Kelso City Council Agenda

Regular Meeting, 6:00 pm
September 1, 2015
City Hall, Council Chambers
203 South Pacific
Kelso, WA 98626

Special accommodations for the handicapped and hearing impaired are available by special arrangement through the City Clerk's Office at 360-423-0900

Invocation:

Pastor Marv Kasemeier from New Song Worship Center

Roll Call to Council Members:

1. Approve Minutes:

1.1. August 18, 2015 – Regular Meeting

2. Presentation:

2.1. Cowlitz Economic Development Council

3. Consent Items:

3.1. Agreement – Cowlitz Transit Authority Lease Extension

4. Citizen Business:

5. Council Business:

5.1. Grant – Southwest Washington Regional Airport
5.2. 2016 Lodging Tax Distribution Requests
5.3. Discussion – Athletic Facilities and Bulk Water Rates
5.4. Discussion – Big Idea Project

6. Action/Motion Items:

6.1. Ordinance, 1st Reading
6.1.1. Nuisance Abatement Code Adopting new Chapter 1.50 Code Enforcement

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6.2. Ordinance, 2nd Reading

6.2.1. Nuisance Abatement Code amending Chapter 8.24 and adding new Chapter 15.04 Property Maintenance

Other Items:

- City Manager Report
- Staff/Dept Head Reports
- Council Reports
- Other Business
- Executive Session

KELSO CITY COUNCIL **August 18, 2015**
6:00 P.M. **REGULAR MEETING**

Pastor Vonda McFadden, Kelso First United Methodist Church, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor Futcher. Councilmembers in attendance were Jared Franklin, Gary Archer, Dan Myers, David Futcher, Todd McDaniel, Gary Schimmel, and Rick Roberson.

Minutes: Upon motion by Councilmember Schimmel, seconded by Councilmember Myers, 'Approve the Minutes of the 8/04/15 Regular Meeting,' motion carried, all voting yes.

PRESENTATIONS:

Cowlitz Wahkiakum Council of Governments (CWCOG): CWCOG Executive Director Bill Fashing provided a brief overview highlighting the agency's profile and services that the CWCOG provides in the community. He distributed a packet that contained information about CWCOG memberships, staff, upcoming events, and the Cowlitz County Metropolitan/Regional Transportation Plan 2015-2036.

Three Rivers Regional Wastewater Authority (TRRWA): TRRWA Board Chairman Jeff Cameron provided a presentation regarding a proposal to change the TRRWA governance from the current multi-agency partnership to a Joint Municipal Utility Authority.

CONSENT AGENDA:

1. **Auditing of Accounts:** $1,544,257.28

Upon motion by Councilmember Myers, seconded by Councilmember Roberson, 'Approve the Consent Agenda and the Auditing of Accounts in the amount of $1,544,257.28,' Councilmembers Archer, Myers, Futcher, McDaniel, Schimmel, and Roberson voted yes. Councilmember Franklin voted no. Motion passed 6 to 1.

CITIZEN BUSINESS:

Tonya Schmeichel, 1423 Ross Avenue, spoke about the drug problem in Kelso.

Daniel L. Baumfalk, 2828 Allen Street, spoke about the transient problem in Kelso.

Rick Von Rock, 400 N 7th Avenue, spoke about the speed bumps on the backside of Riverway Plaza and about the use of parks during private party reservations.

Adena Grigsby, 109 South 3rd Avenue, spoke about the Love Overwhelming Low Barrier Shelter.

MOTION ITEMS:

Ordinance No. (1st Reading) – Nuisance Abatement Code amending Chapter 8.24 and adding Chapter 15.04 Property Maintenance: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Pass on 1st reading, 'AN ORDINANCE OF THE CITY OF KELSO RELATING TO THE CITY'S PROCEDURES FOR ABATEMENT OF PUBLIC NUISANCES BY ADOPTING A REVISED CHAPTER 8.24 OF THE MUNICIPAL CODE FOR THE ABATEMENT OF PUBLIC NUISANCES, AND ADDING A NEW CHAPTER 15.04 PROPERTY MAINTENANCE TO THE MUNICIPAL CODE AND REPEALING 15.03.140.' City Attorney Janean Parker briefed the Council on the proposed amendments and new chapter. Discussion followed.

Jim Hill, 1100 North 22nd Avenue, spoke from the audience about the procedure for attaining compliance.

Motion passed, all voting yes.

Ordinance No. (1st Reading) – Nuisance Abatement Code Adopting new Chapter 1.50 Code Enforcement: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Archer, 'Pass on 1st reading, 'AN ORDINANCE OF THE CITY OF KELSO RELATING TO CODE ENFORCEMENT BY ADOPTING A NEW CHAPTER 1.50 CODE ENFORCEMENT TO THE KELSO MUNICIPAL CODE.' City Attorney Parker provided an overview of the proposed policy. Lengthy deliberation followed. Upon motion by Councilmember Schimmel, seconded by Councilmember Franklin, 'Lower the initial penalty from $200 per day to $10.00 per day.' Discussion followed. Councilmembers Schimmel and Franklin voted yes. Councilmember Archer, Myers, Futcher, McDaniel, and Roberson voted no. Motion failed, 2 to 5. Discussion followed. Upon motion by Councilmember Schimmel, seconded by Councilmember Franklin, 'Change the language in Chapter 1.50.230 (1) (a), to show that the monetary penalty shall be up to $200 per week instead of $200 per day.' Councilmembers Schimmel and Franklin voted yes. Councilmembers Archer, Myers, Futcher, McDaniel, and Roberson voted no. Motion failed, 2 to 5. Discussion followed. **Upon motion by Councilmember Roberson, seconded by Councilmember Franklin, 'Change the language in Chapter 1.50.230 (1) by removing 'per day' in paragraph (a) and adding a new paragraph showing that the initial penalty will be $200. After the initial 2-week period, the penalty will be $300. If compliance is not attained within 2 weeks from that point, the penalty will increase to $400 for each subsequent 2 week periods.' Councilmembers Franklin, Archer, Myers, Futcher, and Roberson voted yes. Councilmembers McDaniel and Schimmel voted no. Motion passed, 5 to 2.** Discussion followed. **Upon motion by Councilmember Schimmel, seconded by Councilmember Franklin, 'Table the original motion to pass the ordinance on first reading.' Councilmembers Franklin, Archer, Schimmel, and**

Roberson voted yes. Councilmember Futcher, McDaniel, and Myers voted no. Motion passed, 4 to 3.

Resolution No. 15-1138 – Cancellation of Unclaimed Warrants: The Deputy Clerk read the proposed resolution by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Pass Resolution No. 15-1138, 'A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO CANCELLING CERTAIN WARRANTS OF THE CITY PURSUANT TO RCW 39.56.040.' Motion passed, all voting yes.

MANAGER'S REPORT:

Steve Taylor: 1) Presented a proposal from the City of Longview regarding cost sharing on a Way Finding Signage project. He asked the Council to consider using the 'Big Idea' monies designated to Kelso in 2017. 2) Provided an update regarding the Love Overwhelming Low Barrier Shelter.

STAFF COMMENTS:

Chief Andrew Hamilton: Spoke about abusing the 911 System.

Community Development Director/City Engineer Mike Kardas: Reported on upcoming paving projects.

COUNCIL REPORTS:

Rick Roberson: 1) Spoke about used syringes discarded in public places. He provided an update on his granddaughter. 2) Provided an update on the Southwest Washington Economic Development Commission.

Gary Schimmel: Provided a report on the combined 911 Council and 911 Board meeting.

Todd McDaniel: Provided an update on the River Cities Transit and the Lodging Tax Advisory Committee.

Dan Myers: Commented on the CWCOG Ten-Year Plan to End Homelessness.

Gary Archer: No report.

Jared Franklin: Commented about the auditing of accounts agenda item.

David Futcher: No report.

There being no further business, Mayor Futcher adjourned the meeting at 8:25 p.m.

_____

MAYOR

_____

CITY CLERK

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: Agreement – Cowlitz Transit Authority Lease Extension

Agenda Item:

Dept. of Origin: City Manager's Office

For Agenda of: September 1, 2015

PRESENTED BY:

Steve Taylor

Originator: Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

Agenda Item Attachments:

2013 Cowlitz Tranist Authority Depot Lease Agreement
Proposed Lease Addendum

SUMMARY STATEMENT:

On August 21, 2013 the Cowlitz Transit Authority (CTA) entered into a lease agreement with the City to rent office space at the Train Depot for 24 months. The CTA would like to continue that arrangement and the proposed addendum will extends the lease for another 24 months.

RECOMMENDED ACTION:

Move to authorize the City Manager to sign the Cowlitz Transit Authority Lease Addendum.

LEASE FOR USE OF OFFICE SPACE AT THE KELSO TRAIN DEPOT

THIS AGREEMENT is made and entered into between the CITY OF KELSO, a municipal corporation (City), and **COWLITZ TRANSIT AUTHORITY**, (Lessee).

W I T N E S S E T H :

WHEREAS, the City is the owner of certain property called the Kelso Train Depot; and

WHEREAS, Lessee desires to lease certain office space (Suite 111) at the Kelso Train Depot; now, therefore,

THE PARTIES HERETO AGREE AS FOLLOWS:

SECTION 1. TERM: The lease term shall commence on August 21, 2013 and terminate twenty-four (24) months later for approximately 359 rentable square feet of retail space and downstairs restroom facilities available to employees located in the Kelso Train Depot, 501 South First Avenue, Kelso, WA 98626. This Lease will also allow for use of the downstairs conference room for a monthly training meeting, the time to be reserved with the City in advance by Lessee. This Lease may be extended upon written Agreement of the parties. Lessee shall have the option to extend the lease for two (2), twenty-four (24) month periods at the rent terms and conditions set for herein, provided Lessee makes such request of the City in writing no later than thirty (30) days prior to expiration. Provided further, that the parties' agreement to extend shall be memorialized in the form of an executed addendum to this Agreement.

SECTION 2. PAYMENT: Lessee shall pay to the City of Kelso in accordance with Schedule A. Payment for the entire month's rent shall be made no later than the 1st day of each

month. In the event of an extension as described in Section 1, rent shall increase 2.5% annually. Lessor shall pay for all utilities, excluding but not limited to communications, telephone data, and internet.

SECTION 3. INDEMNIFICATION: Lessee agrees fully to indemnify, save, and hold harmless the City, its council members, officers, agents, or employees from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of damages or injuries to third persons or their property caused by the fault or negligence in whole or in part of Lessee, its agents, subtenants, or employees in the use and occupancy of the premises hereby leased; provided, that City shall give to Lessee prompt and reasonable notice of any such claims or actions, and Lessee shall have the right to investigate, compromise, and defend the same, and provided such claim is not the result of a negligent act of the City.

SECTION 4. INSURANCE: Lessee shall maintain comprehensive and general liability insurance for the protection of Lessee, directors, officers, agents, servants, and employees, insuring lessee against liability for damages because of personal injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the premises leased or occasioned by reason of the operations of Lessee upon, in, and around the premises leased herein with insurance not less than one million dollars ($1,000,000), combined single-limit or split limits equal to and not less than one million dollars ($1,000,000) each for personal injury and property damage with respect to each occurrence. The City shall be named as an additional insured on the insurance policy or policies. Such insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section 3, entitled "Indemnification."

SECTION 5. TERMINATION: This Lease shall automatically terminate at the end of two years from the date of its execution. This Lease may be terminated prior to the end of the lease term upon 30 days written notice to the other party.

SECTION 6. USE OF PREMISES: Lessee's intended use of the premises is for office and retail space in conjunction with its normal business operations. Lessee shall comply with all city and state laws governing said use. Lessor shall not lease the adjacent units to business that conducts identical business as the exiting Lessee's.

SECTION 7. MAINTENANCE: Lessee shall keep and maintain the leased premises in good condition. Lessee shall provide proper containers for trash and garbage and shall keep the leased premises free and clear of rubbish, debris, and litter at all times. The City shall maintain common areas of use and keep and maintain appropriate insurance for common areas.

SECTION 8. EVENTS OF DEFAULT:

A. Default in Rent: Failure of Lessee to pay any rent or other charge within ten (10) days after it's due.

B. Default in other Covenants: Failure of Lessee to comply with any term or condition or fulfill any obligation of this Lease, (other than the payment of rent or other charges), within thirty (30) days after written notice by City specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Lessee begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

C. Insolvency: Insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution of the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days.

D. Abandonment: Failure of Lessee for fifteen (15) days or more to occupy the property for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

SECTION 9. REMEDIES OF DEFAULT: In the event of a default, the City may, at its option, terminate the Lease by notice in writing by certified mail to Lessee. The notice may be given before or within thirty (30) days after the running of the grace period for default and may be included in a notice of failure of compliance. If the property is abandoned by Lessee in connection with a default, termination shall be automatic and without notice.

A. Damages: In the event of termination or default, City shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

1. Any excess of (a) the value of all of Lessee's obligations under this Lease, including the obligation to pay rent from the date of default until the end of the term, or (b) the reasonable rental value of the property for the same period as figured as of the date of default.

2. The reasonable costs of re-entry and re-letting, including, without limitation, the cost of clean-up, refurbishing, removal of Lessee's property and fixtures, or any other expense occasioned by Lessee's failure to quit the premises upon termination and to leave them in the required condition, any remodeling costs, attorney fees, court costs, broker commissions, and advertising cost.

3. The loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts, could have been secured.

B. Re-entry after Termination: If the Lease is terminated for any reason, Lessee's liability to City for damages shall survive such termination, and the rights and obligations of the parties shall be as follows:

1. Lessee shall vacate the property immediately, remove any property of Lessee, including any fixtures which Lessee is required to remove at the end of the lease term, perform any clean-up, alterations, or other work required to leave the property in the condition required at the end of the term, and deliver all keys to the City.

2. City may re-enter, take possession of the premises and remove any person or property by legal action or by self-help with the use of reasonable force and without liability for damages.

C. Re-letting: Following re-entry or abandonment, City may re-let the premises and in that connection may:

1. Make any suitable alterations or refurbish the premises, or both, or change the character or use of the premises, but City shall not be required to re-let for any use or purpose (other than that specified by the Lease) which City may reasonably consider injurious to the premises, or to any tenant which City may reasonably consider objectionable.

2. Re-let all or part of the premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

SECTION 10. ASSIGNMENT OF INTEREST OR RIGHTS: Lessee shall not have the right to assign rights under this Lease or sublease the premises without prior written approval of the City except as follows: Lessee shall have the right to assign rights to the extent held under this Lease subject to the restrictions and obligations contained in this Lease and otherwise imposed by law, Provided, however, that such assignment shall be authorized only to a parent company, subsidiary or affiliate of Lessee or any entity with which it merges or acquires at least substantially all assets or stock thereof.

Lessee shall have the right to sublease the premises, and may use reasonable and standard methods to advertise the availability of any subleased space, Provided the sublease is for use of anything but retail jewelry and it does not conflict with any existing exclusive use rights of other tenant at the Depot.

SECTION 11. NON-WAIVER: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

SECTION 12. ATTORNEY FEES: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the Court may adjudge as reasonable attorney fees.

SECTION 13. TIME IS OF THE ESSENCE: It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Lease.

SECTION 14. REDELIVERY: Upon expiration of the lease term or earlier termination on account of default, Lessee shall deliver all keys to the City and surrender the leased premises in good condition. Depreciation and wear from ordinary use for the purpose for which the premises were let need not be restored, but all repairs for which the Lessee is responsible shall be completed to the latest practical date prior to such surrender.

SECTION 15. BUSINESS INTERRUPTION: Any interruption to Lessee's business occasioned by the City's maintenance or repair, which it is understood shall be done during City's normal working hours, shall not be compensable to Lessee.

SECTION 16. NOTICES: Any notices to either party pursuant to this Lease shall be in writing. Notices to the City shall be mailed to: PO Box 819, Kelso, WA 98626. Notices to Lessee shall be mailed to: **COWLITZ TRANSIT AUTHORITY, 254 Oregon Way, Longview, WA 98632**

SECTION 17. TENEANT IMPROVEMENTS. Improvements to the interior space to accommodate Lessee shall be the responsibility of Lessee. To the extent such improvements constitute "fixtures" under the laws of the State of Washington, such tenant improvements shall belong to the City of Kelso upon the expiration or termination of the lease. Lessees shall have the specific right to install signage related to its business operations on the fascia of each exposed

sign of the premises, Provided that such signage shall comply with all state and local regulations and codes. Signage shall not constitute "Fixtures" under this Agreements; that upon expiration or termination of this Agreement Lessee shall remove said signage; and, that Lessee shall reimburse CITY for the cost of any necessary repairs caused by removal of signage.

SECTION 18. CONDITION OF PREMESIS. Lessee shall accept the premises, pending inspection approval an appropriate notification. Lessor shall maintain to reasonable standards, the common areas, the areas of roof, exterior doors, windows, exterior walls, underground plumbing, utilities, sewer lines, and structural portions of premises, unless damaged by Lessee.

SECTION 19. PARKING. Lessee, along with all other tenants of the Depot, shall have common use of all parking spaces within the Depot, subject to Lessees' prior approval of parking ratios. City neither warrants nor confirms common parking availability, but represents the parking spots assigned to the Train Depot at the time of execution shall not be reduced.

SECTION 20. HAZARDOUS WASTE. Lessor warrants that it has no knowledge that the Depot contains hazardous material; that it has no knowledge of the release of any hazardous material at the Depot; and, that this Agreement shall not obligate the Lessee to any liability for cleanup, removal, relocation, or remediation of any hazardous material that may exist at the time of the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have subscribed their names this 20th day of August, 2013.

CITY OF KELSO:

CITY MANAGER

LESSEE:

CHAIR, COWLITZ TRANSIT AUTHORITY

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Schedule A

The Lessee shall make payments to the Lessor on the first day of each month as follows:

Months 1-6	$448.75/mo.
Months 7-12	$493.63/mo.
Months 13-24	$538.50/mo.

LEASE ADDENDUM

This addendum is dated and made effective this _____ day of _____, 20____, and is added to and amends the Lease for use of Office Space at the Kelso Train Depot agreement by and between COWLITZ TRANSIT AUTHORITY as Lessee(s) and the CITY OF KELSO as Lessor(s), which agreement is dated 20th day of August, 2013.

Said agreement is amended as follows:

1. Lessee has indicated their intent to renew the lease for one additional twenty-four (24) month period. In accordance with the 2013 agreement, the Lessee shall continue to have an option to extend the lease for one additional twenty-four (24) month period under the same terms and conditions of the original lease.
2. The Term of the Lease is hereby renewed for an additional twenty-four (24) months and shall expire on August 21, 2017.
3. The Lessee shall make payments to the Lessor on the first day of each month as follows, which amounts reflect a 2.5% annual increase from the original payment amount:

   Months 1-12 $551.96

   Months 13-24 $565.76

4. All other terms and conditions of the original lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have subscribed their names on the dates set forth below.

CITY OF KELSO--LESSOR

_____
City Manager, City of Kelso

Date: _____

COWLITZ TRANSIT AUTHORITY--LESSEE

_____
Chair, Cowlitz Transit Authority

Date: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
CITY ATTORNEY

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: Grant – Southwest Washington Regional Airport

Agenda Item:

Dept. of Origin: City Manager

For Agenda of: September 1, 2015

PRESENTED BY:

Steve Taylor

Originator: Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

Agenda Item Attachments:

Federal Aviation Administation Grant Agreement

SUMMARY STATEMENT:

The proposed grant would award the Southwest Washington Regional Airport $294,777 from the Federal Aviation Administation (FAA) to complete the design phase of three capital projects at the airport. The projects include the removal of obstructions, installation of a beacon and tower, and the installation of a perimeter fence. The grant covers 90% of the allowable costs.

The FAA requires authorization by the governing body prior to being signed by the sponsor's designated official representative.

RECOMMENDED ACTION:

Move to authorize the City Manager to sign the Federal Aviation Administation grant agreement.

U.S. Department of Transportation
Federal Aviation Administration

GRANT AGREEMENT

PART I – OFFER

Date of Offer	August 20, 2015
Airport/Planning Area	Southwest Washington Regional Airport – Kelso, Washington
AIP Grant Number	3-53-0034-015-2015 (Contract Number: DOT-FA15NM-0049)
DUNS Number	038040333

TO: City of Kelso, Washington
(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated June 17, 2015, for a grant of Federal funds for a project at or associated with the Southwest Washington Regional Airport – Kelso, Washington, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Southwest Washington Regional Airport – Kelso, Washington (herein called the "Project") consisting of the following:

Remove obstructions (phase 1-design); Install beacon and tower (phase 1-design); Install perimeter fence (phase 1-design);

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated April 3, 2014, and the Sponsor's acceptance of this Offer, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay ninety (90) percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS**:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is $294,777
   A. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b), the following amounts are being specified for this purpose:
      1. $0 for planning
      2. $294,777 for airport development or noise program implementation
      3. $0 for land acquisition.

2. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.

3. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

4. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies and procedures of the Secretary. The Sponsor also agrees to comply with the assurances which are part of this agreement.

5. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.

6. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before September 3, 2015, or such subsequent date as may be prescribed in writing by the FAA.

7. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

8. **United States Not Liable for Damage or Injury.** The United States is not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

9. **System for Award Management (SAM) Registration and Universal Identifier.**

A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at http://www.sam.gov).

B. Requirement for Data Universal Numbering System (DUNS) Numbers

1. The Sponsor must notify potential subrecipient that it cannot receive a contract unless it has provided its DUNS number to the Sponsor. A subrecipient means a consultant, contractor, or other entity that enters into an agreement with the Sponsor to provide services or other work to further this project, and is accountable to the Sponsor for the use of the Federal funds provided by the agreement, which may be provided through any legal agreement, including a contract.
2. The Sponsor may not make an award to a subrecipient unless the subrecipient has provided its DUNS number to the Sponsor.
3. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866–492–0280) or the Internet (currently at http://fedgov.dnb.com/webform).

10. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

11. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by $25,000 or five percent (5%), whichever is greater, the FAA can issue a letter to the Sponsor unilaterally reducing the maximum obligation. The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. If the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the FAA can issue a letter to the Sponsor amending the grant description.

A. By issuing an Informal Letter Amendment, the FAA has changed the grant amount or grant description to the amount or description in the letter.

12. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality

standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this grant.

13. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

14. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

15. **Maximum Obligation Increase for Nonprimary Airports.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

A. May not be increased for a planning project;

B. May be increased by not more than 15 percent for development projects;

C. May be increased by not more than 15 percent or by an amount not to exceed 25 percent of the total increase in allowable costs attributable to the acquisition of land or interests in land, whichever is greater, based on current credible appraisals or a court award in a condemnation proceeding.

16. **Audits for Public Sponsors.** The Sponsor must provide for a Single Audit in accordance with 2 CFR Part 200. The Sponsor must submit the Single Audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at http://harvester.census.gov/facweb/. The Sponsor must also provide one copy of the completed 2 CFR Part 200 audit to the Airports District Office.

17. **Suspension or Debarment.** The Sponsor must inform the FAA when the Sponsor suspends or debars a contractor, person, or entity.

18. **Ban on Texting When Driving.**

A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
    a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

B. The Sponsor must insert the substance of this clause on banning texting when driving in all subgrants, contracts and subcontracts

19. **Trafficking in Persons.**

A. Prohibitions: The prohibitions against trafficking in persons (Prohibitions) that apply to any entity other than a State, local government, Indian tribe, or foreign public entity. This includes private Sponsors, public Sponsor employees, subrecipients of private or public Sponsors (private entity) are:
   1. Engaging in severe forms of trafficking in persons during the period of time that the agreement is in effect;
   2. Procuring a commercial sex act during the period of time that the agreement is in effect; or
   3. Using forced labor in the performance of the agreement, including subcontracts or subagreements under the agreement.

B. In addition to all other remedies for noncompliance that are available to the FAA, Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), allows the FAA to unilaterally terminate this agreement, without penalty, if a private entity –
   1. Is determined to have violated the Prohibitions; or
   2. Has an employee who the FAA determines has violated the Prohibitions through conduct that is either—
      a. Associated with performance under this agreement; or
      b. Imputed to the Sponsor or subrecipient using 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the FAA at 49 CFR Part 29. [Select one of the following]

20. **PLANS AND SPECIFICATIONS PRIOR TO BIDDING:** The Sponsor agrees that it will submit plans and specifications for FAA review and approval prior to advertising for bids.

21. **PLANS & SPECIFICATIONS APPROVAL BASED UPON CERTIFICATION:** The FAA and the Sponsor agree that the FAA approval of the Sponsor's Plans and Specification is based primarily upon the Sponsor's certification to carry out the project in accordance with policies, standards, and specifications approved by the FAA. The Sponsor understands that:

A. The Sponsor's certification does not relieve the Sponsor of the requirement to obtain prior FAA approval for modifications to any AIP standards or to notify the FAA of any limitations to competition within the project;

B. The FAA's acceptance of a Sponsor's certification does not limit the FAA from reviewing appropriate project documentation for the purpose of validating the certification statements;

C. if the FAA determines that the Sponsor has not complied with their certification statements, the FAA will review the associated project costs to determine whether such costs are allowable under AIP.

