

**TUMWATER PLANNING COMMISSION**  
**MINUTES OF HYBRID MEETING**  
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**CONVENE:** 7:00 p.m.

**PRESENT:** Chair Elizabeth Robbins and Commissioners Grace Edwards, Terry Kirkpatrick, Michael Tobias, Brian Schumacher, Meghan Sullivan, and Anthony Varela.

Excused: Commissioner Kelly Von Holtz.

Staff: Planning Manager Brad Medrud and Land Use and Housing Planner Erika Smith-Erickson.

**CHANGES TO THE AGENDA:** There were no changes to the agenda.

**COMMISSIONER'S REPORTS:** There were no reports.

**MANAGER'S REPORT:** Manager Medrud introduced Housing and Land Use Planner Erika Smith-Erickson.

Staff is working on the public participation plan comments submitted by the Commission. Staff anticipates presenting the plan to the Commission in April. The Commission's March 28, 2023 meeting has been cancelled.

The second Community Conversation on the update of tree and vegetation preservation regulations is scheduled on April 3, 2023 at 7 p.m. at the Tumwater Fire Station Training Room and by remote access. All homeowner associations with contact information on file with the City were contacted for the street tree regulations update and for the tree preservation update.

*Commissioner Schumacher arrived at the meeting at 7:03 p.m.*

Manager Medrud referred to the Attorney General's memorandum on takings which was forwarded to the Commission prior to the meeting. He suggested reviewing the memorandum at a future meeting as it serves as the foundation for the Commission's work involving land use issues.

**PUBLIC COMMENT:** **Amy Tousley, Puget Sound Energy (PSE)**, reported she serves as the Local Manager for PSE and is looking forward to hearing the briefing on the Habitat Conservation Plan (HCP).

**Kyle Lucas** said she has multiple interests to include the Growth Management Act update, as she was involved in the Growth

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Management Act when it was first enacted. She is interested as a citizen and as a resident and homeowner in Tumwater on the updates to the Tumwater Comprehensive Plan and the City's decisions on housing densities and addressing socio-economic issues. She lives in a senior manufactured housing community and serves as the spokesperson for the community's new group, Tenants United at Western Plaza Mobile Home Park. The group was formed because the manufactured park was purchased by out-of-state investors from Arizona. The situation affects seniors living on fixed low incomes. The seniors had hoped that the Legislature would have addressed some of the issues with rent stabilization, which did not occur. Consequently, the group will be reaching out to the Planning Commission regarding the issue. The group appreciates the work of the Commission. The group will also contact the City Council. Residents are deeply concerned about the update of the Growth Management Act and changes expected in terms of housing densities, potential rezoning, and its affect to the safety and wellbeing of the community. Residents are grateful for the City of Tumwater's manufactured housing zoning, which should be protected. She looks forward to learning more about the HCP, as she is interested in the public process that is unfolding. She urged reconsideration of scheduling more than one public meeting as the Commission moves forward to review the Comprehensive Plan. The Planning Commission should have more input from the public especially as staff indicated that the document would be abbreviated. Many seniors are members of Tenants United who are very vulnerable elders living within the community.

Manager Medrud advised that the City has established an email for the Comprehensive Plan update process. He asked Ms. Lucas to send an email with a summary of her comments on the manufactured home park purchase, the HCP, and the Comprehensive Plan update. The email address is [compplan@ci.tumwater.wa.us](mailto:compplan@ci.tumwater.wa.us). He will add her name to the mailing list as part of the Comprehensive Plan update process. Staff is completing the public participation plan outlining all the opportunities for discussions with the community as well as through the City's advisory boards and commissions. The one meeting of note is likely the one public hearing as part of the Comprehensive Plan adoption process. Other multiple public meetings will provide opportunities for public input and comments.

Ms. Lucas thanked Manager Medrud for his explanation on the public process.

**BUSH PRAIRIE**  
**HABITAT**  
**CONSERVATION**

Manager Medrud briefed members on the purpose of the Bush Prairie Habitat Conservation Plan (HCP), habitat and protected species, the Endangered Species Act (ESA), and the public engagement process.

