





**TO:** Mayor Guier and City Council Members

**FROM:** Jack Dodge, Community Development Manager

**MEETING DATE:** January 5, 2015

**SUBJECT:** Marijuana Regulations – Council Action

- ATTACHMENTS:**
1. Ord. 2014-1866 – Interim Zoning Regulations
  2. September 8, 2014 memo from City Attorney, Carol Morris
  3. Ord. 2014-1876 – Conditional Approval of Marijuana Producers, Processors and Retail Sales
  4. Ord. 2014-1872 – Prohibit Medical Marijuana Dispensaries and Collective Gardens
  5. Ord. 2014-1877 – Adopts Business Licensing Procedures for Recreational Marijuana Sales
  6. Ord. 2014-1878 – Prohibits both Medical Marijuana and Recreational Marijuana, including Producers & Processors
  7. Ord. 2015-1888 – Conditionally Approves Marijuana Producers & Processors in LI zone. Prohibits Recreational Sales.
  8. Ord. 2015-1889 Conditionally Approves Marijuana Recreational Sales in the C zone. Prohibits Producers and Processors.
  9. Matrix – Summary of Attached Ordinances
  10. Matrix – Summarizes Where Council Must Conduct a Public Hearing

**Previous Council Review Date/s:** 8/8/11, 2/13/12, 2/25/13, 2/3/14, 7/16/14, 7/21/14, 7/28/14  
 (PC Review Dates: 1/29/13, 2/26/13, 3/26/13, 4/23/13, 11/26/13, 2/25/14, 3/18/14, 4/22/14, 5/27/14, 6/24/14, 8/6/14)

**Summary:** Interim zoning regulations (Ord. 2014-1866) prohibiting recreational and medical marijuana businesses, including collective gardens, dispensaries, producers, processors and sales will expire on January 28, 2015. At this point, the City has two choices: (1) extend the interim zoning regulations for another six months; or (2) adopt “permanent” zoning regulations on recreational and medical marijuana businesses, including collective gardens, dispensaries, producers, processors and sales prior to the expiration of this date.

The Planning Commission has discussed marijuana regulations in 12 meetings since January 2013. The Council has conducted a number of public meetings or hearings regarding the regulation of marijuana (For the history of the City's actions with regard to marijuana, see the Memo to the Mayor and City Council from City Attorney, Carol Morris, dated September 8, 2014).

On August 6, 2014, the Planning Commission held a public hearing on the draft medical and recreational marijuana ordinances under consideration and formulated their recommendation. The Planning Commission made the following recommendations to the City Council:

- Recommended the adoption of Ord. 2014-1876. This ordinance would allow marijuana producers and processors conditionally (through a Conditional Use Permit [CUP]) in the Light Industrial (LI) zone and recreational sales of marijuana in the Commercial (C) zone.
- Recommended that the Council **not adopt** Ord. 2014-1872. This ordinance would prohibit medical marijuana dispensaries and marijuana collective gardens in the City.
- Recommended the adoption of Ord. 2014-1877. This ordinance adopts business license procedures for recreational marijuana sales.
- Made no recommendation on Ord. 2013-1878. This ordinance would prohibit medical and recreational marijuana sales.

At the Council Study Session on August 26<sup>th</sup>, the Council considered the recommendations from the Planning Commission regarding medical marijuana and recreational marijuana sales. The Council requested that staff draft two new Ordinances which differed from the Planning Commission recommendation (Attachments 7 & 8). Attachment 9 provides a summary of the actions of the different ordinances that will be considered by the Council. Under RCW 36.70A.035(2)(a), if the City Council is considering a change to the ordinances after the opportunity for review and comment on the ordinances has passed, then another public hearing must be provided before the City Council votes on the proposed change (unless the change is within the scope of RCW 36.70A.035(2)(b)). Attachment 10 outlines whether the Council must conduct a public hearing when considering the different ordinances.

The Planning Commission's recommendations and the new ordinances drafted by the City Attorney as requested by Council will be discussed at the January 5, 2015 City Council Study Session.

**Recommended Action:** Provide staff direction on how the Council would like to proceed regarding medical marijuana and collective gardens and the producing, processing and recreational sales of marijuana.

