



McCleary City Council

AGENDA

August 12, 2015

7:00 City Council Meeting Recessed From July 22nd, 2015

- **Flag Salute**
- **Roll Call**
- **Public Comment**
- **Public Hearing**
- **Council Action** - Mayor Pro Tem (Action)

- **Minutes:** - Approval (Tab A)
- **Mayor's Comments:** - Discussion

- **Staff Reports:** - Dan Glenn, City Attorney (Tab B)
 - Todd Baun Staff Report (Tab C)

- **Old Business:** -

- **New Business:** - Multi Hazard Mitigation Plan Development (Tab D)
 - Zoning Amendment (Tab E)
 - Cedar Heights Storm Pond (Tab F)
 - Dynamic Collectors Amendment (Tab G)
 - Grays Harbor PUD Easement (Tab H)
 - Police Budget Discussion (Tab I)

- **Ordinances:** - Water Use Restriction Ordinance (Tab J)
 - Budget Amendment Ordinance (Tab K)

- **Resolutions:** - Vehicle & Equipment Surplus (Tab L)

- **Approval of Vouchers**
- **Mayor/Council Comments**
- **Public Comment**
- **Executive Session**
- **Adjournment**

Americans with Disabilities Act (ADA)
Accommodation is Provided Upon Request

Please Turn Off Cell Phones – Thank You

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La ciudad de McCleary es un proveedor de igualdad de oportunidades y el empleador.

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, June 24, 2015

ROLL CALL AND FLAG SALUTE	Councilmember's Reed, Schiller Catterlin, Peterson and Ator were in attendance.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, George Crumb, Dan Glenn, Paul Nott and Pierce Ridgway.
PUBLIC HEARING	The Public Hearing opened at 7:00 pm on the 6-Year Transportation Improvement Program. No public comments were made. The hearing closed at 7:02 pm.
PUBLIC COMMENT	Aimee Rowland, President of the Bear Festival, thanked the mayor, council and city employees for all of their hard work and support to make the festival successful. The royalty presented the elected officials and staff with bear festival buttons so they can come enjoy a bowl of bear stew during the festival. Gary Atkins wanted to give out his email address to set up a committee with town members to talk about what they can do to get the town back on track and what to do about the police department. Anyone interested can contact him at garyatkins1969@gmail.com. Councilmember Schiller offered to turn over his town meeting information to him to use and Mr. Atkins said he would gladly include them in his meeting plans.
EXECUTIVE SESSION	At 7:08 pm Councilmember Schiller asked for an executive session to last ten minutes per RCW42.30.11, subsection (f) and subsection (i) with no action to be requested. He asked to have the Mayor sit out on one of the topics and Dan Glenn told him he could not exclude the Mayor. Councilmember Schiller said the Mayor can attend both topics then and the Mayor chose to sit out of both sessions and asked Dan Glenn to attend and represent him. The executive session ended at 7:18 pm. No action taken.
MINUTES APPROVED	It was moved by Councilmember Ator, seconded by Councilmember Reed to approve the minutes from the May 27, 2015 meeting. Motion Carried 5-0.
CITY ATTORNEY REPORT	Dan Glenn provided a written report for the Council and is available if they have any questions.
MAYOR'S COMMENTS	Mayor Dent reported there will be a hearing with the Hearing Examiner at 1:30 pm on July 1st for an amendment to the current zoning. Mayor Dent wanted to congratulate Todd Baun and the outside people who worked with him for applying and receiving an approval letter from Vicky Cummings at the Grays Harbor Council of Governments. We've been awarded \$785,274 to work on Third Street improvements.
DIRECTOR OF PUBLIC WORKS REPORT	Todd Baun reported the Department of Transportation will be sweeping our streets on July 2nd and he has provided an agreement for the Council to approve and sign. Mr. Baun has a purchase order for the cutover project that also needs to be authorized by the Council so he can move forward on the project. Todd wanted to recognize Robert Duncan because he has been working for the City for 20 years now.
ACCIDENT PREVENTION DISCUSSION	It was moved by Councilmember Schiller, seconded by Councilmember Catterlin to adopt the City of McCleary Accident Prevention Program. Motion Carried 5-0.
GHC HAZARD MITIGATION PLAN PARTICIPATION	Tabled.
BEAR FESTIVAL AGREEMENT	Each year the Bear Festival President submits an agreement stating their requests for usage of City property, facilities, streets, support, etc. They again, have submitted an agreement to the Council for authorization in an effort to have a successful festival. It was move by Councilmember Catterlin, seconded by Councilmember Reed to accept the Agreement with the Bear Festival. Motion Carried 5-0.

INTERLOCAL FORFEITURE PROCEEDINGS	It was moved by Councilmember Ator, seconded by Councilmember Schiller to adopt the Interlocal Forfeiture Proceedings Agreement. Motion Carried 5-0.
STORMWATER RATE RESOLUTION	Tabled.
BPA AMENDMENT NO. 2 ENERGY CONSERVATION AGREEMENT	Agreement No. 2 extends the expiration date of the Energy Conservation Agreement by two years to September 30, 2017. It was moved by Councilmember Catterlin, seconded by Councilmember Peterson to authorize the Mayor to sign the BPA Amendment No. 2. Motion Carried 5-0.
3RD STREET IMPROVEMENTS SUPPLEMENTAL AGREEMENT NO. 3	It was moved by Councilmember Catterlin, seconded by Councilmember Peterson to approve Supplemental Agreement No. 3, which adds Jeffrey B. Glander & Associates to the contract for the Third Street Improvement Project and to provide landscape architect services at a cost of \$7,000. Motion Carried 5-0.
BUDGET AMENDMENT ORDINANCE	Dan Glenn said this ordinance would tie in with the levy ordinance and would fund the police until the outcome of the levy in November. The ordinance would allow the \$150,000 that was removed from the budgeted expenditures in the law enforcement line to be put back in the expenditure line. It was moved by Councilmember Ator, seconded by Councilmember Reed to adopt a supplemental budget ordinance. Roll call taken in the negative with Councilmember's Catterlin, Peterson and Schiller voting in the negative and Councilmember's Ator and Reed voting in the affirmative. Ordinance Failed 3-2.
ORDINANCE NO. 809 POLICE LEVY	It was moved by Councilmember Schiller, seconded by Councilmember Ator to adopt Ordinance 809, an ordinance directing submission to the voters of the City of McCleary of a proposition to be voted on the 3rd day of November 2015, to authorize funds for the purpose of more adequately funding the police department. Roll Call taken in the affirmative with Councilmember's Schiller, Ator and Reed voting in the affirmative and Councilmember's Peterson and Catterlin voting in the negative. Ordinance Adopted 3-2. Councilmember Schiller asked to add a stipulation to Ordinance 809 that the council has a contingency plan after the fact, that if this levy does not pass, we will have some type of backup plan and not go another year and try to do this again in 2016. If this levy fails, we make a motion to move forward and work with the county to get some type of thing. We did the levy last year and we screwed up by giving two options so we give it back to the voters again to make a decision. If it fails again, we have an automatic plan to move right into an agreement with the county and make some type of contract with another contracting agency to take over police services because we cannot go another year. Councilmember Catterlin asked if this was a motion and Councilmember Schiller said yes, so it was seconded by Councilmember Catterlin. Motion Carried 5-0.
RESOLUTION 676 6-YEAR TRANSPORTATION IMPROVEMENT PROGRAM (STIP)	It was moved by Councilmember Catterlin, seconded by Councilmember Schiller to adopt Resolution 676 for the 6-Year Transportation Improvement Program. Motion Carried 5-0.
WA STATE DEPT. OF TRANSPORTATION STREET SWEEPING AGREEMENT	It was moved by Councilmember Peterson, seconded by Councilmember Catterlin to authorize the WSDOT agreement for street sweeping. Councilmember Schiller abstained from voting. Motion Carried 4-0.
LIGHT & POWER MATERIAL PURCHASE ORDER	It was moved by Councilmember Catterlin, seconded by Councilmember Peterson to authorize the purchase of materials for the light and power department. Mayor Dent asked for roll call. Roll call taken in the affirmative with Councilmember's Ator, Schiller, Catterlin and Peterson voting in the affirmative and Councilmember Reed voting in the negative. Motion Carried 4-1.
APPROVAL OF VOUCHERS	Accounts Payable vouchers/checks approved were 39616 - 39648 including EFT's in the amount of \$52,274.08 and 39673 - 39722 including EFT's in the amount of \$137,078.87. Payroll checks approved were 39289 - 39725 including EFT's in the amount of \$145,576.91 and 39524-39615 including EFT's in the amount of \$147,173.21. It was moved by Councilmember Ator, seconded by Councilmember Reed to approve the vouchers. Motion Carried 5-0.

PUBLIC COMMENT

Gary Atkins said he was made aware there is a loop hole in the garbage service. He said according to the bylaws of the garbage contract, if someone in town writes a letter and says you can use their garbage can, you don't have to pay for your own garbage service. He thought this is why there are houses with so much garbage piling up. He said Colin Mercer read this to him today. Dan Glenn will review the contract with Colin.

Councilmember Schiller asked if he could get a copy of the new ordinance where he added the language about the levy and seeking contract for another agency if the levy fails. Dan Glenn asked if that was an amendment to the ordinance and Councilmember Schiller said yes. Dan Glenn said that wasn't his intent but, okay, sure. Councilmember Schiller wants to make sure it gets followed up on. He asked to have it drafted up by Dan Glenn.

Brenda Orffer wanted to make sure the Council did not exclusively decide to only look at the County as their option if the levy fails and Councilmember Schiller said he stated, "any other agency", not just the County. She also stated she did a reach out on the city's website and has not received a response and wants to know if we ever received her comments. She has done this on two occasions and did not receive a response either time. She asked if we could check the website to make sure it is functioning properly.

Doug Krikava told the Mayor he seemed to be really struggling, especially tonight, to follow the meeting and he even forgot the names of streets in a town he lived in almost his whole life. He asked the Mayor if he's considered taking a leave of absence until his health got better. Mayor Dent said he is going to physical therapy twice a week and is going back to a doctor in Olympia for a final check on a CAT scan. Mayor Dent called for a motion to adjourn.

MEETING ADJOURNED

It was moved by Councilmember Ator, seconded by Councilmember Reed to adjourn the meeting at 7:51 pm. The next meeting will be Wednesday, July 22, 2015 at 7:00 pm. Motion Carried 5-0.

Mayor Gary Dent:

Clerk-Treasurer Wendy Collins:

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary
FROM: DANIEL O. GLENN, City Attorney
DATE: August 7, 2015
RE: LEGAL ACTIVITIES as of AUGUST 12, 2015 (Recessed Meeting)

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure. It is a supplement to the report provided for the J

1. **SCOPE OF MEETING:** Since this meeting is a recessed meeting from the regular meeting of July 22, it does not have the limitations on action and consideration present in a special meeting.

2. **PUD EASEMENT & RIGHT OF WAY USE REQUESTS:** Mr. Nott and Mr. Malone of the GHPUD have been involved in discussions about the District's desire to obtain the City's consent for use of City right of way for installation of various types of fiberoptic cable, as well as certain lines. We have received draft documents which have been reviewed. I have requested that certain modifications be made in relation to prior notice of use, avoidance of usage conflict, and such matters.

We anticipate having these documents available for your review prior to the next meeting and for your consideration at that meeting.

3. **COUNCIL VACANCY:** With the loss of Ben on July 22, a vacancy was obviously created on the Council. It is my understanding that one or more individuals have expressed an interest in serving in the position. Without getting into my personally held view on the contribution he made by his presence on the Council and the difficulty of filling Ben's position on the Council, the lawyer position requires that I provide you certain background information. I am going to set out at the end

of this report two statutes, one dealing with the loss of Ben in an election year and the other summarizing the general process.

As usual, my goal in providing what follows is to provide information dealing with a variety of questions that not only may come up in this situation, but also are likely to not confront you, rather than leave something out.

Summary: RCW 35A.12.050, through reference to RCW 42.12.010, indicates a council position of a council/mayor code city becomes vacant when there is a resignation or an act creates a vacancy. In this situation, that occurred on July 22, the date of Ben's death. Failure to act within that time period transfers the authority to make the decision to the County Commissioners.

Operational Matters: Pursuant to the direction of the Mayor and the Council, notification of the vacancy and the invitation to submit applications has been placed on the City's website and published in the City's official newspaper. At the time of the preparation of this report, I am uncertain as to whether or not any expressions of interest have been received.

A. Qualifications: As logic suggests, any successor must be legally qualified to be elected to the position. That means she or he must have resided within the corporate limits for at least one year at the time of commencement of service and be a registered voter at the time of the commencement of the selection process. RCW 35A.12.030

B. Methodology: The provisions of RCW 42.12.070 do not lay out the nature of the process to be followed by the Council in the selection of the successor. You have the exclusive authority to make the decisions in that area. However, among the points the statute makes clear are the following:

1. The Council has the exclusive jurisdiction to make the appointment for a period of 90 days following the creation of the vacancy.

2. The interview process of candidates must be open to the public. That would be true whether it be done by a committee or by the Council as a body.

3. If you desire to do so, the Council and Mayor have the right to recess into an executive session for purposes of discussing results of the interviews and the qualifications of the candidates. RCW 42.30.110(1)(h) As the City of Tacoma learned the hard way, it is mandatory that no commitments be made nor any consensus opinion be sought or developed in that executive session.

4. As is true in all situations, the final decision must be made in public under the provisions of the cited portion of the Open Meetings Law. The vote is to be a public vote and may not be by secret ballot.

Impact of Loss of Ben in an Election Year: As you are aware, Ben's position was one which was not on the ballot this year. His term would have run through December 31, 2017. Since the filing period for the elections has passed, under the provisions of RCW 29A.14.171[B], any McCleary citizen appointed to replace Ben would serve until at least November, 2016, since that is the time period for the next "general election." If that is the election intended by the statute, the individual elected would serve until the end of Ben's anticipated term.

