

SELAH CITY COUNCIL

4:00pm November 12, 2014



Selah City Council
 Regular Meeting
 Wednesday, November 12, 2014
 4:00pm
 City Council Chambers

Mayor:
 Mayor Pro Tem:
 Council Members:

John Gawlik
 Brooke Finch
 Paul Overby
 John Tierney
 Dave Smeback
 Allen Schmid
 Roy Sample
 Jane Williams

CITY OF SELAH
 115 West Naches Avenue
 Selah, Washington 98942

City Administrator:
 City Attorney:
 Clerk/Treasurer:

David Kelly
 Bob Noe
 Dale Novobielski

AGENDA

- A. Call to Order – Mayor Gawlik
- B. Roll Call
- C. Pledge of Allegiance
- D. Agenda Changes **None**
- E. Public Appearances/Introductions/Presentations **None**
- F. Getting To Know Our Businesses **None**
- G. Communications
 - 1. Oral

This is a public meeting. If you wish to address the Council concerning any matter that is not on the agenda, you may do so now. Please come forward to the podium, stating your name for the record. The Mayor reserves the right to place a time limit on each person asking to be heard.

- 2. Written
 - Joe Henne a. October 2014 Monthly Report for Building Permit, Animal Control and Code Enforcement
- H. Proclamations/Announcements **None**
- I. Consent Agenda

All items listed with an asterisk (*) are considered routine by the City Council and will be enacted by one motion, without discussion. Should any Council Member or member of the audience request that any item of the Consent Agenda be considered separately, that item will be removed from the Consent Agenda and become a part of the regular Agenda.

- Monica Lake * 1. Approval of Minutes: October 28, 2014 Council Meeting
- Dale N. * 2. Approval of Claims & Payroll

- J. Public Hearings
 - Dale N. 1. Proposed 2015 budget for the City of Selah
- K. New Business **None**
- L. Old Business **None**
- M. Resolutions
 - Rick Hayes 1. Resolution Authorizing the Mayor to Sign the Interlocal Correction / Detention Agreement with the Yakima County Department of Corrections for 2015

David Kelly 2. Resolution authorizing the Mayor to sign an Agreement for Legal Services with Kenyon Disend, PLLC

N. Ordinances

Dale N. 1. Ordinance Amending Section 4.34.040 of the Selah Municipal Code, "Occupations Subject to Tax – Amount"

Dale N. 2. Ordinance to Establish the Amount of Taxes To Be Levied upon Real and Personal Property in the City of Selah, Yakima County, Washington, and Fixing the Tax Levy for the Year 2015

O. Communications

1. Oral

This is a public meeting. If you wish to address the Council concerning any matter that is not on the agenda, you may do so now. Please come forward to the podium, stating your name for the record. The Mayor reserves the right to place a time limit on each person asking to be heard.

P. Reports/Announcements

- 1. Mayor
- 2. Council Members
- 3. Departmental
- 4. Boards

Monica Lake a. Parks Board Minutes – May 5, 2014

Caprise Groo b. Planning Commission Minutes – Corrections page 8 of June 17, 2014; October 27, 2014

Q. Executive Session

None

R. Adjournment

Each item on the Council Agenda is covered by an Agenda Item Sheet (AIS)

A yellow AIS indicates an action item.

A blue AIS indicates an information/non-action item.

Next Study Session
Next Regular Meeting

November 25, 2014
November 25, 2014



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING INFORMATIONAL ITEM

11/12/2014 G – 2A

Title: October 2014 Monthly Report for Building Permit, Animal Control and Code Enforcement

Thru: David Kelly, City Administrator

From: Joe Henne, Public Works Director

Action Requested: Informational - No action

Board/Commission Recommendation: Not applicable

Fiscal Impact: Not applicable

Funding Source: Not applicable

Staff Recommendation:

Informational only

Background / Findings & Facts:

Attached are the Building Permit, Animal Control and Code Enforcement Reports for October, 2014.

Recommended Motion:

Information only

CODE ENFORCEMENT

<u>ADDRESS</u>	<u>VIOLATION / COMPLAINT</u>	<u>ACTION TAKEN</u>
200 BLK E FREMONT AVE.	WEEDS	VERBAL CORRECTION NOTICE TO PROPERTY OWNER
100 BLK E HOME AVE.	DEBRIS	VERBAL CORRECTION NOTICE TO PROPERTY OWNER
500 BLK S 3RD STREET	GRAFFITI	CORRECTION NOTICE SENT TO PROPERTY OWNER
400 BLK S 3RD STREET	GRAFFITI	CORRECTION NOTICE SENT TO PROPERTY OWNER
200 BLK N 10TH STREET	NEIGHBOR KNOCKED OVER FENCE	VERBAL NOTICE TO OWNER TO RESOLVE PROBLEM
*** 100 BLK LYLE LOOP	ALLEGED VIOLATION OF SPECIAL USE PERMIT	RESEARCHING CONDITIONS OF SPECIAL USE PERMIT
300 BLK N WENAS	TREE OVERGROWTH	CORRECTION NOTICE SENT TO PROPERTY OWNER
500 BLK S 5TH STREET	PARKING PROBLEM	VEHICLES PARKED LEGALLY
12TH & FREMONT AVE	SHRUB OBSTRUCTING VIEW OF TRAFFIC	UNFOUNDED
PACIFIC ALLIANCE TITLE	INFORMATION ON PARCEL # 181435-34015	INFORMED ABOUT UNPAID CITATIONS
PACIFIC ALLIANCE TITLE	INFORMATION ON PARCEL # 181435-43010	INFORMED ABOUT UNPAID CITATIONS
100 BLK E BARTLETT AVE.	SINK HOLE IN BACK YARD	VERBAL CORRECTION NOTICE TO PROPERTY OWNER
1300 BLK CRUSHER CANYON	SEWAGE ISSUES	POSTED DO NOT OCCUPY BY HEALTH DEPARTMENT AND CITY OF SELAH

***100 BLK LYLE LOOP, ONGOING PROBLEM - CIVIL LEGAL ACTION HAS RESULTED IN DEFENDANTS PREVAILING OVER COMPLAINTANT. RECIEVE COMPLAINTS ALMOST DAILY FROM SAME PERSON. NO ONE ELSE IN THIS NEIGHBORHOOD HAS COMPLAINED.

ANIMAL CONTROL

OCTOBER 2014

ADDRESS	DATE	HRS	DESCRIPTION OF ANIMAL	ACTION TAKEN
SELAH JR.HIGH SCHOOL	1ST	2	2 CHOCOLATE LABS-LOOSE	HUMANE SHELTER
400 BLK S 3RD STREET	3RD	1	BROWN PIT BULL	P.D - OWNER P/U ADVISED NOT ALLOWED IN CITY
100 BLK E BARTLETT	8TH	0.5	ALLEDGED PIT BULL	WAS LEGAL BREED-BOXXER
1400 BLK W ORCHARD	8TH	0.5	BARKING DOG	SPOKE TO OWNER- WILL KEEP INSIDE
500 BLK VIEW CREST	8TH	0.5	INJURED PIDGEON-BLOW DART	BIRD FLEW AWAY
600 BLK S 5TH STREET	9TH	1	LOOSE DOG	UNABLE TO LOCATE
800 BLK W HOME AVE	10TH	1.5	2 LOOSE DOGS	CITATION ISSUED 500.00
800 BLK W HOME AVE	13TH	2	LOOSE DOG	CITATION ISSUED 250.00
JOHN CAMPBELL SCHOOL	15TH	1	FOUND DOG	HUMANE SHELTER
10 BLK N 3RD STREET	20TH	1	2 LOOSE DOGS	RETURNED TO OWNER-WARNING
300 BLK VALLEY VIEW	20TH	1.5	DOG BITE	QUARENTINE BY OWNER 14 DAYS
100 BLK E HOME AVE	22ND	0.5	LOOSE DOG	RETURNED TO OWNER-WARNING
600 BLK S 1ST STREET	23RD	4	6 FERRELL CATS	TAKEN TO VET
600 BLK S 1ST STREET	24TH	5.5	8 FERRELL CATS	TAKEN TO VET
600 BLK S 1ST STREET	27TH	3	3 FERRELL CATS	TAKEN TO VET
3RD & PLEASANT AVE.	29TH	0.5	LOOSE PIT BULL	UNABLE TO LOCATE
1000 BLK W YAKIMA AVE.	29TH	0.5	BARKING DOG	UNFOUNDED
1000 BLK W YAKIMA AVE.	31ST	0.5	BARKING DOG	UNFOUNDED

lo.	Issue Date	Project	Address	Type	Master Plan	Fees
6198	10/1/2014	Torkelson Construction	207 E Goodlander	Grading Permit		\$48.08
6199	10/2/2014	Troy Helms	311 Sun Way	Re-Roof		\$76.91
6200	10/3/2014	Rich Goodall	1207 Heritage Hills Lane	SFR-New Construction	N/A	\$6,468.53
6201	10/3/2014	Rich Goodall	1207 Heritage Hills Lane	New Plumbing-Residence		\$188.90
6202	10/3/2014	Rich Goodall	1207 Heritage Hills Lane	New Mechanical - Residence		\$137.32
6203	10/3/2014	Jose Grimaldi	1290 W. Goodlander Rd.	Footing/Foundation Only	N/A	\$0.00
6204	10/3/2014	Martin Prado	704 W Bartlett	Carport		\$303.08
6205	10/7/2014	Columbia Ridge Homes LLC	1506 W Naches Ave.	SFR-New Construction	N/A	\$6,428.75
6206	10/7/2014	Columbia Ridge Homes LLC	1506 W Naches Ave.	New Plumbing-Residence		\$221.09
6207	10/7/2014	Columbia Ridge Homes LLC	1506 W Naches Ave.	New Mechanical - Residence		\$137.32
6208	10/7/2014	Columbia Ridge Homes LLC	1506 W Naches Ave.	UG Sprinklers		\$39.64
6209	10/7/2014	Columbia Ridge Homes	1440 Nelson Place	SFR-New Construction	IRC-2012-6	\$6,262.61
6210	10/7/2014	Columbia Ridge Homes	1440 Nelson Place	New Plumbing-Residence		\$188.90
6211	10/7/2014	Columbia Ridge Homes	1440 Nelson Place	New Mechanical - Residence		\$137.32
6212	10/7/2014	Columbia Ridge Homes	1440 Nelson Place	UG Sprinklers		\$39.64
6213	10/7/2014	Jose Grimaldi	1290 W Goodlander Rd.	SFR-New Construction	N/A	\$6,621.13
6214	10/7/2014	Jose Grimaldi	1290 W Goodlander Rd.	New Plumbing-Residence		\$317.66
6215	10/7/2014	Jose Grimaldi	1290 W Goodlander Rd.	New Mechanical - Residence		\$173.04
6216	10/7/2014	Jose Grimaldi	1290 W Goodlander Rd.	UG Sprinklers		\$39.64
6217	10/13/2014	Miller Freeman	314 S. 3rd St.	Replace Water Service		\$51.94
6218	10/13/2014	Wayne Lalley	603 Anchor Place	Re-Roof		\$76.91
6219	10/15/2014	Edward Trapp	1705 W Yakima Ave	Mechanical - Gas piping only		\$7.67
6220	10/17/2014	Matson Fruit Company	465 A South Park Dr.	Water/Sewer Hookup for new storage facility		\$72,761.97
6221	10/15/2014	Matson Fruit Company	465 B South Park Ave	Mechanical Permit for new office building		\$207.50
6222	10/16/2014	Tree Top Inc	100 S. Railroad Ave	Fire Alarm System		\$125.15
6223	10/21/2014	Tree Top Inc	111 S Railroad Ave	Re-Roof Tech Center		\$149.33
6224	10/20/2014	Columbia Ridge Homes LLC	1405 W Naches Ave	Footing/Foundation ONLY		\$0.00
6225	10/22/2014	Verizon Wireless	1303 W Goodlander Rd.	New Commercial- Antenna upgrade		\$525.87
6226	10/23/2014	Selah School District	801 N First St.	Mechanical Commercial - Propane tank install		\$95.67
6227	10/28/2014	Marvin Record	273 Driscoll Rd.	Install/Replace gas furnace/heat pump		\$64.88
6228	10/22/2014	Dustin Doyle	1140 McGonagle Rd.	Side Sewer		\$1,331.41
6229	10/24/2014	Dave Van Alstien	7 Hovde Parkk Dr	Plumbing Permit - add master bath		\$62.67
6230	10/28/2014	Selah School District	411 N First St	Extend/Remodel Pumhouse/Footing & Foundation only		\$0.00
6231	10/28/2014	BBS Selah LLC	506 S. First St	New Commercial - additonal CMU fin wall		\$178.44
					TOTAL	\$103,468.97



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING ACTION ITEM

11/12/2014 I – 1

Title: Approval of Minutes: October 28, 2014 Council Meeting

Thru: David Kelly, City Administrator

From: Monica Lake, Executive Assistant

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Approval of the Minutes from the last Council Meeting.

Background / Findings & Facts:

See Minutes for details.

Recommended Motion:

Motion to approve the Consent Agenda as read. (This item is part of the Consent Agenda)

City of Selah
Council Minutes
October 28, 2014

Regular Meeting
Selah Council Chambers
115 West Naches Avenue
Selah, WA 98942

A. Call to Order Mayor Gawlik called the meeting to order at 6:30pm.

B. Roll Call

Members Present: Paul Overby; John Tierney; Dave Smeback; Allen Schmid ; Roy Sample;
Jane Williams

Members Excused: Brooke Finch

Staff Present: David Kelly, City Administrator; Bob Noe, City Attorney; Gary Hanna,
Fire Chief; Rick Hayes, Police Chief; Dale Novobielski, Clerk/Treasurer;
Dennis Davison, Community Planner; Charlie Brown, Recreation
Manager; Monica Lake, Executive Assistant

C. Pledge of Allegiance

Council Member Tierney led the Pledge of Allegiance. Pastor Jason Williams led the opening prayer.

D. Agenda Changes **None**

E. Public Appearances/Introductions/ Presentations

1. Jim Hall, Office of Emergency Management – Emergency Services 2015 Budget Presentation

Jim Hall, Office of Emergency management, approached the podium and addressed the Council. He talked about what emergency management means to both individuals and governments, and the various systems that his office has put into place to deal with any emergency situations that could potentially arise, which encompass resources from the local level up to the Federal level. He remarked that State requirements call for all local and county governments to have an emergency plan in place, which his office provides for the entire county, adding that Charles Irwin had been updating the mitigation plan to ensure that they are still eligible for Federal aid for mitigation projects. He talked about some of the other services they also provide, such as active shooter exercises and helping local facilities accurately report all chemicals and hazardous materials. He stated that they are working on Ebola exercises with the local hospitals, Fire Districts, and ambulances to get them prepared. He outlined the difficulties with

their budget, and the significant increase to each participating agency due to the City of Yakima's decision to withdraw. He noted that he will be retiring in December, and that the executive board will interview prospective candidates and select his replacement.

Council Member Schmid wondered what rationale the City of Yakima used for their decision to remove themselves from emergency management program.

Mr. Hall responded that they did not ask him anything prior to making the decision, and that things are changing under their new city manager.

Mayor Gawlik remarked that he received letter earlier that day from the Yakima Mayor's office indicating that their primary purpose for Yakima going it alone was a desire to tailor the plan to more successfully deal with their special needs. He noted that the mutual aid plan will remain in effect.

Council Member Tierney asked about the financial impact from their withdrawal.

Mr. Hall replied that it is sixty-nine thousand dollars.

Mayor Gawlik commented that the Valley Mayors met three weeks ago to discuss the matter, opting to recommend to their individual Council and Commissions that things remain as they are for 2015, although they agreed to look into other possibilities for the future.

Council Member Schmid wondered, if something happens and emergency management as it is goes away, would each city then have to come up with an emergency management plan for their community and go through the process of getting other communities to come in to help. He said that it disturbs him that the City of Yakima is backing out.

Mr. Hall felt that it was counter-productive to any major event in Valley, adding that they have the ability to go their own way, but they will need to build their own plans and do a lot of their own work. He noted that this decision puts a burden on everyone else to keep them solvent.

Council Member Schmid commented that a fifty percent increase in assessment for communities in Selah works out to roughly three thousand dollars, adding that it doesn't sound as bad when you know the dollar figure versus the percentage.

Council Member Tierney stated that it would be an increase of approximately one dollar and twelve cents per citizen per year.

Mayor Gawlik remarked that State law requires every jurisdiction have an emergency operation plan in place, which must be upgraded every five years and reviewed every year. He added that Mr. Hall's staff worked with himself and City Administrator Kelly this year to update Selah's emergency operation plan.

Council Member Williams thanked him for his years of service.

F. Getting To Know Our Businesses **None**

G. Communications

1. Oral

Mayor Gawlik opened the meeting.

Sherry Dawson approached the podium and addressed the Council. She expressed her support for the welcome to Selah sign proposed by Wayne Pederson, saying that she felt that the arch being considered by the Selah Downtown Association would be taking a step back in time rather than moving forward with a clean, modern design.

Mayor Gawlik clarified that the Selah Downtown Association is an advisory group, and that, while they are a non-profit organization that will eventually have its own funding, nothing will be done unless the City Council has agreed to it.

Ken Brewer approached the podium and addressed the Council. He said that he owns a small art gallery/hair salon business, where he holds a standing room only art opening twice a year. He commented that people support art, and that he would like to see the City support Mr. Pederson's art offering.

Laura Turner approached the podium and addressed the Council. She said that she has a vested interest in Selah, as she has run Farmers Insurance in Selah for thirty-nine years. She encouraged the Council to strongly support Mr. Pederson's design for the entrance sign, adding that it is remarkable, beautiful, and somewhat abstract.

Norma Smith approached the podium and addressed the Council. She spoke in favor of Mr. Pederson's design, saying that the community is progressing, and that it's exciting to her to see big changes going on. She felt that the sculpture was very cleverly done, and supersedes any excitement over an arch that would be going down the middle of the thoroughfare. She said that some of the trucks coming through town might take out the arch, causing damage to themselves and the arch, while the sculpture would be a progressive addition to the City. She urged the Council to support Mr. Pederson.

Herb Schmidt approached the podium and addressed the Council. He stated that he has been involved in number of ways in the City, and that this subject been on the agenda for quite some time. He said that, when you have an entrance sign such as Mr. Pederson's, you want to have it be a statement to your city. He felt that it reflects the Yakima river, the basalt, the agriculture, and the land in which we live.

Wayne Pederson approached the podium and addressed the Council. He showed his model of the proposed sign, noting that he is willing to donate thirty thousand dollars towards the project. He said that he has the support of the Selah School District, member of the community, and local businesses such as Tree Top, Graf Investments, and Garner Investments. He added that the only discouragement he received came from the Selah Downtown Association. He thanked the Council for listening to his proposal.

Council Member Tierney wondered how big it would be.

Mr. Pederson responded that it is eighteen feet from the ground to the top, sixteen feet wide, and sixteen feet deep, with six foot tall concrete walls.

Council Member Tierney asked where it would be located.

Mr. Pederson replied that it would be by the golf course entrance at the top of the overpass, and that he has been working with the Washington State Department of Transportation and Community Planner Davison in regards to the location.

Council Member Sample requested that he describe the lighting, asking if the lighting inside would move up and down.

Mr. Pederson responded that a lightning bolt of blue light, which wouldn't move, would be seen by drivers, and that the sculpture would be backlit with lighting around the perimeter.

Council Member Williams wondered if it would have flowing water.

Mr. Pederson replied in the negative, adding he wants as much foliage as possible, such as juniper or something that would sprawl and discourage vandalism.

Seeing no one else rise to speak, Mayor Gawlik closed the meeting.

2. Written **None**

H. Proclamations/Announcements **None**

I. Consent Agenda

Executive Assistant Lake read the Consent Agenda.

All items listed with an asterisk (*) were considered as part of the Consent Agenda.

* 1. Approval of Minutes: October 14, 2014 Study Session & Council Meeting

* 2. Approval of Claims & Payroll:

Payroll Checks Nos. 77933 – 78010 for a total of \$189,934.81

Claim Checks Nos. 94706 – 94761 for a total of \$165,340.49

* 3. Resolution M – 1: Resolution Authorizing the Mayor to accept the Goodlander Road Zone 4 Water Main as complete and approve final Progress Estimate number 2 and Project

* 4. Resolution M – 2: Resolution Authorizing the Mayor to accept the Bartlett Avenue Intersection Improvements as complete and approve final Progress Estimate number 2 and Project Acceptance

- * 5. Resolution M – 3: Resolution Establishing November 25, 2014 as the Public Hearing date to consider the adoption of the “Water System Plan Update”

Council Member Tierney moved, and Council Member Smeback seconded, to approve the Consent Agenda as read. By voice vote, approval of the Consent Agenda was unanimous.

