

# **TUMWATER PLANNING COMMISSION**

## **MINUTES OF HYBRID MEETING**

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**CONVENE:** 7:04 p.m.

**PRESENT:** Chair Elizabeth Robbins and Commissioners Terry Kirkpatrick, Nathan Peters, Brian Schumacher, Michael Tobias, and Anthony Varela.

Excused: Commissioners Grace Edwards and Meghan Sullivan.

Staff: Planning Manager Brad Medrud and Transportation Manager Mary Heather Ames.

**CHANGES TO AGENDA:** Agenda items 8 and 9 were reordered.

### **APPROVAL OF MINUTES: TUMWATER PLANNING COMMISSION MEETING MINUTES JUNE 28, 2022:**

**MOTION:** Commissioner Peters moved, seconded by Commissioner Kirkpatrick, to approve the June 28, 2022 minutes as published. Motion carried unanimously.

**COMMISSIONER REPORTS:** Chair Robbins acknowledged and thanked the Parks and Recreation Department for hosting movie nights at various locations throughout the City.

Councilmember Peters reported on an event hosted at the Lacey Maker Space. Mayor Sullivan, Councilmember Charlie Schneider, Economic Development Manager Austin Ramirez also attended the regional partnership event focused on promoting workforce development.

**MANAGER'S REPORT:** Manager Medrud reported Manager Ramirez plans to attend the September 13, 2022 meeting. In addition to overseeing economic development opportunities for the City, Manager Ramirez is responsible for assisting with the implementation of the City's Habitat Conservation Plan.

The totem pole at the Tumwater Town Center has been removed.

Manager Medrud referred to an updated meeting schedule. Staff met with the consultant for the vegetation and tree protection ordinance update. The consultant is working on the public engagement strategy and is identifying stakeholders and outlining the update process. The Commission's first meeting with the Tree Board is scheduled for the first meeting in October. Staff plans to coordinate meetings with the City Council, Tree Board, and the

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Planning Commission to review and attain consensus on the intent of the update before proceeding. The same approach will be pursued with all other stakeholders to achieve some level of agreement prior to recommending specific changes to codes.

The consultant contract should be executed for the update of the street tree plan in the next several days.

The landscaping ordinance RFP closes at the end the month. It appears several firms are planning to submit proposals.

The annual 2022 Comprehensive Plan Amendment review process is scheduled for the Commission's first meeting in August. One of the proposals pertains to neighborhood character. The Commission will be asked to review current language in the Comprehensive Plan Land Use and Housing Elements and provide some reflection on how current language supports other City goals and policies.

#### **PUBLIC COMMENT:**

There were no public comments.

#### **ORDINANCE NO. O2022-015, OTHER HOUSEKEEPING AMENDMENTS:**

Manager Medrud introduced Transportation Manager Mary Heather Ames.

Manager Medrud reported the Commission received a briefing on Ordinance No. O2022-015 at the July 12, 2022 meeting. The three proposed amendments are to Title 2 Administration and Personnel, Title 12 Streets, Sidewalks and Public Places, and Title 15 Building and Construction that do not fall under the Tumwater Municipal Code (TMC) 18.60.025(A) process but considered concurrently with the development code final docket in Ordinance No. O2022-013. The staff report includes a summary of the amendments, code section(s) to be amended, and proposed amendment language.

Manager Medrud referred to the proposed amendments to Title 12 Streets, Sidewalks and Public Places. The briefing will focus on short- and long-term sidewalk maintenance responsibilities and verifying the responsible party for the maintenance with the understanding that the current TMC and the Tumwater Development Guide do not clearly address those issues. The staff report includes some history on the ordinances.

Prior to 2010, provisions in City ordinances identified adjoining property owners as the responsible party for clearing snow and for ongoing maintenance of sidewalks. Those provisions were removed in 2010. Staff is proposing several amendments to address removal of sidewalk obstructions (snow, ice, & vegetation) and ongoing sidewalk maintenance and repair.