22. **DESIGN GRANT:** This grant agreement is being issued in order to complete the design of the project. The Sponsor understands and agrees that within **2** years after the design is completed that the Sponsor will accept, subject to the availability of the amount of federal funding identified in the Airport Capital Improvement Plan (ACIP), a grant to complete the construction of the project in order to provide a useful and useable unit of work. The Sponsor also understands that if the FAA has provided federal funding to complete the design for the project, and the Sponsor has not completed the design within **four (4)** years from the execution of this grant agreement, the FAA may suspend or terminate grants related to the design.

23. **AIRPORT-OWNED VISUAL OR ELECTRONIC NAVIGATION AIDS IN PROJECT:** The Sponsor agrees that it will:

A. 1) Provide for the continuous operation and maintenance of any navigational aid funded under this grant agreement during the useful life of the equipment;
B. 2) Prior to commissioning, assure the equipment meets the FAA's standards; and
C. 3) Remove, relocate, lower, mark, or light each obstruction to obtain a clear approach as indicated in the 14 CFR part 77 aeronautical survey.

24. **FINANCIAL REPORTING REQUIREMENTS:** The Sponsor agrees to submit a **Federal Financial Report** (FAA Form SF-425) for all open grants to the Airports District Office within 90 days following the end of each Federal fiscal year and with each Final Project Closeout Report.

The Sponsor further agrees to submit an **Outlay Report and Request for Reimbursement** (FAA Form SF-271 for construction projects) or **Request for Advance or Reimbursement** (FAA Form SF-270 for non-construction projects) to the Airports District Office within 90 days following the end of each Federal fiscal year and with each Final Project Closeout Report.

25. **FINAL PAYMENT:** The Sponsor understands and agrees that in accordance with 49 USC 47111, no payments totaling more than 90 percent of United States Government's share of the project's estimated allowable cost may be made before the project is determined to be satisfactorily completed.

26. **SPONSOR PERFORMANCE REPORT:**

A. **For non-construction projects** – the Sponsor understands and agrees that in accordance with 49 CFR 18.40 the Sponsor shall submit a Quarterly Performance Report to the Airports District Office (ADO) within 30 calendar days from the end of the quarter, beginning in the quarter in which the project begins, and for each following quarter until the project is substantially complete. If a major project or schedule change occurs between Quarterly Performance Reports, the sponsor must submit an out of cycle performance report to the ADO. The performance report for non-construction projects shall include the following as a minimum:
    1. A comparison of proposed objectives to actual accomplishments.
    2. Reasons for any slippage or lack of accomplishment in a given area.
    3. Impacts on other AIP-funded projects.
    4. Impacts to projects funded by PFC, other FAA programs, or the sponsor.
    5. Identification and explanation of any anticipated cost overruns.
B. **For construction projects** – FAA Form 5370-1 Construction Progress and Inspection Report satisfies the performance reporting requirement. The sponsor must submit FAA Form 53701 to the ADO on a **weekly basis** during construction and at least quarterly when the project is in winter shutdown, until the project is substantially complete. Form 5370-1 requires the following information:
    1. Estimated percent completion to date of construction phases.
    2. Work completed or in progress during the period.
    3. Brief Weather Summary during the period including approximate rainfall and period of below freezing temperature.
    4. Contract time: Number of days charged to date and last working day charged.
    5. Summary of laboratory and field testing during the period.
    6. Work anticipated by the contractor for the next period.
    7. Problem areas and other comments.

27. **GRANT APPROVAL BASED UPON CERTIFICATION:** The FAA and the Sponsor agree that the FAA approval of this grant is based on the Sponsor's certification to carry out the project in accordance with policies, standards, and specifications approved by the FAA. The Sponsor Certifications received from the Sponsor for the work included in this grant are hereby incorporated into this grant agreement. The Sponsor understands that:

A. The Sponsor's certification does not relieve the Sponsor of the requirement to obtain prior FAA approval for modifications to any AIP standards or to notify the FAA of any limitations to competition within the project;

B. The FAA's acceptance of a Sponsor's certification does not limit the FAA from reviewing appropriate project documentation for the purpose of validating the certification statements;

C. If the FAA determines that the Sponsor has not complied with their certification statements, the FAA will review the associated project costs to determine whether such costs are allowable under AIP

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

(Signature)

Carolyn T. Read

Manager, Seattle Airports District Office

PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.[1]
Executed this _____ day of _____, _____.

_____
(Name of Sponsor)

_____
(Signature of Sponsor's Designated Official Representative)

By: _____
(Typed Name of Sponsor's Designated Official Representative)

Title: _____
(Title of Sponsor)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of_____. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this _____ day of _____,_____.

By _____
(Signature of Sponsor's Attorney)

[1] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

ASSURANCES

AIRPORT SPONSORS

A. General.

a. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.

b. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.

c. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.**

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

a. Title 49, U.S.C., subtitle VII, as amended.

b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.[1]

c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.

d. Hatch Act – 5 U.S.C. 1501, et seq.[2]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.[1 2]

f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).[1]

g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.[1]

h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.

i. Clean Air Act, P.L. 90-148, as amended.

j. Coastal Zone Management Act, P.L. 93-205, as amended.

k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.[1]

l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))

m. Rehabilitation Act of 1973 - 29 U.S.C. 794.

n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).

p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.

q. American Indian Religious Freedom Act, P.L. 95-341, as amended.

r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.[1]

Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.[1]

s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.[1]

t. Copeland Anti-kickback Act - 18 U.S.C. 874.1

u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.[1]

v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.

w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.[2]

x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

y. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

a. Executive Order 11246 - Equal Employment Opportunity[1]

b. Executive Order 11990 - Protection of Wetlands

c. Executive Order 11998 – Flood Plain Management

d. Executive Order 12372 - Intergovernmental Review of Federal Programs

e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction[1]

f. Executive Order 12898 - Environmental Justice

FEDERAL REGULATIONS

a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).

b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].[4, 5, 6]

c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment

d. 14 CFR Part 13 - Investigative and Enforcement Procedures14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.

e. 14 CFR Part 150 - Airport noise compatibility planning.

f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.

g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.

h. 29 CFR Part 1 - Procedures for predetermination of wage rates.[1]

i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.[1]

j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).[1]

k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).[1]

l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.[3]

m. 49 CFR Part 20 - New restrictions on lobbying.

n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.

o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.[1] [2]

q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.

r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.[1]

s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.

t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.

u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)

v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).

w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

[1] These laws do not apply to airport planning sponsors.

[2] These laws do not apply to private sponsors.

[3] 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

[4] On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

[5] Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

[6] Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. **Responsibility and Authority of the Sponsor.**

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. **Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. **Good Title.**

a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. **Preserving Rights and Powers.**

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the

sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. **Consistency with Local Plans.**

   The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. **Consideration of Local Interest.**

   It has given fair consideration to the interest of communities in or near where the project may be located.

8. **Consultation with Users.**

   In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. **Public Hearings.**

   In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary.

Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. **Metropolitan Planning Organization.**

    In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. **Pavement Preventive Maintenance.**

    With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.**

    For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. **Accounting System, Audit, and Record Keeping Requirements.**

    a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

    b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. **Minimum Wage Rates.**

    It shall include, in all contracts in excess of $2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum

rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. **Veteran's Preference.**

    It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. **Conformity to Plans and Specifications.**

    It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. **Construction Inspection and Approval.**

    It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. **Planning Projects.**

    In carrying out planning projects:

    a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.

    b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

    c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

    d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

    e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

    f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. **Operation and Maintenance.**

a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

1) Operating the airport's aeronautical facilities whenever required;

2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. **Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. **Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. **Economic Nondiscrimination.**

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

a.) Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

b.) Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

c.) Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

d.) It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

e.) In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

f.) The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

g.) The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. **Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. **Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. **Airport Revenues.**

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor’s acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an

amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.

a.) As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

b.) Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. **Reports and Inspections.**

It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
   1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
   2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. **Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency,

substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

a. by gross weights of such aircraft) is in excess of five million pounds Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied.

28. **Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. **Airport Layout Plan.**

a. It will keep up to date at all times an airport layout plan of the airport showing:

1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;

3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and

4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

a.) If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case

of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. **Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

b. Applicability

1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.

2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or

2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

1) It will insert the non-discrimination contract clauses requiring compliance with the acts

and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.

2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.

3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.

4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

a.) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

b.) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. **Disposal of Land.**

a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such

land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.**

    It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. **Foreign Market Restrictions.**

    It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. **Policies, Standards, and Specifications.**

    It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated March 20, 2014 and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. **Relocation and Real Property Acquisition.**

a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.

b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.

c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. **Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. **Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. **Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. **Competitive Access.**

a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-

1) Describes the requests;

2) Provides an explanation as to why the requests could not be accommodated; and

3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.

b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

FAA
Airports

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

Updated: 2/11/2015

View the most current versions of these ACs and any associated changes at:
http://www.faa.gov/airports/resources/advisorycirculars

NUMBER	TITLE
70/7460-1K	Obstruction Marking and Lighting
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B Change 2	Airport Master Plans
150/5070-7 Change 1	The Airport System Planning Process
150/5100-13B	Development of State Standards for Nonprimary Airports
150/5200-28D	Notices to Airmen (NOTAMS) for Airport Operators
150/5200-30C Change 1	Airport Winter Safety And Operations
150/5200-31C Changes 1-2	Airport Emergency Plan
150/5210-5D	Painting, Marking, and Lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Rescue and Fire Fighting Communications
150/5210-13C	Airport Water Rescue Plans and Equipment
150/5210-14B	Aircraft Rescue Fire Fighting Equipment, Tools and Clothing
150/5210-15A	Aircraft Rescue and Firefighting Station Building Design
150/5210-18A	Systems for Interactive Training of Airport Personnel

NUMBER	TITLE
150/5210-19A	Driver's Enhanced Vision System (DEVS) Ground Vehicle Operations on Airports
150/5220-10E	Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles
150/5220-16D	Automated Weather Observing Systems (AWOS) for Non-Federal Applications
150/5220-17B	Aircraft Rescue and Fire Fighting (ARFF) Training Facilities
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20A	Airport Snow and Ice Control Equipment
150/5220-21C	Aircraft Boarding Equipment
150/5220-22B	Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns
150/5220-23	Frangible Connections
150/5220-24	Foreign Object Debris Detection Equipment
150/5220-25	Airport Avian Radar Systems
150/5220-26 Change 1	Airport Ground Vehicle Automatic Dependent Surveillance - Broadcast (ADS-B) Out Squitter Equipment
150/5300-7B	FAA Policy on Facility Relocations Occasioned by Airport Improvements of Changes
150/5300-13A Change 1	Airport Design
150/5300-14C	Design of Aircraft Deicing Facilities
150/5300-16A	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17C	Standards for Using Remote Sensing Technologies in Airport Surveys
150/5300-18B Change 1	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards
150/5320-5D	Airport Drainage Design

NUMBER	TITLE
150/5320-6E	Airport Pavement Design and Evaluation
150/5320-12C Changes 1-8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-15A	Management of Airport Industrial Waste
150/5235-4B	Runway Length Requirements for Airport Design
150/5335-5C	Standardized Method of Reporting Airport Pavement Strength - PCN
150/5340-1L	Standards for Airport Markings
150/5340-5D	Segmented Circle Airport Marker System
150/5340-18F	Standards for Airport Sign Systems
150/5340-26C	Maintenance of Airport Visual Aid Facilities
150/5340-30H	Design and Installation Details for Airport Visual Aids
150/5345-3G	Specification for L-821, Panels for the Control of Airport Lighting
150/5345-5B	Circuit Selector Switch
150/5345-7F	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10H	Specification for Constant Current Regulators and Regulator Monitors
150/5345-12F	Specification for Airport and Heliport Beacons
150/5345-13B	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26D	FAA Specification For L-823 Plug and Receptacle, Cable Connectors
150/5345-27E	Specification for Wind Cone Assemblies
150/5345-28G	Precision Approach Path Indicator (PAPI) Systems
150/5345-39D	Specification for L-853, Runway and Taxiway Retro reflective Markers
150/5345-42G	Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories

NUMBER	TITLE
150/5345-43G	Specification for Obstruction Lighting Equipment
150/5345-44J	Specification for Runway and Taxiway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures
150/5345-46D	Specification for Runway and Taxiway Light Fixtures
150/5345-47C	Specification for Series to Series Isolation Transformers for Airport Lighting Systems
150/5345-49C	Specification L-854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51B	Specification for Discharge-Type Flashing Light Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53D	Airport Lighting Equipment Certification Program
150/5345-54B	Specification for L-884, Power and Control Unit for Land and Hold Short Lighting Systems
150/5345-55A	Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56B	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-12F	Airport Signing and Graphics
150/5360-13 Change 1	Planning and Design Guidelines for Airport Terminal Facilities
150/5360-14	Access to Airports By Individuals With Disabilities
150/5370-2F	Operational Safety on Airports During Construction
150/5370-10G	Standards for Specifying Construction of Airports
150/5370-11B	Use of Nondestructive Testing in the Evaluation of Airport Pavements
150/5370-13A	Off-Peak Construction of Airport Pavements Using Hot-Mix Asphalt

NUMBER	TITLE
150/5370-15B	Airside Applications for Artificial Turf
150/5370-16	Rapid Construction of Rigid (Portland Cement Concrete) Airfield Pavements
150/5370-17	Airside Use of Heated Pavement Systems
150/5380-7B	Airport Pavement Management Program
150/5380-9	Guidelines and Procedures for Measuring Airfield Pavement Roughness
150/5390-2C	Heliport Design
150/5395-1A	Seaplane Bases

THE FOLLOWING ADDITIONAL APPLY TO AIP PROJECTS ONLY

Updated: 3/7/2014

NUMBER	TITLE
150/5100-14E	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5100-17 Changes 1 - 6	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5300-9B	Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects
150/5300-15A	Use of Value Engineering for Engineering Design of Airports Grant Projects
150/5320-17A	Airfield Pavement Surface Evaluation and Rating (PASER) Manuals
150/5370-6D	Construction Progress and Inspection Report – Airport Improvement Program (AIP)
150/5370-12A	Quality Control of Construction for Airport Grant Projects

Single Audit Certification Form

The Single Audit Act of 1984 established audit requirements for non-Federal entities that receive Federal aid. On December 26, 2014, the implementing document, OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations) was superseded by 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). If your current fiscal year began before December 26, 2014, then OMB Circular A-133 is still applicable. If your fiscal year begins on or after January 1, 2015, then 2 CFR Part 200 applies.

Under OMB A-133, State or local governments (City, County, Airport Authority, Airport Board) that expend $500,000 or more a year (calendar or fiscal) in **total** Federal financial assistance must conduct an audit and submit it to the Federal Audit Clearinghouse. If the single audit is required under 2 CFR Part 200, then the total Federal financial assistance expenditure limit is $750,000 or more. For more information on the Single Audit Act requirements please reference the following web site: http://harvester.census.gov/sac/

This notice is our request for a copy of your most recent audit, whether or not there are any significant findings. In accordance with your Airport Improvement Program (AIP) grant agreement, you must also provide that information to your local Airports District Office (ADO). Please fill out the information below by checking the appropriate line(s), sign, date, and return this form to the FAA local ADO identified at the bottom of the form.

Airport Sponsor Information:

_____ _____
Sponsor Name Fiscal/Calendar Year Ending

_____
Airport Name

_____ _____
Sponsor's Representative Name Representative's Title

_____ _____
Telephone Email

Please check the appropriate line(s):

☐ We are subject to the Single Audit requirements and are taking the following action:

- ☐ The Single Audit for this fiscal/calendar year has been submitted to the FAA.
- ☐ The Single Audit for this fiscal/calendar year is attached.
- ☐ The Single Audit report will be submitted to the FAA as soon as this audit is available.

☐ We are exempt from the Single Audit requirements for the fiscal/calendar noted above.

Sponsor Certification:

_____ _____
Signature Date

Return to: FAA, Seattle Airports District Office
1601 Lind Ave. SW, Ste. 250
Renton, WA 98057-3356

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE:

2016 Lodging Tax Request

Agenda Item:

Dept. of Origin: Lodging Tax Committee

For Agenda of: September 1, 2015

PRESENTED BY:

City Manager: Steve Taylor

AGENDA ITEM ATTACHEMENTS:
August 11, 2015 – Meeting Minutes (Draft)
Exhibit A - 2016 LTAC Request Summary Spreadsheet

SUMMARY STATEMENT:

On August 11, 2015 an LTAC meeting was held to discuss the distribution of 2016 Lodging Tax Funds and the following distribution recommendation was made by the committee:

- Kelso Highlander Festival - **$15,000** (requested $20,000)
- City of Kelso, Wayfinding Project - **$20,000** (requested $20,000)
- Mark Morris Booster Club, Bud Clary War of the Border - **$3,000** (requested $3,000)
- Kelso Longview Chamber, Visitor Information Center - **$48,000** (requested $56,000)
- LCC Athletics, three (3) sporting events - **$5,000** (requested $5,000)
- Columbia Theatre - **$15,000** (requested $21,775)
- Cowlitz County Museum - **$15,000** (requested $15,000)
- KDRA - **$2,000** (requested $3,000)
- Kelso Powwow Committee - **$2,000** (requested $2,000)
- Kelso/Longview Train Depot Volunteers - **$800** (requested $800)
- 2016 Big Idea Project - **$7,650** (On-going annual contribution)

The projected revenue for the Stadium Fund in 2016 is $138,000 and the total recommended distribution is $133,450. The Council does not have to fund the full list as recommended by the LTAC and can choose to make awards in the recommended amounts to all, some, or none of the candidates on this list. If council would like to modify the allocated amounts, a recommendation outlining the desired adjustments must be submitted to the LTAC committee for consideration.

RECOMMENDED ACTION(S):

Move to approve the recommended allocation of the City's Lodging Tax funds for 2016.

Lodging Tax Advisory Committee
Meeting Minutes
August 11, 2015
City of Kelso, Council Chambers

Call to order:

Committee Chair Todd McDaniel called the meeting to order at 3:00 pm.

Those present were as follows:

Lodging Tax Committee Members
Todd McDaniel, Council Rep
Cindy Keeney
Pam Fierst
Bill Marcum

Staff
Steve Taylor, City Manager
Brian Butterfield, Finance Director
Amy Mullerleile, Assistant to City Manager

Absent Lodging Tax Committee Members
Syed Pasha

Guests
Michael Brock, Kelso Powwow Committee
Kirk Roland, Lower Columbia College Athletics
Gian Morelli, Columbia Theatre
Dan Myers, Kelso Train Depot

Funding Overview:
The LTAC Committee discussed funding availability, reserves, total amount of funding requested, and estimated revenue.

Bill Marcum made the motion to forward the following funding distribution recommendation to the Kelso City Council for approval for a total of $133,450. Cindy Keeney seconded the motion. Motion passed, all voting 'yes'.

- Kelso Highlander Festival - **$15,000** (requested $20,000)
- City of Kelso, Wayfinding Project - **$20,000** (requested $20,000)
- Mark Morris Booster Club, Bud Clary War of the Border - **$3,000** (requested $3,000)
- Kelso Longview Chamber, Visitor Information Center - **$48,000** (requested $56,000)
- LCC Athletics, three (3) sporting events - **$5,000** (requested $5,000)
- Columbia Theatre - **$15,000** (requested $21,775)
- Cowlitz County Museum - **$15,000** (requested $15,000)
- KDRA - **$2,000** (requested $3,000)
- Kelso Powwow Committee - **$2,000** (requested $2,000)
- Kelso/Longview Train Depot Volunteers - **$800** (requested $8,000)
- 2016 Big Idea Project - **$7,650** (On-going annual contribution)

Other Discussion:
Staff asked the Committee for guidance on the use of LTAC funds for apparel and other similar items given away at LTAC funded events. There was discussion regarding the appropriate level of oversight

and the use of these items as advertising for future events. The Committee was unable to reach consensus and the topic was tabled for discussion at a future meeting.

With no further comments, the meeting was adjourned at 4:10 pm.

Respectfully Submitted,

Amy Mullerleile, Recording Secretary

Exhibit A

2016 Kelso Lodging Tax Request Summary

Agency	Contact	Project	Amount Requested	Recommend Funding (yes or no)	Recommended Amount	Received money prior	Comments
Cowlitz County Historical Museum	David Freece	2016 Historical Museum	$15,000	yes	$15,000	Yes $15,000	
Kelso Train Depot Volunteers	Dan Myers	Kelso Station Improvements	$800	yes	$800	No	
Kelso Longview Chamber of Commerce	Bill Marcum	Kelso Visitor's Center	$56,000	yes	$48,000	Yes $52,500	
Kelso Highlander Festival Commission	Cory Mugaas	Kelso Highlander Festival	$20,000	yes	$15,000	Yes $15,000	
Kelso Powwow Committee	Michael Brock	Kelso "In Honor of our Children" Powwow	$2,000	yes	$2,000	Yes $100	
City of Kelso	Steve Taylor	Way Finding Project	$20,000	yes	$20,000	Yes $7,615	PDA Feasibility Study
Mark Morris Booster Club	Bill Backamus	Bud Clary War of the Border	$3,000	yes	$3,000	Yes $1,000	
Columbia Theater	Gian Morelli	Columbia Theater	$21,775	yes	$15,000	Yes $10,000	
KDRA	Mike Julian	The Highlander Iron Horse Motorcycle Rally	$3,000	yes	$2,000	Yes, $2,000	
Lower Columbia College Athletics	Kirk Roland	2016 Red Devil Classic Basketball Tournament	$1,000	yes	$1,000	Yes $1,000	
Lower Columbia College Athletics	Kirk Roland	2016 LCC Women's Holiday Basketball Tourney	$1,000	yes	$1,000	Yes $1,000	
Lower Columbia College Athletics	Kirk Roland	2016 NWAC Baseball Championships	$3,000	yes	$3,000	Yes $3,000	
Subtotal			$146,575				
On Going Commitment		Big Idea	$7,650		$7,650		
Total			**$154,225**		**$133,450**		

Total Estimated Revenue **$138,000**

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: Discussion – Athletic Facilities and Bulk Water Rates

Agenda Item:

Dept. of Origin: City Manager's Office

For Agenda of: September 1, 2015

PRESENTED BY:

Steve Taylor

Originator: Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

Agenda Item Attachments:

Park Board Minutes 7/16/2015 (Draft)
City of Longview Bulk Water Policy

SUMMARY STATEMENT:

The costs of irrigating the City's youth athletic fields at Tam O'Shanter and Manasco Parks are currently covered by the league organizations that lease their respective fields. Kelso currently charges the full commercial water rate as adopted within the rate ordinance. No sewer charge is applied to irrigation water. Staff made inquiry into Longview's water rates for athletic fields and learned they have assessed water at 25% of their current adopted rate for the past five years.

Kelso's leagues have requested some type of rate relief or general fund subsidy from the City to help cover the expense of the irrigation water. The Park Board recently recommended Council consideration of a flat surcharge of $500/year for each league to help cover the cost of watering the fields, with the City's general fund bearing the remainder of the expense.

Longview's water rate resolution and minutes from the previous Park Board meeting are attached for background information to facilitate a discussion at the regular Council meeting. Staff is seeking direction from Council on whether to move forward with a rate adjustment for the City's athletic fields.

RECOMMENDED ACTION:

None

Parks and Recreation Department

203 S. Pacific Avenue, PO Box 819 Kelso, WA 98626

Park Board Meeting

July 16, 2015

Call to Order:

Scott DeRosier called the meeting to order at 5:00 p.m. at City of Kelso City Hall Council Chambers, 203 S. Pacific Ave.

Those present were as follows:

Park Board Members	**Staff**
Jerry Phillips	Randy Johnson, Public Works Superintendent
Dan Graves	Nina Caulfield, Recording Secretary
Scott DeRosier	
Bob Smith	**Council Representation**
Pamela Jo (PJ) Enbusk	Gary Archer

Approval of Minutes:

MOTION: Bob made the motion, seconded by PJ to approve the minutes of May 21, 2015. Motion carried, all in favor.

Business:

1. Discussion – Private Concessions in Parks

   Randy explained that Council recently received a request to change our current code regarding park concessions. The current code was reviewed, as well as, an example of the code that Longview uses. Discussion followed. Major concerns with changing the code were: lost league concession revenue, creating a park full of concession stands, and making the code too complicated to enforce.

   MOTION: Jerry made a motion to keep the concession code KMC 12.20.060 as written, Dan seconded. Motion carried, all in favor.

2. Park Updates

   The park has been a very busy place. The leagues have been busy and the reservation calendar has been full every week, with several very large events that have happened and with more to come. Discussion followed regarding the policy to require large reservations to bring in porta potties to help relieve the strain on the covered area bathrooms.

Scott asked about the status of Verizon installation corrections. Tim said he is continuing to pester them.

3. Park Board Comments

Scott started a discussion regarding the current league irrigation situation. He explained that the school district has offered the use of their well for irrigation, free of charge, as opposed to the current rate structure offered by the City. Discussions followed regarding asking the City to offer the leagues a reduced water rate similar to what Longview offers.

MOTION: Scott proposed that the agreement fees for each league be increased $500 to include unlimited irrigation water, thus closing the irrigation accounts. It was acknowledged that some years this would not be beneficial but would be even over time. Bob made a motion to take Scotts proposal to Council, PJ seconded. Motion carried, all in favor.

MOTION: PJ made a motion to adjourn the meeting, Bob seconded. Motion carried, all in favor. Meeting adjourned at 5:40 pm.