J. Public Hearings None

K. New Business

- 1. Youth Center Closure

Recreation Manager Brown addressed K – 1. He briefly explained his reasons for recommending closure of the youth center when they close it for winter break, noting that the number of kids using the facility have dwindled from thirty-five to six per day, most of whom stay for an hour or so before leaving to go to the library and that Central Washington University has cut funding for the service program, which took staffing from five down to two.

Council Member Sample inquired if this would be a permanent closure.

Recreation Manager Brown responded in the affirmative.

Council Member Schmid wondered if Selah CAN had been contacted about the closure.

Recreation Manager Brown replied that he hadn’t talked with them since making the decision to close the facility. He remarked that, during the last conversation he’d with them, they had passed on the phone bill for payment as they were unable to cover the expense.

Council Member Tierney asked if he’d had any discussion with the library staff regarding the increased impact on them.

Recreation Manager Brown responded in the negative, saying that the kids are already going over there, and that the library is better place for them as they have the staff for planning activities.

Mr. Worby spoke up from the audience, saying that five years ago he contacted the Boys & Girls Club of America about coming to Selah, at which time they’d indicated that they were unable to because of the youth center. He wondered if they could be approached again.

Recreation Manager Brown commented that he would look into that, adding that he is looking for other ways to help provide a space for the youth.

Council Member Smeback moved, and Council Member Tierney seconded, to approve the Youth Center Closure. Roll was called: Council Member Overby – yes; Council Member Tierney – yes; Council Member Smeback – yes; Council Member Schmid – abstain; Council Member Sample – yes; Council Member Williams – yes. Motion passed with 5 yes votes and 1 abstention.

L. Old Business None

M. Resolutions

- * 1. Resolution Authorizing the Mayor to accept the Goodlander Road Zone 4 Water Main as complete and approve final Progress Estimate number 2 and Project
- * 2. Resolution Authorizing the Mayor to accept the Bartlett Avenue Intersection Improvements as complete and approve final Progress Estimate number 2 and Project Acceptance
- * 3. Resolution Establishing November 25, 2014 as the Public Hearing date to consider the adoption of the "Water System Plan Update"
- 4. Resolution Adopting Financial Policies for the City of Selah

Clerk/Treasurer Novobielski addressed M – 4. He said that the document is five pages of concisely written policies showing that the City cares about finances in Selah and that they exercise prudent practices. He noted that adoption of this will be a benefit in the bond rating review process and asked that Council approve the Resolution.

Council Member Williams wondered if the ten percent set aside on page two was the same as that on page five.

Clerk/Treasurer Novobielski replied that page two refers to the General Fund, while page five refers to Fund 140. He noted that there used to be a higher amount in Fund 140, but he believes it was tapped into for payment on the Marudo bonds.

Council Member Williams asked if any spending out of Fund 140 would have to be approved by the Council.

Clerk/Treasurer Novobielski responded in the affirmative, adding that spending can only be done through the budget process.

Council Member Williams wondered how long it would be before the financial portion of the website was up and running.

Clerk/Treasurer Novobielski replied that the September financials are currently available on the website under the financial department.

Council Member Overby inquired if the City had State mandates to maintain amounts in reserve funds.

Clerk/Treasurer Novobielski responded in the negative.

Council Member Overby moved, and Council Member Sample seconded, to Approve the Resolution Adopting Financial Policies for the City of Selah. Roll was called: Council Member Overby – yes; Council Member Tierney – yes; Council Member Smeback – yes; Council Member Schmid – yes; Council Member Sample – yes; Council Member Williams – yes. By voice vote, approval was unanimous.

N. Ordinances

1. Ordinance of the City of Selah, Washington, relating to contracting indebtedness; providing for the issuance, fixing or setting parameters with respect to certain terms and covenants, and fixing the form of not to exceed \$3,500,000 aggregate principal amount limited tax general obligation refunding bonds to provide money with which to pay the cost of refunding, paying and redeeming certain outstanding non-voted obligations of the City; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the refunding bonds herein authorized and for the use and application of the money derived from those investments; authorizing the execution of an agreement with U.S. Bank National Association, as refunding trustee; providing for the call, payment and redemption of the outstanding bonds to be refunded; appointing the City's designated representative to approve the final terms of the sale, issuance and delivery of the bonds; authorizing the sale and providing for the delivery of the bonds to D.A. Davidson & Co.; and providing for other matters properly related thereto

Council Member Overby felt that the document was not approachable and requested that Clerk/Treasurer Novobielski would give them the bottom line on it.

City Administrator Kelly said that the City has a debt of slightly less than three point five million, which they would like to refinance both to get a better interest rate and to save the City two hundred and twenty thousand dollars over the next eight years. He felt that this is a good opportunity for the City, and that they may have a better Standard and Poors rating than DA Davidson is projecting.

Mayor Gawlik asked when they would find out the City's bond rating.

City Administrator Kelly replied that it will likely be mid to late November.

Mayor Gawlik inquired about the bond rate.

City Administrator Kelly responded that he doesn't know at this time, adding that he and Clerk/Treasurer Novobielski will be interviewed by Standard & Poors tomorrow about the financial aspects of the City, and that they will be given a rating based on that conversation.

Council Member Tierney wondered what the advantage was between limited tax versus no tax bonds.

City Administrator Kelly replied that the one has less interest, adding that interest rates are good right now.

Council Member Smeback moved, and Council Member Tierney seconded, to Approve the Ordinance of the City of Selah, Washington, relating to contracting indebtedness; providing for the issuance, fixing or setting parameters with respect to certain terms and covenants, and fixing the form of not to exceed \$3,500,000 aggregate principal amount limited tax general obligation refunding bonds to provide money with which to pay the cost of refunding, paying and redeeming certain outstanding non-voted obligations of the City; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the refunding bonds herein authorized and for the use and application of the money derived from those investments; authorizing the execution of an agreement with U.S. Bank National Association, as refunding trustee; providing for the call, payment and redemption of the outstanding bonds to be refunded; appointing the City's designated representative to approve the final terms of the sale, issuance and delivery of the bonds; authorizing the sale and providing for the delivery of the bonds to D.A. Davidson & Co.; and providing for other matters properly related thereto. Roll was called: Council Member Overby – yes; Council Member Tierney – yes; Council Member Smeback – yes; Council Member Schmid – yes; Council Member Sample – yes; Council Member Williams – abstain. Motion passed with 5 yes votes and 1 abstention.

O. Communications

1. Oral

Mayor Gawlik opened the meeting.

Wayne Worby approached the podium and addressed the Council. He asked about the expectations of the Council regarding the internet, saying that he tried to look up both agendas and minutes and struggled with the site.

Executive Assistant Lake described the process for posting information on the website, noting that the Council packets for the year are available online along with minutes for the past several years. She asked which minutes he'd had difficulty locating.

Mr. Worby responded that he was able to get a draft copy of the Planning Commission minutes a week after the meeting.

Mayor Gawlik informed him that minutes aren't posted to the website until after they've been approved.

Richard Weller approached the podium and addressed the Council. He expressed his support of Mr. Pederson's project, which he hadn't heard prior to the presentation that night. He asked if the hastily called Planning Commission meeting was a special session to deal with the proposal remanded back to them at the last Council Meeting, adding that they had been told it would be heard in November.

Mayor Gawlik answered that last night's meeting was educational, and dealt with the process, their responsibilities, and what they needed to consider when looking at certain topics that come before them. He stated that November 18th is still the official meeting date for review of the remanded proposal.

Mr. Weller commented that he has been getting calls from citizens who would like to attend the meeting.

City Administrator Kelly remarked that the intent of the special meeting was to get approved minutes to present to the Council.

Mr. Weller said that he wanted to make sure that date was still a go.

Mr. Worby wondered about the educational part of previous night's Planning Commission meeting.

Mayor Gawlik replied that he'd promised at the last Council Meeting to address concerns about the Commissioners not being versed in their responsibilities and the technicalities of the decision making and review process. He went on to say that Community Planner Davison compiled information to present to the Commissioners, which was then reviewed at their last meeting.

Mr. Worby felt that the citizens might be well served to have the same information made available to them.

City Administrator Kelly suggested that he ask Community Planner Davison for the information.

Community Planner Davison noted that the document is a portion of the guide to local planning put out by the Department of Commerce and the Washington Planning Association, and is available on the Department of Commerce's website. He noted that it covers more than just the appearance of fairness and planning questions.

Mr. Worby inquired if this is their guide now.

Community Planner Davison responded that they were provided this information to help them understand the appearance of fairness, conflicts of interest, how to establish findings of fact, and the process that developers go through.

Mr. Worby asked if he would have a better understanding of the process if he read the material.

Community Planner Davison replied in the affirmative, adding that if he read the whole book he would have a better understanding of the Comprehensive Plan, zones, and subdivisions.

Norma Smith approached the podium and addressed the Council. She commended the Council, the Mayor, and the Police Chief for a wonderful active shooter presentation in September, adding that five of the high school seniors who did presentations recently talked about the value of the active shooter exercise and how proud they were to be a part of it. She noted that there will be another Citizens' Academy starting in January and encouraged all of the Council Members to attend.

Seeing no one else rise to speak, Mayor Gawlik then closed the meeting.

P. Reports/Announcements

1. Mayor

Mayor Gawlik thanked Mr. Pederson for his presentation and suggestions to the Council. He said that he was invited to read to the kids at John Campbell school on Thursday, and that they asked him to bring his motorcycle again.

2. Council Members

Council Member Overby had no report.

Council Member Sample said that he was invited to speak before the Selah Chamber of Commerce the previous week, where they discussed items such as land use, Selah's Comprehensive Plan, annexation, and the Growth Management Act.

Council Member Tierney had no report, but commented that he was impressed with Mr. Pederson's presentation and suggestion for a sign.

Council Member Smeback had no report.

Council Member Williams had no report. She noted that she was sorry to have missed the previous meeting.

Council Member Schmid complimented Council Member Sample for an outstanding job on his presentation to the Selah Chamber of Commerce.

3. Departmental

Community Planner Davison said that, in the future, matters heard by the Planning Commission will be presented to Council three weeks later, to allow for the Commissioners to meet again to approve the minutes from the prior meeting. He went on to say that the Planning Commission opted to hold a public hearing on duplex lots within a preliminary plat on November 4th, which has been duly advertised; this will allow them to deal with the matter prior to tackling the item remanded back to them for further consideration. He briefly talked about the public hearing to be conducted by the Hearing Examiner the next day, noting that a continuance will be announced per the request of the developer.

Council Member Tierney inquired if the developer covered the cost of sending out a second notice.

Community Planner Davison responded in the affirmative, saying that the developer will also pay for the Hearing Examiner's time tomorrow and at any subsequent meetings.

Council Member Schmid asked about the agenda of the next Planning Commission meeting.

Community Planner Davison replied that it they will be discussing an amendment of Chapter 28 to allow duplexes in an R-1 zone, on lots pre-approved during the plat process, adding that this won't apply to existing lots.

City Administrator Kelly commented that it would only be up to ten percent of the lots within an R-1 subdivision.

Community Planner Davison agreed with his comment.

Council Member Sample stated that he attended the prior Planning Commission meeting where this matter was discussed, and that he recalled them discussing lots sizes as well.

Community Planner Davison said that they talked about a minimum lot size of 9000 feet, but are not proposing to change any lot sizes at this time. He noted that this would allow a developer to designate lots for duplexes, and that potential buyers would be advised of any designated lots when looking at the property.

Council Member Schmid asked if there was a statement in Growth Management Plan right now that dealt with multi-use lots in a subdivision.

Community Planner Davison explained that it talks about a diversity of uses, such as affordable housing and building styles, and that the Planning Commission opted to put in an R-1 zone provision for duplexes, which has been there since 2005. He noted that the Hearing Examiner pointed out that it needed to be included in table 10-28.

Council Member Schmid wondered if the matter had been addressed in the Growth Management Act prior to this.

Community Planner Davison responded in the affirmative.

Clerk/Treasurer Novobielski gave a quick update on sales tax activity, noting that they may not end up with as much in the reserves as had been estimated.

Recreation Manager Brown said that Selah will continue to host the AA Softball tournament until 2018, as well as some additional tournaments he was able to acquire with the assistance of Rich Austin from the Yakima Valley Sports Commission.

Fire Chief Hanna said that John Shipley attended a conference in Chelan to broaden his knowledge base on fire investigation, technology and materials changes, and that he also sent several firefighters to the North Bend firefighting training facility for training. He spoke briefly about Firefighter Cline's work with Tree Top Inc. to see how their preparedness was and find ways to improve what they do in case of an emergency, adding that they did a large exercise on the Tree Top campus yesterday. He noted that there are ten people going through the process to become volunteer firefighters.

Police Chief Hayes had no report.

City Administrator Kelly said that a semi got lost on Third Street last week, knocking over a fire hydrant as he turned. He commended the Public Works crew for their cleanup of the area, noting that the trucking will be taking care of the damage caused.

Mayor Gawlik remarked that the next scheduled Council Meeting falls on a holiday.

City Administrator Kelly suggested that they move to the meeting to Wednesday, November 12th.

Council Member Sample moved, and Council Member Schmid seconded, to move the next scheduled Council Meeting from Tuesday, November 11th to Wednesday, November 12th at 4pm. Roll was called: Council Member Overby – yes; Council Member Tierney – yes; Council Member Smeback – yes; Council Member Schmid – yes; Council Member Sample – yes; Council Member Williams – yes. By voice vote, approval was unanimous.

City Attorney Noe had no report.

4. Boards

a. Planning Commission Minutes –September 30, 2014

Q. Executive Session **None**

R. Adjournment

Council Member Tierney moved, and Council Member Sample seconded, that the meeting be adjourned. By voice vote, approval was unanimous.

The meeting adjourned at 8:19pm.

John Gawlik, Mayor

Paul Overby, Council Member

John Tierney, Council Member

Dave Smeback, Council Member

Allen Schmid, Council Member

EXCUSED
Brooke Finch, Council Member

Roy Sample, Council Member

Jane Williams, Council Member

ATTEST:

Dale E. Novobielski, Clerk/Treasurer



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING ACTION ITEM

11/12/2014

I - 2

Title: Claims & Payroll

Thru: David Kelly, City Administrator

From: Dale Novobielski, Clerk/Treasurer

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: See Check Registers

Funding Source: Various. See Check Registers.

Staff Recommendation:

Approval of Claims & Payroll as listed on Check Registers.

Background / Findings & Facts:

See Check Registers.

Recommended Motion:

Motion to Approve the Consent Agenda as read. (This item is part of the Consent Agenda)



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING ACTION ITEM

11/12/2014 J-1

Title: Public hearing to discuss the proposed 2015 budget for the City of Selah.

Thru: David Kelly, City Administrator

From: Dale Novobielski, Clerk/Treasurer

Action Requested: Informational - No action

Board/Commission Recommendation: Not applicable

Fiscal Impact: See proposed 2015 budget

Funding Source: See proposed 2015 budget

Staff Recommendation:

Conduct public hearing on the 2015 budget

Background / Findings & Facts:

To gather public input concerning the proposed 2015 budget for the City of Selah.

Recommended Motion:

N/A

**CITY OF SELAH
2015 PRELIMINARY BUDGET**

	<u>Revenues</u>	<u>Operating Expenditures</u>	<u>Capital Outlay</u>	<u>% of Operating Exp.</u>	<u>Revenues - (Op. Exps. & Capital Outlay)</u>
001 GENERAL FUND					
Beginning Net Cash & Investments - Unrestricted					\$512,000
11 Legislative		\$59,814		1.6%	(\$59,814)
12 Court	\$99,750	122,357		3.2%	(22,607)
13 Executive	11,000	145,689		3.9%	(134,689)
14 Financial, Recording & Election Svcs		188,160		5.0%	(188,160)
15 Legal	7,000	91,815		2.4%	(84,815)
18 Facilities	1,900	43,190		1.1%	(41,290)
21 Police	388,533	2,034,056	127,000	53.8%	(1,772,523)
23 Detention and/or Corrections		106,300		2.8%	(106,300)
25 Emergency Services		4,153		0.1%	(4,153)
53 Pollution Control		2,936		0.1%	(2,936)
54 Animal Control		26,908		0.7%	(26,908)
58 Code & Bldg	99,500	155,582		4.1%	(56,082)
58 Planning	11,100	64,353		1.7%	(53,253)
66 Substance Abuse		2,000		0.1%	(2,000)
71 Participant Recreation	118,382	253,825	13,600	6.7%	(149,043)
76 Parks	56,700	393,082	46,300	10.4%	(382,682)
97 Trf. From F170 CE Equip Res	118,300				118,300
Trf. From F181 Crime Prevention Res	9,000				9,000
Trf. To F170 CE Equip Res		85,263		2.3%	(85,263)
Trf. To F411 Water		3,000		0.1%	(3,000)
98 Non-Departmental	3,578,660				3,578,660
SIED Loan Repayment - RR Ave		23,119			(23,119)
Marudo Debt Repayment		438,656			(438,656)
Total	<u>\$4,499,825</u>	<u>\$4,244,258</u>	<u>\$186,900</u>	100%	<u>\$68,667</u>
Ending Net Cash & Investments - Unrestricted					<u><u>\$580,667</u></u>

CITY OF SELAH 2015 BUDGET

	<u>Revenues</u>	<u>Operating Expenditures</u>	<u>Capital Outlay</u>	<u>Revenues - (Op. Exps. & Capital Outlay)</u>
<u>103 FIRE CONTROL</u>				
Beginning Net Cash & Investments				\$106,194
	\$1,525,137	\$1,073,739	\$255,000	<u>196,398</u>
Ending Net Cash & Investments				<u>\$302,592</u>
<u>110 CITY STREET</u>				
Beginning Net Cash & Investments				\$155,000
	\$436,450	\$510,511	\$15,000	<u>(89,061)</u>
Ending Net Cash & Investments				<u>\$65,939</u>
<u>111 STREET IMPROVEMENT</u>				
Beginning Net Cash & Investments				\$0
	\$440,776	\$35,676	\$405,100	<u>0</u>
Ending Net Cash & Investments				<u>\$0</u>
<u>118 CIVIC CENTER</u>				
Beginning Net Cash & Investments				\$10,300
	\$84,100	\$84,794		<u>(694)</u>
Ending Net Cash & Investments				<u>\$9,606</u>

CITY OF SELAH 2015 BUDGET

	<u>Revenues</u>	<u>Operating Expenditures</u>	<u>Capital Outlay</u>	<u>Revenues - (Op. Exps. & Capital Outlay)</u>
<u>119 TRANSIT</u>				
Beginning Net Cash & Investments				\$257,000
	\$327,070	\$322,087	\$0	<u>4,983</u>
Ending Net Cash & Investments				<u>\$261,983</u>
<u>120 LIBRARY</u>				
Beginning Net Cash & Investments				\$0
	\$17,000	\$17,000		<u>0</u>
Ending Net Cash & Investments				<u>\$0</u>
<u>121 TOURISM</u>				
Beginning Net Cash & Investments				\$0
	\$25,000	\$15,800		<u>9,200</u>
Ending Net Cash & Investments				<u>\$9,200</u>
<u>190 SPRSA POOL</u>				
Beginning Net Cash & Investments				\$19,269
	\$173,000	\$146,837		<u>26,163</u>
Ending Net Cash & Investments				<u>\$45,432</u>

CITY OF SELAH 2015 BUDGET

	<u>Revenues</u>	<u>Operating Expenditures</u>	<u>Capital Outlay</u>	<u>Revenues - (Op. Exps. & Capital Outlay)</u>
<u>411 WATER</u>				
Beginning Net Cash & Investments				\$545,898
	\$1,814,400	\$1,691,022	\$204,600	<u>(81,222)</u>
Ending Net Cash & Investments				<u>\$464,676</u>
<u>415 SEWER</u>				
Beginning Net Cash & Investments				\$718,719
	\$2,082,400	\$2,127,797	\$234,800	<u>(280,197)</u>
Ending Net Cash & Investments				<u>\$438,522</u>
<u>420 SOLID WASTE</u>				
Beginning Net Cash & Investments				\$470,000
	<u>\$812,000</u>	<u>\$818,872</u>	\$0	<u>(6,872)</u>
Ending Net Cash & Investments				<u>\$463,128</u>
Total Operating Funds	<u>\$12,237,158</u>	<u>\$11,088,393</u>	<u>\$1,301,400</u>	