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**PLAN (HCP) – STATUS**

**UPDATE:**

The City of Tumwater is located in the middle of South Puget Sound prairies. The prairies provide unique habitat, are not heavily forested, and have supported many unique species over time. The area has been extensively developed over time because land is flat and conducive to development. Conflicts often occur between development, the environment, and species. One of the prairie species is the Olympia Pocket Gopher, a subspecies of the larger Mazama Pocket Gopher. The U.S. Fish and Wildlife Service (USFWS) listed the species as endangered in 2014 with each of the subspecies listed individually. The local area is home to the subspecies found in Tenino, Yelm, and Tumwater. Gophers are the most widespread of the protected species existing within the City. Other species included in the HCP are the Streaked Horned Lark, Oregon Spotted Frog, and the Oregon Vesper Sparrow (soon to be listed).

The Streaked Horned Lark is only found at the Olympia Regional Airport because of open space habitat for ground nesting. The Streaked Horned Lark is often located at airports in Oregon and Washington. Another species listed at the same time is the Oregon Spotted Frog. It is primarily found in wetlands and streams located in the western half of the City near the Black Lake drainage system. The ESA listing protects both the species and its habitat. The range of the Olympia Pocket Gopher overlaps into the City of Tumwater and an equivalent area in Thurston County located to the south of Tumwater. The City of Tumwater is the prime location for prime habitat for the species. Most of the habitat for Oregon Spotted Frog is located south of Tumwater in Thurston County in both the Salmon Creek and Black Lake Drainage Systems.

Many activities can potentially harm or affect the species. Any development activity ranging from operations, maintenance, and development can potentially harm the species. If an action could potentially harm the species, a federal permit must be obtained. The permit is a federal Take Permit granted under Section 10 of the ESA, giving permission for the developer or owner to kill, maim, or harm the species.

Without the benefit of the HCP at the City level, any development or maintenance activity within the City must obtain a federal take permit. The Citywide scope of the HCP covers all activities within the City. The Port of Olympia is the largest landowner in the City and is most impacted by ESA species. The Port of Olympia and the City of Tumwater developed an interlocal agreement to develop the HCP. The HCP is essential because it guides how development impacts are mitigated when an Incidental Take Permit is issued allowing

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development activities within habitat of protected species, The HCP details mitigation actions and is part of the larger Incidental Take Permit the federal government issues when the HCP is approved by USFWS.

Taking of ESA habitat or species is a very long and costly permitting process. The City has been working on the HCP since 2016. Individual federal permits can take some time as USFWS has prioritized the City's HCP while other permit requests have been placed on hold. A number of larger projects both public and private are pending until the City completes the HCP.

Commissioner Schumacher asked whether the acceptance of the City's HCP would absolve a landowner from independently seeking an Incidental Take Permit for a development activity. Manager Medrud affirmed the approach because an individual landowner who wishes to renovate or develop a project would be required to complete a difficult permitting process.

*Commissioner Varela joined the meeting at 7:23 p.m.*

Manager Medrud reported another advantage of the HCP is enabling higher quality and more efficient long-term species protection. For example, a project located on a 10-acre parcel that impacts gopher habitat on eight of the acres requires the owner to mitigate for those impacts on an equivalent-sized parcel somewhere in the range of the habitat. As individual HCPs continue to move forward (up to five have been approved), it can become a patchwork quilt of mitigation lands. Small patches located far apart are not conducive for the recovery of the species. A Citywide HCP is beneficial as the plan includes identifying larger properties for purchase to provide for the long-term recovery of the species.

The HCP reduces uncertainties and costs as part of the development and redevelopment process, it enables development to occur as forecasted in the Tumwater Comprehensive Plan, enables developers to construct needed housing in the City to accommodate population growth, and it enables the City to perform ongoing operations and maintenance activities. The HCP also covers temporary events, such as the Olympic Air Show or the City's fireworks show on the 4<sup>th</sup> of July.

Development of the HCP was funded from the federal government through a series of Section 6 grants. The grants are from USFWS and administered by the Washington State Department of Fish and Wildlife (WDFW). The City received three grants. The Phase 1 grant covered the scoping process for the HCP. The Phase 2 grant was received in 2018 and covers the preparation of the HCP draft and completing the

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environmental process. The City recently received a grant for Phase 3 covering additional costs incurred from preparing the plan and the environmental review as well as supporting the cost of implementation.

