

**MUKILTEO CITY COUNCIL AGENDA BILL 2019-83**

<p><b>SUBJECT TITLE:</b> Continued Public Hearing - Shoreline Master Program Update</p>	<p><b>Meeting Date:</b> October 28, 2019</p>
<p><b>Staff Lead:</b> Linda Ritter, Senior Planner</p>	<p><b>Exhibits:</b> Documents from prior Council packets are available in full online at: <a href="https://mukilteowa.gov/departments/planning-development/planning-long-range/smp/">https://mukilteowa.gov/departments/planning-development/planning-long-range/smp/</a></p>
<p><b>Department Director:</b> David Osaki, Community Development Director</p>	<ol style="list-style-type: none"> <li>1. Agenda Bill and Exhibits from September 3, 2019 City Council Packet, available here:             <ol style="list-style-type: none"> <li>1-1. Ordinance No. 1427</li> <li>1-2. Shoreline Master Program Amendments</li> <li>1-3. MMC Title 17B - Draft Shoreline Management Regulation Amendments</li> <li>1-4. Dept. of Ecology - Periodic Review Checklist</li> <li>1-5. Findings of Fact and Conclusions</li> <li>1-6. Public Comments/Staff Response</li> <li>1-7. Feb. 4, 2019 SEPA Determination (DNS)</li> <li>1-8. Waterfront Mixed Use Height Analysis</li> <li>1-9. March 20, 2014 Planning Commission Minutes</li> <li>1-10A. Dept. of Ecology Initial Determination, August 2, 2019</li> <li>1-10B. Dept. of Ecology Recommendations, August 2, 2019</li> <li>1-11. Staff Response to the Dept. of Ecology's Comments</li> <li>1-12. Resolution No. 2019-04</li> <li>1-13. Dept. of Ecology – September 3, 2019 City Council Public Hearing PowerPoint Presentation</li> <li>1-14. September 3, 2019 City PowerPoint Presentation</li> </ol> </li> <li>2. Agenda Bill and Exhibits from October 7, 2019 City Council Packet:             <ol style="list-style-type: none"> <li>2-1. View Corridor Map</li> <li>2-2. Development Regulation Matrix</li> <li>2-3. Parking Regulation Map</li> <li>2-4. Shoreline Parking Regulations</li> <li>2-5. October 7, 2019 City PowerPoint Presentation</li> </ol> </li> <li>3. The following <u>new exhibits</u> are provided to City Council as part of this October 28, 2019 Agenda Bill:             <ol style="list-style-type: none"> <li>3-1. October 7, 2019 Tulalip Tribes letter (presented to City Council October 7, 2019)</li> <li>3-2. October 8, 2019 comment letter - Lani O'Connor</li> <li>3-3. Proposed amendment to Off-Street Parking regulations related to Parking Setbacks.</li> <li>3-4. Updated Resolution No. 2019-004</li> <li>3-5. October 21, 2019 Department of Ecology letter regarding proposed amendment to Off-Street Parking Setbacks (See 3-3 above)</li> <li>3-6. Example of Shoreline Parking Regulations</li> <li>3-7. October 28, 2019 City Council PowerPoint Presentation</li> </ol> </li> </ol>
<p><b>Estimated Time:</b> 75 minutes</p>	
<p><b>Previous Review:</b> Council Land Use Committee Work Session - 6/10/2019; Council - 2/28/2018 ; September 3, 2019 Public Hearing ; October 7, 2019 Continued Public Hearing</p>	
<p><b>Budget Reference:</b> 2019 Final Budget, Planning, Page 67: Other Professional Services: \$50,000</p>	

Budget Information:		Account Name	Account
Amount Budgeted (2018-2019, DOE Grant):	\$20,000	Other Prof.	011.58.558.600.41
Amount Spent to Date (2018-2019):	\$19,802	Services –	06
Expenditure Required:	\$0	Shoreline	
Additional Appropriation Required:	\$0	Master Program	

**RECOMMENDATION:**

1. Council **MOTION** to pass Ordinance No. 1427 (**Exhibits 1-1, 1-2, and Exhibit 1-3**) related to updating the Shoreline Master Program and amending Mukilteo Municipal Code (MMC) Title 17B - Shoreline Management Regulations.
  - a. Council **MOTION** to AMEND Ordinance No. 1427 to incorporate an additional amendment changing the off-street parking setback for water-oriented uses to be under, landward or to the side of building closest to the water, as contained in **Exhibit 3-3**.
2. Council **MOTION** to approve Resolution No. 2019-004 (**Exhibit 3-4**) authorizing staff to forward the Shoreline Master Program and all supporting documents to the Washington State Department of Ecology for final approval.

