

**TUMWATER CITY COUNCIL MEETING
MINUTES OF HYBRID MEETING
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CONVENE: 7:00 p.m.

PRESENT: Mayor Debbie Sullivan and Councilmembers Peter Agabi, Michael Althausen, Joan Cathey, Leatta Dahlhoff, Angela Jefferson, Eileen Swarthout, and Kelly Von Holtz.

Staff: City Administrator Lisa Parks, City Attorney Karen Kirkpatrick, Finance Director Troy Niemeyer, Community Development Department Director Michael Matlock, Police Chief Jon Weiks, Fire Chief Brian Hurley, Parks and Recreation Director Chuck Denney, Transportation & Engineering Director Brandon Hicks, Water Resources & Sustainability Director Dan Smith, Transportation & Engineering Assistant Director Mary Heather Ames, Engineering Services Manager Bill Lindauer, and City Clerk Melody Valiant.

**CHANGES TO
AGENDA:**

MOTION: Councilmember Dahlhoff moved, seconded by Councilmember Von Holtz, to amend the agenda adding a discussion under Council Considerations on three proposals regarding the Davis-Meeker oak tree that were forwarded to the Council and the Mayor on Sunday, June 2, 2024. A voice vote approved the motion unanimously.

SPECIAL ITEMS:

**2023 OFFICER OF THE
YEAR - KELLY
CLARK:**

Police Chief Weiks reported the 2023 Officer of the Year is Police Officer Kelly Clark. In his 25 years with the Tumwater Police Department, Officer Clark is unaffected by the day-to-day changes and drama of the job as he projects a singular focus of doing the work, doing it right, and doing it together. Routinely, Officer Clark goes out of his way to assist fellow officers offering his experience and expertise in any way that might help, particularly for younger officers. Officer Clark is a role model, a steady professional, and a reliable partner. This past year, no other officer has worked a more unstable schedule as he covered gaps in the patrol schedule while maintaining responsibilities as the only officer currently serving the Metro Program.

Police Chief Weiks presented Officer Clark with a plaque from the Tumwater Police Officer's Guild recognizing Officer Clark as 2023 Officer of Year in recognition of his dedication and service to the citizens of Tumwater. Police Chief Weiks presented Officer Clark with an American flag flown over the nation's capitol and the state capitol.

Officer Clark said he was honored and humbled to be working with a great team in the Tumwater Police Department. He introduced his wife and stepson and thanked them for their support.

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**PROCLAMATION:
LGBTQIA2S+
COMMUNITY PRIDE
MONTH, JUNE 2024:**

Mayor Sullivan read a proclamation declaring *June 2024 as LGBTQIA2S+ Community Pride Month* calling upon the people of the City of Tumwater to join in celebrating diversity, promoting inclusion and equal protection under the law, and encouraging everyone to join in eliminating discriminatory policies and practices toward any culture, race, or group.

**OPEN PUBLIC
MEETINGS ACT
(OPMA) TRAINING BY
THE ATTORNEY
GENERAL'S OFFICE:**

City Attorney Kirkpatrick introduced Morgan Damerow with the Washington State Attorney General's Office, to provide training on the Open Public Meetings Act (OPMA) in response to a request during the Council's January retreat.

Mr. Damerow reviewed the significance of open government and expectations of the OPMA and the importance of receiving training within 90 days of assuming an office and every four years thereafter to ensure awareness of any changes.

Mr. Damerow reviewed the historical context of OPMA and the reasons for implementation and enforcement of the OPMA. Elected officials assume personal liability for knowledge of violations of the OPMA and can be fined \$500 by the court and \$1,000 for each subsequent knowing violation. Sometimes the court will rule some decisions null and void when rendered during violation of the OPMA.

The current OPMA was implemented in 1971 based on expectations that all actions, deliberations, and conversations must occur within the public forum. One of the most recent changes emerging from the COVID pandemic was the substantial increase in public participation. The OPMA is designed to serve as the environment of informed decisions and informed knowledge about the decision-making process.

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise permitted by RCW 42.30. A governing body includes multimember boards, commissions, councils, or other policy or rule-making bodies of a public agency. The OPMA does not apply to courts, the Legislature, private organizations, or for certain activities by government entities.

Agencies are encouraged to provide remote access that does not require additional cost to access a meeting. A meeting is a public agency taking action by a majority of its members (quorum). Physical presence is not required as a meeting can occur by phone or email. A meeting does not need to be titled "meeting" because it may be a retreat, workshop, or study session, etc. Meetings of a governing body must be open to the public to attend when acting on the public's behalf or receiving public

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testimony or public comments. Although several members passively receiving information outside of a meeting is generally okay it can be troubling as it could lead to later decisions. Off-meeting communications or sharing of information between members should be through an intermediary to avoid direct communication between members that might result in a quorum.

Discussions during an executive session remain confidential; however, any decisions must occur during a public meeting.

The OPMA applies to the entire meeting process and not necessarily to only actions reaching a resolution. All final decisions are subject to the OPMA. Secret voting is prohibited. The bedrock principal of the OPMA is public attendance with no conditions required.

In response to questions about questionable subjects discussed during an executive session, Mr. Damerow advised members to review RCW 42.30.100 provisions for guidance on matters eligible for discussion during an executive session. He encouraged members to self-police should the conversation veer from a municipal purpose.

A public agency cannot place restrictions on the public to attend meetings subject to OPMA. Reasonable rules of conduct can be set. A governing body may adopt generally applicable conditions determined to be reasonably necessary to protect public health or safety or to protect against interruptions. Agencies are encouraged to provide remote access that does not require an additional cost to access the meeting.

Public comment may be oral or written. If oral comment is accepted, the governing body shall, when reasonable, provide people with a disability, limited mobility or any other reason that makes physical attendance difficult, the opportunity to make oral comment. The governing body may limit comment on items not on the agenda, and put guidelines in place for public comment i.e. time limits. Written testimony must be distributed to the governing body prior to the meeting and reasonable deadlines should be established for submission of written testimony.

Types of meetings include regular meetings, special meetings, and emergency meetings. Regular meetings are recurring meetings held in accordance with a periodic schedule by ordinance, resolution, bylaws, or other rule. Regular meetings must include an agenda available online at least 24 hours in advance of the meeting. Agendas can be modified during a meeting. However, legal actions at a regular meeting where the agenda was not posted 24 hours in advance can be invalidated. Some very small agencies may be exempt.

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Special meetings can be called by the presiding officer or a majority of the members with 24 hour written notice of the time, place, and business to be transacted. Exception is possible when the notice cannot be posted with reasonable safety. The meeting agenda cannot be modified. Sufficient information about the reason for the special meeting is also required.

Emergency meetings require no notice when called to deal with an emergency. An emergency involves injury or damage to persons or property or the likelihood of such injury or damage and where time requirements of notice make notice impractical and increase likelihood of such injury or damage. A good example of an emergency meeting occurred during the Mount St. Helen's eruption. Economic loss is not sufficient to call an emergency meeting. In an event of a declared emergency at the local, state, or federal level, the public body may conduct an all-remote meeting without a physical location or hold a meeting with governing body present but some or all of the public excluded. Requirements for remote participation include a declared emergency at the local, state, or federal level or when the public body determines it cannot hold a meeting in person with reasonable safety where members or public are attending. The public must be able to listen, and if not, the meeting is prohibited except for an executive session. Notice of meeting must include remote participation instructions. Individual governing body members may participate remotely during non-emergency meetings as well.

An executive session is part of a regular or special meeting that is closed to the public and is limited to specific purposes. The purpose of the executive session and the time it will end must be announced by the presiding officer before it begins. Extension of an executive session must be publicly announced prior to the end of the original end time. The purpose of executive session must be included within the meeting minutes along with extended meeting time(s) if applicable.

