



## WEEKLY REPORT TO THE CITY COUNCIL

November 2, 2017

Members of the City Council  
City of Tacoma, Washington

**Dear Mayor and Council Members:**

### ITEMS OF INTEREST

1. Neighborhood and Community Services **executed contract amendments authorizing a current vendor to sub-contract for services through the end of 2017, to ensure seamless service delivery** for vulnerable populations while the current vendor prepares to terminate business operations. The services include youth leadership training, scholarships, tutoring, and skills development for high school students and college-age young adults. Funding for these contracted services was previously authorized by the City Council. Unless there are issues with contract performance, we anticipate negotiating and executing one-year contracts with the sub-contractors for 2018, continuing the seamless service delivery through the end of the current biennium.
2. Following City Council adoption of amendments to **Tacoma Municipal Code 18.10 "Paid Sick Leave," City staff are launching a public process to update the rules that will guide implementation of the revised law.** Amendments to the rules will primarily focus on moving into greater alignment with State law, minimizing the administrative burden for employers, and continuing effective enforcement of the law. Finance Director Andy Cherullo provides the attached memorandum and a draft copy of the rules being released for public comment. Feedback will be accepted through Friday, December 1<sup>st</sup>, 4:00 p.m. During this time, the City will host four public meetings for community members to provide their input.
3. In July of 2017, **China notified the World Trade Organization that it planned to ban the import of many types of recyclable materials including mixed plastics, mixed paper and some metals.** Mixed paper makes up a large percentage of Tacoma's recycled material, and mixed plastic materials are a popular item to recycle. These new restrictions are part of the program China has called "Operation Green Fence," which is meant to curb waste imports and reduce contamination of the materials entering China. It is uncertain how the City's recycling programs will be impacted in the future if the ban goes into effect; however, there will be some serious challenges since the standard for contamination rates on our materials is higher than what would be allowed. In addition, the ban would impact the prices of other materials, such as cardboard and aluminum. Environmental Services Director Mike Slevin provides the attached memorandum for additional information.

### **STUDY SESSION/WORK SESSION**

4. The **City Council Study Session** of Tuesday, November 7, 2017, will be held in Room 16 of the Tacoma Municipal Building North, at Noon. Discussion items will include: (1) **Update on the Tacoma Link Extension Project**; (2) **Tideflats Interim Regulations**; (3) **Other Items of Interest**; (4) **Committee Reports**; and (5) **Agenda Review and City Manager's Weekly Report**.

At Tuesday's Study Session, Sound Transit staff will provide the City Council an **update on the Tacoma Link Extension Project. Design of the project is nearly 90% complete.** Sound Transit will be holding an Open House on November 8<sup>th</sup> to update the community on major milestones in the final phases of design, such as station names and the anticipated timeline for construction.

For the second agenda item at Tuesday's Study Session, staff from Planning and Development Services (PDS) will present the **Planning Commission's recommendations regarding the Tideflats Interim Regulations.** The first reading of the proposed ordinance adopting these interim regulations is scheduled for November 14<sup>th</sup>. Additional background appears in the attached memorandum from PDS Director Peter Huffman, which includes responses to frequently asked questions. Please contact Senior Planner Stephen Atkinson with any questions, 253-591-5531 or [satkinson@cityoftacoma.org](mailto:satkinson@cityoftacoma.org).

5. The updated **Tentative City Council Forecast and Consolidated Standing Committee Calendars** are attached for your information.

### **COUNCIL MEETING**

6. **On Tuesday's Council agenda for your consideration are four ordinances related to the City's property tax levies.** Two of the ordinances (No. 28465 and No. 28467) approve the total regular levy amounts to be collected for the regular property tax levy and the Emergency Medical Services (EMS) property tax. The other two ordinances (No. 28466 and No. 28468) approve the percent and dollar increase over the last year's actual levy amounts collected for those two property taxes. Please see the attached memorandum from Budget Manager Katie Johnston for additional information.

### **MARK YOUR CALENDARS**

7. You have been invited to the following events:
  - **Annual Downtown on the Go! Luncheon on Friday, November 3<sup>rd</sup>, 11:30 a.m. to 1:00 p.m.,** at the Pacific Grill Events Center, located at 1530 Pacific Avenue.

- **Electric Vehicle Ride & Drive! Saturday, November 4<sup>th</sup>, 10:00 a.m. to 3:00 p.m.**, at the Front Entrance of the Port Defiance Zoo and Aquarium, located at 5400 North Pearl Street.
- **Tacoma Refugee Choir Community Sing-Along *Everyone Has a Song* on November 4<sup>th</sup>, 7:00 p.m.**, at Lincoln High School, located at 701 South 37<sup>th</sup> Street.
- **All Hands on Deck! Greater Tacoma Community Foundation celebration of the greater community you help build on Wednesday, November 8<sup>th</sup>, 5:00-7:00 p.m.**, at the Foss Waterway Seaport Museum, located at 705 Dock Street.
- **South Sound Military and Communities Partnership Elected Officials Council meeting on Tuesday, November 21<sup>st</sup>, 7:30-9:00 a.m.**, at the Eagles Pride Golf Course, located at Joint Base Lewis McChord, exit 116 off of I-5.
- Broadway Center for the Performing Arts presents the **72<sup>nd</sup> Annual Holiday Tree Lighting on Saturday, November 25<sup>th</sup>, 5:00 p.m.**, at the Pantages Theater Lobby, located at 9<sup>th</sup> and Broadway.
- Washington State Department of Transportation and Sound Transit **Opening Ceremony for the new Amtrak Cascades Station on Wednesday, December 13<sup>th</sup>, 2:00 p.m.**, in Tacoma's Freighthouse Square, located at 422 East 25<sup>th</sup> Street.

Sincerely,



Elizabeth A. Pauli  
City Manager



**TO:** Elizabeth Pauli, City Manager  
**FROM:** Andy Cherullo, Finance Director *AC*  
**COPY:** Mayor and Councilmembers  
**SUBJECT:** Update on the Paid Sick Leave Rules Process  
**DATE:** November 2, 2017

**SUMMARY:**

Following Council adoption of amendments to TMC 18.10 "Paid Sick Leave," City staff are launching a public process to update the rules that will guide implementation of the revised law.

**INFORMATION UPDATE:**

Amendments to the paid sick leave rules will primarily focus on moving into greater alignment with State law, minimizing the administrative burden for employers, and continuing effective enforcement of the law.

Attached you'll find a draft of the rules being released for public comment. Feedback will be accepted through 4pm on Friday, December 1, 2017. During this time, the City will host four public meetings for community members to provide their input:

***Tuesday, November 7, 5:30-7 PM***  
Swasey Library Meeting Room, 7001 6th Ave.

***Thursday, November 9, 10:30 AM-Noon***  
STAR Center Discovery Room, 3873 S. 66th St.

***Wednesday, November 8, 2-3:30 PM***  
Lincoln District Project Office, 750 S. 38th St.

***Thursday, November 30, 10-11:30 AM***  
Main Branch of the Tacoma Public Library

The new rules will take effect on January 1, 2018. Following this public process, the City has scheduled two information sessions for those who want to learn more about the new law taking effect in 2018 (dates below). In addition, one-on-one support is available at any time: 253-591-5306 or [paidleave@cityoftacoma.org](mailto:paidleave@cityoftacoma.org).

***Tuesday, December 12, 2-3:30 PM***  
Main Branch of the Tacoma Public Library

***Wednesday, December 13, 6-7:30 PM***  
Fern Hill Library Meeting Room, 765 S. 84th St

Finance Department staff are working with the Media and Communications Office on a comprehensive outreach strategy to share information on the coming changes and the public process. Mailings to licensed business owners are also planned.

Staff would respectfully request any feedback on or before the December 1, 2017 deadline. Please direct questions about the public process, associated outreach, or the impact/intent of specific rules language to Melanie Harding, Employment Standards Program Manager – [mharding2@cityoftacoma.org](mailto:mharding2@cityoftacoma.org), 253-591-5216.

DRAFT: 11/2/2017

PAID LEAVE PAID SICK LEAVE RULES

For Tacoma Municipal Code 18.10

RULE 1.0 – Working in the City

In General

Work Outside the City

Telecommuting

Traveling Through the City

RULE 2.0 – Employer Attendance Policies

In General

Employee Representative

Reasonable Notice – State Requirements Observed

Verification & Documentation Requirements

Written Policy Requirements

Instances of Abuse

Declaring the Benefit Year

Universal Paid Sick Leave / Paid Time Off (PTO)

Frontloading

RULE 3.0 – Incremental Use of ~~Paid Leave~~ Paid Sick Leave

In General

Incremental Use – State Requirements Observed

Variance from Required Increment of Use

Increment of Use for FLSA-Exempt Employees

RULE 4.0 – Donated ~~Paid Leave~~ Paid Sick Leave

In General

Written Policy & Notice

RULE 5.0 – Premium Pay Programs

RULE 56.0 – Employer Records Requirements

In General

Universal Paid Time Off Programs

RULE 67.0 – Certification of Compliance & Noticing

Certification of Compliance

Noticing

RULE 8.0 – Successor Employees

RULE 79.0 – Breaks in Service

In General

Payout of Accrued Leave upon Separation

RULE 1098.0 – Rate of Pay

In General

Same Hourly Rate Defined – State Requirements Observed

Commissions

Piece Rate

Non-exempt Salaried Employees

Exempt Salaried Employees

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

	<u>Fluctuating Rate of Pay</u>
	<u>Shifts of Indeterminate Length</u>
RULE <del>11</del> 109.0	– Additional Hours/Shifts, Substitute Hours/Shifts, & Shift Swapping
	<u>Written Policy</u>
RULE <del>12</del> 110.0	– Use & Carry Over of <del>Paid Leave</del> <u>Paid Sick Leave</u>
	<u>Concurrent Leave</u>
	<u>Use for On-Call Shifts</u>
	<u>Carry Over of Paid Sick Leave</u>
RULE <del>13</del> 121.0	– Payment of <del>Paid Leave</del> <u>Paid Sick Leave</u> Benefits
	<u>In General</u>
	<u>Verification/Documentation Required</u>
RULE <del>14</del> 12.0	– Retaliation
RULE <del>15</del> 13.0	– State Restricted Policies
	<u>In General</u>
	<u>Collective Bargaining Agreement (CBA) Waivers</u>
	<u>Premium Pay Programs</u>
RULE <del>16</del> 14.0	– Third Party Administrators
	<u>In General</u>
	<u>Employer Responsibility</u>
	<u>Paid Sick Leave Pools for Multiple Employers</u>
RULE <del>14</del> 1715.0	– Administration
	<u>In General</u>
	<u>Amending a Charge</u>
	<u>Withdrawing a Charge</u>
	<u>Access to Records</u>
	<u>Worker Documentation</u>
	<u>Fact Finding &amp; Settlement Conferences</u>
	<u>Findings of Fact/Standard of Proof</u>
	<u>Calculation of Remedies Owed</u>
	<u>Payment of Assessments</u>
RULE <del>15</del> 1816.0	– Request for Administrative Review
	<u>In General</u>
	<u>Request for Administrative Review</u>
	<u>Decision of Director</u>
	<u>Appeals of Director's Decision</u>

**RULE 1.0  
WORKING IN THE CITY**

**1.1 In General**

~~1.1~~ The ~~Paid Leave~~Paid Sick Leave Ordinance (“Ordinance” shall mean Chapter 18.10, “~~Paid Leave~~Paid Sick Leave” of the Tacoma Municipal Code) applies to all Employees who work within the geographical boundaries of the City of Tacoma (the “City” or “Tacoma”) for more than 80 hours in a ~~Calendar~~Benefit Year, regardless of whether their Employer is physically located in the City or not. For example, Employees who live in or travel to the City and conduct their work are covered by the Ordinance; Employees who make pick-ups, deliveries or sales calls within the City are covered by the Ordinance for the hours that the Employees are physically in the City and performing work.