*[NOTE: Resolution No. 2019-004 has been updated for the October 28, 2019 City Council public hearing to reflect the additional review by the Department of Ecology and to provide current approval dates.]*

**ALTERNATIVES:** If changes to the recommendation above are desired, the City Council may:

- a. Make Motion #1 regarding Ordinance No. 1427 as above, and then:
  - i. **Off-Street Parking Setback:** Should the City Council wish to keep parking setbacks for all uses at 75', then do not pass recommendation No. 1.a above. The minimum 75' parking setback is included in the main motion.
  - ii. **Maximum Building Height:** Anything other than the 35 feet in the Urban Waterfront shoreline designation east of Park Avenue, which is included in the main motion, would require an amendment.
  - iii. **Other issues:** The City Council may also amend other provisions of the SMP.
- b. Continue the public hearing to accept additional public comment.
- c. Close the public hearing and deliberate at a future meeting.

## **SUMMARY**

On September 3, 2019 the City Council opened the Shoreline Master Program update public hearing. The public hearing was continued to October 7, 2019. The October 7, 2019 public hearing was again continued to October 28, 2019. Written comment received at and since the October 7, 2019 public hearing is included as **Exhibits 3-1 and 3-2**.

At its October 28, 2019 continued public hearing, the City Council will determine whether or not to pass, with or without amendments, Ordinance No. 1427 (**See Exhibits 1-1, 1-2, and 1-3**). Ordinance No. 1427 includes the Planning Commission and Department of Ecology recommendations as of the City Council's September 3, 2019 public hearing date. Based on recent discussions with the Department of Ecology, Staff is now recommending one additional amendment to shoreline development regulations for parking setbacks (reflected in motion 1.a, and in exhibit 3-3).

After passage of Ordinance No. 1427, the City Council should then approve Resolution No. 2019-04 (**Exhibit 3-4**) authorizing staff to forward the amended Shoreline Master Program and all supporting documents to the Washington State Department of Ecology for review and final approval as required by State law.

## **ADDITIONAL NEW INFORMATION FOR THIS PUBLIC HEARING**

At its continued October 7, 2019 public hearing, the City Council received additional written and oral public testimony. Testimony and City Council questions primarily focused on two issues:

- 1 Maximum Building Height in that portion of the Urban Waterfront Shoreline Environment Designation located east of Park Avenue; and,
- 2 Off Street Parking setbacks, particularly how they apply to water oriented and non-oriented uses in the Urban Waterfront Shoreline Environment Designation.

## **ISSUE 1. MAXIMUM BUILDING HEIGHT**

In addition to public testimony, the City Council has received the following information to date regarding building height in that portion of the Urban Waterfront Shoreline Designation that is zoned Waterfront Mixed Use (WMU):

- September 3, 2019 Public Hearing
  - Waterfront Mixed Use Height Analysis (Exhibit 1-8)
  - March 20, 2014 Planning Commission Minutes identifying the building height discussion by NOAA and the Tulalip Tribes representatives (Exhibit 1-9)
  - PowerPoint presentation (Exhibit 1-13)
- October 7, 2019 Public Hearing
  - LIDAR View Corridor Maps (Exhibit 2-1)
  - PowerPoint presentation (Exhibit 2-5)

**View Corridors/Vistas**

Certain testimony at the October 7, 2019 public hearing made reference to the bulk of buildings. View corridors/vistas are defined in Mukilteo Municipal Code (MMC) Chapter 17.08 as a “...distant view through or along a street or openings between structures”.

Footnote 13 to MMC 17B.20.020 “Bulk matrix” contains provisions to require breaks in the facade and building footprint along the waterfront to retain water views from Front Street and for pedestrian access to the waterfront promenade and beach.

This code provision requires all new buildings or additions to buildings located on land adjacent to Possession Sound and Port Gardner Bay to be designed and constructed in such a manner to require horizontal and vertical space open to public access and open to vistas of the sound and the bay. For example, on the first floor, twenty percent of lot width shall be open to public access and vistas to and of Possession Sound and Port Gardner Bay.

This requirement, in concert with other requirements, helps maintain views/vistas along the waterfront for properties developed with buildings.

**Summary of Existing Code, Recommendations and Proposed Ordinance No. 1427**

A summary of the City current Shoreline Master Program building height requirements, the Planning Commission recommendation, Department of Ecology recommendation and what is contained in proposed Ordinance No. 1427 is as follows:

<b>Maximum Building Height Urban Waterfront Shoreline Environment - Waterfront Mixed Use Zone (Located East of Park Avenue)</b>	
<b>Current Shoreline Master Program Development Regulations</b>	<ul style="list-style-type: none"><li>• North of Front Street: 25 feet / No more than two stories</li><li>• South of Front Street and north of BNSF Railroad: 40 feet / No more than three stories</li><li>• Remaining properties within the Waterfront Mixed Use Zone: 25 feet / No more than two stories</li></ul>
<b>Planning Commission Recommendation</b>	<ul style="list-style-type: none"><li>• 35 feet / No flat roofs allowed.<ul style="list-style-type: none"><li>○ <i>The Planning Commission recommendation seeks to be consistent with the bulk regulations for that portion of the Urban Waterfront shoreline designation zoned “Downtown Business District”, located west of Park Avenue.</i></li></ul></li></ul>
<b>Dept. of Ecology Recommendation / Requirement</b>	<ul style="list-style-type: none"><li>• No comment, other than the current state code (WAC), below.</li><li>• WAC 173-27-040(2)(g) allows structures to be built up to 35 feet in height before requiring a view impact analysis for upland properties.</li></ul>
<b>Proposed Ordinance No. 1427</b>	<ul style="list-style-type: none"><li>• 35 feet / No flat roofs allowed</li></ul>

The Department of Ecology has no specific conditions for buildings 35 feet in height or less. A decision on the maximum building height, so long as it is 35 feet or lower, rests with the City.