Minutes of public meetings must be promptly recorded and open to public inspection. Minutes of an executive session are not required. The format of minutes is not specified in law. An executive session purpose must be recorded in the minutes. Minutes are required to be approved and can be amended by a motion.

Mayor Sullivan thanked Mr. Damerow for providing training on the Open Public Meetings Act.

PUBLIC COMMENT:

Mayor Sullivan outlined the format for providing public comment. Public comments are restricted to three minutes for each individual.

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Marnie Jackson, Langley, Washington, commented on the ease of cutting down a tree and the impossibility of putting it back. Considering whether to proceed with the planned removal of the Davis-Meeker Garry oak tree, the Council should take time to allow due process in the actions of the Court of Appeals, to allow reflection and response from local tribes, and to consider kestrel nesting sites and legal requirements to leave raptors undisturbed. Additionally, the Council should consider the resounding feedback from the community. As elected officials, the Council serves the public. The public does not want the 400-year old tree, middle aged for its species, to be killed. If it is determined next year, next decade, or the next century that the people want their elected officials to remove the tree for the public good then it would not be too late to do so. Today, however, it is far too early. The cities of Quebec and Jamestown were new colonies when the oak tree sprouted, Rembrandt and Cyrano de Bergerac were children, the Ming Dynasty ruled China, and Europe was embroiled in a 30-year war. Given what this tree has survived and how short our time is in comparison, the Council should afford the process more time for the due consideration that it deserves. Halt the planned cutting of the Davis-Meeker oak and allow time to consider alternative solutions for planned infrastructure improvements.

Christina Manetti, 6925 Hillgrove Lane SW, Lakewood, Washington, said she it appears Tumwater is ignorant of the facts. As a result, the City is acting in violation of the Department of Fish and Wildlife, which is supposed to inform the City's policymaking.

Due to technical difficulties, Ms. Manetti advised that she would reconnect to the meeting using a different computer.

Tichomir Dunlop, 6925 Hillgrove Lane SW, Lakewood, Washington, spoke to his disappointment after learning the Council was planning to cut down the oak tree. He urged the Council to reconsider. As a resident of Lakewood, he has watched how Lakewood has completely disregarded the importance of trees by continually allowing trees to be removed. At first, he believed it was only a problem in Lakewood, but recently learned Tumwater is even more brashly disregarding the importance of Garry oaks, which is disheartening. The oak tree is probably one of the most impressive Garry oaks that he has seen. To cut it down because it might be theoretically a risk to traffic is inconceivable as every tree drops branches occasionally. He questioned whether that action would result in cutting trees because of single branches falling. The tree has been there for centuries and has a connection to native people. He urged the Council to listen to what everybody is urging and do not cut it down. The Council should reconsider.

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Beowulf Brower, Olympia, Washington, commented that he does not intend to grill the Council on the quality of the risk assessment completed on the tree or that the City is violating the federal Migratory Bird Treaty Act, the associated RCW for the state of Washington, the wanton violation of the Tumwater Municipal Code, or falsehoods perpetrated by certain City staff concerning the tree. Those points have been made and will be made, as they are all demonstratively true and are not the fault or the doing of this Council. The Council as the legislative branch has the power to vote on actions and pass laws and ordinances and should not let the Executive Branch, Port of Olympia, or anyone else deprive the Council of its ability to represent its constituents. God willing, the Council will have the chance to allow this wrong to be righted. Listen to the citizens, listen to the science, as it is loud and clear. Always seek a second opinion. He questioned whether the Council would not grant it for an elder of the nation. As witnessed recently, a late season windstorm came across the area and dozens of trees fell across the county as they always do. However, the oak and the alleged hazard that scantily clings to stability if one is to believe the report did not have a single twig fall from the tree. The oak tree cannot speak in its defense but he postulates that if it seeks to show what has enabled it, he prays the Council will listen.

Sue Danver, 7106 Foothill Loop SW, advised that she would forfeit her time for other speakers and would submit written comments.

Steve Erickson, P.O. Box 53, Langley, Washington, said he lives on Whidbey Island and is a botanist, a restoration ecologist, and an activist. He urged the Council to act to prevent the tree from being cut down. What the Council does will reflect not only Councilmembers, but on the body of the City Council for years to come. In Oak Harbor, a large old oak tree approximately 350 years old was located near the post office. There were concerns about its condition creating a public controversy. The mayor and city council met in secret, made plans, executed the plans, and cut the tree down at 5 a.m. on a Sunday morning. If the Council enables removal of the oak tree, it reflects on the Council for years to come even when members no longer serve. In Oak Harbor, people do not trust their elected officials even after a decade after the tree was removed. The City of Tumwater has a rogue Mayor who is ignoring federal law of the Migratory Bird Treaty Act, ignoring state law regarding historic and archeological resources, and ignoring local law as the City's Historic Preservation Commission refused an exemption and variance to allow for the removal of the tree. This is the time during each elected official's public service when there is an opportunity to exercise oversight and act in the greater long-term public good. The Mayor is attempting to evade the laws as mentioned, and the reality is that after 5 p.m. tomorrow afternoon, the tree and the nesting kestrels will be cut down as fast as the Mayor is able to arrange.

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Once the tree is removed, it cannot be replaced and it does not matter if other arborist's opinion believe the tree could be saved, it does not matter what the laws are as the tree will be gone and the birds along with a significant portion of the history of Tumwater and native people who lived in the area. He urged the Council to take whatever steps necessary to prevent the tree from being cut down.

Mik Miazio, resident of Shelton, Washington, reported he has been an arborist for 15 years and a certified arborist and tree risk assessor for more than a decade. The Davis Meeker oak tree is not dying. It is a notion perpetuated by people who want to remove the tree. Last Friday, he went to court to watch the challenge against the restraining order to save the tree. The City represented the parties desiring to cut down the oak, which are perpetuating the notion that the tree is dying. He cited the arborist's report, which he believes is not indicative of the tree dying. The Council should hold those individuals accountable for the misinformation they are spreading. While standing under the tree, it is possible to see that the tree is in good health for a 400-year old tree. He was born in Poland and came to the country to live his American dream to be an arborist. That is why he moved to the state of Washington, primarily for the trees and nature. The 400-year old tree was alive at the time when air was pure and water could be drunk from rivers and streams. Although the tree is not considered old growth because of its singularity, the oak is equal to Douglas firs that are eight feet in diameter or the redwoods. The tree is in the same category. The tree dropped a branch, which is another notion perpetuated as the branch did not fall into a lane of traffic as a part of the branch that fell did fall into the lane with the majority of the branch falling in an area under the tree. The process of identifying targets and the possibility of harm is a due process that occurs when considering actions with respect to the tree. Those trees are the remaining trees of a prior beautiful ecological system and should not be cut down.

Dani B asked the Council not to murder the tree. So many in the community are unaware of the danger facing the icon, which has been a fixture in the community for much longer than anyone alive today. The tree was here long before our grandparents were born. The Council should not quietly take it down without giving the people who love it, more chances to speak in its defense. If it must go, a meaningful chance is necessary to say goodbye before the tree is removed. The Council should not kill it without first fighting to save it. Communications with the public have indicated there are other options and local arborists specified how feasible those options could be with pruning and cables. The risks, which many arborists indicated were overstated, could be mitigated. The tree should be cared for, not killed. Public safety is always a concern but there are risks everywhere in life and every tree could potentially fall. She asked whether the City has studied every tree

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near roads in Tumwater with the same degree of scrutiny and whether buildings on the historic register align with current safety codes. It would be hypocritical to destroy the tree for its supposed dangers if other risks have not received similar attention. As a lifelong resident of Western Washington, she is familiar with the danger of falling trees and even experienced some narrow escapes. However, she loves and values trees even after one tree fell on her car. Even the healthiest tree can be uprooted and fall across the road because it happens often. The state is not considered The Evergreen State lightly because trees are part of the state's identity and the oak tree is part of the community. If a loved one was sick and treatments were available she questioned whether Councilmembers would not seek treatment because it was too expensive, as it appears that is what is occurring in this situation. The tree has a long history of people investing in it. Repeatedly throughout the decades, people have spoken saying that this tree is important and it should be protected. The tree was so important that it was given special status to try to prevent it from being carelessly destroyed. The tree has survived countless earthquakes, storms, and witnessed every milestone in the nation's history. As a teacher and a mother she finds herself more and more understanding of their rights when they say that we do not inherit the earth from our ancestors, we borrow it from our children. We cannot uncut the tree because once it is gone it is gone. She wants her children's children to judge the City's actions and record of efforts to repair and save it rather than using their power against the will of the people.

