



ORDINANCE NO. 28828

1 AN ORDINANCE relating to zoning; amending Amended Ordinance No. 28786
2 to accept mandatory and recommended conditions of approval of
3 Exhibit "B," Title 19 of the Tacoma Municipal Code, entitled "Shoreline
4 Master Program," as provided by the Washington State Department of
5 Ecology.

6 WHEREAS, on November 16, 2021, the City Council passed Amended
7 Ordinance No. 28786, replacing Amended Ordinance No. 28470, Tideflats
8 Interim Regulations, as approved by the City Council and as previously
9 extended by Ordinance Nos. 28542, 28583, 28619, 28671, Amended Ordinance
10 No. 28696, and Ordinance No. 28759, and

11 WHEREAS Exhibit "B" of Amended Ordinance No. 28786 included
12 amendments to Title 19 of the Tacoma Municipal Code, the Shoreline Master
13 Program ("SMP"), which were developed through the joint review process
14 outlined in WAC 173-26-104, and

15 WHEREAS Amended Ordinance No. 28786 was submitted as a locally
16 initiated amendment of the SMP to the Washington State Department of
17 Ecology ("Ecology") for final review and approval pursuant to RCW 90.58.090
18 and WAC 173-26-120, and

19 WHEREAS the substance of the amendments required by Ecology is to
20 add to Exhibit "B" of Amended Ordinance No. 28786 provisions from Tacoma's
21 SMP which are already applicable to the regulations in Exhibit "B," but not
22 repeated therein, and
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WHEREAS the Ecology amendments are clarifying in nature and do not change the substance or process of the regulations in Exhibit “B” of Amended Ordinance No. 28786, and

WHEREAS, on July 8, 2022, the City of Tacoma received the Ecology’s letter of conditional approval, findings of fact and conclusions, and mandated and recommended amendments to Exhibit “B” of Amended Ordinance No. 28786, and

WHEREAS Exhibit “B” of Amended Ordinance No. 28786 becomes effective only upon final approval by Ecology, following City Council acceptance of the conditions of approval; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the City Council hereby adopts the Recitals of this Ordinance as its formal legislative findings.

Section 2. That Amended Ordinance No. 28786 is hereby amended to accept mandatory and recommended conditions of approval of Exhibit “B,” Title 19 of the Tacoma Municipal Code, entitled “Shoreline Master Program,” as provided by the Washington State Department of Ecology, as set forth in the attached Exhibit “B.”

Section 3. That in codifying this Ordinance, the City Clerk is authorized to make adjustments to headings, subsections, and other adjustments



1 necessary to organize this code in an accessible and understandable manner
2 without changing any substantive language.

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4 Passed _____
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7 _____
8 Mayor

9 Attest:

10 _____
11 City Clerk

12 Approved as to form:

13 _____
14 Deputy City Attorney

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ATTACHMENT B: ECOLOGY CHANGES TO THE TACOMA SHORELINE MASTER PROGRAM LOCALLY INITIATED AMENDMENT

Changes in **red are required** to comply with the Shoreline Management Act (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in **blue are recommended** and are consistent with SMA policy and the SMP Guidelines. Single ~~strike through~~ and underline reflect the City’s proposed amendments; double ~~strike through~~ and double underline reflect Ecology changes.

ITEM	SMP PROVISION	BILL FORMAT CHANGES (UNDERLINE = ADDITIONS; STRIKETHROUGH = DELETIONS)	DISCUSSION/RATIONALE															
Rec-1	7.6 Port/Industrial Use – 5. Petroleum Fuel Facilities	<p><u>b.</u></p> <p>...</p> <p><u>(2) Except as specifically authorized under 13.06.080.G.5.b.(3), (4), and (5) (3), (4), (5), and (6) of this section</u>, the following new improvements are prohibited:</p>	<p>Recommended change: The adopted language refers to the Land Use Code (Title 13). The provisions referenced are duplicated in this section of the SMP; the recommended change revises the citation to point to these internal provisions. The recommended change also adds provision (6) to the list of allowances for new improvements. Provision (6) allows for infrastructure to support vessel fueling, which is a water-dependent accessory facility and therefore particularly relevant to the SMP.</p>															
Rec-2	7.6 Port/Industrial use – 6. Cleaner Fuel Infrastructure	<p><u>a.</u></p> <p>...</p> <p><u>(2) ... The limitation on cumulative petroleum storage does not apply to expansions allowed under TMC 13.06.080.G.5.b.(3), (4), and (5) 7.6.5.b (3), (4), (5), and (6) above.</u></p>	<p>Recommended change: Revise citation to SMP sections that are identical to the cited provisions in Title 13. See Rec-1, above.</p>															
Req-1	Table 9-1. Shoreline Use and Development Standards	<table border="1" data-bbox="712 857 1599 1015"> <thead> <tr> <th>District</th> <th>...</th> <th>S-10</th> <th>...</th> <th>S-13</th> </tr> </thead> <tbody> <tr> <td colspan="5">Shoreline Uses</td> </tr> <tr> <td>Chemical Manufacturing, Processing, and Wholesale</td> <td><u>N</u></td> <td><u>N³⁴/PCU³⁵</u></td> <td><u>N</u></td> <td><u>N³⁴/PCU³⁵</u></td> </tr> </tbody> </table> <p>35 Prohibited in all districts: Petrochemical manufacturing, Explosives manufacturing, and Fertilizer Manufacturing</p>	District	...	S-10	...	S-13	Shoreline Uses					Chemical Manufacturing, Processing, and Wholesale	<u>N</u>	<u>N³⁴/PCU³⁵</u>	<u>N</u>	<u>N³⁴/PCU³⁵</u>	<p>Required change: As part of this amendment, conditional use criteria specific to Chemical Manufacturing, Processing, and Wholesale Distribution have been added to Chapter 19.02, Section 2.3.7 Shoreline Conditional Use Permit, including an additional requirement that the final CUP decision authority shall be the Hearing Examiner (SMP 19.02(2.3.7.5)). This indicates an intent to require a CUP for this use. Internal conflicts in an SMP are generally inconsistent with the requirement that SMP regulations be “sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies” (WAC 173-26-191(2)(a)(ii)(A)). The required change corrects the conflict between the table and the regulations.</p>
District	...	S-10	...	S-13														
Shoreline Uses																		
Chemical Manufacturing, Processing, and Wholesale	<u>N</u>	<u>N³⁴/PCU³⁵</u>	<u>N</u>	<u>N³⁴/PCU³⁵</u>														
Req-2	Table 9-1. Shoreline Use and Development Standards –	<p><u>34 Primary uses are prohibited. Supportive water-dependent facilities may be permitted subject to a conditional use permit.</u></p>	<p>Required change: This footnote applies to Chemical Manufacturing, Processing, and Wholesale Distribution, which is described in SMP</p>															

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	footnotes – Chemical Manufacturing, Processing, and Wholesale Distribution		19.02(2.3.7.5) as requiring a CUP (see Req-1). The required change clarifies permit requirements consistent with these regulations and with the revised table entry in Req-1, correcting the internal conflict so that regulations ensure implementation in accordance with WAC 173-26-191(2)(a)(ii)(A).
Req-3 Rec-3 Req-4	Table 9-1. Shoreline Use and Development Standards – footnotes – Petroleum Fuel Facility	<p>36 <u>New facilities are prohibited. Improvements and expansions to existing facilities are permitted but subject to development standards in Chapter 7, Section 7.6 <u>TSMP Section 19.07.060. Expansion of existing nonwater-oriented facilities, and expansion of existing nonwater-dependent facilities over water, shall require a conditional use permit. Expansion of overwater coverage for a nonwater-dependent facility is prohibited.</u></u></p>	<p>Required change: The use allowances in the SMP apply to existing facilities only when a permit is triggered. The required change is necessary to clarify the applicability of SMP standards to existing facilities to ensure proper implementation of the Act, per WAC 173-26-191(2)(a)(ii)(A).</p> <p>Recommended change: Numbering throughout the rest of the document has been reformatted as 19.XX.XXX, consistent with the City’s municipal code structure. The recommended change revises the code citation to match this format. Note this recommended change also applies to footnotes 4, 6, 7, 11, 15, 20, 21, 22, 23, and 25.</p> <p>Required change: The existing SMP requires a CUP for all nonwater-oriented industrial development in the S-10 district (High Intensity Shoreline Environment Designation (SED)). Nonwater-dependent industrial development is prohibited in the S-13 district (Aquatic SED). These restrictions are supported by the port/industrial regulations (19.07.060) and the management policies for the High Intensity and Aquatic SEDs (19.05.050(B)(4) and (E)(4), respectively) in the SMP, and by WAC 173-26-241(3)(f) and 173-26-211(5)(c)(ii). The allowances and permit requirements in the existing SMP were analyzed as part of the required Cumulative Impacts Analysis (CIA) during the City’s comprehensive SMP update and were demonstrated to be consistent with the policy goals of the SMA (RCW 90.58.020).</p>

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			<p>The proposed amendment submitted for Initial Determination retained the CUP requirement for newly specified industries in the S-13 district and proposed a change from prohibited (“N”) to CUP in the S-10 district. While this change represented a new allowance for certain industrial uses over water, the use of a CUP ensured that the City would analyze the cumulative impacts of allowing such uses on a project-by-project basis.</p> <p>The revised amendment now proposes to allow expansion of existing petroleum fuel facilities in both the S-13 and S-10 districts as an outright allowed use. In addition to being inconsistent with the policies and regulations of the SMP for the S-13 district, the revised approach is not supported by the record. The record indicates that the rationale for this change is to prevent regulatory and economic barriers to industry locating, expanding, and/or improving existing operations in Tacoma’s Tideflats Manufacturing/Industrial Center, including by converting to cleaner technologies. However the amendments must also be evaluated against the policy goals of the SMA. As discussed in Ecology’s Initial Determination, the industries specifically identified in this amendment may have water-dependent components, but they are not water-dependent industries and do not require a location on the shoreline. The record does not indicate how the proposed amendment is consistent with the requirement to first reserve shoreline areas for water-dependent, water-related, and water-enjoyment uses and limit nonwater-oriented uses to those locations where water-oriented uses are inappropriate or where nonwater-oriented uses “demonstrably contribute to the objectives of the Shoreline Management Act” (WAC 173-26-201(2)(d)(v)). The record also fails to demonstrate consistency with the requirement to assure no net loss of ecological functions (WAC 173-26-201(2)(c)). At the same time, public comments and comments from the Puyallup Tribe of Indians raise substantive concerns regarding</p>

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			<p>the potential for significant adverse environmental impacts resulting from locating these industries on the shoreline.</p> <p>The required change modifies the amendment to retain the restrictions for nonwater-oriented/nonwater-dependent industrial development or, where new allowances are proposed, to require a CUP to ensure a higher level of scrutiny, including an analysis of cumulative impacts on a project-by-project basis.</p>
<p>Rec-4 Req-5</p>	<p>Table 9-1. Shoreline Use and Development Standards – footnotes – Cleaner Fuel Infrastructure</p>	<p>37 Primary use Cleaner Fuel Infrastructure is prohibited. <u>Supportive Wwater-dependent facilities, such as piers, wharves, docks, and floats and accessory facilities, such as parking and loading areas, may be permitted within shoreline jurisdiction. Nonwater-oriented supportive facilities, such as parking and expanded cleaner fuel infrastructure, shall require a conditional use permit. Nonwater-dependent supportive facilities shall require a conditional use permit to locate over water. Expansion of overwater coverage for a nonwater-dependent facility is prohibited.</u></p>	<p>Recommended change: The proposed footnote clarifies that only supportive, or accessory, facilities are allowed, and that a new primary use is prohibited. The recommended change further clarifies this distinction by adding the qualifying word “supportive,” consistent with the approach used in footnote 34.</p> <p>Required change: As discussed in Req-4 above, the record does not support new allowances for nonwater-oriented facilities, or for nonwater-dependent facilities over water. The proposed definition for “Cleaner Fuel Infrastructure – Expanded” describes storage facilities only. Fuel storage is not a water-oriented use and does not require a location on the shoreline.</p> <p>The required change modifies the amendment to retain the permit requirements for nonwater-oriented/nonwater-dependent industrial development or, where new allowances are proposed, to require a CUP to ensure a higher level of scrutiny, including an analysis of cumulative impacts on a project-by-project basis.</p>