Finally, rather than making this report longer with "what ifs", I am going to set out at the end of this report several potential situations and how they would be dealt with under the applicable law.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le

APPLICABLE STATUTES

RCW 29A.24.171: Vacancies in office.

(1) If, prior to the first day of the regular filing period, a vacancy occurs in an office that is not scheduled to appear on the general election ballot, leaving an unexpired term for which a successor must be elected at the next general election, filings for that office shall be accepted during the regular filing period. The filing officer shall provide notice of the vacancy and filing period to newspapers, radio, and television in the county, and online. The position shall appear on the primary and general election ballots unless no primary is required or unless a candidate for superior court judge is entitled to a certificate of election pursuant to Article 4 [IV], section 29 of the state Constitution.

(2) If, on the first day of the regular filing period or later, a vacancy occurs in an office that is not scheduled to appear on the general election ballot, leaving an unexpired term, the election of the successor shall occur at the next succeeding general election that the office is allowed by law to have an election.

RCW 42.12.070: Filling nonpartisan vacancies.

A vacancy on an elected nonpartisan governing body of a special purpose district where property ownership is not a qualification to vote, a town, or a city other than a first-class city or a charter code city, shall be filled as follows unless the provisions of law relating to the special district, town, or city provide otherwise:

(1). Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position.

(2). Where two or more positions are vacant and two or more members of the governing body remain in office, the remaining members of the governing body shall appoint a qualified person to fill one of the vacant positions, the remaining members of the governing body and the newly appointed person shall appoint another qualified person to fill another vacant position, and so on until each of the vacant positions is filled with each of the new appointees participating in each appointment that is made after his or her appointment.

(3). If less than two members of a governing body remain in office, the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person or persons to the governing body until the governing body has two members.

(4). If a governing body fails to appoint a qualified person to fill a vacancy within ninety days of the occurrence of the vacancy, the authority of the governing body to fill the vacancy shall cease and the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person to fill the vacancy.

(5). If the county legislative authority of the county fails to appoint a qualified person within one hundred eighty days of the occurrence of the vacancy, the county legislative authority or the remaining members of the governing body of the city, town, or special district may petition the governor to appoint a qualified person to fill the vacancy. The governor may appoint a qualified person to fill the vacancy after being petitioned if at the time the governor fills the vacancy the county legislative authority has not appointed a qualified person to fill the vacancy.

(6). As provided in chapter 29A.24 RCW, each person who is appointed shall serve until a qualified person is elected at the next election at which a member of the governing body normally would be elected. The person elected shall take office immediately and serve the remainder of the unexpired term.

Hypotheticals:

A. No Appointment Is Made Within the 90 Days: In my 40 years representing cities, that may have happened once. However, if the Council were to be unable to appoint a successor within the 90 day time period, it will lose jurisdiction over the matter and it will fall into the exclusive jurisdiction of the Board of County Commissioners. That is mandatory and, if it occurs, you may request consideration of a candidate put forward by the Council, but the actual appointment is within the sole discretion of the Commissioners.

B. A Tie Vote of the Council: In the event of a tie vote of the Council, which is theoretically possible with the six member status, the Mayor may vote to break the tie. While that may seem a bit illogical since the process is to choose a member of the legislative branch, that opinion is through contact and research. The situations previously presented and the legal rationale are as follows:

(a) The issue of the Mayor voting in an area relating to Council situations has arisen in other cities I have the opportunity to represent. Once it involved the selection of an individual to fill a council vacancy. The second situation involved the selection of a mayor pro tem. Both relate to situations in which the decision is a Council decision.

Before reaching this opinion some time back, I undertook a review of the applicable law and interpretations. Not being willing to believe that my research ability is infallible, I contacted the legal consultants with Municipal Research. They reached the same conclusion.

(b) The legal rationale of the opinion is as follows:

(1) RCW 42.12.070, which governs this process, indicates the selection is to be made by the "remaining members of the governing body."

(2) RCW 35A.12.100 indicates the mayor of a code city may vote to break a tie in the council's vote "with respect to matters **other than** any ordinance, grant or revocation of franchise or license, or any resolution for the payment of money."

(3) Since the particular vote is not one which is specifically excluded by the "other than" language, the general rule of statutory interpretation is a mayor's right to vote on the issue is therefore included within the areas in which the tie breaking vote right is present.

The bottom line is the Council has significant discretion in choosing the process to utilize. However, there is

no discretion as to the mandated qualifications which a person must possess, the time period within which the selection must be formally made, and that the actual selection vote must be done in public and by a voice vote.

STAFF REPORT

To: Mayor Dent
From: Todd Baun, Director of Public Works
Date: July 17, 2015
Re: Current Non-Agenda Activity

Bear Festival

The Bear Festival came and went with no major issues or complaints. The City staff and crews did a great job with getting the City ready and making it look great.

General Pacific PO

In following the policies set in Resolution 622, Light and Power has to purchase supplies to continue working on the cutover project. The material is going to be used for the section of the project that is on 3rd and Mommsen. Paul has received the quote for materials for a total of \$6233.81. The money is budgeted and will come from Light and Power Capital Outlay system budget. Please authorize the Mayor to sign the Purchase order with General Pacific.

Maple Street Water Line Replacement

The public work crew has completed the new 8" water line on Maple Street. This upgrade is now providing customers with more water along with providing the City with great fire flow for the area.

City Hall Lighting Project

We have started replacing all of our old lighting in City hall, Police Department, Fire Hall, and WWTP. All the current T12 lights are being replaced with LED lighting that uses far less electricity. That translates into the City saving money on its electric bills.

We are paying for these items with funds provided by BPA for energy efficiency. These funds have to be used by Oct. 1st 2015, or we risk losing the funding.

Building Official and PW Planning Assistant job advertisements

Colin Mercer has left the City to pursue other opportunities. Colin did a great job while he was with us for the past 8 years and we wish him good luck with his new opportunities.

With him leaving, it left the City struggling to fill all the duties that he performed for us. We are currently looking for a half time Building Official and a half time PW Planning Assistant. We are hoping to have someone perform both duties, but we may have trouble

finding one person to fill both positions. I will keep you posted on how we will proceed once applications are gone through and interviews are performed.

**City of McCleary***Home of the McCleary Bear Festival*

100 South 3rd Street, McCleary, WA 98557 • 360.495.3667(phone) 360.495.3097(fax) CityofMcCleary.com

To: Grays Harbor Planning Partnership
310 W. Spruce Street
Montesano, WA 98563
Attn: Charles Wallace

From: D. Gary Dent, Mayor
City of McCleary

RE: Letter of intent: Multi-hazard Mitigation Plan Development

Please be advised that the City of McCleary is desirous of and committed to participating in the update to the Grays Harbor County Multi-Hazard Mitigation Plan. As the Mayor of this jurisdiction, I confirm that the City is interested in participating in the effort to meet Partnership expectations, as outlined in the "Planning Partners Expectations" document provided by the planning team, in order to obtain Disaster Mitigation Act (DMA) compliance for our jurisdiction. Of course, the final decision as to that participation can only be made when the State and Federal response to the County's proposal is received by the County and provided to the City for review.

Chief George Crumb will be our jurisdiction's point of contact for this process and he can be reached at 100 South 3rd Street McCleary, Washington 98557; telephone number 360-495-3107; and e-mail address: Georgec@CityofMcCleary.com. We understand that this designated point of contact's time will be applied to the "in-kind" local match for the grant that is funding this project. To aid in the determination of this local match, we have determined that the hourly rate (base salary only - no benefits included) for our designated point of contact is \$_____ per hour. The funding source for our point of contact's position within our jurisdiction is not through federal funds.

We look forward to this project moving forward for the benefit of all citizens of the County.

Sincerely,

CITY OF McCLEARY:

D. Gary Dent, Mayor

7-12-15

Date

STAFF REPORT

To: Mayor Dent
From: Todd Baun., Director of Public Works
Date: July 16th, 2015
Re: Zoning Amendment

Our Hearing Examiner, Neil Aaland, conducted a required public hearing, on July 1st at 1:30 pm. This hearing was conducted at Councils request for to the Zoning Ordinance Amendment presented to you at the May 27th Council Meeting. Attached you will find the report provided by Mr. Aaland and the associated recommendation. A copy of the staff report provided to Mr. Aaland is also included. To summarize, the recommendation is as follows:

Adopt the recommended changes to the MMC 17.20.030 that add "Medical Clinics, Medical Offices and Pharmacies" to the list of permitted uses in the C-1 zone.

Action Requested:

Please consider requesting Mr. Glenn to prepare the appropriate ordinance to incorporate the recommended revision.

City of McCleary Hearing Examiner
Report and Recommendation

Application: Revise the McCleary Municipal Code (MCC) to add “medical clinics, medical offices and pharmacies” to the list of permitted uses in the C-1 zone

Applicant: City of McCleary
100 South 3rd Street
McCleary, WA 98557

SUMMARY OF RECOMMENDATION: Adopt the recommended changes to MMC 17.20.030 that add “medical clinics, medical offices and pharmacies” to the list of permitted uses in the C-1 zone.

SUMMARY OF RECORD:

Public Hearing:

A public hearing was conducted at 1:30 p.m. on July 1, 2015 at McCleary City Hall. Present for the city were Neil Aaland, Hearing Examiner and Todd Baun, Public Works Director. Mayor Gary Dent was present to observe the hearing. The Examiner summarized the proposal for the record, including the purpose of the hearing and how the hearing process works. Six letters of support have been received and were entered into the record.

Todd Baun summarized the staff report. He looked at past uses in areas zoned C-1. The zoning ordinance is vague on whether these proposed uses would be allowed. He recommends approval of the proposal to clarify whether these uses are allowed, supported by previous uses that existed in the downtown.

Monika Kuhnau, Harbor Architects, 2004 W. 6th Street, Aberdeen represents the development team for a proposed project to build a medical clinic. She did some research on other cities. Every other city in Grays Harbor County allows these facilities as a permitted or conditional use in commercial zones.

Renee Jensen, 600 E. Main Street, Elma is the CEO of the Hospital District. They operate three clinics employing 50 doctors. This change would allow them to offer better facilities. 50% of their patients are not McCleary residents; this central location will bring more business downtown. The bus line isn't near the hospital but is near downtown. They support this change.

Joy Iverson, 571 N. Summit Road, McCleary lives in McCleary with her mother. This will be a great improvement, will be able to access a clinic downtown. The town needs new business, this will help.

Mayor Gary Dent, McCleary supports the proposal.

The written comments of city staff, together with the staff report, letters from the public, and other supporting materials, are incorporated into the record of the hearing.

FINDINGS:

1. MCC Chapter 2.30 establishes the office of the Hearing Examiner and assigns certain responsibilities to the Examiner.
2. MCC Chapter 17.40.130 and ordinance #790 establishes the responsibility and authority of the Hearing Examiner to hear and make recommendations on matters assigned to him by the Mayor and the City Council.
3. The Mayor and the City Council have assigned to the Examiner the responsibility of conducting the required public hearing and making a recommendation to the City Council for a proposal to revise the MMC. The proposal is to add "medical clinics, medical offices and pharmacies" to the list of allowed uses in the C-1 zone.
4. The Hearing Examiner conducted a public hearing for the proposal on July 1, 2015.
5. City staff have provided an affidavit of publication for June 25, 2015 in the Montesano Vidette.
6. Section 17.40.140 of the MCC stipulates the procedure for amending the zoning ordinance. Section A states:

"The City Council may amend the text of the zoning ordinance, including the city of McCleary zoning map, whenever public necessity, convenience, or general welfare require such action and the proposed amendment is consistent with the city of McCleary comprehensive land use plan in accordance with RCW 35.A.63.105.

7. The purpose of the C-1 zone is defined by MMC Section 17.16.040 (D):

"The downtown (C-1) district provides for a wide range of small to medium commercial uses and professional offices concentrated in the historic downtown area of the city. Uses in this district serve the needs of the immediate area as well as tourists to the community. The C-1 district is a compact, intensive activity center that emphasizes pedestrian access to and between businesses."

8. City staff recommends approval of the proposal.
9. The McCleary comprehensive land use plan includes the following discussion of the C-1 district:

“The C- district provides for a wide range of small to medium retail businesses, eating and drinking establishments, government activities, and professional offices concentrated in the traditional downtown area of the city. Uses in this district serve the needs of the immediate area as well as tourists to the community. The C-1 District is a compact, intensive activity area that emphasizes pedestrian access to and between businesses...”

10. The State Environmental Policy Act (SEPA) requires a threshold determination to be made for revisions to the comprehensive plan and the UDC. A Determination of Non-Significance (DNS) was issued on June 15, 2015. As allowed under WAC 197-11-340 (2), no comment period was provided. No conditions were attached to this DNS.

CONCLUSIONS:

1. Notice of the public hearing was advertised in the Montesano Vidette on June 25, 2015.
2. A threshold determination has been properly issued under SEPA. No significant adverse environmental impacts were identified.
3. The changes to the MCC are consistent with the McCleary Comprehensive Plan (as required by MCC 17.40.130 (A)).
4. The changes to the MCC are supported by the record.

RECOMMENDATION:

Add the following to the table of land uses as permitted uses in the C-1 zone, MCC 17.20.030:

“Medical clinics, medical offices and pharmacies”

NOTICE TO APPLICANTS AND INTERESTED PARTIES:

Under section 2.30.090 of the McCleary Municipal Code, the decision of the examiner shall be final and conclusive, as to any further action or appeal as to those matters in which the examiner's decision is in fact passed on to the mayor and council as a recommendation, on the twenty-first day after the date of the decision. Since this is a recommendation and not a final decision, there is no appeal provided.

This report is the recommendation of the Hearing Examiner to the McCleary City Council. The council may approve, reject or modify this recommendation. Interested parties should contact the Clerk-Treasurer concerning action by the City Council.