Jenna Cook Holmlund, 2415 92nd Court SE, Tumwater, said she feels passionately about the tree because she drives by the tree every day and it resonates with her because she is a Native American woman. Removal of the tree would be an awful and terrible act because it is such a beautiful tree that has stood the test of time through even her ancestors. She is against the tree being cut down and hopes everyone reconsiders how removing the tree would leave an empty space to make the road or airport bigger. Many things could be built at that location, but the tree would never be there.

Nicole Mercier, 210 Mark Street, NE, said she spoke to a representative from the US Department of Fish and Wildlife Service who plans to complete an assessment of the tree regarding the kestrels. She is vehemently opposed to the removal of the tree and believes it is a hasty move. It is a rush to do this for whatever reason that she cannot imagine. The area had a huge windstorm earlier in the day and nothing fell from the tree. That should give everyone an idea of the unfairness of the rush to remove the tree because more information and assessment is needed. She read all of the assessments and does not believe it was a true assessment or proper and correct. More information is needed. If removal is proposed because of someone's death then it would have

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to be removed; however, she does not believe there is any evidence to support its removal.

Pamela Hansen, P.O. Box 14521, Tumwater, said she does not agree with the cancellation of the June 18, 2024 regular Council meeting. Regarding the \$1.7 million overrun of the Capitol Boulevard/Trospen Road roundabout, she does not agree with increasing staff authority to pay the overrun as it needs to occur during an open public meeting and with a review. During Mayor Osgood's administration in the 1980s both Ralph Osgood and she reported to the Comptroller of the Department of Revenue. That is her connection with Mayor Osgood. He served as Mayor during the development of the City's first Comprehensive Plan. Mayor Osgood's style when an issue was important was to present the issue to the Council for a vote. It is of a sufficient size of an issue that it needs to occur during a public meeting. She referred to a flyer of a picture reflecting the area of the oak tree where the branch separated from the tree. The area of the tree was bark, not rotted wood. In another picture, it appears that a drawn red line overshoots the side of the tree that she considers an exaggeration. Another picture of the cross section of the tree may be an exaggeration because although it reflects the X-axis and Y-axis, the Z-axis is missing. She questioned the size of the area. She cited a press release of June 3, 2024 from the davismeekeeroak.org website. She attended the court hearing on Friday but was not present during the events occurring on Monday, which should be reflected in the record. She supports the article on, 'Save the Davis-Meeker Garry Oak group leading multi-prong effort to save historic Tumwater tree' written by Jeffrey Westbrook with *The Jolt*.

Laura Webber calling from Surrey County, Virginia, reported she was a resident of Tumwater and attended Tumwater High School. She remembers the oak tree and has been so moved by the community's efforts to save the tree. She is a history teacher teaching the history of America and lives across the river from Jamestown where the country was established. She teaches 400 years of history and the tree embodies those teachings. She remembers growing up in Washington and feeling that there was not much regard for history and that people did not care that much about history as it was always about progress and new development, which is what America has become. She sees it around her as development tears down the old disregarding the environment and history. Within her area, it speaks to the expansion of industrial solar farms; however, in this instance, it is about a story of a community, the history of Washington, and people who traveled to and settled in Washington. It is a story of the Native American tribes, a story of the environment and animals that have lived there. It is the story of Washington. If the tree cannot be saved, she is uncertain as to what is important for history and why anything would be saved. She believes

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it is crazy that the City is intent on destroying one tree, which embodies so much of the story of Tumwater and the community. The Council should stop, slow down, and take some time, as there is no rush as the tree has stood for 400 years. The recent storm speaks volumes as the tree stood tall and strong. The Council should exercise patience, slow down the process, listen to the community, and think about how the story of Tumwater is embodied within the tree.

Chris Kautsky, 908 Delta Lane, Tumwater, said she is an environmental planner and a member of the American Planning Association and is ACIP certified. As such, the principles of her profession compel her to speak out against the decision by the Mayor to exercise administrative authority to cut down the Davis-Meeker oak tree. The tree means much to her. Others will remind the Council of its age and the meaning of the tree to native people, the history of the Oregon Trail, its beauty, and how it is sheltering federally protected wildlife. When she drives past the tree, the road may jog around it, but she sees something else. She sees how her government balances the needs of modern life with the desire to preserve community heritage. The little jog tells her that Tumwater is a good place to live. It is City government's responsibility to figure out how Tumwater will fit within an economy where unique experiences are highly valued. The tree can be cherished for its place in the history of Tumwater and play a role in the future. Time is needed to find inspiration to identify and explore creative alternatives and reduce risk. The Mayor tells the community that the tree is not safe and if it fails the consequences would be dire. She reminded the Council that life is risky business and everyone assumes risks every day. She questioned why the only option was the irrevocable death of the tree's life. She asked about pruning, moving the road, or considering real solutions. The optics look bad with respect to the appeal of the temporary restraining order and a rush to demolition, as it speaks to talk within the community of hidden agendas, backroom politics, and secret partnerships. She asked whether this situation is what the Mayor promised when she campaigned for office. After staffing many public meetings over the years, she is aware that each person that attends a meeting or gives a comment is standing for hundreds who do not have the time, do not understand the process, or feel their voice does not matter. Councilmembers should look at the people in the room and listen as they share what they value. The truth is policy is made by those who show up and many people have shown up. She asked how much interest there is for ongoing City business. How the Council handles this challenge will show exactly how the City values its public engagement. Instead of hiring lawyers, the City needs to hire a facilitator and bring all interested parties together of officials, city planners, scientists, arborists, tribes, and wildlife biologists to work towards a compromise and take action. It is not too late, as the tree still stands. The community needs action by the Council as leaders in the

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room by overriding the Mayor's decision and embracing public comment and public engagement.

Tasha Smith, resident of Olympia, thanked everyone for attending the meeting. She would like to have a conversation with the Council, as she believes members would have much to say about the community and their respective feelings about the tree and the kestrels. She and her children love birds and they know about the migratory bird tree act. The act was initiated through cooperation between America and Canada to protect birds traveling back and forth between the countries. The kestrels are from the falcon family in the Migratory Bird Treaty Act and are protected not just from hunting but also for other reasons. The Council should afford time for the birds to grow, mature, and move and not cut down the tree and destroy the nest and the birds.

Ray Gleason, 6226 Cedar Flats Road, Olympia, commented that the Davis-Meeker oak tree is an extremely rare remnant of the oak savannah that existed in Western Washington and Western Oregon. In its age class in Western Washington, there are less than 20 trees remaining. To think that the City is considering removing the specimen without further assessment is not mindful of the uniqueness of that specimen that is irreplaceable and was living during a time when the area was only grassland with Douglas fir trees only existing near creeks and rivers. When considering the completed assessment, only one image was included of the sonic tomography at the base of the tree. Personally, he believes the City should consider the public for a positive outcome. As a scientist, he looks at the sonic tomography as a great way of measuring a tree's health. Looking at it only from the base is inappropriate. The analysis should have been completed multiple times throughout the entire canopy of the tree. That type of analysis is an aerial analysis. The assessment did include an aerial analysis; instead, a rubber mallet was used by hitting the trunk of the tree and listening to determine any hollowness in the tree, which is based on interpretation and not appropriate. The drawn red line on the tree depicted the outcome as correct, which is inaccurate. He would not utilize that type of health analysis. Public funds were paid for that inappropriate analysis. An independent third party is needed for the public to have an appreciation for the City of Tumwater. He asked for respect for the public's time and for future respect for the City of Tumwater.