1.2 Once an Employee is covered by the Ordinance, ~~they remain covered through the next Calendar Year~~

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

~~even if they don't meet the 80-hour threshold, the Employee remains covered in subsequent Benefit Years as long as they continue to do work in the City.~~

**1.3** When there is a reasonable expectation that Employees will work 80 hours in a ~~Calendar Year~~**Benefit Year**, Employees shall be immediately covered by the Ordinance.— Employees who work either infrequently or irregularly shall become eligible as soon as there is a reasonable expectation that they will work 80 hours within Tacoma in a ~~Calendar Year~~**Benefit Year**.— Once an Employee is covered by the Ordinance, an Employer shall provide the Employee with the amount of ~~Paid Leave~~**Paid Sick Leave** equal to what would have been accrued for the hours worked to date during the current ~~Calendar Year~~**Benefit Year**.

#### **1.4 Work outside the City.**

~~1.4~~ An Employee who performs work outside the City, even if the Employer is based in the City, is not covered by the Ordinance for hours worked outside the City.

#### **1.5 Telecommuting.**

~~1.5~~ An Employee who ~~lives in the City and performs work for an Employer from home, including telecommuting, telecommutes, or works from home or another location outside of the primary place of business,~~ is covered by the Ordinance for all hours that they perform while physically located in the City, even if the Employer is physically located outside the City.— However, the Ordinance and this rule apply only if the Employee has or will perform more than 80 hours of work in Tacoma within a ~~Calendar Year~~**Benefit Year**.

**1.6** An Employee who performs work for an Employer by telecommuting is not covered by the Ordinance for the hours the Employee is not physically located in the City, even if the Employer is physically located in the City.

#### **1.7 Traveling Through the City.**

~~1.7~~ An Employee who travels through the City is not covered by the Ordinance if they make no stops for work purposes, or only make incidental stops that are not considered to be making a stop for work purposes (e.g., purchasing gas, eating a meal, or changing a flat tire).

**1.8** An Employee who travels through the City, and stops in the City as a purpose of their work (e.g. to make pickups or deliveries), is covered by the Ordinance for all hours worked in the City, including travel within the City when it would typically occur during paid work time. However, the Ordinance and this rule apply only if the Employee has or will perform more than 80 hours of work in the City within a ~~Calendar Year~~**Benefit Year**.

**1.9** An Employer may make a reasonable estimate of an Employee's time spent working in the City for purposes of ~~Paid Leave~~**Paid Sick Leave** accrual and use.— Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, ~~employee~~**Employee** logs, delivery addresses and estimated travel times, or historical averages.

#### **Professional Development or Training in the City.**

1.10 An Employee in the City solely to attend a convention, conference, training, educational class, or similar is not covered by the Ordinance.

## RULE 2.0 EMPLOYER ATTENDANCE POLICIES

### **2.1 In General-**

~~2.1~~ As outlined in TMC 18.10.030.D, an Employer may require an Employee to comply with the Employer's usual and customary notice and procedural requirements for absences and/or requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

### **2.2 Written Policy for Reasonable Notice – State Requirements Observed**

As required by WAC 296-128-650, as currently enacted or hereinafter amended, Employers must have a written policy outlining any requirements of an Employee to give reasonable notice for the use of Paid Sick Leave, and must make notification of such policy or agreement, prior to requiring an Employee to provide reasonable notice. An Employer must make this information readily available to all Employees. If an Employer does not require an Employee to give reasonable notice for the use of Paid Sick Leave, a written policy is not required.

### **2.23 Employee Representative**

~~2.2~~ In accordance with the requirements outlined by TMC 18.10.030.D, in the event it is impracticable for an Employee to provide notice to their Employer, a person may provide notice to the Employer on the Employee's behalf.

### **~~2.3~~**

### **2.4 Verification & Documentation Requirements-**

~~2.4~~ For absences exceeding three days, an Employer may take reasonable measures to verify or confirm that an Employee's use of Paid Sick Leave is for an authorized purpose as outlined in TMC 18.10.030.C.

**2.25** "Absences exceeding three days" means absences exceeding three consecutive days an Employee is scheduled to work. For example, assume an Employee is scheduled to work on Mondays, Wednesdays, and Fridays, and then the Employee uses Paid Sick Leave for any portion of those three work days in a row. If the Employee uses paid sick leave again on the following Monday, the Employee would have absences exceeding three days.

**2.6** If an Employer requires verification for the use of Paid Sick Leave, the Employer must have a written policy outlining any such requirements. Said policy must clearly describe:

- a) The forms or types of documentation that the Employer may require and the circumstances for requiring each form or type of documentation;
- b) The "reasonable time period" as defined in Rule ~~X.X~~2.7 below in which the Employee is required to submit such documentation or verification;

- c) Any consequences resulting from an Employee's failure or delay in providing such written documentation or other verification; and
- d) The Employee's right to assert that the verification requirement results in an unreasonable burden or expense on the Employee.

The Employer must notify the Employee of such policy prior to requiring the Employee to provide verification. An Employer must make this information readily available to all Employees.

**2.7** If an Employer requires verification that the use of Paid Sick Leave is for an authorized purpose under TMC 18.10.030.C, verification must be provided to the Employer within a reasonable time period during or after the leave. For the purpose of this rule set, "reasonable time period" is a period of time defined by a written policy, but may not be less than ten calendar days following the first day upon which the Employee uses Paid Sick Leave.

**2.8** If an Employer requires an Employee to provide verification from a health care provider identifying the need for use of Paid Sick Leave for an authorized purpose, the Employer must not require that the information provided explain the nature of the condition. If the Employer obtains any health information about an Employee or an Employee's family member, the Employer must treat such information in a confidential manner consistent with applicable privacy laws.

**2.9** Unreasonable Burden or Expense: Employer-required verification may not result in an unreasonable burden or expense on the Employee. If an Employer requires verification, and the Employee anticipates that the requirement will result in an unreasonable burden or expense, the Employee must be allowed to provide an oral or written explanation to their Employer which asserts:

- a) That the Employee's use of Paid Sick Leave was for an authorized purpose under as outlined in TMC 18.10.030.C; and
- b) How the Employer's verification requirement creates an unreasonable burden or expense on the Employee.

The Employer must consider the Employee's explanation. Within ten calendar days of the Employee providing an explanation to their Employer about the existence of an unreasonable burden or expense, the Employer must make a reasonable effort to identify and provide alternatives for the Employee to meet the Employer's verification requirement in a manner which does not result in an unreasonable burden or expense on the Employee.

A reasonable effort by the Employer to identify and provide alternatives could include, but is not limited to:

- a) Accepting the oral or written explanation provided by the Employee; or
- b) Mitigating the Employee's out-of-pocket expenses associated with obtaining medical verification.

If after the Employer considers the Employee's explanation, the Employer and Employee disagree that the Employer's verification requirement results in an unreasonable burden or expense on the Employee:

1.) The Employer and Employee may consult with the City of Tacoma's Employment Standards Office

regarding the verification requirement; and/or 2.) The Employee may file a complaint with the City of Tacoma's Employment Standards Office.

**2.10** If an Employer requires verification that the use of Paid Sick Leave is for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such verification requirements must comply with the provisions outlined in WAC 296-135-070. For use of Paid Sick Leave for purposes authorized under federal, state, or other local laws that permit Employers to make medical inquiries, an Employer may require verification from an Employee that complies with such certification requirements.

~~2.2 If the Employer chooses to require written documentation or other verification for the use of all or a portion of an Employee's Paid Leave, the Employer must have a written policy regarding the requirement and said policy must be readily available to all Employees. Said policy must clearly describe: (i) the forms or types of documentation that the Employer may require and the circumstances for requiring each form or type of documentation; (ii) the timeframe in which the Employee is required to submit such documentation or verification (e.g., one week, one month, etc); and (iii) any consequences resulting from an Employee's failure or delay in providing such written documentation or other verification; provided that the policy must allow a personal statement signed by the Employee that he or she is using Paid Leave for a qualifying absence as acceptable verification. An Employee's signed statement does not need to be in an affidavit format or notarized, but shall be legible and shall make clear the Employee's identity and the general purpose for which Paid Leave is being used, the date(s) and time(s) when paid leave hours are being used, and if applicable, the Employee's relationship to the family member for whom leave is needed. When providing documentation, an Employee is not required to provide private health information. For example, an Employee may notify his Employer that he needs to take Paid Leave to care for his sick child; the Employee does not need to indicate the nature of the child's illness.~~

~~2.3 If an Employer obtains any health information about an Employee or an Employee's family member, including when a doctor's note or other medical documentation for the use of Paid Leave is obtained by the Employer, the Employer shall treat that information in a confidential manner consistent with federal, state, and local medical privacy laws.~~

**2.42.11** If an Employer obtains any records or information about an Employee or an Employee's family member related to domestic violence, harassment, sexual assault, stalking or other safety related issues, such records or information are confidential and may not be released without express written permission of the Employee, unless specifically required otherwise by law.

### **2.12 Written Policy Requirements**

In any circumstance where a written policy is required, the requirement may be fulfilled by capturing said policy in a ratified collective bargaining agreement.

#### **Absence Control Policies.**

~~2.5 The Ordinance's protection for exercise of rights and prohibition against retaliation shall apply in situations where an absence control policy, in writing or in practice, counts Paid Leave covered under~~

the Ordinance as an absence that may lead to or result in any adverse action taken against the Employee.

### **2.13 Instances / Patterns of Abuse.**

~~2.6~~ The Ordinance's protections for exercise of rights and prohibition against retaliation do not prevent an Employer from taking reasonable action (e.g., discipline) when an Employee's use of ~~Paid Leave~~Paid Sick Leave is not in good faith, such as a clear instance ~~or pattern~~ of abuse. Disciplinary actions may not include deductions from an Employee's legitimately earned or donated ~~Paid Leave~~Paid Sick Leave hours.

### **2.14 Declaring the Benefit ~~or Calendar Year~~Year.**

~~2.7~~ The Ordinance allows Employers to declare their "Calendar Year~~Benefit Year~~" as either "the 12-month period beginning January 1; the 12-month period beginning on the date of hire; or the fiscal year." The Employer shall ~~declare and~~ consistently use one option to serve as their "~~Calendar Year~~Benefit Year" for all Employees ~~and/or groups of similarly situated Employees~~; ~~t~~The definition may not be changed to avoid Employee accrual or use of ~~Paid Leave~~Paid Sick Leave.

### **2.15 Universal Paid Sick Leave Policy / Paid Time Off**

As outlined in TMC 18.10.020.E, Employers may use a combined or universal Paid Sick Leave program to comply with the Ordinance. For the purposes of the Ordinance, a combined or universal Paid Sick Leave program may include, but is not limited to: universal paid time off, vacation, floating holidays, or any other program that allows an Employee to take paid time off for combined or universal purposes (collectively referred here as PTO).

2.16 An Employer using a PTO program to comply with the Ordinance shall allow Employees to use all of their PTO hours for all the purposes and under the same conditions as set forth in Section 18.10.030. In addition, the PTO program shall meet or exceed the accrual rate in TMC 18.10.020 and payment for the PTO shall be at the Employee's normal hourly compensation as defined in Rule ~~x~~8.3.

2.17 An Employer using a PTO program to comply with the Ordinance shall have a written policy, readily available to all Employees, informing Employees that the Employer will use their PTO program to comply with the Ordinance. An Employer must notify Employees of such policy prior to using a PTO program to meet the Ordinance requirements. Said policy shall include:

- a) A clear description identifying the particular PTO program and the Employer's intent to use that program and/or complete bank of hours to comply with the Ordinance; and
- b) Information letting Employees know that all of their hours in such PTO program can be used for all the same purposes and under the same conditions as set forth in 18.10.030.

2.18 An Employer using a PTO program to comply with the Ordinance shall also comply with Rule ~~6~~35.2 (Record Keeping for Employers Using PTO) and Rule ~~7~~6.3 (Noticing).

2.19 If an Employee chooses to use their PTO leave for purposes other than those authorized under Sec.18.10.030, and the need for use of Paid Sick Leave later arises when no additional PTO leave is available, the Employer is not required to provide any additional PTO leave to the Employee as long as the Employer's PTO program meets or exceeds the provisions of the Ordinance, and all applicable rules.