CITY OF SELAH 2015 BUDGET

	<u>Revenues</u>	<u>Operating Expenditures</u>	<u>Capital Outlay</u>	<u>Revenues - (Op. Exps. & Capital Outlay)</u>
<u>113 PATHS & TRAILS</u>				
Beginning Net Cash & Investments				\$6,640
	\$630	\$0		<u>630</u>
Ending Net Cash & Investments				<u>\$7,270</u>
<u>115 LOCAL ACCESS STREET IMPROVEMENT</u>				
Beginning Net Cash & Investments				\$97,496
	\$130,400	\$44,201		<u>86,199</u>
Ending Net Cash & Investments				<u>\$183,695</u>
<u>140 CONTINGENCY RESERVE</u>				
Beginning Net Cash & Investments				\$27,660
	\$25	\$0		<u>25</u>
Ending Net Cash & Investments				<u>\$27,685</u>
<u>150 FIRE EQUIPMENT RESERVE</u>				
Beginning Net Cash & Investments				\$130,568
	\$222,000	\$255,000		<u>(33,000)</u>
Ending Net Cash & Investments				<u>\$97,568</u>

CITY OF SELAH 2015 BUDGET

	<u>Revenues</u>	<u>Operating Expenditures</u>	<u>Capital Outlay</u>	<u>Revenues - (Op. Exps. & Capital Outlay)</u>
<u>153 EMS EQUIPMENT RESERVE</u>				
Beginning Net Cash & Investments				\$25,776
	\$20			<u>20</u>
Ending Net Cash & Investments				<u>\$25,796</u>
 <u>170 CE EQUIP RESERVE</u>				
Beginning Net Cash & Investments				\$395,062
	\$146,263	\$118,300		<u>27,963</u>
Ending Net Cash & Investments				<u>\$423,025</u>
 <u>171 PW EQUIPMENT RESERVE</u>				
Beginning Net Cash & Investments				\$291,164
	\$66,000	\$126,000		<u>(60,000)</u>
Ending Net Cash & Investments				<u>\$231,164</u>
 <u>180 DRUGS & ALCOHOL COM. RESERVE</u>				
Beginning Net Cash & Investments				\$7,478
	\$1,205	\$0		<u>1,205</u>
Ending Net Cash & Investments				<u>\$8,683</u>

CITY OF SELAH 2015 BUDGET

	<u>Revenues</u>	<u>Operating Expenditures</u>	<u>Capital Outlay</u>	<u>Revenues - (Op. Exps. & Capital Outlay)</u>
<u>181 CRIME PREVENTION RESERVE</u>				
Beginning Net Cash & Investments				\$8,448
	\$2,004	\$9,000		<u>(6,996)</u>
Ending Net Cash & Investments				<u>\$1,452</u>
<u>202 GOODLANDER LID</u>				
Beginning Net Cash & Investments				\$1,951
	\$9,723	\$10,570		<u>(847)</u>
Ending Net Cash & Investments				<u>\$1,104</u>
<u>220 LI GUARANTY</u>				
Beginning Net Cash & Investments				\$46,290
	\$40	\$0		<u>40</u>
Ending Net Cash & Investments				<u>\$46,330</u>

CITY OF SELAH 2015 BUDGET

	<u>Revenues</u>	<u>Operating Expenditures</u>	<u>Capital Outlay</u>	<u>Revenues - (Op. Exps. & Capital Outlay)</u>
<u>301 CAPITAL IMPROVEMENT</u>				
Beginning Fund Balance				\$172,905
	\$50,750	\$0		<u>50,750</u>
Ending Fund Balance				<u>\$223,655</u>
 <u>303 FIRE CONTROL BLDG. RESERVE</u>				
Beginning Net Cash & Investments				\$1,292
	\$1	\$0		<u>1</u>
Ending Net Cash & Investments				<u>\$1,293</u>
 <u>308 CIVIC CENTER CAPITAL PROJECT</u>				
Beginning Net Cash & Investments				\$4,581
	\$10	\$0		<u>10</u>
Ending Net Cash & Investments				<u>\$4,591</u>
 <u>310 CE BLDG/PROP RESERVE</u>				
Beginning Net Cash & Investments				\$377,458
	\$600	\$10		<u>590</u>
Ending Net Cash & Investments				<u>\$378,048</u>

CITY OF SELAH 2015 BUDGET

	<u>Revenues</u>	<u>Operating Expenditures</u>	<u>Capital Outlay</u>	<u>Revenues - (Op. Exps. & Capital Outlay)</u>
<u>461 WATER RESERVE</u>				
Beginning Net Cash & Investments				\$698,368
	\$228,300	\$100,000		<u>128,300</u>
Ending Net Cash & Investments				<u>\$826,668</u>
<u>465 SEWER RESERVE</u>				
Beginning Net Cash & Investments				\$688,778
	\$229,000	\$0		<u>229,000</u>
Ending Net Cash & Investments				<u>\$917,778</u>
<u>470 SOLID WASTE RESERVE</u>				
Beginning Net Cash & Investments				\$63,128
	<u>\$60</u>	<u>\$0</u>		<u>60</u>
Ending Net Cash & Investments				<u>\$63,188</u>
<u>Summary of Funds:</u>				
Beginning Net Cash & Investments				<u>\$5,839,423</u>
Ending Net Cash & Investments				<u>\$6,110,738</u>
TOTAL	<u>\$13,324,189</u>	<u>\$11,751,474</u>	<u>\$1,301,400</u>	



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING ACTION ITEM

11/12/2014 M – 1

Title: Resolution Authorizing the Mayor to Sign the Interlocal Correction / Detention Agreement with the Yakima County Department of Corrections for 2015

Thru: David Kelly, City Administrator

From: Rick Hayes, Police Chief

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: \$56.80 – 50.60 a day for daily housing, based on the Monthly Average Daily Population sliding scale; \$9.50 a day for electronic home monitoring

Funding Source: Fund 001: General

Staff Recommendation:

Approval of the contract

Background / Findings & Facts:

This is the annual renewal of the City's agreement with Yakima County regarding inmates and home detention.

Recommended Motion:

Approval of the Resolution Authorizing the Mayor to Sign the Interlocal Correction / Detention Agreement with the Yakima County Department of Corrections for 2015



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)

Date:	Action Taken:
11/26/2013	Resolution authorizing the Mayor to sign the Interlocal Correction / Detention Agreement with the Yakima County Department of Corrections for 2014
11/13/2012	Resolution authorizing the Mayor to sign the Interlocal Correction / Detention Agreement with the Yakima County Department of Corrections for 2013
12/13/2011	Resolution Authorizing the Mayor to Sign an Interlocal Correction / Detention Agreement with the Yakima County Department of Corrections for 2012

[Click here to enter a date.](#) [Click here to enter text.](#)

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RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE
INTERLOCAL CORRECTION / DETENTION AGREEMENT
WITH THE YAKIMA COUNTY DEPARTMENT OF
CORRECTIONS FOR 2015

WHEREAS, the City of Selah desires to continue Correction and Detention services with the Yakima County Department of Corrections for 2015;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON that the Mayor be authorized to sign the 2015 Interlocal Correction / Detention Agreement with the Yakima County Department of Corrections.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 12th day of November, 2014.

John Gawlik, Mayor

ATTEST:

Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

Bob Noe, City Attorney

RESOLUTION NO. _____



YAKIMA COUNTY
DEPARTMENT OF CORRECTIONS
111 North Front Street Yakima, Washington 98901 (509) 574-1700

October 22nd, 2014

City of Selah

Police Chief or Elected Official

RECEIVED
OCT 27 —
SELAH POLICE DEPT.

RE: 2015 Local Corrections/Detention Agreements – Renewal Notification

Dear Sir:

It is once again time we begin execution of the 2015 Local Corrections/Detention Agreements with the Yakima County Department of Corrections. I have enclosed (2) original agreements for you to review and have signed. There will be no proposed language changes for the upcoming year and a slight **3.75%** increase of the Daily Rate, which is reflected in Attachment A.

As you know, we have also implemented a Booking Fee, which is only assessed directly to the Inmate, therefore no information is included within your local agreement. The option also remains for a supervised work crew, which can be established through separate agreement.

Please have the agreements signed and forwarded back to ATTN: Sandra Bess, Program Coordinator at 111 North Front Street, Yakima WA 98901. Once our Board of County Commissioners has signed, a fully executed original will be mailed back to you. Yakima County's last BOCC Agenda will be held on Tuesday, December 30th, 2014 so it is my hope that we will get them all fully executed before this year is over.

Please do not hesitate to contact me if you have any questions or issues you would like to discuss. I can be reached at 574-1758, or you can contact Sandra Bess at 574-1704.

Looking forward to another successful year of working together!

Respectfully,

Ed W. Campbell, Director

EC:sb

C: Board of County Commissioners
City Notebook

**2015 INTERLOCAL
CORRECTIONS/DETENTION AGREEMENT**

THIS INTERLOCAL CORRECTIONS/DETENTION AGREEMENT (hereinafter "Agreement") is made and entered into by and between **Yakima County** (hereinafter the "County") and the **City of Selah** (hereinafter the "City/Town").

WHEREAS, RCW Chapters 39.34 and RCW 70.48 authorize the City and the County to enter into a contract for jail services that specifies the responsibilities of each party.

WHEREAS, the City, through its Police Department, or Mayor desires to continue to utilize the jail facilities maintained by the County for the detention of some City prisoners, and to reasonably compensate the County for the care and custody of said prisoners.

WHEREAS, the County, through its Department of Corrections, desires to continue to make its jail facilities available to the City for the detention of some City prisoners.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, the parties hereto mutually agree as follows:

1. **Purpose.** It is the purpose and intent of this Agreement that the County, through the Department of Corrections, and the City, through its Police Department, Manager or Mayor shall cooperate for the care and custody of male and female jail prisoners pursuant to the authority of Chapters 39.34, 70.48 and 39.34.180 of the Revised Code of Washington. This Agreement is intended to apply to those instances in which it is desirable that a person arrested for a misdemeanor or gross misdemeanor referred from their respective jurisdiction, whether filed under State law or City ordinance, be held under the control and/or custody of the Yakima County Department of Corrections.
2. **Incarceration.** The County shall accept and incarcerate male and female prisoners of the City and shall feed and otherwise generally care for those prisoners in the same manner as its own prisoners and in a manner consistent with rules governing its jail, if it has available space in its jail. The City shall accept and incarcerate male and female prisoners of the County and State and shall feed and otherwise generally care for those prisoners in the same manner as its own prisoners and in a manner consistent with rules governing its jail, if it has available space in its jail. Yakima County Department of Corrections will not accept prisoners that are not deemed medically acceptable. Please see **Attachment B** to this agreement. In addition, an inmate may be refused for reasons other than medical concerns. To the greatest extent permitted by law, the County shall have the right to refuse to accept a City/Town prisoner or to

return a City/Town prisoner. The County shall use reasonable judgment when invoking this section of the contract.

3. **Computation of Fees.** The Director of the Department of Corrections and the City Police Chief, or City Manager or Mayor shall meet by November of each year to estimate the fees for the following year. This fee will be established by determining the fixed and variable costs of the forthcoming budget along with the number of beds available and the estimated average prisoner days; provided, however, that this fee estimation shall not be considered a renewal of this Agreement.

4. **Charges and Other Services.**

4.1 Daily Rate for Incarceration. The City shall pay the County a daily rate for each day or partial day for each prisoner that is incarcerated in the Yakima County Jail for violation or alleged violation of a misdemeanor or gross misdemeanor referred from their respective jurisdiction, whether filed under State law or City ordinance. The City shall not be obligated to pay for incarceration of prisoners charged with any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

The daily rate for the duration of this Agreement will be per day, per inmate according to **Attachment A**. If for some reason, an agreement between the City/Town and County cannot be reached by January 1, 2015, but incarceration of prisoners is desired, the daily rate shall be applied retroactively to January 1, 2015, once the parties reach an agreement.

4.2 Pursuant to this Agreement and that prisoner is also held in custody at the same time by the County on the basis of State and/or local agency criminal charges, the daily incarceration rate, and all other fees, electronic monitoring charges, medical treatment fees, etc.) for the prisoner shall be fractionalized on an equal basis between the respective jurisdictions. "At the same time" as used in this paragraph shall not be interpreted to include time spent while waiting to serve a consecutive sentence for City charges. For example: if a prisoner is held by the County pursuant to City, County, and a third agency's charges, the booking fee, daily incarceration rate charges, and applicable medical treatment charges shall be allocated to each jurisdiction on a 33 1/3% share of the total cost. For purposes of this paragraph, the State of Washington and Yakima County shall be considered one entity.

4.3 Inmate Housing Computation. It is agreed the City and County will use **Attachment A** to compute prisoner housing fees.

4.4 Inmate Work Crews. Inmate work crews will be contracted through a separate agreement.

4.5 Home Detention. Two home detention services are available for the City's prisoners.

4.5.1 Option A: The County will provide home detention electronic monitoring and reporting services to the City/Town for a cost **according to Attachment A.** All offender screening, selection, hookups, scheduling, supervision, re-incarceration, and offender fee collections and use will be the province of the City provided: (1) This service contracted city's offenders only AND (2) The City will reimburse the cost to replace any lost, damaged and/or stolen equipment.

4.5.2 Option B: The County will provide any or all of the home detention program service. Those activities shall be operated by mutual agreement and in full compliance with the County's program policies, procedures and practices. The City/Town also agrees to allow the County to collect and keep all participant and other revenues and fees associated with providing home detention services.

- a. The County shall maintain reasonable access to a sufficient supply of field monitoring device (FMD) equipment needed to meet the City/Town home detention service needs. The County shall keep and maintain such equipment in good working order and shall update the equipment as necessary. The County shall also make reasonable efforts to provide the City/Town with additional monitoring capabilities, including but not limited to: alcohol sensors, daily fax on each monitored defendant, and automated notification regarding monitored defendants who are not in compliance with the home detention monitoring program.
- b. The City/Town shall not be liable to the County for the loss of or damage to monitoring equipment caused by defendants and/or offenders provided by the County pursuant to this Agreement. Rather, the County shall seek compensation for lost or damaged monitoring equipment from those monitored defendants and/or offenders who lose or damage such equipment.

4.6 Access to County Computer System. The County shall permit the City continuous access to its computer database regarding all City prisoners detained by the County. This continuous access feature shall be accomplished through a computer link between a computer(s) designated by the City at the Police Station and appropriate computer(s) of the County.

5. Prisoner Delivery and Notification.

5.1 When it becomes necessary to incarcerate City prisoners in the County due to City's Detention Facility space limitations or for other reasons, the City shall deliver such prisoners to the County Jail. At the time of delivery, the City shall provide the warrant or court order detaining or committing the prisoner to the County. Said order shall specify the next court date or release date of the prisoner. The County shall accept any such prisoner; provided, however, that the County may not accept any prisoner who appears to be sick or injured until such prisoner has received proper medical attention and has been cleared for incarceration by an appropriate medical authority. The County Jail reserves the discretion to refuse to take prisoners for medical reasons or safety and security reasons within the facility.

5.2 In the event a City prisoner is held in custody by the County Jail pursuant to this Agreement, and that prisoner is also detained by the County on the basis of other State and/or other local agency charges, the City may at its option and upon completion of his/her sentence for the other jurisdictional charges, pick up and deliver the prisoner to the City Detention Facility for the Completion of his/her jail sentence. It will be the City's responsibility to monitor and manage their prisoner population and to remove its prisoners from and or leave its prisoners in the County facility under this section as best meets its needs.

5.3 In the event a prisoner is received by the County pursuant to misdemeanor and/or gross misdemeanor charges filed by the City, the County shall immediately notify the City of the receipt of said prisoner.

5.4 When the City holds a prisoner in custody at the City's Detention Facility pursuant to charges from other jurisdictions, the City will notify the County of the transport need and detain the prisoner until the next transport date. The City will deliver the prisoner and the necessary documents to the County on the next transport date at a mutually agreed upon time.

6. **Booking Procedure.** Prisoners will be booked by Department of Corrections personnel according to the procedures and policies of the Department of Corrections by completing for each such prisoner an appropriate booking sheet with a copy to be provided to the arresting agency if requested. Prisoner's personal property will be held by the County and handled in the same manner as property of its own prisoners. Pursuant to RCW 70.48.130, and as part of the booking procedure, the Department of Corrections shall obtain general information concerning the inmate's ability to pay for medical care, including insurance or other medical benefits or resources to which an inmate is entitled. The County shall provide this information to the City/Town upon request within forty-eight (48) hours of receipt of the request. Requests shall only be made between 8:00 a.m. and 5:00 p.m. on weekdays. Requests shall not be made on County holidays.

7. **Court Appearance.** The County shall be responsible for arranging and delivering City prisoners held pursuant to this Agreement for Yakima County Superior Court and District Court appearances. The County shall have sole discretion in determining when prisoners will be transported for Yakima County Superior Court and District Court appearances. Transport may be delayed on occasion if transporting a prisoner poses a safety and security risk to other prisoners in the Jail or Yakima County Department of Corrections staff. The City/Town shall be responsible for arranging and delivering City/Town prisoners held by the County pursuant to this Agreement for applicable Court appearances and then redelivering the prisoner to the appropriate detention facility if necessary.

8. **Bail.** The County shall deliver all bail to the appropriate court in a manner, which is agreeable to the receiving court.

9. **Hold Harmless.**

The County agrees to hold harmless, indemnify, and defend the City/Town, its elected officials officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) (also including but not limited to claims related to alleged mistreatment, injury, or death to any prisoner, or loss or damage to prisoner property while in County custody) which result from or arise out of the sole negligence of County, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of the County's services, duties and obligations under this Agreement.

9.1 The City/Town agrees to hold harmless, indemnify, and defend the County, its selected officials, officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) (also including but not limited to a claim of false arrest or detention) which result from or arise out of the sole negligence of the City/Town, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of the City/Town services, duties and obligations under this Agreement.

9.2 In the event that the officials, officers, agents, and/or employees of both the County and the City/Town are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees).

9.3 Nothing contained in this Section or this Agreement shall be construed to create a right of indemnification in any third party

10. **Medical.**

The County shall provide and furnish for prisoners confined in its facility the minor medical care, attention and treatment, which is provided within the facility. The County shall immediately notify the City/Town's designee(s) via e-mail or fax if a City/Town's prisoner requires medical or dental treatment at a medical or health care facility, when that is possible. There may be times when immediate notification is not possible or practical, and the provisions of RCW 70.48.130 still apply. The City/Town shall promptly notify the County of any changes in its designee(s). The County shall be reimbursed for any of these medical costs pursuant to RCW 70.48.130. If any disputes arise concerning the City or Town's reimbursement of the County, RCW 70.48.130 controls. Prisoners who are assaulted or accidentally injure themselves while housed in any jail, the medical will be the responsibility of the jail housing them. If an inmate intentionally injures themselves or instigates an action where they are injured the cost goes to the agency for whom the inmate is held **(fractionalized as appropriate.)**

The County and City/Town shall bear the expense of any such medical care, which is directly caused by misfeasance, or malfeasance of the County or City, its officers or agents. "Immediate notification" shall mean notification as soon as reasonably possible before the inmate receives medical and/or dental treatment with the understanding that such may not be reasonably possible prior to emergency care.

In the event the County or City/Town, pursuant to this Agreement holds a prisoner in custody, and the County or City/Town on the basis of other State and/or other local agency criminal charges detains that prisoner, the costs of medical and/or dental treatment shall be fractionalized on an equal basis between the respective jurisdictions. **For example:** if a prisoner is held by the County pursuant to City, County, and a third agency's charges, the total costs of medical and/or dental treatment (other than minor care) shall be allocated on a 33 1/3% share to each jurisdiction. For purposes of this paragraph, the State of Washington and Yakima County shall be considered one entity.