Approved:

Scott DeRosier, Chair

Nina Caulfield, Recording Secretary

RESOLUTION NO. 2122

A RESOLUTION RELATING TO AND SETTING RATES AND MINIMUM CHARGES FOR WATER AND WATER SERVICE CONNECTIONS, FOR FIRE SERVICE, AND OTHER RELATED CHARGES FOR PROVIDING WATER SERVICE WITHIN AND OUTSIDE THE CITY OF LONGVIEW, AND REPEALING RESOLUTION NO. 2104.

WHEREAS, Pursuant to Chapter 15.56 of the Longview Municipal Code, the City Council of the City of Longview, Washington hereby enacts this Resolution to increase the rates and charges for providing water to cover the projected operating and capital costs of the water utility.

BE IT RESOLVED by the City Council of said City that the rates for water service furnished by said City, both inside and outside the corporate limits thereof, shall be, and are hereby established, as follows:

Section 1. Water for All Uses Within the Corporate Limits.

All water supplied for domestic or commercial purposes within the corporate limits of the City shall be supplied by meter only. The rates for such metered water supplied in any one month or fractional part thereof shall be in accordance with the following schedule but not less than the minimum monthly meter charge. These base monthly rates shall be charged for each month a customer's account is open, regardless of consumption history or actual use during any specific month:

A. Minimum Monthly Meter Charges

(1) All Classes Except Irrigation

$11.45 per month for 3/4" x 5/8" meter
$23.09 per month for 1" meter
$42.45 per month for 1-1/2" meter
$65.68 per month for 2" meter
$127.63 per month for 3" meter
$197.34 per month for 4" meter

$390.97 per month for 6” meter
$623.29 per month for 8” meter
$894.36 per month for 10” meter
$1281.59 per month for 12” meter

(2) Irrigation

$9.07 per month for 3/4" x 5/8” meter
$17.11 per month for 1” meter
$30.50 per month for 1-1/2” meter
$46.57 per month for 2” meter
$89.42 per month for 3” meter
$137.62 per month for 4” meter
$271.51 per month for 6” meter
$432.19 per month for 8” meter
$619.64 per month for 10” meter
$887.43 per month for 12” meter

B. Consumptive Charges

In addition to the minimum monthly meter charges shown above, the following rates shall be charged for metered water consumed:

(1) Single Family Residence and Duplex

For the first 800 cu. ft. or any portion thereof - $2.41 per 100 cu. ft.
For the next 800 cu. ft. - $2.82 per 100 cu. ft.
For all over 1,600 cu. ft. - $3.68 per 100 cu. ft.

(2) Trailer Courts and Apartments (Triplex and above)

All water consumed - $2.79 per 100 cu. ft.

(3) Commercial, Churches, Schools, Hospitals, and Motels/Hotels

All water consumed - $2.96 per 100 cu. ft.

(4) Irrigation

All water consumed - $4.40 per 100 cu. ft.

Section 2. Water for all Uses Outside the Corporate Limits.

All water supplied for domestic or commercial purposes outside the corporate limits of the City shall be supplied by meter only. The rates for such metered water supplied shall be in accordance with the schedule in Section 1, plus an additional charge of sixty-five percent (65%)

to cover public fire protection costs of the water system serving outside customers and other costs applicable thereto.

Section 3. Partial Monthly Charges.

When water has been supplied to any one customer for less than a calendar month, the amount to be charged such customer for the water furnished during said partial period shall be determined by dividing the applicable monthly minimum meter charge by thirty and multiplying the quotient times the number of days water was so supplied, plus the total consumptive charges for water actually supplied.

Section 4. Water Service Connection Charges.

(a) All water installations shall meet or exceed the existing standards and specifications of the City, as set forth in the Longview Municipal Code or as determined by the City Engineer. Prior to the installation, the owner/contractor shall request an inspection of materials by the City Engineer, or his/her representative. No water installations or taps into the City water mains shall occur without a utility permit issued under LMC 15.44. Any utility construction within a public right-of-way or easement shall comply with the authorizing agency's requirements and permitting regulations, and a permit shall be obtained from such agency prior to starting construction of the utility facilities. In addition, no water installation or taps shall occur except upon forty-eight (48) or more hours advance notice to the City Engineer, or his/her representative. All water installations requiring taps into a water main shall be performed by a licensed plumbing contractor qualified to perform tapping connections, per the standards set forth by the City.

(b) The City Engineer, or his/her representative, shall inspect all materials to ensure compliance with the current City standards and specifications. Once the materials, location, and permits are approved, the contractor shall be permitted to install the service. The work shall be inspected by the City Engineer, or his/her representative.

(c) No water installations or taps into the City's water main shall be covered or obscured until inspected and approved by the City Engineer, or his representative. An inspection fee of one-hundred fifty dollars ($150) shall be charged for such inspections and shall be paid at the time that a permit is granted under LMC 15.44. Where the developer of newly platted land has installed a complete water service to City standards, including corporation stop, service line, meter stop and meter box, the inspection fee is waived.

(d) A meter set-in fee shall be charged according to the following schedule:

CONNECTION SIZE	INSIDE CITY	OUTSIDE CITY
3/4" and 1" Service	$200.00	$200.00

For services greater than 1", the developer, owner or contractor shall furnish new, City-approved meters.

(e) In addition to the foregoing charges, a capital recovery fee will be charged according to the meter size as follows:

CONNECTION SIZE	CAPITAL RECOVERY FEE
0.75"	$ 2,031.00
1"	$ 5,078.00
1.5"	$ 10,155.00
2"	$ 16,248.00
3"	$ 32,496.00
4"	$ 50,775.00
6"	$ 101,550.00
8"	$ 162,480.00
10"	$ 233,565.00
12"	$ 335,115.00

Section 5. Monthly Rates for Private Fire Sprinkler Systems and for Hydrants on Private Property.

The monthly charges for private fire sprinkler systems and hydrants installed on private property shall be as follows:

INSIDE CITY	OUTSIDE CITY
$11.45	$18.91

Private fire protection systems must be metered as provided in Section 15.64.080 of the Longview Municipal Code, and payment of the costs of such installation shall be the responsibility of the property owner. Use of water from private fire sprinkler systems and hydrants shall be for fire suppression or system testing purposes only.

Section 6. Charges to City Owned Facilities.

(a) Unmetered Service: For each unmetered water service to a City park or other City facility, the City shall pay into the Water Utility Fund, two thousand one hundred dollars and twenty-one cents ($2,303.83) per year for each such service.

(b) Youth Athletic Leagues: Water consumed by Youth athletic leagues utilizing City park facilities under a Longview-Kelso Parks and Recreation Department Facility Use Agreement shall be charged at twenty-five percent (25%) of the rates

set forth in this Resolution. In order to qualify for this reduced rate, the youth athletic league facilities must be metered to determine actual usage. Where the league is the account customer and is billed directly by the City, the league shall be billed at twenty-five percent (25%) of the account total determined by the rates set forth in this Resolution, except that penalties, turn on charges, and other related charges shall be billed at one hundred percent (100%) of the amounts set forth in this Resolution. Where the league is not the account customer, the Parks and Recreation Department shall install and monitor sub-meters to determine the league's actual usage. The City Engineer, or his/her representative, and the Parks and Recreation Department shall implement procedures to determine the league's usage and charge the Parks and Recreation Department account twenty-five percent (25%) of the league's consumption, plus the full amount of all other consumption on that account. That may be accomplished by appropriately reducing each bill to the Parks and Recreation Department account, or by reimbursing the Parks and Recreation Department account from the Water Utility Fund. Penalties, turn on charges, and other related charges shall be billed at one hundred percent (100%) of the amounts set forth in this Resolution.

(c) Mint Valley Golf Course Irrigation: Water consumed at the Mint Valley Golf Course for irrigation purposes only, shall be charged at forty percent (40%) of the rates set forth in this Resolution.

Section 7. Delinquent Payments.

All money due the City for furnishing water service for any customers shall be due and payable within fifteen (15) days of the billing date shown on each bill, and if not paid within fifteen (15) days thereafter, shall be deemed delinquent. For those accounts determined to be in delinquent status, the City will issue a notice advising the customer that payment is past due, and that such payment should be made within ten (10) days after receipt of such notice. In accordance with Longview Municipal Code Section 15.56.010(2), if full payment on a utility account has not been received at the Finance Department by the fortieth (40^{th}) day after the bill date, a penalty in the amount of twenty-five dollars ($25.00) shall be assessed should it become necessary for the City to make a personal call upon a delinquent utility account debtor for the purpose of attempting to collect such delinquent account, regardless of whether or not such an account is collected as a result of such personal demand for payment or otherwise. In the event that the utility account remains delinquent beyond the forty-first (41^{st}) day after the bill date, and after such contact has been attempted by the City, the utility service shall be disconnected or shut off until such time as the balance is paid in full. In accordance with the Longview Municipal Code Section 15.56.010(3), a penalty charge of fifty dollars ($50.00) shall be assessed to turn on the utility service, once the balance, including penalty fees, are paid in full. In accordance with

Longview Municipal Code Section 15.56.050, there is hereby established a charge of fifty dollars ($50.00) to turn on a water service which has been disconnected or turned off due to a user failing to apply for water service as provided in Longview Municipal Code Section 15.44.010. A charge of one hundred dollars ($100.00) is hereby established if the City is required to turn on a water service after regular working hours. If the City determined that it was necessary to physically remove the meter to enforce the provisions of the Longview Municipal Code and this resolution, a charge of one hundred fifty dollars ($150.00) shall be assessed to reinstall the meter and turn on water service.

Section 8. Water Obtained from Fire Hydrant.

Anyone desiring to obtain water from an un-metered fire hydrant shall first obtain a Fire Hydrant Use Permit, and pay all applicable fees and deposits. Use of a fire hydrant to obtain water shall be temporary only, shall occur only at hydrants designated and approved by the Utilities Operations Manager or his/her designee, and shall not exceed ninety (90) calendar days unless otherwise approved by the Utilities Operations Manager or his/her designee. All water obtained from a hydrant shall be through a water meter and backflow prevention assembly provided by the City, except that the Utilities Manager may authorize the permittee to provide its own meter and backflow prevention assembly.

The permittee shall pay a deposit of one thousand dollars ($1,000.00) and a non-refundable meter assembly installation and removal fee of one hundred fifty dollars ($150.00) in advance of the City installing the meter assembly on the hydrant. The permittee shall also pay a meter rental charge of five dollars ($5.00) per calendar day and shall pay for water used at the rates shown in Section 1.B (3).

All water supplied for use outside the corporate limits of the City shall be charged at the rates shown in Section 1.B (3), plus an additional charge of sixty-five percent (65%) as identified in Section 2 of this resolution.

The deposit is required for the purpose of assuring that said meter will be returned to the City, and that it will not be damaged. The permittee shall be fully responsible for any damage or loss to the hydrant and/or the hydrant meter assembly. If a meter assembly is returned to the

City in a damaged condition, or the hydrant is damaged by the permittee's use, the permittee shall be responsible to pay all replacement or repair costs that exceed the deposit amount, in addition to the meter rental and water consumption charges. Replacement or repair costs shall become payable to the City within thirty (30) calendar days after notification and subsequent mailing of an invoice to permittee.

Permittees providing their own meter and backflow prevention assembly shall obtain a Fire Hydrant Use Permit for each hydrant used, and shall use only hydrants designated and approved by the Utilities Manager or his/her designee. Such permittees shall be exempt from the installation/removal fee and meter rental charge, but shall pay a one hundred dollar ($100.00) deposit, shall pay for all water consumed, and shall be responsible for any damage or loss to the hydrant due to their use of the hydrant.

The permit shall be on site at any time water is to be withdrawn from the hydrant and shall be subject to examination on request of employees of the City. The permittee shall comply with the requirements set forth in the 2009 International Fire Code, Section 901.8; LMC Sections 15.60.050 and 15.60.070.

The Utilities Division shall provide meter readings to the Finance Department, who shall determine and issue the monthly and final billings. The Finance Department shall refund the deposit to the permittee after all charges have been paid and upon verification from the Utilities Operations Manager or his/her designee, that the meter has been returned and that all City-owned property is undamaged.

Section 9. Water Shortage Fees.

During a water shortage emergency as defined in Chapter 15.74 of the Longview Municipal Code, fees shall be assessed as follows for installation and removal of flow restrictor devices on individual water services, or for disconnecting or shutting off services, as provided for to enforce the measures set forth in Chapter 15.74:

¾ -inch to 1 ½ -inch meters: $150.00

larger than 1 ½ -inch meters: Actual costs for time, material, and equipment

Section 10. Temporary Aesthetic Water Quality Rate Reduction

On January 31, 2013, the City of Longview discontinued supplying its customers with water from the Cowlitz River and began supplying treated groundwater from the Mint Farm Regional Water Treatment plant. Several months later a limited number of customers began experiencing water quality issues due to destabilization of scale build up in the City's water mains. Although the water meets potable standards, objectionable odor, color, and taste characteristics have been experienced by a limited number of customers. As acknowledgement that some customers are receiving water with objectionable aesthetic characteristics impacting their daily lives, the following reduced rates will be charged to certain qualifying customers.

10.1 Eligibility for Aesthetic Water Quality Rates

Eligibility for Aesthetic Water Quality Rates shall be based on water quality at a specific customer's location.

A. EligibilityCustomers may be eligible for Aesthetic Water Quality Rates upon request by the customer and after verification by City staff that the customer has experienced aesthetic water quality issues related to iron and/or manganese concentrations in the customer's water supply. Customers dealing only with spotting and other issues related to hardness and dissolved solids concentrations, chlorine odor or taste, or other issues not related to iron or manganese concentrations, are not eligible for Aesthetic Water Quality Rates. Eligibility for Aesthetic Water Quality Rates shall be determined by City staff based one or more of the following methods:

i) Water sample collected by City staff from the water main serving the customer containing iron concentration greater than the state Dept. of Health established Secondary Maximum Contaminant Level of 0.3 mg/l.

ii) Water sample collected by City staff from the water main serving the customer containing manganese concentration greater than the state Dept. of Health established Secondary Maximum Contaminant Level of 0.05 mg/l.

iii) Water sample collected by City staff from the water main serving the customer with an apparent color reading of greater than 15 color units.

iv) Non-quantifiable characteristics as determined by the Public Works Director or his/her designee.

v) Eligibility testing of a customer's water shall occur no more frequently than once per week. After two tests fail to meet the eligibility criteria, the City will not conduct any further eligibility tests for that customer unless the City identifies a general deterioration of water quality in the City's mains in the area of the customer.

B. Eligibility Period

Customers shall be eligible for the Aesthetic Water Quality Rates for a period of two (2) months, after which continued eligibility must be determined in accordance with section 10.1.A.

10.2 Aesthetic Water Quality Rates Inside Corporate Limits

All water supplied for domestic or commercial purposes within the corporate limits of the City shall be supplied by meter only. The rates for such metered water supplied in any one month or fractional part thereof shall be in accordance with the following schedule but not less than the minimum monthly meter charge. These base monthly rates shall be charged for each month a customer's account is open, regardless of consumption history or actual use during any specific month:

A. Minimum Monthly Meter Charges – Aesthetic Water Quality

(1) All Classes Except Irrigation

$5.73 per month for 3/4" x 5/8" meter
$11.56 per month for 1" meter
$21.23 per month for 1-1/2" meter
$32.84 per month for 2" meter
$63.83 per month for 3" meter
$98.67 per month for 4" meter
$195.49 per month for 6" meter
$311.64 per month for 8" meter
$447.18 per month for 10" meter
$640.79 per month for 12" meter

(2) Irrigation

No reduced rates for irrigation; the rates in Section 1 shall apply.

B. Consumptive Charges – Aesthetic Water Quality

In addition to the minimum monthly meter charges shown above, the following rates shall be charged for metered water consumed:

(1) Single Family Residence and Duplex

For the first 800 cu. ft. or any portion thereof - $1.20 per 100 cu. ft.
For the next 800 cu. ft. - $1.42 per 100 cu. ft.
For all over 1,600 cu. ft. - $1.84 per 100 cu. ft.

(2) Trailer Courts and Apartments (Triplex and above)

All water consumed - $1.40 per 100 cu. ft.

(3) Commercial, Churches, Schools, Hospitals, and Motels/Hotels

For the first 800 cu. ft. or any portion thereof - $1.48 per 100 cu. ft.
For the next 800 cu. ft. - $1.96 per 100 cu. ft.
For all over 1,600 cu. ft. - $2.52 per 100 cu. ft.

(4) Irrigation

No reduced rates for irrigation; the rates in Section 1 shall apply.

10.3 Aesthetic Water Quality Rates Outside the Corporate Limits.

The rates for water supplied shall be in accordance with the schedule in Section 10.2, plus an additional charge of sixty-five percent (65%) to cover public fire protection costs of the water system serving outside customers and other costs applicable thereto.

BE IT FURTHER RESOLVED that Resolution No. 2104 , passed by the City Council on February 27, 2014 , is hereby repealed in its entirety on the date this Resolution becomes effective.

BE IT FURTHER RESOLVED that this Resolution shall take effect on January 1, 2015 .

PASSED by the City Council of the City of Longview, Washington, and approved by its Mayor at a regular meeting of said City Council held on the 11th day of September , 2014.

_____

M A Y O R

ATTEST:

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: Discussion – Big Idea Project

Agenda Item:

Dept. of Origin: City Manager's Office

PRESENTED BY:

For Agenda of: September 1, 2015

Steve Taylor

Originator: Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

Agenda Item Attachments:

Current Big Idea Contract

SUMMARY STATEMENT:

Continue the discussion of project ideas for use of the City's Big Idea funding in 2017.

RECOMMENDED ACTION:

Interlocal Agreement
Reconstituting and Amending the Cowlitz County Regional Tourism Development Partnership Program AKA "The Big Idea" and Tourism Board of Directors

THIS AGREEMENT made and entered into between **COWLITZ COUNTY**, a political subdivision of the State of Washington, acting by and through its Board of Commissioners, hereinafter referred to as "County," and the Cities of **LONGVIEW, KELSO, CASTLE ROCK, KALAMA, and WOODLAND**, each political subdivisions of the State of Washington, acting by and through their respective City Councils or City Managers for the purpose of creating an Interlocal Agreement to create and administer the Cowlitz County Regional Tourism Development Partnership Program (hereinafter "The Big Idea").

WHEREAS, the Interlocal Cooperation Act, Chapter 39.34, Revised Code of Washington (RCW), permits local governmental units in Washington State to develop and implement Interlocal agreements regarding issues of common interest and concern; and

WHEREAS, each of the parties to this Agreement independently collects and expends special excise taxes used to pay the cost of tourism promotion, which is defined in RCW 67.28 as activities and expenditures designed to increase tourism, including advertising, publicizing or otherwise distributing information for the purpose of attracting visitors and encouraging tourism expansion; and

WHEREAS, each of the parties to this Agreement are also authorized to expend the special excise taxes for acquisition, construction or operation of tourism-related facilities as defined in RCW 67.28 to include facilities that support tourism, the performing arts, or the accommodation of tourist activities, or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purposes (these include such items as events, attractions, or activities); and

WHEREAS, the parties wish to enter into a collaborative partnership for the promotion of tourism and for the acquisition, construction or operation of tourism-related facilities to stimulate the local economy for the benefit of the businesses and citizens of their individual entities of Cowlitz County; and

WHEREAS, it is the desire of the parties to contribute resources and cooperate to develop a regional vision, plans and projects to diversify tourism programs and activities within the geographical boundaries of Cowlitz County to accomplish more together than can be done separately. The intent of the annual "Big Idea" program is to draw visitors for potential overnight stays thereby adding to the lodging tax funding pool while also creating something that will continue to draw visitors in the future.

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein and the benefits to be realized by each party, and in further consideration of the benefit to the general public to be realized by the performance of this Agreement, the parties agree as follows:

1. **Board of Directors Created.** There is hereby created a Tourism Board of Directors ("Tourism Board"), consisting of nineteen (19) voting members, and four (4) nonvoting ex officio members who shall be the County's Tourism Director, a representative of the United States Forest Service, a representative of the Washington State Parks & Recreation Commission and the County's Exposition/Conference Center Director. The Tourism Board will be responsible to review, select and recommend to the local lodging tax advisory committees and legislative authorities of each party for funding projects or programs submitted by the parties as further described in this Agreement. The projects or programs are intended to have a regional vision in order to diversify tourism programs and activities within the geographical boundaries of Cowlitz County and to provide each entity with an equal vote to implement that vision, the projects, and oversee the direction of those projects and programs. The projects and programs should, among other things, establish a collaborative partnership for the promotion of tourism and tourism-related activities to stimulate the local economy for the benefit of the businesses and citizens of each entity and Cowlitz County as a whole.

A. Membership of Tourism Board of Directors.

(1) Number, Terms and Qualifications of Members. The board shall consist of nineteen (19) members and three (3) nonvoting ex officio members as follows:

Regional Tourism Board of Directors				
Jurisdiction	Position	Status	# of Members	Initial Term
Longview	[City Manager], or designee	Voting	One (1)	___ years
Longview	Hotelier or designee	Voting	One (1)	___ years
Longview	Citizen or Stakeholder	Voting	One (1)	___ years
Kelso	[City Manager] , or designee	Voting	One (1)	___ years
Kelso	Hotelier or designee	Voting	One (1)	___ years
Kelso	Citizen or Stakeholder	Voting	One (1)	___ years
Castle Rock	[Mayor] , or designee	Voting	One (1)	___ years
Castle Rock	Hotelier or designee	Voting	One (1)	___ years
Castle Rock	Citizen or Stakeholder	Voting	One (1)	___ years
Kalama	[Mayor] , or designee	Voting	One (1)	___ years
Kalama	Hotelier or designee	Voting	One (1)	___ years
Kalama	Citizen or Stakeholder	Voting	One (1)	___ years
Woodland	[Mayor] , or designee	Voting	One (1)	___ years
Woodland	Hotelier or designee	Voting	One (1)	___ years
Woodland	Citizen or Stakeholder	Voting	One (1)	___ years
Cowlitz County	[Commissioner], or designee	Voting	One (1)	___ years
Cowlitz County	Hotelier or designee	Voting	One (1)	___ years
Cowlitz County	Citizen or Stakeholder-Hwy 503	Voting	One (1)	___ years
Cowlitz County	Citizen or Stakeholder-Hwy 504	Voting	One (1)	___ years
Cowlitz County	County's Tourism Director	Non-Voting	One (1)	6 years
State of WA	Parks & Recreation Commission	Non-Voting	One (1)	6 years
U.S. Forest Service	Representative	Non-Voting	One (1)	6 years
Cowlitz County	Expo/Conference Center Director	Non-Voting	One (1)	6 years

Voting members shall serve six-year terms or until a member's successor is duly appointed and confirmed. PROVIDED THAT the terms of the first Tourism Board shall be staggered so that each entity shall have one voting member with a two-year term, each entity shall have one voting member with a four-year term, and each entity shall have one voting member with a six-year term. During the first meeting of the Tourism Board, the Directors shall, by majority vote, determine which Director's seats shall be for shorter terms in order to establish the staggered term rotation. It is the intent of the parties that one-third of the voting Directors shall be selected every-other year. Directors shall not be limited in number of successive years on the Tourism Board.

(2) Qualifications. Nominees for a Tourism Board position should be individuals with backgrounds and experience in tourism, planning, advertising, and marketing.

(3) Appointment. Tourism Board members shall be appointed by the City Council or Board of Commissioners for the jurisdiction represented in a manner consistent with the jurisdiction's appointment procedures. The Hotelier and Citizen or Stakeholder-at-large representing the cities shall be appointed by the City Manager, or designee. Prior to appointment, applicants for the Tourism Board are required to meet with the entity they wish to represent. Entities will seek a recommendation from their Lodging Tax Advisory Committees.

(4) Vacancies. Vacancies occurring other than through the expiration of the term shall be filled for the unexpired term in the same manner as for appointments as provided herein.

B. Meetings.

The Tourism Board shall hold such regular and special meetings as may be necessary to carry out its responsibilities. The Tourism Board shall elect from among its members a chair who shall preside at all meetings and a vice chair who shall preside in the absence of the chair. A majority of the Tourism Board shall constitute a quorum for the transaction of business and a majority vote of those present shall be necessary to carry any motion.

C. Duties and Responsibilities.

The Tourism Board shall be an advisory body to the City Councils and the Board of Commissioners. Duties of the Tourism Board shall include:

(1) Collaboration. Work collaboratively with Lodging Tax Advisory Committees, community stakeholders, and City and County Elected Officials and staff, and the Cowlitz County Tourism Director to identify eligible projects and programs that meet the requirements of laws regarding the use of the monies which are the subject of this Agreement and that meet the operational and programmatic needs of the participating partners.

All activities, projects, programs and expenses of the program supported with funds received from the County and the Cities in furtherance of this Agreement must conform to requirements of RCW 67.28, as now enacted or hereinafter amended, and shall further be subject to such other restrictions as might be contained in this Agreement.

(2) Regional Tourism Projects & Programs. Annually select and recommend to the local lodging tax advisory committees and legislative authorities of each of the parties funding for one or more current or new activities, attractions, events, or other causes that will promote tourism and lodging throughout the County and/or a City that is a party to this Agreement pursuant to the terms of this Agreement. (For example: the City of Woodland operates a Visitor's Center that serves tourism county-wide and therefore extended support would benefit all entities involved. Due to the volume of visitors receiving information from Woodland's Visitor Center, Woodland retains the ability to use its collective funding to support its Visitor's Center over a period of years to the benefit of the other entities. Other entities may also choose to invest a portion of their lodging tax monies in the operations of the Woodland Visitor's Center to promote on-going events and activities in the area.)