Dated this 16th day of July, 2015



Neil L. Aaland, AICP
McCleary Hearing Examiner



City of McCleary

Home of the McCleary Bear Festival

100 South 3rd Street, McCleary, WA 98557 • 360.495.3667(phone) 360.495.3097(fax) CityofMcCleary.com

STAFF REPORT

To: Neil Aaland, Hearing Examiner
From: Todd Baun, Director of Public Works
Date: June 12, 2015
Re: Zoning Amendment- Medical Clinic

Attached you will find a request provided by a local citizen suggesting a minor change to the existing zoning ordinance. The basic premise of the request is to allow “Medical Clinics, Medical Offices and Pharmacies” as permitted uses in the C-1 district in MMC 17.20.

The C-1 district, also called the Downtown district is shown on the attached zoning map. This district is bisected by State Route 108 and 3rd Street. Both State Route 108 and 3rd Street are identified in the Comprehensive Land Use Plan as “City Arterials”, thus indicating a large volume of traffic uses these facilities. These streets are the main thoroughfare into and out of the City.

The purpose of the C-1 zoning district is found in McCleary Municipal Code (MMC) Section 17.16.040(D):

“The downtown (C-1) district provides for a wide range of small to medium commercial uses and professional offices concentrated in the historic downtown area of the city. Uses in this district serve the needs of the immediate area as well as tourists to the community. The C-1 district is a compact, intensive activity center that emphasizes pedestrian access to and between businesses”

The language found in the MMC is a condensed model of the language found in the 2002 Comprehensive Land Use Plan, which is as follows:

“The C-1 District provides for a wide range of small to medium retail businesses, eating and drinking establishments, government activities, and professional offices concentrated in the traditional downtown area of the city. Uses in this district serve the needs of the immediate area as well as tourists to the community. The C-1 District is a compact, intensive activity area that emphasizes pedestrian access to and between businesses. The minimum lot size in the C-1 District is 2,500 square feet.

Staff Report

Mr. Neil Aaland

June 12, 2015

Zoning Amendment- Medical Clinic

Examples of compatible uses requiring a conditional use permit in the Downtown District may include second story residential housing, housing for the elderly, such as senior apartments, assisted living units, or residential care centers, and other public and semipublic uses."

When reviewing the language in the Municipal Code, which was adopted in 2004, as well as the 2002 Comprehensive Plan, the request to include "Medical Clinics, Medical Offices and Pharmacies" in the C-1 district seems to blend with the term "professional offices" used in both documents.

The existing zoning definitions include a "Medical Clinic", which is permitted in the General Commercial district (C-2), but is not authorized in the C-1 district. The definition of "Medical Clinic" is as follows:

"Medical clinic" means a building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

It is our understanding that this request is to allow a medical establishment run by several specialists, working in cooperation and sharing the same facilities, that is devoted to the diagnosis and care of outpatients

Another important item to consider is that a pharmacy was previously in place at the adjacent property at 119 S.3rd Street. The pharmacy was used regularly in the C-1 district since well before the 2002 Comprehensive Plan until its closure in 2005.

Message therapy offices have been and are currently used in the C-1 district. While the City considers them as "professional office" or "personal service", the argument can be made that they can be considered as a "medical clinic" or "medical office".

Concerns / Safety Hazards / Mitigation Measures

As this is not a project action, safety hazards and mitigation measures have not been addressed, as these will be addressed during project actions.

Recommendation

After considering all of the above issues, specifically the fact that an office consistent with this request has been used in this district since before the Comprehensive Plan was adopted, and no complaints have resulted, staff is recommending that the request be considered by the Hearing Examiner and City Council for adoption.

Staff Report

Mr. Neil Aaland

June 12, 2015

Zoning Amendment- Medical Clinic

Attachments:

1. City zoning map
2. Zoning Amendment Petition
3. SEPA Checklist
4. SEPA Decision

CITY OF McCLEARY ZONING MAP

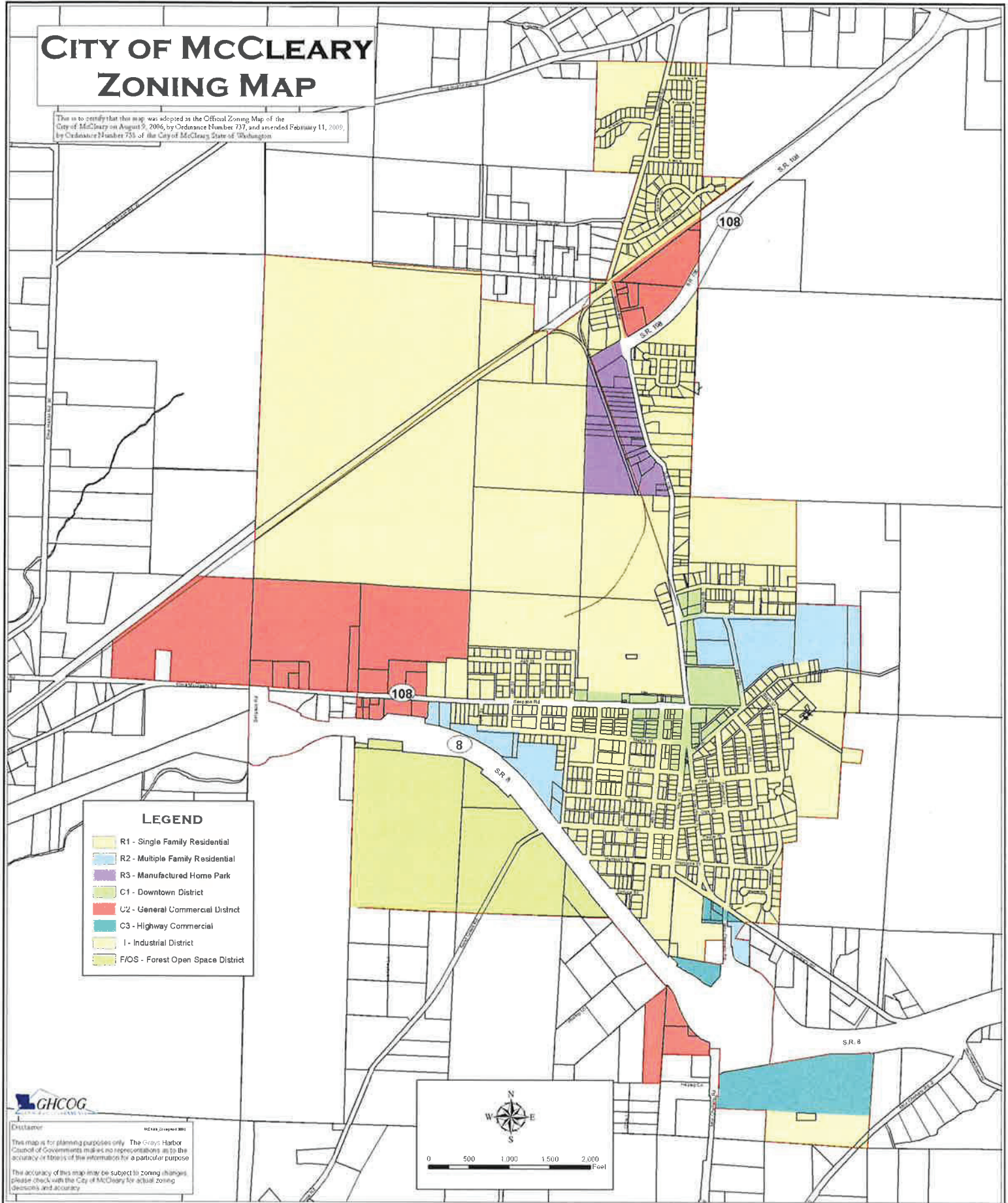
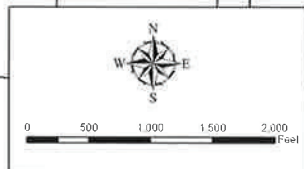
This is to certify that this map was adopted as the Official Zoning Map of the City of McCleary on August 9, 2006, by Ordinance Number 737, and amended February 11, 2009, by Ordinance Number 755 of the City of McCleary, State of Washington.

LEGEND

- R1 - Single Family Residential
- R2 - Multiple Family Residential
- R3 - Manufactured Home Park
- C1 - Downtown District
- U2 - General Commercial District
- C3 - Highway Commercial
- I - Industrial District
- FIOS - Forest Open Space District



Disclaimer
 This map is for planning purposes only. The Grays Harbor Council of Governments makes no representations as to the accuracy or timeliness of the information for a particular purpose.
 The accuracy of this map may be subject to zoning changes. Please check with the City of McCleary for actual zoning designations and accuracy.



STAFF REPORT

To: Mayor Dent
From: Todd Baun, Director of Public Works
Date: May 22nd, 2015
Re: Zoning Amendment Referral

A request to modify the existing zoning ordinance has been received. A copy of the request follows this staff report. We have also included MMC Section 17.40.130, regarding amendments to the zoning ordinance for your reference.

This is our second opportunity to implement Ordinance 790, which was adopted in December 2012. You will notice that the language in MMC 17.40.130 directs the Planning Commission to set a public hearing and submit a written recommendation to the Council. Ordinance 790, specifically Section I.F, states that *"In the event that an application involves review and possible amendments to the comprehensive plan and the zoning code of the City, it shall be the responsibility of the planning commission or planning agency (Hearing Examiner), to whichever the matter has been referred by the Mayor and Council, to hold such public hearings as may be required and make recommendations to the Council..."*.

At this time, this topic is not for consideration, but for referral.

Staff Recommendation:

As the planning commission has one active member, and the Hearing Examiner is on call, it will likely be much more efficient to utilize the services of the Hearing Examiner.

Action Requested:

Please consider directing staff to coordinate with the Hearing Examiner to set the public hearing date, facilitate the public hearing, and prepare a written recommendation to Council.

05-22-15 410:05 PAID

May 21, 2015

Attn: City of McCleary

I am requesting an amendment to McCleary Municipal Code **17.20.030 Table of land uses for all zoning districts**. I propose to include Hospitals, medical clinics, medical offices as permitted use in district C-1. Thank you.

Sincerely,



Larry Birindelli
111 W. Elma Hicklin Rd.
McCleary, WA 98557
(360) 470-1367

17.40.130 Amendments.

A. The city council may amend the text of the zoning ordinance, including the city of McCleary zoning map, whenever public necessity, convenience, or general welfare require such action and the proposed amendment is consistent with the city of McCleary comprehensive land use plan in accordance with RCW 35A.63.105.

B. Amendments to the text of the zoning ordinance may be initiated by:

1. One or more owners of property within the corporate boundaries of the city of McCleary;
2. A motion of the city council requesting the planning commission to set the matter for hearing; or,
3. A motion of the planning commission.

C. At the first meeting at which action may be taken occurring after the receipt of the request for amendment by the office of the clerk-treasurer, the commission shall set a date for a public hearing on the request. The hearing shall be set to occur no sooner than twenty days following the date of that meeting: provided that if any applicable law, ordinance, rule, or regulation requires the utilization of different time parameters for the particular hearing, those parameters shall be utilized; provided still further that, the hearing date may continued from the date set if the commission determines that good cause supports such action.

Upon completion of its hearing, the planning commission shall submit a written recommendation to the city council as to the matters heard by its at its public hearing by filing it with the clerk-treasurer. This recommendation shall be tendered to the city council within sixty days after the close of the record provided that if any applicable law, ordinance, rule, or regulation requires the utilization of different time parameters for the particular submission, those parameters shall be utilized; provided still further that, the timing for submission may occur outside the time frames set forth above or continued from the date otherwise required if the commission determines that good cause supports such action.

Upon receipt of the commission's recommendation, the clerk-treasurer shall place the recommendation upon the agenda for the next regular meeting of the city council for commencement of consideration as set forth in subsection D of this section.

D. Upon receipt of the commission's recommendation on the matter heard by the commission, the city council shall at the next regular meeting of the council either set a time and place of public hearing thereon and order public notice as herein provided, or, if determines that no additional public hearing is necessary, set the matter on for consideration at its next regular council session. If at the time set for consideration without public hearing, the majority of the council determines it appropriate to schedule a public hearing, such hearing may be scheduled and held as provided for herein. So long as the council determines it has adequate information from the applicant and/or planning commission to make a decision, the council shall take final action within sixty days after the later of (1) any public hearing held by it or (2) the date of the consideration without public hearing. The council may its issue decision by passing an amendatory ordinance, by declining to amend, or by referring the matter back to the planning commission for further consideration. To the extent required by law, the council shall issue written findings of fact and conclusions of law in relation to the decision it makes. Written notice of the action take by the city council shall be transmitted by the clerk-treasurer to the planning commission and/or to the applicant, if the matter was initiated by the filing of an application: provided that, for purposes of an appeal, the date of issuance of the council's decision shall be determined as provided in RCW 36.70C.040(4), as now existing or hereafter amended or succeeded.

E. The city council's decision shall be final unless an appeal is timely filed and perfected within ten days of the issuance of the notice of the decision provided for under subsection D or, if applicable, within the time period set forth under the provisions of RCW 36.70C, as now existing or hereafter amended or succeeded.

(Ord. 709 § 1 (part), 2004)

SEPA ENVIRONMENTAL CHECKLIST

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Instructions for Lead Agencies:

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

Use of checklist for nonproject proposals:

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

A. Background

1. Name of proposed project, if applicable:

C-1 Zoning Amendment

2. Name of applicant:

City of McCleary

3. Address and phone number of applicant and contact person: [\[help\]](#)

City of McCleary- Contact person: Todd Baun

100 S. 3rd Street

McCleary, WA 98557

360-495-3667

4. Date checklist prepared:

6-11-15

5. Agency requesting checklist:

City of McCleary

6. Proposed timing or schedule (including phasing, if applicable):

Earliest amendment to zoning ordinance will likely occur at the City Council meeting on July 22nd, 2015 at 7:00 PM.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

None at this time.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

None known.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

None known.

