



## ORDINANCE NO. 28034

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AN ORDINANCE relating to the Comprehensive Plan and Title 13 of the Tacoma Municipal Code; authorizing the adoption of an updated Tacoma Shoreline Master Program, which amends both the Comprehensive Plan and Land Use Regulatory Code, establishes both new and modified environmental designations and zoning classifications, amends zoning district boundaries, reclassifies certain properties to the new and revised shoreline zoning districts, and adopts revisions to Chapters 13.05, 13.06, and 13.11 of Title 13 of the Tacoma Municipal Code.

WHEREAS the Growth Management Act ("GMA") was amended to add the goals and policies of the Shoreline Management Act ("SMA") and to declare that the goals and policies of a shoreline master program shall be considered an element of the Comprehensive Plan and all other portions shall be considered development regulations, and

WHEREAS development regulations include, but are not limited to, zoning controls, area-wide zoning reclassifications, critical area ordinances, and other similar official controls found in the Land Use Regulatory Code and portions of the Shoreline Master Program fall within the definition of development regulations, and

WHEREAS the Comprehensive Plan, adopted in 1993 by Ordinance No. 25360 and amended by ordinance once every year thereafter, is Tacoma's comprehensive plan, as required by the GMA, and consists of several plan and program elements, including the Shoreline Master Program, and

WHEREAS the Shoreline Management Act of 1971 requires local Shoreline Master Programs be updated to: (1) give priority to uses that require a shoreline location; (2) promote public access and enjoyment opportunities; and



(3) protect the environmental resources of state shorelines, and

1           WHEREAS the 2003 Department of Ecology ("DOE") guidelines, codified  
2 in Chapter 173-26 of the Washington Administrative Code ("WAC"), include  
3 substantive, procedural, and process requirements to be followed by local  
4 jurisdictions in their comprehensive update to a shoreline master program, and  
5 require the update to be based on scientific and technical information to assure  
6 no net loss of shoreline ecological functions, and

8           WHEREAS the SMA was amended to establish a timeline for local  
9 jurisdictions to adopt updated Shoreline Master Programs consistent with DOE  
10 guidelines, and the adoption deadline for the City is December 1, 2011, and

11           WHEREAS the City Council directed staff to initiate an update of the  
12 Shoreline Master Program three years ahead of the state's schedule in  
13 RCW 90.58.080(4) in order to integrate critical areas protection with the  
14 Shoreline Master Program, and

16           WHEREAS the City's update process began in earnest in 2005 and  
17 included the development of required supporting studies and implementation  
18 documents, and said studies and documents will be adopted under separate  
19 legislative actions of the City Council, as required by DOE guidelines, as part of  
20 the adoption of the update to the Shoreline Master Program as a whole, and

22           WHEREAS the Planning Commission ("Commission") has recommended  
23 changes to the Comprehensive Plan ("Plan") and the Land Use Regulatory Code  
24 ("Code"), pursuant to the SMA, and consistent with the GMA, and

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1 WHEREAS the Commission held a public hearing on June 1, 2011 on a  
2 draft Shoreline Master Program, draft Shoreline Restoration Plan, draft  
3 Shoreline Inventory and Characterization, draft Public Access Alternatives Plan,  
4 draft Thea Foss Waterway Design Guidelines, draft Cumulative Impacts  
5 Analysis, and draft changes to Chapter 13.05 Land Use Permit Procedures,  
6 Chapter 13.06 Zoning, and Chapter 13.11 Critical Areas Preservation of the  
7 Tacoma Municipal Code ("TMC"), and

8 WHEREAS 41 citizens spoke at the public hearing and 52 written  
9 comments were submitted by the close of the comment period on June 10,  
10 2011, and after review of said testimony, the Commission made modifications  
11 to the draft Shoreline Master Program and associated draft supporting  
12 documents, and

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14 WHEREAS, pursuant to the State Environmental Policy Act ("SEPA"),  
15 the City issued a preliminary Determination of Environmental Nonsignificance  
16 ("DNS") and Adoption of Existing Environmental Document on May 2, 2011  
17 based upon a review of a completed environmental checklist, and, pursuant to  
18 WAC 197-11 and Tacoma's SEPA procedures, the preliminary DNS, SEPA File  
19 Number: SEP2011-40000162367, was made final on June 17, 2011, and

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21 WHEREAS the determination was made that this project does not have a  
22 probable significant adverse impact on the environment, and

23 WHEREAS the Commission has recommended changes to the  
24 Comprehensive Plan and Land Use Regulatory Code on August 17, 2011, and  
25 has conveyed the same to the City Council, in the form of the proposed Tacoma  
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1 Shoreline Master Program ("TSMP"), which will rescind and replace in their  
2 entirety the City's existing Master Program for Shoreline Development, an  
3 element of the Comprehensive Plan, and Chapter 13.10 TMC, which are the  
4 development regulations for shoreline areas, and