**Motion for Consideration:**

Options

**Option 1**

1. Adopt the Planning Commission's recommendation regarding Ord. 2014-1876, conditionally allowing marijuana producers and processors in the "Light Industrial" (LI) zone and recreational sales in the "Commercial" (C) zone (Attachment 3) and approve at the January 20, 2015 Council Special Meeting.
2. Adopt the Planning Commission's recommendation not to adopt Ord. 2014-1872 related to medical marijuana dispensaries and collective gardens (Attachment 4).
3. Adopt the Planning Commission's recommendation to adopt Ord. 2014-1877 related to licensing procedures for recreational marijuana sales and approve at the January 20, 2015 Council Special Meeting (Attachment 5).

**Option 2**

1. *Do not adopt* the Planning Commission's recommendation regarding Ord. 2014-1876 conditionally allowing the producing, processing and recreational sales of marijuana (Attachment 3).
2. *Do not adopt* the Planning Commission's recommendation and adopt Ord. 2013-1872 which will prohibit medical marijuana dispensaries and collective gardens (Attachment 4).
3. Adopt Ord. 2014-1878 at the January 20, 2015 Council Special Meeting which prohibits both medical marijuana and recreational marijuana including producers and processors (Attachment 6).
4. Adopt the Planning Commission's recommendation to adopt Ord. 2014-1877 related to licensing procedures for recreational marijuana sales (Attachment 5).

**Option 3**

1. *Do not adopt* the Planning Commission's recommendation regarding Ord. 2014-1876 conditionally allowing marijuana producers, processors and recreational sales (Attachment 3).
2. Adopt Ord. 2015-1888 which would conditionally allow marijuana producers and processors in the "light industrial" (LI) zone and prohibit recreational marijuana sales and approve at the January 20, 2015 Council Special Meeting (Attachment 7).
3. *Do not adopt* the Planning Commission's recommendation and adopt Ord. 2013-1872 which will prohibit medical marijuana dispensaries and collective gardens (Attachment 4).
4. Adopt the Planning Commission's recommendation to adopt Ord. 2014-1877 related to licensing procedures for recreational marijuana sales and approve at the January 20, 2015 Council Special Meeting (Attachment 5).

**Option 4**

1. *Do not adopt* the Planning Commission's recommendation regarding Ord. 2014-1876 conditionally allowing marijuana producers, processors and recreational sales (Attachment 3).
2. Adopt Ord. 2015-1889 which would conditionally allow recreational marijuana sales in the "Commercial" (C) zone and prohibit marijuana producers and processors and approve at the January 20, 2015 Council Special Meeting (Attachment 8).
3. *Do not adopt* the Planning Commission's recommendation and adopt Ord. 2013-1872 which will prohibit medical marijuana dispensaries and collective gardens (Attachment 4).
4. Adopt the Planning Commission's recommendation to adopt Ord. 2014-1877 related to licensing procedures for recreational marijuana sales and approve at the January 20, 2015 Council Special Meeting (Attachment 5).

***Option 5***

Extend the "Interim" zoning regulations prohibiting medical and recreational marijuana sales and provide an ordinance at the January 20, 2015 Council Special Meeting.

**Budget Impact:** N/A

**Alternatives:**

**CITY OF PACIFIC, WASHINGTON  
ORDINANCE NO. 2014-1866**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO THE RECREATIONAL AND MEDICAL USE OF MARIJUANA, EXTENDING THE INTERIM ZONING ORDINANCE ADOPTED ON 2-3-14 UNDER ORDINANCE NO. 2014-1855, PROHIBITING THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES, PROPERTY OR USES RELATING TO RECREATIONAL OR MEDICAL MARIJUANA PRODUCTION, PROCESSING, CULTIVATION, STORAGE, SALE, DELIVERY, EXCHANGE OR BARTERING, TO BE IN EFFECT UNTIL THE CITY ADOPTS "PERMANENT" ZONING REGULATIONS ON THE SAME SUBJECT, WHICH INCLUDES A PROHIBITION ON THE SUBMISSION OF BUSINESS LICENSE APPLICATIONS FOR SUCH USES, THIS INTERIM ORDINANCE TO BE EFFECTIVE IMMEDIATELY, SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THIS EXTENSION OF THE INTERIM ZONING ORDINANCE, AND ESTABLISHING THE DATE OF A PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE INTERIM ZONING ORDINANCE.