(3) Annual and Periodic Reports. The Tourism Board shall, at least annually not later than April each year, provide a written report to the Board of County Commissioners and each City Council related to the operation of the Tourism Board which should include, among other things:

a) A narrative detailing the implementation and accomplishments of the Tourism Board for the prior year related to the goals set out in this Agreement (including, but not limited to, the information required by RCW 67.28.1816(2)(c)(i), as now enacted or hereafter amended); and

b) The status of regional tourism development planning program; and

c) A summary of the actual, collective expenditures and revenues for the "Big Idea" program for the prior year; and

d) Such other information as may be requested by the parties or would be helpful in understanding the overall program.

(4) Ad Hoc Committees. The Tourism Board may from time to time create short-term ad hoc committees that include nonmembers who are deemed important in performing the Tourism Board's duties. Tenure shall vary with the need as determined by the Tourism Board'. Ad Hoc Committee Members shall not have voting rights.

D. County Staff Support.

Administrative staff support shall be provided by Cowlitz County and/or other designee of the cities. Staff support shall be responsible to provide clerical, administrative and other assistance as necessary to enable the Tourism Board to conduct business and carry out its duties and responsibilities.

2. Financial Contributions.

A. Collective "Big Idea" Funding. The parties to this Agreement agree to review promptly the annual recommendation of the Tourism Board for the collective funding of a project or program, either approving or disapproving the recommendation within a month of receipt. If a party, in good faith, disapproves the annual recommendations, the parties and the

Tourism Board shall promptly confer to resolve the disagreement and shall seek to resolve the dispute in time to permit proper funding of that year's recipient of the funding. Within two weeks of the approval by all parties, each party shall transmit to the agreed recipient the amounts as provided below. The Tourism Board and recipient shall submit final accounting to and for the parties.

B. Participating Entities Annual Commitment to Regional Tourism. Funds to be committed for regional tourism by each participating entity are anticipated to come from each entity's lodging tax receipts, but the actual source and amount of funding shall be determined by each entity. More specifically; each entity may derive its funding from sources other than the lodging tax, provided the source meets all state, federal, and local legal requirements. General fund dollars, community partnership fundraising capital or lodging tax funds can be contributed either in combination or alone to meet the entities' anticipated annual commitments. Each entity is anticipated to commit the following amounts each year for six years (2012, 2013, 2014, 2015, 2016, and 2017):

Entity	Annual Contribution (2012 -2017)
Longview	$ 3,632
Kelso	$ 7,625
Castle Rock	$ 1,279
Kalama	$ 352
Woodland	$ 2,540
Cowlitz County	$18,410
Total Entity Annual Contributions:	$33,838
Cowlitz County (match)	$33,838
Total Program Contributions	$67,676

C. Monetary Default. Failure of a party to fulfill its commitments, as specified, herein, shall constitute a default under the terms of this Agreement. If the default is not cured within forty-five (45) days after the County notifies the agency in writing of such default, the voting privileges of the Directors representing such defaulting entity shall be suspended. Additionally, the entity will not qualify to receive proceeds from the "Big Idea" Fund until its regional tourism commitments have been made and the default has been cured.

3. <u>Distributions from Tourism Pooled "Big Idea" Fund</u>. The parties agree that monies for the "Big Idea" funding will be paid annually by each party on or before January 31 to support a program or project collectively approved by the parties. Each entity will be entitled to receive proceeds in accordance with this Agreement once during the initial term of this Agreement, or once every six years if the Agreement is extended.

With funds committed under the terms of this Agreement and collectively awarded by the parties, each entity agrees to design, construct and complete the approved project or program within one year of receiving the funds. However, an entity may request approval from the parties, with the review and recommendation of the Tourism Board, for an extension of time to

complete a project where it can be shown that substantial progress has been made toward implementing or completing an approved project or program especially where the recommended "Big Idea" collective funding expands activities such as marketing, promotions, and licensing. Entities may also share a portion of their lodging tax funds associated with this Agreement with another participating entity to enhance collaborative marketing and/or activities. Entities may contribute excess proceeds distributed to it to the County Department of Tourism to pursue collaborative efforts or opportunities as may be approved by the Tourism Board, or as otherwise agreed by the parties.

PROVIDED HOWEVER, that each entity may request approval from the parties, with the review and recommendation of the Tourism Board, to receive an amount not to exceed ten per cent (10%) or Six Thousand Seven Hundred Sixty-seven dollars and 60/100 ($6,767.60) of its allocation prior to the year in which they would receive the annual commitment of funds. Funds advanced under this provision must be used to promote, plan, or secure contracts associated with their "Big Idea" project. Such funds will only be distributed only if all parties agree, which agreement shall not be unreasonably withheld.

PROVIDED FURTHER, that distribution of the "Big Idea" collective funding intended for the City of Woodland may be used for the Woodland Visitor Center and is exempt from the requirement to expend funds granted to it within the one year time frame described above. This paragraph does not preclude other entities from contributing a portion of their "Big Idea" collective fund to The Woodland Visitor's Center. All funds distributed pursuant to this Agreement in support of The Woodland Visitor's Center must meet the requirements of RCW 67.28 and be disclosed to the other parties for inclusion in their annual reports.

In the event that collective funds have been disbursed to the entity and the project or program does not proceed or is not completed as anticipated or redistributed as described herein, the entity hereby guarantees that it will refund all respective funds to the respective parties who contributed, together with accrued interest at the same rate as if the funds had been invested with the Washington State Local Government Investment Pool,; PROVIDED that the entity may deduct such amounts as it shall have applied to its project or program through the date on which a decision is made not to proceed with or to abandon the project or program. Refunded proceeds will be returned to the parties.

4. Acquisition and Ownership of Capital Equipment, Property and Facilities. The parties do not anticipate the joint acquisition or ownership of capital equipment, property or facilities with the monies committed for regional tourism under the provisions of this Agreement. PROVIDED however, should the parties determine later that such joint acquisitions should be made, this Agreement will be amended to provide for the disposition of such equipment, property or facilities upon the termination of this Agreement. For purposes of this Agreement, the term "capital equipment" shall mean expenditure for a non-recurring physical asset that is not consumed within a year, but rather has a multi-year life and a value exceeding $5,000.00.

5. Contract Administrator. The County's Finance Director shall be the administrator of this Agreement.

6. Effective Date/Termination. The initial term of this Agreement shall be January 1, 2012 through December 31, 2017. The Agreement may be renewed by the parties upon such terms and conditions as the parties agree. Any party may terminate their part in this Agreement by giving written notice thereof at least 180 days before the end of any calendar year.

7. Penalty for Early Withdrawal. In the event that any party to this Agreement shall withdraw from further participation prior to expiration of the initial term of this Agreement, and

(a) The withdrawing party shall have received collective funding pursuant to this Agreement prior to the time of withdrawal, the withdrawing party shall either

(1) Refund all respective funds received to the respective parties who contributed, or

(2) Commit to pay to the other parties the amounts committed by the withdrawing party as specified in Paragraph 2B above. PROVIDED, that the withdrawing party shall receive as a credit against the amounts committed under this paragraph, all sums previously contributed by the withdrawing party under the terms of this Agreement.

(b) PROVIDED FURTHER, that any party that withdraws from this Agreement prior to expiration of the initial term shall NOT be entitled to a refund of any contributions made in accordance with this Agreement.

8. Relationship of the Parties. No agent, official, employee, servant, or representative of one party shall be deemed an officer, employee, agent, servant or representative of another party or for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, or representatives.

9. Nonwaiver. No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies.

10. Interpretation and Implementation. In the event that any dispute should arise regarding the interpretation of any term of this Agreement or the implementation of any of the provisions hereof, and such dispute is not resolved by mutual discussions within ten (10) days after a written description of such dispute is delivered by one party to the other, such dispute may be submitted to binding arbitration in the manner described in RCW 39.34.180 as now enacted or hereafter amended. In any legal action between the parties with respect to the matters covered

by this Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in such legal action, in addition to any other relief it may be awarded.

11. Construction of Agreement. In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.

12. Invalidity. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any of the other provisions hereof and such other provisions shall remain in full force and effect despite such invalidity or illegality. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

13. Severability. If a court of law determines any provision of the Agreement to be unenforceable or invalid, the parties hereto agree that all other portions of this Agreement shall remain valid and enforceable.

14. Paragraphs. The paragraph headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they appertain.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties for the use of funds received and projects undertaken as the result of this Agreement and it supersedes and repeals all prior interlocal agreements, communications and proposals, whether electronic, oral, or written between parties with respect to this regional tourism partnership and with respect to this Agreement. This Agreement may be amended, modified, or added to only by written instrument properly signed by all parties hereto.

16. Supplemental Agreements. The parties agree to complete and execute all supplemental documents necessary or appropriate to fully implement the terms of this Agreement.

17. Assignment. No party shall assign this Agreement, or any part hereof, without the written consent of the other parties. The Agreement shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns.

18. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and permitted assigns. No other person or entity shall have any right of action or interest in this Agreement based upon any provision of the Agreement.

19. Notices. All communications, notices and demands of any kind which any party requires or desires to give to any of the other parties shall be in writing and either served on the following individual(s) or deposited in the U.S. Mail, certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Longview:

City Manager
City of Longview
1525 Broadway
Longview, WA 98632

Copy to:
City Attorney
1525 Broadway
Longview, WA 98632

If to Kelso:

City Manager
City of Kelso
203 S. Pacific #217
Kelso, WA 98626

Copy to:
City Attorney
105 Allen Street
Kelso, WA 98626

If to Castle Rock

City of Castle Rock
P.O. Box 370
Castle Rock, WA 98611

Copy to:
City Attorney
P.O. Box 370
Castle Rock, WA 98611

If to Kalama:

City of Kalama
P. O. Box 1007
Kalama, WA

Copy to
City Attorney
P. O. Box 1007
Kalama, WA

If to Woodland:

City of Woodland
P. O. Box 9
Woodland, WA 98674

Copy to
City Attorney
P. O. Box 9
Woodland, WA 98674

If to Cowlitz County:

Board of County Commissioners
County Administration Building, Room 300
207 North 4th Ave
Kelso, WA 98626

Copy to:
Chief Civil Deputy
Cowlitz County Prosecuting Attorney
312 South 1st Ave West
Kelso, WA 98626

20. Compliance with Laws. All parties shall comply with all applicable federal, state and local laws, regulations and rules in performing this Agreement.

21. Applicable Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to the Agreement shall be Cowlitz County, Washington.

22. Interlocal Cooperation Act. The performance of the obligations of this Agreement shall be in compliance with the provisions of RCW 39.34, the Interlocal Cooperation Act. The parties agree that no separate legal administrative entities are necessary in order to carry out this Agreement. For purposes of RCW 39.34.030(4)(a), the Director of the County Office of Financial Management shall serve as the administrator responsible for administering the joint and cooperative undertaking among the parties to this Agreement. There shall be no "joint board" as that term is used in RCW 39.34.030(4)(a), except as noted in 1 of this Agreement.

23. Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart. The effective date of this Agreement shall be the last date executed by any one of the parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written below.

Interlocal Agreement
Cowlitz County Regional Tourism Development Partnership

BOARD OF COUNTY COMMISSIONERS
OF COWLITZ COUNTY, WASHINGTON

Mike A. Karnofski, Chairman

James R. Misner, Commissioner

Dennis P. Weber, Commissioner

Approved as to Form:

Approved via Agenda Quick
Chief Civil Deputy Prosecuting Attorney

5-1-14
Date

Attest:

Tiffany Ostreim, Clerk of the Board 5-6-14

Interlocal Agreement
Cowlitz County Regional Tourism Development Partnership

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written below.

CITY OF LONGVIEW

Robert J. Gregory, City Manager

Attest:

Ann Davis, City Clerk

Approved as to Form:

James McNamara, City Attorney

March 13, 2014
Date

Interlocal Agreement
Cowlitz County Regional Tourism Development Partnership

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written below.

CITY OF KELSO

Steve Taylor, City Manager

Attest:

Brian Butterfield, Clerk/Treasurer

Approved as to Form:

Janean Parker, City Attorney

Date

Interlocal Agreement
Cowlitz County Regional Tourism Development Partnership

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written below.

CITY OF KALAMA

Pete Poulsen, Mayor

Attest:

Coni McMaster, Clerk/Treasurer

Approved as to Form:

Paul Brachvogel, City Attorney

3/19/14
Date

Interlocal Agreement
Cowlitz County Regional Tourism Development Partnership

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written below.

CITY OF CASTLE ROCK

Paul Helenberg, Mayor

Attest:

Ryana Covington, City Clerk/Treasurer

Approved as to Form:

Frank Randolph, City Attorney

2/10/2014
Date

Interlocal Agreement
Cowlitz County Regional Tourism Development Partnership

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written below.

CITY OF WOODLAND

Marilee L. McCall, Mayor Pro-Tem

Attest:

Georgina D. Anderson, Deputy Clerk/Treasurer

Approved as to Form:

William Ellng, City Attorney

Date

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: AN ORDINANCE OF THE CITY OF KELSO RELATING TO CODE ENFORCEMENT BY ADOPTING A NEW CHAPTER 1.50 CODE ENFORCEMENT TO THE KELSO MUNICIPAL CODE

Agenda Item:

Dept. of Origin: Community Development

For Agenda of: September 1, 2015

Originator: Steve Taylor

City Attorney: Janean Parker

City Manager: Steve Taylor

PRESENTED BY:

Steve Taylor

Agenda Item Attachments:

Proposed Ordinance
Proposed new KMC Chapter 1.50 w/ redlined changes
Proposed new KMC Chapter 1.50 clean
Memo from City Attorney

SUMMARY STATEMENT:

At the August 18 meeting staff proposed the adoption of a general code enforcement chapter outlining the process for addressing violations of the nuisance abatement code as well as violations of other parts of the Kelso Municipal Code. During the discussion Council provided staff with comments and guidance. The revised version incorporates the desired changes expressed by Council as it relates to the penalty provisions; several other noted comments will be incorporated into the procedures as staff implements the new program.

RECOMMENDED ACTION:

Move to approve on first reading an ordinance adding Chapter 1.50 Code Enforcement to the Kelso Municipal Code.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO RELATING TO CODE ENFORCEMENT BY ADOPTING A NEW CHAPTER 1.50 CODE ENFORCEMENT TO THE KELSO MUNICIPAL CODE

WHEREAS, Kelso Municipal Code Chapter 8.24 Abatement of Public Nuisances was adopted in 2003 and contains several outdated enforcement provisions; and

WHEREAS, in conjunction with the revision of Chapter 8.24, the City wishes to consolidate the enforcement provisions of the old Chapter 8.24 with updated enforcement provisions related to the whole of the municipal code to provide a single uniform and efficient enforcement process for code violations throughout the City; and

WHEREAS, the City wishes to update this enforcement process to more clearly describe the enforcement process, include alternatives for voluntary compliance, and provide a progressive enforcement program that utilizes a civil hearing process.

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 1.50 ADDED. That a new Kelso Municipal Code Chapter 1.50—Code Enforcement is hereby adopted as set forth in Exhibit "A" attached hereto and incorporated fully by this reference.

SECTION 2. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect on December 1, 2015 upon its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____ _____, 2015.

_____

ATTEST/AUTHENTICATION: MAYOR

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

PUBLISHED:_____

Chapter 1.50
Code Enforcement

Sections:

1.50.010 Purpose and scope.

The purpose of this chapter is to set forth the enforcement procedures for violations of the Kelso Municipal Code, to provide an opportunity for a prompt hearing and decision on alleged violations, and to establish monetary penalties for such violations. This Chapter shall apply to the violations of public nuisance provisions of KMC Chapter 8.24, and such other sections of the Kelso Municipal Code making reference to this Chapter.

1.50.020 Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this section. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the singular. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

(1) "Abate" means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the authorized representative of the City determines is necessary in the interest of the general health, safety, welfare of the community or the environment. It shall include to stop, discontinue, or do away with a condition on any premises, which is in violation of this chapter or any part of the Kelso Municipal Code.

(2) "Director" means the director of the department or any designated alternate empowered by ordinance or by the City Manager to enforce the applicable city ordinance or regulation.

(3) "Authorized representative or agent" means any person having authority to act on behalf of the City of Kelso within the terms of this chapter, including, but not limited to, the City Manager, City Attorney, applicable Director (or his/her designee), code enforcement officers and any other person granted the authority to act on behalf of the City pursuant to this chapter.

(4) "Civil violation" means a code violation for which a monetary penalty may be imposed.

(5) "City" or "the City" means the City of Kelso, Washington, acting by and through the authorized representatives or agents.

(6) "Code" means the Kelso Municipal Code.

(7) “Code violation” or “violation” means and includes an act or omission contrary to:

(a) Any ordinance, resolution, regulation or public rule of the City.

(b) The conditions of any permit, notice and order or stop work order issued pursuant to any such ordinance, resolution, regulation or public rule.

(8) “Determination of compliance” means a written statement from the City that evidence to determine that the violation(s) has been sufficiently abated as to the violation(s) stated in the voluntary compliance agreement, warning notice or notice and order.

(9) “Development” means the activity or purpose for which land or structures or a combination of land and structures are designed, arranged, occupied or maintained together with any associated site improvements. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any clearing, grading, leveling, paving or excavation. “Development” also means any existing or proposed configuration of land, structures and site improvements, and the use thereof.

(10) “Emergency” means a situation which in the opinion of the Director requires immediate action to prevent or eliminate an immediate threat to the health or safety of people or property.

(11) “Hearing Examiner” or “examiner” means the City of Kelso Hearing Examiner, as provided by Chapter 2.14 KMC, Hearing Examiner, as adopted or hereafter amended.

(12) “High risk case” means where there is an imminent likelihood of actual bodily harm, damage to public resources or facilities, damage to real or personal property, public health exposure or environmental damage or contamination.

(13) “Omission” means a failure to act.

(14) “Permit” means any form of certificate, approval, registration, license or any other written permission issued by the city. All conditions of approval, and all easements and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public are deemed conditions applicable to all subsequent plat property owners, owners’ tenants, and owners’ agents as permit requirements enforceable under this chapter.

(15) “Person” means any individual, association, partnership, corporation or legal entity, public or private, and the agents, heirs, executors, administrators, contractors, and assigns of such individual, association, partnership, corporation or legal entity.

(16) “Person responsible for a code violation” or “responsible person” means any person, as above defined, who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the City, and includes but is not limited to owner(s), lessor(s), tenant(s) or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.

(17) “Property” means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(18) “Public rule” means any rule, including those policies and procedures of any department of the City, properly promulgated to implement provisions of this code.

(19) “Remediate” means to restore a site to a condition that complies with sensitive area or other regulatory requirements as they existed before the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition which does not pose a probable threat to the environment or to the general public health, safety or welfare.

(20) “Repeat violation” means a violation of the same regulation in any location by the same person for which voluntary compliance has been sought within one year or a notice and order has been issued within two years.

(21) “Resolution,” for purposes of this chapter, means any resolution adopted by the City of Kelso City Council.

(22) “Warning” is any notice given verbally or in writing advising a person responsible for a code violation of such code violation.

(23) “Subject Property” means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and planter strips whereupon a public nuisance or code violation occurs.

1.50.030 Obligations of person responsible for code violation.

It shall be the responsibility of any person identified as responsible for a code violation to achieve full code compliance, including bringing property into a safe and reasonable condition. Payment of civil penalties, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing corrective work and/or performance of actions required for code compliance and/or having property brought into compliance to the extent reasonably possible under the circumstances; the department director shall have the final authority to determine what is “reasonably possible under the circumstances.”

1.50.040 Enforcement authority and administration

(1) In order to discourage public nuisances and/or otherwise promote compliance with the Kelso Municipal Code, the City may, in response to field observations, investigations or reliable complaints, determine that violations of the Kelso Municipal Code have occurred or are occurring as adopted or hereafter amended. The City may utilize any of the civil or administrative compliance and enforcement provisions contained in this Chapter.

(a) Issue warning notices, notice and orders, assess civil penalties, and/or recover costs as authorized by this chapter and/or other applicable code sections;

(b) Enter into voluntary compliance agreements with a person responsible for code violations;

(c) Require abatement by means of a judicial abatement order, and if such abatement is not timely completed by the person responsible for a code violation, undertake the abatement and charge the reasonable costs of such work as authorized by this chapter;

(d) Forward a written statement providing all relevant information relating to the violation to the office of the City Attorney with a recommendation to prosecute willful and knowing violations as misdemeanor offenses; and/or

(e) Require any other remedy available by law through the Hearing Examiner and/or court of applicable jurisdiction in Cowlitz County.

(2) The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner limit or restrict the City from remedying or abating violations of the Kelso Municipal Code in any other manner authorized by law.

(3) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may seek legal or equitable relief to abate and/or remedy any conditions or enjoin any acts or practices which constitute a code violation.

(4) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may assess or recover civil penalties accruing under this chapter by legal action filed in the court of applicable jurisdiction in Cowlitz County by the office of the City Attorney.

(5) The provisions of this chapter shall in no way adversely affect the rights of the owner, lessee, or occupant of any property to recover all costs and expenses incurred and required by this chapter from any person causing such violation.

(6) In administering the provisions for code compliance, the City shall have the authority to waive any one or more such provisions so as to avoid substantial injustice. Any determination of substantial injustice shall be made in writing supported by appropriate facts. For purposes of this subsection, substantial injustice cannot be based exclusively on financial hardship.

(7) The City may, upon presentation of proper credentials, with the consent of the owner or occupier of a building or property, or pursuant to a lawfully issued court order, enter at reasonable times any building or property subject to the consent or court order to perform the duties imposed by the Kelso Municipal Code.

(8) The City may request that the police, appropriate fire district, Cowlitz Regional Health District, or other appropriate city department or other public agency assist in enforcement of this code.

1.50.050 Transfer of ownership.

It shall be unlawful for the owner of any dwelling unit, building, structure or property who has received a notice and order to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit, building, structure or property to another until the provisions of the notice and order have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice and order issued by the community development director, or his authorized agent and shall furnish to the community development director, or his authorized agent a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice and order and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order.

1.50.060 Procedures when probable violation is identified.

(1) The City shall determine, based upon information derived from sources including, but not limited to, field observations, the statements of witnesses, relevant documents, and data systems for tracking violations and applicable city codes, regulations and other applicable laws, whether or not a violation has occurred. When the City has reasonable cause to determine that a violation has occurred, the violation should be documented and the person responsible for the code violation notified of such violation.

(2) When the City determines a violation has occurred, the City shall issue a written warning violation to the person determined to be responsible for the violation and the owner of the property, if different. The warning shall inform the person of the code violation of the violation and allow the person an opportunity to correct it. In cases of emergency or a high risk case the City may require immediate correction.

(3) The responsible person and the City may enter into a voluntary compliance agreement. If the responsible person does not agree to a voluntary compliance agreement, the City may issue a notice and order not earlier than 10 days from the date of the first warning by the City. Nothing herein is to limit the ability of the City and the responsible person from entering into a voluntary compliance agreement at any time prior to the appeal decision.

(4) The department director shall not be required to issue a warning and may immediately require correction, issue a notice and order, criminal citation, or notice of infraction in the following circumstances:

(a) High risk cases;

(b) Cases involving the public right-of-way;

(c) Repeat violation cases;

(d) Cases that are already subject to a voluntary compliance agreement;

(e) When the Director determines, based on the circumstances, that a warning is not appropriate.

(5) The responsible party shall be responsible for advising the department director of his/her compliance with any warning or notice and order. The department director shall make any re-inspections as determined necessary by such department director.

1.50.070 Service – Warning notice and notice and order.

(1) Service of a written warning notice or notice and order shall be made on a person responsible for a code violation by one or more of the following methods:

(a) Personal service of a warning notice or notice and order may be made on the person identified by the City as being responsible for the code violation, or by leaving a copy of the notice and order at the person's house of usual abode with a person of suitable age and discretion who resides there, or if the violation involves a business, with an employee of the business of a suitable age and discretion;

(b) Service directed to the business owner, landowner and/or occupant of the property may be made by posting the notice and order in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for below, if a mailing address is available;

(c) Service by mail may be made for a notice and order by mailing one copy, postage prepaid, by certified mail, five-day return receipt requested, to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the notice and order was placed in the United States mail; or

(d) Service by mail may be made for a warning notice by mailing a copy, postage prepaid, by first class mail to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the warning notice was placed in the mail.

(2) For notice and orders only, when the address of the person responsible for the code violation cannot be reasonably determined, service may be made by publication once in an appropriate regional or neighborhood newspaper or trade journal. Service by publication shall conform to the requirements of Civil Rule 4 of the Rules for the Superior Courts of the State of Washington.

(3) The failure of the City to make or attempt service on any person named in the warning notice or notice and order shall not invalidate any proceedings as to any other person duly served.

1.50.080 Determination of compliance.

After issuance of a warning notice, voluntary compliance agreement or notice and order and after the person responsible for a violation has come into compliance, the City shall issue a written determination of compliance. The City shall mail copies of the determination of compliance to each person originally named in the warning notice, voluntary compliance agreement or notice and order.