5 WHEREAS, in addition to adoption of the new TSMP, the following  
6 supporting studies and implementation documents associated with the TSMP  
7 shall be adopted by subsequent resolution:

- 8 • Thea Foss Waterway Design Guidelines
- 9 • Public Access Alternatives Plan
- 10 • Shoreline Restoration Plan
- 11 • Shoreline Inventory and Characterization
- 12 • Cumulative Impacts Analysis, and

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14 WHEREAS, in addition to adoption of the new TSMP, amendments are  
15 being made by this ordinance to TMC 13.05 Land Use Permit Procedures, TMC  
16 13.06 Zoning, and TMC 13.11 Critical Areas Preservation, to achieve  
17 consistency with the new TSMP, and

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19 WHEREAS, upon approval by the Department of Ecology of the TSMP, the  
20 development regulations for critical areas within the shorelines of the State located  
21 within the City shall be the regulations contained in the TSMP and designed to  
22 assure no net loss of shoreline ecological functions, and

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24 WHEREAS policies and development regulations for public access and  
25 recreation have been developed consistent with the SMA and with DOE  
26 regulations in Chapter 173-26 WAC, including provisions that recognize



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constitutional limitations on regulation of private property and a process for the evaluation of nexus and proportionality in the review of shoreline permits for development on private property, and

WHEREAS past subarea plans for the Thea Foss Waterway and Ruston Way, including the Point Ruston site, established area-wide public access standards to establish a linear public access system in conjunction with more flexible use and development regulations, and

WHEREAS the policies and development standards of the Thea Foss Waterway Design and Development Plan have been integrated into the TSMP, the design guidelines have been incorporated into the new Thea Foss Waterway Design Guidelines, and additional revisions have been undertaken to respond to public comments and to more effectively implement the vision for the Waterway, and

WHEREAS the policies and design guidelines of the Ruston Way Plan have been integrated into the TSMP and additional revisions have been undertaken, and

WHEREAS policies and development regulations for public access and recreation have been developed that promote and implement a comprehensive public access system as envisioned in the Thea Foss Waterway Design and Development Plan, Ruston Way Plan, Shoreline Trails Plan, and the Transportation Element of the Comprehensive Plan, and

WHEREAS existing and planned public access sites found in the Shoreline Trails Plan, the Thea Foss Waterway Design and Development Plan,



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and the Ruston Way Plan have been identified and integrated into the Public Access Alternatives Plan, and

WHEREAS it is appropriate to rescind the Thea Foss Waterway Design and Development Plan (last amended in 2005), the Ruston Way Plan (1981), and the Shoreline Trails Plan (1989) as elements of the Shoreline Master Program; however, they are to be retained as elements of the Comprehensive Plan and shall remain in effect except when there is a conflict with the Shoreline Master Program, Thea Foss Waterway Design Guidelines, Shoreline Restoration Plan, or the Public Access Alternatives Plan and in which case the Shoreline Master Program, Thea Foss Waterway Design Guidelines, Shoreline Restoration Plan, or the Public Access Alternatives Plan shall prevail, and

WHEREAS the Thea Foss Waterway Design and Development Plan envisions the Westside of the Foss Waterway as an area for retail commercial, office, hotel, and residential use in mixed-use configurations, with a strong emphasis on residential development between South 15th and South 21st Streets, and

WHEREAS, since 1996, the mixed-use structures that have been built along the Westside of the Foss Waterway have struggled to sustain the preferred uses on the ground level and have experienced high vacancy rates, and

WHEREAS the expectations for build-out of the Westside of the Foss Waterway have changed significantly, and



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WHEREAS conflicting frontage and location requirements for mixed-use structures have created a hindrance to achieving the preferred build-out of the Foss Waterway, and

WHEREAS the TSMP removes the design and development barriers for new mixed-use structures on the Westside of the Waterway and allows non-water-oriented uses for a limited term until economic conditions improve to support the development of the preferred uses, consistent with the City's overall growth strategy as expressed in the Generalized Land Use Element for the Downtown Mixed-Use Center, the Downtown Regional Growth Center designation, and Plan policies to foster commercial and civic uses and attractions of regional scale and high-density residential development, and

WHEREAS the Commission recommended the establishment of new shoreline district zoning classifications and modifications to the boundaries of existing shoreline districts as well as the reclassification of properties within the new and modified districts, and

WHEREAS the Commission adopted Findings and Recommendations on August 17, 2011 and conveyed these to the City Council, and

WHEREAS Chapter 13.02 TMC requires the City Council to hold a public hearing before adopting any change to the Plan and Code, and

WHEREAS, on September 27, 2011, the City Council held a public hearing to receive public comments on the Commission's proposed TSMP, and

WHEREAS the City Council considered the testimony presented at the September 27, 2011 public hearing and other comments submitted on the draft



1 TSMP, and also considered and generally concurred with the Findings and  
2 Recommendations of the Commission dated August 17, 2011, and

3 WHEREAS the City Council's Standing Committees for Economic  
4 Development and for Environment and Public Works, after reviewing the draft  
5 TSMP recommended by the Commission and all of the public testimony received,  
6 recommended modifications to the draft TSMP, and

7 WHEREAS, in accordance with RCW 90.58.090, the update to the  
8 Shoreline Master Program is required to be submitted for review and approval by  
9 the DOE prior to becoming effective, and

10 WHEREAS the TSMP has been developed in full compliance with  
11 Chapter 13.02 TMC and the Revised Code of Washington's procedural  
12 requirements for amendments to the City's Comprehensive Plan and  
13 development regulations, and

14 WHEREAS the TSMP appropriately balances the goals of the SMA and  
15 incorporates the most current, accurate, and complete scientific and technical  
16 information available, as per WAC 173-26-201, and

17 WHEREAS, in concert with the implementation of restoration actions in  
18 the City and other ongoing state and federal programs, the regulatory  
19 provisions of the TSMP serve to maintain the overall condition of shoreline  
20 resources and in certain circumstances will serve to improve their overall  
21 condition, and

22 WHEREAS the TSMP is consistent with the City's Comprehensive Plan,  
23 including the overall goal to "[e]nsure conservation, protection, enhancement  
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and proper management of natural resources and shoreline areas, while providing for a balanced pattern of development . . .”, and

WHEREAS the TSMP has been designed to increase the public's opportunities to enjoy the physical and aesthetic qualities of the shoreline to the greatest extent feasible, and

WHEREAS, pursuant to RCW 36.70A.370 and following the guidelines prepared by the Washington State Attorney General pursuant to RCW 36.70A.370, the TSMP was reviewed by the City Attorney to assure that adoption of the changes will not result in an unconstitutional taking of property, and

WHEREAS approval of this TSMP is in the public interest and will benefit the City as a whole, will not adversely affect the City's public facilities and services, and advances and supports the general health, safety, and welfare of the citizens of this City; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the “Whereas” clauses set forth above are hereby adopted as the Findings of the City Council and are by this reference incorporated herein as if set forth in their entirety.

Section 2. That the City Council adopts the Tacoma Shoreline Master Program as modified replacing Chapter 13.10 of the Land Use Regulatory Code; and that the goals and policies thereof replace the shoreline element of the Comprehensive Plan, as shown in Amended Exhibit “A”, attached hereto, and substantially in the form of the amendments on file in the office of the City Clerk.



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Section 3. That the City Council adopts the shoreline district classifications for S-1 to S-15 as the official shoreline zoning classification and boundaries as generally described and depicted in Amended Exhibit "B" attached hereto as listed below:

- Exhibit B-1 S-1a Western Slope South Shoreline District Map and Boundary Description;
- Exhibit B-2 S-1b Western Slope South Shoreline District Map and Boundary Description;
- Exhibit B-3 S-2 Western Slope Central Shoreline District Map and Boundary Description;
- Exhibit B-4 S-3 Western Slope North Shoreline District Map and Boundary Description;
- Exhibit B-5 S-4 Point Defiance Natural Shoreline District Map and Boundary Description;
- Exhibit B-6 S-5 Point Defiance Conservancy Shoreline District Map and Boundary Description;
- Exhibit B-7 S-6 Ruston Way Shoreline District Map and Boundary Description;
- Exhibit B-8 S-6/7 Schuster Parkway Transition Shoreline District Map and Boundary Description;
- Exhibit B-9 S-7 Schuster Parkway Shoreline District Map and Boundary Description;



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Exhibit B-10 S-8 Thea Foss Waterway Shoreline District Map and  
Boundary Description;

Exhibit B-11 S-9 Puyallup River Shoreline District Map and Boundary  
Description;

Exhibit B-12 S-10 Port Industrial Area Shoreline District Map and Boundary  
Description;

Exhibit B-13 S-11 Marine View Drive Shoreline District Map and Boundary  
Description;

Exhibit B-14 S-12 Hylebos Creek Shoreline District Map and Boundary  
Description;

Exhibit B-15 S-13 Marine Waters of the State Shoreline District Map and  
Boundary Description;

Exhibit B-16 S-14 Wapato Lake Shoreline District Map and Boundary  
Description;

Exhibit B-17 S-15 Point Ruston/Slag Peninsula Shoreline District Map and  
Boundary Description.

Section 4. That the City Council adopts changes to Chapter 13.05 Land  
Use Permit Procedures as shown in Exhibit "C".

Section 5. That the City Council adopts changes to Chapter 13.06 Zoning  
as shown in Exhibit "D".

Section 6. That the City Council adopts changes to Chapter 13.11 Critical  
Areas Preservation as shown in Exhibit "E".



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Section 7. That if any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 8. That the TSMP takes effect when and in such form as approved by the Department of Ecology.

Passed NOV 29 2011

*Marilyn Stenrod*  
Mayor

Attest:

*Doris Soum*  
City Clerk

Approved as to form:

*JAC*  
Deputy City Attorney