At the last meeting, Commissioners asked a series of questions regarding the proposed amendments pertaining to sidewalks:

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1. **How will property owners in the City know about the proposed amendments and their responsibilities for short- and long-term maintenance after the code amendments are complete?** Manager Medrud reviewed and cited a series of codes within the staff report that speak to the amendment. They include:

- a. **8.04.030 Public nuisance defined.** A public nuisance consists of doing an act, or omitting to perform a duty, or permitting an action or condition to occur or exist which...*

*Ordinance No. 616 (1972) explicitly addressed removing snow and ice and vegetation from public sidewalks. Ordinance No. O2013-004 (2013) replaced the code sections dealing with those specific issues.*

- b. **TMC 12.08.010 Obstructing streets prohibited.** No person shall deposit, place or put, nor suffer to be deposited, placed or put, by a person or persons in his or her employ, any goods, wares, firewood, coal, lumber, chattels or merchandise of any description whatsoever, in any of the streets, highways, alleys, or other public places of the city, except while counting or shipping the same, or actually removing the same into or out of some building or enclosure, or loading the same into or unloading the same out of some vehicle.*
- c. **12.24.030 Trees and shrubs endangering usefulness of streets and sidewalks – Public nuisance.** Trees, plants, shrubs or vegetation, or parts thereof, which endanger the security or usefulness of any public street, sidewalk, sewer or other underground utility, are declared to be a public nuisance, except that trees may extend over the sidewalk when kept trimmed to a height of eight feet above sidewalks and fourteen feet above a roadway.*
- d. **12.24.040 Abatement of nuisance.** The public works director, or his/her designee, shall by written notice require the owner of such nuisances described in TMC 12.24.030, in addition or alternative to the penalties prescribed by TMC 12.24.090, to abate the nuisance by trimming, destroying or removal, at the owner's cost and expense within the time specified by the director; provided further, that if the destruction, trimming, or removal is not made by such owner within the time specified, the director may abate the same and render a bill covering the cost of such abatement.*

*Additionally, notes in specific approved final plats reinforce those code sections.*

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Manager Medrud explained that staff would need to work with the City's Communications team on a Citywide notice to all residents about the updated ordinance followed by notices that are more detailed to property owners adjacent to known defects from the transition plan. There would likely be a lengthy notice period before the City starts enforcement, perhaps two to five years.

Transportation Manager Ames stressed the importance of communicating the action to the community through a public campaign, especially when the City begins enforcement of maintenance of sidewalks. The two to five year timeframe is important as it speaks to a major change that would take time to implement the changes both for the public's perception and in City processes.

Manager Medrud responded to questions and explained that the City's code enforcement is through the Tumwater Police Department with two positions devoted to code enforcement actions in the City spanning all types of violations. The City's code enforcement is a complain-driven process with officers not actively seeking issues but investigating complaints received by the City.

Commissioner Kirkpatrick pointed out that the proposal would require assumption of maintenance of street curb and possibly trees planted within the middle of a sidewalk. The proposed amendment speaks to much more complexity than just a sidewalk. Manager Medrud offered that in some cases, neighborhood associations or business districts would address the requirements rather than individual property owners.

Manager Ames said several homeowner associations are tracking the proposal because of interest in repairing sidewalks damaged by tree roots. Some groups would work jointly to address issues on a larger scale rather than individually.

Commissioner Varela questioned the different forms of communication to the community. Manager Ames replied that the City's Communications team uses many social media platforms. The communications plan has not been defined at this point, but based on other campaigns; the City pursues a variety of methods and formats to communicate information.

Commissioner Kirkpatrick offered that since the underlying liability of sidewalks is the responsibility of the City, he supports revising language that encourages the homeowner rather than requires the homeowner to maintain sidewalks.

Chair Robbins suggested the City should recognize its values in terms of walkability and the aesthetics of neighborhoods and business districts by assuming responsibility for maintenance of sidewalks and budgeting costs to

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achieve those values. She supported the recommendation to revise language reflecting, “to encourage.”

Manager Medrud replied that the option “to encourage” is worth further discussion recognizing that many property owners are willing to maintain their property appropriately with or without enforcement codes while other instances of owners not maintaining their property have created issues. The City needs the ability to enforce actions when encountering those types of situations.

Commissioner Schumacher suggested retaining the proposed language and focusing the communications campaign on the City’s desire to work cooperatively with homeowners while retaining the ability to pursue enforcement if situations should warrant.