1.50.090 Warning notice – Effect.

(1) A warning notice represents a determination that a code violation has occurred and that the noticed party is a person responsible for a code violation and may be subject to penalties.

(2) Issuance of a warning notice in no way limits the City's authority to issue a notice and order to any person responsible for a code violation pursuant to this chapter and/or other applicable code section(s).

1.50.100 Written Warning notice – Contents.

The written warning notice shall contain the following information:

(a) The address, when available, or location of the code violation, when applicable;

(b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;

(c) A statement that the City has found the named person to have committed a code violation and a brief description of the violation(s) found;

(d) A statement of the specific ordinance, resolution, regulation, public rule, or notice and order provision that was or is being violated;

(e) A statement that the warning notice represents a determination that a code violation has occurred and that the noticed party may be subject to civil and/or criminal penalties;

(f) A statement of the amount of the civil penalty that may be assessed if the violations are not corrected as required;

(g) A statement of the corrective or abatement action required to be taken and that any required permits to perform the corrective action must be obtained from the proper issuing agency;

(h) A statement advising that, if any required action is not completed within the time specified by the warning notice, the City may proceed to seek a judicial or administrative abatement order, or may seek other applicable relief from Cowlitz County Superior Court to abate and/or remedy the violation;

(i) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the warning notice;

(j) A statement advising that a failure to correct the violation(s) cited in the warning notice could lead to the denial of subsequent city permit applications on the subject property, when applicable; and

(k) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

1.50.110 Warning notice – Modification or revocation.

(1) The City may add to, revoke in whole or in part, or otherwise modify a warning notice by issuing a written supplemental warning notice. The supplemental warning notice shall be governed by the same procedures and time limits applicable to all warning notices contained in this chapter.

(2) The City may revoke or issue a supplemental warning notice.

(3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served, in conformity with this chapter, on the person responsible for a violation.

1.50.120 Voluntary compliance agreement – Authority.

(1) Whenever the City determines that a code violation has occurred or is occurring, the City shall make reasonable efforts to secure voluntary compliance from the person responsible for the code violation. Upon contacting the person responsible for the code violation, the parties may enter into a voluntary compliance agreement as provided for in this chapter. The City is under no obligation to enter into a voluntary compliance agreement. It is the responsibility of the person responsible for the violation to correct the violation within the time specified in the warning notice or notice and order.

(2) A voluntary compliance agreement may be entered into at any time before an appeal is decided. If an administrative appeal has already been filed, then the voluntary compliance agreement shall require the signature of the department director for approval of the terms of the agreement.

(3) By entering into a voluntary compliance agreement, a person responsible for a code violation admits that the violations described in the voluntary compliance agreement existed and constituted a code violation, waives the right to administratively appeal, and authorizes the City to enter onto the subject property to correct the violation in the event of a default of the voluntary compliance agreement.

(4) The voluntary compliance agreement shall incorporate the shortest reasonable time period for compliance, as determined by the department director. An extension of the time limit for compliance or a modification of the required corrective action may be granted by the department director. Any such extension or modification must be in writing and signed by the department director and person who signed the original voluntary compliance agreement.

(5) The voluntary compliance agreement is not a settlement agreement.

1.50.130 Voluntary compliance agreement – Contents.

The voluntary compliance agreement is a written, signed commitment by the person responsible for a code violation in which such person agrees to abate the violation, remediate the site, mitigate the impacts of the violation and/or remedy a code violation to achieve code compliance. The voluntary compliance agreement shall include the following:

(a) The name and address of the person responsible for the code violation;

(b) The address or other identification of the location of the violation, if applicable;

(c) A description of the violation and a reference to the provision(s) of, resolution or regulation which has been violated;

(d) A description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed;

(e) The amount of the civil penalty to be paid, if any, and any civil penalty that will be imposed in the event the terms of the voluntary compliance agreement are not satisfied;

(f) An acknowledgement that if the City determines that the terms of the voluntary compliance agreement are not met, the City may, without issuing any further notice, (1) impose any remedy authorized by this chapter or other applicable code section(s), (2) enter the subject property and perform abatement of the violation by the City (when applicable), (3) assess the costs incurred by the City to pursue code compliance and/or to abate the violation, including reasonable legal fees and costs, and (4) cause the suspension, revocation or limitation of a development permit obtained or to be sought by the person responsible for the code violation;

(g) An acknowledgement that if a penalty is assessed, and if any assessed penalty, fee or cost is not paid, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and that the unpaid amount may be a joint and several personal obligation of all persons responsible for the violation;

(h) An acknowledgement that by entering into the voluntary compliance agreement, the person responsible for the code violation thereby admits that the conditions or factors described in the voluntary compliance agreement existed and constituted a code violation; and

(i) An acknowledgement that the person responsible for the code violation understands that he or she has the right to administratively appeal any such notice and order, and that he or she is knowingly and intelligently waiving those rights.

1.50.140 Failure to meet terms of voluntary compliance agreement.

(1) If the terms of the voluntary compliance agreement are not completely met, and an extension of time has not been granted, the authorized representatives of the City may take whatever reasonable steps are necessary to gain compliance, including but not limited to entering onto the subject property and abating the violation without seeking a judicial abatement order. The person responsible for the violation may, without being issued a notice and order, be assessed a civil penalty as set forth by this chapter, plus all costs incurred by the City to pursue code compliance, including abating the violation, and may be subject to other remedies authorized by this chapter and/or other applicable code section(s). Penalties imposed when a voluntary compliance agreement is not met accrue from the date that an appeal of any preceding notice and order was to

have been filed or from the date the voluntary compliance agreement was entered into if there was not a preceding notice and order.

(2) The City may issue a notice and order or proceed with any other legal remedy authorized by law, for failure to meet the terms of a voluntary compliance agreement.

1.50.150 Notice and order – Authority.

When the City has reason to believe that a code violation exists or has occurred, and the City is unable to secure voluntary correction, pursuant to KMC 1.50.120, or that the terms of a voluntary compliance agreement have not been met, the City is authorized to issue a notice and order to any person responsible for a code violation.

1.50.160 Notice and order – Effect.

(1) A notice and order represents a determination that a violation has occurred, that the party to whom the notice is issued is a person responsible for a code violation, and that the violations set out in the notice and order require the assessment of penalties and other remedies that may be specified in the notice and order.

(2) The City is authorized to impose civil and/or criminal penalties upon a determination by the City that a violation has occurred pursuant to a notice and order.

(3) Issuance of a notice and order in no way limits the City's authority to issue a stop work order to a person previously cited through the notice and order process pursuant to this chapter.

(4) Imposition of a civil penalty creates a joint and several personal obligation in all persons responsible for a code violation who are served with notice of the violation.

(5) Any person identified in the notice and order as responsible for a code violation may appeal the notice and order within 15 days as provided for in this chapter.

(6) Failure to appeal the notice and order within the applicable time limits shall render the notice and order a final determination of the City that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a code violation.

1.50.170 Notice and order – Contents.

The notice and order shall contain the following information:

(a) The address, when available, or location of the violation;

(b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;

(c) A statement that the City has found the named person to have committed a violation and a brief description of the violation(s) found;

(d) A statement that the notice and order represents a determination that a code violation has occurred and that the person responsible may be subject to criminal penalties;

(e) A statement of the specific provisions of the ordinance, resolution, regulation, public rule, permit condition, or notice and order provision that was or is being violated;

(f) A statement that a civil penalty is being assessed, including the dollar amount of the civil penalties per separate violation, and that any assessed penalties must be paid within 30 days of service of the notice and order;

(g) A statement advising that any costs of enforcement incurred by the City shall also be assessed against the person to whom the notice and order is directed;

(h) A statement that payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter;

(i) A statement of the corrective or abatement action required to be taken and that all required permits to perform corrective action must be obtained from the proper issuing agency;

(j) A statement advising that, if any required work is not commenced or completed within the time specified by the notice and order, the City may proceed to seek a judicial abatement order from Cowlitz County Superior Court to abate the violation, when applicable;

(k) A statement advising that, if any assessed penalty, fee or cost is not paid on or before the due date, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and as a joint and several personal obligation of all persons responsible for a code violation;

(l) A statement advising that any person named in the notice and order, or having any record or equitable title in the subject property against which the notice and order may be recorded, may appeal from the notice and order to the Hearing Examiner within 15 days of the date of service of the notice and order; except that, for violations of KMC 10.06 Junk Vehicles, there shall be a statement that the nuisance must be abated within fifteen (15) days or the City will proceed to abate and assess costs of removal against the registered vehicle owner and/or property owner and that the person may request a hearing before the City's Hearing Examiner to contest the City's notice and order.

(m) A statement advising that a failure to correct the violations cited in the notice and order could lead to the denial of subsequent Kelso permit applications on the subject property, when applicable;

(n) A statement advising that a failure to appeal the notice and order within the applicable time limits renders the notice and order a final determination that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a violation;

(o) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the notice and order; and

(p) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

1.50.180 Notice and order – Recording.

(1) When a notice and order is served on a person responsible for a code violation of a specific piece of real property, the City may record and/or file a copy of the same with the Cowlitz County Auditor's office.

(2) In the event notice and order is recorded as set forth in section 1 above, when all violations specified in the notice and order have been corrected or abated to the satisfaction of the City, the City shall record a certificate of compliance with the Cowlitz County Auditor's office within 15 days of receiving evidence of abatement. The certificate shall include a legal description of the property where the violation occurred and shall state whether any unpaid civil penalties for which liens have been filed are still outstanding and, if so, shall continue as liens on the property.

(3) After all liens have been satisfied, the City shall file a notice of satisfaction of lien with the Cowlitz County Auditor's office within 15 days of final payment to the City.

1.50.190 Notice and order – Supplementation, revocation, modification.

(1) The City may add to, revoke, in whole or in part, or otherwise modify a notice and order by issuing a written supplemental notice and order. The supplemental notice and order shall be governed by the same procedures and time limits applicable to all notice and orders contained in this chapter.

(2) The City may issue a supplemental notice and order, or revoke a notice and order issued under this chapter.

(3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served on the person responsible for a violation in conformity with this chapter.

1.50.200. Notice and order – Administrative conference.

An informal administrative conference may be conducted by the City at any time for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences.

1.50.210 Notice and order – Remedies – Abatement.

In addition to, or as an alternative to, any other judicial or administrative remedy, the City may use the notice and order provisions of this chapter to order any person responsible for a code violation to abate the violation and to complete the work at such time and under such conditions as the City determines reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, the City may seek a judicial abatement order or other legal remedy pursuant to this chapter.

1.50.220 Notice and order – Remedy – Civil penalties.

(1) In addition to any other judicial or administrative remedy, the City may assess civil penalties for the violation of any notice and order or voluntary correction agreement according to any other applicable code section(s) or the civil penalty schedule established in KMC 1.50.230.

(2) Violation of a notice and order shall be a separate violation from any other code violation.

1.50.230 Civil penalties – Assessment schedule.

(1) Civil penalties for code violations shall be imposed for remedial purposes and shall be assessed for each violation, pursuant to applicable code section(s) and/or the following schedule:

(a) The monetary penalty for each violation ~~per day or portion thereof~~ shall be $200.00. In the event the violation is not corrected within 15 days of the ~~beginning on the~~ date set by the Director for correction of the violation in the Notice and order or the Voluntary Correction Agreement, the penalty shall be increased by one hundred fifty percent (150%) of the initial penalty. For each additional 15 day period thereafter that the violation is not corrected, the penalty shall be increased by ~~two hundred~~ percent (200%) of the initial penalty.

(b) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may decrease the assessment of penalties based on these factors:

(i) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation.

(ii) Whether the person showed due diligence and/or substantial progress in correcting the violation

(iii) Whether a genuine code interpretation issue exists; and

(iv) Any other relevant factors.

(c) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may increase the assessment of penalties to an amount not to exceed double the ~~original~~ assessed penalty amount based on these factors:

(i) Whether the violation is a repeat violation or the person has a history of similar violations;

(ii) Whether the violation is intentional;

(iii) Whether the violation creates significant environmental or property damage;

(iv) Whether there is economic benefit to the person responsible for the violation; and

(v) Any other relevant factors.

(2) Civil penalties shall be paid within 30 days of service of the notice and order if not appealed. Payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation and/or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter.

(3) Civil penalties assessed create a joint and severable personal obligation in all persons responsible for a code violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of civil penalties, the City may file record and/or file with the Cowlitz County Auditor to claim a lien against the real property for the civil penalties assessed under this chapter if the violation was reasonably related to the real property. Any such lien can be filed under this chapter if, after the expiration of 30 days from when a person responsible for a code violation receives the notice and order (excluding any appeal), any civil penalties remain unpaid in whole or in part.

(5) The City shall state in writing the basis for a decision to waive, reduce or increase penalties, and such statement shall become part of the record.

1.50.240 Civil penalties – Duty to comply.

A person responsible for a code violation has a duty to notify the City in writing of any actions taken to achieve compliance with the warning notice or notice and order. For purposes of assessing civil penalties, a violation shall be considered ongoing until the person responsible for a code violation has come into compliance with the warning notice, notice and order, or voluntary compliance agreement, and has provided sufficient evidence, as determined by the City, of such compliance. Proof of sufficient evidence may require right of entry by the code official to verify compliance.

1.50.250 Cost recovery.

(1) In addition to the other remedies available under this chapter and those authorized by law, upon issuance of a notice and order the City shall charge the costs of pursuing code compliance and abatement incurred to correct a code violation to the person responsible for a code violation. These charges include:

(a) Reasonable Legal Fees and Costs. For purposes of this section, “reasonable legal fees and costs” shall include, but are not limited to, legal personnel costs, both direct and related, incurred to enforce the provisions of this chapter as may be allowed by law;

(b) Administrative Personnel Costs. For purposes of this section, “administrative personnel costs” shall include, but are not limited to, administrative employee costs, both direct and related, incurred to enforce the provisions of this chapter;

(c) Abatement Costs. The City shall keep an itemized account of costs incurred by the City in the abatement of a violation under this chapter. Upon completion of any abatement work, the City shall prepare a report specifying a legal description of the real property where the abatement work occurred, the work done for each property, the itemized costs of the work, and interest accrued; and

(d) Actual expenses and costs of the City in preparing notices, specifications and contracts; in accomplishing or contracting and inspecting the work; and the costs of any required printing, mailing, or court filing fees.

(2) Such costs are due and payable 30 days from mailing of the invoice unless otherwise stated in a written agreement with the City. The City reserves the right to collect interest at the statutory set rate on any outstanding balance not paid within 30 days.

(3) All costs assessed by the City in pursuing code compliance and/or abatement create a joint and several personal obligation in all persons responsible for a violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of costs, the City may, after abating a violation pursuant to this chapter, file and/or record with the Cowlitz County Auditor to claim a lien against the real property for the assessed costs identified in this chapter if the violation was reasonably related to the real property, in accordance with any lien provisions authorized by state law.

(5) Any lien filed shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall share priority. The City may cause a claim for lien to be filed and/or recorded within 90 days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated. The claim of lien shall contain sufficient information regarding the notice and order, a description of the property to be charged with the lien, the owner of record, and the total of the lien. Any such claim of lien may be amended from time to time to reflect changed conditions. Any such lien shall bind the affected property for the period as provided for by state law.

1.50.260 Collection of civil penalties, fees, and costs.

In addition to the remedies available under this chapter and those authorized by law, the City may use the services of a collection agency, or any other legal means, in order to collect any civil and/or criminal penalties, fees, costs, and/or interest owing under this chapter.

1.50.270 Abatement.

(1) Emergency Abatement. Whenever a condition constitutes an immediate threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

(2) Upon failure to comply with a final unappealed notice and order, or final disposition of any appeal therefrom of a violation of KMC 10.06, the vehicle, automobile hulk, junk vehicle or parts thereof shall be removed at the request of the chief of police and disposed of to a registered tow truck operator, with notice to the Washington State Patrol and the Washington State Department of Motor Vehicles that such a vehicle, automobile hulk, or junk vehicle has been wrecked.

(3) Judicial Abatement. The City may seek a judicial abatement order from Cowlitz County Superior Court, to abate a condition which continues to be a violation of this code where other methods of remedial action have failed to produce compliance.

(4) The City shall seek to recover the costs of abatement as authorized by this chapter.

(5) No person shall obstruct, impede or interfere with the City or its authorized agents, or with any person who owns or holds any interest or estate in any property in performing any tasks necessary to correct the violation.

1.50.280 Administrative appeals – Standing – Filing requirements.

(1) Any person issued or named in a notice and order, and any owner of the land where the violation for which a notice and order is issued, shall have standing to appeal and may file a notice of appeal of the order.

(2) Any person filing an appeal under this chapter shall do so by obtaining the appeal form from the City and filing the completed appeal form along with the appeal fee as identified in the City's Master Fee Schedule within 15 days of service of the notice and order.

(3) Any administrative appeal considered under this chapter will be determined by the Hearing Examiner pursuant to the procedures set forth in this chapter and Chapter 2.14 KMC, unless in conflict with specific provisions of this chapter, in which case the specific provisions of this chapter shall control.

1.50.290 Administrative appeal – Notice of hearing.

Upon receipt of a notice of appeal, the City shall provide a hearing notice stating the time, location and date of the hearing on the issues identified in the appeal. Such date shall not be less than ten days nor more than sixty days from the date of the appeal filing with the City. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the examiner's office either by causing a copy of such notice to be delivered to the appellants personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address showing on the appeal.

1.50.300 Administrative appeal – Procedures.

(1) The appeal hearing shall be conducted as provided for this chapter and in Chapter 2.14 KMC, as adopted or hereafter amended.

(2) Enforcement of any notice and order of the City issued pursuant to this chapter shall be stayed during the pendency of any administrative appeal except when the City determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order issued.

(3) When multiple notice and orders or stop work orders have been issued simultaneously for any set of facts constituting a violation, only one appeal of all the enforcement actions shall be allowed.

(4) Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled if the department director approves the completed required corrective action and payment of penalties, if any, at least 48 hours prior to the scheduled hearing.

1.50.310 Administrative appeal hearing – Procedure.

The Hearing Examiner shall conduct a hearing on the appeal of notice and order pursuant to the rules of procedure of the Hearing Examiner. The authorized representative of the City and the appellant may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the authorized representative of the City as to the need for the required corrective action shall be accorded substantial weight by the Hearing Examiner in determining the reasonableness of the required corrective action.

1.50.320 Administrative appeal – Final order.

(1) Decision of the Hearing Examiner.

(a) The Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions;

(b) The Hearing Examiner shall issue an order, within 20 days of the hearing. A copy of the decision shall be delivered to the City and to the appellant personally or sent by certified mail, postage prepaid, return receipt requested which contains the following information:

(i) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(ii) The required corrective action;

(iii) The date and time by which the correction must be completed;

(iv) The monetary penalties assessed based on the criteria section 1.50.230 of this chapter; and

(v) The date and time after which the City may proceed with abatement of the unlawful condition or other action if the required correction is not completed.

(c) Notice of Decision. The Hearing Examiner shall mail a copy of the decision to the appellant and to the department director within 20 working days of the hearing.

(d) Failure to Appear. If the person to whom the notice and order was issued fails to appear at the scheduled hearing, the Hearing Examiner will enter an order finding that the violation occurred and assessing the appropriate monetary penalty. The City will carry out the Hearing Examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

(2) The Hearing Examiner's final order shall be final and conclusive unless a request for reconsideration is made in accordance with subsection (4) of this section or proceedings for review of the decision are properly commenced in Cowlitz County Superior Court within the time period specified in subsection (5) of this section.

(3) Any aggrieved person upon good cause that the decision of the Hearing Examiner is based on erroneous procedure, error of law or fact, error in judgment, or the discovery of new evidence which could not have been reasonably available at the hearing, may make a written request for reconsideration by the Hearing Examiner within 10 days of the date the written decision of the Hearing Examiner was mailed to the person to whom the notice and order was directed. The request must set forth in writing the specific errors or new information relied upon by such person. The Hearing Examiner, within 10 days of the written request for reconsideration being filed with the City, after review of the record and materials, will issue a written decision of whether there will be any changes to the original decision. The time to file an appeal to the Cowlitz County Superior Court shall be stayed from the date the reconsideration is filed with the City to the date the decision on the reconsideration is mailed to the person requesting the reconsideration.

(4) An appeal of the decision of the Hearing Examiner must be filed with Cowlitz County Superior Court 30 calendar days from the date the Hearing Examiner's decision was mailed to the person to whom the notice and order was directed, or is thereafter barred.

(5) If, after any order of the City or Hearing Examiner made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the City may (1) cause such person to be prosecuted as provided for in this chapter, or (2) institute any appropriate action to abate such building or nuisance and assess the costs of abatement to the property owner as provided for in this chapter.

1.50.330 Judicial enforcement – Petition for enforcement.

(1) In addition to any other judicial or administrative remedy, the office of the City attorney, on behalf of the City, may seek enforcement of the City's order by filing a petition for enforcement in Cowlitz County Superior Court.

(2) The petition must name as respondent each person against whom the City seeks to obtain civil enforcement.

(3) A petition for civil enforcement may request monetary relief, declaratory relief, temporary or permanent injunctive relief, and any other civil remedy provided by law, or any combination of the foregoing.

1.50.340 Criminal Penalty.

After any notice and order, stop work order, any other compliance order of the building official or Director, or any decision of the Hearing Examiner made pursuant to this Chapter shall have become final, no person to whom any such order or decision is directed shall fail, neglect or refuse to obey any such order or decision. Any such person who fails to comply with any such order is guilty of a misdemeanor.

1.50.350 Citations – Authority.

Whenever the City has determined, based upon investigation of documents, statements of witnesses, field observations, data system(s) for tracking violations and/or physical evidence, that a code violation has occurred, the City may in lieu of the enforcement procedures of this chapter issue a citation of civil infraction to any person responsible for the violation.

1.50.360 Chapter not exclusive.

The provisions of this chapter are in addition to any other provisions of this code and may be enforced separately from such other provisions or in combination therewith.

1.50.370 Application with other codes.

To the extent other codes adopted by reference conflict with the provisions of this chapter, the latter shall control, unless otherwise determined by an administrative code interpretation.

1.50.380 General duty.

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the City, its officials, or employees for the performance or failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public.

Chapter 1.50
Code Enforcement

Sections:

1.50.010 Purpose and scope.

The purpose of this chapter is to set forth the enforcement procedures for violations of the Kelso Municipal Code, to provide an opportunity for a prompt hearing and decision on alleged violations, and to establish monetary penalties for such violations. This Chapter shall apply to the violations of public nuisance provisions of KMC Chapter 8.24, and such other sections of the Kelso Municipal Code making reference to this Chapter.

1.50.020 Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this section. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the singular. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

(1) "Abate" means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the authorized representative of the City determines is necessary in the interest of the general health, safety, welfare of the community or the environment. It shall include to stop, discontinue, or do away with a condition on any premises, which is in violation of this chapter or any part of the Kelso Municipal Code.

(2) "Director" means the director of the department or any designated alternate empowered by ordinance or by the City Manager to enforce the applicable city ordinance or regulation.

(3) "Authorized representative or agent" means any person having authority to act on behalf of the City of Kelso within the terms of this chapter, including, but not limited to, the City Manager, City Attorney, applicable Director (or his/her designee), code enforcement officers and any other person granted the authority to act on behalf of the City pursuant to this chapter.

(4) "Civil violation" means a code violation for which a monetary penalty may be imposed.

(5) "City" or "the City" means the City of Kelso, Washington, acting by and through the authorized representatives or agents.

(6) "Code" means the Kelso Municipal Code.

(7) “Code violation” or “violation” means and includes an act or omission contrary to:

(a) Any ordinance, resolution, regulation or public rule of the City.

(b) The conditions of any permit, notice and order or stop work order issued pursuant to any such ordinance, resolution, regulation or public rule.

(8) “Determination of compliance” means a written statement from the City that evidence to determine that the violation(s) has been sufficiently abated as to the violation(s) stated in the voluntary compliance agreement, warning notice or notice and order.

(9) “Development” means the activity or purpose for which land or structures or a combination of land and structures are designed, arranged, occupied or maintained together with any associated site improvements. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any clearing, grading, leveling, paving or excavation. “Development” also means any existing or proposed configuration of land, structures and site improvements, and the use thereof.

(10) “Emergency” means a situation which in the opinion of the Director requires immediate action to prevent or eliminate an immediate threat to the health or safety of people or property.

(11) “Hearing Examiner” or “examiner” means the City of Kelso Hearing Examiner, as provided by Chapter 2.14 KMC, Hearing Examiner, as adopted or hereafter amended.

(12) “High risk case” means where there is an imminent likelihood of actual bodily harm, damage to public resources or facilities, damage to real or personal property, public health exposure or environmental damage or contamination.

(13) “Omission” means a failure to act.

(14) “Permit” means any form of certificate, approval, registration, license or any other written permission issued by the city. All conditions of approval, and all easements and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public are deemed conditions applicable to all subsequent plat property owners, owners’ tenants, and owners’ agents as permit requirements enforceable under this chapter.

(15) “Person” means any individual, association, partnership, corporation or legal entity, public or private, and the agents, heirs, executors, administrators, contractors, and assigns of such individual, association, partnership, corporation or legal entity.