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**MEDICAL MARIJUANA**

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment." *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq; and

WHEREAS, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); and

WHEREAS, the intent of Initiative 692 was that qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law," (RCW 69.51A.005), but that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes" (RCW 69.51A.020); and

WHEREAS, the Washington State Legislature passed ESSSB 5073 in 2011, which directed employees of the Washington State Departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis; and

WHEREAS, this bill required that the Department of Health develop a secure registration system for licensed producers, processors and dispensers, but these provisions, together with the provisions relating to dispensaries and the definitions, were vetoed by the Governor; and

WHEREAS, ESSSB 5073 provided that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, under certain defined circumstances (participation in the registry, possession of a limited number of plants or usable cannabis, cultivation of a limited number of plants in the qualifying patient or designated care provider's residence or in a collective garden); and

WHEREAS, Washington's Governor vetoed all of the provisions relevant to medical marijuana dispensaries in ESSSB 5073 but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually within their residences and in collective gardens; and

WHEREAS, ESSSB 5073 was codified in chapter 69.51A RCW; and

WHEREAS, RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and to impose business taxes on the production, processing or dispensing of medical cannabis or cannabis products, which the Washington Court of Appeals has interpreted to authorize complete bans on medical marijuana uses, such as collective gardens (*Cannabis Action Coalition v. City of Kent*, 322 P.3d 1246, 1253 (2014)); and

## **RECREATIONAL MARIJUANA**

WHEREAS, In November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

WHEREAS, on the LCB adopted regulations (chapter 314-55 WAC) which: prohibit the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, describes the manner in which marijuana growing may take place,<sup>1</sup> limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on

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<sup>1</sup> Under WAC 314-55-075, recreational marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

WHEREAS, according to the administrative rules, the LCB will determine whether the recreational marijuana business licensee is within 1,000 feet of the sensitive uses identified in WAC 314-55-050(10) and shall not issue the license if it is within this area; and

WHEREAS, the LCB has begun issuance of licenses for recreational marijuana uses; and

WHEREAS, on January 14, 2014, the Washington State Attorney General issued an opinion finding that local governments are not preempted by state law from banning the location of a recreational marijuana business, even if the business has been licensed by the LCB (AGO 2014 No. 2)); and

WHEREAS, in the same Attorney General Opinion, the Attorney General also gave the opinion that cities could establish restrictions on recreational marijuana businesses licensed by the LCB, even if such restrictions made it “impractical for a licensed marijuana business to locate within their jurisdiction” (AGO 2014 No. 2); and

WHEREAS, the City adopted Ordinances 1804, 1823, 1843, 1848 and 1855, adopting moratoria or interim zoning on marijuana uses (including recreational marijuana uses); and

WHEREAS, the detailed licensing and comprehensive regulatory system for recreational marijuana in I-502 is substantially different from what little remains in chapter 69.51A RCW to regulate medical marijuana after the Governor’s veto; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a Memorandum to all United States Attorneys, acknowledging that several states had adopted laws authorizing marijuana production, distribution and possession by establishing a regulatory scheme for these purposes; and

WHEREAS, in this Memo, the DOJ advised that in recent years, the DOJ has “focused its efforts on certain law enforcement priorities that are particularly important to the federal government,” such as: (a) preventing the distribution of marijuana to minors; (b) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (c) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (d) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (e) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (f) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (g) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (h) preventing marijuana possession or use on federal property; and

WHEREAS, in this Memo, the DOJ warned that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified above] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms”; and

WHEREAS, in this Memo, the DOJ warned that a regulatory system adequate to this task “must not only contain robust controls and procedures on paper, it must also be effective in practice”; and

WHEREAS, in this Memo, the DOJ advised that “in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department’s enforcement priorities [listed above]” and that federal prosecutors “should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong but effective state regulatory system”; and

WHEREAS, a comparison of the LCB’s rules for recreational marijuana and chapter 69.51A RCW for medical marijuana demonstrates that there is virtually no state regulatory system for medical marijuana, and that even if local governments decided to adopt the type of medical marijuana system that would protect against the harms identified in the federal government’s enforcement priorities, most local governments do not have the resources to be able to enforce such regulations; and

WHEREAS, after considering the August 29, 2013 DOJ Memo, the City has determined that even if the City decided to adopt an ordinance on the subject of medical marijuana in order to provide the type of regulatory system that the DOJ might find adequate to protect against the harms identified in the federal government’s enforcement priorities, the City does not have the resources to enforce such a system; and

WHEREAS, the City adopted Ordinances 1804, 1823, 1848 and 1855, adopting moratoria or interim zoning on marijuana uses; and

WHEREAS, on July 28, 2014, the Council considered this ordinance during its regular meeting; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC DOES ORDAIN AS FOLLOWS:

**Section 1.** Definitions. The following definitions apply to the terms used in this Ordinance:

A. "Cannabis" or "Marijuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

B. "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

C. "Child Care Center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

D. "Collective Garden" means those gardens authorized under RCW 69.51A.085, which allows Qualifying Patients to create and participate in Collective Gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use, subject to certain limited conditions, including:<sup>2</sup>

(1) No more than ten Qualifying Patients may participate in a single collective garden at any time;

(2) A Collective Garden may contain no more than fifteen plants per Qualifying Patient, up to a total of forty-five plants;

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<sup>2</sup> Additional definition appears in RCW 69.51A.085(2).