10. List any government approvals or permits that will be needed for your proposal, if known.

Recommendations of proposed modifications (if any) will be provided by the City of McCleary Hearings Examiner to the City Council for consideration. Further action will require adoption of a zoning amendment ordinance.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The existing C-1 zoning does not allow for medical clinics, medical offices, or pharmacies. A request to allow medical clinics, medical offices, or pharmacies for the C-1 zone has been provided to the City.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The C-1 zoning district encompasses the downtown core of McCleary.

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site:

(circle one): Flat, rolling, hilly, steep slopes, mountainous, other _____

b. What is the steepest slope on the site (approximate percent slope)?

6%

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

Most of the C-1 zoning district is impervious, with the exception of the City Park and undeveloped lots. In areas where excavation has occurred, pockets of gravel and clay have been observed. The national wetland inventory identified hydric soils in the north eastern portion of the district.

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

No.

- e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

Non project action- N/A

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

Non project action- N/A

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

Non project action- N/A

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

Non project action- N/A

2. Air

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

Vehicular traffic is not planned to increase, as the "Downtown Commercial" district or C-1 district will continue to generate traffic. No other air emissions are anticipated.

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

None known

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

N/A

3. Water

a. Surface Water:

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

A tributary to Wildcat Creek, also known locally as "Sam's Canal", runs adjacent to the C-1 district. It is piped underneath a portion of the C-1 district through large diameter culverts.

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

Non Project Action- N/A

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

Non Project Action- N/A

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

Non Project Action- N/A

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

A portion of the C-1 zoning district lies within the 100-year floodplain. As this is a non project action, the site plan has been omitted.

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

Non Project Action- N/A

b. Ground Water:

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

Non Project Action- N/A

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

NON PROJECT ACTION- N/A

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

Surface water is currently collected by existing catch basins the flows through the City's Stormwater conveyance system and discharged to Sam's Canal.

- 2) Could waste materials enter ground or surface waters? If so, generally describe.

Non Project Action- N/A

- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

Non Project Action- N/A

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

Non Project Action- N/A

4. Plants

a. Check the types of vegetation found on the site:

- ☒ x_deciduous tree: alder, maple, aspen, other
☒ x_evergreen tree: fir, cedar, pine, other
☒ x_shrubs
☒ x_grass
☒ pasture
☒ crop or grain
☒ Orchards, vineyards or other permanent crops.
☒ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
☒ water plants: water lily, eelgrass, milfoil, other
☒ other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

Non Project Action- N/A

c. List threatened and endangered species known to be on or near the site.

None Known

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

Non Project Action- N/A

e. List all noxious weeds and invasive species known to be on or near the site.

Non Project Action- N/A

5. Animals [\[help\]](#)

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site.

Examples include:

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:

fish: bass, salmon, trout, herring, shellfish, other _____

b. List any threatened and endangered species known to be on or near the site.

It is presumed that Steelhead, Fall/winter Chum and Chinook utilize Sam's Canal.

c. Is the site part of a migration route? If so, explain.

Part of the Pacific Flyway.

d. Proposed measures to preserve or enhance wildlife, if any:

NON PROJECT ACTION- N/A

e. List any invasive animal species known to be on or near the site.

Non Project Action- N/A

6. Energy and Natural Resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

Non Project Action- N/A

- b. Would your project affect the potential use of solar energy by adjacent properties?
If so, generally describe.

Non Project Action- N/A

- c. What kinds of energy conservation features are included in the plans of this proposal?
List other proposed measures to reduce or control energy impacts, if any:

Non Project Action- N/A

7. Environmental Health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal?
If so, describe.

Non Project Action- N/A

- 1) Describe any known or possible contamination at the site from present or past uses.

Non Project Action- N/A

- 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

Non Project Action- N/A

- 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

Non Project Action- N/A

- 4) Describe special emergency services that might be required.

Non Project Action- N/A

- 5) Proposed measures to reduce or control environmental health hazards, if any:

Non Project Action- N/A

b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

Common commercial noises such as passenger and truck traffic, compressor noise and noise generated by people are common in this district.

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

Non Project Action- N/A

- 3) Proposed measures to reduce or control noise impacts, if any:

Non Project Action- N/A

8. Land and Shoreline Use

- a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

The C-1 district is the "Downtown Commercial" district.

- b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

The C-1 district has not been used for agriculture since prior to incorporation in 1943.

- 1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

Non Project Action- N/A

- c. Describe any structures on the site.

Various commercial buildings are located within the C-1 district from restaurants, office space, nail salons, laundry mat, grocery store, etc..

d. Will any structures be demolished? If so, what?

Non Project Action- N/A

e. What is the current zoning classification of the site?

C-1: Downtown Commercial.

f. What is the current comprehensive plan designation of the site?

The C-1 District provides for a wide range of small to medium retail businesses, eating and drinking establishments, government activities, and professional offices concentrated in the traditional downtown area of the city. Uses in this district serve the needs of the immediate area as well as tourists to the community.

g. If applicable, what is the current shoreline master program designation of the site?

N/A

h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

Yes, portions fo the district have hydric soils and are within the 100-year flood plain.

i. Approximately how many people would reside or work in the completed project?

Non Project Action- N/A

j. Approximately how many people would the completed project displace?

Non Project Action- N/A

k. Proposed measures to avoid or reduce displacement impacts, if any:

NON PROJECT ACTION- N/A

L. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

Proposed changes to the zoning ordinance will be evaluated by the City's Hearing Examiner to ensure compatibility with the existing use then recommend to the City Council for potential action.

m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any:

Non Project Action- N/A

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

Non Project Action- N/A

- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

Non Project Action- N/A

- c. Proposed measures to reduce or control housing impacts, if any:

Non Project Action- N/A

10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

Non Project Action- N/A

- b. What views in the immediate vicinity would be altered or obstructed?

Non Project Action- N/A

- b. Proposed measures to reduce or control aesthetic impacts, if any:

Non Project Action- N/A

11. Light and Glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

Non Project Action- N/A

- b. Could light or glare from the finished project be a safety hazard or interfere with views?

Non Project Action- N/A

- c. What existing off-site sources of light or glare may affect your proposal?

Non Project Action- N/A

- d. Proposed measures to reduce or control light and glare impacts, if any:

Non Project Action- N/A

12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?

Beerbower park is located in the eastern portion of the C-1 district.

- b. Would the proposed project displace any existing recreational uses? If so, describe.

Non Project Action- N/A

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

Non Project Action- N/A

13. Historic and cultural preservation

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near the site? If so, specifically describe.

The "Old McCleary Hotel" is listed as a historic property and is located on the northern portion of the C-1 district. The City "Equipment Shop" is shown as a historic property on the WISAARD and is located in the center of the C-1 district,

- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

None Known

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

Non Project Action- N/A

- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

Non Project Action- N/A

14. Transportation

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

State Route 108 bisects the C-1 district. An arterial street, 3rd Street, also bisects the district. Local access streets are also utilized in conjunction with the public alley's in the district.

- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

Yes, a Grays Harbor Transit Station is located within the C-1 district.

- c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?

Non Project Action- N/A

- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

NON PROJECT ACTION- N/A

- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

Non Project Action- N/A

- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

Non Project Action- N/A

- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

Non Project Action- N/A

- h. Proposed measures to reduce or control transportation impacts, if any:

Non Project Action- N/A

15. Public Services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

Non Project Action- N/A

- b. Proposed measures to reduce or control direct impacts on public services, if any.

Non Project Action- N/A

16. Utilities

- a. Circle utilities currently available at the site:

electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system,
other _____

- c. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

Non Project Action- N/A

C. Signature

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: _____

Name of signee Todd Baum

Position and Agency/Organization Director of Public Works; City of McCleary.

Date Submitted: 6-11-15

D. supplemental sheet for nonproject actions

(IT IS NOT NECESSARY to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

The proposal to allow medical clinics, medical offices, or pharmacies within the C-1 District is not anticipated to increase the above listed concerns anymore than the currently permitted uses would.

Proposed measures to avoid or reduce such increases are:

None

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

The proposal to allow medical clinics, medical offices, or pharmacies within the C-1 District is not anticipated to increase the above listed concerns anymore than the currently permitted uses would.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

None

3. How would the proposal be likely to deplete energy or natural resources?

The proposal to allow medical clinics, medical offices, or pharmacies within the C-1 District is not anticipated to increase the above listed concerns anymore than the currently permitted uses would.

Proposed measures to protect or conserve energy and natural resources are:

The City offers conservation incentives to businesses and homeowners throughout the electric service area to promote energy conservation. This action will continue to occur, regardless of the proposal outcome.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

The proposal to allow medical clinics, medical offices, or pharmacies within the C-1 District is not anticipated to increase the above listed concerns anymore than the currently permitted uses would.

Proposed measures to protect such resources or to avoid or reduce impacts are:

None at this time.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

The proposal will be evaluated by the City Hearing Examiner to confirm the use is compatible with existing land uses. In the event the use is not confirmed by City Council, the proposed action will not proceed.

Proposed measures to avoid or reduce shoreline and land use impacts are:

None at this time.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

The proposal to allow medical clinics, medical offices, or pharmacies within the C-1 District is not anticipated to increase the above listed concerns anymore than the currently permitted uses would.

Proposed measures to reduce or respond to such demand(s) are:

None at this time.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

No conflicts are anticipated.

**CITY OF MCCLEARY
STATE ENVIRONMENTAL POLICY ACT
DETERMINATION OF NONSIGNIFICANCE
(DNS)**

Proponent/Applicant: City of McCleary
100 South 3rd Street
McCleary, WA 98557
Phone: 360-495-3667

Jurisdiction/Lead Agency: City of McCleary

Responsible Official: Todd Baun.
Director of Public Works
100 South 3rd Street
McCleary, WA 98557
Contact via U.S. Mail or Fax (360) 495-3097

Date of Issuance: June 15th, 2015

Comment Period:

This Determination of Non-significance (DNS) is issued under the State Environmental Policy Act (SEPA) as provided in WAC 197-11-340; a comment period is not required in accordance with WAC 197-11-340(2).

Description of Proposal:

The project is a consideration of a zoning amendment to add "Medical Clinics, Medical Offices and Pharmacies" to the list of permitted uses in the C-1 district.

Location of Proposal:

The C-1 zoning district, also called the Downtown District, is located in the center of the City of McCleary and functions as the downtown core of the city.

Threshold Determination:

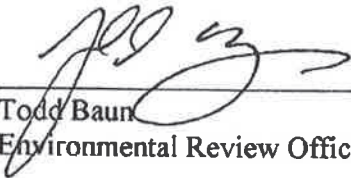
The City of McCleary, acting as the SEPA lead agency for this Proposal, has determined that it DOES NOT have a probable significant adverse impact on the environment under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is open to the public on request. A copy of the environmental checklist is on file at McCleary City Hall, 100 South 3rd Street, McCleary, WA 98557.

Determination of Non-Significance
Subject: Zoning Amendment
Date: June 15, 2015
Page 2 of 2

Appeal Process:

The SEPA lead agency has elected to not establish appeals for this proposal. A land use public hearing will be conducted on July 1st, at 1:30 PM. All members of the public are encouraged to attend.

Determination of Non-
Significance Issued by:



Todd Baun
Environmental Review Officer

STAFF REPORT

To: Mayor Dent
From: Todd Baun- Director of Public Works
Date: July 17, 2015
Re: Cedar Heights Storm Pond

Cedar Heights has created its Homeowners Association and had a meeting on July 15th, which I attended at the request of the HOA. At that meeting the HOA members decided that the Homeowners would like to deed their storm pond to the City, with one condition. The one condition that they would like to add is this: They would be not charged the additional rate above the base Stormwater rate that they already pay on a monthly basis.

They feel that prior precedence has been set with the Summit Place 1 storm pond. The City was deeded ownership of that storm pond in 2007 and we have maintained it since then. We also do not charge Summit 1 residences any additional fee above the base storm water rate.

The HOA feels that if they already pay to maintain everyone's storm system, including Summit 1 storm pond, why it would be any different if the City took ownership and maintains the Cedar Heights storm pond.

Action Requested:

Please provide recommendations on how you would like to proceed on this matter.



DYNAMIC COLLECTORS, INC.

790 S MARKET BLVD, CHEHALIS, WA 98532

(360) 748.0420 • (800) 464.3457 • FAX (360) 748.0262

AMENDMENT TO CONTRACT

This amendment (the "Amendment") is made by **DYNAMIC COLLECTORS, INCORPORATED (AGENCY)** and **CITY OF MCCLEARY (CITY)**, parties to the Contract dated 10-1-02.

The Agreement is amended as follows and shall apply to any new accounts turned over, effective the date of this Amendment to Contract:

The CITY authorizes the AGENCY to add interest to accounts at a rate of 12% and to disperse the interest as follows: 100% of accrued interest to the CITY prior to the AGENCY commencing legal action and 100% of interest accrued after the AGENCY has commenced legal action shall be retained by the AGENCY. The AGENCY reserves the right to write-off interest balances under \$5.00, or to stop charging interest on payroll deductions and post-dated check payment plans.

The CITY will receive full payment in order to close a case. The CITY authorizes the AGENCY to either waive or reduce interest as a negotiation tool.

Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this amendment and the Agreement or any earlier amendment, the terms of this amendment will prevail.

The work to be performed under this amendment shall commence on _____, of _____, 2015.

Donald G. Dent, Mayor

City of McCleary

Dated: _____

Kevin Klumper

Dynamic Collectors, Inc.

Dated: _____

STAFF REPORT

To: Mayor Dent
From: Todd Baun- Director of Public Works
Date: August 5, 2015
Re: Grays Harbor PUD easement

Grays Harbor PUD will be installing fiber cable to the cell tower by the City reservoirs. They will be going underground on Cedar Street and will need a utility easement from the City to complete their project.