Manager Ames referred to the City of Olympia’s code containing similar language. However, the City of Olympia is not actively enforcing that section of the code at this time. The discussion surrounding public communications and the implementation of the code is important. It is unlikely a typical community member would read the code but would be more likely exposed to the information through the communications campaign. The idea of a collaborative effort is important. In terms of cost incurred by the City, the City’s American with Disabilities Act (ADA) Transition Plan update for rights-of-way completed in 2021 identified a cost of \$19 million to repair all sidewalks to ADA standards in the City. The City expends approximately \$200,000 each year to address sidewalk repairs. The City proactively works with other partners to help reduce those costs.

Chair Robbins commented that her suggestion pertained to maintenance costs rather than upgrading sidewalks to ADA standards.

Discussion ensued on various options and practices whereby City-sponsored efforts are in collaboration with neighborhoods and property owners to address street tree issues and the possibility of including language on an appeal process for homeowners who are elderly or unable to maintain their respective sidewalk and curb.

#### **2. How can the City help property owners who are elderly or have other challenges keep their sidewalks clear of vegetation and snow?**

Manager Medrud reported the issue requires further discussion with the City Council, as the City cannot assist with snow removal, as staff does not remove snow on any sidewalks in the City given limited equipment and crews. Staff is not aware of any agency that handles snow removal for sidewalks. It is typically a “help your neighbor” situation, but some residents contact the City

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for emergency purposes and staff helps when resources are available. It is similar for vegetation removal when staff lacks capacity to provide assistance.

Chair Robbins noted that extended snow events are relatively rare in the region. She questioned whether the code should be clarified in terms of the City's responsibility for snow removal for a specific timeframe if a snow event warrants action. She supported efforts to promote volunteerism, as there are likely youth organizations and other groups that would appreciate support assistance from the City.

Manager Ames acknowledged the importance of working with the community during snow events, as well offering assistance on coordinated vegetation maintenance events.

Manager Medrud outlined the City's response for code enforcement violations. The first step is contact with the property owner to resolve the issue before advancing to an enforcement action. The second step is a voluntary correction agreement with acknowledgement by the City that in some circumstances resolving the violation may take time for the homeowner to resolve. The voluntary agreement affords sufficient time and cites available resources to consider. Enforcement action does not advance to the penalty phase unless the property owner has ignored the offer of a voluntary correction agreement or other contacts by the City.

Commissioner Varela commented that in many situations, the lack of action by a homeowner is because of the lack of resources or equipment. He asked whether the City has a program that offers homeowners access to equipment or information on where resources can be obtained.

Manager Ames responded that the City's equipment typically includes snow plows mounted on trucks. The City lacks smaller hand tools and no program has been established at this time.

### **3. How does the City explain the long-term cost implications and who will pay: property owner directly or the property owner to the City to have the City do the work instead?**

Manager Medrud reported the City previously sponsored a program where the property owner paid 25% and the City paid 75%. Property owners proactively contacted the City about sidewalk defects in front of their parcels and requested the City include their project within the City's sidewalk repair program. Staff supports considering reinitiating a similar program.

Commissioner Peters supported the option but questioned those situations where the homeowner is unable contribute 25% to the cost of the project. Manager Medrud recommended more discussion on program criteria and assistance for special circumstances.

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Manager Ames addressed questions on determining the project cost via seeking bids for the lowest bidder or whether the City assesses an established fee. It is possible to seek individual bids; however, the benefit of including a project within a larger project contract is beneficial because of the economies of scale with less per unit cost.

Chair Robbins questioned whether Washington State Department of Emergency Management or the Federal Emergency Management Agency (FEMA) affords grants to cities for small-scale preparedness projects. Manager Ames responded that the possibility exists as most of her grant experience has focused on large City projects. However, the option could be explored.

**4. Liability issue: if the City's code explicitly states that it is the adjoining property owner's responsibility to maintain sidewalks (snow, ice, vegetation, etc.), will it encourage lawsuits?**

Manager Medrud advised that the City could shift maintenance responsibility to abutting properties with the understanding that the City cannot shift liability absent the property owner being the cause of the defect. Staff would need to follow up with the City Attorney regarding liability responsibility.