(3) A Collective Garden may contain no more than twenty-four ounces of usable cannabis per patient up to a total of seventy-two ounces of usable cannabis; and

(4) A copy of each Qualifying Patient's valid documentation or proof of registration with the registry established in state law (now or in the future), including a copy of the Qualifying Patient's proof of identity, must be available at all times on the premises of the Collective Garden;

(5) No Usable Cannabis from the Collective Garden may be delivered to anyone other than one of the Qualifying Patients participating in the Collective Garden; and

(6) A business license must be obtained for the Collective Garden through the City.

E. "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

F. "Deliver or Delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

G. "Designated care provider" means a person who:  
(1) Is eighteen years of age or older;  
(2) Has been designated in writing by a patient to serve as a designated provider under chapter 69.51A RCW; and  
(3) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and  
(4) Is the designated provider to only one patient at any one time.

H. "Dispensary, Medical Marijuana" means: any location that does not meet the definition of a "Collective Garden" and does not have a license from the Liquor Control Board of the State of Washington for a marijuana producer, processor or retailer pursuant to I-502, where medical cannabis or marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold to a qualified patient, designated provider or any other member of the public. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell or give away medical cannabis or marijuana to a qualified patient, designated provider or any other member of the public.

I. "Dispense" means the interpretation of a prescription or order for medical cannabis, and pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare the prescription or order for delivery.

J. "Elementary School" means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

K. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

L. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

M. “Legal parcel” means a parcel of land for which one legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this ordinance.

N. “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

O. “Manager” means any person to whom a medical marijuana collective garden has delegated discretionary powers to organize, direct and carry on or control its operations. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the business: (a) to hire, select, or supervise employees or staff, including volunteers; (b) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (c) to disburse funds of the business other than for the receipt of regularly replaced items of stock; or (d) to make, or participate in making, policy decisions relative to operations of the business.

P. “Marijuana processor” means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

Q. “Marijuana producer” means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

R. “Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.

S. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

T. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

U. "Medical (or medicinal) use of cannabis or marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(r), for the exclusive benefit of a Qualifying Patient in the treatment of his or her terminal or debilitating illness.

V. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

X. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

Y. "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, or address, either alone or when combined with other sources, that establish the person is a Qualifying Patient or Designated Provider.

Z. "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

AA. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

BB. "Process" means to handle or process cannabis in preparation for medical or recreational use.

CC. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

DD. "Public Park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

EE. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school

purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

FF. "Public Transit Center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

GG. "Qualifying Patient" means a person who:

1. Is a patient of a health care professional;
2. Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
3. Is a resident of the state of Washington at the time of such diagnosis;
4. Has been advised by that health care professional about the risks and benefits of the medical use of marijuana;
5. Has been advised by that health care professional that he or she may benefit from the medical use of marijuana; and
6. Is otherwise in compliance with the terms and conditions established in chapter 69.51A RCW.

HH. "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.

II. "Residential treatment facility" means a facility providing for treatment of drug and alcohol dependency;

JJ. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

KK. "Secondary School" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington State Superintendent of Public Instruction.

LL. "Terminal or debilitating medical condition" means:

1. Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or
2. Intractable pain, limited for the purpose of this ordinance to mean pain unrelieved by standard medical treatments and medications; or
3. Glaucoma, either acute or chronic, limited for the purpose of this ordinance to mean increased intraocular pressure unrelieved by standard treatments and medications; or
4. Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or
5. Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or
6. Diseases, including anorexia, which result in nausea, vomiting, cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or
7. Any other medical condition duly approved by the Washington State Medical Quality Assurance Commission in consultation with the Board of Osteopathic Medicine and Surgery as directed in chapter 69.51A RCW.

MM. "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

NN. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term "usable cannabis or usable marijuana" does not include marijuana-infused products or cannabis products.