Action Requested:

Please allow the Mayor to sign the utility easement provided.

After recording return to:

GRAYS HARBOR PUD
PO BOX 480
ABERDEEN, WA 98520-0109

RE: PE-5697; WS-15-0016-Fiber

GRANT OF EASEMENT

Grantor: CITY OF MCCLEARY

Grantee: PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY

Legal Description (abbreviated): MC AC TAX 11; 18-05-13

Situate in Grays Harbor County, State of Washington

Additional legal on page 3

Assessor's Tax Parcel ID# 618051321004

City of McCleary, (collectively "Grantor"), as the owner of real property described in **Exhibit A** and depicted in **Exhibit B**, attached hereto (the "Real Property") does hereby grant and convey to PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY, WASHINGTON, a municipal corporation ("the PUD") a perpetual, non-exclusive easement for utility lines, associated facilities and appurtenances (the "Easement") as follows:

1. Nature and Location of Easement. The Easement from Grantor shall be a permanent easement over, across, along, through, in, upon, and under the Real Property, for the purpose of installing, laying, constructing, maintaining, inspecting, repairing, removing, expanding, extending, replacing, using, testing and operating the PUD's electric distribution, transmission, and communication facilities. The Easement shall be twenty (20) feet in width, ten (10) feet on each side of the centerline of the PUD's facilities which, without limiting the generality of the foregoing, shall include, but not be limited to: underground fiber optic and communication cables, vaults and any other necessary appurtenances located as constructed or to be constructed or relocated within the Real Property as depicted in **Exhibit B**.
2. Access, Right of Entry and Restoration. The PUD, its workmen, contractors, or both shall have the right at all times, without notice, of reasonable access upon and ingress to and egress from the Real Property for all purposes within the scope of this Easement. The PUD agrees, that if the Real Property is disturbed by the exercise of its rights under the Easement, it will restore the surface of the Real Property as reasonably practicable to the condition in which it existed at the commencement of the PUD's activities or, at its option, reasonably compensate Grantor for any material damage to the Real Property caused by the exercise of its Easement rights, including any damage to roads, crops, driveways or fences. The PUD shall have the right to trim, cut or remove trees, roots, and other vegetation that may endanger or interfere with the function of this Easement, the facilities or appurtenances at all reasonable times without compensation to Grantor and without any duty to replace them.

block wall, rockery, fence or similar obstructions or any excavation that might undermine or damage the facilities or appurtenances without the prior written consent of the PUD, which consent shall not be unreasonably withheld or delayed. If prohibited structures, obstructions, vegetation, or excavations are located within the Easement, the PUD may require Grantor to remove or remedy the same and, if Grantor fails to timely do so, the PUD may undertake all reasonable actions to protect its rights including removal and charge Grantor the reasonable costs of such actions. Grantor shall have the right to use the Easement for any legal purpose consistent with the limitations on encroachment and the easement rights granted to the PUD. Use of the Easement beyond the limits, however, shall be at Grantor's risk unless prior written approval is obtained from the PUD.

4. Binding Effect/Warranty of Title. The Easement and the terms, covenants and conditions contained herein are intended to and shall run with the Real Property and shall be binding on Grantor, the PUD, and their respective successor, heirs and assigns. Grantor warrants that Grantor is the legal owner of and holds marketable title to the Real Property.

Notarization Attached

City of McCleary	
	Name _____
	Title _____
	Name _____
	Title _____

COUNTY OF

SS

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Washington,
residing at _____

My Commission expires: _____

Page 3 of 5

EXHIBIT A

Property Description:

That portion of Section 13, Township 18 North, Range 5 West of the Willamette Meridian, described as follows:

Parcel 618051321004

The reservoir site described as: Beginning at the Northeast corner of the Northwest Quarter of the Northwest Quarter of section 13, Township 18 North, Range 5 West of the Willamette Meridian;

THENCE West along the North line of said Section 13 a distance of 117.4 feet;

THENCE South 61° 42' East a distance of 889 feet to the West margin of the reservoir site and the initial point of this description;

THENCE North 3° 16' East a distance of 47.4 feet to the northwest corner of reservoir site;

THENCE South 86° 44' East a distance of 253 feet;

THENCE South 3° 16' West a distance of 172 feet;

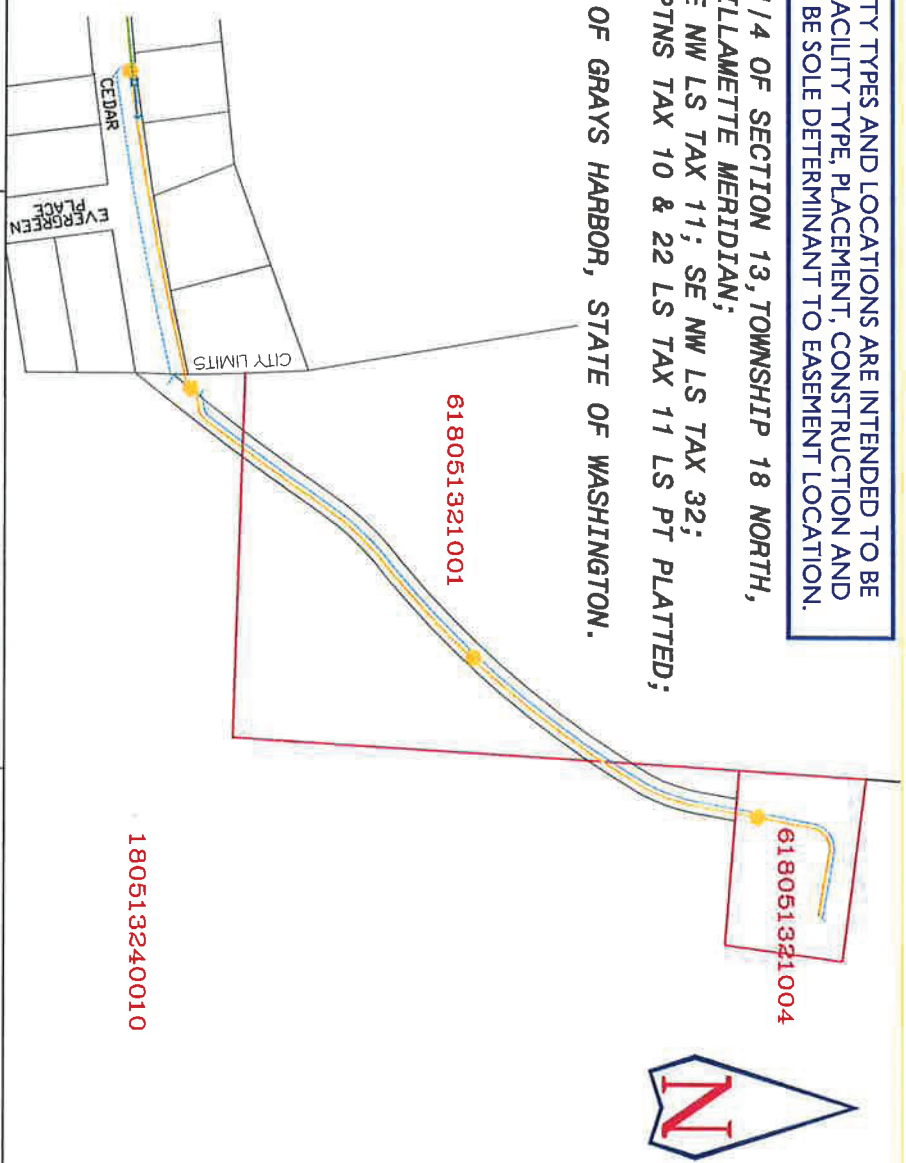
THENCE North 86° 44' West a distance of 253 feet;

THENCE North 3° 16' East a distance of 124.6 feet to initial point, containing approximately 1 acre;

Situate in the County of Grays Harbor, State of Washington.

NOTE: THIS DRAWING'S FACILITY TYPES AND LOCATIONS ARE INTENDED TO BE APPROXIMATE ONLY. ACTUAL FACILITY TYPE, PLACEMENT, CONSTRUCTION AND EXTENSIONS THEREFROM SHALL BE SOLE DETERMINANT TO EASEMENT LOCATION.

A PORTIONS OF THE NW 1/4 OF SECTION 13, TOWNSHIP 18 NORTH, RANGE 5 WEST OF THE WILLAMETTE MERIDIAN, INCLUDING THE E 1/2 NE NW LS TAX 11; SE NW LS TAX 32; MC AC W 1/2 NE NW LS PTNS TAX 10 & 22 LS TAX 11 LS PT PLATTED; MC AC TAX 11; SITUATE IN THE COUNTY OF GRAYS HARBOR, STATE OF WASHINGTON.



- LEGEND:
- PROPERTY LINE
 - UNDERGROUND FIBER FACILITIES
 - BURIED FIBER CONDUIT-1 1/4" HDPE
 - OVERHEAD FIBER FACILITIES
 - BURIED VAULT W/LID
 - POLE & ANCHOR W/DOWNGUTS

ENGINEERING DEPARTMENT PUBLIC UTILITY DISTRICT NO.1 GRAYS HARBOR COUNTY, WASHINGTON		EXHIBIT B	
EASEMENT SKETCH FOR			
GREEN DIAMOND RESOURCE COMPANY; CITY OF MCCLEARY, a municipal corporation			
DATE: 6-15-2015	DR. BY: TLC		
WS: 15-0016	ENGR: GM		
MAP: 180513B	CK BY: SSB		
VICIN: MCCLEARY	APRVD: SSB		
SCALE: 1"=250'	NO. PE-5697		

STAFF REPORT

To: Mayor Dent and Councilmember's
From: Wendy Collins, Clerk-Treasurer
Date: August 5, 2015
Re: State of the Budget/Budget Ordinance Options

Staff has been monitoring the police budget closely due to the restricted expenditures in the 2015 budget. We have now come to the crucial point where we have come to the end of our available funds.

After payroll in July, the approximate remaining balance for the police department is \$32,740, (This is less the LEOFF1 remaining amount of \$38,510). Payroll for August is estimated to be approximately \$28,000, leaving only \$4,800 left in the police expenditure line for September.

Currently, it is estimated that it takes \$35,000 a month (\$28K for salaries and \$7K for operating expenses) to operate the police department. The Fraternal Order of Police Union Contract requires a 30-day notice of layoff for the officers. If the police officers were to be laid off, after their final pay check, the city will have to pay out the accrued benefits for the officers ie; vacation, compensatory time, sick leave and holiday compensatory time. This total is estimated to be around \$40,000.

The ballot measure for the police levy will be decided on during the November 3rd election. If the Council chooses to wait until the people have decided whether to pass the levy or not, we do not have the expenditures available to cover until then.

Depending on which way the Council chooses, there will need to be an amended budget to allow additional expenditures in the police department budget.

Dan Glenn is providing two Budget Ordinance Amendments for you to review and consider. Regardless of how the Council decides to move forward, please be aware that we cannot pay out a layoff or operate until after the November 3rd election without a budget amendment.

As of August 4th, there is \$214,500 available in the current expense fund and \$137,000 available in the current expense reserve fund. As stated above, it costs approximately \$35,000 a month to operate the police department. It will cost approximately \$105,000 to fund the police through the election, leaving \$109,000 in the current expense fund and \$137,000 in the current expense reserve fund.

Action Requested:

Council options:

1. Choose ordinance to fund the police until the November 3rd election.
2. Choose ordinance to fund the police through the end of the calendar year.
3. Choose to lay off the police and amend the budget to pay necessary buyout cost.

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary
FROM: DANIEL O. GLENN, City Attorney
DATE: August 7, 2015
RE: LEGAL ACTIVITIES as of AUGUST 12, 2015 (Law Enforcement)

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

I have prepared this as a separate report since it deals with a single subject and is not very short in and of itself. Also, since it is likely to be a continuing subject, at least through the holding of the next meeting.

1. **LAW ENFORCEMENT MATTERS:** At the session in June, while the ordinance submitting a special levy request to the voters was approved, the proposed ordinance relating to the allocation of additional funds to the law enforcement budget did not receive the necessary number of affirmative votes. Since then, fiscally matters have not gotten any better for that particular fund and certain very stark realities are facing the City in terms of the provision of law enforcement services.

In order to allow you to continue your evaluation of what approach the Council determines to be appropriate, Ms. Collins and I have met twice with the goal of developing both fiscal information and legal information. In relation to the former, you have received a staff report from Ms. Collins laying out the fiscal realities as related to the existing FOP contract requirements and the status of and implications for the budget.

It seems to me what it all boils down to is that the Council has two basic alternatives, both of which will have fiscal impacts and, if I understand the fiscal situation correctly, require supplemental budget ordinances to be adopted.

Alternative #1: let the funding run out and close the Department down.

or

Alternative #2: adopt a supplemental budget of a chosen duration to fund the Department.

If the first alternative is chosen, that will require a supplemental budget in order to meet the contractual requirements which are not related to the requirements arising under the MOU approved two months ago. If the second alternative is chosen, as noted in Wendy's Report, there are also two alternatives of action required to be taken through the adoption of a supplemental budget: [a] fund the Department through the general election date or [b] fund it through the end of the year.

A. Alternative #1: If the first alternative were to be chosen, theoretically the City's law enforcement agency would cease existence as of the date of the lay offs. Given the implications of entering into a contract with the GHSO under the current conditions (funding, triggering of the MOU provisions, and the like) no contract were to be executed, then the question becomes what duties does the GHSO have to the citizens of McCleary?