Receiving an Incidental Take Permit is only one element of the process because the City must manage the process requiring training of staff to process permit applications, engage with owners and developers to ensure they are informed as to the process, and establish a long-term monitoring program. The term of the HCP is 30 years. The City will develop a process to manage the lands or work with consultants to manage the lands followed by reporting on an annual basis to USFWS on the number of acres impacted and conserved to ensure active continuation of the HCP.

The permit is intended to cover all areas within the City and all Port-controlled lands in the City. The HCP also covers all lands located outside the City within the urban growth area with the expectation that over the next 30 years, many of those areas will be annexed to the City. The 30-year term is initiated when the City issues the first permit.

Chair Robbins asked about the location of large parcels of prime habitat in the urban growth area. Manager Medrud said the land is divided among many owners. The City's Economic Development Manager is identifying and recommending the purchase of land if available on the market or securing conservation easements. Staff is also exploring options of what other HCPs might have in terms of extra mitigation credits the City could purchase. However, each HCP calculates conservation values differently.

Manager Medrud identified the HCP Plan Area, which designates the extent of the Olympia Pocket Gopher range. The area is separated into the Permit Area and the Plan Area. The Permit Area is all land within the City and its urban growth area located west of the Deschutes River. The Permit Area includes all development activities that are covered by the HCP. The larger Plan Area is an area the City is seeking habitat conservation opportunities. The area includes some City land and areas south of the City in Thurston County. Coordination will be necessary with Thurston County as the county's plan also includes some of the same areas.

The Permit Area for the Streaked Horned Lark was recently expanded and covers all South Puget Sound lowlands from the islands north of Portland along the Columbia River to the north of the City. The City is constrained in terms of mitigation lands for the species since the species tend to favor large open areas, such as the airport. The HCP has some restraints on what can occur at the airport because of FAA rules. The

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FAA does not want habitat conservation lands established at the airport.

Commissioner Tobias asked whether the bird is a migratory bird or a local area bird. Manager Medrud said he believes the Streaked Horned Lark is a migratory bird as its range extends to the south area of the Willamette River. Chair Robbins said according to information on the internet, the bird breeds and winters in the local area.

Manager Medrud identified the four species covered in the HCP. All the species are federally threatened except the Oregon Vesper Sparrow, which is under review. Within the state listing, the gopher is threatened and the other species are endangered. Although the HCP is a federal plan, it is also intended to meet state requirements.

Manager Medrud displayed a flow chart describing the model used to estimate habitat in the City for the Olympia Pocket Gopher. The model used previous surveys of land that identified the presence of gophers from either mound activity or sightings of gophers. The first threshold is whether the area has both shrub cover and suitable soils that essentially is located in the southern two-thirds of the City. Areas not suitable for gophers were excluded. If the areas are known to be occupied by gophers, the area is considered occupied habitat. If the area is occupied and recent survey data demonstrates such, the area is rated at Level 1. Level 2 are areas within 200 meters of occupied habitat or contiguous with habitat that is within 200 meters of occupied habitat. As a second tier level, the plan includes those areas immediately adjacent or within 200 meters of known occupied habitat.

Manager Medrud identified areas on a map of known occupancy (Level 1) and areas of grass shrub cover located within 200 meters of known habitat (Level 2). Some areas in the City lack sufficient data but are located beyond the 200-meter threshold. Those areas are anticipated for conservation within the City's Permit Area. Areas located outside of the City will be targeted for opportunities for conservation; however, the City is not required to protect those areas under the HCP. Those areas are likely protected in Thurston County's HCP.

Commissioner Kirkpatrick asked whether a property owner would need to hire a contractor to certify whether the land included species habitat. Manager Medrud said the City's process was intended to focus only on habitat within the gopher soil areas. If the property has gopher soils, it is assumed the area contains gopher habitat. The City's HCP under state law does not limit landowner options. If the landowner elects to complete a HCP after the City's HCP is adopted, the landowner has the right to pursue a separate HCP and participate in the federal permitting process rather than follow the City's HCP process.