OO. "Valid documentation" means:

1. A statement signed and dated by a Qualifying Patient's Health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis/marijuana;
2. Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and
3. In the case of a Designated Provider, the signed and dated document valid for one year from the date of signature executed by the Qualifying Patient who has designated the Provider.

**Section 2: Findings.** The Council adopts all of the "whereas" sections of this Ordinance as findings to support this interim zoning ordinance, as well as the following:

A. The purpose of this interim zoning ordinance is to maintain the status quo while the City drafts, considers and adopts a new ordinance on the subject of medical cannabis/marijuana and recreational marijuana.

B. The City will consider adoption and enforcement of such an ordinance during the next six months, while this interim zoning ordinance is in effect. During the period of time that this interim zoning ordinance is in effect, the City will also consider the manner in which the negative impacts and secondary effects associated with the marijuana uses (on-going or predicted) in the City can be ameliorated, including but not limited to, the demands that will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using medical marijuana prescriptions, murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.

C. The State of Washington has adopted a strict regulatory and enforcement system for the cultivation, processing and sale of recreational marijuana. The Liquor Control Board has recently begun issuing the licenses, but it is still too early to determine whether (or the manner in which) the State will enforce these rules. The Council also acknowledges that the State has not performed any environmental analyses that will assist cities, towns and counties in the adoption of local regulations addressing marijuana uses, or the environmental impacts associated with individual licenses and that municipalities must therefore either develop their own analyses or observe these impacts after-the-fact (or, *after* these marijuana uses locate and begin operation in cities, towns and counties throughout Washington.) Then, the municipalities will be required to “fix” the problems stemming from these uses with their already scarce resources.

D. No part of this interim ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. This interim ordinance is not intended to address or invite litigation over the question whether the State of Washington’s medical or recreational marijuana laws (or this City’s laws) satisfy the federal government’s enforcement priorities. Nothing in this interim ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this interim ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this interim ordinance be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

**Section 3. Interim Ordinance Adopted.** This interim ordinance is immediately adopted for a period of six months in order to provide the City adequate time to:

A. Hold a public hearing on the secondary land use impacts associated with the location and siting of structures and uses in which medical and recreational marijuana production, marijuana processing or marijuana retailing may take place. This includes, but is not limited to, all activities associated with medical marijuana, including individual cultivation, collective gardens, transfer, bartering, exchange and delivery of marijuana between qualified patients and designated providers. Have the City Council direct the Planning Commission to consider a draft ordinance. This work will begin upon adoption of this ordinance and is expected to take 1-2 months.

B. Have the Planning Commission hold a public hearing(s) on the draft ordinances, obtain public input on such ordinances, and allow the Planning Commission to make recommendations to the City Council. This will take up to 3 months.

C. Have the City Council review the draft ordinance and the Planning Commission's recommendation and, if desired, to adopt new regulations or prohibitions on marijuana uses. This work will begin immediately after the activities described in A and B are complete.

**Section 4. Effect of Interim Zoning Ordinance.** This interim zoning ordinance extends the previous interim zoning ordinance for another six months, and imposes a prohibition on the acceptance of all development permit and business license applications for any structure, use or operation involving marijuana production, marijuana processing or marijuana retailing, as the same are defined in this Ordinance. All such development permit and business license applications shall be rejected and returned to the applicant.

**Section 5. Duration of Interim Zoning Ordinance.** This interim zoning ordinance shall commence on the effective date set forth in Section 10 herein. As long as the City holds a public hearing on the interim zoning ordinance and adopts findings and conclusions in support of the interim zoning ordinance (as contemplated by Section 6 herein), the interim zoning ordinance shall not terminate until six (6) months after the date of adoption, or at the time all of the events described in Section 3 have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

**Section 6. Public Hearing on Moratorium.** Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this interim zoning ordinance within sixty (60) days of its adoption, or before September 28, 2014. The Council hereby schedules this hearing for **September 8, 2014**. During the next Council meeting immediately following, the City Council shall adopt findings of fact on the subject of this interim zoning ordinance and either justify its continued imposition or repeal this ordinance.

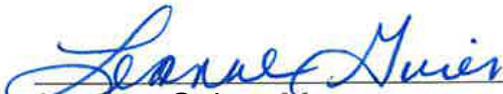
**Section 7. Declaration of Emergency.**<sup>3</sup> The City Council hereby declares that an emergency exists necessitating that this interim zoning ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum.<sup>4</sup> If this interim zoning ordinance is not adopted immediately, applications for marijuana uses and business licenses could be submitted to the City and arguably become vested, leading to development that could be incompatible with the regulations eventually adopted by the City (after the process described herein). Therefore, the interim zoning ordinance must be adopted immediately as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time.