11. **Uniform Alcoholism Treatment.** Neither party shall be responsible to the other for those individuals taken into protective custody by a party in accordance with RCW Chapter 70.96A Uniform Alcoholism and Intoxication Treatment.
12. **Jail Industries.** The County has a number of internal programs, which may be of benefit to the City/Town. These programs include Commissary, Meal Service, and Work Crews. In the event the City/Town wishes to utilize any of these programs, the County and City/Town shall have the ability to negotiate cost for use.
13. **Implementation.** The Director of the Yakima County Department of Corrections and the City/Town's Designee shall be jointly responsible for implementation and proper administration of this Agreement. In addition, will refer problems of implementation to the governing bodies of the County and City/Town for resolution if necessary.

14. **Termination.** Termination of this Agreement by either party may be accomplished on ninety (90) days written notice to the other party and to the State Office of Financial Management as required by RCW 70.48.090 stating the grounds for said termination and specifying plans for accommodating the affected prisoners; provided, however, that either party may terminate the home detention program specified in Section 4.3.2(a) by providing the other party with thirty (30) days written notice of termination that states the grounds for said termination and specifying plans for accommodating the affected prisoners.
15. **Duration of Agreement.** The duration of this Agreement shall be from *January 1, 2015 through midnight December 31, 2015*, unless otherwise terminated in accordance with Section 14 of this Agreement.
16. **Property.** It is not anticipated that any real or personal property will be acquired or purchased by the parties solely because of this Agreement.
17. **Equal Opportunity.** Neither party shall discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, age, marital status, political affiliation or belief or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 USC 12110 et. Seq.). In the event of the violation of this provision, the other party may terminate this agreement immediately.
18. **Assignment.** This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by Yakima County to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Yakima County stated herein.
19. **Non-Waiver.** The failure of either party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.
20. **Severability.** If any portion of this Agreement is changed per mutual Agreement or any portion is held invalid, the remainder of the Agreement shall remain in full force and effect.
21. **Integration.** This written document constitutes the entire Agreement between the City and Yakima County. There are no other oral or written Agreements between the parties as to the subjects covered herein. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

22. **Notices.** Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

TO CITY: Selah Police Department
 Chief Rick Hayes
 617 South 1st Street
 Selah, WA 98942

TO COUNTY: Edmund Campbell, Director
 Yakima County Department of Corrections
 111 North Front Street
 Yakima, WA 98901

Alternatively, to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any action concerning this contract shall be brought in the Superior Courts of Yakima County.
24. **Arbitration.** In the event an inter-local correction/detention agreement for calendar year 2015 is desired by both parties but the parties cannot agree upon the terms of the agreement by March 31, 2015 the new agreement shall automatically be submitted to binding arbitration as provided herein. Specifically, the parties shall attempt to name a single arbitrator by April 15, 2015. In the event that the parties cannot agree on a single arbitrator by said time, each party shall appoint one arbitrator by April 30, 2015. The two appointed arbitrators shall then mutually agree on a third arbitrator to chair the arbitration panel. The arbitration panel shall thereafter decide the dispute by majority rule and render a written decision within fourteen (14) calendar days of the arbitration hearing.
25. **Approval and Filing.** Each party shall approve this Agreement by resolution, ordinance or otherwise pursuant to the laws of the governing body of each party. The attested signatures of the City, Manager or Mayor and the Yakima County Commissioners below shall constitute a presumption that such approval was properly obtained. A copy of this Agreement shall be filed with the Yakima County Auditor's Office pursuant to RCW 39.34.040.

CITY OF SELAH

**BOARD OF YAKIMA COUNTY
COMMISSIONERS**

Mayor/City Manager

Kevin J. Bouchey, Chairman

Approved as to form this
____ day of _____

J. Rand Elliott, Commissioner

Michael D. Leita, Commissioner
*Constituting the Board of County Commissioners for Yakima
County, Washington*

Attest:

Tiera Girard
Clerk of the Board

Approved as to Form:

Stefanie Weigand,
Senior Deputy Prosecuting Attorney

Attachment A

YAKIMA COUNTY INTERLOCAL CORRECTIONS AGREEMENT - 2015

Local Detention/Correction Rates:

Daily Housing:

Based on the Monthly Average Daily Population (MADP) sliding scale:

In consideration of Yakima County's commitment to house City Inmates, the City shall pay the County based on the Monthly Average Daily Population (MADP) sliding scale. This scale does not include those inmates with serious medical, mental health or behavioral conditions as determined by the County. Inmates whose mental health, behavioral or medical conditions require special housing or treatment will be housed at a rate of \$87.95. All other inmates will be housed based on the (MADP):

<i>Monthly Average Daily Population (MADP)</i>	<i>Daily Rate Per Inmate</i>
151 - above	\$50.60
126-150	\$51.65
101-125	\$52.65
76-100	\$53.70
51-75	\$54.75
26-50	\$55.80
0-25	\$56.80

Billing Detail:

Fractionalized Billing per current practice.

Other special Agreement Conditions:

Yakima County has the following correctional options services.

- **Electronic Home Detention** (City determines monitoring and supervision)
 - Daily Electronic Home Monitoring Equipment \$9.50
 - Daily Electronic Home Supervision \$0.00
 - (Fees collected from client)
- **Work Crews** (City may contract through separate agreement)

Daily Electronic Home Monitoring Equipment is a charge to agencies for the equipment used, should they decide to do their own Home Detention services Yakima County will provide the equipment for the fee listed above.

ATTACHMENT B
MEDICAL ACCEPTABILITY

The County may, based on the following or other reasonable criteria, determine that proposed inmates are not acceptable for transport and/or housing:

1. Blood or fluid present at an open wound site or bleeding from an open wound.
2. Any injury or illness requiring immediate or emergency medical treatment.
3. Unconsciousness.
4. Inmates unable to stand and walk under their own power.
5. Signs of alcohol toxicity and signs of current or recent use of any intoxicants.
6. Signs of alcohol and/or drug withdrawal.
7. Bed bound individuals.
8. Individuals with attached IV or requiring IV medications.
9. Individuals requiring the use of oxygen tanks.
10. AMA (Against Medical Advice) from the hospital.
11. Individuals having had major invasive surgery within the last 72 hours. Non-invasive surgery such as oral surgery, laser-eye surgery and minor surgery may be evaluated on a case by case basis.
12. Post-operative persons who have follow up appointments within the next two weeks.
13. Wounds with drainage tubes attached.
14. Open and/or oozing bedsores.
15. Individuals requiring nebulizers who cannot obtain one.
16. Inmates who cannot perform activities of daily living ("ADL's") or who do not have the capacity to function safely within a correctional environment.
17. Persons who are pregnant.
18. Persons undergoing chemotherapy and/or radiation treatment.
19. Persons undergoing dialysis.
20. Persons with the following untreated medical conditions:
 - a) Heart disease

- b) Seizures disorders
 - c) Insulin dependent diabetes
 - d) Cancer
 - e) HIV Positive or AIDS
21. Persons who are HIV positive or have AIDS and are taking anti-viral medications.
 22. Persons taking Methadone, or Suboxone, a substitute for Methadone.
 23. Person, if prescribed, has not taken psychotropic medications for at least 72 hours.
 24. Persons requiring CPAP machines as prescribed must be transported with the machine.



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING ACTION ITEM

11/12/2014 M – 2

Title: Resolution authorizing the Mayor to sign an Agreement for Legal Services with Kenyon Disend, PLLC

Thru: David Kelly, City Administrator

From: David Kelly, City Administrator

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: \$260 per hour

Funding Source: 001, Current Expense; 003 Fire; 411, Water; 415, Sewer; 420 Garbage

Staff Recommendation:

Authorize the Mayor to sign the contract for Legal Services with Kenyon Disend, PLLC.

Background / Findings & Facts:

As you have all been informed, Bob Noe, our City Attorney has taken a job with the firm Kenyon Disend, PLLC, located in Issaquah. The firm he is working for is one of the largest firms in Washington assisting local governments with their legal needs.

Mr. Noe has informed the City that he could continue to provide our Civil Legal work through the new firm. He also explained that he would not be moving to Issaquah, but that he would continue to live on this side of the mountain and remain available.



CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY



Recommended Motion:

I move to authorize the Mayor to sign the contract for Legal Services with Kenyon Disend, PLLC.

CITY OF SELAH, WASHINGTON
RESOLUTION NO. _____

A RESOLUTION authorizing the Mayor to sign an Agreement for Legal Services with Kenyon Disend, PLLC.

WHEREAS, the City of Selah has a need for civil city attorney legal services;

WHEREAS, the City of Selah desires to enter into an Agreement for Legal Services with Kenyon Disend, PLLC for these services;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, HEREBY RESOLVES as follows:

The Mayor is authorized to sign an Agreement of Legal Services with Kenyon Disend, PLLC.

PASSED this 12th day of November, 2014.

John Gawlik, Mayor

ATTEST:

APPROVED AS TO FORM:

Dale Novobielski, Clerk/Treasurer

Robert F. Noe, City Attorney

AGREEMENT FOR LEGAL SERVICES

I. PARTIES

This Agreement is made on this 12th day of November, 2014, between the City of Selah (“City”) and Kenyon Disend, PLLC (“Attorneys”).

II. SERVICES OF THE ATTORNEYS

The Attorneys shall provide the legal services set forth in this Agreement and shall work for the City at the pleasure of and under the direction of the Mayor and City Administrator. Robert F. Noe shall serve as the City Attorney and will direct the services provided under this Agreement.

III. QUALITY OF SERVICES

Attorneys shall perform all legal services covered by this Agreement in a capable and efficient manner, and in accordance with the professional standards of the Washington State Bar Association.

IV. SERVICES PROVIDED

The City Attorney shall be principally responsible for performing all legal work for the City, except where defense is provided through insurance coverage. The City Attorney may have other attorneys and paralegals employed by Kenyon Disend, PLLC assist in the performance of his duties. The following list of duties is illustrative, but not necessarily inclusive, of the services to be performed by the City Attorney:

- (1) Review or draft City ordinances, agreements, resolutions, interlocal agreements, and other legal documents as requested by the City;
- (2) Represent the City in all lawsuits and other contested administrative proceedings commenced by or against the City, except where defense is provided through insurance coverage;
- (3) Advise City Councilmembers, Mayor, and staff members with regard to legal matters relating to their respective duties for the City;

(4) Consult with and advise the City Councilmembers, Mayor, and staff members in person, by telephone, e-mail, or by written memo on City business; and

(5) Attend City Council or other meetings as requested.

**V.
FEES AND COSTS**

City shall be billed for legal services described in Section IV, above, at Attorneys' hourly rates. Attorneys' hourly rates for services through December 31, 2015, including necessary travel time, are attached hereto as Exhibit A. Attorneys' hourly rates for subsequent calendar years shall be provided to the City on or before November 1 of the immediately preceding calendar year.

In addition, Attorneys will charge the City fifteen cents per page for photocopying, and shall be reimbursed for legal messenger services, postage, filing fees advanced on the City's behalf, and other direct expenses. Attorneys shall not bill the City nor be entitled to payment for telephone or mileage expenses incurred in the performance of its duties.

**VI.
PAYMENT TERMS**

Fees and costs are due in full from the City upon billing by Attorneys. A service charge shall accrue at the rate of 12% per annum, but shall only be added to any balance remaining unpaid sixty (60) days after the statement date.

**VII.
TIME RECORDS**

Attorneys will maintain accurate time records describing the services performed and the dates upon which said services were performed, and shall provide a monthly statement to the City setting forth the time expended for such services.

**VIII.
AGREEMENT PERIOD**

This Agreement shall remain in effect until terminated. Each party shall have the right to terminate this Agreement upon thirty days written notice.

**IX.
INDEMNIFICATION/HOLD HARMLESS**

Attorneys shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of Attorneys in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

**X.
INSURANCE**

Attorneys shall maintain for the protection of the City a professional errors and omissions insurance policy with minimum coverage of one million dollars per claim and three million dollars annual aggregate.

CITY OF SELAH

KENYON DISEND, PLLC

By: _____
John Gawlik, Mayor

By: _____
Michael R. Kenyon

EXHIBIT A

**KENYON DISEND, PLLC
HOURLY RATE SCHEDULE THROUGH DECEMBER 31, 2015**

ATTORNEYS:

Partners and Senior Attorneys:

Michael R. Kenyon	\$295.00
Bruce L. Disend	\$295.00
Chris D. Bacha	\$260.00
Kim Adams Pratt	\$260.00
Robert F. Noe	\$260.00
Kari L. Sand	\$240.00
John "Jay" P. Long Jr.	\$240.00

Associate Attorneys:

Rachel B. Turpin	\$165.00
Danielle M. Evans	\$165.00
Ann Marie Soto	\$160.00

PARALEGALS:

Margaret C. Starkey	\$120.00
Sheryl A. Loewen	\$105.00
Pam M. Odegard	\$105.00
Mary A. Swan	\$105.00
Terry T. Curran	\$105.00
Kathy I. Swoyer	\$105.00



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING ACTION ITEM

11/12/2014 N – 1

Title: Ordinance Amending Section 4.34.040 of the Selah Municipal Code, “Occupations Subject to Tax – Amount”

Thru: David Kelly, City Administrator

From: Dale Novobielski, Clerk/Treasurer

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: Based upon the current level of participation in the City’s Low Income Senior and/or Disabled Rate Programs Utility Tax revenues will be reduced by approximately \$2,000 annually, or \$7 a month per customer.

Funding Source: Fund 001 General

Staff Recommendation:

Approve Resolution.

Background / Findings & Facts:

The reduction in Utility Taxes on City services provided to Low Income Seniors and/or Disabled customers, to the same level that is imposed on private company (electric, gas, etc.) services, will improve the financial ability of these citizens.



CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY



Recommended Motion:

I move to approve the Ordinance providing for a reduction in City Utility Taxes on customers participating in the Low Income Senior and/or Disabled rate programs.

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 4.34.040 OF THE SELAH MUNICIPAL CODE,
"OCCUPATIONS SUBJECT TO TAX – AMOUNT"

WHEREAS, the City Council wishes to amend section 4.34.040 to provide for a reduction in the Utility Tax rate for Low Income Senior and/or Disabled customers;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, does ordain that Selah Municipal Code be amended as follows:

SMC 4.34.040 amended as follows:

There is levied upon, and shall be collected from persons, including the city, on account of certain business activities engaged in or carried on, license fees or occupation taxes in the amount to be determined by the application of rates given against gross income as follows:

- (1) Upon every person engaged in or carrying on the business of selling or furnishing electric energy, a fee or tax equal to six percent of the total gross income derived from such business in the city during the period for which the license fee or tax is due;
- (2) Upon every person engaged in or carrying on a telephone business, a fee or tax equal to six percent of the total gross income, excluding revenues from intrastate toll, derived from such business in the city during the period for which the license fee or tax is due. "Telephone business" means the business of providing access to a local telephone network, local telephone switching service, toll service, cellular telephone service, coin telephone service, telephonic, video, data, or similar communication, or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating exchanges. For the purpose of this subsection, gross income does not include charges which are passed onto the subscriber by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this section, nor competitive telephone service which is a type that can be provided by persons that are not subject to regulation as telephone companies under RCW Title 80 and for which a separate charge is made;
- (3) Upon every person and/or entity engaged in or carrying on the business of selling or furnishing natural gas for domestic, business or industrial consumption, a tax equal to six percent of the total gross income derived from such business in the city during the period for which the tax is due. The city also imposes a use tax, equal in percent to the city's utility tax as now existing or hereinafter amended, for all customers purchasing out of state brokered natural gas;
- (4) Upon every person engaged in or carrying on the business of transmitting television by cable, a fee or tax equal to six percent of the total gross income derived from such business in the city during the period for which the license fee or tax is due;

- (5) Upon every person engaged in or carrying on the business of operating or conducting a water system for domestic, business or industrial consumption, a fee or tax equal to six percent of the total gross income derived from such business in the city during the period for which the license fee or tax is due;
- (6) Upon every person engaged in or carrying on the business of operating or conducting a sewerage system for domestic, business or industrial use, a fee or tax equal to six percent of the total gross income derived from such business in the city during the period for which the license fee or tax is due;
- (7) Upon every person engaged in or carrying on the business of operating or conducting a garbage or solid waste refuse collection system for domestic, business or industrial use, a fee or tax equal to six percent of the total gross income derived from such business in the city during the period for which the license fee or tax is due;
- (8) Upon the City is engaged in or carrying on the business of operating a water and sewerage systems for domestic, business, or industrial use, and where the city is in engaged in or carrying on the business of operating a garbage collection service, a fee or tax of equal to twenty-one percent of the total gross income derived from such business within the city during the period for which the license fee or tax is due. Provided that City utility customers participating in Low Income Senior and/or Disabled rate programs will only be charged a fee or tax equal to the rates imposed in sections (1) thru (7) for private utility company providers.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH,
WASHINGTON this 12th day of November 2014.

John J. Gawlik, Mayor

ATTEST:

Dale E. Novobielski, Clerk-Treasurer

APPROVED AS TO FORM:

Robert Noe, City Attorney

ORDINANCE NO. _____



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING ACTION ITEM

11/12/2014 N – 2

Title: Ordinance to Establish the Amount of Taxes To Be Levied upon Real and Personal Property in the City of Selah, Yakima County, Washington, and Fixing the Tax Levy for the Year 2015

Thru: David Kelly, City Administrator

From: Dale Novobielski, Clerk/Treasurer

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: Total \$ 1,476,643. Fund 001 General \$ 1,025,123, 103 Fire Control \$ 289,680, 110 City Street \$ 144,840, and 120 Library \$ 17,000.

Funding Source: Funds 001; 103; 110; and 120

Staff Recommendation:

Approve Ordinance.

Background / Findings & Facts:

To establish and levy the amount of real and personal property taxes to be assessed in 2015.

Recommended Motion:

I move to approve the Ordinance establishing the 2015 real and personal property tax levy.

ORDINANCE NO. _____

ORDINANCE TO ESTABLISH THE AMOUNT OF TAXES TO BE LEVIED UPON THE REAL AND PERSONAL PROPERTY IN THE CITY OF SELAH, YAKIMA COUNTY, WASHINGTON, AND FIXING THE TAX LEVY FOR THE YEAR 2015

WHEREAS, the City Council has held a Public Hearing on the revenue sources for the coming year's budget, including consideration of possible increases in property tax revenues for the 2015 calendar year, and

WHEREAS, the assessed valuation for the City is preliminary and is subject to change;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH does ordain as follows:

The City Council of the City of Selah, Washington, does make, determine and levy the amount of taxes to be assessed in 2015 against real and personal property situated within the corporate limits of the City as follows:

REGULAR LEVY	\$ 1,476,643*
--------------	---------------

**The regular levy represents the 2014 levy of \$ 1,427,444 adjusted for amounts resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property, and an increase of \$ 14,274, which is 1 percent of the 2014 levy, as allowed under the provisions of RCW 84.55.*

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 12th day of November, 2014.

John Gawlik, Mayor

ATTEST:

Dale E. Novobielski, Clerk-Treasurer

APPROVED AS TO FORM:

Robert F. Noe, City Attorney

ORDINANCE NO. _____



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING INFORMATIONAL ITEM

11/12/2014 P – 4A

Title: Parks Board Minutes – May 5, 2014

Thru: David Kelly, City Administrator

From: Monica Lake, Executive Assistant

Action Requested: Informational - No action

Board/Commission Recommendation: Not applicable

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Informational only

Background / Findings & Facts:

N/A

Recommended Motion:

N/A

City of Selah
Parks & Recreation Board Minutes
May 5, 2014

Regular Meeting
Selah Council Chambers
115 West Naches Avenue
Selah, WA 98942

A. CALL TO ORDER

Vice Chairman Callahan called the meeting to order at 4:10pm.

B. ROLL CALL

Members Present: Board Members Callahan, Neumeyer, Creach, Finch

Members Absent: Board Members Baranowski, Stokes, Pendleton, Smith

Staff Present: Ty Jones, Public Works Utility Supervisor; Charlie Brown, Recreation Manager; Monica Lake, Executive Assistant

Guests:

C. REVIEW OF MINUTES FROM THE March 3, 2014 MEETING

Board Member Neumeyer moved, and Board Member Creach seconded, approval of the March 3, 2014 minutes as written. By voice vote, support was unanimous.

D. COMMUNICATIONS None

E. GENERAL BUSINESS

1. Selah Cliffs Letter in Support of the Boy Scouts' Efforts

Vice Chairman Callahan said that Chairman Baranowski would like approval to send out a letter of support on behalf of the Parks Board. Consensus was unanimous.

2. Sunrise Park Status

Public Works Utility Supervisor Jones gave a brief update on the status of Sunrise Park, saying that a new bench and picnic table have been added. A brief discussion followed.