Manager Ames reported the issue was the subject of staff discussions several years ago. The City acknowledges that it retains liability if someone trips or falls on a sidewalk maintained by a property owner. During her tenure with the City, she has not been aware of any situations involving injuries caused by a fall on a sidewalk; however, she has worked for other jurisdictions that were involved in sidewalk injury lawsuits. Jurisdictions are insured to cover those types of liabilities.

Commissioner Kirkpatrick questioned whether snow removal on sidewalks is an appropriate action as cleared sidewalks during a snow event often freeze during the night increasing hazards for falls. Manager Medrud responded that other options could be discussed.

Manager Ames reported the City applied a sand mixture to roads during the last snow event, as the application of saline is only effective in certain temperatures.

Chair Robbins asked about the possibility of applying sand mixtures to sidewalks. Manager Ames explained that the equipment is not capable of applying the mixture to sidewalks because of the difference in elevation between the road and sidewalk or because of the presence of trees between the street and sidewalk. Additionally, the City lacks continuous sidewalks throughout the City except in some areas. The capacity of staff is also limited.

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Manager Ames reviewed similar code examples from surrounding jurisdictions. The City of Lacey's code does not include any provisions for sidewalk maintenance or a program. The City of Olympia has adopted codes but has not implemented any actions. The issue speaks to the Commission's comments that should the proposal move forward, it would be important for implementation actions to be smartly applied with consideration of impacts to property owners rather than enacting changes without considering the impact to the community. Those issues could be addressed and staff is capable of moving forward should the amendments move forward.

Manager Medrud referred to the request to schedule a public hearing and offered an option of delaying action on the two code changes and committing some resources for the development of an educational/communications.

Commissioner Kirkpatrick cited **TMC 8.04.030 Public nuisance defined.** and the addition of "*C. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any stream, public park, square, highway, public trail, or public right-of-way in the city.*" He asked about whether the additional language conforms with legal opinions surrounding homeless encampments, as homeless encampments are considered a public nuisance. Manager Medrud cited the Boise court ruling in terms of what the City can and cannot do with respect to homeless encampments. The court case prohibits the removal of homeless encampments unless the jurisdiction can provide suitable housing. The proposed language should not create an issue, as other measures must be in place before the provision would be enforced in those circumstances. There could be particular instances where concerns for public safety or other reasons exist, such as the Percival Creek situation where homeless encampments were located along the creek throughout the canyon. Public health concerns surrounded sewage entering the creek from the encampments. Those particular cases are examples where the City should have the ability to resolve issues. However, the Boise decision also requires the City to provide suitable housing opportunities.

Commissioner Tobias pointed out that the proposed language distinguishes between an encampment and obstruction of passage.

Manager Medrud noted that the provision in the staff report was mistakenly underlined and is an existing provision in the current code. He reviewed the proposed action to schedule a public hearing on Ordinance O2022-015 removing provisions **12.08.010 Obstructing streets prohibited** and **12.12.070 Sidewalk maintenance and repair** and moving forward with the remaining provisions. The staff report to the Council would include information on the Commission's overall discussion and review and the Commission's suggestion that more efforts are warranted on public education with consideration of those specific code changes scheduled later. Chair Robbins requested the public outreach communication include facilitation to volunteer groups to seek opportunities for providing assistance.



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**MOTION:** Commissioner Kirkpatrick moved, seconded by Commissioner Schumacher, to schedule a public hearing on Ordinance No. O2022-015 - Other Housekeeping Amendments omitting *Section 2 12.08.035 Removal of sidewalk obstructions and Section 12.12.070 Sidewalk maintenance and repair* with the staff report to City Council documenting the Commission's discussion and the importance of pursuing a public communications/educational outreach plan prior to recommending the proposed code amendments. Motion carried unanimously.

**ORDINANCE NO. O2022-013, FINAL DOCKET FOR 2022 ANNUAL HOUSEKEEPING AMENDMENTS:** Manager Medrud reported the City's code establishes a process to identify a preliminary docket of annual development code housekeeping amendments for review by the Planning Commission for a recommendation to the City Council. The City Council adopted the docket on June 21, 2022 for 2022 annual housekeeping amendments. At its last meeting, the Commission reviewed the final docket of proposed amendments.

The staff report includes a summary of each amendment, the code sections affected, and proposed amendment language.

Manager Medrud referred to the 15 proposed amendments:

- A. Accessory Dwelling Unit Entrances
- B. Adult Family Homes/Residential Care Facilities
- C. Bicycle Storage
- D. Capitol Boulevard Community – Multifamily Parking Requirements
- E. Car Washes
- F. Duplexes
- G. Impound Yards.
- H. Mixed Use Overlay
- I. Nonconforming Signs
- J. Optometry Clinics
- K. Personal and Professional Services
- L. Public Building Signs
- M. Residential Mechanical Equipment in Setbacks
- N. Residential Storage Sheds – Gravel Access
- O. Subdivision Dedication Code Language Update

Similar to the previous action, it is possible to exclude some the proposed amendments from the public hearing on the ordinance that might require further review and discussion.

Councilmember Tobias referred to optometry clinics and the discussion on whether the use is retail versus a health service provider. He recently visited a local optician with a sign requiring the wearing of masks. It appears the business assumes it is operating as a medical facility. He asked whether those types of clinics are considered a medical facility. Manager Medrud said the

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question speaks to the uncertainty of whether it is an issue of statewide zoning in terms of the use or whether it as an issue involving licensing and how those clinics align within the licensing structure.

Commissioner Schumacher noted that for facilities licensed through the Department of Health (DOH), those facilities are mandated to be licensed and follow DOH medical guidelines.

Commissioner Kirkpatrick noted that an optician is not an optometrist. An optician operates a retail store whereas the optometrist issues the prescription. The question is whether the definition of "Optometry Clinic" includes an optician. An optician cannot issue a prescription.

Commissioner Schumacher shared additional information on licensing requirements and offered that the proposal essentially speaks to the practical effect of the business and how it affects surrounding uses. Commissioner Kirkpatrick said he believes an optician does not conform to the definition. The zoning allows for an optometry clinic but not an optician business.

Manager Medrud said the issue prompting the proposal was the existing extensive definition of medical clinics that are allowed. The definition speaks to an optometry clinic but not to an optician business. He recommended an additional review by staff to ensure the appropriate uses are included within the definition.

Commissioner Schumacher suggested the ordinance should not refer to specific professions to avoid the issues associated with the variety of professions. Manager Medrud noted that language within the ordinance includes professional services that often include a small component of product sales, such as a salon.

Chair Robbins agreed with the suggestion that the definition is an unnecessary distinction as the intent is the affect of any particular business on surrounding area and the environment.

Commissioner Kirkpatrick recommended removing the definition and examining the use tables to ensure optometry clinics are authorized as well as retail in the zones because of the convenience to customers as many optometrists include optician services. No objections were offered on the proposal.

Manager Medrud reported the staff report addresses additional questions raised at the briefing on July 12, 2022 involving accessory dwelling unit entrances, CBC parking requirements, and car washes.

Commissioner Kirkpatrick referred to page 78 of the ordinance and questioned the intent of the inclusion of "notwithstanding" within *"N. TMC 18.50.070*

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*notwithstanding, the number of required parking...*” Manager Medrud explained that the terminology is a reference to the code.

Commissioner Kirkpatrick cited the lack of a definition of a “residential storage shed” within the code. He asked whether it pertains to an accessory dwelling unit. Manager Medrud said the use is a storage shed not designed for permanent housing. He offered to include and refine a definition of a “residential storage shed.” The intent is applicable to the installation of a storage shed and that a paved driveway should not be required. Several Commissioners suggested removing “residential” as it confuses the definition of a shed. Manager Medrud supported the recommendation.

Commissioner Kirkpatrick referred to **18.10.020 Permitted uses** and questioned the intent of the provision stating, *1. Duplexes are allowed on individual lots legally established before or on April 15, 2021.* Manager Medrud explained that the intent of the language speaks to allowing the owner to build a duplex on a legal lot established through a platting process or some other method either on or before April 15, 2021. After that point, duplexes shall not occupy more than twenty percent of the total lots in a new short plat or subdivision legally established after April 15, 2021 in the Single Family Low Density zone district. In such cases, the Community Development Director would have the discretion to alter the percentage in order to allow the new short plat or subdivision to meet minimum required densities due to topography or other special conditions related to the site, such as critical areas.

Manager Medrud reviewed the three outstanding provisions with recommended language changes:

1. Accessory Dwelling Unit Entrances. Changed the primary entrance to an accessory dwelling unit from “should” to “are encouraged to” not be visible from the yard on the same side of the lot on which the primary entrance to the primary single-family dwelling unit is located.
2. CBC – Parking Requirements. Raised the maximum parking ratios for multifamily dwellings from one space per dwelling to one off-street space per studio apartment, 1.5 spaces per one to two bedroom dwelling units, two spaces per three or more bedroom dwelling units, and one guest space for every ten units, which are the minimum prescribed spaces in TMC Figure 18.50.70(A).

Chair Robbins asked about the possibility of requiring structured parking at a certain required parking space threshold. Manager Medrud suggested the City has not attained the level of economic activity that would require structured parking. Some developers have contemplated structured parking to obtain a higher number of units. The zoning code requires adequate parking spaces for the use and there are various methods allowed to achieve that outcome.

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3. Car Washes. Added “electric vehicle charging stations” as an accessory use to an “automobile service station.”

Manager Medrud reported the recommendation from staff is to schedule a public hearing on August 9, 2022 to consider Ordinance No. O2022-013 - Final Docket for 2022 Annual Housekeeping Amendments. Additionally, staff has identified some changes to the ordinance, which will be included in the ordinance considered during the public hearing.

Chair Robbins asked about the possibility of a map overlay of the location of existing impound lots in the City for the public hearing. Manager Medrud responded that the City utilizes data from the Thurston County Assessor. It would entail identifying a wrecking yard versus an impound yard. The definitions used by the Assessor’s Office do not always match with the City’s definitions. Chair Robbins said her intent is ascertaining the real need for the City to host additional impound lots if there are an adequate number available in the surrounding areas. Manager Medrud responded that staff has been contacted by two companies seeking information about locating in the City. Chair Robbins inquired about the level of tax revenue generated from those types of uses or the benefits to the City versus impacts to the City. Manager Medrud said he would research and provide additional information. The use is also limited to industrial zones within the City.

Staff and the Commission discussed various activities associated with impound yards and wrecking yards. Manager Medrud said all impound yards would also be a conditional use as proposed within industrial zoned areas. No off-street parking or loading areas would be allowed in any required yard area, all outdoor or processing/handling areas must be screened in accordance with the landscaping code, and all parking areas shall be clean. Additionally, the proposed definition includes a specific reference to the RCW regulating impound lots.

Manager Medrud referred to the previous discussion on signage specific to churches and schools. The current code includes limitations on the size and location of signs in areas near churches and schools. At that time, other types of uses were not necessarily recognized that locate in residential areas that may require more signage than typically allowed, such as schools and churches, which tend to attract people to residential areas. Staff believed it would be appropriate to consider those two uses, as they are community uses attracting people to residential areas that could benefit from signage.

Chair Robbins suggested categorizing churches within the category of community centers as there are different types of religious facilities. Manager Medrud noted the definition of “church” is a place of worship or something similar, as the intent was to cover all different types of religious facilities.

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Chair Robbins offered the possibility of adding “schools” and “places of assembly, such as churches as defined in...” Manager Medrud replied that the suggested language would not be necessary as the code includes the definition of church. He suggested deferring the proposal as it could broaden allowed locations for signs, which could entail a future amendment. Chair Robbins said the intent of her recommendation is include a generalized term that speaks to locations where people want to assemble. Manager Medrud offered that a generalized term could encompass a range of different types of uses to include uses that are not allowed in single-family residential zones.

**MOTION:** **Commissioner Tobias moved, seconded by Commissioner Peters, to schedule a public hearing on August 9, 2022 on Ordinance No. O2022-013, Final Docket for 2022 Annual Housekeeping Amendments. Motion carried unanimously.**

**NEXT MEETING DATE:** The next meeting is on Tuesday, August 9, 2022. The agenda includes the two public hearings and an introductory discussion on 2022 Comprehensive Plan Amendments.

**ADJOURNMENT:** **Commissioner Schumacher moved, seconded by Commissioner Tobias, to adjourn the meeting at 9:02 p.m. Motion carried unanimously.**

Prepared by Valerie Gow, Recording Secretary/President  
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