Margaret O'Conner said her comments pertain to a middle-aged 400-year-old historic tree. Fundraising is underway for lawyers for both sides of the issue in addition to taxpayer funds. She questioned why those funds have not been devoted to the care of the tree. On the City's website, the City's arborist has overseen the care of the tree for 27 years. She believes he has failed, yet the City listens to the arborist. Roads can be moved. The road needs to be moved to help the tree. Physical

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supports are available for large trees involving corbels, cantilevers, guide wires, and stations. Engineers know how to install physical supports. The Mayor has indicated she would not want to face the family of someone who experienced a loss because of a falling branch from the tree. One answer to alleviate that situation is to step down as Mayor and no longer control the situation. She knows that the ground and the tree are located on the Cowlitz Trail, a site of burials for both native people and those who came after. She urged the City to leave the tree, its heritage, and everything it stands for by helping the tree live another 400 years for future generations by moving the road.

Mark Fleming, 2110 Sunset Street SE, Olympia, asked the Council not to cut the tree down. If the tree is a risk, the City should mitigate it, evaluate it, and find ways to address the situation. As previous speaker noted, engineers and expertise are available. Taking time to evaluate thoroughly whatever risk a 400-year old tree presents is a good way to preserve the City's heritage and culture. He urged the Council to do so.

Bev Bassett, 1218 Marion, Olympia, spoke of the deep irony of the evening spending 45 minutes being informed about the Open Public Meetings Act. The world has transitioned far from the 1970s when laws were written by well-intentioned people who did not have hidden agendas and who expected their government to act in the best interest of its citizens. Today, democracy has gone to hell. The nation is looking down the barrel of laws with little democracy remaining. She attended Port of Olympia meetings for four years and rarely missed a meeting and learned about the corruptness of the Port. It made it so ill she discontinued attending meetings in 2017. She does not believe the tree is being cut down for safety, as she knows the reason is to expand the airport. The City is just checking off the boxes while the Mayor lets the public attend and speak while ignoring comments and moving forward later in the week to remove the tree. Public comments will not make a difference because democracy no longer exists. Mayor Sullivan is acting to remove the tree so the airport can be expanded. The community is wise to that action and is aware of what the Mayor is doing.

Erik Johansen, resident of Tumwater, spoke to several other Garry oaks on City property, one located off 79th Avenue and the famous Garry oak. The 79th Avenue oak at the Old Trails End property is apparently loved as the City plans to protect the tree, but not so much with the Davis-Meeker Garry oak. It seems odd that the City was dealt with an unfortunate situation when the Department of Transportation routed the highway placing it too close to the tree. The City should move the road to mitigate the risk. It is doable as the project is included within the City's plan. The tree should also be fenced off if feasible because the situation is fixable. He would like the City to put as much

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effort into protecting the tree as the City puts into protecting a brewhouse. The brewhouse is great as it is 100 years old; however, when the tree was growing, his ancestors lived in Europe.

Cindy Cooper, 1085 Ebbets Drive SW, Tumwater, said she is a 13-year resident of the City and lives on Tumwater Hill. She is also a 22-year veteran of the Washington State Department of Agriculture. She supports retaining the Garry Meeker oak and urged the Mayor to reconsider her decision to remove the tree. Many experts have testified earlier. The Garry oak is only one of 14 native oaks remaining on City property. A survey completed by the City on trees pointed out the importance of increasing the diversity of tree species on City property. Removal of the tree would not support that intent. The City has a number of heritage projects, such as the brewhouse and restoration projects for different properties. She questioned why the tree could not be another opportunity for a great community project to protect the history and the love of the City's heritage. She is aware some seedlings and cuttings have been obtained from the tree in the advent the tree is removed but cautioned that the seedlings are not being properly handled and should be handled by experts. Burnt Ridge Nursery, an oak propagator, could handle the seedlings for the City. The owner is an expert oak tree grower, one of the best in the country. She urged the City to safeguard the seedlings. Additionally, at the Council's May 14, 2024 meeting, a promise was extended about issuing a survey to the public for feedback on the disposition of wood from the tree following its removal. She asked whether the City plans to sponsor the survey and the timing for the survey.

Sandia Slaby, 1827 Legion Way SE, Olympia, said she is incredibly baffled by the event over the last several weeks and the short amount of time some aspects of it has been occurring and how long the issue has been moving forward without notice either to the public or to Native American tribes, etc. She wants to be respectful of the Council as a body and as individuals. However, it is challenging because of her nature, as she is very angry and could be very inappropriate. She is wondering who is it the Council is listening to, as it is clear the Council is not listening to city laws, state laws, or federal laws. There is a huge lesson underway in this country as no one is above the law in this country. As a body, she hopes the Council considers all statements. When authority figures pursue these types of actions without total transparency, especially because of the tutorial provided earlier in the meeting about the Open Public Meetings Act, she is left wondering what has happened in secrecy over the years. Whenever she attends City Council meetings about important issues where decisions have been made, it appears everyone is groveling. She wants to be invited and to engage with a Council that is genuinely listening. She would like to be hopeful that the Council will listen, reconsider, and give more

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time to save the tree to remain on earth longer and hopes the Council will move the dam road instead of the tree.

Kattarina Simons, 8116 Countrywood Drive SE, Olympia, said she grew up in Tumwater and lived near Trails End. She calls the place home although she has lived in other places in the military. During her military service she lived in Germany for four years and spent one year in Iraq. Those are places with much history and architecture visited by people to see buildings built 500 to 2,000 years ago. Those visitors do not visit those places to experience natural beauty. That is what people who come to America do because in America old buildings are torn down. Living in Europe taught her what a young country America is. Some members of the Council might see this as just a single tree, as it is emblematic of America's tendency to tear down anything that is old and not value history even though the tree predates European colonization of the continent and shares its history with local tribes living during times of wilderness, war, drought, and industry. The tree is not dead because it has leaves and animals subject to the Migratory Bird Treaty Act living in the tree. The tree has survived winter storms and has lived through so much. The tree is on the City's historic register for a reason. Losing history by tearing down buildings also happens when trees are removed. Other options are available and the public would likely be happier with an independent analysis and mitigation options. The course of the process has not fostered trust in the Council, the process, or in some cases, the Council's motivations. It is destroying the trust of the community at the same time the Council is destroying the community's history. The Garry oak is the only oak native to the area and species diversity is needed today. Children need to have a livable earth. Just because a tree cannot scream does not mean it is any less of a death if cut down. If there are ways to preserve the tree, she urged the Council to preserve the tree.

Ariana Simons, 8116 Country Wood Drive SE, Olympia, said that as an 11-year old, she knows that the tree is very important to many people. She believes the tree can be saved and she wants it saved. Many times, she and her friends have discussed how they want the tree to remain and that it is salvable. They believe the tree is alive and do not believe it is necessary to shout to be heard. The Mayor has indicated she would not want to look into the eyes of someone who lost someone in a car accident because of the tree. She also believes that the Mayor could not look her in the eyes and say, "I am going to disregard what you are saying and I am going to chop down an historical tree, a piece of living history." She needs the Mayor to listen and respect those in attendance and their wishes for the tree. If the tree is cut down, she will no longer trust the Council. If she is unable to trust the Council to make good decision, she is uncertain as to the type of decisions the Council would make and whether those decisions would hurt people, which

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makes her feel incredibly unsafe. She urged the Council to reconsider decisions about the tree and listen to the community.