3. Status of new pool efforts

Recreation Manager Brown said that he attended a Selah Parks Foundation meeting, where they elected new members to proceed with the pool efforts. He noted that the new pool filters will arrive tomorrow, and will be installed prior to the new season.

Public Works Utility Supervisor Jones stated that they will start to drain and clean the pool next Monday, and make any necessary repairs to the fiberglass.

4. Status of any grant writing efforts (Volunteer Park, Civic Center)

Recreation Manager Brown talked briefly about applying for a community development lot grant for the Civic Center remodel. He gave an update on the grant application for Volunteer park, which was turned in last Friday, and noted that he would be traveling to Olympia next Tuesday to do a presentation to the board. He commented that the focal point of Volunteer Park is an all-inclusive playground so children with special needs can use the facility.

5. Volunteer Park PowerPoint presentation

Recreation Manager Brown did a presentation on Volunteer Park.

F. OLD BUSINESS

1. Wixson Park Gazebo update

Public Works Utility Supervisor Jones gave an update on the project, which had been completed, and passed around several photos of the gazebo.

2. Centennial Park Update **REMOVED FROM AGENDA**

3. Next meeting date – September 15th? (Sept 1st is Labor Day, and the Selah Downtown Association meets on September 8th.)

Vice Chairman Callahan opened discussion on the next meeting date. The Board Members unanimously decided to have the next meeting on September 15th at 4pm.

G. NEW BUSINESS **None**

H. PARK BOARD MEMBER REPORTS

Board Member Creach had no report.

Vice Chairman Callahan had no report.

Board Member Neumeyer had no report.

Board Member Finch had no report.

ADJOURNMENT:

Board Member Neumeyer moved, and Board Member Creach seconded, that the meeting be adjourned. By voice vote, the motion passed unanimously.

The meeting was adjourned at 4:32 pm.



**CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY**



COUNCIL MEETING INFORMATIONAL ITEM

11/12/2014 P – 4B

Title: Planning Commission Minutes – Corrections page 8 of June 17, 2014 Minutes, October 27, 2014 Minutes

Thru: David Kelly, City Administrator

From: Caprise Groo, Public Works Department Assistant

Action Requested: Informational - No action

Board/Commission Recommendation: Not applicable

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Information only

Background / Findings & Facts:

Information only

Recommended Motion:

Information only

10. Because the road to be provided under condition 8 will be a dead end road in excess of 150 feet in length, an approved area for turning around a fire apparatus shall be provided at 150 foot intervals along the roadway. Alternatively, a cul de sac with a 90 foot diameter can be installed at the terminus of the road. IFC 503.2.5

11. Two fire hydrants must also be installed along the road to be provided under condition 8. A fire hydrant must be provided for each 250 foot section of the road. Additionally, where hydrants are located along the road, that portion of the road must be expanded to twenty-six feet in width and the 26 wide sections shall extend and continue 20 feet north of the hydrant and 20 feet south of the hydrant's location. IFC D103.1, figure D103.1.

12. Fire lane signs as specified in the IFC D103.6 shall be posted on both sides of the road to be provided for under condition 8.

13. East Goodlander is scheduled to be improved in the near future. East Goodlander abutting parcel 181425-33030, which is the subject of a shot plat application herein, will be improved to include curb and gutter on the frontage of parcel 181425-33030. The applicant must either (1) install a sidewalk along the frontage of parcel 181425-33030 at the time that the curb and gutter are installed or immediately following installation of the curb and gutter; or, (2) the applicant must pay an amount to the City sufficient to pay for the installation of a sidewalk along the frontage of parcel 181425-33030. The amount of payment required shall represent the applicant's proportionate share of the cost of the sidewalk based on lineal footage and shall be based upon the City's engineering estimate for the costs of installation. In the event that the actual costs to install the sidewalk exceed the engineer's estimate, applicant is obligated to pay an amount in addition to the amount already paid so that sum of both payments does not exceed a total of 115% of the engineer's estimate.

Note: The short plat application requests the creation of lots in sizes that exceed the minimum required dimensions for lots within the R-2 zone. Although requested to do so by opponents of the proposed short plats, the Planning Commission is not recommending the imposition of any conditions further restricting the number of lots that be can be created as there is no legal basis to do so.

Although requested to do so by the opponents of the proposed short plats, the Planning Commission is not recommending the imposition of any conditions dictating what type of structures can be built on any of the individual lots created, the configuration of such structures, or any other conditions related to the construction of structures on the lots based upon speculation of what may occur at the site. There is no legal basis to do so at this time. Because the property is within the R-2 zone, a duplex may be constructed on each lot consistent with the zoning designation. The structures will go through the City's permitting processes to ensure compliance with applicable development and building codes. In the event Mr. Bowers seeks to construct something that is not otherwise expressly permitted within the City's codes, he will be required to go through review processes and through those processes there may be the imposition of certain conditions based upon what is actually presented as a development proposal at that time.

Chairman Quinnell called for any changes.

Mr. Noe: The commissioners for this will be voting.

Commissioner Pendleton motioned, Commissioner Smith seconded.

Chairman Quinnell called a vote ayes carry 3-0. (3-1)

Mr. Noe had Commissioners Pendleton, Smith, and Quinnell sign the document. (Commissioner Miller)

Chairman Quinnell moved to the next order of business.

2. New Business –

- a. Adopt text amendment to Sels'n Municipal Code, title 10 chapter 10.28 regulating Marijuana

Commissioner Torkelson returned.

City of Selah
Planning Commission Minutes
of
October 27, 2014

Selah Council Chambers
115 W. Naches Ave.
Selah, Washington 98942

A. Call to Order

The meeting was called to order by Chairman Quinnell at 5:35 p.m.

B. Roll Call:

Members Present: Commissioners: Miller, Torkelson, Smith, and Quinnell
Members Absent: Commissioner Pendleton,
Staff Present: Dennis Davison, Community Planner; Caprise Groo, Secretary
Guests:

C. Agenda Change None

D. Communications

1. Oral -None.
2. Written – None

E. Approval of Minutes

Chairman Quinnell had a revision to the minutes on page four, under OTHER FINDINGS number two. The maximum number of dwelling units allowed on the subject property under its current Low Density Residential land designation is **20 (4.07 x 5)**. The proposed density based on the Planned Development of 33 dwelling units increases the planned number of dwelling units in the urban growth area by 13. This section was corrected to state: The maximum number of dwelling units allowed on the subject property under its current Low Density Residential land designation is **24 (4.7 x 5)**. The proposed density based on the Planned Development of 33 dwelling units increases the planned number of dwelling units in the urban growth area by 9.

Mr. Davison: In these issues, Mr. Samples Comprehensive Plan Amendment and rezone and the Code Amendment to allow for duplexes in Preliminary Plats were remanded back to the Planning Commission. The duplex in the R-1 zone has been rescheduled. Mr. Durant and I will meet with Mr. Sample and get more information so the City Administrator can tell us how to proceed with his application.

Mr. Torkelson: So the next meeting will be the 4th.

Mr. Davison: Unless there is an emergency, then yes it has already been advertised. I am trying to get Mr. Smeback, Mr. Schmid and Mr. Sample together to discuss what options there are other than a duplex permitted in a Preliminary Plat. Mr. Sample would like to see if the lot can be split. I am against it. You would have a 4500 sq. ft. lot instead of a true duplex lot of 9000 sq. ft. So the three of us are going to sit down and discuss what they think is acceptable. Then I will report to you and if we adopt something, it will then then go back to the Council unless there is nothing adopted.

Chairman Quinnell: Requests the approval or disapproval of the minutes.

Commissioner Smith motioned to approve the Minutes with the revision stated.

Commissioner Torkelson seconded the motion.

Chairman Quinnell called for a voice vote and the minutes were passed with a vote of 4-0.

Commissioner Miller: Questioned a section on the June minutes. On page 8, a revision to the 3-0 vote was changed to 3-1 and all 4 commissioners signed the document.

Commissioner Quinnell: We do not have those minutes here. We can note it for the meeting but it's not on the agenda.

Commissioner Torkelson: Were those minutes approved at the last meeting?

Mr. Davison: Yes they were. We can still make the correction.

Commissioner Smith: Let's put it on the agenda for the next Commission meeting.

Chairman Quinnell:

F. Public Hearing

1. Old Business - None
2. New Business - None

G: General Business

1. Old Business – None
2. New Business- The Short Course on Local Planning: Section ii-2, iii-2-iii-14 and 2-i-2-30

Chairman Quinnell: Has every one had a chance to read that? (The Short Course on Local Planning: Section ii-2, iii-2-iii-14 and 2-i-2-30 attached)

Mr. Davison: We sent this to you because the Council is going to get a copy of this too. It comes out of the Short Course on local Planning. Mr. Davison highlights Appearance of Fairness, Conflict of Interest, how to develop conclusions, what Commissioners are responsible for, Freedom of Information, what type of meetings, etc. Mr. Davison stated that Mr. Noe was unavailable tonight, but that if the Commissioners had questions for him to please write them down so that Mr. Noe could respond to them later in the week. Mr. Davison also discusses legislative and quasi-judicial activities.

Mr. Torkelson believes more Executive Sessions and Study Sessions are needed to make informed decisions.

Mr. Davison discusses Open Public Meetings and the difficulties of Public forums, continuing a meeting and ex parte contact.

Commissioner Miller: So in some ways there is a risk in doing that?

Mr. Davison: Sure.

Mr. Davison and Mr. Miller discuss ex parte contact and what a Commissioner should do.

Commissioner Smith: Who do I talk to if I have a specific question?

Mr. Davison: You could talk to the City Attorney. Are there any questions for the City Attorney or about the information in the packet?

Mr. Miller: Does the city have errors and omissions insurance? (Page iii-12 number 9)

Mr. Davison: The City has insurance. Discussion ensues. There is an application so you can become members of the Planning Association of Washington. Discussion ensues. Any other questions?

Chairman Quinnell: Any other questions? Lisa will head the next meeting.

Commissioner Smith: Why?

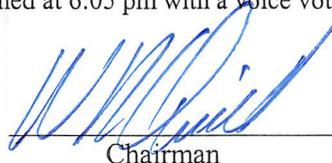
Commissioner Quinnell: I am recusing myself. Commissioner Smith is Vice Chair.

H. Reports/Announcements

1. Chairman –
2. Commissioners –
3. Staff –

I. Adjournment

Chairman Quinnell asked for a motion to adjourn .Commissioner Torkelson moved to adjourn and Commissioner Miller seconded the motion. The meeting was adjourned at 6:05 pm with a voice vote of 4-0.



Chairman

Introduction

The Short Course on Local Planning has been a service of PAW to the citizens of Washington state for more than 30 years. Over 25,000 people have attended PAW sponsored training sessions, and many have benefited from the Short Course training and materials. The Short Course has always been the work of dedicated volunteers. This edition of the Short Course mirrors the objectives originally identified 30 years ago to provide:

- **An introduction to planning and the planning process, which will demystify planning and make the process more understandable and, therefore, more accessible to the public**
- **A guide for planning commissioners and council members, who, in formulating their local plans and regulations, must confidently be able to follow established procedures for hearings and decision-making**
- **A source of practical problem-solving information, giving insight as to how a commissioner, council member, or citizen participant can be successful in the planning arena**
- **A resource guide that will aid in understanding technical planning issues and guide further research**
- **A guide that may be used to teach planning issues, using selected chapters as teaching outlines**

This Short Course is dedicated to you, the devoted men and women who serve our communities as planning commissioners and city and county representatives, who give so much to make our communities a better place to live.

*Planning Association of Washington
Chris Parsons, AICP
President*

How This Manual is Organized

The Planning Association of Washington's Short Course on Local Planning provides a detailed overview of the planning process, its legal basis in Washington state, and specific legislation, tools, and techniques that can be used in local planning efforts. It will answer many of your basic questions, but is not intended as legal advice. For specific information on legal issues, you should consult the appropriate legal counsel in your jurisdiction.

Topics included in Chapters 1-4 of this Short Course proceed from essential background on the legal and practical objectives of planning and the public process, to highlights of growth management legislation and constitutional rights and responsibilities. Chapters 5-8 present specific information on development tools and techniques, environmental legislation, shoreline management, and county/tribal planning issues. Chapter 9 provides information on transportation planning and Chapter 10 reviews annexation procedures. A brief summary of each chapter follows.

Short Course at a Glance

The first section of this manual, "New to the Planning Commission? Some Key Questions Answered," raises a number of issues which arise frequently at Short Course sessions around the state. This section provides basic information only; we encourage you to read the detailed treatment of these topics contained in the manual.

Next, is a one-page explanation of "How to Arrange a Short Course" for your community.

Chapter 1 provides an in-depth look at the "Legal and Practical Objectives of Planning," including how planning is done in Washington state, and its constitutional and statutory basis.

Chapter 2 is crucial reading for any planning commissioner or elected official. Addressing "Citizen Participation and The Public Process," it covers the practical and legal aspects of how to involve community residents in land use planning; how to hold meetings, the proper treatment of public and confidential documents, the Appearance of Fairness doctrine, and guidelines for making public decisions and creating records.

Chapter 3 presents a thorough overview of the Growth Management Act (GMA), which defines land use planning in Washington state. Requirements of the GMA are detailed for local planning, including comprehensive planning, development regulations, official controls, and the concept of "concurrency."

Chapter 4 deals with "Constitutional Issues and Responsibilities in Planning." Two key concepts are presented and discussed: due process and the taking issue.

Chapter 5, "Development Tools and Techniques," covers the platting process, site plan review, common platting problems, and vested rights.

Chapter 6 discusses Planning and Environmental Legislation, including the State Environmental Policy Act and Water Quality legislation.

Chapter 7 summarizes the purpose and intent of the Shoreline Management Act and its shoreline master program and permit processes.

Chapter 8 introduces County/Tribal Planning Issues, with information on coordinating with tribal governments and fact sheets on Indian Tribes in Washington State.

Chapter 9 provides fundamentals to Transportation Planning, including transportation improvement programs and steps in developing a transportation plan.

Chapter 10 outlines the Annexation procedures and implications when a city annexes property into its jurisdictional boundaries.

*New to the Planning Commission?
Some Key Questions Answered*

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New to the Planning Commission? Some Key Questions Answered

Serving on the planning commission is one of the most rewarding ways you can serve your community. As a commissioner, you will help set the long-term direction or vision for your community's future. Although the planning commission is an advisory body which rarely makes final decisions, it is one of the most important groups in local government.

In recent years, growth management and environmental legislation have emphasized the importance of land use issues. You will be advising your community on these issues through adoption or amendment of the comprehensive plan, and will help implement its subdivision, zoning, and shoreline regulations. You may review applications for individual projects ranging from mobile home parks to shopping centers.

New planning commissioners must get up to speed quickly on the structure of local government and the laws and procedures that govern their actions. Following are the answers to 10 questions that are commonly asked; we suggest you read them before conducting your first public meeting.

1. I'm new to our planning commission. I don't really have a sense of the key players in the planning process. Who are they and what do they do?

Four groups have key roles:

- 1) **City council or board of county commissioners.** Both are elected bodies which appoint planning commission members (or the board of adjustment, discussed below). The city council or board of county commissioners has ultimate decision-making authority for all land use planning issues.
- 2) **Planning commission.** The planning commission makes recommendations to the city council or board of county commissioners for changes and updates in the comprehensive plan and the zoning code. In most jurisdictions, the planning commission also reviews individual applications for variances, conditional use permits, site plans, subdivisions, shoreline permits, and rezones.
- 3) **Board of adjustment.** This body hears appeals on land use decisions. In some communities, the planning commission acts as the board of adjustment. In others, the city council or board of county commissioners assumes this role.

4) **Hearings examiner.** The decision to have a hearings examiner is a local option. When a community does have one, this hired professional replaces the board of adjustment. The hearings examiner takes the place of the planning commission in hearing applications for land use permit applications, such as variances and conditional use permits. Having a hearings examiner frees up the planning commission to deal with policy issues and long-term concerns of the community.

2. **Can you tell me more about the planning commission?**

In Washington state, a planning commission is an advisory body appointed by the city council or board of county commissioners to provide advice and recommendations on land use issues at the local level.

Although the key word here is *advisory* and planning commissions don't normally make the final decision, it is probably one of the most important bodies in local government.

You'll spend lots of evenings in meetings. (Don't be fooled if those who invited you to serve on the planning commission gave you a sales pitch that sounded something like "You only meet twice a month for a couple of hours.") In a survey done for the City of Renton, it was found that the planning commission met more often than all other advisory boards combined, and more often than the city council itself. We're stating this up front so that you'll understand the amount of serious work that is expected of most planning commissions. Being a planning commissioner means making a serious time commitment for the required preparation and the commission meetings.

3. **What if our elected officials (city council/county commissioners) ignore a recommendation of the planning commission, but we all know it's a good one?**

When it happens—and sooner or later it will—you have several choices:

First, you can swallow hard, accept the political decision, and continue to do your best to provide thorough and thoughtful recommendations. It's important to keep in mind that both the planning commission and the elected body which appointed you are working from the same set of policies and regulations. If there are differences in interpretation, then these differences need to be clarified. One strategy for keeping communication clear is presented below.

Second, you can resign in protest. Although this sometimes seems like the only ethical option, we encourage you to think very carefully before you exercise it. If you quit, it deprives the commission of your experience and expertise, and it always takes time for a new person to get up to speed once appointed.

Third, most effective planning commissioners have decided that they can increase the number of times their recommendations are accepted with minimal or no modification by actively working to maintain good communications with the city council or board of county commissioners.

There are a number of strategies that have been used successfully around the state over the years, and we encourage you to use one of them (or invent one of your own).

One of our favorites comes from Bob Patrick, former Community Development Director at the City of Lacey. In Lacey, the planning commission and city council sit down together twice each year to discuss issues and concerns. Each session is followed by a bus tour of the City, so everyone can see first hand the sites and locations which are the focus of local land use issues.

Another good option is to send out a newsletter, like the one distributed by the Thurston Regional Planning Council. In this concise and well-written newsletter, anyone who's interested can find out exactly where the county and all of its cities are in progress on key growth management planning elements.

4. If you were to identify the one factor which can spell success or failure for a planning commission, what would it be?

There are really two answers to this one.

First, the initial appointments made to the planning commission are crucial. Elected officials must appoint quality, committed individuals, who represent the community's diverse social and political interests, as well as its geographic diversity.

Second, the planning commission needs a strong chairperson. Regardless of whose "turn" it is to serve as Chair, if you pick a nice but unassertive person who can't control controversial meetings, and who isn't willing to put in the time necessary to get the agenda together and make reminder phone calls, then the commission as a whole will suffer. Your Chair needs to be a dedicated, no-nonsense, reasonably high-energy person—someone who can run a tight meeting with a sense of fairness.

5. Our planning commission Chair called for an "executive session" during a meeting a few weeks ago, so we could discuss the qualifications of candidates who had applied for our City Planner position. Someone in the audience stood up and said what we were doing was illegal, because of the "Open Public Meetings Act," and that all business of the planning commission had to be conducted in public. Yes or no?

Your Chair was perfectly justified in calling an executive session, because you were evaluating qualifications of applicants for public office. It should be stressed, however, that there are very few times when your planning commission will need to hold an executive session. (See Chapter 2 for more information on the Open Public Meetings Act.)

Had you been talking about the salary, wages, or general conditions of employment for the planner position, the discussion should have been public. But personnel matters, including performance reviews, can be conducted in executive session; as can discussions of litigation or potential litigation with your attorney, and real estate negotiations where publicity is likely to cause an increase in the price your city, town, or county will have to pay.

If you plan to hold an executive session, the planning commission Chair must take specific procedural steps (see Chapter 2).

Regular Meetings

The basic intention of the Open Public Meetings Act is that the public's business be conducted in public; and that the planning commission must establish a time for its regular meetings.

Special Meetings

If you need to hold a special meeting, either your chairperson or a majority of the members can call for it. But you will need to notify all members of the planning commission, as well as media representatives who are on record as having requested notification (i.e., newspapers, local radio, and television stations). Your notice must be in writing, at least 24 hours prior to the special meeting, and state the place and nature of the business to be transacted. You will be limited in making final decisions to those announced business items at the special meeting.

6. I've been on the planning commission for a while now, and I'm still not clear on the difference between our "legislative" and "quasi-judicial" activities.

Everything you do as a planning commissioner will fall into one of these two categories. It's important to be clear on the difference, because when you're operating in a quasi-judicial mode, you're subject to the Appearance of Fairness Act.

Some basic definitions:

First, a legislative action is one which will affect the entire community, not just an individual property owner or single piece of land. Examples include updating or revising your community's comprehensive plan and adopting zoning code text amendment ordinances. When you change the community's comprehensive plan or zoning code, the rules change for everyone. No one is seeking or being granted special consideration.

A quasi-judicial action is one in which you're sitting "like a judge," evaluating a specific case or proposal submitted to you by individual parties. Examples include applications for variances, special use permits, and subdivisions. In each case, you are being asked to make a decision that affects an individual (or family, partnership, or corporation), but not the entire community. You are acting like a judge, weighing the merits of an individual case before the court. Guilty or not guilty? Grant the variance or deny it?

When you're dealing with these individual applications and project proposals, you are held to very high levels of scrutiny. These are contained in the Appearance of Fairness Doctrine (see Chapter 2 for a detailed discussion). Basically, all of your actions when you are in your quasi-judicial role must not only be fair in fact, but must appear fair to the average person.

The question you must ask yourself is: Would a disinterested person, apprised of the totality of your personal interest or involvement in the matter which the planning commission is considering, be reasonably justified in thinking that your involvement might affect your judgment in reaching a decision?

The place where most planning commissioners get into trouble on this one is a direct result of their well-intentioned attempts to be open and accessible to their friends and neighbors. It's really difficult to cut someone off when they call you up at home, or approach you on the street or at the coffee shop and start to tell you what they think about a particular proposal

which you're considering, or are about to consider, at the planning commission.

But when you listen to their thoughts outside a regular meeting of the planning commission, regardless of whether they are for or against the proposed project, you are engaging in what the law calls an "ex parte" communication. Ex parte communications are forbidden, because they violate the intent of the Appearance of Fairness Doctrine: Regardless of whether any single "off the record" conversation influenced your final vote on a proposed project or application, it just doesn't look right. The law says your actions must appear fair as well as be fair in fact.

So what do you do if you get a letter at home, and read it through before you realize it's an attempt to lobby you to approve a new 80-home subdivision? Or what if a friend grabs your arm at the post office and blurts out his deeply held thoughts that the thus-and-so project, if approved, is going to change forever the rural character of your town? (He knows this because he worked for years as a real estate appraiser in a very similar community in California, and he can tell you as a real estate professional exactly what a proposal like this one did to that town and its tax base.)

When a situation like one of these occurs, you need to take immediate action at the next planning commission meeting. You'll need to announce and place on the record at the beginning of the discussion of that item the substance of any written or oral ex parte communication which you've received. If you feel that, regardless of this contact, you'll still be able to render a fair decision, you need to state that for the record as well.

At this point in the meeting, you've opened yourself up for a challenge from anyone who feels that you've been tainted by the ex parte communication. If you're challenged, and don't step down for the duration of the discussion and decision on the proposal under consideration, you've left yourself and the commission wide open for a legal challenge after you've rendered your recommendation.

Our advice if you're challenged? Consult with your city attorney or county prosecutor, if that person is available: You may be able to stay and participate. But in the absence of legal advice to the contrary, **step down and leave the room.** Don't take a seat in the audience, from where you can later be accused of sending "baseball signals" to the remaining members of the commission to influence their votes on the

proposal. Instead, go home and take a well-deserved evening off.

After the Doctrine of Appearance of Fairness was first enacted, it didn't take long for clever applicants to figure out that if they could just taint those members of the commission who would probably oppose their application, they could then challenge them on the grounds of having received an ex parte communication. These planning commissioners would then be forced to step down and—bingo!—an approved application.

The problem with this sneaky strategy is that if enough members are disqualified, the planning commission lacks a quorum, and can't do business. A clever legal solution called the Doctrine of Necessity was enacted to counter this lack of a quorum. Basically, if enough members of the planning commission are challenged to make it impossible to obtain either a quorum or a majority vote, then those challenged members can return to their seats and participate fully in the debate and the decision. All they have to do is disclose publicly the reason for their disqualification before they render their decision.

A simple three step ounce-of-prevention strategy is definitely worth a pound of cure on this one. We recommend that the Chair inquire at the beginning of the discussion of each agenda item if any member of the planning commission has any ex parte oral or written contacts to report for the record. The Chair should then ask if any member of the planning commission is aware of any appearance of fairness violations which would prevent his or her participation on the quasi-judicial matter before the commission. Once these have been reported, the Chair should solicit from members of the audience any challenges they wish to pose to individual commissioners based on what the commissioners have just said. These three steps should take place before testimony on the project or proposal begins.

It's worth noting at this point that if no one in the audience raises any challenges right here, then they've waived their right to challenge the participation of any member of the commission later on. This is their one opportunity. If they're silent, they're agreeing to let all unchallenged members of the commission hear the testimony and render a decision.

The following guide covers key procedures for a successful quasi-judicial public hearing:

SHORT FORM OF PROCEDURES FOR QUASI-JUDICIAL PUBLIC HEARINGS

- 1 Chairman declares the public hearing is open.
- 2 Chairman states that everyone present will be given an opportunity to be heard; however, the commission or council does have a policy of closing meetings at 10:00 p.m. (or your own closing time). State that the hearing is being recorded and that prior to speaking, individuals should state their names and addresses.
- 3 Appearance of Fairness.
 - (a) Chairman requests anyone who objects to the Chairman's participation, or any other commission or council member's participation, to please state so now and give the reasons for the objection.
 - (b) Chairman asks the commission or council members if any have an interest in the property or issue. Chairman asks commission or council members if they can hear and consider this matter in a fair and objective manner.
 - (c) Chairman requests any member of the commission or council to place on record the substance of any communication each has had outside of the hearing with opponents or proponents on the issue to be heard. After the communication is placed on the record, the Chairman should request whether any interested parties wish to rebut the substance of the communication.
- 4 Chairman requests staff to make its presentation.
- 5 Applicant invited to comment.
- 6 Chairman invites comments from citizens in favor of the proposal.
- 7 Chairman invites comments from citizens against the proposal.
- 8 Chairman invites applicant to rebut the opposition.
- 9 Additional comments from those against and those for the proposal should be recognized, if needed.
- 10 Chairman requests whether the commission or council members have questions of the applicant, citizens, or staff.
- 11 Chairman declares the public hearing closed.
- 12 Commission or council deliberates on the record, discussing Findings of Fact and Conclusions.

7. At our planning commission meetings, we do a pretty good job taking minutes of the major issues and decisions. But one of our members heard recently that having hand-written minutes may not be good enough. (Our secretary does type them up later so they're nice and neat.) What should we be doing, as far as record keeping goes?

You really need to tape record all of your hearings. If one of your decisions is appealed, you must produce a word-for-word ("verbatim") transcript of the hearing for the reviewing court. If you can't provide this verbatim transcript, the court may order you to re-hear the issue.

It has been suggested—not entirely in jest—that every new planning commissioner should have to transcribe at least one

hearing tape onto paper. Why? Because it proves how difficult it is to make sense of a poorly done meeting tape. All you need is a podium microphone which isn't working well, a couple of commissioners conversing privately in front of a desk-top microphone, somebody else coughing or rustling a stack of papers, and you've got a real auditory mess. Add to this a series of exhibits (informally identified as "that big map," "the other map," and "the second site plan you showed us,") and you'll have a hearing tape which is nearly impossible to transcribe.

To produce accurate, word-for-word meeting tape transcripts that will stand up on appeal:

1. Have speakers identify themselves each time they speak.
2. The Chair must control the testimony and discussion: Allow only one speaker at a time.
3. Assign each exhibit a letter or number designation. Be sure speakers reference those designations in their testimony.
4. If the meeting is packed with a large group organized to support or oppose an application, the Chair should limit redundant testimony to save time. Members of the group should be instructed to state that they agree with the previous speakers' testimony. You can further limit each participant's testimony to a 5-to-10-minute summary. (Planning commission meetings shouldn't run until 1:00 or 2:00 a.m. Adopt a reasonable cut-off time, such as 10:00 p.m., publicize it in your rules of procedure, and stick to it. If you need to continue after the cut-off time, do so another night.)
5. If any members of the public become unruly or obnoxious, the planning commission can expel them. If the meeting still cannot be controlled, it can be adjourned to a different place and time and can exclude the public, except the media.
6. Before closing a hearing to further testimony, be sure both sides of the issue have adequate time and opportunity to present their cases and arguments. Regardless of public sentiment in

your community, the applicant is always entitled to a fair hearing.

8. After our commission has heard all the testimony and it's time to make a decision, our Chairperson likes to go around the group, kind of informally, and see what each of us thinks, before we actually vote. How do you feel about this as a procedure?

It's not a procedure we recommend. Although the Chair may ask if anyone has further questions or needs additional information, a planning commission meeting is not the place for informal "straw votes." Once testimony has ended, the Chair should call for a motion, facilitate a full and complete discussion, and call for a formal vote on the issue before the commission.

Always cite the conditions in your local ordinance or code which pertain to the application at hand.

The Chair should cite the relevant ordinance or code, and conditions to be satisfied. In the City of Brewster, for example, variance applications must satisfy three conditions. The Chair should restate them for the record. (See Appendices 1 and 2 of Chapter 5. Although it's intended primarily for city councils, the material is relevant for planning commissioners.)

Always cite the evidence presented which, in your judgment, supports granting or denying the application.

Each member should cite the convincing evidence in his/her vote to approve or deny the application. After citing the evidence, the person should state how he or she voted. The combined results, tallied in the vote, will provide the basis for formal collective findings and conclusions. (See Chapter 2.)

9.

As a planning commissioner, can I be sued for the actions of our planning commission?

Yes. You owe it to yourself to check with your city or county to make sure the municipality you serve has errors and omissions insurance, or a self-insurance program which specifically covers you as a planning commissioner.

As a member of an advisory committee, your actions are normally not the cause of any decision which would result in damages. A different result could arise if a proponent (or opponent) of a project before the planning commission was able

to demonstrate a hidden financial interest on your part or an intent on your part to hinder the project, independent of the applicable rules and regulations.

In those rare cases where liability is found, it normally runs to the municipality. The key to peace of mind is to assure yourself that an adequate insurance program is in place. An insurance program provides a defense whether or not there is liability and coverage for any damages found.

The only exception to this general rule is a violation of the Open Public Meetings Act, for which you can personally be assessed a penalty of \$100. (Please see Chapter 2 for a detailed discussion.)

10. It seems to me that our planning commission wastes a lot of time at meetings. We're always waiting for a couple of commissioners to wade through their information packets before we can get on with the evening's business. Any suggestions?

In most communities, planning commissioners have a lot of reading to do. There are staff reports, draft planning documents, applications, zoning text amendments, training materials, and a host of other documents.

You really owe it to yourself—not to mention your fellow commissioners—to set aside the time necessary to read through all this stuff before the start of the meeting. You also need to attend the meetings. If you don't, there may not be a quorum, and no business can be transacted.

A good chairperson can help motivate people. But it's really a matter of taking your personal obligation seriously. Many people, including the elected body which appointed you, are counting on your good work. And that means staying current on your reading. Please spend the time necessary to come to meetings prepared.

It's fair to say that your service on the planning commission will go through phases. There will probably come a time when you know in your heart of hearts that it's time for you to do something else. Perhaps you've accomplished everything you set out to do when you agreed to serve. Perhaps personal, family, or business obligations are demanding more time than they used to. Perhaps community service of another sort has caught your interest. You will leave a generous legacy to the commission and to your community if you recognize these symptoms, and step aside in a timely way so that someone else

can serve in your place. This is perhaps the ultimate act of dedication.

How to Arrange a Short Course

To arrange a short course for your community, please contact:

Short Course Coordinator
Growth Management Services Program
Washington State Department of Community, Trade and
Economic Development
P.O. Box 42525
Olympia, Washington 98504-2525
Telephone: (360) 725-3000
Fax: (360) 753-2950
E-mail: shortcourse@cted.wa.gov

Municipal Short Courses typically are three hours long and are held in the evening. Speakers usually include a land use attorney and two planning directors or senior planners. All are volunteers dedicated to improving the quality of local land use planning in Washington state.

Topics covered during the Short Course generally include the legal basis of planning in Washington state, comprehensive planning and citizen participation, and plan implementation and the role of the planning commission. Additional topics can be covered in response to your community needs. There is no charge for the course or the handout materials.

PAW is committed to providing regional Short Courses whenever possible, which provide training to larger audiences than the basic municipal course. Regional Short Courses can be half or full day events, and are often held in conjunction with other conferences and workshops. PAW has a policy of providing financial support to communities and organizations wishing to host regional Short Courses. Please contact the Short Course Coordinator for more information on hosting a regional Short Course.

PAW
Planning Association of Washington

Membership Application

Membership Options

Institutional: \$60.00

Two representatives from any public agency, private organization, or firm to be registered under a single membership number. Additional members may be added under the same membership number at the rate of \$35.00 each.

Individual: \$40.00

Offered to those not affiliated with an Institutional Membership.

Student: \$20.00

All the benefits of an Individual Membership at a reduced rate. A limited number of sponsored memberships are also available to students at no charge; contact the PAW office for more information.

Individual or Institutional 1

Name _____

Title or Position _____

Company or Agency _____

Address _____

City, State, Zip _____

Phone _____ Fax _____

Email (for access to PAW listserve) _____

Institutional 2

Name _____

Title or Position _____

Company or Agency _____

Address _____

City, State, Zip _____

Phone _____ Fax _____

Email _____

Additional

Name _____

Title or Position _____

Company or Agency _____

Address _____

City, State, Zip _____

Phone _____ Fax _____

Email _____

Membership Dues

Institutional Membership	\$80.00	\$ _____
___ Additional @ \$35.00 each		\$ _____
Individual Membership	\$40.00	\$ _____
Student Membership	\$20.00	\$ _____

Sponsorships

___ Student Sponsorships @ \$20.00 each	\$ _____
Short Course Support	\$ _____
TOTAL AMOUNT ENCLOSED	\$ _____

Make checks payable:

Planning Association of Washington
 603 Stewart Street, #610
 Seattle, WA 98101-1275

___ Please do not include my listing in this year's roster.

___ Please contact me about advertising opportunities in the membership roster.

Applications received before February 15 will be included in the annual membership roster. Applications received after October 1 will include the following year.

Sponsorship

Members are encouraged to sponsor Student Memberships and to lend support to the Short Course. Simply enter your sponsorship amount where indicated.

CHAPTER 2.

*Citizen Participation and
the Public Process*

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Growth management challenges Washington communities to deal effectively with difficult issues. Addressing these issues requires a thorough understanding of citizen participation and the legal requirements of the public process.

The first part of this chapter, *Citizen Participation*, focuses on the role of community residents in land use planning. It also introduces the most popular public involvement techniques local governments can use to encourage citizen participation, and guidelines for planning successful public meetings and work sessions.

The *Public Process*, which follows, provides an overview of the legal requirements for public involvement, meetings, and access to records. It also outlines how to introduce properly, deliberate, and adopt municipal codes and ordinances, including the Appearance of Fairness doctrine.

Part I: Citizen Participation

A. What is Citizen Participation?

Citizen participation in community affairs is as old as democracy; yet any attempt to define citizen participation is difficult. Citizen participation means different things to different people. Some view it as the task of electing representatives and voting on specific issues. Others define it as having an active voice in influencing local government decisions.

In land use activities, for example, citizens can testify at a public hearing; attend a workshop to create goals for the community comprehensive plan; serve a term on the planning commission; or answer a public opinion survey to identify community planning priorities. In other words, citizen participation in local government involves the people, in some fashion, in land use decisions. The traditional roots of contemporary participation are found in the town hall form of direct democracy. The fundamental justification for citizen participation is the premise that people have a right to participate in decisions that affect them.

Citizen participation is an established part of the land use planning and regulatory process in Washington state. All state planning laws require citizen participation—through public hearings—before plans or regulations are adopted, or before granting land development permits.

Emphasis on citizen participation in Washington has increased significantly following the Growth Management Act of 1990. The goals of the Act include, "Encourage the involvement of citizens in the planning process."¹ Although the Act does not further define citizen participation, the procedural criteria for adopting comprehensive plans and development regulations stress "that the process should be a 'bottom up' effort, involving early and continuous public participation, with the central locus of decision-making at the local level."²

The Growth Management Act also states:

*"Each county and city...shall establish . . . procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments."*³

This requirement provides overall guidance, but leaves local governments free to tailor a more detailed definition of citizen participation to fit community needs.

B. Who Should Be Involved?

State planning laws and local ordinances spell out the need to involve elected and appointed officials closely in local land use planning. A broad range of citizen groups and committed individuals (generally referred to as "citizens" or "the public") must also be involved. A brief overview of these participants includes:

City councils and boards of county commissioners set policy, make final decisions on plans and land development

permits, adopt ordinances, approve budgets for planning, and appoint members of the planning commission.

Planning commissioners are volunteer citizens with legal responsibility to review plans and projects. They do not make final decisions, but must make recommendations before elected officials can adopt comprehensive plans. Planning commissioners are non-partisan appointed officials who represent the general values of the community in land use decision making. They also serve as a sounding board for new ideas, promote community interest in planning, and furnish leadership in formal citizen participation programs.

Most larger cities in Washington state and its 39 counties have a professional planning staff, who bring technical expertise and knowledge to the land use planning process. Historically, the planning staff serves as advisers to elected officials and planning commissions. They conduct studies, administer planning regulations (such as zoning and subdivision ordinances), and are a resource for the public on land use planning activities. In smaller communities without professional staff, consultants sometimes are hired on a limited basis to provide technical assistance.

Typically, nearly everyone outside this formal structure who could be involved in the land use planning process is termed "the citizens" or "the public"—neither entirely appropriate. Citizens in a community are not a single homogeneous entity. They represent a broad spectrum of ideas and opinions, often with conflicting goals and values. The "citizens" are a diverse collection of individuals and groups: neighborhood associations; public interest groups, such as the local chapter of the Sierra Club; or special interest groups like the local chamber of commerce. Many are individuals intensely interested in planning issues, while there are citizens who pay little or no attention to the community's land use planning activities.

What these diverse groups share is a willingness to volunteer some of their free time for community planning activities. Motivations to participate range from believing that citizens must be involved in community affairs to maintain the rights and privileges of a free democratic society; to reasons of self interest, prestige, professional recognition, or an increase in business contacts.

Not everyone is interested in a formal citizen participation program. However, all citizens in the community must be given an opportunity to express their views and concerns, and

have them considered as decisions are made. Local government must make opportunities for citizen participation in land use planning accessible to everyone. It is up to the citizens to take full advantage of these opportunities.

C. Citizen Involvement: A Matter of Timing

No matter when officials invite or recruit citizen participation in land use planning, it will not be soon enough for some interest groups. Others will complain that participation is starting too early. Controversy over the topic of when to invite or recruit citizen involvement can only be settled by local officials. Citizens can be involved from the beginning, or at selected steps in the process.

Citizen mistrust, or lack of support for plans and projects, often has more to do with a lack of opportunity to participate early in the project than on its merits. Citizen participation in the earliest stages of land use planning will save time and agony for officials and planners in the long run. The longer participation is put off, especially in major planning or development issues, the more likely that rumor and misinformation will spread. When this happens, officials spend more time explaining what is not true than reviewing the pros and cons of the project.

Another good reason for early participation is to identify disagreements or conflicts. Conflicts are abundant in land use planning. A healthy airing of conflicting views early on encourages creative problem solving and productive conflict management. Delaying citizen participation does not reduce or avoid conflicts. Conflict can cause poor utilization of resources, delay important planning efforts, and, on occasion, result in the loss of desirable development projects.

Citizen participation efforts will fail if the deciding officials have not defined their expectations and responsibilities at the beginning. Elected and appointed officials must make a strong public commitment to announced citizen participation activities. They must define clearly what the purpose of any formally announced participation program will be; and there should be a written document that clearly states how officials will invite, review, and process citizens' information. People are more likely to devote time and energy to local planning activities if they know their officials are accountable.

D. Methods for Encouraging Citizen Participation

Citizen participation must be carefully planned and organized. Activities should be simple, straightforward, and manageable by officials, planning commissioners and staff; and designed to fit local values and available resources.

The extent and intensity of any participation activity should match the importance of the issue. Widespread participation is desirable when comprehensive plans or land development ordinances are being created or updated. Participation efforts can be on a smaller scale if the issue mainly interests a particular neighborhood or area.