1. Existing Funding Provided to the County: First, it should be recognized that McCleary's citizens already aid in the funding of the GHSO to the same extent as those living outside of town. How did I determine that? As part of my research in relation to this same general area upon behalf of the City of Oakville, thanks to a review of information provided by their Clerk-treasurer, I was surprised to note that the citizens of McCleary already pay into the County's current expense fund the same figure of real property tax as is paid by citizens living in the unincorporated areas. I confirmed that information with Ms. Bednarik, the employee at the Treasurer's Office with whom Ms. Collins and I work on an annual basis. Since that is the fund from which almost all of the moneys utilized to fund the GHSO's budget are derived, I directed a query to Ms. Tillotson, the DPA who represents the Sheriff's Office in general matters basically asking if that were correct and, if so, why is it that they were seeking to require Oakville's citizens to pay more for law enforcement services. I am attaching copies of my query and her response. I will make no comment about the thrust of the response, which I am certain was at the direction of the appropriate individuals.

2. Statutory Duties of the Sheriff: Obviously, in the absence of a municipal police department, the question becomes

what duty does the Sheriff have in terms of providing law enforcement protection for the citizens of McCleary. In that area, Ms. Tillotson sets forth a general position on that matter. That being said, for your information I am attaching a number of documents relating to the existing authority and responsibility of a County Sheriff in relation to providing law enforcement services to the citizens of a county, whether they reside within or without corporate limits in the absence of a specific contract. As you will note, the AGO is a bit more proactive in terms of setting forth the scope of the duty for response. The documents attached are as follows:

A. A copy of an email response from Patrick Mason, Senior Legal Consultant at MRSC, to a query I directed to him in relation to their opinion on an issue which I had been researching due to both McCleary and Oakville facing the same situation.

B. A copy of AGO 1990 #4, one of the Opinions of the Attorney General referenced in Mr. Mason's response.

C. Copies of RCW 36.28.010, .011, & .020 setting forth the duties and responsibilities of a County Sheriff and his or her deputies.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le



LaRae Erickson <larae.erickson75@gmail.com>

Oakville Discussions

1 message

Daniel Glenn <glennsatop@msn.com>
To: Norma Tillotson GHPA <ntillotson@co.grays-harbor.wa.us>
Cc: Amy Durga <oakvillecityhall@comcast.net>

Thu, Jun 25, 2015 at 8:50 AM

Norma,

Thanks for the response and the modifications. I can indicate that the Mayor and Council are desirous of bringing this area to a point of resolution. So, some additional guidance needed.

1. Funding: If the reporting of the discussions of the Commissioners as to funding is current, the funding for the GHSO, including the jail operation, is almost totally from the current expense fund. Why do I raise that? In checking with the Assessor's records, Ms. Durga has found that they indicate that the citizens of Oakville and all other incorporated areas of the County pay the same rate of their real estate taxes (\$1.7158233 p/ \$1,000 of assessed valuation) into that fund as do those in the unincorporated areas of the County. I checked with the Assessor's Office and the information was confirmed as being correct.

Do you folks agree with that information? If not, it would be helpful to have guidance on where that information is incorrect.

2. Level of Services: So, assuming both of the previous statements are correct, given that information and a question one council member has already raised, the issue which is likely to be raised at the next Council Meeting is why are the citizens of Oakville going to have to pay an additional \$100,000.00 to receive the same level of services as those in the unincorporated areas? So as to be able to respond to that area of question, it would be helpful to have the following guidance:

A. The proposed contractual language in Sections 1.1 and 1.3 as to the services to be provided continues to be ambiguous or, to say it another way, vague. The Mayor would like to have a clarification from the GHSO on exactly what services they will be receiving for the total sum which would be paid consisting of the portion of real estate taxes paid into the County's current expense fund and the \$100,000.00.

B. On the jail contract, if the City contracts for law enforcement services will there be consideration to the mutual advantage of combined contracts?

Thank you.

Dan Glenn 360 943 7700 360 943 7721 Fax The information contained in this email is intended for the individual or entity above. This email is protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521 and to the extent provided by law, is legally protected by the attorney/client privilege and/or work product doctrine. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you.



KATHERINE L. SVOBODA
Grays Harbor County Prosecuting Attorney
102 W. Broadway, Room 102
Montesano, Washington 98563
360-249-3951
FAX 360-249-6064

CHIEF CRIMINAL DEPUTY
Jason F. Walker

OFFICE ADMINISTRATOR
Randi Toyra

July 13, 2015

Mr. Daniel Glenn
Glenn & Associates, P.S.
2424 Evergreen Park Drive
Olympia, WA 98507

Re: Oakville Law Enforcement Services Contract

Dear Dan:

Thank you for your June 25, 2015, email concerning the potential contract between the City of Oakville and the Grays Harbor County Sheriff's Office for law enforcement services.

I agree that the base property tax rate is uniform throughout Grays Harbor County. In essence, the argument you appear to make is that due to the base tax rate uniformity, the County should assume law enforcement duties for incorporated cities at no cost. However, as you are no doubt aware, the base property tax rate is supplemented by additional levied amounts in different areas/districts within the County. Currently, Oakville total property taxes are \$10.55 per \$1,000 assessed value on real property, and the City receives \$2.28 per \$1,000 as its share of the collected property taxes. The remainder is disbursed to the State (\$2.17); the County (\$1.71); as repayment of City bonds (\$1.81); and for various other levies including the fire and school districts (\$0.70 and \$2.34, respectively). Under your theory, the State should provide law enforcement services to the City, as it receives a significant amount of the property taxes paid by Oakville's property owners.

That being said, just as a city would prepare its budget for municipal services based upon the revenue it receives (including police departments), the County likewise budgets for salaries, supplies, maintenance and repair, new computer equipment, utilities, and the myriad other expenses required to run a county government – including the budget for the Sheriff's Office. You are welcome to do the calculations which will show that Oakville's actual contribution to the County Current expense fund supplies only a very small fraction of the Sheriff's overall budget, and an even smaller fraction of the funds designated for the patrol of East County.

GLENN & Associates

JUL 27 2015

RECEIVED

Moreover, as I read the arguments presented in your email there appears to be a mistaken belief that those tax revenues previously used for Oakville's police department have been "taken away" from the city and given to the Sheriff. This is simply not true. Once the property taxes have been collected by the county treasurer, they are distributed as described above, and each city uses these funds to budget. If a city chooses to disband its police force, the city's share of the property taxes doesn't decrease, even though that service is no longer being provided to its citizens.

The proposed \$100,000 yearly contract for law enforcement services is not intended to replace the defunct Oakville Police Department. Rather, as the proposed contract states, it is intended to provide limited law enforcement services within the City of Oakville's budget. It is my understanding that both Sheriff Scott and Lieutenant Porter have discussed the anticipated level of services with Mayor Sims and the Council, so I am unsure of what additional information or clarification is being requested. Notwithstanding, I am confident that either Sheriff Scott and/or Lieutenant Porter will be willing to sit down with Mayor Sims and the Council to answer their concerns.

With regard to your comment about the jail contract, I do not understand your question. It appears you may be suggesting that by entering into two separate contracts for two entirely separate and distinct services, the County should reduce the yearly fee for one or both. The County will not agree to such a reduction. First, the quoted annual fee listed in each of those contracts is based upon the true cost to the Sheriff's Office and Jail. Second, such a reduction would essentially be a gift of the County's services, which is expressly forbidden under the State Constitution.

Finally, my take-away from your email was that Oakville may simply choose to not enter into an agreement with the Sheriff's Department for law enforcement services, but instead rely on RCW 36.28.010 and .011, which provides that a sheriff has a duty to provide law enforcement services to the entire county. While this is true, given the financial and logistic constraints placed upon a sheriff's department, incorporated cities and towns have chosen to fund their own police departments in order to provide a specific level of services to their citizens.

As you are no doubt aware, the unincorporated areas of Grays Harbor County are solely dependent on the services of the Sheriff's Department, as those resident citizens cannot form their own police department. Obviously, when a city is unable to provide an adequate police force, the county sheriff must factor that decision in when determining the allocation of resources. Notwithstanding, the statutes do not require that a county sheriff provide a specific number of police officers, nor specific law enforcement services to a city that chooses to not fund a police force. Cities that wish to obtain a level of services must contract with the county sheriff's office pursuant to RCW 39.34.080.

Mr. Daniel Glenn
July 13, 2015
Page 2 of 2

The County has previously agreed to the majority of your requested changes to the document. We are not inclined to continue to rehash these discussions which began in January, and which we are no closer to resolving six months later. If the City of Oakville desires to enter into a contract for law enforcement services for the protection of its citizens, the County is prepared to provide those services as previously discussed, and at the cost previously provided.

Very truly yours,

KATHERINE L. SVOBODA
Prosecuting Attorney
for Grays Harbor County

BY: 
NORMA J. TILLOTSON
Deputy Prosecuting Attorney

NJT/

cc: Sheriff Rick Scott
Lt. David Porter

Daniel Glenn

From: "Pat Mason" <pmason@mrsc.org>
To: "Glenn, Daniel" <glennsatsop@msn.com>
Sent: Tuesday, February 10, 2015 12:47 PM
Subject: Sheriff Duties

Hi Dan -

This is a response we have provided before in regard to the general obligation of a sheriff to provide police services within a city. I hope this helps:

We have been asked in the past about the responsibility of the sheriff to provide police protection within a city.

The best answer comes from an Attorney General's Opinion, AGO 1990 No. 4. I am attaching a link to this opinion below.

<http://www.atg.wa.gov/opinion.aspx?section=archive&id=6040>

Here is an excerpt with some helpful language from that AGO that indicates that the sheriff does have some responsibility for law enforcement within the city limits:

"Indeed, this office has twice previously concluded that where the statutory powers and duties granted to municipal police departments coincides with those granted to county sheriffs, the municipality's jurisdiction is concurrent, not exclusive, within the municipality's boundaries.2/

AGO 61-62 No. 25 at 6 [[Orig. Op. Page 5]] (county sheriff and municipal police department have concurrent authority to investigate felony cases occurring within a city or town); AGLO 1974 No. 96 at 3 (county sheriff and municipal police department have concurrent authority over state traffic law violations occurring within a city or town).

Thus, the statutory duties of the sheriff apply equally within and without municipal boundaries. That being said, however, it is equally important to stress the nature of those duties. As noted at the outset, the sheriff's duties are set forth in RCW 36.28.010-[36.28].011. In *State ex rel. Zempel v. Twitchell*, 59 Wn.2d 419, 427, 367 P.2d 985 (1962), the state Supreme Court held that the sheriff is obligated to "devote unceasing effort toward performing and discharging those duties of the office which are imposed by law. . . ." That is, the sheriff may not simply refuse to perform his or her statutory duties altogether. Such a refusal has been held a wilful neglect of duty. *State v. Twitchell*, 61 Wn.2d 403, 378 P.2d 444 (1963). Other courts have similarly ruled that the sheriff must "exercise [a] reasonable degree of activity and diligence" to carry out his or her duties. *State ex rel. Windham v. LeFever*, 486 S.W.2d at 744; *State ex rel. Thompson v. Reichman*, 135 Tenn. 653, 188 S.W. 225, 228 (1916); *Brownstown Township v. County of Wayne*, 68 Mich. App. 244, 242 N.W.2d 538, 540 (1976); see also *Orton*, 465 S.W.2d at 627 (the sheriff has an "official duty to make reasonable efforts to enforce [the] laws both within and without the cities").

There may be instances in which a sheriff would be found to have "wilfully neglected" his or her duties. But one should note, in this regard, that the statutes do not obligate the sheriff to provide cities

(or the unincorporated areas of the county) with a specific number of police officers, or with a specific level of police services. Whether the sheriff has in fact carried out his or her statutory duties will therefore depend on the facts and circumstances of the particular case. We conclude here, in answer to your first question, simply that the sheriff's statutory duties apply to both the incorporated and unincorporated areas of the county.

And here is some language from AGO 1996 No. 7 that summarizes the conclusion and may be easier to refer to:

"In AGO 1990 No. 4, we laid out the basic relationship of county to city law enforcement in Washington. We noted that the county sheriff has a duty to enforce state law everywhere within the county, including those areas within the boundaries of incorporated cities and towns. However, we noted, the sheriff is entitled to take into account the existence of city and town police departments in allocating the resources available. Also, the sheriff's efforts may logically be concentrated in those portions of the county which have no other police protection. Finally, we concluded that if a city wants to obtain a particular level of police service, and does not wish to form its own police department, the Interlocal Cooperation Act (chapter 39.34 RCW) provides authority for the city to contract with the county to provide those services."

So it is not correct to say that a county sheriff has no obligation for police protection within a city.

Pat Mason

Senior Legal Consultant

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206.625.1300 | MRSC.org <<http://www.mrsc.org>> | Local Government Success

SHERIFF -- LAW ENFORCEMENT -- CITIES AND TOWNS -- CONTRACTS -- INTERLOCAL COOPERATION ACT -- COUNTIES



(<http://www.atg.wa.gov>)

AGO 1990 No. 4 - May 24 1990

Attorney General Ken Eikenberry

SHERIFF -- LAW ENFORCEMENT -- CITIES AND TOWNS -- CONTRACTS -- INTERLOCAL COOPERATION ACT -- COUNTIES

1. The county sheriff's duty to enforce state law applies equally in incorporated and unincorporated areas of the county.
2. If a city is unable to provide for adequate police protection, the county sheriff must take this factor into account in allocating the resources of the sheriff's office. However, the statutes do not obligate the sheriff to provide a city with a specific number of police officers or a specific level of police services.
3. If a city wants to obtain a specific number of county police officers or level of police services, the Interlocal Cooperation Act empowers the city to contract with the county to provide those services.

May 24, 1990

Honorable Scott Barr
State Senator, Seventh District
Institutions Building
Olympia, WA 98504

Cite as: AGO 1990 No. 4

Dear Senator Barr:

By letter previously acknowledged, you requested our opinion on the following two questions:

[[Orig. Op. Page 2]]

1. To what extent does a county sheriff have an obligation to enforce state law1/
in an incorporated city or town within the county?
2. Does the answer to question 1 differ depending upon the existence of a functioning city or town police department?

We answer your questions in the manner set forth below.