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Manager Medrud displayed a map of habitat for the Oregon Spotted Frog. The primary habitat areas are in wetlands. During the winter the frog may live in those areas whereas during drier months, the frog may move to other locations. Some areas extending beyond wetlands will be accounted for as part of the plan to include a major area in the western area of the City. For the most part, existing critical areas regulations address the protection of wetlands and buffers that apply to the area. If there is a need to develop within a wetland or buffer in those areas, some level of conservation mitigation would be required to mitigate impacts.

Commissioner Tobias asked whether the City has designated any conservation areas in the Permit and Plan Areas. Manager Medrud said the City has no conservation areas either owned or operated by City or the Port. Several other HCPs have assigned conservation lands within the City. In some cases, excess credits could be available in those areas that might become available for purchase; however, the process is complicated as conservation values are different for each HCP.

Chair Robbins inquired about the expiration of other HCPs and permits and whether it might be possible to synchronize those HCPs with the City's HCP. Manager Medrud said the other HCPs were completed as an individual project HCP requiring the owner to mitigate for impacts. The City's HCP is a programmatic HCP and covers multiple projects.

Manager Medrud displayed a map of habitat for the Streaked Horned Lark at the airport and areas immediately adjacent to the airport.

The City has not had any recent sightings of the Oregon Vesper Sparrow. However, the bird may be present at the airport or in other adjacent grassland areas. The bird's habitat is a smaller requirement than the Streaked Horned Lark. The City's search for larger parcels would likely serve as good habitat for the Oregon Vesper Sparrow.

HCP covered activities must meet six criteria:

1. Control: City or Port will perform or issue a permit for the activity
2. Location: Activity is within Permit Area
3. Timing: Activity is during 30-year permit term
4. Impact: There is a reasonable risk of take
5. Definition: Activity is defined well enough to assess its impacts on the species
6. Practicable: More feasible to include the activity in the HCP than to not do so

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City activities covered include:

- Urban development projects
- Recurring activities (public events)
- Facilities operations and maintenance
- Conservation strategy implementation

Port activities covered include:

- Aeronautical activities under the authority of Federal Aviation Administration (FAA)
- Operations and maintenance
- Capital improvements identified in Olympia Regional Airport Master Plan

The effects analysis considers the immediate effect on the covered species as well as other impacts over time from other actions that need to be accounted for. Impacts include mortality, injury, or removal or degradation of habitat over time, such as a dog park adjacent to a habitat preserve.

Chair Robbins asked whether the HCP covers the potential expansion of the airport as a capital improvement. Manager Medrud advised that it likely would not cover an airport expansion as the HCP covers only those activities occurring within the existing fence line of the airport. Should the Port expand beyond the specifications contained within the Master Plan, the activity would not be covered within the HCP. However, the City's HCP covers development activities within the New Market Industrial Park.

Future development effects over the 30 years considered the following:

- Estimates of urban growth from the Thurston Regional Planning Council
- Estimates of development under the Port of Olympia Master Plan
- Removed areas that are unlikely to develop (e.g. development underway, mitigation lands)
- Compared areas likely to develop with assumptions about species habitat potential

Manager Medrud referred to several tables within the plan of the modeled habitat types (occupied, higher likelihood of occupancy, lower likelihood of occupancy, occupied wetlands, suitable habitat, and modeled habitat for each species) and the amount of acres required for habitat in Permit Areas, maximum amount removed by covered activities, habitat remaining in Permit Area following loss from covered activities, and the percentage lost during permit term. The amounts do



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not include habitat added as part of conservation efforts. Calculations were completed for the four species. The numbers may change because the HCP has not been finalized.

Chair Robbins inquired as to the amount of loss allowable by USFWS. Manager Medrud explained that any loss incurred must be mitigated, such as identifying 1,500 acres of mitigation land to offset intended development activities. The loss is not capped; however, all loss must be mitigated.

Conservation strategies are intended to identify actions necessary to mitigate impacts:

- Designed to address ESA requirement to minimize and mitigate the impacts of the taking on the covered species to the maximum extent practicable
- Mitigation program fully offsets the taking impacts of each of the covered species that may result from covered activities
- Mitigate the impacts in the effects analysis, including direct, indirect, temporary, and permanent effects
- Based on the best scientific data available at the time of its preparation
- Identifies the amount of mitigation land needed, the criteria for selecting it, and the location requirements
- Creates biological goals and objectives for covered species
- Outlines the management activities on mitigation lands that will improve habitat conditions
- Describes a monitoring program to track progress

Chair Robbins asked whether the plan include strategies to address if progress is not occurring or recovery has not occurred. Manager Medrud explained that the HCP is not responsible for the recovery of the species. USFWS developed species recovery plans for each listed species. USFWS issued a recovery plan for the gopher and the spotted frog. The HCP includes measures to ascertain whether land has been set-aside for conservation. If not, the issuance of permits would cease until the City secures conservation lands. The City files a report to USFWS annually on the status of impacts and mitigation measures. If the City is not achieving the proper level of mitigation, the City has one year to rectify the situation. The HCP includes ongoing monitoring and reporting of the conservation values of the lands. After a certain level of prairie has been preserved, the City is required to maintain the value requiring annual activities.

Commissioner Kirkpatrick questioned the outcome of the City's HCP if the pocket gopher is removed from ESA listing in the next 20 years.

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Manager Medrud replied that language in the HCP addresses partners withdrawing from the HCP (Port or City) over time for whatever reason. However, each agency would still need to meet obligations in terms of established conservation lands and ongoing maintenance in perpetuity. Provisions within the HCP also address delisting of species. Conservation lands created by the City would remain as it addressed past impacts; however, the City has the ability to remove a species that has been delisted. The City would no longer need to account for the species within the 30-year term.

Manager Medrud reported the conservation strategy addresses all impacts in terms of different levels of impacts for each species and the estimated protected habitat and total maximum temporary impacts.

The HCP guidelines address changes occurring during the 30-year permit term and adaptability within a limited framework. During the initial years of implementation, the City will evaluate its compliance with the HCP, assess the status of covered species habitat within the Reserve System (conservation areas), and evaluate the effects of management actions on species as the conservation strategy is implemented over time.

The section on Implementation includes:

- City and the Port's roles and responsibilities as HCP Permittees
- Covered activity application process
- Process for assembling the Reserve System and other mitigation options
- Annual compliance and reporting
- The City will be the primary responsible party for HCP implementation

The HCP accounts for a number of uncertainties:

- Total amount of development that occurs
- Frequency of operations and maintenance activities
- Amount of onsite mitigation
- Number of project proponents who seek ESA coverage through the HCP

HCP Cost Centers include:

- Implementation of conservation strategy
- Mitigation land acquisition
- Land management, monitoring, and administration costs
- Adaptive management
- Funding to manage mitigation lands in perpetuity
- Contingency funds to cover uncertainties

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The HCP includes a total per acre charge. For example, total acres impacted for the gopher is 1,529 with a cost per acre impact of \$58,816 (\$52,000 two years ago), which speaks to the importance of receiving approval of the HCP. The costs are handled similar to impact fees for transportation, parks, and schools, etc. Developers have the option of working under the HCP and paying the one-time fee or pursuing a separate HCP with USFWS. The first calculation for a development site is the amount of gopher soils present on the site followed by the level of total acres of impact on the site.

Chair Robbins asked about the status of the endowment after 30 years. Manager Medrud said contributions to the endowment would no longer occur; however, the endowment (trust fund) would remain. The HCP is applicable only to the identified boundary and if extended in the future for other reasons, the City would need to seek an amendment from the U.S. Fish and Wildlife Service to extend the boundary.

Chair Robbins inquired about the possibility of USFWS grants to help cover costs for land acquisition. Manager Medrud advised that for mitigation purposes, no funds from USFWS are available. If the City incurs impacts, the federal government does not pay for those impacts. Conservation grants are available to purchase lands if the City improves the lands to a specific level that could result in excess conservation capacity for mitigation.

Commissioner Schumacher conveyed support for mitigating the habitat conversion fee through land acquisition to improve conservation capacity. Manager Medrud said provisions within the HCP address extending beyond the fee collection. If an owner of 100 acres of prime gopher habitat agreed to provide the City with two, 20-acre parcels as conservation land, the HCP includes the ability to evaluate those types of circumstances rather than assessing a fee.

Commissioner Kirkpatrick asked whether any of the fees collected by the City are provided to USFWS or WDFW. Manager Medrud said all fees collected are allocated to the cost categories identified in the HCP.

Fees are collected when the City issues a grading or building permit or whenever a final permit is issued.

Discussion ensued on the property value loss when land is placed in a conservation status.

Manager Medrud noted that unfortunately, despite staff efforts, the U.S. Fish and Wildlife Service indicated the City is required to impose a

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permit for a homeowner to add a patio to their home.

Commissioner Schumacher commented on the importance of public education on the HCP because it will affect some homeowners. Manager Medrud said the educational component will be included in the implementation process for both staff and for applicants. Since the HCP process commenced, the City conducted five stakeholder meetings prior to the pandemic. Stakeholders represented approximately 35 organizations including the Audubon Society, Master Builders, state agencies, Thurston County, developers, and others. Additionally, staff has been meeting with smaller groups of stakeholders to focus on particular issues. Stakeholder meeting #6 is scheduled on Friday, March 17, 2023 to introduce the first draft of the HCP. Another meeting is scheduled in April to address questions about the HCP. He anticipates additional stakeholder meetings moving forward.

Staff has coordinated with WDFW and USFWS staff on particular issues involving the HCP. Staff anticipates a larger community meeting later in the year. A community meeting was held in 2019 to share the general outline of the process and present information available at that time. The second meeting may be part of or separate from the required environmental review of the project. The National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA) reviews both have specific processes. NEPA and SEPA may be accomplished using a single document or separate documents. Staff is pursuing an environmental assessment rather than an Environmental Impact Statement (EIS) process because it is a simpler process and covers the same information. The EIS process will require at least two years to complete. All processes require some level of public review and comment. The City serves as the Lead Agency for SEPA and USFWS serves as the Lead Agency for NEPA. Any documentation from the NEPA process will be provided by USFWS.

2023 HCP activities to date include:

- On March 6, 2023, the City issued a working draft of the HCP to USFWS, WDFW, and the project stakeholder group
- March 17, 2023: Stakeholder Meeting #6
- April 21, 2023: Stakeholder Meeting #7
- Staff continues to meet more than once a month with USFWS staff

Next steps include:

- Complete HCP: public draft expected late summer 2023, final HCP and approvals in 2024
- SEPA/NEPA Review expected to start in 2023

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Manager Medrud noted that the City does not control the timeline. The project website includes details of the stakeholder process, links to the working draft, and future meetings. The Project Website address is <http://www.bushprairiehcp.org/>. Manager Medrud invited members to contact him with any questions.

**NEXT MEETING  
DATE:**

The Commission's meeting on March 28, 2023 has been cancelled. The next meeting is a joint meeting with the Tree Board on April 11, 2023.

**OTHER BUSINESS:**

Commissioner Schumacher reported the Legislature took no action to help resolve commercial and residential rent increases. He recommended the Commission discuss the issue because the increase in rents has become a serious issue, especially for low-income households.

Manager Medrud agreed the topic is both important and timely. In 2018, the Council directed staff to begin addressing homelessness and affordable housing. One of the items included exploring ways to preserve manufacturing housing. The City had previously enacted a manufactured home park zone that was subject to a legal challenge to the Washington State Supreme Court. The Court upheld the City's action. A much more difficult issue is the increase in rent for mobile home spaces. Staff is exploring options because the issues are difficult to address at the City level. Additionally, the Commission will receive a briefing on the tenant protections and rental housing registration requirements recently adopted by the Council for all renters and landlords in the City.

**ADJOURNMENT:**

**Commissioner Tobias moved, seconded by Commissioner Schumacher, to adjourn the meeting at 8:49 p.m. A voice vote approved the motion unanimously.**

Prepared by Valerie L. Gow, President  
Puget Sound Meeting Services, [psmsoly@earthlink.net](mailto:psmsoly@earthlink.net)