Teri Graves, P.O. 237 Carbonado, Washington, said she is a member of the Cowlitz Indian Tribe. The trail belongs to her grandfather. She noted that the Council has not afforded a land acknowledgement to honor the people of the land. All other city and county governments have offered land acknowledgements. It is a slap in a face. Trees often fall and fire departments are called to remove trees from roads. If the Council is so concerned about the tree, the City should move the road. As her grandfather Roy would say, you are guests on their land. The Cowlitz Trail has been the tribe's highway of commerce since time immemorial. Her great grandfather, a chief of chiefs, controlled the trade routes from what is now Canada all the way to the big waters of the Columbia River until his death in 1827. Her grandfather and the seven generations before him and after him have traveled the Cowlitz Trail and have passed the grandmother tree. Her people stopped for shade and rest as it was used as a marker tree within a large area of grasslands. This grandmother oak has guided many of her tribal family. They touched her, offered her prayers, sang to her, and gifted to her. They thanked her for her guidance and believed that everything has a spirit. She is a beautiful living being. Many trees were planted to mark burial sites. Everyone drinks the same water her ancestors drank and eat the food off the land, fish in our rivers, and each person carries some of the land, water, and animal DNA of this land. The Council has a responsibility to the land, water, and the grandmother oak. She asked whether the Council is familiar with the Centennial Accord. If not, the Council should learn about the Accord. She contacted Bob Ferguson, State Attorney General, to educate him about the Accord. The Council did not consult with any tribes in the area. The Council should abide by the Accord, move the road, protect her ancestors, and the winged relations that are living within it.

Greg LaDue Grove, 736 Shorey Road, Chehalis, Washington, said he is a member of the Cowlitz Indian Tribe and is from the Taidnapam family. It appears the Council does not understand his tribe's history, which he will help describe. The trail has been in existence for a long time and served as the trail of commerce and trade. The trail is still those things. Eight years ago, three tribal men walked the trail taking five days and touching all places they had been told about by their elders. They stopped by the tree and remembered that it is a marker for the tribes and points a direction. Archeology and anthropology issues need to be addressed. The Council should consult with the tribes that were affected by the tree. In terms of the trade routes, five of the local tribes always traded and married. The tribes include the Cowlitz, Chehalis, Squaxin, Nisqually, and the Puyallup. All five tribes have an interest in the trail. An old camp is located near the creek. The area is

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the tribe's history and how tribes' identify themselves upon the land differently than modern society. Just because everyone lives in a modern society, does not mean there is no memory of living on the land. He would not want to be in a middle of a lawsuit with the City of Tumwater because the City knows that federally recognized tribes have standing. He has standing in court to address the Council. The City needs to engage in consultation, as the tree is important.

Dick Swearingen, 1396 89th Avenue SE, Tumwater, reported he is a retired Washington National Guard Lieutenant Colonel who received the highest honor the National Guard bestows. However, that does not make him any better than any member of the Council. Regarding trust in the Tumwater City Council, on the one occasion he needed assistance from the Tumwater Police Department during a domestic situation, he was required to call at least three times before they responded and when they responded one of the officers threatened him with being shot for attempting to retrieve a packet of cigarettes from his pocket. On another occasion involving the Tumwater City Council, the Council levied a \$10,000 fine to his neighbor for having a rooster. The only reason he mentions those situations is to demonstrate that at some time the Council did not use very much common sense. Today he is unsure whether the Council can grasp the concept of sacred and the value of what others have spoken about. Sacred is a non-tangible concept that cannot be touched physically but it is a phenomenon that everyone readily receives including the Council. That tree is sacred and should be treated as such. The Council would gain face by saving the tree and lose face by cutting it down. Face is the most important thing the Council can hold onto.

Sharon Cuntz, Tilley Road, Thurston County, said that as public opinion grows against the Mayor's continued refusal to change her arbitrary decision to kill the oak tree as soon as possible, she cannot help but wonder how the Mayor could be set on this course rather than affording other arborists an opportunity to prove that the tree could be saved while ensuring public safety. The City should pause, prune, and brace the tree if it can be made safe temporarily to avoid killing the birds and breaking the law. It is especially odd that there is no compromise offered by the Mayor when she must realize that a recall campaign is obviously coming soon if she goes forward with the plan. There truly is no logical reason for holding onto such an unpopular position and refusing to consider an offered and easy solution. The panic over public safety is questionable and it does not appear to be genuine because if it were the community would have heard about the dangers soon after the branch fell, not many months later. It leaves many in the community wondering, what is behind the attempt to break a long-held pledge often affirmed in many official Tumwater documents that the tree would be protected. The pledge is stated in the

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current Tumwater Highway Corridor Study on widening the road. That is one behind-the-scenes story and perhaps a possible motive that the community is not hearing about. The other involves the Port of Olympia where City Administrator Parks previously worked and the Port's plan to enlarge the airport. The tree would need to be removed for that project. If it does, she would not be too surprised if the other historic impediment to airport enlargement was the historic Washington State Patrol Hanger. Officials could suddenly determine the building to be a safety hazard or other impediment. Such actions are plausible according to published documents. Common sense should prevail by not moving forward to remove the tree and the birds at this time. The presence of the birds would make removal of the tree illegal. Tumwater has nothing to lose by pushing the pause button unless officials were a party to some secret plan or agreement. If not, she urged the Council to let the experts try to make the historic, iconic tree safe to live another 100 years.

Astrid Sturm said she lives in the community of Scott Lake and drives by the tree each day. She is originally from New Mexico and she understands what trees mean to people. Trees in the desert are needed by Native Americans and their ancestors. The tree means much to the community. The road can be moved. The community is in support of protecting the tree and would be willing to drive around the tree and deal with traffic to save the tree. Trees will continue to fall as she lives in a forest with many trees falling frequently. The City should let the tree fall on its own accord. She does not believe the assessment was thorough and does not understand why removal of the tree must be so soon. She asked why further evaluation could not be completed on the tree.

Su Sikora, resident of Olympia, commented on the beautiful community turnout. She thanked the Council for making space and for receiving comments. She works in Tumwater and passes the tree six times a week. The issue is difficult, which she respects. She has compassion for each Councilmember because it is obvious that members are trying and doing their best to navigate a unique and unprecedented situation for Tumwater. As the Council indicated at its last meeting, the situation is a first and it is difficult. At the onset of the issue, there appeared to be no guidelines or rules as indicated by references by the Council. When it comes to making decisions about the special tree, special guidelines are needed, as it is not just any tree because it is a scared tree and historic landmark. Although the Council lacked guidelines to address the issue, it is not too late to create guidelines to address this and future situations. Other cities have created guidelines for similar trees. The City should contact other cities in the state. She continues to have faith in the Council's leadership to guide the community through the issue and find a way to save the tree

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while ensuring public safety. The tree is special and needs special experts on heritage tree preservation. The only company with the expertise is Tree Solutions. She asked the Council to give Tree Solutions a chance to help create a path forward.

Jeff Foster, 3104 59th Court SE, Olympia, said prior to his retirement, he was an ecologist working in the forestry program at Joint Base Lewis McChord. Over the course of 24 years he had the opportunity to observe and measure thousands of oaks. The base has more *Quercus garryana* than anywhere else in Washington. He recently attended the rally for the Davis-Meeker oak and the more time he spent observing and walking around the tree, the more impressed he became. The tree is a tall, large diameter oak tree likely older than any other oak tree on base. As an ecologist he deciphers what likely occurs during the lifetime of a tree. Several regrets during the rally was knowing that the tree might be cut down soon and that it was located between an airport hanger and a paved road as it originally grew in a native prairie next to an historic trail. He has spent time preserving native prairies both on and off the base. This tree is unique. He cautioned against making a hasty decision and urged the Council to take its time and do it right. He also spoke to an arborist during the rally who indicated that he and other arborists believed there had been an overestimation on the amount of decay in the tree. The arborist was able to inspect the branch that fell last October and took a cross section of the area where it had been attached to the main trunk. The arborist shared the cross section during the rally. No rot was present in the cross section. Based on his count of growth rings, the branch alone was approximately 150 years old.