The best that can be done in any community is to see that citizen participation activities are open and accessible to anyone who wishes to be involved; that they do not require citizens to have special technical knowledge; and that there are clear lines of responsibility and accountability.

Two methods are key to successful citizen participation: interaction and public information. Public information methods are a time-honored way to inform citizens about land use plans and projects. Interactive methods create a dialog between citizens, elected and appointed officials, and professionals.

1. Public Information

Citizens need to be informed about land development plans and projects, and armed with the facts they need to participate constructively. Citizens must also be informed of specific opportunities for involvement and how their participation will influence land use decisions. Public information methods reach large audiences, stimulate interest in community planning, announce citizen participation activities and events, provide notice of public hearings, and inform the public of actions and decisions.

Following are just a few examples of traditional public information methods:

Public Information Methods

Newspaper, Television, and Radio		
Feature Story	Press Conference	News Coverage
Legal Notice	Insert	Paid Advertisement
Editorial	Talk Show	Public Service Message
Other		
Direct Mail	Newsletter	Video Tape/Slide Show
Hotline	Displays & Exhibits	Documentary Films
Speakers Bureau	Telephone Tree	Brochures

The best way to select public information tools is to identify the objective and audience to be informed, and choose the methods based on skills and available budget. Cooperation from the local media is one key to maintaining a solid public information program. Local planning agencies should include funding for public information activities in their yearly budgets.

2. Citizen Interaction

If citizen participation is to be effective and not simply "window-dressing" people need opportunities to:

- *clarify values and attitudes*
- *express their opinions and priorities*
- *create proposals for plans and projects*
- *develop alternative approaches*
- *resolve conflict*

Interactive methods encourage two-way communication and innovative solutions. All of these methods create a dialog among decision makers, professionals, and citizens who will be affected by those decisions. Some interactive methods, such as workshops, are effective throughout a planning process. Others, like surveys, are best limited to specific steps. Interactive methods most frequently used in Washington state are public hearings, public meetings, citizen advisory committees and community surveys.

3. Public Hearings

A public hearing is a special meeting which allows the public to comment on proposed plans and projects before officials make a final decision. Operating under a set of laws and formal procedures, it is an open public meeting. All citizens must be permitted to present their views for the official record, verbally and in writing, before the hearing body makes its decision.

Public hearings are conducted by city councils, boards of county commissioners, planning commissions, and, for certain designated zoning issues, the board of zoning adjustment. Some jurisdictions in Washington have hearings examiners who conduct quasi-judicial public hearings related to land development permits.

It is in the community's best interest to see that public hearings are carefully planned. In addition to the legal aspects of conducting a hearing, the points listed below can significantly increase the productivity of public hearings.

Before a hearing takes place:

- 1) The responsible agency should carefully examine the proposal or application to see that it is complete, and that all procedures and regulations have been followed.
- 2) All interested parties should receive ample notice of the hearing.⁴
- 3) Members of the hearing body should visit the site of all specific development proposals.
- 4) At least several working days prior to the hearing, staff reports, environmental assessments, economic analysis, and any other documents relevant to the hearing should be available for members of the hearing body and the general public.
- 5) Printed copies of the hearing body's rules and procedures should be on hand.

HOW TO CONDUCT A PUBLIC HEARING

- 1 The Chair calls the hearing to order, explains the purpose of the hearing and the procedures to be followed.
 - 2 The Chair is responsible for conducting the hearing in a fair, evenhanded manner, and should request that all questions and comments be addressed through him/her.
 - 3 A brief summary description of the proposal or plan is given by the Chair or a member of the planning staff. A lengthy description of the proposal is not necessary, as the subject of the hearing needs to be announced sometime before the hearing.
 - 4 All visual aids, such as maps and slides showing specific sites or development proposals, must be visible to everyone in the hearing room.
 - 5 The Chair opens the hearing for public testimony when the description of the proposal or plan is completed.
 - 6 Typically, proponents will be heard first, followed by opponents and a short rebuttal by proponents; however, some hearing bodies ask people to sign up if they wish to testify and then call for testimony based on the order of the sign up sheet.
 - 7 The Chair closes the hearing after all testimony is presented; however, it may be necessary to continue the hearing to a future date if there is a great deal of testimony.
 - 8 The Chair thanks all citizens in attendance for their testimony. The hearing body will either debate, deliberate, and make a decision; or take all the information under advisement and make a decision at the next meeting, or announce a specific date when the decision will be made.
-

Members of the hearing body need to keep a fair and open mind until all testimony is presented. Citizens should be adequately prepared to testify, know the hearing rules and procedures, have a clear statement of purpose for their testimony, and back up their statements with solid information. It is also helpful to the hearing body if citizens prepare written testimony and present only summary remarks at the hearing.

Public hearings are required both for legislative and quasi-judicial decisions. Legislative hearings are conducted to seek citizen views on general land use plans and ordinances. Quasi-judicial hearings deal with individual property. Quasi-judicial hearings (such as rezoning a property from residential to commercial or subdividing several acres in a rural area) are frequently surrounded by conflict. These conflicts often make front page news and are sometimes resolved in the courts, rather than the community.

The standard public hearing provides proponents and opponents of land development projects an opportunity to comment, but it does not work very well as a technique to solve problems or resolve conflicts. For this reason, many private developers are initiating their own citizen participation sessions. They are meeting and consulting with neighborhood

groups in the design stages of project development. These private initiatives have been successful across the state.

Legally required public hearings offer only a limited opportunity for two-way communication. They are most effective if used in combination with other citizen participation methods. Public hearings are not a very expedient method for resolving conflict and can be counter-productive if used as a method to rubber-stamp plans or projects. The advantage of public hearings is that they guarantee citizens' comments on land use issues will be heard.

4. Public Meetings

Designed to inform, educate, or facilitate extensive interaction and dialogue, public meetings⁵ are a widely used form of citizen participation. Information and educational meetings are a valid first step in any citizen participation process. Technical information can be distributed, along with an orientation to citizen participation opportunities and general or detailed descriptions of plans and projects.

Problems, however, can occur when the purpose of a public meeting is not clearly stated. Citizens become frustrated and angry if they attend a meeting believing they will be able to express their views, only to discover that the meeting was designed to educate or inform them about plans or projects. The purpose of a public meeting must be announced openly and honestly in pre-meeting publicity.

5. Community Workshops

One of the most popular citizen participation methods is the community workshop. Encouraging extensive interaction, workshops offer a structure that divides many people into small work groups of six to nine individuals. The value in this method is the data citizens develop in the work groups. Each small group prepares a written report, communicated at the end of the workshop to all attendees. Data developed at community workshops can be used throughout the planning process. When people see the goals, priorities, and ideas they have developed in community workshops reflected in land use decisions, they are more likely to support local government plans and projects.

Other advantages of this method are: 1) everyone can participate at meetings; 2) it is an excellent means of developing community consensus; and 3) it is relatively

inexpensive. To be successful, workshop managers must have good group facilitation and data management skills.

Keys to Planning and Conducting Successful Public Meetings and Community Workshops

- 1 Tell people the purpose of the meeting and have a written agenda.
 - 2 Make sure that the meeting date and time is convenient for the people who are being asked to attend.
 - 3 Notify people well in advance, approximately one to two weeks before the meeting date.
 - 4 The meeting site should be easy to get to, serviced by public transportation, and have ample parking.
 - 5 Select a meeting room that is appropriate for the size of the expected audience. Avoid rooms with pillars, other structural supports, and fixed seats.
 - 6 Make certain there is adequate lighting, ventilation, and a comfortable room temperature.
 - 7 Assure that people will be able to hear speakers and converse in small groups.
-

PRACTICE TIP: People appreciate having the announced starting and ending times observed. One note of warning: speak in English, not planning jargon, at public meetings. Using technical terms that people do not understand has been the downfall of many carefully planned public meetings. Paying attention to details can reduce problems and make public meetings more enjoyable for everyone involved.

A few words on meeting formats: Information and education meetings are usually set up in a formal manner with a podium and chairs set in rows. Informal arrangements with chairs and tables for small groups are appropriate for workshops. Meeting sponsors often serve coffee, tea, or juice as a way to make people comfortable and help them become acquainted during meeting breaks. Having materials for people to look at and study prior to a meeting, and setting up audio visual equipment well in advance of the starting time are other simple ways to make meetings less stressful for organizers and participants.

6. Citizen Advisory Committees

Citizen advisory committees, which give advice to local officials on a particular plan, project, or program, are very popular for citizen participation. Community or neighborhood committees range in size from small, select groups of individuals appointed by local officials, to large groups of 50-100 volunteers. Advisory committees assure that community values and attitudes are represented in the planning process. They can also underscore obstacles to plans and projects, generate interest in land use planning, and help resolve conflicts among interest groups.

Appointed advisory committees are most efficient when they represent a cross-section of community interests. Volunteer advisory committees are best suited to educate and inform, create interest in community planning issues, and to get feedback on plans and projects. They generally do not represent all viewpoints in the community and may be strongly biased.

In all cases, whether an advisory committee is appointed by local government officials or composed of volunteers, staff support must be supplied to deal with technical and organizational tasks.

7. Citizen Surveys

A citizen survey is often used to gather information about citizen attitudes, values, and priorities. It can also gather data about a community's residents, such as age, income, and employment. Surveys are not a truly interactive participation method; citizens do not communicate directly with decision-makers in a survey, but they can express their opinions on land use issues.

Several types of surveys are used in land use planning. The formal scientific survey systematically measures community attitudes, values, and priorities. Data collected by scientific surveys can statistically represent all citizens' views in a quantifiable manner. Crucial elements in a formal scientific survey are properly designed questionnaires, careful tabulation of results, and a written analysis and interpretation of the data. Survey results must be reported in a straightforward manner and be widely distributed throughout the community. If the local government staff is not experienced in survey design and analysis, they should seek assistance.

The community self-survey is popular in smaller communities. This method makes extensive use of community volunteers with a minimum of outside assistance. Citizens organize and conduct all aspects of the survey, from developing and distributing questionnaires to tabulating and distributing results to the community. The advantages of this type of survey are that it encourages broad citizen participation and it collects information about community attitudes and priorities. Conducting a community self-survey is a large undertaking. This method should be chosen only if enough volunteers are available and when the survey results are not needed immediately.

Informal methods to survey public opinion include questionnaires printed in the local newspaper, or call-in answers on a talk show. Such surveys will not represent all community views, but can help focus on or uncover land use planning issues. They should not be relied on to develop community plans.

Many other methods have been used successfully in communities across the state. Mediation techniques, for example, can help disputing parties resolve conflicts over land use plans and projects. New methods, such as interactive computer simulations and cable television, are being introduced in citizen participation activities. In selecting among these, communities should be open to new and innovative techniques. However, they must carefully evaluate their ability to execute a particular method. Guiding factors in making a selection are 1) match the appropriate method to each citizen participation objective; and 2) have the skills and resources to carry out the method properly.

A SEVEN STEP GUIDE TO CREATING AN EFFECTIVE CITIZEN PARTICIPATION PROGRAM

- 1 **DETERMINE OBJECTIVE(S)** of the participation program. Write them down, in plain English, so everyone can understand the purpose of the program.
- 2 **IDENTIFY WHO** should be involved by identifying who will be impacted by the plan, ordinance, or project. These are the citizens who need an invitation to participate.
- 3 **DECIDE WHEN** to invite/recruit citizen involvement. This step must be consistent with Step 1. For example, if the objective is to have citizens develop initial ideas for plans, people must be involved at the beginning of the process. If the objective is to have people review and comment, it will not be necessary to plan for involvement until draft proposals are available.
- 4 **IDENTIFY AND EVALUATE A VARIETY OF METHODS** that are appropriate to carry out the program objective(s). Typical evaluation criteria are: the cost of the method; the ability of staff (volunteer and professional) to administer the method; the amount of time needed by citizens; the amount of time needed by staff to process data generated; and the quality of that data.
- 5 **SELECT THE BEST METHOD(S)** to achieve each program objective. Be sure they are within the resource capabilities, both financial and human, of the community.
- 6 **CARRY OUT** the citizen participation program.
- 7 **EVALUATE THE PROGRAM** when it has been completed. Decide if objectives have been met, list what went well and what could be changed or improved for the next time.

Part 2: The Public Process

Public involvement in local planning and land use decisions in Washington communities takes place within a formal structure established by law. Procedures governing how public meetings are conducted relate to the general statutes and case law governing the conduct of public officials. Some of these requirements apply specifically to planning commissions; all of them, however, are important in conducting public agency business.⁶

A. Public Meetings/Executive Sessions

I. Open Public Meetings—In General

Planning commissions, hearings examiners, and city and county governing bodies operate under the umbrella of the state's public meeting and public document laws.

With a few exceptions, the Open Public Meetings Act⁷ requires the governing bodies of public agencies to keep all meetings at which action is taken open and accessible to the public. Multi-member planning commissions are considered governing bodies of public agencies under the Act.⁸

"Action," as used here, includes substantive deliberations or the receipt of evidence, as well as formulating findings or taking final votes.⁹ Thus, if a quorum of a governing body meets at any time or place and engages in any discussion or deliberation about agency business, the result is a meeting that must comply with open meetings requirements. Subcommittees of a governing body also are considered governing bodies if they exercise delegated powers, hold hearings, or take testimony or public comment.¹⁰

Open meeting requirements of the Act (including proper procedures for notice and conduct) apply to all regular or special meetings, even when they are called "work sessions" or "study sessions." There are times, however, when the public does not have a right to participate in all activities of an "open" meeting. While agendas, staff input, commission deliberations, work sessions, and briefings are all activities proper at public meetings, the commission or council may permit or exclude public participation, as appropriate to the circumstance. Only at specific public hearings is the commission or council required to solicit and listen to public input on a specific subject.¹¹

Planning commissions and city or county legislative bodies hold two types of meetings:

a. Regular Meetings

A regular meeting is held at fixed times established by ordinance, resolution, or similar rule. Once properly established, regular meetings require no separate public notice. A regular meeting normally follows an agenda; but all business of the body may be transacted at such a meeting, including matters raised at the meeting but not listed on the agenda.¹²

b. Special Meetings

Any meeting not set by resolution for general meeting purposes is a special meeting.¹³

To hold special meetings, public agencies must comply with additional rules. First, written notice of the meeting identifying the time, place, purpose, and agenda items to be discussed must be delivered to each member of the body at least 24 hours in advance, either by mail or personal delivery. This requirement is waived by attending the meeting, and may be waived in writing either before or after the meeting, by any person entitled to notice.

Written notice of special meetings, including the agenda, must be sent to every newspaper, radio station, or other organization or person that has requested in writing to be notified of special meetings.

Board action at special meetings is limited to matters identified on the agenda and published in the special notice. Thus, matters not on the special notice cannot come before the board for action. While technically permitted, it is best to avoid "discussion" of non-agenda items. This often leads to *de facto* decisions, which violate the Act and may invalidate later formal action.

2. Closed Meetings—"Executive Sessions"

Meetings at which the public may be excluded from deliberations ("executive sessions") are narrowly defined. These include matters pertaining to certain personnel matters, real estate acquisition, selling or leasing property, and, under

certain circumstances, consultations with the agency's legal counsel.¹⁴

"Executive sessions" commonly involve sensitive personnel matters (such as evaluations of individual employees) and sensitive legal consultations. Closed discussions of agency enforcement actions and "litigation or potential litigation" which may involve the agency or its officials are permitted by statute when public knowledge of the discussions would harm the agency.¹⁵ The exemption generally includes discussions of legal alternatives, where the agency's decision could result in litigation. Most other legal discussions pertaining to non-controversial agency business must take place in open meetings.

Note: The statute generally allows only "discussion" or "consideration" of specified matters in executive session. Any final action must be taken in the subsequent open session.

Notice rules that apply to public meetings also apply to executive sessions. Before the executive session begins, the public meeting is convened and the presiding officer announces:

- *The board is going into executive session.*
- *The purpose of the session and the reason it is exempt.*
- *The length of time the session will last.*¹⁶

When the session ends, the presiding officer returns the meeting to public session and discloses the nature of the meeting for the record. He or she may adjourn the meeting if there is no other business before the board, or proceed to other agenda items.

3. Conduct of Meetings

The Open Public Meetings Act encourages public attendance at meetings.¹⁷ Any conduct that could discourage attendance (such as requiring all attendees to sign up for the meeting) is prohibited.¹⁸ Sign-up sheets for those who wish to speak at a public hearing, however, are appropriate and recommended. When large crowds are expected, sign-in sheets should be numbered so testimony can be taken in order. If attendees behave in a disorderly manner, the body may expel the offenders or relocate the meeting.¹⁹ For an accurate record of

the proceedings, persons who want to speak may be required to identify themselves.

By law, minutes must be taken and recorded promptly for all public meetings, except executive sessions.²⁰ Stenographic notes and tapes are not considered minutes unless they are officially adopted as such. If a public agency does not produce written minutes, the adoption of tapes or notes of previous meetings as the "official meeting record" should be an agenda item at every meeting. Under the public records law, these documents may be subject to public inspection.

If proper notice or procedures for open meetings are not followed, any action taken will be invalidated.²¹ Persons who violate the Open Public Meetings Act are also subject to a \$100 penalty for each violation, so responsibility rests with the deliberative body (and usually the presiding officer) to check for procedural compliance before taking action.²²

While state law does not prescribe any specific meeting protocol, communities are encouraged to adopt, publish, and follow an agenda format. A consistent agenda format will make it easier to follow community business. Some communities publish upcoming subjects for future meetings in the agenda package. Advance notice allows everyone interested in the topics to prepare and spread the word, increasing public participation.

Written staff reports should be available several days in advance. This will give the commissioners or council members and other participants time to understand the case and prepare their comments. A staff or committee presentation of matters to be decided is common at public hearings. Where projects are involved, the applicant usually has the opportunity to address the proposal and its consistency with local codes and ordinances.

At large hearings, testimony should be organized so everyone is heard and the evidence is presented in a logical fashion.

Acceptable alternatives for large hearings include (a) testimony taken in order of sign up, (b) all testimony in favor, then all opposed, or (c) alternating favorable and opposition testimony. Time limits may be imposed, although written comments should be solicited when the subject cannot be covered in a brief public comment. Finally, groups should be given more time to organize joint comments or presentations, reducing the number of comments needed.

If a meeting runs overtime or needs to be continued, the presiding officer must adjourn the meeting to a stated time and place.²³ A notice of adjournment is then posted promptly on the door where the meeting was held. If the adjourned meeting was a special meeting, written notice of adjournment must be mailed to all who are given notices of special meetings. Once reconvened, the meeting may continue as if there were no adjournment. There is no limit to the number of times a meeting may be continued.²⁴ However, one must bear in mind that certain actions of the deliberative body are to be taken within independently established deadlines. For instance, a preliminary plat application must be either approved, denied, or returned for modifications within ninety days from filing and a final plat application within thirty days, unless either time period is extended.²⁵ Other deadlines may apply as well, either by state law²⁶ or local ordinance. The governing body must therefore be careful when it repeatedly continues matters to subsequent meetings.

B. Public Documents/Confidential Documents

1. Public Records or Freedom of Information

Washington's open public records provisions,²⁷ modeled after the federal Freedom of Information Act,²⁸ are sometimes called the state's Freedom of Information Act. Washington adopted its Public Records Act by initiative in 1972.²⁹

The public purpose of the Freedom of Information Act is stated boldly in broad, sweeping language.³⁰ The definition of records, for instance, is so broad that it suggests members of the public can inspect and copy any transcription of thought or speech in the agency's possession related to agency business.³¹ There are exceptions, of course, designed to protect the public interest as well as privacy rights of individuals in some cases.³²

2. Duty of Public Agency to Facilitate Access to Records

An agency must establish procedures for providing access to its records. Indexes should be created and published.³³

All records must be available for public inspection and copying during customary office hours. If an agency has no regular office hours, the hours are set by statute.³⁴

The agency must make its facilities available for the public to make copies of its records, or must make the copies itself upon request. The agency may charge for the cost of making copies, but only at the actual cost. The agency may not charge for making record searches or allowing inspections.³⁵

3. What Records May Be Withheld

The Public Records Act provides a variety of specific, narrowly construed exemptions. One exemption from disclosure that might be involved during the planning process is for "Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss."³⁶ Note the requirement of "public loss."