(16) “Person responsible for a code violation” or “responsible person” means any person, as above defined, who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the City, and includes but is not limited to owner(s), lessor(s), tenant(s) or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.

(17) “Property” means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(18) “Public rule” means any rule, including those policies and procedures of any department of the City, properly promulgated to implement provisions of this code.

(19) “Remediate” means to restore a site to a condition that complies with sensitive area or other regulatory requirements as they existed before the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition which does not pose a probable threat to the environment or to the general public health, safety or welfare.

(20) “Repeat violation” means a violation of the same regulation in any location by the same person for which voluntary compliance has been sought within one year or a notice and order has been issued within two years.

(21) “Resolution,” for purposes of this chapter, means any resolution adopted by the City of Kelso City Council.

(22) “Warning” is any notice given verbally or in writing advising a person responsible for a code violation of such code violation.

(23) “Subject Property” means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and planter strips whereupon a public nuisance or code violation occurs.

1.50.030 Obligations of person responsible for code violation.

It shall be the responsibility of any person identified as responsible for a code violation to achieve full code compliance, including bringing property into a safe and reasonable condition. Payment of civil penalties, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing corrective work and/or performance of actions required for code compliance and/or having property brought into compliance to the extent reasonably possible under the circumstances; the department director shall have the final authority to determine what is “reasonably possible under the circumstances.”

1.50.040 Enforcement authority and administration

(1) In order to discourage public nuisances and/or otherwise promote compliance with the Kelso Municipal Code, the City may, in response to field observations, investigations or reliable complaints, determine that violations of the Kelso Municipal Code have occurred or are occurring as adopted or hereafter amended. The City may utilize any of the civil or administrative compliance and enforcement provisions contained in this Chapter.

(a) Issue warning notices, notice and orders, assess civil penalties, and/or recover costs as authorized by this chapter and/or other applicable code sections;

(b) Enter into voluntary compliance agreements with a person responsible for code violations;

(c) Require abatement by means of a judicial abatement order, and if such abatement is not timely completed by the person responsible for a code violation, undertake the abatement and charge the reasonable costs of such work as authorized by this chapter;

(d) Forward a written statement providing all relevant information relating to the violation to the office of the City Attorney with a recommendation to prosecute willful and knowing violations as misdemeanor offenses; and/or

(e) Require any other remedy available by law through the Hearing Examiner and/or court of applicable jurisdiction in Cowlitz County.

(2) The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner limit or restrict the City from remedying or abating violations of the Kelso Municipal Code in any other manner authorized by law.

(3) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may seek legal or equitable relief to abate and/or remedy any conditions or enjoin any acts or practices which constitute a code violation.

(4) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may assess or recover civil penalties accruing under this chapter by legal action filed in the court of applicable jurisdiction in Cowlitz County by the office of the City Attorney.

(5) The provisions of this chapter shall in no way adversely affect the rights of the owner, lessee, or occupant of any property to recover all costs and expenses incurred and required by this chapter from any person causing such violation.

(6) In administering the provisions for code compliance, the City shall have the authority to waive any one or more such provisions so as to avoid substantial injustice. Any determination of substantial injustice shall be made in writing supported by appropriate facts. For purposes of this subsection, substantial injustice cannot be based exclusively on financial hardship.

(7) The City may, upon presentation of proper credentials, with the consent of the owner or occupier of a building or property, or pursuant to a lawfully issued court order, enter at reasonable times any building or property subject to the consent or court order to perform the duties imposed by the Kelso Municipal Code.

(8) The City may request that the police, appropriate fire district, Cowlitz Regional Health District, or other appropriate city department or other public agency assist in enforcement of this code.

1.50.050 Transfer of ownership.

It shall be unlawful for the owner of any dwelling unit, building, structure or property who has received a notice and order to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit, building, structure or property to another until the provisions of the notice and order have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice and order issued by the community development director, or his authorized agent and shall furnish to the community development director, or his authorized agent a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice and order and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order.

1.50.060 Procedures when probable violation is identified.

(1) The City shall determine, based upon information derived from sources including, but not limited to, field observations, the statements of witnesses, relevant documents, and data systems for tracking violations and applicable city codes, regulations and other applicable laws, whether or not a violation has occurred. When the City has reasonable cause to determine that a violation has occurred, the violation should be documented and the person responsible for the code violation notified of such violation.

(2) When the City determines a violation has occurred, the City shall issue a written warning violation to the person determined to be responsible for the violation and the owner of the property, if different. The warning shall inform the person of the code violation of the violation and allow the person an opportunity to correct it. In cases of emergency or a high risk case the City may require immediate correction.

(3) The responsible person and the City may enter into a voluntary compliance agreement. If the responsible person does not agree to a voluntary compliance agreement, the City may issue a notice and order not earlier than 10 days from the date of the first warning by the City. Nothing herein is to limit the ability of the City and the responsible person from entering into a voluntary compliance agreement at any time prior to the appeal decision.

(4) The department director shall not be required to issue a warning and may immediately require correction, issue a notice and order, criminal citation, or notice of infraction in the following circumstances:

(a) High risk cases;

(b) Cases involving the public right-of-way;

(c) Repeat violation cases;

(d) Cases that are already subject to a voluntary compliance agreement;

(e) When the Director determines, based on the circumstances, that a warning is not appropriate.

(5) The responsible party shall be responsible for advising the department director of his/her compliance with any warning or notice and order. The department director shall make any re-inspections as determined necessary by such department director.

1.50.070 Service – Warning notice and notice and order.

(1) Service of a written warning notice or notice and order shall be made on a person responsible for a code violation by one or more of the following methods:

(a) Personal service of a warning notice or notice and order may be made on the person identified by the City as being responsible for the code violation, or by leaving a copy of the notice and order at the person's house of usual abode with a person of suitable age and discretion who resides there, or if the violation involves a business, with an employee of the business of a suitable age and discretion;

(b) Service directed to the business owner, landowner and/or occupant of the property may be made by posting the notice and order in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for below, if a mailing address is available;

(c) Service by mail may be made for a notice and order by mailing one copy, postage prepaid, by certified mail, five-day return receipt requested, to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the notice and order was placed in the United States mail; or

(d) Service by mail may be made for a warning notice by mailing a copy, postage prepaid, by first class mail to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the warning notice was placed in the mail.

(2) For notice and orders only, when the address of the person responsible for the code violation cannot be reasonably determined, service may be made by publication once in an appropriate regional or neighborhood newspaper or trade journal. Service by publication shall conform to the requirements of Civil Rule 4 of the Rules for the Superior Courts of the State of Washington.

(3) The failure of the City to make or attempt service on any person named in the warning notice or notice and order shall not invalidate any proceedings as to any other person duly served.

1.50.080 Determination of compliance.

After issuance of a warning notice, voluntary compliance agreement or notice and order and after the person responsible for a violation has come into compliance, the City shall issue a written determination of compliance. The City shall mail copies of the determination of compliance to each person originally named in the warning notice, voluntary compliance agreement or notice and order.

1.50.090 Warning notice – Effect.

(1) A warning notice represents a determination that a code violation has occurred and that the noticed party is a person responsible for a code violation and may be subject to penalties.

(2) Issuance of a warning notice in no way limits the City's authority to issue a notice and order to any person responsible for a code violation pursuant to this chapter and/or other applicable code section(s).

1.50.100 Written Warning notice – Contents.

The written warning notice shall contain the following information:

(a) The address, when available, or location of the code violation, when applicable;

(b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;

(c) A statement that the City has found the named person to have committed a code violation and a brief description of the violation(s) found;

(d) A statement of the specific ordinance, resolution, regulation, public rule, or notice and order provision that was or is being violated;

(e) A statement that the warning notice represents a determination that a code violation has occurred and that the noticed party may be subject to civil and/or criminal penalties;

(f) A statement of the amount of the civil penalty that may be assessed if the violations are not corrected as required;

(g) A statement of the corrective or abatement action required to be taken and that any required permits to perform the corrective action must be obtained from the proper issuing agency;

(h) A statement advising that, if any required action is not completed within the time specified by the warning notice, the City may proceed to seek a judicial or administrative abatement order, or may seek other applicable relief from Cowlitz County Superior Court to abate and/or remedy the violation;

(i) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the warning notice;

(j) A statement advising that a failure to correct the violation(s) cited in the warning notice could lead to the denial of subsequent city permit applications on the subject property, when applicable; and

(k) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

1.50.110 Warning notice – Modification or revocation.

(1) The City may add to, revoke in whole or in part, or otherwise modify a warning notice by issuing a written supplemental warning notice. The supplemental warning notice shall be governed by the same procedures and time limits applicable to all warning notices contained in this chapter.

(2) The City may revoke or issue a supplemental warning notice.

(3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served, in conformity with this chapter, on the person responsible for a violation.

1.50.120 Voluntary compliance agreement – Authority.

(1) Whenever the City determines that a code violation has occurred or is occurring, the City shall make reasonable efforts to secure voluntary compliance from the person responsible for the code violation. Upon contacting the person responsible for the code violation, the parties may enter into a voluntary compliance agreement as provided for in this chapter. The City is under no obligation to enter into a voluntary compliance agreement. It is the responsibility of the person responsible for the violation to correct the violation within the time specified in the warning notice or notice and order.

(2) A voluntary compliance agreement may be entered into at any time before an appeal is decided. If an administrative appeal has already been filed, then the voluntary compliance agreement shall require the signature of the department director for approval of the terms of the agreement.

(3) By entering into a voluntary compliance agreement, a person responsible for a code violation admits that the violations described in the voluntary compliance agreement existed and constituted a code violation, waives the right to administratively appeal, and authorizes the City to enter onto the subject property to correct the violation in the event of a default of the voluntary compliance agreement.

(4) The voluntary compliance agreement shall incorporate the shortest reasonable time period for compliance, as determined by the department director. An extension of the time limit for compliance or a modification of the required corrective action may be granted by the department director. Any such extension or modification must be in writing and signed by the department director and person who signed the original voluntary compliance agreement.

(5) The voluntary compliance agreement is not a settlement agreement.

1.50.130 Voluntary compliance agreement – Contents.

The voluntary compliance agreement is a written, signed commitment by the person responsible for a code violation in which such person agrees to abate the violation, remediate the site, mitigate the impacts of the violation and/or remedy a code violation to achieve code compliance. The voluntary compliance agreement shall include the following:

(a) The name and address of the person responsible for the code violation;

(b) The address or other identification of the location of the violation, if applicable;

(c) A description of the violation and a reference to the provision(s) of, resolution or regulation which has been violated;

(d) A description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed;

(e) The amount of the civil penalty to be paid, if any, and any civil penalty that will be imposed in the event the terms of the voluntary compliance agreement are not satisfied;

(f) An acknowledgement that if the City determines that the terms of the voluntary compliance agreement are not met, the City may, without issuing any further notice, (1) impose any remedy authorized by this chapter or other applicable code section(s), (2) enter the subject property and perform abatement of the violation by the City (when applicable), (3) assess the costs incurred by the City to pursue code compliance and/or to abate the violation, including reasonable legal fees and costs, and (4) cause the suspension, revocation or limitation of a development permit obtained or to be sought by the person responsible for the code violation;

(g) An acknowledgement that if a penalty is assessed, and if any assessed penalty, fee or cost is not paid, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and that the unpaid amount may be a joint and several personal obligation of all persons responsible for the violation;

(h) An acknowledgement that by entering into the voluntary compliance agreement, the person responsible for the code violation thereby admits that the conditions or factors described in the voluntary compliance agreement existed and constituted a code violation; and

(i) An acknowledgement that the person responsible for the code violation understands that he or she has the right to administratively appeal any such notice and order, and that he or she is knowingly and intelligently waiving those rights.

1.50.140 Failure to meet terms of voluntary compliance agreement.

(1) If the terms of the voluntary compliance agreement are not completely met, and an extension of time has not been granted, the authorized representatives of the City may take whatever reasonable steps are necessary to gain compliance, including but not limited to entering onto the subject property and abating the violation without seeking a judicial abatement order. The person responsible for the violation may, without being issued a notice and order, be assessed a civil penalty as set forth by this chapter, plus all costs incurred by the City to pursue code compliance, including abating the violation, and may be subject to other remedies authorized by this chapter and/or other applicable code section(s). Penalties imposed when a voluntary compliance agreement is not met accrue from the date that an appeal of any preceding notice and order was to

have been filed or from the date the voluntary compliance agreement was entered into if there was not a preceding notice and order.

(2) The City may issue a notice and order or proceed with any other legal remedy authorized by law, for failure to meet the terms of a voluntary compliance agreement.

1.50.150 Notice and order – Authority.

When the City has reason to believe that a code violation exists or has occurred, and the City is unable to secure voluntary correction, pursuant to KMC 1.50.120, or that the terms of a voluntary compliance agreement have not been met, the City is authorized to issue a notice and order to any person responsible for a code violation.

1.50.160 Notice and order – Effect.

(1) A notice and order represents a determination that a violation has occurred, that the party to whom the notice is issued is a person responsible for a code violation, and that the violations set out in the notice and order require the assessment of penalties and other remedies that may be specified in the notice and order.

(2) The City is authorized to impose civil and/or criminal penalties upon a determination by the City that a violation has occurred pursuant to a notice and order.

(3) Issuance of a notice and order in no way limits the City's authority to issue a stop work order to a person previously cited through the notice and order process pursuant to this chapter.

(4) Imposition of a civil penalty creates a joint and several personal obligation in all persons responsible for a code violation who are served with notice of the violation.

(5) Any person identified in the notice and order as responsible for a code violation may appeal the notice and order within 15 days as provided for in this chapter.

(6) Failure to appeal the notice and order within the applicable time limits shall render the notice and order a final determination of the City that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a code violation.

1.50.170 Notice and order – Contents.

The notice and order shall contain the following information:

(a) The address, when available, or location of the violation;

(b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;

(c) A statement that the City has found the named person to have committed a violation and a brief description of the violation(s) found;

(d) A statement that the notice and order represents a determination that a code violation has occurred and that the person responsible may be subject to criminal penalties;

(e) A statement of the specific provisions of the ordinance, resolution, regulation, public rule, permit condition, or notice and order provision that was or is being violated;

(f) A statement that a civil penalty is being assessed, including the dollar amount of the civil penalties per separate violation, and that any assessed penalties must be paid within 30 days of service of the notice and order;

(g) A statement advising that any costs of enforcement incurred by the City shall also be assessed against the person to whom the notice and order is directed;

(h) A statement that payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter;

(i) A statement of the corrective or abatement action required to be taken and that all required permits to perform corrective action must be obtained from the proper issuing agency;

(j) A statement advising that, if any required work is not commenced or completed within the time specified by the notice and order, the City may proceed to seek a judicial abatement order from Cowlitz County Superior Court to abate the violation, when applicable;

(k) A statement advising that, if any assessed penalty, fee or cost is not paid on or before the due date, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and as a joint and several personal obligation of all persons responsible for a code violation;

(l) A statement advising that any person named in the notice and order, or having any record or equitable title in the subject property against which the notice and order may be recorded, may appeal from the notice and order to the Hearing Examiner within 15 days of the date of service of the notice and order; except that, for violations of KMC 10.06 Junk Vehicles, there shall be a statement that the nuisance must be abated within fifteen (15) days or the City will proceed to abate and assess costs of removal against the registered vehicle owner and/or property owner and that the person may request a hearing before the City's Hearing Examiner to contest the City's notice and order.

(m) A statement advising that a failure to correct the violations cited in the notice and order could lead to the denial of subsequent Kelso permit applications on the subject property, when applicable;

(n) A statement advising that a failure to appeal the notice and order within the applicable time limits renders the notice and order a final determination that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a violation;

(o) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the notice and order; and

(p) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

1.50.180 Notice and order – Recording.

(1) When a notice and order is served on a person responsible for a code violation of a specific piece of real property, the City may record and/or file a copy of the same with the Cowlitz County Auditor's office.

(2) In the event notice and order is recorded as set forth in section 1 above, when all violations specified in the notice and order have been corrected or abated to the satisfaction of the City, the City shall record a certificate of compliance with the Cowlitz County Auditor's office within 15 days of receiving evidence of abatement. The certificate shall include a legal description of the property where the violation occurred and shall state whether any unpaid civil penalties for which liens have been filed are still outstanding and, if so, shall continue as liens on the property.

(3) After all liens have been satisfied, the City shall file a notice of satisfaction of lien with the Cowlitz County Auditor's office within 15 days of final payment to the City.

1.50.190 Notice and order – Supplementation, revocation, modification.

(1) The City may add to, revoke, in whole or in part, or otherwise modify a notice and order by issuing a written supplemental notice and order. The supplemental notice and order shall be governed by the same procedures and time limits applicable to all notice and orders contained in this chapter.

(2) The City may issue a supplemental notice and order, or revoke a notice and order issued under this chapter.

(3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served on the person responsible for a violation in conformity with this chapter.

1.50.200. Notice and order – Administrative conference.

An informal administrative conference may be conducted by the City at any time for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences.

1.50.210 Notice and order – Remedies – Abatement.

In addition to, or as an alternative to, any other judicial or administrative remedy, the City may use the notice and order provisions of this chapter to order any person responsible for a code violation to abate the violation and to complete the work at such time and under such conditions as the City determines reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, the City may seek a judicial abatement order or other legal remedy pursuant to this chapter.

1.50.220 Notice and order – Remedy – Civil penalties.

(1) In addition to any other judicial or administrative remedy, the City may assess civil penalties for the violation of any notice and order or voluntary correction agreement according to any other applicable code section(s) or the civil penalty schedule established in KMC 1.50.230.

(2) Violation of a notice and order shall be a separate violation from any other code violation.

1.50.230 Civil penalties – Assessment schedule.

(1) Civil penalties for code violations shall be imposed for remedial purposes and shall be assessed for each violation, pursuant to applicable code section(s) and/or the following schedule:

(a) The monetary penalty for each violation shall be $200.00. In the event the violation is not corrected within 15 days of the date set by the Director for correction of the violation in the Notice and order or the Voluntary Correction Agreement, the penalty shall be increased by one hundred fifty percent (150%) of the initial penalty. For each additional 15 day period thereafter that the violation is not corrected, the penalty shall be increased by two hundred percent (200%) of the initial penalty.

(b) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may decrease the assessment of penalties based on these factors:

(i) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation.

(ii) Whether the person showed due diligence and/or substantial progress in correcting the violation

(iii) Whether a genuine code interpretation issue exists; and

(iv) Any other relevant factors.

(c) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may increase the assessment of penalties to an amount not to exceed double the assessed penalty amount based on these factors:

(i) Whether the violation is a repeat violation or the person has a history of similar violations;

(ii) Whether the violation is intentional;

(iii) Whether the violation creates significant environmental or property damage;

(iv) Whether there is economic benefit to the person responsible for the violation; and

(v) Any other relevant factors.

(2) Civil penalties shall be paid within 30 days of service of the notice and order if not appealed. Payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation and/or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter.

(3) Civil penalties assessed create a joint and severable personal obligation in all persons responsible for a code violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of civil penalties, the City may file record and/or file with the Cowlitz County Auditor to claim a lien against the real property for the civil penalties assessed under this chapter if the violation was reasonably related to the real property. Any such lien can be filed under this chapter if, after the expiration of 30 days from when a person responsible for a code violation receives the notice and order (excluding any appeal), any civil penalties remain unpaid in whole or in part.

(5) The City shall state in writing the basis for a decision to waive, reduce or increase penalties, and such statement shall become part of the record.

1.50.240 Civil penalties – Duty to comply.

A person responsible for a code violation has a duty to notify the City in writing of any actions taken to achieve compliance with the warning notice or notice and order. For purposes of assessing civil penalties, a violation shall be considered ongoing until the person responsible for a code violation has come into compliance with the warning notice, notice and order, or voluntary compliance agreement, and has provided sufficient evidence, as determined by the City, of such compliance. Proof of sufficient evidence may require right of entry by the code official to verify compliance.

1.50.250 Cost recovery.

(1) In addition to the other remedies available under this chapter and those authorized by law, upon issuance of a notice and order the City shall charge the costs of pursuing code compliance and abatement incurred to correct a code violation to the person responsible for a code violation. These charges include:

(a) Reasonable Legal Fees and Costs. For purposes of this section, “reasonable legal fees and costs” shall include, but are not limited to, legal personnel costs, both direct and related, incurred to enforce the provisions of this chapter as may be allowed by law;

(b) Administrative Personnel Costs. For purposes of this section, “administrative personnel costs” shall include, but are not limited to, administrative employee costs, both direct and related, incurred to enforce the provisions of this chapter;

(c) Abatement Costs. The City shall keep an itemized account of costs incurred by the City in the abatement of a violation under this chapter. Upon completion of any abatement work, the City shall prepare a report specifying a legal description of the real property where the abatement work occurred, the work done for each property, the itemized costs of the work, and interest accrued; and

(d) Actual expenses and costs of the City in preparing notices, specifications and contracts; in accomplishing or contracting and inspecting the work; and the costs of any required printing, mailing, or court filing fees.

(2) Such costs are due and payable 30 days from mailing of the invoice unless otherwise stated in a written agreement with the City. The City reserves the right to collect interest at the statutory set rate on any outstanding balance not paid within 30 days.

(3) All costs assessed by the City in pursuing code compliance and/or abatement create a joint and several personal obligation in all persons responsible for a violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of costs, the City may, after abating a violation pursuant to this chapter, file and/or record with the Cowlitz County Auditor to claim a lien against the real property for the assessed costs identified in this chapter if the violation was reasonably related to the real property, in accordance with any lien provisions authorized by state law.

(5) Any lien filed shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall share priority. The City may cause a claim for lien to be filed and/or recorded within 90 days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated. The claim of lien shall contain sufficient information regarding the notice and order, a description of the property to be charged with the lien, the owner of record, and the total of the lien. Any such claim of lien may be amended from time to time to reflect changed conditions. Any such lien shall bind the affected property for the period as provided for by state law.

1.50.260 Collection of civil penalties, fees, and costs.

In addition to the remedies available under this chapter and those authorized by law, the City may use the services of a collection agency, or any other legal means, in order to collect any civil and/or criminal penalties, fees, costs, and/or interest owing under this chapter.

1.50.270 Abatement.

(1) Emergency Abatement. Whenever a condition constitutes an immediate threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

(2) Upon failure to comply with a final unappealed notice and order, or final disposition of any appeal therefrom of a violation of KMC 10.06, the vehicle, automobile hulk, junk vehicle or parts thereof shall be removed at the request of the chief of police and disposed of to a registered tow truck operator, with notice to the Washington State Patrol and the Washington State Department of Motor Vehicles that such a vehicle, automobile hulk, or junk vehicle has been wrecked.

(3) Judicial Abatement. The City may seek a judicial abatement order from Cowlitz County Superior Court, to abate a condition which continues to be a violation of this code where other methods of remedial action have failed to produce compliance.

(4) The City shall seek to recover the costs of abatement as authorized by this chapter.

(5) No person shall obstruct, impede or interfere with the City or its authorized agents, or with any person who owns or holds any interest or estate in any property in performing any tasks necessary to correct the violation.

1.50.280 Administrative appeals – Standing – Filing requirements.

(1) Any person issued or named in a notice and order, and any owner of the land where the violation for which a notice and order is issued, shall have standing to appeal and may file a notice of appeal of the order.

(2) Any person filing an appeal under this chapter shall do so by obtaining the appeal form from the City and filing the completed appeal form along with the appeal fee as identified in the City's Master Fee Schedule within 15 days of service of the notice and order.

(3) Any administrative appeal considered under this chapter will be determined by the Hearing Examiner pursuant to the procedures set forth in this chapter and Chapter 2.14 KMC, unless in conflict with specific provisions of this chapter, in which case the specific provisions of this chapter shall control.

1.50.290 Administrative appeal – Notice of hearing.

Upon receipt of a notice of appeal, the City shall provide a hearing notice stating the time, location and date of the hearing on the issues identified in the appeal. Such date shall not be less than ten days nor more than sixty days from the date of the appeal filing with the City. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the examiner's office either by causing a copy of such notice to be delivered to the appellants personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address showing on the appeal.

1.50.300 Administrative appeal – Procedures.

(1) The appeal hearing shall be conducted as provided for this chapter and in Chapter 2.14 KMC, as adopted or hereafter amended.

(2) Enforcement of any notice and order of the City issued pursuant to this chapter shall be stayed during the pendency of any administrative appeal except when the City determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order issued.

(3) When multiple notice and orders or stop work orders have been issued simultaneously for any set of facts constituting a violation, only one appeal of all the enforcement actions shall be allowed.

(4) Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled if the department director approves the completed required corrective action and payment of penalties, if any, at least 48 hours prior to the scheduled hearing.

1.50.310 Administrative appeal hearing – Procedure.

The Hearing Examiner shall conduct a hearing on the appeal of notice and order pursuant to the rules of procedure of the Hearing Examiner. The authorized representative of the City and the appellant may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the authorized representative of the City as to the need for the required corrective action shall be accorded substantial weight by the Hearing Examiner in determining the reasonableness of the required corrective action.

1.50.320 Administrative appeal – Final order.

(1) Decision of the Hearing Examiner.