Debra Jaqva, resident of Thurston County, echoed all previous statements to save the oak tree. She is hopeful each Councilmember listens to what individuals are expressing about the tree because it is important. Someone said the tree is sacred, which it is. The Council should consider that and save the tree.

Sarah Stewart, 4941 Old Military Road SE, Tenino, noted that the public attending the meeting want to be heard and want to communicate with the Council about how they feel. Over the last two weeks, the amount of knowledge she has gained from others who are involved in the effort speaks to a remarkable group of people. The Council should spend time listening as it would sow mutual respect for everybody. At the recent rally, a gentleman held a sign depicting "Save the Tree Honk." Approximately eight of every ten passing cars waved and honked. Each advocate for the tree represents the community as a whole. She quoted a passage she discovered at aol.com stating, *"Various Native American tribes understood the hawk as a messenger bringing insight, discernment, and focus into our lives. Across ancestral traditions, the hawk represented clear vision, intuition, and*

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the ability to swiftly rise above any changes or obstacles in our way.” She recently took a road trip across the country to Florida and the most impressive area was the return trip to Washington with its big beautiful trees. There is nothing like them and they should be saved, especially the ones that are so significant.

Arthur Wuerth, 3409 Sapp Road, Tumwater, said he has been a Tumwater area resident since 1951 and retired as finance director for the City of Ocean Shores. He opposes the decision to cut down Tumwater’s historic oak tree. The Mayor quoted a study reflecting that there were 407 deaths from wind-related tree failures in the United States. The study was cited as a justification to remove the tree. The study was completed by Kent State University. Of the 407 deaths spanning 13 years, the annual rate was 31 tree-related deaths in the United States. Two-thirds of the deaths were associated with thunderstorms, hurricanes, and tornados. Half of the deaths did not involve vehicles. Only six deaths involved vehicles. The category covered only the Pacific Northwest and the Mid-Atlantic. Splitting the data by area equates to approximately three deaths per year. The report cites an average tree-related fatality in the state of Washington per year to include all categories of causes and locations as zero to one tree. According to a recent University of Utah study, the number of people killed in the US annually in deer vehicle accidents is 440. A person is 70 times more likely to die by a deer than by an old tree. There are solutions to mitigate potential public safety concerns that have been documented for protecting the tree and public safety. The Council should consider those options.

Dave Nicandri, 505 4th Anemia SW. Tumwater, said he served on the City Council in the 1970s and is a member of the Historic Preservation Commission that considered the issue. He also served as the Director of the Washington State Historical Society. He was introduced to Tumwater history in 1972 by Jim Brown, who introduced him to Albert Rutledge. At that time, they attempted to save the cemetery off Littlerock Road. Mr. Rutledge was 90 years old at that time and often referred to his uncle Jesse, who he learned later, was Jesse Ferguson, one of the original American settler pioneers who came to the area in 1845. His own ancestry and connection might not go back as deep as some, but he spoke to a person who spoke to another person who spoke to another person who was one of the first American colonists on Puget Sound. Removing the tree would be an absolute travesty. He has witnessed numerous laws and other procedurals and knows the consequence of “Fruit of the Poisonous Tree.” The Historic Preservation Commission reviewed the original report, which was flawed. As a group of historians with no botanical expertise, the Commission determined that the arborist’s judgment to remove the tree was wrong and mistaken. The Commission pointed that out as such.

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The arborist refused to engage in peer dialogue with the Commission and would not answer any questions from other botanists. It is interesting that he has seen reference to two or three dozen botanists over the course of the last three months with only one botanist on record in favor of cutting the tree down. All other botanists are on record indicating that something is missing in terms of the assessment. As an author of four published books, all the books were peer reviewed, which is an uncomfortable process for any discipline because it requires defending your reputation and the thesis of the book. He does not understand how in good conscious, the Council could proceed on a decision when every other arborist who offered an opinion offered a contrary point of view while the one arborist refused to engage in peer review dialogue.

Christina Manetti, 6925 Hillgrove Lane SW, Lakewood, representing the Garry Oak Coalition, an environmental non-profit in Lakewood, urged the Council to preserve the Davis-Meeker Garry oak as both a historical landmark and as a critical area. Based on observations, the City of Tumwater appears to be ignorant of some fundamental facts. As a result, the City is acting in violation of the law and without regard to the intention of WDFW guidelines that are supposed to inform the City's policymaking. It was shocking to hear the City's representative at the recent court proceedings indicate that the Migratory Bird Treaty Act only relates to hunting of birds, as well as witnessing the judge accepting the falsehood unquestionably. Although the Trump administration changed the law to weaken the protections, the Biden Administration restored the protections. If the City of Tumwater cuts down the tree, the City will be breaking the law while nesting kestrels are in the tree. The WDFW habitat biologist confirmed that it would be illegal to remove the tree. The City of Tumwater also appears to be ignorant of WDFW management's recommendation for Garry oaks or Oregon white oaks published in 1998 and January 2024. The recommendations are supposed to inform the City's policies for Garry oaks and there is no information in the municipal code that the City based its policies and regulations on the recommendations. The City failed to identify Garry oaks as critical areas that are valuable to wildlife and has allowed destruction of those critical areas without any consideration of mitigation. For example in the 2024 recommendations, one Garry oak of 30" diameter at breast height would require the replacement of 250 young Garry oaks as mitigation. According to the 1998 recommendations, Garry oaks located on the westside of the Cascades should not be cut down except for stand enhancement. Mitigation for large oaks is impossible. There would be a temporal gap in the habitat of hundreds of years while small trees grow despite the uncertainty of new climatic conditions. Consequently, the City of Tumwater would be allowing a net loss of critical areas, which is in violation of the Growth Management Act.

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The City is also ignorant of basic ecological principles that must be considered when making decisions about the Meeker oak and other oaks. The City considers the oak as dangerous because it might kill a human being because it loses a branch. The tree is more valuable because it contains rot, which is reflected in the 2024 recommendations. The City must guide its policies for what is best for the oak tree and ecosystem and not only expedient for humans.

James Dunlop, resident of Lakewood, observed that many people regard their respective city council as representing their interests with most people investing faith in their city council to protect their interests. After reviewing the operation of city councils in the cities of Lakewood and Tacoma, he believes there is a problem as members of city councils must be aware of the kind of pressure of being a councilmember and the incredible pressure to conform. Irving Janis, a social psychologist who identified the phenomenon of “groupthink,” explained the disordered decision-making process that occurs in groups working together. He studied the Bay of Pigs incident during the Kennedy Administration and how the Kennedy Cabinet made such a disastrous decision to invade Cuba. Those individuals were highly intelligent articulate people who were pressurized to make a disastrous decision. The Council, as it considers its action, is also likely to make a disastrous mistake because the pressure is enormous. Additionally, there is the second pressure of avoiding backing down from a faulty decision. Councilmembers must be aware of the pressure as they were elected to look after the interests of those they represent. The Council should not look after the interests of City bureaucrats who have different ideas about development. He encouraged the Council to step back from the pressures and consider the entire situation because if the tree is removed, it would be illegal, The Council would be blamed forever. The Council needs to think very carefully about its action, as it is a good time to practice bravery.