A maximum building height requirement other than 35 feet would require a City Council motion to amend proposed Ordinance No. 1427.

**ISSUE 2. OFF STREET PARKING REGULATIONS (SETBACK)**

A second notable issue raised during the public hearing process has been the off-street parking setback, especially in the area of the Urban Waterfront shoreline designation.

**Summary of Existing Code, Recommendations and Proposed Ordinance No. 1427**

A summary of the City existing Shoreline Master Program off-street parking setback requirements, the Planning Commission recommendation, Department of Ecology recommendation and what is contained in proposed Ordinance No. 1427 is as follows:

<b>Off-Street Parking Setback (including the Urban Waterfront Shoreline Designation)</b>	
<b>Current Development Regulations</b>	<ul style="list-style-type: none"> <li>• A minimum of 75 feet landward of the Ordinary High Water Mark (OHWM). Parking must be to the side or landward of the building.</li> </ul>
<b>Planning Commission Recommendation</b>	<ul style="list-style-type: none"> <li>• A minimum of 5 feet from the landward edge of the promenade. Parking must be to the side or landward of the building.</li> </ul>
<b>Dept. of Ecology Recommendation / Requirement (from August)</b>	<ul style="list-style-type: none"> <li>• A minimum of 75 feet landward of the Ordinary High Water Mark. Parking must be to the side or landward of the building</li> </ul>
<b>Proposed Ordinance No. 1427</b>	<ul style="list-style-type: none"> <li>• A minimum of 75 feet landward of the Ordinary High Water Mark. Parking must be to the side or landward of the building.</li> </ul>
<b>New DOE requirement, outlined below, included in Exhibit 3.3, and included in recommended motion 1.a.</b>	<ul style="list-style-type: none"> <li>• Non-water-oriented uses: a minimum of 75 feet landward of the Ordinary High Water Mark.</li> <li>• Water-oriented uses: parking must be under, to the side, or landward of the front of the building closest to the water.</li> </ul>

**Staff Conversations with Department of Ecology since October 7, 2019**

Since the October 7, 2019 continued public hearing, Staff has been in discussion with the Washington State Department of Ecology to clarify the City’s 75 foot minimum off-street parking setback regulations.

In summary, the Department of Ecology can support an off-street parking setback that varies depending on whether or not the parking serves a “water oriented use” as follows:

- a. Off-street parking for **water-oriented uses** may be within 75 feet of the Ordinary High Water Mark (OHWM), so long as the parking is no closer to the OHWM than the building on the property.
- b. Off Street parking for **non-water-oriented uses** must setback at least 75 feet from the Ordinary High Water Mark.

Under the State Shoreline Management Act, a “Water-Oriented Use” is defined as:

*Water-Oriented Use:* A use that that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

A Water-Oriented Use is therefore an umbrella term for the following:

*Water-Dependent Use:* A use that depends on being adjacent to water in order to operate. Examples include marinas, aquaculture operation, and shipping terminal.

*Water-Related Use:* A use whose economic viability is dependent upon a waterfront location, such as the shipment of materials by boat or the need for large quantities of water. Examples include a dry dock, boat repair facility, boat sales, boat rentals, scuba diving and swim shop.

*Water-Enjoyment Use:* Recreational or aesthetic use of the water by the public. Examples include parks, swim beaches and restaurants if designed the meet the definition of water-enjoyment use.

A non-water-oriented use is any use that does not meet the criteria above.

**Exhibit 3-6** illustrates how this parking setback provision would be applied in part of the Urban Waterfront Shoreline Designation for water oriented and non-water-oriented use.

The proposed building setback in the Urban Waterfront Shoreline Designation of 20 feet from the top of the rip rap provides for slightly more latitude and flexibility in siting parking closer to the OHWM than does a 75 foot parking setback; Provided that, the development is a water oriented use. Still, in the case of the illustration in **Exhibit 3-6**, the impact of even a 75 foot parking setback from the OHWM does not encumber a great deal of the property.

#### **Recommended Amendment to Ordinance No. 1427.**

As follow up to these conversations with the Department of Ecology, Staff has prepared amendments to the shoreline parking regulations to change off-street parking requirements for water-oriented and non-water-oriented uses. The proposed amendments provide increased flexibility to locate off-street parking closer to the OHWM for parking related to a water-oriented use. (**Exhibit 3-3**). These would be adopted via motion 1.a.

The proposed amendments were provided to the Department of Ecology for review, and were accepted on October 21, 2019 (**see Exhibit 3-5A&B**).

Adopting the proposed parking setback amendment in **Exhibit 3-5A&B** would require a City Council motion to amend proposed Ordinance No. 1427

**ALTERNATIVES:** See page 2 which presents options following the recommendation.