There is an exemption for records of archaeological sites and for certain business records protected under other statutes.³⁷ Washington appellate courts have held on several occasions that agencies cannot simply create confidentiality for records—for instance, by agreement with a private party—without statutory authority. For example, an agency or public official cannot accept an employment application with the understanding that the applicant's business records submitted with it will be confidential. An exemption for this purpose was sought during several legislative sessions, but has yet to be enacted.

An agency may apply to a court for an exemption for a particular record when disclosure would harm "vital governmental functions."³⁸ However, this standard is difficult and uncertain to meet.

4. Procedures for Access—Remedies

An agency must make its records available promptly on request. It must provide a reason for denying access and must establish procedures for reviewing requests. The law establishes schedules for prompt action by the agency. Municipalities should adopt ordinances or resolutions identifying the method and manner for requesting public documents, the person or persons responsible, and the time within which answers should be provided.³⁹

A person whose request for inspection or copying is wrongfully denied has the right to sue the agency and force it to produce the record. If successful, the requesting person might be entitled to reimbursement for legal costs and may be awarded up to \$100 per day for each day the request was denied. Generally, the agency has the burden of proving its denial was justified.⁴⁰

5. Conflicts of Interest

The law strictly forbids public officials, including planning commissions, to have personal financial interests in contractual matters they are supervising.

*No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.*⁴¹

These rules rarely apply in planning cases; they are usually limited to situations where the municipality is contracting for consultants to review a project or proposal, or make studies for the community.

6. Nonfinancial Conflicts

The rule of incompatible offices is a nonfinancial conflict which may arise. Courts generally hold that a public official may not hold two offices simultaneously that are incompatible with each other,⁴² unless expressly permitted by statute. Examples include two offices in which one has supervision over the other, or offices that at times may hold opposing duties, such as the simultaneous appointment of one person as (a) mayor and planning director; or (b) council member and planning commissioner; or (c) boundary review board member and elected official involved in annexations.

C. Appearance of Fairness

Appearance of fairness is a judicial doctrine that may arise when (1) public hearings are required, (2) a decision must be made based on evidence in the record, and (3) the decision is based on applying policy to a specific situation, rather than creating a new policy for the community.⁴³ The appearance

of fairness doctrine arises from the judicial perspective that certain actions of local officials must not only be fair in fact, but conducted in a manner that is fair in appearance.⁴⁴

The courts divide zoning and planning actions into two functions. Actions that involve the public as a whole (rather than a particular project or proposal) are called "legislative actions." Examples include area-wide zoning actions or comprehensive plan modifications. But when a project or proposal is at issue, especially if policy is applied to a specific parcel or small group of parcels, the action is termed "quasi-judicial."⁴⁵

The distinction between the two is that broad public policy declarations are legislative actions; applying that policy to a particular situation through hearing, findings, and creating a record is a quasi-judicial proceeding.⁴⁶

In the quasi-judicial setting, the appearance of fairness doctrine holds that the decision-maker must not have conflicting interests or preconceived views on a project. This ensures that: (1) the decision is made on the record; (2) the decision-maker has no entangling alliances that would make it appear that he or she might favor one side over the other; and (3) the proceedings are conducted in a manner that appears fair.

As stated by the Supreme Court when the doctrine was first articulated:

It is axiomatic that, whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, a hearing not only fair in substance, but fair in appearance as well.⁴⁷

The reasoning behind the appearance of fairness doctrine is twofold:

The first applies if the community establishes a policy applicable to a certain situation. Each participant in the proceeding has the right to have a matter judged on its merits by unbiased officials who are not influenced by financial or personal interests.

Second, because any quasi-judicial decision is open to court review, all factors in a decision must be on record for the court's evaluation. Where one or more of the decision-makers have interests or contacts outside the record that influence the

decision, the rights of all parties to have the matter decided on the record may be compromised. This is why the court articulated the appearance of fairness doctrine.

The doctrine has now been codified and clarified by statute.⁴⁸ Key points to keep in mind include:

DOCTRINE OF FAIRNESS

- The doctrine applies only to actions that determine the legal rights of specific parties in a hearing or contested case proceeding.
- Contact with a constituent by a decision-maker will not result in an appearance of fairness claim if the contact is during the course of the official's business and does not involve issues in a contested hearing.⁴⁹
- Where ex parte contacts occur (i.e., between an official and only one of the interested persons in a case), the official must disclose the contact and substance of the contact on the hearing record.⁵⁰ Disqualification may still follow if the contact could prevent the official from fairly deciding the case on the record.⁵¹
- Persons will not be disqualified for comments they made before declaring for public office, or while campaigning for public office.⁵²
- Persons may not be disqualified on the basis of campaign contributions, if they follow campaign disclosure laws.⁵³
- Planning commission members, having made a recommendation to county or city officials, are not barred from participating in further proceedings.⁵⁴
- The appearance of fairness doctrine cannot be used to defeat a quorum if the member or members first disclose the basis for their disqualification.⁵⁵
- None of the exceptions to the doctrine apply if the result is a hearing that is actually unfair (due process violation), as opposed to simply appearing unfair.⁵⁶

Here are three keys to a successful quasi-judicial proceeding:

1. **Keep an accurate record of the hearing.** All applications, exhibits, reports, letters, and written and oral comments on the project should be part of the record.
2. **All decision-makers should disclose special interests they may have in any matter before the particular body.** When a decision-maker has a vested interest or predisposition to a specific outcome

(such as a financial or other personal interest that would prevent an unbiased decision, or a personal relationship with the applicant or the opponent), that decision-maker should withdraw from consideration and voting on the matter.

3. The decision should be written and on the record (see discussion below).

D. Public Decisions and Creation of Records

1. Conduct of the Initial Hearing

The manner in which hearings and meetings are conducted is important in two respects. 1) Meetings must be conducted so they are fair, both in fact and appearance, to persons affected by their outcome. 2) Planning agency action or non-action involving factual questions must be defended effectively on appeal through the case record.

2. The Requirements for an Adequate Record

Washington courts make it clear that an adequate record is the key to successful land use decisions.⁵⁷ When any decision is to be made on the record, the municipality must maintain an adequate record of all proceedings.

The record should contain the following elements:

AN ADEQUATE RECORD

- The application and supporting documentation.
- The environmental determination and any supporting documentation.
- Any staff report and prehearing correspondence pertaining to the case, including all agency or department comments and letters from interested citizens.
- A verbatim record (usually taped) of any hearing in the case.
- Any exhibits offered during the hearing should be numbered and kept as part of the record.
- Nothing is part of the record unless it appears on the tapes or in exhibits offered as evidence in those proceedings.
- Comments must appear on the record before they can be considered in evaluating an application. All oral comments to be considered should be made into a microphone provided

for that purpose. This will ensure they appear on the record. The Chair should instruct persons offering comments or testimony to speak into the microphone and identify themselves. Otherwise, the Chair should ask them to repeat the remarks into the microphone for the benefit of the record. This same requirement applies to testimony by staff and officials. Comments not so recorded may not be considered in making the final decision.

- If a tape ends, the Chair should stop the proceeding and forbid any further testimony until a new tape is inserted and playing. Using the microphone, the Chair should announce that the tape has just been changed. Anyone whose testimony was made after the previous tape had run out, should be invited to repeat his or her comments for the record, with a warning that comments not on the tape will be disregarded.
- No map, drawing, or sketch should be discussed unless the document is offered, marked or labeled, identified on tape, and kept as a part of the record. When a document is accepted as an exhibit, the secretary should affix an exhibit designation to it. In some instances (as with an exhibit of substantial value to the owner) an exact copy of the document is acceptable for the record. The name and nature of the document should be noted on the tape; and in whose possession the original document will remain, if it is needed for evidence. The exhibit should be photographed or copied for the record.
- Hearings should be closed formally by motion. When a hearing ends, deliberations should be initiated promptly, and no other testimony or evidence considered by the hearing body.

The decision-making body may begin deliberation or may continue the proceeding to a new work session or meeting. If new evidence is to be received, the commission or council must take steps to reopen the record and properly receive the new materials.

Failing to maintain an accurate record when using tape recordings will cause problems for a municipality. The Court of Appeals gave the following admonition in a case where an inadequate record caused significant problems:

We strongly urge that where proceedings are electronically recorded great care be taken to ensure usable recordings. To that end, we suggest:

1. *If possible, high quality multi-track recording equipment with multiple microphones should be used. This would enable the transcriber to play back one track—hence one voice—at a time.*
2. *Proceedings must be organized to facilitate recording. Thus, speakers must be required, and reminded if necessary, to speak into the*

microphones; to identify themselves before speaking, spelling out their names; to stay at the microphones while speaking; and to talk rather than rely upon bodily gestures to convey meaning.

3. *The person operating the recorder should monitor the recording, check the tape after periods of increased background noise to determine whether testimony was recorded, and ask the speaker to repeat the testimony if it is inaudible.⁵⁸*

3. The Need for Findings and Conclusions

Written findings of fact and conclusions state the principal factual and legal basis for a decision. A finding does not recite the evidence, but rather demonstrates that the criteria for a decision have been met. (Take, for example, a plat in a 4 dwelling units per acre minimum zone. Finding: The plat has a density of 4.25 dwelling units per acre. Conclusion: The density requirements of the code have been met.) If the record does not support the findings, or the findings do not support the conclusions, or if neither support the decision, a reviewing court may reverse the decision.

Statutes governing the actions of quasi-judicial officials require adequate findings:

Both the board of adjustment and the zoning adjuster shall, in making an order, requirement, decision or determination, include in a written record of the case the findings of fact upon which the action is based.⁵⁹

Written findings and conclusions are also required when any jurisdiction decides to use a hearings examiner;⁶⁰ or, when subdivision actions are taken.⁶¹

The requirement for adequate records and findings applies to more than quasi-judicial project approvals. Under the Planning Enabling Act,⁶² planning commissions must act by a majority of the whole, not simply of the quorum, and must produce adequate findings.

*The recommendation to the board of any official control or amendments thereto by the planning agency shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action....*⁶³

The Planning Enabling Act also requires that the commission's recommendations be accompanied by the motion and a statement of factors considered at the hearing, with an analysis of controlling findings.⁶⁴

4. The Administrative Appeal

Local governments are no longer required to provide for administrative appeals.⁶⁵ If no administrative appeal is provided, then a challenge to a local land use decision is directly to superior court.

If an administrative appeal is provided, the legislative body has appellate jurisdiction. When operating by appellate jurisdiction, the decision is based only on the record made before the hearing official. Under this system, the legislative body does not conduct a second hearing,⁶⁶ and will not take testimony for its record.

The only questions needed in an appellate model are: (a) are the decision-makers' findings supported by evidence in the record, and (b) did the decision-makers correctly apply adopted county/city policy? The legislative body may not adopt new findings based on the evidence before the decision-maker, or hold hearings to elicit new evidence. The record below is the sole basis for the decision on appeal.

5. Superior Court Appeal

Once local officials make a final decision, further appeal is by a petition to superior court under the Land Use Petition Act ("LUPA").⁶⁷ The reviewing court generally considers only the record created at the local level. This is why an accurate record of all proceedings must be maintained. If the only record available is inaccurate or incomplete, the court will usually void the local action and remand the case for a new (de novo) hearing. A verbatim (word-for-word) transcript of the proceedings is usually required.

Reviewing courts have identified these prerequisites for adequate judicial review:

- c *A well-defined record, identifying the nature of the decision and its basis.*
- c *Findings that identify the standards considered and the factual basis for action.*
- c *A clear expression of action taken by the decision-making body, the persons or entities affected by the action, and the extent of such effects.*

Communities can take comfort in the fact that few cases are ever appealed to court, and only a small percentage of them rule against the city or county. Accuracy and clarity of the record is a community's first line of defense in such cases.

An appeal under LUPA must be filed within 21 days of the issuance of a land use decision.⁶⁸ The 21-day limitations period contained in LUPA, together with the Act's service requirements, must be adhered to carefully. In a recent court of appeals case, the dismissal of a petition was upheld where service of the petition occurred 20 minutes after normal office hours on the last day of the 21-day period.⁶⁹ An appeal period may begin to run on the date of an oral decision at a public meeting where the decision rendered is final and conclusive.⁷⁰ The appeal period for written decisions, including "decision documents" prepared in advance of a vote, begins to run three days after the written decision is mailed.⁷¹

To obtain judicial review under LUPA, the petitioner must first exhaust all of his or her administrative remedies.⁷² If the only administrative remedy available to a project opponent is participation in a public hearing process, the remedy may be exhausted by writing and speaking against the proposed decision.⁷³ A number of other recent opinions have further clarified what constitutes the exhaustion of administrative remedies for purposes of LUPA.⁷⁴

LUPA requires courts to accord due deference to a local jurisdiction's construction of a statute or ordinance. Where a municipal ordinance is unambiguous, the court will look to the plain meaning of the language used in the statute. Where a legislative enactment, or ordinance, is ambiguous, the court may seek the expertise of the agency when construing its meaning.⁷⁵

The doctrine of res judicata bars the retrial of the same claim in a subsequent action. The doctrine applies in the quasi-judicial administrative context and stands for the general proposition that "a controversy should be resolved once, not more than once."⁷⁶ Res judicata will bar a claim when a prior final resolution is similar in four respects to a subsequent proceeding: There must be a common identity of (1) subject matter; (2) cause of action; (3) persons or parties; and (4) the quality of the persons for or against whom the claim is made. Thus, under LUPA, where an agency has previously rendered a final decision on a landowner's application, that landowner may not retry the same claim at a later date unless there has been a substantial change in circumstance or conditions relevant to the application, or a substantial change in the application itself.⁷⁷

Finally, the superior courts have inherent authority under the Constitution to review agency action by writ of certiorari to determine if the action is arbitrary and capricious or contrary to law.⁷⁸ Agency action is considered arbitrary and capricious if it is willful and unreasoning, taken without consideration and in disregard of the facts and circumstances.⁷⁹

ENDNOTES FOR CHAPTER 2

- 1 RCW 36.70A.020(11).
- 2 WAC 365-195-010(3).
- 3 RCW 36.70A.140.
- 4 RCW 36.70B.110(11) requires a public comment period and sets forth specific requirements for providing notice of a land use project hearing.
- 5 RCW 36.70B.020(5).
- 6 For a more detailed analysis of this subject, readers should consult *Knowing the Territory*, published and periodically updated by the Municipal Research & Services Center of Washington, November, 1991.
- 7 Chapter 42.30 RCW.
- 8 RCW 42.30.020(1)(c).
- 9 RCW 42.30.020(3).
- 10 RCW 42.30.020(2).
- 11 RCW 42.30.030 requires meetings be open and all persons be permitted to attend any meeting; it does not require that persons be permitted to participate.
- 12 RCW 42.30.070 &.075.
- 13 RCW 42.30.080.
- 14 RCW 43.30.110.
- 15 RCW 42.30.110(1)(i).
- 16 RCW 42.30.110(2).
- 17 See RCW 42.30.010 & .030.
- 18 RCW 42.30.040.
- 19 RCW 42.30.050.
- 20 RCW 42.32.030.
- 21 RCW 42.30.060.
- 22 RCW 42.30.120(1).
- 23 RCW 42.30.090.
- 24 RCW 42.30.100.
- 25 RCW 58.17.140.
- 26 See, e.g., RCW 36.70B.070 & .090.
- 27 RCW 42.17.250 - .348.
- 28 5 U.S.C. § 552.
- 29 Initiative Measure No. 276, approved November 7, 1972, eff. January 1, 1973.
- 30 RCW 42.17.290.
- 31 RCW 42.17.250 & .260.
- 32 RCW 42.17.310 & .315.
- 33 RCW 42.17.260 & .290.
- 34 RCW 42.17.280.
- 35 RCW 42.17.300.
- 36 RCW 42.17.310(1)(h) (emphasis added); *Servais v. Port of Bellingham*, 127 Wn.2d 820, 904 P.2d 1124 (1995). But see *Lindberg v. Kitsap County*, 82 Wn. App. 566, 919 P.2d 89, review granted, 130 Wn.2d 1025,

930 P.2d 1229 (1996) (site and drainage plans for proposed residential development were not exempt from copying under The Public Records Act).

37 RCW 42.17.310(1)(k) & (m)(o)(r)(z)(bb) & (ff).

38 RCW 42.17.330.

39 RCW 42.17.250 & .320.

40 RCW 42.17.340.

41 RCW 42.23.030.

42 Kenneth v. Levine, 50 Wn.2d 212, 310 P.2d 244 (1957).

43 Smith v. Skagit County, 75 Wn.2d 715, 739, 453 P.2d 32 (1969); but cf. Polygon Corp. v. Seattle, 90 Wn.2d 59, 67-68, 578 P.2d 1309 (1978) (holding that the appearance of fairness doctrine does not apply to administrative actions, such as the issuance of a building permit, except where a public hearing is required by statute).

44 Id.

45 Raynes v Leavenworth, 118 Wn.2d 237, 821 P.2d 1204 (1992).

46 Zehring v. Bellevue, 99 Wn.2d 488, 663 P.2d 823 (1983).

47 Smith, 75 Wn.2d at 739.

48 Chapter 42.36 RCW.

49 RCW 42.36.020; See Organization to Preserve Agricultural Lands v. Adams Cy., 128 Wn.2d 869, 913 P.2d 793 (1996) ("OPAL") (an ex parte communication between a member of an administrative quasi-judicial decision making body and an interested party that occurs before a matter is set to be heard by the body does not render the subsequent decision invalid if all parties have been given extensive opportunity for input on the issues or if the party challenging the appearance of fairness is unable to demonstrate that the communication concerned the proposal which is the subject of the quasi-judicial proceeding).

50 An administrative decision maker's failure to disclose an ex parte communication does not render the administrative decision invalid if the communication has, in fact, been rebutted in the course of the administrative proceeding. OPAL, 128 Wn.2d at 889.

51 RCW 42.36.060.

52 RCW 42.36.040.

53 RCW 42.36.050.

54 RCW 42.36.070.

55 RCW 42.36.090.

56 RCW 42.36.110.

57 Bennett v. Board of Adjustment, 29 Wn. App. 753, 755 n.2, 631 P.2d 3 (1981).

58 Bennett, 29 Wn. App. at 755 n.2 (emphasis in original).

59 RCW 36.70.900.

60 RCW 36.70.970(3).

61 RCW 58.17.110.

62 Chapter 36.70 RCW.

63 RCW 36.70.600.

64 RCW 36.70.610.

65 RCW 36.70B.110(9).

66 In fact, only one hearing at which testimony is heard and evidence is taken can be conducted on any project permit application. RCW 36.70B.060(6).

67 Chapter 36.70C RCW.

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- 68 RCW 36.70C.040.
- 69 San Juan Fidalgo Holding Co. v. Skagit County, 87 Wn. App. 703, 943 P.2d 341 (1997).
- 70 Kilpatrick v. City of Anacortes, 84 Wn. App. 327, 927 P.2d 227 (1996).
- 71 Hale v. Island County, 88 Wn. App. 764, 946 P.2d 1192 (1997).
- 72 RCW 36.70C.060(2).
- 73 Citizens for Mount Vernon v. Mount Vernon, 133 Wn.2d 861, 947 P.2d 1208 (1997) (citizens for Mount Vernon also rejected the argument that a city council's approval of a land use project must be appealed to the Growth Management Hearings Board in order to comply with LUPA's exhaustion requirement).
- 74 Smoke v. Seattle, 132 Wn.2d 214, 937 P.2d 186 (1997) (an applicant was not required to seek a code interpretation by the Director in order to exhaust its remedies); Phillips v. King County, 87 Wn. App. 468, 943 P.2d 306 (1997) (the court rejected King County's argument that the landowner was required to challenge the County's approval of a development by filing a writ action before he could pursue other courses of action); Ward v. Board of Skagit County Commissioners, (the court of appeals affirmed that the exhaustion requirement contained in LUPA applies to all who seek judicial review.)
- 75 McTavish v. City of Bellevue, 89 Wn. App. 561, 949 P.2d 837 (1998).
- 76 Davidson v. Kitsap County, 86 Wn. App. 673, 937 P.2d 1309 (1997).
- 77 Davidson, 86 Wn. App. at 681.
- 78 Washington State Constitution, Article IV § 6.
- 79 Saldin Sec. v. Snohomish County, 134 Wn.2d 288, 949 P.2d 370 (1998); Crosby v. City of Spokane, 87 Wn. App. 247, 941 P.2d 687 (1997); Department of Corrections v. Kennewick, 86 Wn. App. 521, 931 P.2d 1119 (1997).