Janine L., resident of Tumwater, advised that she cannot add much to the conversation that has not already been beautifully stated. She urged the Council to focus on transparency, as transparency in the process on many multiple levels has been very poor, especially as to the reason the tree needs to be removed. The reason is not safety as it has been a year since the branch fell and yet the process today is the first time to address the issue. It speaks to no emergency involving the danger the tree represents to the public. There appears to be a hidden agenda with some members of the Council not understanding the reason for the urgency of removing the tree. A pair of kestrels is raising baby kestrels in the cavity of the tree. Many individuals contacted the U.S. Department of Fish and Wildlife Service, Washington State Department of Fish and Wildlife, and the Portland office of the Migratory Bird Treaty Act responsible for enforcing permitting and law

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enforcement of the Act. The message is clear, if anyone touches or disturbs the tree with nesting birds, such action is not allowed. Tumwater staff have communicated to the public that the Mayor claimed to consult with the tribes concerning the tree. However, based on the public's consultation with the tribes (Nisqually, Cowlitz, and the Squaxin), the assertion is not true. The consultation did not occur. She has been involved in the process for four months beginning in February 2024. The process surrounding the beloved, historic, protected, and very alive and healthy Meeker oak is totally lacking in transparency and truth telling. She asked the Council and the Mayor to speak the truth, protect, and preserve the tree for future generations.

Kepler Felton, resident of West Seattle, reported she recently learned about the issue surrounding the tree. As she learns more about the circumstances she becomes more disappointed with what the City is doing in response. Most of the public in attendance support saving the tree. The Council should not remove the tree because the tree is part of the community, not just the landscape. Despite the community support, should the Council elect to remove the tree, the Council deserves all the hatred and wrath it will receive from the community.

Diane Kiley said experts have spoken to the condition of the tree and the Council has received emotional testimony and requests to preserve the tree. The dismissiveness and apathy that she senses from the governing body is hurtful. She referred to a picture of Tumwater pioneers who would not have arrived if it had not been for the Cowlitz people and Cowlitz River. They were only able to reach the area because of the Cowlitz people. That history must be preserved. Her ancestors toiled carrying their belongings by canoe and building wagons to transport belongings over land to arrive at this place. She asked about the kind of gratitude the Council will afford to her ancestors because no one would be here today if their ancestors had not traveled through Cowlitz country with Cowlitz labor, Cowlitz help, and Cowlitz transportation. The Council must understand that it is more than the tree, it is a decision to save a tree and a decision to preserve history and recognize the role of Native Americans. The Council should preserve the small piece of the Cowlitz land, memorialize it, and honor it. The airport and the road can be built around the tree because there is plenty of space rather than eliminating the history of the Cowlitz again. The apathy she senses is likely the same her ancestors felt during the signing of the Treaty of Medicine Creek. The Cowlitz Tribe refused to sign the treaty because the tribe wanted its lands intact, which is similar to what is occurring today. The Council should vote to postpone action until the tribes have an opportunity to weigh in. Both the Nisqually and Cowlitz Tribes completed elections with new leadership. The Council should afford time for the tribes to provide feedback. As her brother pointed out earlier, the Cowlitz has standing that must be honored.

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Barnaby Caldwell, resident of Olympia, said he resonates with previous comments as to how each speaker is representing others who are either too tired or too busy to attend the meeting. He is representing younger adult voters, who pay attention to issues. Young voters care about trees and local elections. Some younger voters care more about local elections than presidential elections.

Tanya Nozawa, P.O. Box 14013, Tumwater, said she has served on the Tumwater Tree Board for seven years because of her desire to protect existing trees. The branch that fell from the Meeker oak in February 2023 did not fall in the roadway. She met with the gentleman who witnessed the incident. The branch fell next to the tree and not in the road. The gentleman, whose daughter was traveling to work when the branch fell in front of her car, believes the Meeker oak should not be cut down. She was able to observe the falcons. One bird was white in color and chased away a large hawk several times. She heard the babies located within the cavity of the tree. She was able to contact a representative from the U.S. Fish and Wildlife Service, who plans to conduct an assessment on the tree in the next several days. Moving the road is only one option as installing a wildlife bridge is another option. The City of Bellingham recently adopted an ordinance to protect its historical and heritage trees. The ordinance is strict and she plans to present the ordinance to the Tree Board for consideration by the City to implement. The ordinance would prevent these circumstances from occurring in the future. Additionally, the issue has created national attention as it is featured in an article in *People Magazine*.

Mayor Sullivan thanked everyone for providing comments and encouraged those experiencing connection difficulties to submit their written comments to the City.

- CONSENT CALENDAR:**
- a. Approval of Minutes: City Council Work Session, May 14, 2024
 - b. Approval of Minutes: City Council, May 21, 2024
 - c. Payment of Vouchers
 - d. R2024-008 Surplus Canine James
 - e. Interlocal Agreement with City of Olympia for the Mottman Road Pedestrian and Street Improvements Project
 - f. Israel Road and Linderson Way Pedestrian and Bicycle Improvements project, Authority to Solicit Bids and Recommend Award
 - g. Construction Contract with Active Construction, Inc. for the Interstate 5/Trospen Road/Capitol Boulevard Reconfiguration Project, Request for Additional Construction Funds
 - h. Reappointment of Joe Munro and Amy Hargrove to the Board of Parks and Recreation Commissioners
 - i. Thunder in the Valley 4th of July Fireworks Display Permit

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j. Cancellation of the June 18th Regular Council Meeting

MOTION: **Councilmember Dahlhoff moved, seconded by Councilmember Von Holtz, to approve the consent calendar as published. A voice vote approved the motion unanimously.**

Mayor Sullivan reviewed the items approved on the consent calendar.

**COUNCIL
CONSIDERATIONS:**

RESOLUTION NO. R2024-011, STRATEGIC PRIORITIES & GOALS 2025-2026: City Administrator Parks reported the proposal culminates the review by the Council in January through March. The proposed resolution adopts the Strategic Goals and Priorities for 2025-2026. The proposed resolution reflects additional comments received from the Council.

In response to a request from Councilmember Dahlhoff to receive a tracked version of the changes to the document, City Administrator Parks confirmed she would provide a tracked version of the document. Councilmember Dahlhoff added that until she has an opportunity to review the changes, she would not support a motion to adopt the resolution.

MOTION: **Councilmember Althaus moved, seconded by Councilmember Agabi, to adopt Resolution R2024-011, updating the City's Strategic Priorities and Goals 2025-2026. A voice vote approved the motion. Councilmember Dahlhoff opposed.**

LETTER OF UNDERSTANDING WITH SQUAXIN ISLAND TRIBE: Police Chief Weiks presented an updated Letter of Understanding with the Squaxin Island Tribe for law enforcement services. In 2023, the City signed an initial letter of understanding with the Squaxin Island Tribe providing Tumwater police officers with the authority to enforce traffic and criminal laws on specific property owned by the tribe located within the limits of the City. The letter also implemented a provision included in the 2023 Memorandum of Understanding (MOU) signed by the City and the tribe. Since then, the tribe has purchased additional land currently under development. The land was converted to trust status and the proposal clarifies the City's legal authority to enforce laws on trust lands. Additionally, the proposal incorporates a provision addressing any future trust land acquired by the Squaxin Island Tribe.

Staff requests approval and authorization for the Police Chief to sign the updated Letter of Understanding with the Squaxin Island Tribe to provide law enforcement services to any Squaxin Island Tribal trust land located within the City of Tumwater.

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Councilmember Althausen inquired about the cost for law enforcement services and whether the fee is adjusted when the tribe acquires additional land. City Attorney Kirkpatrick advised that the intent of the updated agreement is to avoid amending the agreement each time the tribe acquires additional land. The fee is scheduled for renegotiation in two years.

MOTION:

Councilmember Althausen moved, seconded by Councilmember Von Holtz, to approve and authorize the Chief of Police to sign the updated Letter of Understanding with Squaxin Island Tribe to provide law enforcement services to any Squaxin Island Tribal land located within the City of Tumwater. A voice vote approved the motion unanimously.