ANALYSIS

Question 1

We commence by analyzing the statutory duties of the sheriff, with particular reference to the territorial directives contained therein. The Legislature has set forth the general duties of the sheriff in RCW 36.28.010 as follows:

The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his office, he and his deputies:

(1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

(2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;

(3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;

(4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;

(5) Shall attend the sessions of the courts of record held within the county, and obey their lawful order or directions;
[[Orig. Op. Page 3]]

(6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

(Emphasis added.)

RCW 36.28.011 further provides:

In addition to the duties contained in RCW 36.28.010, it shall be the duty of all sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions.

The statutes plainly state that the sheriff is a county officer. Where territorial references are made, the statutes direct the sheriff to "defend the county" and to take various actions "within the county" or "in their [the sheriffs'] respective counties". Nowhere has the Legislature indicated that the sheriff's powers and duties are limited to the unincorporated areas of the county. Nor is there any statutory language from which such a limitation might be inferred. We note, in addition, that the sheriff at common law was the chief law enforcement officer of the county, and that the office of sheriff retains its common law powers and duties unless modified by the constitution or statutes. 70 Am. Jur. 2d Sheriffs, Police, and Constables § 2 (1987); see State ex rel. Johnston v. Melton, 192 Wash. 379, 388-89, 73 P.2d 1334 (1937); AGO 51-53 No. 322 at 2. We thus conclude that the sheriff has a general duty to enforce state law in both unincorporated and incorporated areas of the county.

Several other states have held likewise. State ex rel. Windham v. LaFever, 486 S.W.2d 740, 742 (Tenn. 1972); State ex rel. Danforth v. Orton, 465 S.W.2d 618, 626 (Mo. 1971); People v. Scott, 259 Cal. App. 2d 268, 66 Cal. Rptr. 257, 265 (1968); Commonwealth ex rel. Davis v. Malbon, 195 Va. 368, 78 S.E.2d 683, 686 (1953); see also 80 C.J.S. Sheriffs and Constables § 36a (1953). In Scott, the California court noted that "the jurisdiction of the sheriff in law enforcement matters normally extends throughout his county including the incorporated areas thereof." 66 Cal. Rptr. at 265. In Orton, the Missouri court expounded further:

[The sheriffs] authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinance[s] the [[Orig. Op. Page 4]] cities and towns have their police departments or their town marshals. Even the state has its highway patrol. Still the authority of the sheriff with his correlative duty remains.

465 S.W.2d at 626.

We recognize that the Legislature, in addition to delineating the sheriff's powers and duties, has provided for the establishment of city and town police departments. See RCW 35.22.570 (omnibus grant of power under which first class cities may establish police departments); RCW 35.23.130 (chief of police and police force for second class cities); RCW 35.24.160 (chief of police and police

department for third class cities); RCW 35.27.240 (town marshal and police department for towns). But as pointed out above, the existence of a municipal police department does not in itself diminish the general duty of the county sheriff to enforce state law within a city or town.

Indeed, this office has twice previously concluded that where the statutory powers and duties granted to municipal police departments coincides with those granted to county sheriffs, the municipality's jurisdiction is concurrent, not exclusive, within the municipality's boundaries.^{2/}

AGO 61-62 No. 25 at 6 [[Orig. Op. Page 5]] (county sheriff and municipal police department have concurrent authority to investigate felony cases occurring within a city or town); AGLO 1974 No. 96 at 3 (county sheriff and municipal police department have concurrent authority over state traffic law violations occurring within a city or town).

Thus, the statutory duties of the sheriff apply equally within and without municipal boundaries. That being said, however, it is equally important to stress the nature of those duties. As noted at the outset, the sheriff's duties are set forth in RCW 36.28.010-[36.28].011. In State ex rel. Zempel v. Twitchell, 59 Wn.2d 419, 427, 367 P.2d 985 (1962), the state Supreme Court held that the sheriff is obligated to "devote unceasing effort toward performing and discharging those duties of the office which are imposed by law..." That is, the sheriff may not simply refuse to perform his or her statutory duties altogether. Such a refusal has been held a wilful neglect of duty. State v. Twitchell, 61 Wn.2d 403, 378 P.2d 444 (1963). Other courts have similarly ruled that the sheriff must "exercise [a] reasonable degree of activity and diligence" to carry out his or her duties. State ex rel. Windham v. LeFever, 486 S.W.2d at 744; State ex rel. Thompson v. Reichman, 135 Tenn. 653, 188 S.W. 225, 228 (1916); Brownstown Township v. County of Wayne, 68 Mich. App. 244, 242 N.W.2d 538, 540 (1976); see also Orton, 465 S.W.2d at 627 (the sheriff has an "official duty to make reasonable efforts to enforce [the] laws both within and without the cities").

There may be instances in which a sheriff would be found to have "wilfully neglected" his or her duties. But one should note, in this regard, that the statutes do not obligate the sheriff to provide cities (or the unincorporated areas of the county) with a specific number of police officers, or with a specific level of police services. Whether the sheriff has in fact carried out his or her statutory duties will therefore depend on the facts and circumstances of the particular case. We conclude here, in answer to your first question, simply that the sheriff's statutory duties apply to both the incorporated and unincorporated areas of the county.

Question 2

Your second question, repeated for ease of reference, asks:

Does the answer to question 1 differ depending upon the existence of a functioning city or town police department?

At the outset, we note that the materials submitted with your opinion request indicate that for budgetary or other reasons, certain cities or towns have had difficulty in providing [[Orig. Op. Page 6]] their own full-time police departments. We understand that you are referring to this phenomenon when speaking of the lack of "functioning" municipal police departments. Your question is whether this factor affects the sheriff's duty to enforce state law within cities.

To a certain extent it does. While we have located no Washington cases on this issue, other state courts have considered the question, though in a slightly different context. In Orton, a municipal police department, while apparently able to act, nevertheless did little or nothing to stop gambling and liquor law violations occurring within the city. The sheriff likewise did not act, contending that responsibility rested solely with the city officials. In rejecting this contention, the court stated, in part:

It has become the custom for the sheriff to leave local policing to local enforcement officers but this practice cannot alter his responsibility under the law.... A sheriff may assume that a city police department will do its duty in enforcing the law and hence will not be guilty of any serious neglect of duty if he gives little attention to police matters in such city. But this rule has a proper qualification. If the sheriff has reason to believe that the police force is neglecting its duty it is his duty to inform himself. And if he knows that the police are ignoring or permitting offenses his duty to prevent and suppress such offenses is the same as it would be if there were no municipality and no police force.

465 S.W.2d at 626-27. Accord Commonwealth v. Malbon, 78 S.E.2d 683, 686; State v. Reichman, 188 S.W. 225, 228.

We believe the same principle applies to those cities which are unable, rather than simply unwilling, to provide adequate police protection for themselves. That is, the sheriff must take this factor into account in allocating his office's resources between the cities and the unincorporated areas of the county. To the extent that certain areas are not adequately policed by local authorities, the sheriff's duty to provide police protection increases. See Brownstown Township, 242 N.W.2d 538, 541.

It is, however, equally important to repeat what the statutes do not require. They do not obligate the sheriff to provide cities with a specific number of police officers, nor do they obligate the sheriff to provide cities with a specific level of police services. Furthermore, the sheriff's resources may be limited; and the unincorporated areas of the county, lacking statutory authority to create their own police force, must rely [[Orig. Op. Page 7]] heavily on the sheriff's office for their own police protection. The county resources remaining for police protection in the cities may thus be problematical. Therefore, while the sheriff's duty to enforce state law remains clear, that duty is not neatly quantified in the sheriff's statutes.

Should a city find it desirable or necessary to obtain the services of a specific number of county police officers, or a specific level of police services, it may contract with the sheriff's office for such services. Such contracts, in our view, are the only means by which a city may assure itself of quantified police protection beyond that contained in the sheriff's general charge to enforce state laws. The authority to contract in this manner is contained in the Interlocal Cooperation Act, chapter 39.34 RCW, and is implicitly recognized in several other statutes.

We are aware of a previous opinion, AGO 65-66 No. 28, in which this office found that cities and counties did not have the authority to enter into such contracts. That opinion, however, was issued prior to the enactment of RCW 39.34.080 which provides:

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; Provided That such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

This statute, part of the Interlocal Cooperation Act, permits public agencies (including cities and counties) to mutually contract for the provision of services. The entity providing the services in question must have the authority to perform such services independent of the authority granted by RCW 39.34.080. See AGO 1969 No. 8 at 5 (the Interlocal Cooperation Act does not authorize the exercise of any new substantive powers by public agencies).

That requirement poses no obstacle here, however, because as noted previously, the sheriff has not only the authority but the duty to perform his or her statutory law enforcement duties in both the incorporated and unincorporated areas of the [[Orig. Op. Page 6]] county. 3/

The city may therefore contract with the county for specific law enforcement services. To the extent that AGO 65-66 No. 28 concludes otherwise, it is overruled.

To summarize, we conclude that the sheriff has a duty to enforce state law in both incorporated and unincorporated areas of the county. To the extent that a particular city's police department is unable to provide adequate police protection, the sheriff's office has a duty to allocate its resources accordingly. However, the sheriff is not obligated by statute to provide cities with a specific number of officers, or a specific level of services. Should a city wish to obtain such specific protection, it may do so by contract.

We trust that the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY
Attorney General

GREGORY I. TRAUTMAN
Assistant Attorney General

*** FOOTNOTES ***

1/We note that your opinion request refers specifically to the enforcement of state law within cities or towns. We thus limit our response to that issue, and do not address the question of enforcement of city or town ordinances.

2/This principle is expressly set forth in the statutes governing the police departments of third class cities and towns. RCW 35.24.160 provides in part:

The department of police in a city of the third class shall be under the direction and control of the chief of police subject to the direction of the mayor.

He shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or the public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

(Emphasis added). RCW 35.27.240, governing towns, contains identical language. We conclude that the principle of concurrent jurisdiction likewise applies to all city police departments, as we have found no language in the various statutes that would limit the sheriff's powers and duties within first class, second class, or code cities.

3/The Legislature has also implicitly recognized the authority of cities and counties to enter into such contracts. RCW 41.14.250-[41.14].280, for example, sets forth a detailed scheme governing the rights and duties of city police department employees whenever "a city or town shall contract with the county sheriff's office for law enforcement services." See also RCW 35.02.220-[35.02].225, which recognizes the authority of newly incorporated cities to contract for law enforcement and other essential services after the date of incorporation.

36.28.010. General duties.

The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his or her office, he or she and his or her deputies:

- (1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;
- (2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;
- (3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;
- (4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;
- (5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions;
- (6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

[2009 c 549 § 4050; 1965 c 92 § 1; 1963 c 4 § 36.28.010. Prior: (i) 1891 c 45 § 1; RRS § 4157. (ii) Code 1881 § 2769; 1863 p 557 § 4; 1854 p 434 § 4; RRS § 4168.]

Effect of Amendments. 2009 c 549 § 4050, effective July 26, 2009, made gender neutral changes.

36.28.011. Duty to make complaint.

In addition to the duties contained in RCW 36.28.010, it shall be the duty of all sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions.

[1963 c 4 § 36.28.011. Prior: 1955 c 10 § 1. Cf. Code 1881 § 2801, part; 1869 p 264 § 311, part; RRS § 4173, part.]

36.28.020. Powers of deputies, regular and special.

Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be performed by the sheriff, and shall serve or execute, according to law, all process, writs, precepts, and orders, issued by lawful authority.

Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his or her official bond for their default or misconduct.

[2009 c 549 § 4051; 1963 c 4 § 36.28.020. Prior: 1961 c 35 § 2; prior: (i) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (ii) 1886 p 174 § 1; Code 1881 § 2768; 1863 p 557 § 3; 1854 p 434 § 3; RRS § 4167.]

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Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his or her official bond for their default or misconduct.

[2009 c 549 § 4051; 1963 c 4 § 36.28.020. Prior: 1961 c 35 § 2; prior: (i) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (ii) 1886 p 174 § 1; Code 1881 § 2768; 1863 p 557 § 3; 1854 p 434 § 3; RRS § 4167.]

Effect of Amendments. 2009 c 549 § 4051, effective July 26, 2009, made gender neutral changes.

STAFF REPORT

To: Mayor Dent
From: Todd Baun- Director of Public Works
Date: July 17, 2015
Re: Water Conservation Ordinance

With our current weather and dry conditions, I have started looking at ways to keep our water system safe. Since the City has nothing on Water Conservation, I have been talking with Dan about this issue of drafting a Water Conservation Ordinance. Dan has drafted an Ordinance that I think will help protect our valuable water.

This issue started to pop up in early June. Kevin and I started reviewing our well outputs, and we were seeing that our current well levels were currently at levels normally seen in late August and September. With this information, we consulted Gray and Osbourn about what we could do to help with our declining water in the well field. They gave us some suggestions on turning down output from the wells and possibly limiting our back washing cycles. Both items were implemented and have helped our wells slowly recover.

The City has also cut our normal irrigation usage in half, stopped flushing hydrants unless necessary and have put a message on our website asking for voluntary water conservation. I have put the website message on page 2 for your information.

Action Requested:

Please allow the Mayor to sign the Ordinance for Water Conservation measures.

With our drier than normal winter, dry warm spring and early summer, the City and our ground water supplies are at risk of overuse. The demand on our aquifer can be greater than the amount supplied by rain and snowmelt. Water conservation is an important measure to help with, due to increases with demand on the City's potable water resource.