## **2.20 Frontloading**

An Employer may, but is not required to, frontload Paid Sick Leave to an Employee in advance of accrual.

2.21 The Employer must have a written policy which addresses the requirements for use of frontloaded Paid Sick Leave. An Employer must notify Employees of such policy prior to frontloading an Employee Paid Sick Leave, and must make this information readily available to all Employees.

2.22 If an Employer frontloads Paid Sick Leave, the Employer must ensure that such frontloaded Paid Sick Leave complies with the provisions of the Ordinance and all applicable rules.

2.23 If an Employer frontloads Paid Sick Leave, the Employer must do so by using a reasonable calculation, consistent with the accrual requirement set forth under TMC 18.10.020, to determine the amount of Paid Sick Leave the Employee would be projected to accrue during the period of time for which Paid Sick Leave is being frontloaded.

2.24 If the Employer calculates and frontloads, and an Employee subsequently uses, an amount of Paid Sick Leave which exceeds the Paid Sick Leave the Employee would have otherwise accrued absent frontloading, the Employer shall not seek reimbursement from the Employee for such Paid Sick Leave used during the course of ongoing employment.

2.25 If an Employer frontloads Paid Sick Leave to an Employee, but such frontloaded Paid Sick Leave is less than the amount the Employee was entitled to accrue under TMC 18.10.020, the Employer must make such additional amounts of Paid Sick Leave available for use by the Employee as soon as practicable, but no later than thirty days after identifying the discrepancy.

2.26 An Employer may not make a deduction from an Employee's final wages for frontloaded Paid Sick Leave used prior to the accrual rate required by TMC 18.10.020, unless there is a specific agreement in place with the Employee allowing for such a deduction. Such deductions must also meet the requirements set forth under Washington State law, RCW 49.48.010 and WAC 296-126-025, as currently enacted or hereinafter amended.

## **RULE 3.0**

### **INCREMENTAL USE OF ~~PAID LEAVE~~ PAID SICK LEAVE**

#### **3.1 In General.**

~~3.1~~ Employers may establish a minimum increment of use of accrued Paid Sick Leave time according to the terms established by the State of Washington in WAC 296-128-630 and WAC 296-128-640 as currently enacted or hereinafter amended, subject to the FLSA, provided that the Employer shall not require Employees covered by the overtime requirements of the FLSA to use accrued Paid Sick Leave time in increments greater than one hour unless necessary due to a reasonable business need. An Employee may use Paid Leave in one hour increments, unless the Employer establishes a written minimum use policy, subject to the Fair Labor Standards Act.

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

### **3.2 Increment of Use – State Requirements Observed**

3.2 Employers must comply with the terms established by the State of Washington in WAC 296-128-630 as currently enacted or hereinafter amended for “employees” as defined by RCW 49.46, the terms of which currently state: “Unless a greater increment is approved by a variance as provided by WAC 296-128-640, Employers must allow Employees to use Paid Sick Leave in increments consistent with the Employer’s payroll system and practices, not to exceed one hour. For example, if an Employer’s normal practice is to track increments of work for the purposes of compensation in fifteen-minute increments, then an Employer must allow Employees to use Paid Sick Leave in fifteen-minute increments.”

### **3.3 Variance from Required Increment of Use**

3.3 Employers who wish to adopt an increment of use for Employees covered by the overtime requirements of the FLSA that is inconsistent with the Employer’s payroll system or in excess of one hour must seek and receive a variance from the Washington State Department of Labor and Industries as outlined in WAC 296-128-640 as currently enacted or hereinafter amended.

3.4 If an Employer applies for and obtains a variance from Washington State Department of Labor, the Employer must provide the involved Employees with information about the increments of use requirements that apply within fifteen (15) days of receiving notification of such approval from the Washington State Department of Labor and Industries. An Employer must make this information readily available to all Employees.

### **3.5 Increment of Use for FLSA-Exempt Employees**

For FLSA-exempt Employees, the Employer may make deductions of Paid Sick Leave in reasonable increments, in accordance with the FLSA or in accordance with a pay system established by statute, ordinance, or regulation.

#### **Minimum Use Policy.**

3.2 An Employer may establish a reasonable, written policy on minimum use that requires an Employee to use a greater amount of Paid Leave than the Employee needs or requests, subject to the Fair Labor Standards Act. The policy must be readily available to Employees.

## **RULE 4.0**

### **DONATED PAID LEAVE PAID SICK LEAVE**

#### **4.1 In General.**

4.1 An Employer may establish a ~~written~~ policy whereby an Employee may choose to donate unused ~~Paid Leave~~ PAID SICK LEAVE to another Employee.

#### **4.2 Written Policy & Notice**

4.2 If an Employer establishes a donated Paid Sick Leave policy, the Employer must have a written policy which specifies that an Employee may donate accrued, unused Paid Sick Leave to a co-worker. The Employer must notify Employees of such policy prior to allowing donations of Paid Sick Leave. An Employer must make this information readily available to all Employees. Donations shall be made at the Employee’s discretion, and policies requiring compulsory donations are prohibited.

#### **Use of Paid Leave.**

4.2 If donated leave is permitted by Employer policy, an Employer may, but is not required to, count donated leave as part of the 40 hours maximum of Paid Leave that an Employee may use in a Calendar Year Benefit Year.

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

**RULE 5.0**  
**PREMIUM PAY PROGRAMS**

**In-General.**

5.1 An Employer that offers extra pay in lieu of paid time off can be in compliance with the Ordinance if the program meets or exceeds the requirements of the Ordinance, subject to approval by the Director.

**Application, Review, and Approval of Premium Pay Programs.**

5.2 The Director shall review proposed Premium Pay Programs to make a determination of compliance with the Ordinance. Employers shall submit an outline of their proposed Premium Pay Program at least 90 days before the intended Premium Pay Program start date. Proposals should demonstrate how the Employer's Premium Pay Program meets or exceeds the minimum requirements and provide an overview of the program, including: (i) how Employee base pay is determined; (ii) how extra pay would be calculated; (iii) how other forms of compensation/benefits will be or have recently been changed (if applicable); (iv) the frequency and method for distributing extra pay to Employees; (v) information on which Employees would be receiving extra pay in lieu of benefits (e.g., Employees who opt in, all Employees, customer service staff, etc); (vi) the specific types of records that will be maintained by the Employer to document the extra pay; (vii) how the Employer will address accrued but unused Paid Leave hours if they are transitioning from Paid Leave accrual to a Premium Pay Program; and (viii) the anticipated program start date. The Director may request additional information or documentation as needed to make a determination of compliance.

5.3 The Director will issue a written determination within 60 days of receiving the request for review of a Premium Pay Program stating whether the proposed Premium Pay Program is approved. If the Premium Pay Program is not approved, the determination will include reasons why the program does not meet the Ordinance requirements. If the Director requires additional information from the Employer after the initial request is received, the time to issue a determination may extend past 60 days. Notice of the extended date will be provided by the Director in writing.

5.4 If an Employer fails to submit sufficient information that explains how the Premium Pay Program meets or exceeds the requirements of the Ordinance, then the Director shall not approve the program.

5.5 An Employer may request administrative review of the Director's determination of compliance according to the process outlined in the Ordinance and Rule 15 "Request for Administrative Review."

**Premium Pay Program Criteria.**

5.6 Premium Pay Programs will be evaluated based on how the proposed extra pay compares to the value of benefits outlined in the Paid Leave Ordinance, including the following criteria: (i) extra pay must meet or exceed the value of the Paid Leave benefit outlined in the Ordinance; (ii) extra pay must be readily available for expenditure, similar to wages, and not placed in a restricted account such as a retirement or flexible spending account unless mutually agreed upon by the Employee and Employer; (iii) extra pay cannot be provided in the form of goods/services; and (iv) extra pay is dispersed at reasonable intervals, not less than once per month, or "frontloaded." Additional, reasonable criteria may be applied as deemed necessary by the Director to ensure that the Premium Pay Program meets or exceeds the minimum requirements of the Ordinance. If a Premium Pay Program is not approved, the specific criteria that resulted in such a determination will be disclosed to the Employer.

**Records Requirements.**

5.7 If an Employer enacts an approved Premium Pay Program, the Employer will be responsible for

maintaining documentation of the extra pay provided, as well as Employee name, hire date, and all records outlined in an approved Premium Pay Program proposal, for a minimum of three years and shall allow Director access to such records according to the parameters outlined in TMC 18.10.060(B).

**Written Policy.**

5.8 If an Employer elects to enact an approved Premium Pay Program, then it must be documented in a written policy and made readily available to Employees.

**Other Ordinance Requirements Remain in Effect.**

5.9 Employers who enact an approved Premium Pay Program are not exempt from other requirements of the ordinance including, but not limited to, Noticing and Posting requirements and the "Employer Responsibilities" outlined in TMC 18.10.050.

Premium Pay Program Example:

A full-time (2,000 hours/year) Employee is paid wages at a rate of \$15/ hr. In order for the Employer to establish a Premium Pay Program that meets the requirements of the Ordinance, they must pay the Employee at least \$.18 more per hour to equal the value of the required 24 hours of Paid Leave:

Current wage:	2,000 hours x \$15 =	\$30,000
Paid Leave value:	24 hours x \$15 =	\$360
Required wage:	2,000 hours x \$15.18 =	\$30,360

**RULE 65.0**

**EMPLOYER RECORDS REQUIREMENTS**

**5.1 In General**

Per Washington State WAC 296-128-010 as currently enacted or hereinafter ~~Records required. For all employee amended, s who are subject to RCW 49.46.020, e~~ **Employers shall be required to keep and preserve payroll or other records containing the following information and data with respect to each and every employee** ~~Employee to whom said section of said act applies~~ covered by TMC Chapter 18.10:

- a) (1) Name in full, and on the same record, the Employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes;
- b) Home address;
- c) Occupation in which employed;
- d) Date of birth if under eighteen;
- e) Time of day and day of week on which the Employee's workweek begins.
- f) Hours worked each workday and total hours worked each workweek in Tacoma (for purposes of this section, a "workday" shall be any consecutive twenty-four hours);
- g) Total daily or weekly straight-time earnings or wages; that is, the total earnings or wages due for hours worked during the workday or workweek, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation;
- h) Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked;

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

- i) Total additions to or deductions from wages paid each pay period. Every Employer making additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions;
- j) Total wages paid each pay period;
- k) Date of payment and the pay period covered by payment;
- l) Paid sick leave accruals each month, and any unused Paid Sick Leave available for use by an Employee;
- m) Paid sick leave reductions each month including, but not limited to: Paid sick leave used by an Employee, Paid Sick Leave donated to a co-worker through a shared leave program, or Paid Sick Leave not carried over to the following Benefit Year; and
- n) The date of commencement of the Employee's employment

Employer may use symbols where names or figures are called for so long as such symbols are uniform and defined Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes; (2) Home address; (3) Occupation in which employed; (4) Date of birth if under eighteen; (5) Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice. If, however, any employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall then be kept for that employee or group of employees; (6) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" shall be any consecutive twenty four hours); (7) Total daily or weekly straight time earnings or wages; that is, the total earnings or wages due for hours worked during the workday or workweek, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation; (8) Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight time earnings or wages also earned during overtime worked; (9) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions; (10) Total wages paid each pay period; (11) Date of payment and the pay period covered by payment; (12) Paid sick leave accruals each month, and any unused paid sick leave available for use by an employee; (13) Paid sick leave reductions each month including, but not limited to: Paid sick leave used by an employee, paid sick leave donated to a co-worker through a shared leave program, or paid sick leave not carried over to the following year ("year" as defined in WAC 296-128-620(6)); (14) The date of commencement of his or her employment, as defined in WAC 296-128-600(2); (15) Employer may use symbols where names or figures are called for so long as such symbols are uniform and define

d.

In General.

6.1 An Employer shall retain records for a period of three years that document:

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

Employee hours worked in Tacoma;  
Amount of Paid Leave accrued by each Employee; and  
Amount of Paid Leave used by each Employee  
Other Records.

6.2 Records shall also contain at a minimum:  
Name of each Employee;  
The hire date of employment of each Employee;  
Date Employee was eligible to use Paid Leave; and  
The dates and time each Employee used Paid Leave

#### **5.2 Universal Paid Time Off Programs.**

~~6.3~~ Employers using a PTO policy to comply with the Ordinance ~~Employers who provide a universal paid time off program that meets the requirements of the Ordinance~~ must track leave accrued and used; however, they are not required to track the specific reasons for the use of PTO leave. The Employer is also required to comply with all of the Washington State requirements, including those stated in Rule .

#### **Premium Pay Program Records.**

~~6.4~~ Employers who enact an approved Premium Pay Program are subject only to the records requirements outlined in Rule 5.

### **RULE 76.0**

#### **CERTIFICATION OF COMPLIANCE & NOTICING**

#### **6.1 Certification of Compliance.**

~~7.1~~ An Employer shall annually certify compliance with the Ordinance upon application for and renewal of their Tacoma business license.

~~7.2~~ An Employer that does not “engage in business” in Tacoma and is not required to obtain a Tacoma business license according to Title 6 of the TMC shall certify compliance with the Ordinance on a form and frequency as determined by the Director.

#### **6.3 Noticing.**

~~7.3~~ Employers are required to provide notice as outlined in TMC 18.10.050 to Employees in the Employee’s primary language when the City of Tacoma has created a notice in that language and made it available to Employers electronically or in print.

### **RULE 8.0**

#### **SUCCESSOR EMPLOYERS**

#### **In General.**

~~8.1~~ Unused Paid Leave shall be retained by the Employee if the Employer sells, transfers, or otherwise assigns the business to another Employer and the Employee continues to work in the City.

### **RULE 97.0**

#### **BREAKS IN SERVICE**

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

**7.1 In General-**

~~9.1~~ When an Employee is separated from employment and rehired by the same Employer within ~~six~~ twelve (612) months of separation ~~within the same Calendar Year~~ Benefit Year, previously unused Paid Leave Paid Sick Leave shall be reinstated according to TMC 18.10.020.G. ~~The previous period of employment shall be counted for purposes of determining the Employee's eligibility to use Paid Leave. For example, the hours worked and length of employment during the previous period of employment shall count towards the 80 hour requirement and 180~~ 90 day requirement for eligibility.

**7.2 Pay-out of Accrued Leave upon Separation-**

~~9.2~~ If an Employee separates from employment, the Employer may, but is not required to, provide financial or other reimbursement to the Employee for accrued, unused Paid Sick Leave at the time of separation. An Employer may choose to reimburse an Employee for any portion of their accrued, unused Paid Sick Leave at the time the Employee separates from employment.

7.3 If an Employer chooses to reimburse an Employee for any portion of their accrued, unused Paid Sick Leave at the time the Employee separates from employment, any such terms for reimbursement must be mutually agreed upon in writing by both the Employer and the Employee, unless the right to such reimbursement is set forth elsewhere in state law or through a collective bargaining agreement.

7.4 An Employer need not reinstate any hours of Paid Sick Leave previously provided to the Employee through financial or other reimbursement at the time of separation, as long as the value of the Paid Sick Leave was established and paid at a rate that was at least equal to the Employee's normal hourly compensation.

~~An Employer may, but is not required to, allow Employees the option to either leave their bank of accrued hours intact to potentially be reinstated upon rehire or receive a payout for the cash value of accrued Paid Leave. If an Employer chooses to allow payouts of accrued leave, the Employer must have an established written policy readily available to the Employees and the amount of the payout must be equal to or greater than the value of the accrued Paid Leave balance. The Employer is not responsible for reinstating any cashed out leave if the Employee is rehired within six~~ 12 months of separation ~~within the same calendar year~~ Benefit Year.

**RULE 108.0  
RATE OF PAY**

**8.1 In General-**

~~10.1~~ When using ~~Paid Leave~~ Paid Sick Leave, an Employee shall be compensated by the Employer at the same hourly rate or the effective minimum wage (as required by Washington State law and/or TMC 18.20), whichever is greater, and with the same benefits, including health care benefits, as the Employee would have earned during the time the Paid Sick Leave is used ~~at the same hourly rate of pay as the Employee would have earned during the time Paid Leave was taken.~~

**8.2 Same Hourly Rate Defined – State Requirements Observed**

~~10.2~~ For the purposes of the Ordinance and these rules, "same hourly rate" is equivalent to "normal hourly compensation" as defined by Washington State WAC 296-128-600 as currently enacted or

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

hereinafter amended. Per WAC 296-128, "For Employees who use Paid Sick Leave for hours that would have been overtime hours if worked, Employers are not required to apply overtime standards to an Employee's normal hourly compensation. Normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the Employer or a collective bargaining agreement allows for such considerations. However, where an Employee's normal hourly compensation is a differential rate, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium rate."

108.3 Per the requirements set by WAC 296-128-670 as currently enacted or hereinafter amended,

An employer Employer must calculate an employee Employee's normal hourly compensation using a reasonable calculation based on the hourly rate that an employee Employee would have earned for the time during which the employee Employee used paid sick leave Paid Sick Leave. Examples of reasonable calculations to determine normal hourly compensation include, but are not limited to:

- a) (a) Commissions: For an employee Employee paid partially or wholly on a commission basis, dividing the total earnings by the total hours worked in the full pay periods in the prior ninety days of employment;
- b) (b) Piece Rate: For an employee Employee paid partially or wholly on a piece rate basis, dividing the total earnings by the total hours worked in the most recent workweek in which the employee Employee performed identical or substantially similar work to the work they would have performed had they not used paid sick leave Paid Sick Leave;
- c) (c) Non-exempt Salaried Employees: For a non-exempt employee Employee paid a salary, dividing the annual salary by fifty-two (52) to determine the weekly salary, and then dividing the weekly salary by the employee Employee's normal scheduled hours of work;
- d) (d) Exempt Salaried Employees: The hourly rate of pay for an Employee who is paid an annual salary and who is exempt from overtime laws provided under the Fair Labor Standards Act and/or state wage and hour laws shall be determined by dividing the annual salary by fifty-two (52) to determine the weekly salary and then dividing the weekly salary by 40 hours, or, if they typically work less than 40 hours per week, the number of hours of the Employee's normal work week.
- e) Fluctuating Rate of Pay: For an employee whose hourly rate of pay fluctuates:
  - i. (i) Where the employer Employer can identify the hourly rates of pay for which the employee Employee was scheduled to work, a calculation equal to the scheduled hourly rates of pay the employee Employee would have earned during the period in which paid sick leave Paid Sick Leave is used;
  - ii. (ii) Where the employer Employer cannot identify the hourly rates of pay for which the employee Employee would have earned if the employee Employee worked, a calculation based on the employee Employee's average hourly rate of pay in the current or preceding thirty days, whichever yields the higher hourly rate.

(3) For employees who are scheduled to work a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the rate of pay may be calculated by multiplying the employee's normal hourly compensation by the total hours worked by a replacement employee in the same shift, or similarly situated employees who worked that same or similar shift. (4) An employer must apply a consistent methodology when calculating the normal hourly compensation of similarly situated employees.

#### **Tips, Gratuities, & Travel Allowances.**

10.2 An Employee is not entitled to compensation for lost tips, gratuities, or travel allowances and shall only be compensated at the hourly rate that would have been earned during the time the Paid Leave is taken.

#### **Commissions.**

10.3 For an Employee who is paid on a commission (whether base wage plus commission or commission only), the hourly rate of pay shall be the base wage or minimum wage, whichever is greater, except for an Employee considered to be an "outside salesperson" as defined by Washington State Labor & Industries (WAC 296-128-540). The hourly rate of pay for an "outside salesperson" is computed as the amount of commission earned divided by the number of hours worked in the same pay period.

#### **Fluctuating Pay.**

10.4 If an Employee performs more than one job for the same Employer or an Employee's rate of pay fluctuates for a single job, the rate of pay shall be that which the Employee would have been paid during the time the Employee used the Paid Leave.

#### **Annual Salary.**

10.5 The hourly rate of pay for an Employee who is paid an annual salary and is exempt from overtime laws provided under the Fair Labor Standards Act and/or state wage and hour laws shall be determined by dividing the annual salary by 52 to get the weekly salary and dividing the weekly salary by 40 hours, or, if they typically work less than 40 hours per week, the number of hours of the Employee's normal work week.

#### **8.4 Shifts of Indeterminate Length.**

10.6 For Employees who are scheduled to work a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the rate of pay may be calculated by multiplying the Employee's normal hourly compensation by the total hours worked by a replacement Employee in the same shift, or similarly situated Employees who worked that same or similar shift. An Employer must apply a consistent methodology when calculating the normal hourly compensation of similarly situated Employees. When an Employee uses Paid Leave for a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the Employer may base hours of Paid Leave used and payment on the hours worked by a replacement Employee in the same shift or a similarly situated Employee who worked that same or similar shift in the past.

**RULE 119.0**

**ADDITIONAL HOURS/SHIFTS, SUBSTITUTE HOURS/SHIFTS, & SHIFT SWAPPING**

**9.1 Written Policy.**

~~11.1~~ If an Employer allows substitute hours/shifts and/or swapping shifts in conjunction with or in lieu of using Paid LeavePaid Sick Leave, as outlined by TMC 18.10.030.G-J, then the Employer must have a written policy, readily available to all Employees, that clearly describes the process.

**RULE 1210.0**

**USE & CARRY OVER OF PAID LEAVEPAID SICK LEAVE**

**10.1 Concurrent Leave.**

~~12.1~~ An Employee's use of Paid LeavePaid Sick Leave may also qualify for concurrent leave under other federal, state, or local laws (e.g., family medical leave, workplace injury, etc.).

**10.2 Use for On-Call Shifts.**

~~12.2~~ For Employees who are scheduled for on-call shifts and are compensated for their scheduled time regardless of whether work is performed, Employers must permit use of Paid LeavePaid Sick Leave. Employers may, but are not required to, permit use of Paid LeavePaid Sick Leave for on-call shifts when Employees are compensated only when work is performed.

**Use for Overtime Hours.**

~~12.3~~ Employers are required to permit use of Paid Leave for mandatory overtime and/or overtime hours that an Employee was scheduled to work in advance.

**Disciplinary Leave.**

~~12.4~~ Employers are not required to permit use of Paid Leave when an Employee has been suspended or otherwise placed on leave for disciplinary reasons.

**Multiple Work Locations.**

~~12.5~~ If an Employee works in multiple cities, the Employer may require that accrued Paid Leave be used for shifts only within the City of Tacoma.

**10.3 Carry Over of Paid LeavePaid Sick Leave.**

~~12.6~~ The Ordinance requires that an Employer shall allow Employees to carry over up to ~~40~~24 accrued but unused hours of Paid LeavePaid Sick Leave time. An Employer policy may enact a more generous policy that allows Employees to carry over more than 40 hours of accrued but unused hours and/or provides Employees with the cash value of unused ~~the option to either carry over or receive the cash value of accrued Paid Leave~~PAID SICK LEAVE in excess of 40 hours. ~~If an Employer chooses to allow payouts of accrued leave in excess of 40 hours, the Employer must have an established written policy readily available to the Employees and the amount of the payout must be equal to or greater than the value of the accrued Paid Leave balance.~~

**RULE 1311.0**

**PAYMENT OF PAID LEAVEPAID SICK LEAVE BENEFITS**

**11.1 In General:**

13.1 Paid Leave must be paid no later than the next regular payroll period beginning after the Paid Leave was used by the Employee, except as provided below. Unless verification/documentation for absences exceeding three days is required by an employer as outlined in Rule X:2.5, the employer must pay paid sick leave to an employee no later than the payday for the pay period in which the paid sick leave was used by the employee.

**11.2 Written Verification/Documentation Required-**

13.2 If verification is required by the employer as outlined in Rule X:2.4, paid sick leave must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.

If an Employer has a written policy subject to the requirements outlined in Rule 2.0 and has asked for written documentation of use of Paid Leave pursuant to these rules, then the Employer is not obligated to pay the Paid Leave until the Employee has provided written documentation or other verification that the absence was for a qualifying reason.

**RULE 142.0  
RETALIATION**

12.1 It is unlawful for an employer to interfere with, restrain, or deny the exercise of any employee right provided under or in connection with the Ordinance. This means an employer may not use an employee's exercise of any of the rights provided under the Ordinance as a negative factor in any employment action such as evaluation, promotion, or termination, or otherwise subject an employee to discipline for the exercise of any rights provided under the Ordinance.

12.2 It is unlawful for an employer to adopt or enforce any policy that counts the use of paid sick leave for a purpose authorized under the Ordinance as an absence that may lead to or result in discipline by the employer against the employee.

12.3 It is unlawful for an employer to take any adverse action against an employee because the employee has exercised their rights provided under the Ordinance. Such rights include, but are not limited to: Filing an action, or instituting or causing to be instituted any proceeding under or related to chapter the Ordinance; exercising their right to paid sick leave, minimum wage, overtime, tips and gratuities; or testifying or intending to testify in any such proceeding related to any rights provided under the Ordinance.

12.4 Adverse action means any action taken or threatened by an employer against an employee for their exercise of rights under the Ordinance, which may include, but is not limited to:

- a) Denying use of, or delaying payment for, paid sick leave, minimum wages, overtime wages, all tips and gratuities, and all service charges, except those service charges itemized as not being payable to the employee or employees servicing the customer;
- b) Terminating, suspending, demoting, or denying a promotion;
- c) Reducing the number of work hours for which the employee is scheduled;

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

- d) Altering the employee's preexisting work schedule;
- e) Reducing the employee's rate of pay; and
- f) Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member.

12.5 It shall be considered a rebuttable presumption of retaliation if an employer or any other person takes an adverse action against a person within 90 days of the person's exercise of any rights provided under the Ordinance. However, in the case of seasonal work that ended before the close of the 90 day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The Employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

12.6 Proof of retaliation under the Ordinance should be sufficient upon a showing that: 1.) An Employer or any other person has taken an adverse action against a person; 2.) The person's exercise of rights, as protected under the Ordinance, was a motivation factor in the adverse action; and 3.) The Employer cannot prove that the action would have been taken in the absence of such protected activity.

#### **RULE ~~14~~1513.0**

#### **STATE RESTRICTED POLICIES**

##### **13.1 In General**

~~15.1~~ Where State and City rules and regulations conflict, those provisions most generous to the Employee prevail. The following provisions are considered less generous than State law and, therefore, do not apply to "employees" as defined by RCW 49.46.

##### **13.2 Collective Bargaining Agreement (CBA) Waivers**

~~15.2~~ RCW 49.46 as currently enacted does not provide an exemption from the Paid Sick Leave requirements set forth in RCW 49.46.200 and 49.46.210 for a valid collective bargaining agreement, nor does RCW 49.46 as currently enacted specify a means of waiver of the requirements under RCW 49.46.200 and 49.46.210 by collective bargaining agreement. Where current or future Washington State regulations permit for waiver of the right to Paid Sick Leave by collective bargaining agreement, the conditions set by TMC 18.10.090 shall apply.

13.3 Memorandums of Understanding, Letters of Agreement, or other fully-vetted amendments to collective bargaining agreements that have been approved by the Employer and ratified by the bargaining group can be used to meet the waiver requirement.

##### **13.4 Premium Pay Programs**

In response to questions presented during the rulemaking process, the Washington State Department of Labor and Industries indicated that under its interpretation, Employers may not pay wages in lieu of sick leave benefits (often referred to as "Premium Pay Programs") to meet the state requirements for the Paid Sick Leave law which goes into effect January 1, 2018. Specifically, Labor and Industries' Concise Explanatory Statement stated that "an Employer who provides any payment in lieu of the Employee accruing Paid Sick Leave would be in direct conflict with the (State) statute."

In the event that current or future interpretations permit the use of Premium Pay Programs, the following criteria will apply to Premium Pay Programs being used to meet the requirements of the Ordinance in the City of Tacoma.

5.413.5 An Employer that offers extra pay in lieu of paid time off can be in compliance with the Ordinance if the program meets or exceeds the requirements of the Ordinance, subject to approval by the Director.

### **13.6 Application, Review, and Approval of Premium Pay Programs**

5.2 The Director shall review proposed Premium Pay Programs to make a determination of compliance with the Ordinance. Employers shall submit an outline of their proposed Premium Pay Program at least 90 days before the intended Premium Pay Program start date. Proposals should demonstrate how the Employer's Premium Pay Program meets or exceeds the minimum requirements and provide an overview of the program, including:

- a) How Employee base pay is determined;
- b) How extra pay would be calculated;
- c) How other forms of compensation/benefits will be or have recently been changed (if applicable);
- d) The frequency and method for distributing extra pay to Employees;
- e) Information on which Employees would be receiving extra pay in lieu of benefits (e.g., Employees who opt-in, all Employees, overtime-exempt staff, etc);
- f) The specific types of records that will be maintained by the Employer to document the extra pay;
- g) How the Employer will address accrued but unused Paid Sick Leave hours if they are transitioning from Paid Sick Leave accrual to a Premium Pay Program; and
- h) The anticipated program start date. The Director may request additional information or documentation as needed to make a determination of compliance.

5.313.7 The Director will issue a written determination within 60 days of receiving the request for review of a Premium Pay Program stating whether the proposed Premium Pay Program is approved. If the Premium Pay Program is not approved, the determination will include reasons why the program does not meet the Ordinance requirements. If the Director requires additional information from the Employer after the initial request is received, the time to issue a determination may extend past 60 days. Notice of the extended date will be provided by the Director in writing.

5.413.8 If an Employer fails to submit sufficient information that explains how the Premium Pay Program meets or exceeds the requirements of the Ordinance, then the Director shall not approve the program.

5.513.9 An Employer may request administrative review of the Director's determination of compliance according to the process outlined in the Ordinance and Rule 16 "Request for Administrative Review."

### **13.10 Premium Pay Program Criteria**

5.6 Premium Pay Programs will be evaluated based on how the proposed extra pay compares to the value of benefits outlined in the Paid Sick Leave Ordinance, including the following criteria:

- a) Extra pay must meet or exceed the value of the Paid Sick Leave benefit outlined in the Ordinance;
- b) Extra pay must be readily available for expenditure, similar to wages, and not placed in a restricted account such as a retirement or flexible spending account unless mutually agreed upon by the Employee and Employer;
- c) Extra pay cannot be provided in the form of goods/services; and
- d) Extra pay is dispersed at reasonable intervals, not less than once per month, or "frontloaded." Additional, reasonable criteria may be applied as deemed necessary by the Director to ensure that the Premium Pay Program meets or exceeds the minimum requirements of the Ordinance. If a Premium Pay Program is not approved, the specific criteria that resulted in such a determination will be disclosed to the Employer.

**13.11 Premium Pay Program Records Requirements**

5.7-If an Employer enacts an approved Premium Pay Program, the Employer will be responsible for maintaining documentation of the extra pay provided each pay period, as well as Employee name, hire date, and all records outlined in an approved Premium Pay Program proposal, for a minimum of three years and shall allow Director access to such records according to the parameters outlined in TMC 18.10.060(B).

**13.12 Premium Pay Program – Written Policy Required**

5.8-If an Employer elects to enact an approved Premium Pay Program, then it must be documented in a written policy and made readily available to Employees prior to enacting an approved Premium Pay Program.

**13.13 Other Ordinance Requirements Remain in Effect**

5.9-Employers who enact an approved Premium Pay Program are not exempt from other requirements of the ordinance including, but not limited to, Noticing and Posting requirements and the "Employer Responsibilities" outlined in TMC 18.10.050.

**RULE 1164.0**

**THIRD PARTY ADMINISTRATORS**

**14.1 In General**

Employers may contract with a third-party administrator in order to administer the Paid Sick Leave requirements under the Ordinance, and all applicable rules.

**14.2 Employer Responsibility**

Employers are not relieved of their obligations under the Ordinance, and all applicable rules, if they elect to contract with a third-party administrator to administer Paid Sick Leave requirements.

**14.3 Paid Sick Leave Pools for Multiple Employers**

With the consent of Employers, third-party administrators may pool an Employee's accrued, unused Paid Sick Leave from multiple Employers as long as the accrual rate is at least equal to one hour of Paid Sick Leave for every forty hours worked as an Employee. For example, if a group of Employers have Employees who perform work for various Employers at different times, the Employers may choose to

\* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

contract with a third-party administrator to track the hours worked and rate of accrual for Paid Sick Leave for each Employee, and pool such accrued, unused Paid Sick Leave for use by the Employee when the Employee is working for any Employers in the same third-party administrator network. A collective bargaining agreement may outline the provisions for an Employer to use a third-party administrator as long as such provisions meet all Paid Sick Leave requirements under the Ordinance, and all applicable rules.

**RULE 175.0**  
**ADMINISTRATION**

**15.1 In General-**

~~14.1~~ The Director shall attempt to conciliate and settle by agreement any alleged violation or failures to comply with the Ordinance.

**15.2 Amending a Charge-**

~~14.2~~ A Charging Party may amend their charge at any time prior to the issuance of a determination by the Director so long as the responding party has adequate time to present additional evidence if needed. The amendment must be filed in writing.

**15.3 Withdrawing a Charge-**

~~14.3~~ A Charging Party may request, in writing, that their charges be withdrawn at any time prior to the issuance of a determination. A ~~Complainant~~ ~~Charging Party~~ that withdraws a charge may not file another charge that alleges the same facts and violation as the withdrawn charge.

**15.4 Access to Records-**

~~14.4~~ All records (including written documents, emails, photographs, or recordings) created, prepared, owned, or retained for investigation or enforcement of the Ordinance are public records pursuant to RCW 42.56. If a records request is made, the records must be disclosed unless an exemption applies. One potential exemption that may apply is for "information revealing the identity of persons who are witnesses to or victims of a crime... if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern (RCW 42.56.240)."

~~14.5~~ **15.5** Records and information provided by one party may be disclosed to the other party if, in the judgement of the Director, such disclosure would promote the effective enforcement of the Ordinance.

**15.6 Worker Documentation-**

~~14.6~~ Investigations will not seek information on whether or not a worker has provided documentation showing that they are qualified to work in the United States.

**15.7 Fact Finding & Settlement Conferences-**

~~14.7~~ When deemed appropriate by the Director, fact finding and settlement conferences may be held during investigation of a charge. The Charging Party and the respondent shall attend the conference and notice will be provided at least 10 days in advance. Conferences may be rescheduled by the City. The

purpose of the conference shall be to identify undisputed elements of the charge, define and resolve the disputed elements of the charge if possible, and attempt to settle the charge by agreement.

**15.8 Findings of Fact/Standard of Proof.**

~~14.8~~ The Director shall affirm the citation and notice of assessment if, in the judgement of the Director, a preponderance of the credible evidence establishes that a violation of the Ordinance is occurring or has occurred.

**15.9 ~~15.9~~ Calculation of Remedies Owed**

Specific investigation findings and/or ongoing violations of the Ordinance may result in a financial remedy payable to affected Employees as well as restored access to Paid Sick Leave hours. As noted in TMC 18.10.010.R, any such remedy, when applicable, will be outlined in a Notice of Assessment provided in writing to the Employer.

15.10 Financial Remedies: The financial remedies owed to affected Employees will be calculated based on the most recent available data regarding "the frequency of work-loss days" for adults aged 18 and over as published by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, plus interest of one percent per month from the last day of each year of noncompliance

For example: Based on the 2014 National Health Interview Survey, Summary Health Statistics for U.S. Adults, the financial remedy for each affected Employee may include but is not limited to payment for thirty (30) Paid Sick Leave or PTO hours for each year of noncompliance at the Employee's rate of pay on the last day of each year of noncompliance, plus interest of one percent per month from the last day of each year of noncompliance

Financial remedies may be applied in circumstances where an Employee did not have knowledge of or access to Paid Sick Leave, including but not limited to the following scenarios:

- a) When an investigation results in a finding that: i.) The Employer unlawfully failed to provide Employees with notice of their rights and/or written policy describing the Employer's intent to use their PTO policy to comply with the Ordinance; and ii.) Failed to provide Employees with their notification of Paid Sick Leave or PTO balance as outlined in TMC 18.10.030.L.; and
- b) When an investigation results in a finding that the Employer unlawfully withheld Paid Sick Leave or universal Paid Sick Leave accrual, use, and/or carry-over.

**15.11 Restored Access to Paid Sick Leave Hours:** In addition to the wages owed for Paid Sick Leave violations as outlined above, each affected Employee will receive access to accrued Paid Sick Leave hours.

- a. If payroll records exist, this will involve calculation of the Paid Sick Leave hours that would have accrued for each year of noncompliance. The Department will subtract from the accrual the number of hours paid out and restore the remaining balance of Paid Sick Leave hours that each Employee should have accrued, minus carryover restrictions; or
- b. If payroll records do not exist, the Employer shall restore the maximum amount of Paid Sick Leave hours that the Employee could have accrued for the period of noncompliance, minus carryover restrictions.

**15.12** When remedies include restored access to Paid Sick Leave hours, the number of Paid Sick Leave hours carried over between Benefit Years shall not be capped or limited for two subsequent years after the Paid Sick Leave has been restored.

**15.12 Payment of Assessments.**

~~14.9~~ Failure to pay assessments or comply with agreed upon terms of conciliation may constitute a willful violation of the Ordinance.

**RULE ~~15~~186.0**

**REQUEST FOR ADMINISTRATIVE REVIEW**

**16.1 In General.**

~~15.1~~ Any Citation and Notice of Assessment (Citation), Determination of Compliance (Determination) or Civil Penalty (Penalty) issued by the Director may be reviewed at the request of an Employee or Employer.

**16.2 Request for Administrative Review.**

~~15.2~~ An Employee or Employer may request an administrative review by filing a written request with the Director within ten calendar days from the date of the Citation, Determination or Penalty. The request shall state, in writing, the reasons the Director should review the Citation, Determination, or Penalty. If the basis for review is not stated in the written request, the request for administrative review will be dismissed and the violation affirmed.

**16.3 Decision of Director.**

~~15.3~~ For all properly submitted requests for administrative review, the Director shall determine whether a violation has occurred and shall affirm, vacate, suspend, or modify the Citation, Determination or Penalty. The decision shall be delivered in writing to all parties.

**16.4 Appeals of Director's Decision.**

~~15.4~~ An Employee or Employer may appeal the Director's decision within 10 calendar days from the date of the Director's decision by filing a written notice of appeal, clearly stating the reason the appeal is being requested, with the Hearing Examiner. Appeals of the Hearing Examiner's decision shall be governed by TMC 1.23.



**TO:** Elizabeth A. Pauli, City Manager

**FROM:** Michael P. Slevin, III, P.E., Environmental Services Director *M.P.S.*

**SUBJECT:** The Changing Nature of the Waste Recycling Markets and the Impact on Tacoma

**DATE:** October 17, 2017

In July of 2017, China notified the World Trade Organization that it planned to ban the import of many types of recyclable materials including mixed plastics, mixed paper and some metals. Mixed paper makes up a large percentage of Tacoma's recycled material, and mixed plastic materials are a popular item to recycle. These new restrictions are part of a program China has called Operation Green Fence, which is meant to curb waste imports and reduce contamination of the materials that enter China.

China is the largest consumer of many recyclable materials in the world, and is the single largest purchaser of recycled plastics and paper from the United States. At the same time in July, the Chinese government also stated it will adopt very stringent quality control standards on imported recyclables. China is dropping the contamination rates for most recyclable materials to below 0.3%. These standards are not currently attainable by our current processors in the United States, which generally have contamination rates of between 3% and 5%.

As of today's date, our processor Waste Management has informed us that they are still temporarily able to market the mixed paper and mixed plastics that they process for Tacoma. Smaller markets such as Vietnam are still in need of materials. However, Waste Management has stated that the volume of these materials we recycle in the United States will soon overwhelm the reduced demand, and the markets are not sustainable without the demand from China.

In addition to the recycled material markets, the uncertainty over China's involvement in the global recycling market has greatly impacted the prices of other recycled materials such as cardboard and aluminum. Waste Management has reported that it has observed the largest single price drop for all recycled materials it has ever seen.

It is still unclear how all of these new market restrictions and contamination requirements will affect our current recycling systems. The worst case scenario is that the high volume materials that are currently recyclable under our system will require disposal due to lack of recycling markets. This could significantly affect our current recycling systems. All of the big processors are planning for all potential outcomes, including the need to dispose of large portions of the current recycle stream. This will result in changes to what is accepted by all of the collection operations, including Tacoma's.

Regardless of the outcome, it is a near certainty that if the new restrictions from China are not changed our recycling programs will be impacted. Changes in collection programs, materials accepted and collection frequencies could be impacted. Also, increased costs related to collection, processing and landfilling of the banned materials could be observed.

One positive for Tacoma is that our current system where glass is kept separate from the other recyclables provides cleaner materials than completely commingled systems. On the negative side it is likely that it still does not produce clean enough materials to meet the reduced contamination standard.

This action by the Chinese government may present some serious challenges to our recycling programs. However, it is also clear that the recycling industry will need to adapt with cleaner materials and more domestic end users. While this will not be a quick fix, improvements will have to be implemented if we want to continue having world class recycling programs. It is not inconceivable that collection operations may be required to change drastically as well, including Tacoma's curbside collection programs.



**TO:** Elizabeth Pauli, City Manager

**FROM:** Peter Huffman, Director, Planning and Development Services Department 

**SUBJECT:** **Tideflats Interim Regulations – Planning Commission Recommendation**

**DATE:** November 2, 2017

On Tuesday, October 17, 2017, the City Council held a public hearing on the Planning Commission's recommendation for the Tideflats Interim Regulations. On Tuesday November 7 staff will be presenting a summary of testimony and public comments. First reading of ordinance is scheduled for November 14, 2017. Staff is seeking direction at the upcoming study session from Council regarding potential amendments to the Planning Commission's recommendation in response to the public testimony. To facilitate discussion, staff has prepared a response to some of the frequently asked questions that have been raised through this process. These questions and responses are attached.

#### **BACKGROUND**

The City of Tacoma periodically accepts applications to amend the Comprehensive Plan and Land Use Regulatory Code. As part of the 2017-2018 Comprehensive Plan and Land Use Regulatory Code Amendment Application period, the City received multiple applications/requests for zoning and land use process changes in the Tideflats Area, including the Northeast Tacoma Buffer Zone application, the Council Consideration Request for implementation of the Container Port Element of the City's Comprehensive Plan, and the Director's Rule relating to Expanded Notification for Large Industrial Projects.

In response to the multiple amendment applications, on May 9, 2017, the Tacoma City Council adopted Resolution No. 39723 initiating a subarea planning process for the Port Tideflats. In addition, the Resolution requested that the Planning Commission consolidate the various applications/requests into the scope of work for the Tideflats Subarea planning process and to hereby consider the need for interim regulations in the Tideflats subarea while the subarea planning process is under way.

#### **SUMMARY OF PROPOSED AMENDMENTS:**

The Planning Commission's recommended Tideflats Interim Regulations consist of the following elements:

##### *Category 1: Expanded Notification for Heavy Industrial Uses*

- These amendments would expand notification of heavy industrial use permits to taxpayers and interested parties.
- The notification distances are expanded to 2500' from the subject parcel. For projects located within a designated manufacturing and industrial center, the 2500' notification distance is measured from the boundary of the applicable M/IC boundary.
- This expanded notification applies to all heavy industrial projects city-wide that require a discretionary permit or SEPA determination.

*Category 2: Non-industrial Uses in the Port of Tacoma M/IC*

- These amendments would pause certain new non-industrial uses within the Port of Tacoma M/IC. The amendments would apply to the M-2 Heavy Industrial and PMI Port Maritime Industrial zoning districts within the M/IC.
- The specific uses identified include, but are not limited to:
  - Destination/high intensity parks and recreation,
  - Agriculture,
  - Residential uses,
  - Hospitals,
  - Airports,
  - Schools (K-12),
  - Retail,
  - Cultural institutions, and
  - Care facilities.
- Existing non-industrial uses subject to the pause would be considered allowed uses subject to limitations on expansion per TMC 13.06.630 Nonconforming uses.

*Category 3: Marine View Drive Residential Development Restrictions*

- These amendments would pause all new residential platting and subdivision of land along Marine View Drive.
- New residential development in the interim would be required to provide notice on title disclosing the proximity of the residential units to industrial zoning districts.

*Category 4: Industrial Special Use Restrictions*

- These interim regulations would pause the establishment of the following heavy industrial uses:
  - Coal terminals and bulk storage facilities
  - Oil or other liquefied fossil fuel terminals, bulk storage, manufacturing, production, processing or refining
  - Bulk chemical storage, production or processing, including acid manufacture
  - Mining and quarrying
- Existing uses as noted above would be considered allowed with limited expansion of 10% storage, production, or distribution capacity during the interim period, subject to a conditional use permit. Other types of expansion and normal maintenance and repair would be allowed.

For more information, please contact Stephen Atkinson, Senior Planner, at (253) 591-5531 or [satkinson@cityoftacoma.org](mailto:satkinson@cityoftacoma.org).

PH:lw

Attachment

A. Frequently Asked Questions



## Frequently Asked Questions

### 1. What is the impact from expanded notification?

- *How many taxpayers would be notified in and within 2500' of the Port of Tacoma MIC and South Tacoma MIC?*

Approximately 3800 taxpayers would receive notice of a permit application or SEPA notice within and around the Port of Tacoma MIC. Approximately 6500 taxpayers would receive notice of a project occurring in or around the South Tacoma MIC. These notices also include adjacent jurisdictions, neighborhood councils, and business districts.

- *What is the cost of a typical expanded notice?*

For a Port of Tacoma MIC expanded notice, the cost is approximately \$1350 plus an additional 10 hours of staff time to conduct the public meeting.

- *How many notices do we expect per year?*

Staff is estimating 10 projects per year, which would result in 20 notices (a second notice is sent of the decision).

- *Who pays for the notice?*

Typically these costs are incorporated into the permit fee. However, the expanded notification is currently being conducted under a Director's Rule and the costs have not been incorporated into the permit fee. The costs are currently borne by the General Fund.

### 2. How many permit applications has the City received for heavy industrial uses in the past five years? How many are associated with one of the proposed uses?

Data for the past 5 years is inconsistent due to a shift in permitting systems that occurred on January 1, 2016.

For the period since January 1, 2016, staff has received close to 300 permit applications for uses within the M-2 and PMI heavy industrial zoning districts. The majority of these permits are for mechanical, plumbing, or building alterations. These figures include non-industrial uses that may be located within these industrial zones and in some cases the permit applications may not have been completed or approved. The heavy industrial use categories subject to the interim regulations account for approximately 21 of these permit applications in the past year.

In the past five years, these specified heavy industrial uses account for approximately 160 permits. Again, the majority of the permit activity is for permits such as mechanical, plumbing and building alterations. Of these, U.S. Oil and Targa have been the most active applicants, accounting for approximately 110 permit applications over this time period. The high volume of permit activity for these uses appears to be generated by expansions of existing facilities or new building additions that then result in multiple permit applications for the various components of the new construction. Some of the existing uses did not have any documented permit activity over this time period.



3. When does a project becoming “existing”?

The proposed interim regulations distinguish between new and existing uses. This has resulted in questions about how the code would apply to projects either currently in the permit process or under construction. The City currently has multiple projects either in permit review or under construction including the Coski sand and gravel mine, U.S. Oil, and the PSE LNG plant.

The intent of the proposed regulations is that projects that have been permitted, are in the permit process, or are vested, would be considered “existing”. Therefore, the interim regulations would not halt the permitting or construction of a project currently in process. For example, the interim regulations would prohibit a new mine and place a limitation on expansion of “existing” mining and quarrying. In this case, Coski sand and gravel mine would be able continue under existing permits and permit timeframes. If, subsequently, the sand and gravel mine applied for a permit to expand mining operations, that expansion would be considered subject to the adopted interim regulations.

4. How many existing businesses would be potentially impacted by the limitation on expansion? And how many would not?

According to tax and license data, there are approximately 299 business licenses active within the Port of Tacoma MIC and the South Tacoma MIC. As part of the Weekly Report dated October 11, 2017, staff provided two maps and summaries identifying 17 businesses that would likely be impacted by the limitation on expansion.

The majority of businesses located in these industrial areas, and many of those who testified at the City Council hearing, would not be subject to these proposed regulations. These centers are home to diverse businesses including pulp and paper mills, metal fabrication, metal recycling, port container terminals and facilities, automobile rentals, lumber and construction supply, boat building, marinas, seafood preparation and processing, warehousing and storage, millwork, gas stations with convenience stores, business support services, marijuana production, and automobile repair, among many others.

5. The City Council heard testimony from current businesses in the Tideflats that the proposed interim regulations would detrimentally impact their planned investments or current activities. What impact does staff expect this to have on these businesses?

As part of the Weekly Report from October 11, staff provided a summary of businesses potentially impacted by the proposed interim regulations as well as some of the aggregate economic data.

Interim regulations are intended to maintain the status quo, which includes, in this case the many businesses and jobs currently located in the Tideflats. The Planning Commission’s proposal was intended to minimize any detrimental impact and to reasonably allow for continued investment in existing businesses. Council did hear several specific examples of business concerns at the hearing. The following are examples of the types of uses and development that would not be impacted by the proposed interim regulations:



WestRock pulp and paper mill: A representative from WestRock provided testimony expressing concern about the impact of the proposed interim regulations on the company's expected and planned capital improvement projects. These projects included seismic upgrades and new scrubbers that control air emissions. First, pulp and paper mills are not subject to the proposed interim regulations. Second, the proposed interim regulations section 13.06.380.4.b expressly allows these types of investments to proceed during the interim period. Even a use subject to limitation on expansion could implement these types of improvements.

Port of Tacoma shipments: The City Council heard testimony expressing concern that the proposed interim regulations could potentially impact the Port of Tacoma's ability to ship automobiles, since automobiles are shipped with gas in the fuel tank. Other products may also contain or include oil and gas or derivatives. These types of shipments would not be impacted by the proposed interim regulations. The use restrictions relating to coal, oil, gas and chemical manufacturing is directed towards primary uses. A use in the tideflats may have propane or fuels on site that are ancillary to the primary use. These would not be subject to the limitation. There is a significant difference between a use that uses oil and gas products and one whose primary purpose is the refinement or storage of such products. This is the difference between a hardware store that sells propane tanks for barbecues, among many other items, and a use whose primary function is the bulk storage and distribution of propane.

U.S. Oil: U.S. Oil is currently applying to shift some of the existing production capacity to ethanol and other diesel fuel products. Two existing storage tanks would be converted to ethanol service. The project also requires additional piping and transfer pumps to separate the ethanol from other products. U.S. Oil has applied for permits and therefore, the development would not be subject to interim regulations adopted after the permit submittal.

It is important to note how the interim regulations might hypothetically apply in this scenario if they were to be adopted. First, ethanol is defined as part of the chemical manufacturing use category, so staff would be conducting a review under the proposed interim regulations. Second, the storage capacity appears unaffected as the ethanol production converts two existing tanks to a different product, rather than adding new storage tanks to serve the new product. Third, while the equipment and facilities needed to transfer the product are new additions, the purpose is to separate different products. It is also expected that the shift in product would also result in a change in transport and a need for new transport facilities. Transport would not be affected by the interim regulations if the improvements are merely serving existing output. Lastly, it is unclear at this time if the new facilities and conversion of storage to ethanol would increase the overall output capacity of the refinery (in terms of unit volume produced) or if the overall output capacity would remain consistent but with a different makeup in the types of product and modes of distribution.

6. How will City staff determine what is and is not a capacity increase?

First, the proposed interim regulations explicitly exempt certain types of development from this review, including: normal maintenance and repair, improvements to meet building code or environmental regulations, accessory uses and utilities. Many permits in the port are for projects



that would meet these exemptions, such as (these are based on real permit applications in the tideflats from the past year):

- Expansion of lunchroom and locker rooms,
- Wheel wash systems for haul vehicles,
- Biofiltration swales and stormwater detention,
- Installation of a ductless heat pumps,
- Dust collectors,
- Installation of a fire suppression system,
- Seismic retrofits,
- Fill and grade to replace and clean contaminated soils.

Generally, there are fairly established industry methodologies for calculating capacity. Current capacity can be thought of as a business's current output using existing equipment and scheduling. Output can be increased by improving operational efficiencies and scheduling. This type of capacity increase would not be subject to limitation. For example, an oil refinery may have 10 storage tanks on site. Even if only 5 of the tanks are in use, the "capacity" would be measured in accordance with the volume from all 10 tanks. In this case, the existing business could make use of all 10 storage tanks without limitation. As another example, a widget factory may have 50 machines and 50 employees using those machines for 8 hours a day. However, if demand for widgets was to increase the business could implement a second shift and increase output merely by scheduling longer production hours. This type of operational increase in output would not be subject to the interim regulations.

The other type of "capacity" is what the proposed interim regulations are intended to address – capacity increases as a result of physical, capital expenditures. If the oil refinery were to propose adding a new storage tank or to replace an existing tank with a larger one, then the addition would be subject to the proposed limitations as it is not part of the current capacity. If the widget factory had already maximized efficiencies with current equipment and staffing and wanted to expand from 50 to 100 machines, this would be subject to permits and reviewed within the limitations of the proposed interim regulations.

Staff recognizes that there can be difficulties in defining capacity in a way that is responsive to the variety of types of circumstances and businesses in the port/tideflats. The intent of the Commission's recommendation was to provide some greater predictability by expressly exempting certain types of activities and investments (i.e. normal maintenance and repair, building codes, et al) and thereby narrowing what types of activities would fall under the greater scrutiny of the interim regulations. The definitions could be amended to more clearly distinguish between operational changes that increase overall capacity and those that are more physical, capital investments. The Commission had also considered limitations based on parking quantity and trip generation but had determined that these were not as relevant to the issues.

7. Why is the capacity increase for existing uses limited to 10%?

This issue of expansion of existing uses was one of the central discussion points throughout the Planning Commission's review. While this issue had been discussed throughout the process, the



Commission initially released a public review document that included no limitations on the expansion of existing uses. The restriction was introduced by the Planning Commission after the hearing for several reasons:

- Public comment overwhelmingly identified expansion of existing uses as a central issue of concern;
- The likelihood of new development is perhaps greater from existing uses than entirely new uses;
- That expansion of existing uses can be so significant as to be equivalent to the introduction of an entirely new use;
- That a limitation on new uses while allowing unlimited expansion of existing uses could simply enable businesses to creatively circumvent the restrictions on new uses;
- That limiting expansion helps to preserve an existing baseline for environmental review.

The Commission grappled with the question of how much expansion should reasonably be allowed during the subarea planning process. Staff had initially proposed an option that would allow a 10% expansion by right, with an expansion of up to 20% subject to a conditional use permit. Ultimately, the Commission opted for a limitation on capacity as it would enable significant investments that are not capacity related. The 10% limit is based on established City allowances in the nonconforming use code. Staff recognizes that these numbers can seem arbitrary: they are more art than science. How much expansion could potentially pre-empt the planning process? How much expansion and investment in an existing use is reasonable during the subarea planning process over the next 2-3 years? At what point is the expansion of an existing use comparable to the establishment of a new use? The Commission recommended a 10% limitation on capacity subject to a conditional use permit but other options were discussed during the process including:

- 10% expansion outright, and up to 20% expansion subject to a conditional use permit;
- Unlimited expansion, subject to a conditional use permit;
- Limits on expansion based on parking quantity and trip generation;
- Unlimited expansion by right.

8. Are ethanol and other biofuels included in these proposed restrictions?

While commonly discussed within the oil, gas and liquefied fossil fuel use category, ethanol and biofuel production are defined within Chemical Manufacturing, under North American Industrial Classification System Group 325. As such, these uses would be subject to the interim regulations. The proposed interim regulations would prohibit the establishment of a new business producing ethanol and biofuels and would limit the expansion of existing uses.

9. Why are the South Tacoma MIC and other industrial districts included?

The interim regulations were first initiated directly pertaining to the Port/tideflats and the upcoming subarea planning process. During the Planning Commission's review, the Commission determined that the "need" for interim regulations was not strictly limited to the Port/tideflats. The issues the Commission focused on, the permissiveness of current heavy industrial zoning, community concerns regarding the effectiveness of transitions and buffers separating industrial and residential uses, and



the likelihood of development that could exacerbate current issues, were determined to have applicability beyond the tideflats. While the City has primarily heard comments and concerns from uses within the tideflats and residents in Northeast Tacoma, the Commission's recommendation reflects an interest in trying to prevent further conflicts in other parts of the City before they arise.

10. How are undefined uses classified in the code?

If a new use were to be proposed that was not directly or clearly defined within the City's land use classifications in TMC 13.06 Zoning, the code grants the Planning Director authority, under TMC 13.05.030.C, to determine whether such use would or would not be in conformity with the authorized permitted uses in the district. This provides the City with the ability to scrutinize whether the use is appropriate. In most of the City's zoning district unlisted uses are prohibited and subject to this Director's determination. However, in the City's industrial zoning districts, unlisted uses are currently permitted outright. The proposed interim regulations would modify this to be consistent with the City's practice for treating unlisted uses in other zoning districts.

In the review of these code references, an existing citation error was identified in TMC 13.06 Zoning. Staff will correct this error as part of the final ordinance for Council consideration.

**City of Tacoma 2017  
City Council Forecast Schedule**

Date	Meeting	Subject	Department	Background
November 7, 2017	Study Session (TMBN 16, Noon)	Update on the Tacoma Link Extension Project	ST/GRO/PW	Sound Transit staff will provide an update on the Tacoma Link Extension Project
		Tideflats Interim Regulations	PDS	Planning Commission's recommendations regarding the Tideflats Interim Regulations.
	City Council Meeting (TMB Council Chambers, 5:00 PM)	Marijuana Code Amendment Final Reading Property Tax and EMS Ordinance First Reading	PDS OMB	
November 14, 2017	Study Session (TMBN 16, Noon)	2-Year Funding Priorities for HUD Funds	CED/Housing	Staff recommendations for the use of HUD funds for housing, community and economic development and human services for the next two years.
		Small Wireless Cell Installations	CMO/MCO	Briefing on how and why we grant the use of the right of way to telecommunications companies, the process for negotiating the pole attachment fee agreements with TPU and Public Works, potential revenue generating including where the money goes once collected, and discussions occurring at the legislative level.
	City Council Meeting (TMB Council Chambers, 5:00 PM)	Tideflats Interim Regulations Ordinance First Reading Billboard sign code amendments Public Hearing	PDS	
November 21, 2017	City Council Study Session (TMBN 16, Noon)	Mid-biennium Budget Adjustments	OMB	2017 mid-biennium budget modifications will be discussed.
		Tacoma Mall Subarea Plan	PDS	
	City Council Meeting (TMB Council Chambers, 5:00 PM)	Tideflats Interim Regulations Ordinance Final Reading Tacoma Mall Subarea Plan Public Hearing Property Tax and EMS Ordinance Final Reading	PDS PDS OMB	
November 28, 2017	Study Session (TMBN 16, Noon)	Tacoma Mall Subarea Plan	PDS	
		State and Federal Legislative Agenda	GRO	Government Relations Office staff will share the proposed state and federal legislative agendas for 2018 for Council's review and input prior to the resolution to adopt.
	City Council Meeting (TMB Council Chambers, 5:00 PM)	Public Hearing - Mid-Biennial Budget Modifications & Ordinance First Reading Tacoma Mall Subarea Plan Ordinance First Reading	OMB OMB PDS	

**City of Tacoma 2017  
City Council Forecast Schedule**

Date	Meeting	Subject	Department	Background
December 5, 2017	Study Session (TMBN 16, Noon)	Understanding Housing Conditions & Displacement Pressure on Hilltop: Final Findings and Recommendations	PDS	Report on existing housing conditions and neighborhood change on Tacoma's Hilltop, and how the Link Extension may affect its housing market. Presentation will include recommendations for stabilizing the neighborhood, preserving affordable housing, incentivizing new development, and capitalizing on opportunities for small-scale infill development.
		Environmental Action Plan and Biogas Project	ESD-OEPS	Update on the Environmental Action Plan First Annual Progress Report, to include briefing on the City's climate goals.
	City Council Meeting (TMB Council Chambers, 5:00 PM)	Mid-Biennial Budget Modifications Ord. Final Reading Tacoma Mall Subarea Plan Ordinance Final Reading Billboard Sign Code Amendments Ord. First Reading	OMB PDS	
December 12, 2017	Joint Utility Board Study Session (TMBN 16, Noon)	Quarterly Joint Meeting	TPU	
		Joint Executive Session - Pending Litigation	CAO	
	City Council Meeting (TMB Council Chambers, 5:00 PM)	Billboard Sign Code Amendments Ord. Final Reading		
December 19, 2017	Study Session (TMBN 16, Noon)			
	City Council Meeting (TMB Council Chambers, 5:00 PM)			
December 26, 2017	CANCELLED			

Community Vitality and Safety			
<b>Committee Members:</b> Blocker (Chair), Campbell, Lonergan, Walker Lee, Alternate-Mello <b>Executive Liaison:</b> Linda Stewart; Staff Support - Will Suarez		2nd and 4th Thursdays 4:30 p.m. Room 248	<b>CBC Assignments:</b> • Citizen Police Advisory Committee • Human Services Commission • Human Rights Commission • Housing Authority • Commission on Disabilities • Library Board • Tacoma Community Redevelopment Authority
<b>November 9, 2017</b>	Human Rights Commission Interviews	<i>Clerks Office</i>	
	2-Year Funding Priorities for HUD Funds	<i>Daniel Murillo, Housing Division Manager, Community and Economic Development, and Pam Duncan, Human Services Division Manager, Neighborhood and Community Services</i>	Staff will present bi-annual funding priority recommendations for the City's allocation of Federal housing, economic development and social services funds received from the U.S. Department of Housing and Urban Development (HUD). These funds consist of three core programs: (1) Community Development Block Grant (CDBG); (2) HOME Investment Partnership Program (HOME); and (3) Emergency Solutions Grant (ESG).
	Proposed Creation of a Commission on Immigrant and Refugee Affairs	<i>Diane Powers, Equity and Human Rights Director, Office of Equity and Human Rights</i>	Staff will bring proposal for the creation of a Commission on Immigrant and Refugee Affairs for review and discussion.
	Council Consideration Request about affordable housing	<i>Walker Lee, Council Member</i>	
	Accessory Dwelling Units code change proposal	<i>Lauren Flemister, Senior Planner, Planning and Development Services</i>	
<b>Future:</b>			
November 23, 2017	CANCELLED		Thanksgiving Holiday
December 14, 2017	Citizen Police Advisory Committee Interviews	<i>Clerks Office</i>	

<b>Economic Development Committee</b>			
<b>Committee Members:</b> Campbell (Chair), Mello, Strickland, Thoms, Alternate-McCarthy <b>Executive Liaison:</b> Tadd Wille; Staff Support - Lynda Foster		2nd, 4th, and 5th Tuesdays 10:00 a.m. Room 248	<b>CBC Assignments:</b> •Tacoma Arts Commission •Greater Tacoma Regional Convention Center Public Facilities District •Foss Waterway •City Events and Recognition Committee
November 14, 2017	Tacoma Arts Commission Interviews	<i>Doris Sorum, City Clerk</i>	
	SBE/LEAP Proposed Code Changes	<i>Keith Armstrong, SBE &amp; LEAP Supervisor, Community and Economic Development</i>	CEDD staff will present proposed code changes to streamline the LEAP code: Increase SBE preference from 5% to 10%; add 5% preference for SBEs on Small Works Roster; delete community empowerment zone and adjustments provisions; add 15% apprenticeship goal; add 15% priority hire goal; and add vendor performance evaluation report for all contracts.
	MultiFamily Property Tax Exemption (MFPTE) Update	<i>Debbie Bingham, Program Development Specialist, Community and Economic Development</i>	Staff will provide an overview of the current program usage and the results of a financial analysis just completed on the feasibility of building mixed use projects in Tacoma.
<b>Future:</b>			
November 28, 2017	Adaptive Reuse of the Old Post Office - Past, Present and Future Plans	<i>Gloria Fletcher, Business Development Manager, community and Economic Development</i>	The developers of Courthouse Square building, which was formerly the Old Post Office Building on 11th and A Street, will be presenting the story of this adaptive reuse project. It will include a history of the building, and it's current use as restaurant, office, and event space.
December 12, 2017	NBD Program Activity Update [Informational Briefing]	<i>Shari Hart, Program Development Specialist, Community and Economic Development</i>	Bi-annual status report on the Neighborhood Business Districts element of the "Economic Development Strategic Framework Plan"; including retail activities, physical improvements, and adaptive reuse and infill development.
	Foss Waterway Development Authority Interviews	<i>Doris Sorum, City Clerk</i>	

<b>Government Performance and Finance Committee</b>			
<b>Committee Members:</b> Lonergan (Chair), Campbell, Ibsen, Walker Lee, Alternate-Strickland <b>Executive Liaison:</b> Andy Cherullo; Staff Support - Chris Bell		1st, 3rd, and 5th Wednesdays 4:30 p.m. Room 248	<b>CBC Assignments:</b> •Public Utility Board •Board of Ethics •Audit Advisory Board •Civil Service Board
November 15, 2017	Permit enterprise fund restructuring and single family fee adjustments	<i>Peter Huffman, Director, Planning and Development Services</i>	Review of fund restructuring and financial policies regarding single family fee adjustments.
	Microsoft Office 365 Enterprise Agreement Transition	<i>Brian Tetreault, Management Analyst, IT; Paul Federighi, Assistant Director, IT</i>	This item will provide details on the current environment, the various options around Microsoft Office 365 platforms and the cost associated with the procurement, implementation and migration to the new platform.
	Committee Boards Commissions (CBC) Evaluation	<i>Doris Sorum, City Clerk; David Nash-Mendez, Senior Management Fellow, City Managers Office</i>	The item is a request for consideration of different recommendations provided to the Committee on behalf of the City Clerk, Staff support, and participants. It will include a demographic look at our CBCs and survey results from applicants and seated members of our CBCs.
<b>Future:</b>			
November 29, 2017			
December 6, 2017	<i>Joint Audit Advisory Board</i>		

<b>Infrastructure, Planning and Sustainability Committee</b>			
Committee Members: Mello (Chair), Ibsen, McCarthy, Thoms, Altemate-Blocker Executive Liaison: Kurtis Kingsolver; Staff Support - Rebecca Boydston		2nd and 4th Wednesdays 4:30 p.m. Room 16	CBC Assignments: •Sustainable Tacoma Commission •Planning Commission •Landmarks Preservation Commission •Board of Building Appeals •Transportation Commission
<b>November 8, 2017</b>	Planning Commission Interviews	<b>Doris Sorum, City Clerk</b>	Council District No. 5 open
	Brewery District Infrastructure	<b>Ian Munch, Kurtis Kingsolver and Mike Stevin</b>	Update regarding Brewery District Infrastructure and capital facilities planning in conjunction with Environmental Services and Public Works. Affected City Departments will present the work program and schedule necessary to develop an integrated three year capital facility plan for the Brewery District.
	Permitting Process Improvements	<b>Jana Magoon and Steve Sandley, PDS</b>	This is legislation regarding changes to requirements for performance bonding. A Council Action Memo to Council and request for ordinance for this item has been submitted for the November 14th Council agenda.
<b>Future:</b>			
<b>November 22, 2017</b>	CANCELLED		Day before Thanksgiving
<b>December 13, 2017</b>	Landmarks Preservation Commission Interviews	<b>Doris Sorum, City Clerk</b>	
	Revolving Loan for Historic Buildings Pilot Program [Informational Briefing]	<b>Reuben McKnight, Historic Preservation Officer, PDS</b>	On May 24, 2017, staff will provide a briefing on the Historic Preservation Rehabilitation and Repair Loan. This low-interest loan was created in 2014 to provide gap financing for commercial projects that involve City Landmarks, and may be used for envelope and systems improvements, tenant improvements, and restoration of historic elements, in amounts ranging from \$20,000 to \$100,000.

# CITY OF TACOMA

## Office of Management & Budget

**TO:** Elizabeth Pauli, City Manager  
**FROM:** Katie Johnston, Budget Manager, Office of Management & Budget  
**COPY:** Mayor and City Council; Executive Leadership Team  
**SUBJECT:** 2018 PROPERTY TAX LEVY OVERVIEW OF ORDINANCES  
**DATE:** November 6, 2017

For each of the City of Tacoma's property tax levies, the regular property tax levy and the Emergency Medical Services (EMS) property tax levy, the City of Tacoma is required to pass two separate ordinances to set the property tax levies for 2018. The first two ordinances approve the total regular levy amounts to be collected. The second two ordinances approve the percent and dollar increase over the last year's actual levy amounts collected.

**Summary of dates and actions regarding the property tax ordinances:**

- October 17<sup>th</sup> – Resolution setting Public Hearings for Property Tax and EMS levies on October 31<sup>st</sup>
- October 31<sup>st</sup> – Public Hearing on Property Tax and EMS levies
- November 7<sup>th</sup> – 1<sup>st</sup> Reading of Property Tax and EMS Ordinances (4 total)
- November 21<sup>st</sup> – 2<sup>nd</sup> Reading of Property Tax and EMS Ordinances (4 total)

**Summary of the ordinances and actions that will be presented to the City Council:**

- **Ordinances approving the total regular levy amount to be collected (RCW 84.52.020 and RCW 84.52.070)** – State law requires that the City adopt an ordinance that states how much in property taxes the City is requesting to collect in 2018. The requested amount does not include new construction. The 2018 levy can only increase 1% over the City's highest levy amount since 1985. Additionally, the collection amount is limited by specific rate limitations (\$3.60 per \$1,000 of Assessed Value for the regular property levy and \$0.50 per \$1,000 of Assessed Value for the EMS levy).

	Highest Levy Since 1985	Maximum Levy 2017 (Given 1% increase over highest levy)	Maximum Levy 2017 (Given rate limit and assessed value)	2017 Levy Amount (Lower of the Maximum Levy Amounts)
<b>Regular Property Tax</b>	2017 Levy \$61,065,151	\$61,675,802	\$83,525,370	\$61,675,802
<b>Emergency Medical Services Property Tax</b>	2017 Levy \$10,353,518	\$10,457,054	\$11,600,746	\$10,457,054

- **Ordinances approving the percentage and dollar increase over the prior year's actual levy collection (RCW 84.55.120)** – State law requires that the City Council approve a separate ordinance that states the percentage and dollar increase of this year's levy request over the prior year's actual levy. The percentage increase in this ordinance is slightly different than the previous ordinance due to the requirement to use the prior year's actual levy collection. The prior year's actual levy collection can differ from the amount levied due to refunds. The City of Tacoma can receive unexpected refunds due to changes in State law or court cases that change what types of properties are eligible to be taxed.

	2016 Actual Levy	Requested 2017 Levy	Dollar Increase	Percent Increase
<b>Regular Property Tax</b>	\$61,464,420	\$61,675,802	\$211,382	0.34391%
<b>Emergency Medical Services Property Tax</b>	\$10,383,150	\$10,457,054	\$73,904	0.7117645%