(a) The Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions;

(b) The Hearing Examiner shall issue an order, within 20 days of the hearing. A copy of the decision shall be delivered to the City and to the appellant personally or sent by certified mail, postage prepaid, return receipt requested which contains the following information:

(i) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(ii) The required corrective action;

(iii) The date and time by which the correction must be completed;

(iv) The monetary penalties assessed based on the criteria section 1.50.230 of this chapter; and

(v) The date and time after which the City may proceed with abatement of the unlawful condition or other action if the required correction is not completed.

(c) Notice of Decision. The Hearing Examiner shall mail a copy of the decision to the appellant and to the department director within 20 working days of the hearing.

(d) Failure to Appear. If the person to whom the notice and order was issued fails to appear at the scheduled hearing, the Hearing Examiner will enter an order finding that the violation occurred and assessing the appropriate monetary penalty. The City will carry out the Hearing Examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

(2) The Hearing Examiner's final order shall be final and conclusive unless a request for reconsideration is made in accordance with subsection (4) of this section or proceedings for review of the decision are properly commenced in Cowlitz County Superior Court within the time period specified in subsection (5) of this section.

(3) Any aggrieved person upon good cause that the decision of the Hearing Examiner is based on erroneous procedure, error of law or fact, error in judgment, or the discovery of new evidence which could not have been reasonably available at the hearing, may make a written request for reconsideration by the Hearing Examiner within 10 days of the date the written decision of the Hearing Examiner was mailed to the person to whom the notice and order was directed. The request must set forth in writing the specific errors or new information relied upon by such person. The Hearing Examiner, within 10 days of the written request for reconsideration being filed with the City, after review of the record and materials, will issue a written decision of whether there will be any changes to the original decision. The time to file an appeal to the Cowlitz County Superior Court shall be stayed from the date the reconsideration is filed with the City to the date the decision on the reconsideration is mailed to the person requesting the reconsideration.

(4) An appeal of the decision of the Hearing Examiner must be filed with Cowlitz County Superior Court 30 calendar days from the date the Hearing Examiner's decision was mailed to the person to whom the notice and order was directed, or is thereafter barred.

(5) If, after any order of the City or Hearing Examiner made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the City may (1) cause such person to be prosecuted as provided for in this chapter, or (2) institute any appropriate action to abate such building or nuisance and assess the costs of abatement to the property owner as provided for in this chapter.

1.50.330 Judicial enforcement – Petition for enforcement.

(1) In addition to any other judicial or administrative remedy, the office of the City attorney, on behalf of the City, may seek enforcement of the City's order by filing a petition for enforcement in Cowlitz County Superior Court.

(2) The petition must name as respondent each person against whom the City seeks to obtain civil enforcement.

(3) A petition for civil enforcement may request monetary relief, declaratory relief, temporary or permanent injunctive relief, and any other civil remedy provided by law, or any combination of the foregoing.

1.50.340 Criminal Penalty.

After any notice and order, stop work order, any other compliance order of the building official or Director, or any decision of the Hearing Examiner made pursuant to this Chapter shall have become final, no person to whom any such order or decision is directed shall fail, neglect or refuse to obey any such order or decision. Any such person who fails to comply with any such order is guilty of a misdemeanor.

1.50.350 Citations – Authority.

Whenever the City has determined, based upon investigation of documents, statements of witnesses, field observations, data system(s) for tracking violations and/or physical evidence, that a code violation has occurred, the City may in lieu of the enforcement procedures of this chapter issue a citation of civil infraction to any person responsible for the violation.

1.50.360 Chapter not exclusive.

The provisions of this chapter are in addition to any other provisions of this code and may be enforced separately from such other provisions or in combination therewith.

1.50.370 Application with other codes.

To the extent other codes adopted by reference conflict with the provisions of this chapter, the latter shall control, unless otherwise determined by an administrative code interpretation.

1.50.380 General duty.

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the City, its officials, or employees for the performance or failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public.

MEMORANDUM
OFFICE OF THE CITY ATTORNEY

To: Members of the City Council
From: Janean Parker, City Attorney
CC: Steve Taylor, City Manager
Date: August 13, 2015
Re: Overview of Code Enforcement Changes

I. Introduction.

For your consideration on August 18 staff will present two ordinances that, collectively, make several changes to the City's code enforcement program. Staff has been working on these changes for several months and believes that the updated codes will provide a stronger, more effective, and more efficient code enforcement program to improve conditions within the City of Kelso. At your meeting on July 21, 2015, we presented a brief description of the changes and since that meeting have made further changes to attempt to address some of the comments and concerns of Council.

Below is a brief description of the key provisions of the new changes of each ordinance and an outline of the enforcement process under the new codes. These changes are generally modelled upon the language of Longview's code enforcement program for regional consistency, but with changes that reflect Kelso's concerns and processes.

In the event that Council proceeds with these changes, staff will also be bringing forward a few additional housekeeping ordinances that bring several other portions of the municipal code into conformance with these new processes. The current proposed effective date for each of the ordinances is December 1, 2015 to allow time for these other revisions and for adequate training and implementation prior to the ordinances becoming effective.

II. Nuisance Ordinance.

The first ordinance amends Title 15 and Title 8 as follows:

1. The International Property Maintenance Code (the "IPMC") is adopted by reference as one of the uniform international codes of the City into a new Chapter 15.04 of Title 15. Title 15 is where all other uniform codes are adopted by reference. This IPMC provides a comprehensive and uniform standard that is nationally recognized for the maintenance of property.

2. The IPMC is also amended to be consistent with other chapters of the municipal code and procedures of the City and also to reflect the particular definitions and code enforcement concerns of the City.
3. In particular, the list of enumerated public nuisances from the text of Chapter 8.24 is moved into the International Property Maintenance Code in order to provide for a single listing in one place of all property related nuisances.
4. Title 8.24 is amended to make the International Property Maintenance Code as adopted by the City in Title 15 as the standard for property maintenance and to define violations of the IPMC as a public nuisance.
5. The process for enforcement of nuisances have been removed from Chapter 8.24 and replaced with a reference to a new chapter to be adopted as described below. This process language is expanded and updated into this new code enforcement chapter where public nuisances as well as all other types of code violations can be enforced with one clear and uniform process.

III. Code Enforcement Ordinance.

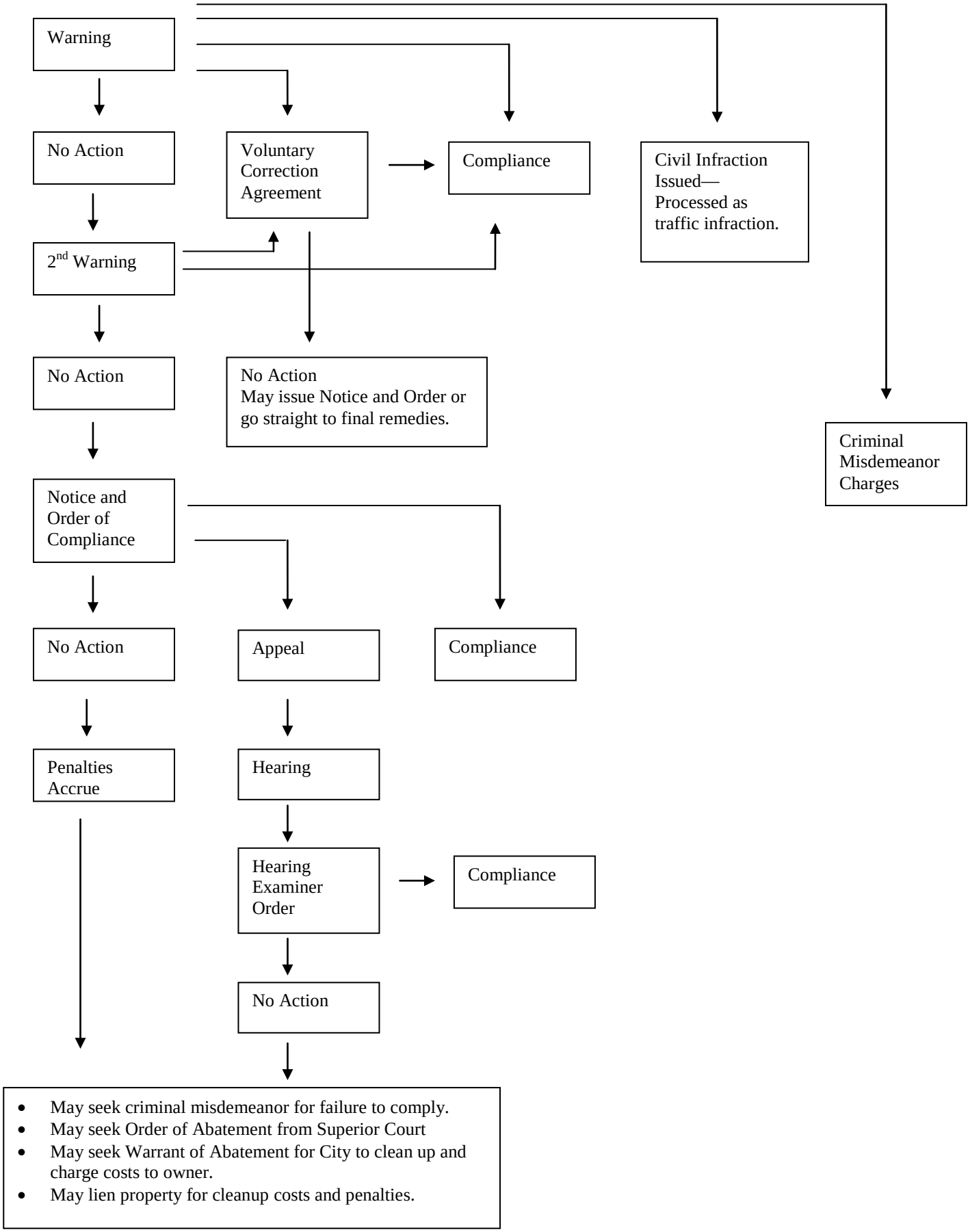
The second ordinance adopts a new Chapter 1.50 called Code Enforcement that provides a single enforcement process that can be used for nuisances and other municipal code violations. Key provisions are as follows:

1. A new formalized voluntary correction program is codified to promote compliance.
2. A revised warning and notice process is set out. These provisions were modified since the last meeting so that penalties will not accrue until after the warning process and a notice and order has been issued for noncompliance.
3. The assessment of penalties is authorized and an assessment schedule set out that allows increase, reduction or waiver of penalties based on specific factors of a case. These provisions were modified since the last meeting to make them more flexible with conditions that allow the penalties to be raised or lowered depending on the seriousness of the violation and the cooperation of the person responsible.
4. The abatement and cost recovery provisions were updated.
5. The appeal process has been updated.
6. The authority for an alternative civil infraction (ticket) process was also added to allow for enforcement of other general code violations. This enforcement mechanism would be for things that are generally not ongoing or property related, but for one time violations that cannot be corrected.
7. The authority further criminal penalties, which is in the current code, was updated and limited to willful and knowing violations.

IV. Conclusion.

Collectively, staff believes these changes will clarify the enforcement process, give additional tools and flexibility to the enforcement officer, bring more consistency to enforcement proceedings, and bring more compliance with the City's property maintenance and other codes.

Enforcement Process:



AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: AN ORDINANCE OF THE CITY OF KELSO RELATING TO THE CITY'S PROCEDURES FOR ABATEMENT OF PUBLIC NUISANCES BY ADOPTING A REVISED CHAPTER 8.24 OF THE MUNICIPAL CODE FOR THE ABATEMENT OF PUBLIC NUISANCES, AND ADDING A NEW CHAPTER 15.04 PROPERTY MAINTENANCE TO THE MUNICIPAL CODE AND REPEALING 15.03.140.

Agenda Item:

Dept. of Origin: Community Development

For Agenda of: Sept. 1, 2015

Originator: Steve Taylor

City Attorney: Janean Parker

City Manager: Steve Taylor

PRESENTED BY:
Steve Taylor

Agenda Item Attachments:

Proposed Ordinance
Exhibit A - Proposed amended KMC Chapter 8.24
Exhibit B - Proposed new KMC Chapter 15.04
Existing KMC Section 15.03.140

SUMMARY STATEMENT:

On July 21 Staff gave a presentation regarding the proposed changes to the City's nuisance abatement program. As part of those changes the portions of Chapter 8.24 Nuisance Abatement addressing enforcement and processing violations were incorporated into a new KMC Chapter 1.50 Code Enforcement. The remaining portions of 8.24 were revised to ensure compliance with state law and incorporation of necessary language specific to nuisance related issues.

The specific standards and definitions of nuisances as they relate to the maintenance of real property were incorporated into a new KMC Chapter 15.04 Property Maintenance. This chapter adopts the 2012 version of the International Property Maintenance Code (IPMC) which has been previously adopted by Council and is contained within the current KMC Chapter 15.03. The new chapter will contain more extensive amendments that fit the IMPC standards to the needs of Kelso while also providing code enforcement staff with objective industry standards and removing vague language.

City staff as well as the City Attorney have review and approved the proposed changes.

RECOMMENDED ACTION:

Move to approve on second reading an ordinance amending Chapter 8.24, repealing Section 15.03.140 of the Kelso Municipal Code and adding Chapter 15.04 Property Maintenance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO RELATING TO THE CITY'S PROCEDURES FOR ABATEMENT OF PUBLIC NUISANCES BY ADOPTING A REVISED CHAPTER 8.24 OF THE MUNICIPAL CODE FOR THE ABATEMENT OF PUBLIC NUISANCES, AND ADDING A NEW CHAPTER 15.04 PROPERTY MAINTENANCE TO THE MUNICIPAL CODE AND REPEALING 15.03.140.

WHEREAS, Kelso Municipal Code Chapter 8.24 Abatement of Public Nuisances was adopted in 2003 and contains several outdated enforcement provisions; and

WHEREAS, the International Property Maintenance Code was most recently adopted in 2012 and contains a comprehensive and uniform set of standards for evaluating the condition of property; and

WHEREAS, the City wishes to update its public nuisance enforcement by updating and removing to a separate chapter—Chapter 1.50 Code Enforcement—those provisions related to the administrative process for enforcement of code violations to provide a uniform abatement process throughout the whole of the Kelso Municipal Code; and

WHEREAS, the City wishes to further update its public nuisance code by revising the International Property Maintenance Code and adopting this Code as a separate chapter of the Kelso Municipal Code as the standard for certain public nuisances related to the condition of real property and incorporating this Chapter by reference into Chapter 8.24;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 8.24 AMENDED. That Kelso Municipal Code Chapter 8.24 is hereby amended by adopting a revised Chapter 8.24 as set forth in Exhibit "A" attached hereto and incorporated fully by this reference.

SECTION 2. CHAPTER 15.04 ADDED. That a new Kelso Municipal Code Chapter 15.04 is hereby adopted as set forth in Exhibit "B" attached hereto and incorporated fully by this reference.

SECTION 3. SECTION 15.03.140 REPEALED. That a section 15.03.140 of the Kelso Municipal Code Chapter 15.03 is hereby repealed.

SECTION 4. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be in full force and effect on December 1, 2015 upon its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____ _____, 2015.

_____

ATTEST/AUTHENTICATION: MAYOR

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

PUBLISHED:_____

Chapter 8.24
ABATEMENT OF PUBLIC NUISANCES*

Sections:

*Prior legislation: Ordinances 3106 and 3039.

8.24.010 Purpose and scope.

The purpose of this chapter is to provide for the protection of the health, safety, and welfare of the citizens of the city by protecting the neighborhoods within the city from urban blight and by providing standards for the appearance and condition of properties; to protect the expectations of the citizens of the city to enjoy their dwellings and property without being subjected to unpleasant conditions; and to protect property values and the livability of neighborhoods by providing an abatement process for nuisances as defined within this chapter; and to hold those persons who have, at any time, control over a nuisance, responsible for the abatement thereof. (Ord. 3526 § 2, 2003)

The nuisance code is supplemental to all other laws that have been adopted by the city, and shall be used to help enforce elements within other laws; provided, if specific terms of enforcement and penalties are set forth in the other laws, such provisions shall take precedence over the provisions in the nuisance code. The nuisance code also applies to situations and conditions which are not addressed by other laws of the city. (Ord. 3526 § 2, 2003)

8.24.020 Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this section. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

(1) “Abate” means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the authorized representative of the city determines is necessary in the interest of the general health, safety and welfare of the community. It shall include to stop, discontinue, or do away with a condition on any premises, which is in violation of this chapter or any part of the Kelso Municipal Code, which defines a public nuisance.

(2) “Director” means the director of the department or any designated alternate empowered by ordinance or by the city manager to enforce the applicable city ordinance or regulation.

(3) “Authorized representative or agent” means any person having authority to act on behalf of the city of Kelso within the terms of this chapter, including, but not limited to, the city manager, city attorney, applicable Director

(or his/her designee), code enforcement officers and any other person granted the authority to act on behalf of the city pursuant to this chapter.

(4) “City” or “the city” means the city of Kelso, Washington, acting by and through the authorized representatives or agents.

(5) “Code” means the Kelso Municipal Code.

(6) “Omission” means a failure to act.

(7) “Person” means any individual, association, partnership, corporation or legal entity, public or private, and the agents, heirs, executors, administrators, contractors, and assigns of such individual, association, partnership, corporation or legal entity.

(8) “Person responsible for a nuisance violation” or “responsible person” means any person, as above defined, who is required by the applicable regulation to comply therewith, or who commits any act or omission which is constitutes a public nuisance or causes or permits a violation public nuisance to occur or remain upon property in the city, and includes but is not limited to owner(s), lessor(s), tenant(s) or other person(s) entitled to control, use and/or occupy property where a public nuisance occurs.

(9) “Property” means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(10) “Public Nuisance” means the unreasonable or unlawful use by a person of real or personal property or the unreasonable, indecent, or unlawful personal conduct which materially interferes with or jeopardizes the health, safety, prosperity, quiet enjoyment of property or welfare of others, offends common decency or public morality, or obstructs or interferes with the free use of public ways, places, or bodies of water.

8.24.030 Duty to Maintain Real Property.

Any person owning, leasing, renting, occupying, or in charge of any real property in the City, including vacant lots, has a duty to maintain the property free from junk, trash, yard waste, and any other public nuisance as defined in this Chapter, in order that such property shall not endanger the safety, health, or welfare of the general public.

8.24.040 Nuisances Prohibited.

It is a violation of this Chapter for any person to cause, permit, create, maintain, or allow upon any property any public nuisance within the City, including any public rights of way abutting a person’s property. Each of the following conditions, unless otherwise permitted by law, is hereby determined to be detrimental to the general public health, safety, and welfare and is declared to constitute a public nuisance:

(1) Any violation of the International Property Maintenance Code as adopted by reference and as amended by Chapter 15.04.

(2) Any violation of any Kelso Municipal Code provision declared therein to be a public nuisance,

(3) Any junk vehicles or automobile hulks, or parts thereof in violation of KMC 10.06.

(4) Any items which remain on the public right-of-way for a period of forty-eight hours shall be deemed abandoned and constitute a public nuisance subject to removal by the city with or without notice. The costs of abatement may be assessed against the abutting real estate from which the nuisance was abated.

8.24.050 Abatement of public nuisance.

The person responsible for the public nuisance, as defined herein shall abate such public nuisance by removal, trimming, demolition, rehabilitation or repair of the condition causing the public nuisance and for bringing the property into a safe and reasonable condition.

8.24.060 Penalty; Enforcement.

(1) Any person who willfully or knowingly causes, aids or abets a public nuisance by any act of commission or omission is guilty of a misdemeanor. Upon conviction, the person shall be punished by a fine not to exceed the amount set forth in KMC 1.40. Each day such violation continues shall be considered a separate misdemeanor offense. Misdemeanor prosecution is an alternative, or in addition to any other judicial or administrative remedy provided in this chapter or by law or other code section or regulation. The authorized representative of the city may recommend that the office of the city attorney file a misdemeanor complaint against the person responsible for a code violation when the city has documentation or other evidence that the violation was willful and knowing.

(2) In addition to the criminal remedies set forth herein, in order to discourage public nuisances and/or otherwise promote compliance with this Chapter, the city may, in response to field observations, investigations or reliable complaints, determine that violations of this Chapter have occurred or are occurring, and may utilize any of the civil or administrative compliance and enforcement provisions contained in Chapter 1.50 as adopted or hereafter amended to obtain compliance with the applicable code provisions.

Chapter 15.04
PROPERTY MAINTENANCE CODE

Sections:

15.04.010 International Property Maintenance Code adopted – Purpose.

That a certain document, one copy of which is on file in the office of the city clerk of the city of Kelso, being marked and designated as the International Property Maintenance Code, 2012 Edition, as published by the International Code Council, be and is hereby adopted as the property maintenance code of the city of Kelso, in the state of Washington, for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said property maintenance code on file in the office of the city of Kelso are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions and changes, if any, prescribed in KMC 15.04.020.

15.04.020 Amendments to International Property Maintenance Code.

The following sections of the International Property Maintenance Code, 2012 Edition, as adopted in KMC 15.04.010 are hereby amended as follows:

Section 101.1, Title, is amended to read as follows:

> **101.1 Title.** These regulations shall be known as the Property Maintenance Code of the City of Kelso, hereinafter referred to as "this code."

Section 101.3, Intent, is amended to read as follows:

> **101.3 Intent.** This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be declared a public nuisance and shall be abated by repair, rehabilitation, vacation, demolition or

removal as to provide a minimum level of health, welfare and safety as required herein. This code is an exercise of the City's police power, and it shall be liberally construed to effect this purpose.

102.1, General, is amended to read as follows:

102.1 General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern. When conflicts occur between this code and the Kelso Municipal Code, the Kelso Municipal Code requirements shall govern.

Section 102.3, Application of other codes, is amended to read as follows:

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the International Building Code, International Fuel Gas Code, International Mechanical Code, International Residential Code, the National Electrical Code and other applicable codes as adopted by this jurisdiction. Nothing in this code shall be construed to cancel, modify or set aside any provision of KMC Title 17, Planning and Zoning.

Section 103.1, General, is amended to read as follows:

103.1 General. This code shall be administered by the Community Development Department and the executive official in charge thereof shall be known as the code official.

Sections 103.2, Appointment; 103.3, Deputies; and, 103.4, Liability, are deleted.

Section 103.5, Fees, is amended to read as follows:

103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as set by resolution of the City Council.

Section 107.2, Form, is amended to read as follows:

107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with Chapter 8.24 KMC and 1.50.

Section 107.3, Method of service, is amended to read as follows:

107.3 Method of service. Notice and orders shall be served in accordance with Chapter 8.24 KMC and 1.50.

Section 107.5, Penalties, is amended to read as follows:

107.5 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in KMC 8.24, KMC 15.03 and KMC 1.50.

Section 109.6, Hearing, is amended to read as follows:

109.6 Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the hearings examiner, be afforded a hearing as described in this code.

Section 111.1, Application for appeal, is amended to read as follows:

111.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal in accordance with Chapter 8.24 KMC.

Sections 111.2, Membership of board; 111.3, Notice of meeting; 111.4, Open hearing; 111.5, Postponed hearing; 111.6, Board decision; 111.7, Court review; and 111.8, Stays of enforcement, are deleted.

Section 201.3, Terms defined in other codes, is amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, KMC Title 17 – Planning and Zoning, International Plumbing Code, International Mechanical Code, International Residential Code, the National Electrical Code or other applicable codes as adopted by this jurisdiction, such terms shall have the meanings ascribed to them as stated in those codes.

Section 201.5, Parts, is amended to read as follows:

201.5 Parts. Whenever the words “dwelling unit,” “dwelling,” “premises,” “building,” “rooming house,” “rooming unit,” “housekeeping unit,” “story,” “structure” or “vehicle” are stated in this code, they shall be construed as though they were followed by the words “or any part thereof.”

Section 202, the following definitions are hereby added or amended to read as follows:

ATTRACTIVE NUISANCE. All premises within the city which cause the circumstance and/or condition that would reasonably attract any person and such circumstance and/or condition which may constitute a danger to the person(s). Attractive nuisances include, but are not limited to, unused or abandoned refrigerators, freezers or other such large appliances or equipment or any parts thereof; any structurally unsound or unsafe fence or building edifice; any unsecured or abandoned excavation pit, well, cistern, storage tank or shaft; any collection of scrap lumber, trash, vegetation or other similar items; or

unattended machinery or equipment, unsecured, abandoned or vacant buildings, open and unattended vehicles or vehicle trunks, or other similar unguarded conditions or situations that would injure or cause injury to any person(s).

CAR COVER. A cover that is specifically manufactured and commercially retailed for the purpose of covering a vehicle. This cover can be a cover designed for the specific vehicle or type of vehicle or may be designed for a generic vehicle. The cover must be completely opaque, conceal the vehicle entirely and be securely fastened at all times. Generic tarps are not a permitted car cover.

DIRT AND FILTH. Dirt and filth means and includes, but is not limited to, floor, sidewalk, street and other surface sweepings; discards from vacuum cleaners; soot; ashes; matter removed from gutters and downspouts; accumulations of dust, residue from fire other than soot and ashes; hair from humans and animals; and all other discarded, unused and seemingly worthless goods and commodities not otherwise described in this chapter.

DRIVEWAY. The driveway is the permitted surfaced roadway leading from the public right-of-way to a legal parking space.