**DISCUSSION ON
THREE PROPOSALS
REGARDING THE
DAVIS-MEEKER OAK
TREE:**

Councilmember Dahlhoff reported she forwarded an email on June 2, 2024 with three sample proposals for a discussion and review by the Council. As the issue surrounding the oak tree has evolved, the municipal code was addressed for administrative actions by the Executive branch of the City. However, municipal codes fall under the purview of the Council as the Legislative branch of the City. As the restraining order expires on June 5, 2024 at 5 p.m., she is seeking guidance for the Council to engage in a discussion to update the municipal code for an exemption, as well as discussing how data that are questioned should be subject to an independent third party assessment to validate the data. She is raising the question because of community comments stressing the importance of actions based on facts rather than feelings. The proposed conversation could include how the Council could amend the municipal code to address circumstances where data are questioned and whether the matter could be automatically referred to a third party for assessment and validation. As the issue has been presented as an administrative function, she is seeking guidance on the role of the Council as a legislative body. Several options for discussion include the City of Bellingham's recent adoption of a resolution and consideration of an emergency ordinance, a review of municipal codes as cited in the email for possibly adding trees as an object, or consideration of an exemption of the data to remove an object if data are questioned. She cited the possibility of updating TMC Chapter 16.08 E to reflect that for any documentation that is questioned by a board, commission, or a council, a third party independent assessment would be performed to validate and reproduce documentation before any decision, action, or non-action is rendered.

City Attorney Kirkpatrick advised that any changes to the municipal code would require a draft ordinance to require an additional assessment of some type. Additionally, many tree protection provisions are covered in development regulations, which require an additional

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administrative process involving the Planning Commission, a public hearing, and notice to the state.

Councilmember Dahlhoff questioned the difference of issuing an emergency ordinance similar to the City of Bellingham's recent action. City Attorney Kirkpatrick explained that an ordinance can be adopted as an emergency. However, a draft ordinance would be necessary for presentation to the Council. An emergency ordinance requires a unanimous vote of the Council to adopt to take effect immediately.

Councilmember Dahlhoff cited her draft of a sample ordinance in the email. City Attorney Kirkpatrick advised that the draft does not meet the minimum qualifications of an ordinance.

Councilmember Cathey asked about the reason for the requirement of a unanimous Council vote. City Attorney Kirkpatrick said a unanimous vote is required by state statute because of the power of initiative and referendum requiring a unanimous vote to adopt an emergency ordinance.

Councilmember Dahlhoff offered the option of pursuing a discussion about not removing the tree until an emergency ordinance could be drafted meeting the standards. City Attorney Kirkpatrick advised that any discussion is at the discretion of the Council and the Mayor followed by any direction to staff.

Councilmember Cathey supported deferring any actions on the tree in deference to the letter received from the Nisqually Tribe requesting a delay until the tribe has an opportunity to review historical and preservation issues.

Councilmember Agabi referred to an email received earlier in the day from the attorney of the plaintiffs seeking the temporary restraining order against removing the tree. The attorney indicated that if an injury or death occurs because of the tree, the insurance of the plaintiff would be responsible for the liability. City Attorney Kirkpatrick said she reviewed the email and additional research would be necessary on the proposal.

Councilmember Jefferson said the testimony from community members spoke to apathy and a lack of concern by the Council, as well as a lack of trust in the Council and the City by the community. She proposed a compromise of trimming and bracing the tree to mitigate public safety risk. Local tribes are upset with the Council with a request from the Chairman of the Nisqually Indian Tribe to delay any action to remove the oak tree until the tribe has had an opportunity to complete consultation with the State Department of Archeology and Historic

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Preservation and the tribe's Historic Preservation Officer. The Council should consider the request and agree to afford an independent third party analysis.

Councilmember Swarthout commented that any circumstances resulting in a difference in data should result in the Council moving forward to ensure data the Council considers supports an appropriate decision moving forward. She was moved by the testimony from the community. She acknowledged the request from the new leadership of the Nisqually Indian Tribe. The Council should delay action and seek another opinion.

Councilmember Von Holtz noted that the City's Insurance Authority indicated the City would not be covered for any liability caused by injury or death caused by the tree. However, the Insurance Authority also conveyed that if scientific data were different, another opinion could be issued. She supported moving forward with a third party review of the report findings.

Councilmember Althausen commented on the mechanisms available to the Council noting that the Council could adopt a motion deferring the removal of the tree for a specific period while staff is directed to seek an independent third party analysis. However, he questioned whether the Council's action would compel the Executive branch from not removing the tree. City Attorney Kirkpatrick affirmed that City Administration and the Mayor could move forward and remove the tree regardless of the Council's action.

Councilmember Althausen noted that alternatively, the mechanism required by the Council would entail adoption of an ordinance; however, because it involves the Development Code, an administrative process is required involving the Planning Commission and a public hearing. City Attorney Kirkpatrick advised that the Council could adopt an emergency ordinance, which would require the same process.

Councilmember Althausen questioned the threshold for declaring an emergency. City Attorney Kirkpatrick said declaration of an emergency is for public health and safety.

Councilmember Cathey commented on the intent of the Council to work together to resolve the issue.

Following further discussion, Mayor Sullivan offered that any independent third party review would not include any arborist involved in the issue.

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City Administrator Parks described the timing of a contracting process and options to provide temporary public safety measures as an interim step. However, the City would remain liable for any risks associated with the tree.

Mayor Sullivan reiterated the importance of the Council acknowledging the City would be absorbing the risk of the action. The action would require rerouting of traffic around the tree. The cost of building a new road was suggested by many community members; however, because the road and tree are located near pocket gopher habitat, the City, at this time, has not completed mitigation measures. Rerouting traffic would require a structure that would support 22,000 vehicles per day. The Council would need to identify steps to mitigate the issue quickly. In February and March 2024, three people in the state were killed by falling trees with two of the deaths occurring while they were driving. She agreed to develop a reasonable schedule to identify another arborist to complete a third party full risk assessment.

City Administrator Parks affirmed staff would move forward quickly to release a Request for Proposal.

Discussion ensued on the vagueness of the City pursuing actions contemplated earlier for the tree in lieu of an independent third party assessment. It was clarified that the City was working on mitigation of risk by rerouting traffic and moving people away from the tree. Information included on the website was intended to acknowledge the legal proceedings currently in process. Measures under consideration include adding a fence around the base of the tree, engaging in conversations with the Port of Olympia for parking lot control during Port events, exploring detour options and closing that section of Old Highway 99 while acknowledging potential impacts to local intersections and roads, and the possibility of providing a temporary lane of traffic to the east outside the drip line of the tree. Any closure of the road for 12 hours or more requires action by the Council. Those actions were contemplated in response to the possibility of an extended court proceeding preventing the City from removing the tree. The Mayor has expressed a willingness to delay action to accommodate a reasonable timeframe for an independent third party arborist to complete a risk assessment. During the interim, staff will continue to identify mitigation measures to ensure safety of the traveling public.

In response to a request to include the tribes, Mayor Sullivan described her outreach to the Nisqually, Squaxin, Chehalis, and Cowlitz Tribes. She received feedback except from the Cowlitz Tribe. Support was offered by other tribes. Because of the change in leadership of the Nisqually Indian Tribe and the Cowlitz Tribe, discussions are planned with new tribal leadership of both tribes.

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Mayor Sullivan confirmed moving forward with an independent third party arborist and a timeline for the process. She emphasized the importance of public safety and that the City must take actions to mitigate dangers to individuals posed by the tree.

**COMMITTEE
REPORTS:**

Committee reports were deferred.

**MAYOR/CITY
ADMINISTRATOR'S
REPORT:**

Mayor Sullivan announced upcoming events of Dog Days at Pioneer Park on Saturday, June 8, 2024, and the Juneteenth Celebration on June 15, 2024.

City Administrator Parks reviewed the schedule of meetings over the next several weeks. Joint work sessions are planned with the Planning Commission.

**COUNCILMEMBER
REPORTS:**

All reports were deferred.

ADJOURNMENT:

With there being no further business, Mayor Sullivan adjourned the meeting at 10:58 p.m.

Prepared by Valerie L. Gow, Recording Secretary/President
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