Keep in mind that it is often cheaper, easier, and safer to use less water and there are many ways for homeowners to conserve water. It is important for our consumers to use water wisely to assure an adequate supply of water for our community. Following are some conservation measures will help reduce water usage during hot, dry weather:

Outdoor and Lawn watering tips:

- The average lawn requires only one inch of water per week to stay green. Overwatering doesn't improve your lawn's health and results in runoff and water waste. Place a series of shallow containers throughout your lawn. Turn the sprinklers on and water your grass. When you're finished, measure the water in the dishes. Adjust the time until the water is about one inch deep.
- Regularly check and adjust your sprinklers. Water only your lawn and not the driveway, streets and sidewalks.
- In order to reduce the amount of water lost to evaporation, the best time to water your lawn is in the mornings between 6am-9am.
- Mow your lawn with blades set high; grass that is 2"-3" tall promotes a healthier root system and helps retain soil moisture.
- Consider replacing lawn with native plants to use less water, fewer chemicals, and eliminate mowing.
- Apply mulch around plants and trees to retain moisture and inhibit weed growth.
- Use a broom, not a hose, to clean driveways and sidewalks

Indoor water conservation tips:

- Don't use the toilet as a wastebasket. Each flush wastes water.
- Check toilets and faucets for leaks and fix any problems.
- Run your dishwasher only when it's full.
- Wash only full loads of laundry or use the proper water level setting for your load size.
- Don't leave the water running when brushing your teeth or shaving. With the tap running at full force, shaving takes 20 gallons of water, teeth-brushing takes 10.
- Take shorter showers or use less water in your bath. A full bathtub requires about 36 gallons of water. A five-minute shower using a water-conserving showerhead will use just 15 to 25 gallons.
- Consider installing water-efficient toilets, faucets and showerheads as a water-saving investment.

ORDINANCE NO. _____

AN ORDINANCE RELATING TO PUBLIC UTILITIES,
ADDING A NEW CHAPTER TO TITLE 13 OF THE
MUNICIPAL CODE, PROVIDING FOR PENALTIES,
ENFORCEMENT, AND SEVERABILITY.

R E C I T A L S:

1. The Director of Public Works has reported to the Mayor and Council that the source of the City's water supply is currently at a level normally reached in the early Fall.

2. The indication is such an unusual level of availability is associated with the weather of the recent months which has involved much less rainfall than would be normal.

3. A review of the Municipal Code has disclosed no existing provisions authorizing the implementation of measures to control water usage in situations arising from a shortage of supply.

4. As a protective measure for the public good, it is found appropriate to implement the provisions set forth below so that, in the event such action becomes necessary, specific guidelines as to steps to be taken to protect the public health and safety are in place.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY Council OF THE CITY OF McCLEARY:

SECTION I: When, as the result of information provided by the Director of Public Works (the Director), it is deemed necessary in the judgment of the Council to conserve water within the City's domestic water supply system during critical water shortage periods, the Council may by resolution declare an emergency condition and direct the Director to implement any or all of the following actions after publication of notice thereof in a newspaper of general circulation distributed in the city. In the event the Director has determined it necessary to make this recommendation and more than fourteen calendars days must pass before the next regular meeting of the Council, the Mayor may issue a proclamation declaring the emergency which shall remain in place until the Council ratifies, reverses, or modifies the action of the Mayor at its next meeting.

Based upon the information provided to the Council or the Mayor, as the case may be, the resolution or declaration shall define the emergency as a mild, moderate, or severe emergency. Such definition shall govern the steps taken in the implementation of the program. Upon implementation of a program, the public works department shall monitor the supply and demand for domestic water on a daily basis and the Director shall provide reports to the Mayor and Council on a weekly basis of the status of the domestic water system.

SECTION II: Upon adoption of a water supply emergency resolution, the Director shall implement a water consumption

curtailment program corresponding to the emergency level declared by Council. The water curtailment program shall consist of the following measures and any other measures necessary, in the judgment of the Director, to maintain the operational capabilities of the City's water supply system and thus insure the safety and health of those served by it.

A. Stage I-Mild:

1. The public works department shall place a notice of a water supply emergency upon the City's website and any social media service upon which it maintains a "site". It shall also notify the newspapers of general circulation within the City of this situation.

2. The public works department shall prepare and send a water status report to large water users as identified in the city's utility billing system.

3. The Director may take such steps as may be deemed appropriate requesting that domestic water users using city water for irrigation conform to the following landscape watering schedule, such watering to be allowed before 9:00 am and after 6:00 pm:

a. Even-numbered addresses water on even-numbered calendar days.

b. Odd-numbered addresses water on odd-numbered calendar days.

4. The public works department may develop and distribute to customers within the water utility billing system a water conservation guide.

B. Stage II-Moderate: In addition to the following measures, all of the measures indicated in the mild stage water emergency shall apply.

1. A representative of the public works department shall meet with the large water users as identified in the water utility billing system to inform them of the current condition and request a voluntary percentage reduction in their water consumption.

2. Mandatory landscape water restrictions shall be implemented. Landscape watering restriction may include required schedules up to and including prohibition of landscape watering.

3. Washing of streets, sidewalks, driveways, or decks shall be prohibited except as necessary for public health and safety.

4. Washing of boats and vehicles shall be prohibited unless at a commercial car washing facility equipped with water recycling equipment.

5. The filling of swimming pools, spas, and similar artificially created water features is prohibited.

6. Construction operations receiving water from a hydrant shall not use water unnecessarily for any purposes other than those required by regulatory agencies.

7. All restaurants that provide table service shall be requested to post in a conspicuous place a notice of emergency water conditions as provided by the Director and shall refrain from serving water except upon a specific request by a customer.

8. Operators of commercial establishments offering lodgings, including by way of example bed and breakfasts and motels, shall be requested post in each room a notice of emergency water conditions as provided by the Director.

C. Stage III-Severe: In addition to the following measures, all of the measures indicated in the mild stage and moderate stage water emergencies shall apply.

1. All watering of any lawn, yard, city park, landscaping, recreational area, or any other area containing vegetation shall be prohibited.

2. Hydrant permits shall be rescinded and no new permits issued.

3. In the event the above measures do not prevent a shortage of water supply available for the basic function of health and sanitation, the Director may be authorized to implement a rolling system of water system outages as necessary to preserve basic health and sanitation.

SECTION III. Enforcement:

A. Accountability: For the purposes of this ordinance, the legal owner of any premises upon which a violation of this section occurs or, in the case of rented or leased

premises, the legal occupant thereof, shall be deemed accountable for the conduct of all other persons being present thereon or having access to the premises. Any such owner or occupant may be found to have committed a violation of this ordinance upon proof of the commission of a violation of this section and proof that the named individual is the owner or legal occupant of the premises upon which the violation occurred, though the persons claimed to have committed the violation have not been prosecuted or convicted, or have been acquitted.

B. Violations & Penalties:

1. It is unlawful for any person to violate any provision of this ordinance. For the purpose of this section, person includes, in addition to the definition provided in MMC 9.04.160, those accountable for the conduct of others as defined in this section. Notices of infraction or citations, as may be merited under subparagraph 2, may be issued for violations of this ordinance.

2. Any person found to have violated any provision of this ordinance shall be deemed to have committed a civil infraction subject to a civil penalty as set forth in MMC 8.16.230: Provided that, if the same violator has been found to have committed an infraction violation for the same or similar conduct two separate times, with the violations occurring at the same location, involving the same or similar sections of the Municipal Code or other similar codes, and having been issued

within a thirty day period, the third or subsequent violation shall be issued as a citation and shall be deemed to constitute a misdemeanor, punishable as provided in MMC 9.02.030.

C. Discontinuance of Service: If a person accountable for service at a location has been given written notification of violation of the provisions of this ordinance and has failed to timely take reasonable efforts to correct the violation, in addition to the enforcement provisions set forth in the prior subparagraphs, in the Director's discretion, a written notification of intention to discontinue service may be given. It shall be given no less than five business days in advance of the intended date of discontinuance of service. The person may appeal such notification pursuant to the procedure set forth in Sections 5.04.030 and 5.04.040. Such notice of appeal must be filed within three business days of the giving of the notice. All other provisions of the two sections apply, including staying of the actual termination of service.

SECTION IV: Severability: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been

declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION V: Effective Date: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION VI: Corrections by the Clerk-treasurer or Code Reviser: Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

SECTION VII: Codification: Sections I through III shall constitute a new chapter in Title 13 of the Municipal Code.

PASSED THIS _____ DAY OF _____,
2015, by the City Council of the City of McCleary, and signed in
approval therewith this _____ day of _____,
2015.

CITY OF McCLEARY:

D. GARY DENT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

ORDINANCE -C- 8
07/15/2015
DC/1e

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON)
 : ss.
GRAYS HARBOR COUNTY)

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number _____ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number _____, as it was published, is on file in the appropriate records of the City of McCleary.

WENDY COLLINS

SIGNED AND SWORN to before me this _____ day of _____, 2015, by WENDY COLLINS.

NOTARY PUBLIC IN AND FOR THE STATE OF
WASHINGTON, Residing at:
My appointment expires:

ORDINANCE NO. _____

**AN ORDINANCE ADOPTING A SUPPLEMENTAL
BUDGET FOR THE CALENDAR YEAR 2015;
AMENDING ORDINANCE 806 AS TO A PARTICULAR
ELEMENT; AND DECLARING AN EMERGENCY.**

R E C I T A L S:

1. Since the adoption of the budget for 2015, certain fiscal matters in relation to not only funding of the law enforcement agency of the City but also the appropriate method of providing such services have been the subject of continued discussions. The Council and Mayor have received a fiscal report from the Clerk-treasurer summarizing the current situation of the funding for the Police Department and analyzing the impacts of various alternatives.

2. Previously, the Council and Mayor approved the submission to the City's voters in November a proposal requesting the authority to collect a special excess levy for collection in 2016. If approved, any funds received as a result of that levy will be restricted for use in funding the City's Police Department.

3. In the adoption of the City's budget for 2015, \$150,000.00 was transferred from the expenditures to be utilized for funding of the Police Department and placed in an unallocated position. Those funds are still unallocated.

4. In light of the fact that the ballot proposition will not be decided until November's election, the Council finds it appropriate to transfer the funds set forth upon Exhibit #1 the Police Department's budget for the purpose of funding the Department's operations for a defined period. To achieve that goal, it is recognized that the Department's administration will have to carefully manage the Department's operations

5. Thus, this ordinance was introduced at the regular council meeting of August 12, 2015, so as to allow the opportunity for public comment.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION I: The portions of the budget adopted pursuant to Ordinance 806 are amended as shown upon Exhibit #1, which was adopted as Attachment A to Ordinance 806, attached hereto and incorporated by this reference.

SECTION II: The Office of the Clerk-treasurer shall be authorized to modify the referenced funds and accounts as may be required and authorized pursuant to the BARS accounting system issued by the Office of the State Auditor to correctly reflect revenues and expenditures.

SECTION III: To the extent not amended by Section I, the budget adopted pursuant to Ordinance 806 is reaffirmed.

SECTION IV: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

PASSED THIS ____ DAY OF AUGUST, 2015, by the City Council of the City of McCleary, and signed in approval therewith this _____ day of August, 2015.

CITY OF McCLEARY:

D. GARY DENT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON)
 : ss.
GRAYS HARBOR COUNTY)

I, Wendy Collins, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number _____ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number _____, as it was published, is on file in the appropriate records of the City of McCleary.

WENDY COLLINS

SIGNED AND SWORN to before me this _____ day of August, 2015, by Wendy Collins.

NOTARY PUBLIC IN AND FOR THE STATE OF
WASHINGTON, Residing at:
My appointment expires:

Amended Attachment "A"
City of McCleary
2015 Revised Fund Summary

<u>Fund Title</u>	<u>Revenue</u>	<u>Expenditure</u>
Current Expense	\$1,111,542.00	\$1,111,542.00
Street	\$399,318.00	\$399,318.00
REET	\$14,280.00	\$14,280.00
Light and Power	\$3,203,090.00	\$3,203,090.00
Water	\$925,778.00	\$925,778.00
Sewer	\$1,080,985.00	\$1,080,985.00
Stormwater	\$168,560.00	\$168,560.00
Ambulance	\$87,520.00	\$87,520.00
Total	\$6,991,073.00	\$6,991,073.00

Per Adoption of the amended supplemental budget, increase law enforcement expenditures in the current expense fund by \$150,000.

RESOLUTION NO. _____

**A RESOLUTION DECLARING CERTAIN VEHICLES AND
EQUIPMENT TO BE SURPLUS AND PROVIDING FOR THE
DISPOSITION THEREOF.**

R E C I T A L S:

1. In his report to the Council, the Public Works Director has reported that certain equipment and vehicles are surplus to the present and anticipated future needs of the City. A list of those items was attached to his report and is attached to this Resolution as Attachment #1.

2. It is the desire and the intent of the Council to declare these items surplus and to provide for the disposition thereof.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY, THE MAYOR SIGNING IN AUTHENTICATION THEREOF:

SECTION I: Those certain items of personal property more fully described in Attachment Number 1, said Attachment being attached hereto and incorporated by this reference, are hereby declared surplus to the present and future needs of the City.

SECTION II: The property so declared surplus shall be disposed of as follows:

A. Pursuant the provisions of Resolution 443 and, to the extent inconsistent therewith, any resolution adopted thereafter by the City setting forth procedures for the disposition of surplus property.

B. As an alternative means of disposal, the items may be disposed of as a portion of any public sale carried forth either by the County of Grays Harbor or any other municipal corporation situate in the County of Grays Harbor, subject to the ability of the City Administrator to establish a minimum amount which will be accepted; said minimum bid amount to be approved by the Mayor.

C. In the event they are not disposed of pursuant to the provisions of paragraphs A and B, then they may be disposed of by negotiated disposition; said negotiations to be carried forth by the Director of Public Works and reported to the Council for approval by the Council prior to the entry into any agreement. Notice of their availability shall be posted upon the City's website and upon the entrance to the City Hall.

PASSED THIS _____ DAY OF JULY, 2015, by the City Council of the City of McCleary, and signed in authentication thereof this _____ day of _____, 2015.

CITY OF McCLEARY:

D. GARY DENT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney