

ORDINANCE NO. 703

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING TITLE 18 SHORELINE MASTER PROGRAM CHAPTER 18.10 DEFINITIONS AND CHAPTER 18.15 ADMINISTRATION, AND TITLE 19 ZONING CHAPTER 19.80 NONCONFORMING LOTS, USES, AND STRUCTURES, IN ACCORDANCE WITH THE SHORELINE MANAGEMENT ACT AND THE DEPARTMENT OF ECOLOGY SHORELINE MASTER PROGRAM GUIDELINES

WHEREAS, the Shoreline Management Act (SMA) finds that shorelines of the state are among the most valuable and fragile of our natural resources; and

WHEREAS, the SMA requires that local governments prepare, and the state adopt, Shoreline Master Programs (SMPs) for designated shoreline of the state; and

WHEREAS, the City completed a comprehensive update of its SMP pursuant to WAC 173-26 and Ordinance No. 652, on March 16, 2015; and

WHEREAS, the Washington State Department of Ecology (Ecology) reviewed and adopted the City's SMP effective April 17, 2015; and

WHEREAS, the City is undertaking a periodic review of its SMP, as required by SMA, RCW 90.58.080(4) wherein the SMA requires each SMP be reviewed, and revised if needed, on an eight-year schedule established by the Legislature; and

WHEREAS, this schedule directs Pierce, King and Snohomish counties, and the municipalities within these counties, to complete their periodic reviews, and adopt amendments if warranted, no later than June 30, 2019; and

WHEREAS, this review ensures the SMP stays current with changes in laws and rules, remains consistent with other City plans and regulations, and is responsive to changed circumstances, new information and improved data; and

WHEREAS, in 2018 Ecology provided a grant to assist the City in undertaking and completing its SMP periodic review; and

WHEREAS, the Planning Commission initiated its work on the City's periodic review on February 7, 2018 when it reviewed and adopted a public participation plan that identifies steps the City would take to fully involve and encourage participation of all interested persons and private entities, tribes, and agencies of the federal, state or local government having interests and responsibilities relating to shorelines of the state and the local master program; and

WHEREAS, on April 6, 2018, the City mailed a public notice to owners of property located within regulated shoreline areas and to agencies, organizations and other stakeholders with potential interests in the proposal and shoreline planning in the community, informing them of the availability of review documents and a public open house scheduled for April 18, 2018; and

WHEREAS, on April 8, 2018, the City published a public notice in the Tacoma News Tribune concerning the scheduled April 18, 2018 public open house; and

WHEREAS, in accordance with the adopted public participation plan, the Planning Commission held a public open house on April 18, 2018 to disseminate information about the SMA and SMP periodic review process, potential SMP amendments, and future steps in the review and amendment process; and

WHEREAS, the City's Responsible Official issued a *SEPA Determination of Nonsignificance* with a 14-day comment period on May 3, 2018 and received written comment from the Department of Ecology concerning future recommended policy development and implementation relating to the Tacoma Smelter Plume; and

WHEREAS, the City submitted a *Notice of Intent to Adopt Amendment* to the Department of Commerce on May 2, 2018 to initiate a 60-day state agency review period, and no comments have been received; and

WHEREAS, the City elected to use the optional joint review process that combines a joint Planning Commission/Ecology public hearing and the local and state public comment periods required by RCW 90.58.090; and

WHEREAS, on May 4, 2018 and May 25, 2018, the City published a public notice in the Tacoma News Tribune concerning the scheduled June 6, 2018 joint public hearing and the combined comment period that ran from May 4, 2018 through the June 6, 2018 hearing; and

WHEREAS, on May 4, 2018, the City mailed a public notice to owners of property located within regulated shoreline areas and to agencies, organizations and other stakeholders with potential interests in the proposal and shoreline planning in the community, informing them of the availability of review documents, the comment period, and the joint public hearing scheduled for June 6, 2018; and

WHEREAS, after considering public comment at the June 6, 2018 hearing, the Planning Commission determined that the City's SMP, as amended, will remain supportive of and consistent with the City's Comprehensive Plan goals, objectives and policies; and

WHEREAS, the Planning Commission determined that the SMP, as amended, will recognize private property rights and be consistent with other property regulations and those rights afforded to property owners; and

WHEREAS, the Planning Commission determined that the SMP, as amended, will protect the public health, safety and welfare and comply with the Shoreline Management Act and Shoreline Master Program Guidelines; and

WHEREAS, the Planning Commission found that City had reviewed amendments to chapter 90.58 RCW and Ecology guidelines that have occurred since its SMP was last amended, and determined that local amendments are needed to maintain compliance; and

WHEREAS, the Planning Commission found that the City had reviewed changes to its comprehensive plan and development regulations and determined that the City's SMP policies and regulations remain consistent with them; and

WHEREAS, the Planning Commission found that the City had determined during its periodic review that changed circumstances, new information or improved data do not warrant additional amendments to the SMP; and

WHEREAS, on June 6, 2018, the Planning Commission voted unanimously to recommended approval of amendments to UPMC Title 18 Shoreline Master Program and associated amendments to Title 19 Zoning; and

WHEREAS, on June 14, 2018, the City submitted a *Responsiveness Summary* to Ecology that summarized public comment received at the Planning Commission's public hearing and provides responses to this comment; and

WHEREAS, Ecology reviewed the Planning Commission's recommended amendments and *Responsiveness Summary* and issued an *Initial Compliance Determination* that the proposal is consistent with state shoreline planning policies and guidelines; and

WHEREAS, the City Council conducted a public hearing on proposed SMP amendments on July 16, 2018, and after considering public testimony, Council concurred with each of the findings made by the Planning Commission when that body issued its recommendation to the City Council on June 6, 2018.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Title 18 Shoreline Master Program -- Text Amendments. University Place Municipal Code Title 18 Shoreline Master Program is hereby amended as set forth in Exhibit "A" attached.

Section 2. Title 19 Zoning -- Text Amendments. University Place Municipal Code Title 19 Zoning is hereby amended as set forth in Exhibit "A" attached.

Section 3. Severability. If any section, sentence, clause or phrase of this Title shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Title.

Section 4. Publication and Effective Date. A summary of this ordinance, consisting of its title, shall be published in the official newspaper of the City. This ordinance shall take effect fourteen (14) days following the date of the written notice of final action to the City of University Place from the Washington State Department of Ecology approving the Shoreline Master Program.

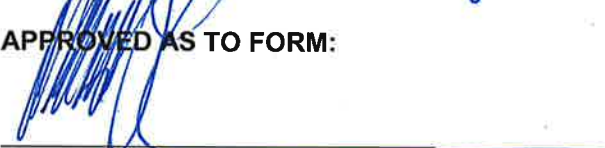
PASSED BY THE CITY COUNCIL ON JULY 16, 2018.

for 
Kent Keel, Mayor

ATTEST:

for 
Emelita Genetia, City Clerk

APPROVED AS TO FORM:


Matthew S. Kaser, City Attorney

Date of Publication: 07/18/18

Exhibit A to Ordinance No. 703
SMP PERIODIC REVIEW AMENDMENTS

TITLE 18 SHORELINE MASTER PROGRAM

Chapter 18.10

DEFINITIONS

18.10.020 Definitions.

“Development” means the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this title at any state of water level. “Development” does not include dismantling or removing structures if there is no other associated development or re-development.

“Exempt development” means developments set forth in WAC [173-27-040](#) and RCW [90.58.030\(3\)\(e\)](#), [90.58.140\(9\)](#), [90.58.147](#), [90.58.355](#), and [90.58.515](#) which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the Act and the local Shoreline Program. These include:

1. Normal maintenance, repair, or replacement of existing structures, developments, or utilities, including damage by accident, fire, or elements. “Normal maintenance” includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. “Normal repair” means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;
2. Construction of the normal protective bulkhead common to single-family residences;
3. Emergency construction necessary to protect property from damage by the elements;
4. Construction and practices normal or necessary for farming, irrigation, and ranching activities, as described in WAC [173-27-040\(2\)\(e\)](#);
5. Construction or modification of navigational aids such as channel markers and anchor buoys;
6. Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for his own use or for the use of his family, which residence does not exceed a height of 35 feet above average grade level and which meets all requirements of the State agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this title;

7. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single- and multiple-family residences. This exception applies if either:

a. In salt waters, the fair market value of the dock does not exceed \$2,500; or

b. In fresh waters, the fair market value of the dock does not exceed (1) \$20,000 for docks that are constructed to replace existing docks and are of equal or lesser square footage than the existing dock being replaced; or (2) \$10,000 for all other docks constructed in fresh waters. However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either subsection (7)(b)(1) or (2) of this definition, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

8. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

9. The marking of property lines or corners on State-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

10. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

11. Any project with a certification from the governor pursuant to Chapter [80.50](#) RCW;

12. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

a. The activity does not interfere with the normal public use of the surface waters;

b. The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

c. The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

e. The activity is not subject to the permit requirements of RCW [90.58.550](#);

13. The process of removing or controlling an aquatic noxious weed, as defined in RCW [17.26.020](#), through the use of an herbicide or other treatment methods applicable to weed

control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department jointly with other State agencies under Chapter [43.21C](#) RCW;

14. Watershed restoration projects as defined in WAC [173-27-040](#)(o);

15. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, pursuant to WAC [173-27-040](#)(p);

16. Hazardous substance remedial actions. The procedural requirements of Chapter [90.58](#) RCW shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to Chapter [70.105D](#) RCW or to the Department of Ecology when it conducts a remedial action under Chapter [70.105D](#) RCW. The Department shall, in consultation with the appropriate local government, assure that such projects comply with the substantive requirements of Chapter [90.58](#) RCW, Chapter [173-26](#) WAC and the local master program.

17. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

“Flood plain” is synonymous with one hundred-year flood plain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act. means the total area subject to inundation by the base flood including the flood fringe and the floodway areas.

“Floodway” means the area that has been established in effective federal emergency management agency flood insurance rate maps or floodway maps. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, as identified on FEMA FIRM or floodway maps.

“Substantial development” means any development of which the total cost or fair market value exceeds \$7,0476,416, or any development which materially interferes with the normal public use of the water or shorelines of the State. (Note: The dollar threshold above is adjusted for inflation by the Washington Office of Financial Management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period.) See RCW [90.58.030](#).

Chapter 18.15 ADMINISTRATION

18.15.070 Nonconforming development.

A. General Provisions. Uses, lots or structures within the shoreline jurisdiction that do not meet the specific standards of this Shoreline Program shall be regulated pursuant to Chapter [19.80](#) UPMC, Nonconforming Lots, Uses, and Structures.

B. Continuance. Subject to the provisions of this Shoreline Program, a lot, use or structure lawfully existing prior to the effective date of this Program or any amendment thereto, which is rendered nonconforming by adoption of this Shoreline Program or an amendment, may continue in the manner and to the extent that it existed upon the effective date of this Shoreline Program or amendment, respectively.

C. Nonconforming Development Regulations.

1. Nonconforming lots, uses and structures shall be regulated in accordance with Chapter [19.80](#) UPMC. In addition to provisions contained therein, the following provisions shall apply within the shoreline jurisdiction:

a. Any actions taken under the provisions of Chapter [19.80](#) UPMC shall not create adverse impacts to shoreline ecological functions and processes, and shall consider the cumulative impacts associated with the proposed action;

b. Required vegetation conservation areas are provided pursuant to UPMC [18.25.100](#);

c. Expansion of a nonconforming structure within the required shoreline setback, whether horizontally or vertically, shall be prohibited.

d. The Administrator may authorize expansion of a nonconforming structure, provided:

(1) The expansion is located entirely outside of the VCA, VCA setback, and shoreline setback;

(2) The expansion is consistent with all other provisions of this Shoreline Program; and

(3) The expansion does not increase the degree of nonconformity. If the expansion would comply with subsections (C)(1)(d)(1) and (2) of this section but increase the degree of zoning nonconformity, a variance would be required pursuant to UPMC [19.80.050\(A\)\(1\)](#). This provision could apply, for example, to a proposal with a front yard setback that complies with all Shoreline Program requirements but requires a zoning variance.

e. Notwithstanding UPMC [19.80.050\(A\)\(2\)](#), the Administrator may authorize relocation of a nonconforming structure, provided the structure is brought as closely as practicable into conformance with the applicable provisions of this Shoreline Program.

ef. An expanded or relocated structure for which an administrative authorization has been issued consistent with the criteria listed in subsection (C)(1)(d) or (e) of this section shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconforming structures;

fg. A nonconforming use may not be converted to a use that is specifically prohibited in this Shoreline Program; and

gh. The applicant shall obtain required shoreline permits or approvals prior to construction.

2. Existing nonconforming covered moorage may be maintained, repaired, or replaced in accordance with WAC [173-27-040](#) and the requirements of the Department of Natural Resources.

3. The expansion ~~or resumption~~ of a nonconforming use may be authorized as a shoreline conditional use, provided the applicant demonstrates compliance with the standards in UPMC [18.15.060\(A\)](#).

4. If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless re-establishment of the use is authorized through a shoreline conditional use permit, provided the applicant demonstrates compliance with the standards in UPMC 18.15.060(A) and the permit is applied for within the two-year period. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations.

D. Existing, lawfully established single-family residences on Day Island, Day Island South Spit and Sunset Beach located closer to the Ordinary High Water Mark than the setback specified in Table 18.30.B shall be considered conforming structures for purposes of this SMP. Such structures may be expanded in accordance with footnotes 30 and 31 on Table 18.30.B, and shall be subject to the substantial destruction provisions in UPMC [19.80.050\(A\)\(4\)](#) and (5).

E. Procedure for Development of a Nonconforming Lot.

1. When lot size would prevent development of a nonconforming lot consistent with the applicable shoreline setback requirements, the Examiner may authorize development under the following conditions:

- a. A written request for a shoreline variance is received from the project proponent;
- b. The development will be located as far landward as possible from the ordinary high water mark; and
- c. The decision of the Examiner shall be based upon the shoreline variance criteria found in UPMC [18.15.050\(F\)](#).

18.15.090 Ecology review.

A. The Department of Ecology shall be notified of any substantial development, conditional use or variance permit decision made by the Examiner or Administrator, whether it is an approval or denial. The notification shall occur concurrently with the transmittal of the ruling to the applicant. When a substantial development permit and either conditional use or variance permit are required for a development, the submittal of the permits shall be made concurrently. After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, The the Administrator shall mail the permit and file the following items using return receipt requested mail to the Department of Ecology and the Office of Attorney General:

1. A copy of the complete application per WAC [173-27-180](#);
2. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable Shoreline Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);

3. The final decision of the City;

4. The permit data sheet per WAC [173-27-190](#);

5. Affidavit of public notice; and

6. Where applicable, the Administrator shall also file the applicable documents required by the State Environmental Policy Act (Chapter [43.21C](#) RCW).

B. When the project has been modified in the course of the local review process, plans or text shall be provided to Ecology that clearly indicates the final approved plan.

C. If Ecology determines that the submittal does not contain all of the documents and information required by this section, Ecology shall identify the deficiencies and notify the City and the applicant in writing. Ecology will not act on conditional use or variance permit submittals until the material requested in writing is submitted to them.

D. Ecology shall convey to the City and applicant its final decision approving, approving with conditions, or disapproving the permit within 30 days of the date of submittal by the City. The Administrator will notify those interested persons having requested notification of such decision.

E. Ecology shall base its determination to approve, approve with conditions or deny a conditional use permit or variance permit on consistency with the policy and provisions of the SMA, the criteria listed in Chapter [173-27](#) WAC and this Shoreline Program.

F. Consistent with RCW 90.58.140(6), the state's Shoreline Hearings Board twenty-one day appeal period starts with the date of filing, which is defined below:

1. For projects that only require a substantial development permit: the date that Ecology receives the City's decision.

2. For a conditional use permit or variance: the date that Ecology's decision on the conditional use permit or variance is transmitted to the applicant and City.

3. For substantial development permits simultaneously mailed with a conditional use permit or variance to Ecology: the date that Ecology's decision on the conditional use permit or variance is transmitted to the applicant and the City.

G. No construction pursuant to a shoreline substantial development permit, shoreline variance, or shoreline conditional use authorized by this Shoreline Program shall begin or be authorized, and no building, grading or other construction permits shall be issued by the City until 21 days from the date of ~~filing receipt by the applicant and the City of Ecology's decision~~ or until all review proceedings are terminated.

18.15.130 Developments not required to obtain shoreline permits or local reviews

Requirements to obtain a shoreline substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

- A. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW;
- B. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit;
- C. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review;
- D. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045; and
- E. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

TITLE 19 ZONING

Chapter 19.80

NONCONFORMING LOTS, USES, AND STRUCTURES

19.80.040 Nonconforming uses.

The party asserting the existence of a lawful nonconforming use has the burden of establishing that as of August 31, 1995, the effective date of the ordinance codified in this chapter, or subsequent revisions or amendments, the use was either consistent with the zoning provisions or was a pre-existing legal nonconforming use.

A legal nonconforming use may be continued; provided, that:

A. The nonconforming use is not replaced by a conforming use. If replaced by a conforming use, the nonconforming use may not thereafter be resumed.

B. ~~Abandonment~~Vacation or Discontinuation. A nonconforming use may be continued by successive owners or tenants where the use ~~is not vacated~~continues unabandoned. If the use ~~is vacated or discontinued for 12 consecutive months~~ceases for a period of more than one year, the subsequent use of the land shall be conforming.

C. Expansion on Land, in Buildings or Structures. The nonconforming use shall not be enlarged, increased, expanded or extended to occupy a greater area of land, building or structure than was occupied on the date the use became nonconforming; except, if the nonconforming use is an accessory use and the principal use is a conforming use, the conforming principal use may expand so long as the nonconforming accessory use is not made more nonconforming.

D. The use is not moved in whole or in part to any other portion of the lot or parcel or another lot or parcel in a zone where the structure would be nonconforming.

E. Substantial Destruction. If the structure in which the use depends is harmed or destroyed by more than 50 percent of the improvement value as shown in the County Assessor's data, the nonconforming use can no longer continue, except when the structure is damaged or destroyed as a result of accidental fire or natural causes, in which case permits to reconstruct a structure in order to continue the nonconforming use shall be applied for within one year of damage. Restoration or reconstruction must be substantially completed within 12 months of permit issuance.

F. Exception for Single-Family Detached Houses. Any existing nonconforming single-family detached housing unit may be expanded as an exception to the basic rules on expansion of nonconforming uses.