GARBAGE. Waste and residue from the preparation, cooking and dispensing of food, and from the handling, storage and sale of food and food products including, but not limited to, discarded food wrappings and containers, paper, plastic and metal products used or intended for use in connection with the storage, sale, preparation or “clean-up” relating to food items; egg shells; used coffee grounds; used tea bags; meat trimmings; entrails of animals, poultry or fish; offal; medical wastes including bandages, syringes, medicines, plaster or other casts; and decomposed putrid material; whether such items are alone or in combination with other materials.

GRAFFITI. The writing, painting, or drawing of any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless that person has given permission to the perpetrator for such conduct.

ILLICIT DISCHARGE. Any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater.

INOPERABLE VEHICLE. A vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

JUNK. Scrapped, broken, or neglected items and materials. Junk includes items such as plastic, cloth, glass, rags, paper or metals that can be converted into usable articles or stock, or articles that have outlived their usefulness in their original form. Examples of “junk” include, but are not limited to, empty bottles and jars; empty metal, plastic or paper products; discarded engine or motor parts; automobile and truck parts of all descriptions; used tires, wheels and inner tubes; discarded batteries; cardboard; discarded and/or pre-used building materials; discarded and/or pre-used electrical and plumbing

materials; broken pieces of concrete; discarded, broken, or neglected electrical, gas or hand-operated appliances; previously used packing materials; discarded, broken, or neglected household goods and furnishing; or any household item located outdoors that is designed for indoor use; as well as parts and pieces of any of the foregoing.

JUNK VEHICLES. Any vehicle meeting at least three (3) of the following requirements: (a) Is three years old or older; (b) Is extensively damaged, such damage including but not limited to any of the following: a broken window or windshield, or missing wheels, tires, motor, or transmission; (c) Is apparently inoperable; or (d) Has an approximate fair market value equal only to the approximate value of the scrap in it.

LANDOWNER. A legal owner of private property, a person with possession or control of private property, or a public official having jurisdiction over public property.

LITTER. Tangible personal property which has been unlawfully scattered and/or abandoned in a public place, typically outdoors, as a form of solid waste – material which, if thrown or deposited, creates a danger to public health, safety and welfare. Litter is further defined as either hazardous, reusable-recyclable, non-hazardous, or non-usable material. Litter includes, but is not limited to, polystyrene foam, plastics, cigarette butts, candy and gum wrappers, paper towels, food wastes, chip bags, aluminum and steel beer/soda cans, leather, rubber, clothing, textiles, wood, glass, metal, abandoned tires, vehicle parts, or other such debris that has fallen onto a public right-of-way as a result of negligent litter; litter from trash-hauling vehicles, unsecured loads, or construction sites.

PLANTING, PARKING STRIP. The area of the right-of-way between the constructed curb or edge of the roadway and the adjoining property line, exclusive of any improved sidewalk or any established pedestrian path.

PUBLICLY VISIBLE OR PUBLIC VIEW. Anything that can be seen by a person with normal vision from any sidewalk, street, alley or other public place, or from any building situated on an adjoining property.

PUBLIC NUISANCE. A nuisance consists of doing an unlawful act, or omitting to perform a duty, or permitting an action or condition to occur or exist which intrudes, annoys, injures or endangers the comfort, repose, health or safety of others, is unreasonably offensive to the senses, or which interferes with or disrupts a neighbor's or citizen's ability to freely use or enjoy their properties or public property adjacent to where the nuisance occurs. Such nuisances include, but are not limited to, the following:

A. Unsecured attractive nuisances;

B. Conditions or acts which annoy, injure, or endanger the comfort, repose, health, or safety of others;

C. Conditions or acts which are offensive to the senses;

D. Conditions or acts which interfere with, obstruct, or tend to obstruct or render dangerous for passage any stream, public park, parkway, square, sidewalk, street, or highway and other rights-of-way in the city;

E. Illicit discharges into the municipal storm drainage system;

F. Unauthorized interference with, damage to, or polluting of designated habitat areas, publicly owned restoration sites, streams, creeks, lakes, wetlands, or tributaries and similar areas thereto;

G. Conditions or acts which obstruct the free use of property so as to essentially interfere with the comfortable enjoyment of life and property;

H. Conditions or acts which lead to blight and contribute to the deterioration of the neighborhood or adjoining property;

I. The improper parking or storage of vehicles on any residential lots which impedes the use of yard areas for light, air circulation, recreation, and landscaping;

J. Those acts or omissions defined in RCW 7.48.140 and 9.66.010.

PREMISES. Any building, lot, parcel, alley, real estate or land or portion of land whether improved or unimproved, including adjacent sidewalks, parking strips and street.

PUBLIC RIGHT-OF-WAY OR RIGHT-OF-WAY. “Right-of-way” means all real property owned or held by the city in fee, or by way of easement, or dedicated to the public and located within the city, and used or intended for use as a street, alley, sidewalk, public way or easement for public or private utilities, whether developed or undeveloped.

SPECIAL INTEREST VEHICLE and/or HISTORIC AUTOMOBILE. Any vehicle as defined above, at least 30 years old on the date of any attempt by Code Official, or a motor vehicle which meets any of the following definitions: (a) A make of motor vehicle which is no longer manufactured; or, (b) A make or model of motor vehicle produced in limited or token quantities; or, (c) A make or model of motor vehicle in the special interest market which has appreciated in value during the past year.

TRASH AND WASTE. Trash and waste means, but is not limited to ashes; leaves; branches and trimmings from trees, shrubs and hedges; discarded Christmas trees; excrement and undigested residue of food eliminated by humans, animals, fish and birds; lawn, yard, garden, shrub and tree trimmings; garbage, junk and filth; discarded clothing of all descriptions; decayed or decaying materials of all kinds and descriptions; and insect-infested materials of all kinds and descriptions; whether such items are alone or in combination with other materials.

VEHICLE. A vehicle includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including but not limited to, automobiles, motorcycles, trucks, buses, motorized recreational vehicles,

campers, travel trailers, boat trailers, utility trailers, or other similar devices capable of moving or being moved on public right-of-way, and shall also include parts of vehicles.

WATERCRAFT. A watercraft means any boat, vessel, or other craft used for navigation on or through water. (Does not include kayaks or canoes).

WEEDS. Weeds shall be defined as those plants designated as Class A, B, and C Noxious weeds by the state noxious weed control board, including but not limited to all grasses, dandelions, morning glory, uncontrolled berry bushes, and other weeds, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

YARD. Any open space on a lot or lots.

Section 302.1, Sanitation, is amended to read as follows:

302.1 Sanitation. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition free of junk, garbage, trash, rubbish, filth and waste.

Section 302.3, Sidewalks and driveways, is amended to read as follows:

302.3 Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking and/or planting strips, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from encumbrances and hazardous conditions as specified, but not limited to those in Chapter 12.12 KMC.

Section 302.4, Weeds, is amended to read as follows:

302.4 Weeds, grass or vegetation. All premises and exterior property including any unimproved portion of any street or alley to the center thereof, and the portion of any improved street within the area known as the parking strip, bordering on any such lot or lots, land or lands, shall be maintained free from weeds or plant growth in excess of 12 inches or in a state of having gone to seed. All noxious weeds shall be prohibited. All grasses in excess of 12 inches in height shall also be prohibited subject to applicable zoning requirements. Weeds shall be defined as those plants designated as Class A, B, and C Noxious weeds by the state noxious weed control board, including but not limited to all grasses, dandelions, morning glory, uncontrolled berry bushes, and other weeds, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens not in violation of KMC 17.40.

Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 106.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to

enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property.

Section 302.8, Motor Vehicles, is amended to read as follows:

302.8 Motor vehicles/vehicles/watercraft. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle, vehicle, watercraft or parts thereof shall be parked, kept or stored on any premises, and no vehicle or watercraft shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth. Such vehicles shall be declared to be public nuisances which shall be abated and removed as specified in this code; provided that this section shall not apply to the following:

1. A vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed auto wrecker or licensed vehicle dealer and is fenced according to the provisions of RCW 46.80.130;

2. Any historic automobile, special interest vehicle or inoperable vehicle that is in the process of being restored; provided that all such vehicles and parts thereof which are not licensed or not operable shall be stored or parked within a building in a lawful manner where they are not publicly visible; or parked in a parking area and screened in accordance with KMC Chapter 17.40; or

3. A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes or is “screened” where it is not publicly visible in accordance with KMC Chapter 17.40. This work shall be performed in compliance with Section 302.12 and in accordance with applicable zoning regulations.

Section 302.10, Vehicles and/or machinery parts, is added to read as follows:

302.10 Vehicles and/or machinery parts. Except where permitted and licensed as a wrecking yard, all premises within the city shall be maintained free of the existence and maintenance of a storage area, junkyard or dumping ground for the wrecking or dismantling of automobiles, trucks, trailers, house trailers, boats, tractors or other vehicles or machinery of any kind, or for the storing or leaving of worn out, wrecked, inoperative or abandoned automobiles, trucks, trailers, house trailers, boats, tractors or other vehicles or machinery of any kind or of any major parts thereof.

Section 302.11, Vehicle parking/storage, is added to read as follows:

302.11 Vehicle parking/storage. Limitations on the parking of vehicles, boats, trailers, commercial and heavy commercial equipment.

302.11.1 Vehicles. Motor vehicles, or other vehicles not covered in this section, shall be parked or stored only within parking areas as defined in Chapter 17.40 KMC and shall not be parked or stored within property setbacks.

302.11.2 Recreational vehicles, boats, trailers. Recreational vehicles, boats, and trailers shall be parked or stored on an approved parking surface, shall not be parked or stored in required property setbacks and shall be in conformance with Chapter 17.40 KMC.

302.11.3 Machinery and equipment. Machinery and equipment shall be parked, kept or stored on an approved parking surface, shall not be parked or stored in required property setbacks and shall be in conformance with Chapter 17.40 KMC.

302.11.4 Truck tractors, semi-trailers and commercial equipment. Truck tractors, as defined in RCW 46.04.655, and semi-trailers, as defined in RCW 46.04.530, or commercial equipment, shall not be parked or stored in residentially zoned areas, on residential property in other zones, or on sites that have not been permitted, improved and approved for such use. This requirement shall not apply when equipment is used in conjunction with a permitted or allowed project. These vehicles shall be parked or stored on an approved surface outside of required property setbacks.

Section 302.12, Vehicle and equipment repair on residential premises, is added to read as follows:

302.12 Vehicle and equipment repair on residential premises. Servicing, repairing, assembling, modifying, restoring, or otherwise working on any vehicle on any residential premises shall be subject to the following:

302.12.1 Work shall be limited to the repair and maintenance of vehicles, equipment, or other conveyance currently registered as specified in the Washington Vehicle Code to the occupant or a member of the occupant's family.

302.12.2 Work is limited to the approved parking surface or garage or approved accessory structure; at no time can repairs be made on the lawn, sidewalk, planting strip or the street.

302.12.3 Only minor repairs such as an oil change, tire repair, small parts change, or minor routine maintenance may be performed outside of a garage or approved accessory structure and only then on an approved parking surface. The associated vehicle(s) in which such minor repairs exceed seven (7) days shall be moved inside of a building that meets applicable code and zoning requirements or be properly "screened" from public view and parked on an approved surface outside of property setbacks.

302.12.4 Work which creates a nuisance shall not be permitted.

Section 302.13, Dangerous fences and structures, is added to read as follows:

302.13 Dangerous fences and structures. All premises within the city shall be maintained free of any fence or other structure which is in a sagging, leaning, fallen, decayed or other dilapidated or unsafe condition.

Section 302.14, Dangerous trees, is added to read as follows:

302.14 Dangerous trees. All premises within the city shall be maintained free of any dead, diseased, infested or dying tree that constitutes a danger to street trees, streets, alleys or sidewalks.

Section 302.15, Obscured public facilities, is added to read as follows:

302.15 Obscured public facilities. All premises within the city shall be maintained free of any object blocking, vine or climbing plants growing into, onto or over any street, tree growing within a public right-of-way or any public hydrant, utility meter, pole, street light, utility device, street sign or public facility or device; or the existence of any uncontrolled, uncultivated or untended shrub, vine or plant growing on, around or nearby any hydrant, standpipe, sprinkler system connection or any other appliance or facility provided for fire protection purposes in such a way as to obscure the view thereof or impair the access thereto.

302.15.1 Overhanging trees and shrubs. Every property owner having any tree or shrub overhanging any street, alley or right-of-way within the city shall prune the branches so that such branches shall not interfere with the unobstructed use of the street, alley, sidewalk or right-of-way or obstruct the view of any street intersection. Trees and shrubs overhanging the street and alley shall be pruned to allow a minimum 14-foot clearance above the entire surface of the street or alley. Trees and shrubs overhanging the sidewalk and/or right-of-way shall be pruned to allow a minimum 8-foot clearance above the entire sidewalk surface and/or right-of-way to the adjoining property line. No person shall, without a written permit of the city manager or his/her designee cut, prune, rake, climb, injure or remove any living tree in any public right-of-way, park, planting/parking strip or other public place in the city in accordance with KMC 17.40 and15.05

Section 302.16, Privies, vaults, cesspools, etc., is added to read as follows:

302.16 Privies, vaults, cesspools, etc. All premises within the city shall be maintained free of any privies, vaults, cesspools, sumps, pits, trenches or like places which create a dangerous condition or are not securely protected from flies and rats, or which are foul or malodorous.

Section 302.17, Hedges, is added to read as follows:

302.17 Hedges. The existence on any real property within the city of a hedge in violation of Chapter 17.40 KMC is a public nuisance.

Section 302.18, Fences, is added to read as follows:

302.18 Fences. The existence on any real property within the city of a fence in violation of Chapter 17.40 KMC is a public nuisance.

Section 302.19, Outdoor wood storage, is added to read as follows:

302.19 Outdoor wood storage. Outdoor wood and firewood shall be neatly stacked not to exceed six (6) feet in height, shall be adequately supported so as not to pose a hazard to person or property, and shall not be placed in any setback or other restricted area on the property in which it is being stored.

Section 302.20, Attractive nuisance, is added to read as follows:

302.20 Attractive nuisance. All premises within the city shall be maintained free of any accessible attractive nuisance.

Section 302.21, Accumulation of dangerous materials, is added to read as follows:

302.21 Accumulation of dangerous materials. All premises within the city shall be maintained free of the existence of any accumulation of materials, substances or objects in a location when the same endangers property, health, safety or constitutes a fire hazard.

Section 302.22, Open storage of materials and furnishings, is added to read as follows:

302.22 Open storage of materials and furnishings. No person shall openly store or keep any equipment, materials or furnishings; or any item that creates an unsightly condition or one that promotes urban blight or public nuisance. This may include, but is not limited to, indoor furniture, household appliances, auto parts, shopping carts or building materials.

Exception: Building materials neatly stacked and stored for no less than sixty (60) days for a construction project permitted with the city. The material must be weather protected, shall not be placed within property setbacks or placed in such a manner that would create a danger to property, health and/or safety.

Section 302.23, Nuisance premises, is added to read as follows:

302.23 Nuisance premises. All premises within the city shall be maintained free of any structure allowing or maintaining prostitution, or where there is the use, sale, manufacturing or distributing of any illegal narcotics or controlled substance, or at which there is a pattern of criminal activity.

Section 302.24, Alley/Public right-of-way maintenance, is added to read as follows:

302.24 Alley/Public right-of-way maintenance. The owner, lessee, occupant or agent thereof, or any person having the care or charge of any property that has alley access or an alley right-of-way easement, shall be responsible for maintaining that portion of the alley that fronts said property up to

and including one-half of the apparent alley centerline, and shall keep said alley or alley easement maintained in a clean, safe and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health, safety or welfare. Public right-of-way maintenance shall also include utility easements or parking and/or planting strips. Such blighting problems shall include, but are not limited to: overgrown trees, shrubs, vegetation, weeds and/or grasses; garbage; junk; rubbish; dirt and filth; litter; trash; and waste. This definition shall also include, but not be limited to, such items as couches, loveseats, chairs, mattresses, and other similar household furniture. Such items, if placed in any city alleyway or alley easement, shall be considered a public nuisance and abated within the time established by the city in accordance with Section 106.

Section 302.25, Garage sales, is added to read as follows:

302.25 Garage sales. Sales of secondhand merchandise, conducted from residences, and designated as “garage sales,” “estate sales,” “yard sales,” and/or “moving sales” are allowed without a permit provided they are conducted under the following requirements:

(a) Shall be in conformance with KMC 5.03, KMC 17.62, KMC 17.15;

(b) Garage sale displays, signs and merchandise must be removed after/between sales events.

Section 303.1, Swimming pools, is amended to read as follows:

303.1 Swimming pools, spas, and ponds. Swimming pools, spas, hot tubs and/or ponds shall be maintained in a clean and sanitary condition in good repair and shall comply with the provisions of the International Residential Code, Appendix G. Except for regulated wetlands and City-approved structures related to storm drainage systems, all premises within the city shall be maintained free of the existence of all stagnant, pooled water in which mosquitoes, flies or other insects may multiply.

Section 303.2, Enclosures, is amended to read as follows:

303.2 Enclosures. See the International Residential Code, Appendix G, Section AG105, Barrier Requirements.

Section 304.2, Protective treatment, is amended to read as follows:

304.2 Protective treatment. All exterior surfaces, including but not limited to doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. Tarp use for weather protection may not exceed 30 days. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all

surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Surfaces designed for stabilization by oxidation are exempt from this requirement.

Section 304.3, Premises identification, is amended to read as follows:

304.3 Premises identification. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be a minimum of 3 inches high and shall not be sight obscured.

Section 304.7, Roofs and drainage, is amended to read as follows:

304.7 Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Tarp use for weather protection may not exceed 30 days. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

Section 304.14, Insect screens, is deleted.

Section 308.1, Accumulation of rubbish or garbage, is amended to read as follows:

308.1 Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish, junk, trash, filth, waste or garbage.

Section 308.2, Disposal of rubbish, is amended to read as follows:

308.2 Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish, junk, trash, filth, waste or garbage in a clean and sanitary manner by placing such rubbish, junk, trash, filth, waste or garbage in approved containers as provided for in Chapter 8.04 KMC, or by taking it to an approved disposal facility.

308.2.1 Rubbish/garbage storage facilities. The owner of every occupied premises shall maintain approved covered containers for rubbish, junk, trash, filth, waste or garbage, and the owner of the premises shall be responsible for the removal of rubbish, junk, trash, filth, waste or garbage from the premises.

308.2.2 Dangerous and/or discarded appliances. Except when stored within a building, as defined in Section R202 of the International Residential Code, refrigerators, household appliances, and similar equipment shall not be discarded, abandoned or stored on any premises within the City.

Section 308.3, Disposal of garbage, is amended to read as follows:

308.3 Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage container as provided for in Chapter 8.04 KMC or by taking it to an approved disposal facility.

308.3.1 Containers. The operator of every establishment producing garbage shall maintain, and at all times cause to be utilized, approved containers as set forth in Chapter 8.04 KMC.

308.3.2 Undumped garbage or rubbish containers. All premises within the city shall be maintained free of the existence of any garbage or rubbish containers or any can, bag, box or other device, which is filled to 50 percent or more of its capacity with garbage, trash, rubbish, waste, dirt or filth, and which has remained upon such premises for more than 14 successive days.

Section 308.4, Containers – within the public right-of-way, is added to read as follows:

308.4 Containers – within the public right-of-way. No residential or commercial solid waste or recycling cart shall be placed along a public street, alley or right-of-way, on a public sidewalk, or on other public property any sooner than 24 hours before the time of collection. All residential and commercial solid waste and recycling carts placed in the public right-of-way for collection shall be removed from those public areas within 24 hours of the time of collection, except when such established day for collection falls on a designated holiday in which case collection will be conducted on the next succeeding workday, and the containers shall be removed and replaced to their appropriate storage location by the morning following collection.

Section 308.5, Rubbish and garbage exceptions, is added to read as follows:

307.5 Rubbish and garbage exceptions. The following shall not be a violation of this section.

A. Compost piles less than four feet in height and six feet in diameter at ground level, and 30 feet or more from any dwelling, and four feet or more from adjoining properties.

B. Storm debris within 30 days following a storm event.

C. Construction residue and debris during and for 14 days following completion of work.

D. Fallen leaves, tree needles, tree fruit and similar vegetation, during the months of October through April, inclusive.

E. The accumulation and temporary storage, in containers designated for such purposes, of “recyclable” materials pursuant to a program of recycling adopted by the city; provided, however, that such containers must not be publicly visible or they must be made available to the city’s garbage or “recycle contractor” within 14 days after having been filled to 50 percent or more of their capacity.

F. Uncultivated, uncut or untended weeds, grass, bushes or other vegetation not constituting a health or fire hazard, existing in a natural state on undeveloped, agricultural, industrially zoned, “open space” or “green belt” areas.

Section 505.1, General, is amended to read as follows:

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the Uniform Plumbing Code.

Section 505.4, Water heating facilities, is amended to read as follows:

505.4 Water heating facilities. Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110°F (43°C) nor shall the temperature be set higher than the maximum allowed by federal, state or local law. A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

Section 507.1, General, is amended to read as follows:

507.1 General. Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance.

A. It is a violation for any person to break, damage, destroy, uncover, deface or tamper with any structure or facility which is part of the stormwater runoff and erosion control system.

B. It is a violation for any person who is responsible to do so, to fail to maintain stormwater runoff and/or erosion control facilities and structures as required by this chapter and 13.09 KMC. Each calendar day that a violation occurs constitutes a separate offense. In addition, the City may institute injunctive, mandamus, or other appropriate action or proceedings for the enforcement of this chapter.

Section 602.2, Residential occupancies, is amended to read as follows:

602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms. Cooking appliances shall not be used as a means to provide required heating.

Section 602.3, Heat supply, is amended to read as follows:

602.3 Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat to maintain a temperature of not less than 68° F (20° C) in all habitable rooms, bathrooms, and toilet rooms.

Exceptions: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in KMC 15.03.030.

Section 602.4, Occupiable work spaces, is amended to read as follows:

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat to maintain a temperature of not less than 65 °F (18° C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.

2. Areas in which persons are primarily engaged in vigorous physical activities.

Section 604.2, Service, is amended to read as follows:

604.2 Service. The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the National Electrical Code. Dwelling units shall be served by a three-wire, 120/240 volt, single phase electrical service having a rating of not less than 60 amperes.

Section 606.1, General, is amended to read as follows:

606.1 General. Elevators, dumbwaiters and escalators shall be maintained in compliance with ASME A17.1 and the L&I Elevator rules. The most current certification of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, or the certificate shall be available for public inspection in the office of the building operator. The inspection and tests shall be performed at not less than the periodical intervals listed in ASME A17.1, Appendix N, except where otherwise specified by the authority having jurisdiction.

Section 702.3, Locked doors, is amended to read as follows:

702.3 Locked doors. All means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the International Building Code.

Section 704.2, Smoke alarms, is amended to read as follows:

704.2 Smoke alarms. Single- or multiple-station smoke alarms shall be installed and maintained in Group R occupancies, regardless of *occupant* load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of *bedrooms.*
2. In each room used for sleeping purposes.
3. In each story within a *dwelling unit,* including *basements* and cellars but not including crawl spaces and uninhabitable attics. In dwellings or *dwelling units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

Single- or multiple-station smoke alarms shall be installed in other groups in accordance with the *International Fire Code.*

Section 704.4, Interconnection, is amended to read as follows:

704.4 Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling unit in Group R and in dwellings not regulated as Group R occupancies, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

Exception:

1. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or *basement* available which could provide access for interconnection without the removal of interior finishes.

Chapter 8 Referenced Standards.

References to the electric code shall mean the National Electric Code as adopted by the State of Washington.

15.04.030 Severability.

If any one or more section, subsections or sentences of this chapter are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this chapter and the same shall remain in full force and effect.

15.03.140 International Property Maintenance Code adopted.

The 2012 Edition of the International Property Maintenance Code as published by the International Code Council is adopted with the following amendments:

101.1 Title.

These regulations shall be known as the Property Maintenance Code of the City of Kelso, hereinafter referred to as “this code.”

102.1 General.

When conflicts occur between this code and the Kelso Municipal Code, the Kelso Municipal Code requirements shall govern.

103.1 General.

The code enforcement division is hereby created and the official in charge thereof shall be known as the code official.

103.5 Fees.

Is not adopted. Fees shall be as set by resolution of the City Council.

106.3 Prosecution of violation.

Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a gross misdemeanor, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

107.5 Penalties.

Penalties for noncompliance with orders and notices shall be as set forth in KMC 8.24 and KMC 15.03.

201.3 Terms defined in other codes.

Where terms are not defined in this code and are defined in the International Building Code, International Residential Code, International Mechanical Code, International Fire Code, International Plumbing Code, or the National Electrical Code, such terms shall have the meanings ascribed to them as in those codes.

304.14 Insect screens. Is not adopted.

304.18.1 Doors. Is not adopted.

505.1 General.

Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the Uniform Plumbing Code.

505.4 Water heating facilities.

Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110°F (43°C) nor shall the temperature be set higher than the maximum allowed by federal, state or local law. A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

602.2 Residential occupancies.

Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

602.4 Occupiable workspaces.

Indoor occupiable workspaces shall be supplied with means to provide heat to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

604 Electrical facilities.

604.2 Service.

The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the NEC (National Electric Code).

Chapter 8 Referenced Standards.

References to the electric code shall mean the National Electric Code as adopted by the State of Washington.

(Ord. 3802 § 1 (Exh. A), 2013)