**Section 8. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

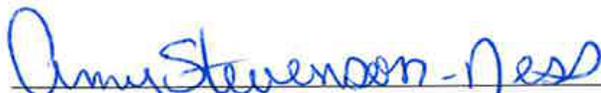
**Section 9. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**Section 10. Effective Date.** This Ordinance shall take effect and be in full force immediately upon passage, having received the vote of a majority plus one of the entire Council.

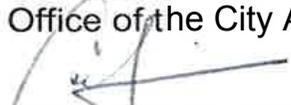
PASSED by the City Council of Pacific this 28th day of July, 2014.

  
\_\_\_\_\_  
Leanne Guier, Mayor

AUTHENTICATED :

  
\_\_\_\_\_  
Amy Stevenson-Ness, City Clerk.

APPROVED AS TO FORM :  
Office of the City Attorney

  
\_\_\_\_\_  
Carol Morris, City Attorney

PUBLISHED: 08/01/2014  
EFFECTIVE DATE: 07/28/2014

<sup>4</sup> RCW 35A.12,130 for code cities.



**MEMORANDUM**

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**DATE:** September 8, 2014  
**TO:** Mayor and City Council, City of Pacific  
**FROM:** Carol Morris, Morris Law, P.C., City Attorney  
**RE:** Marijuana

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**I. Chronology.** Here are the events pertinent to marijuana issues in Pacific:

Date                      Ordinance

8-8-11                      The City passed Ordinance 1804, establishing a 6 month moratorium on the issuance of permits or licenses for medical marijuana collective gardens.

2-13-12                     The City passed Ordinance 1823, establishing a 12 month moratorium on the issuance of permits or licenses for medical marijuana collective gardens.

2-25-13                     The City passed Ordinance 1843, establishing a 6 month moratorium on the issuance of permits or licenses for medical marijuana collective gardens.

2-3-14                      The City passed Ordinance 2014-1855, adopting an interim zoning ordinance prohibiting medical and recreational marijuana uses, to be in effect for 6 months (or approximately August 3, 2014).

June, 2014                 The City distributed three draft ordinances on the subject of marijuana for the public to consider. One of these ordinances allowed recreational marijuana uses as a conditionally permitted use in the Light Industrial Zone. Another ordinance adopted business licensing requirements for recreational marijuana uses. The third ordinance banned all medical marijuana uses.

7-16-14                     The City Council held a public hearing (Town Hall Meeting) on the subject of recreational and medical marijuana. No action was taken.

7-21-14                     The City Council deliberated on the issue of recreational and medical marijuana. The City Council directed the Planning Commission to hold a public hearing and make a

recommendation to the City Council on one or more of the draft ordinances. The City Council directed the City Attorney to change the recreational marijuana ordinance, to allow retail sales of recreational marijuana (with a state license) to occur in the commercial zones (ordinance currently allowed recreational marijuana state-licensed uses to take place in the industrial zone).

7-22-14 The SEPA Responsible Official was directed to perform SEPA on the ordinances that were forwarded to the Planning Commission for hearing.

7-28-14 The City Council voted to extend the existing interim zoning ordinance for another six months.

8-6-14 The Planning Commission held a public hearing on the draft ordinances and formulates their recommendation to the City Council. The recommendation was to: (1) approve the ordinance allowing state licensed recreational marijuana retail sales in the commercial zone and other state licensed recreational marijuana uses in the industrial zone, as conditional uses; (2) approve the ordinance adopting business licensing requirements for state-licensed recreational marijuana uses; (3) do not approve the ordinance banning medical marijuana uses; and (4) no recommendation was made for ordinance that banned both medical and recreational marijuana uses.

9-4-14 Copies of the ordinances forwarded to the Planning Commission for hearing were sent to the Washington State Department of Commerce under RCW 36.70A.106.

9-8-14 The City Council will hold a public hearing on the continued maintenance of the interim zoning ordinance adopted on July 28, 2014, for the six month period (which began on 7-28-14).

**At the next City Council Regular Meeting after the public hearing on the maintenance of the interim zoning ordinance:** The City Council adopts findings and conclusions to support the continued maintenance of the interim zoning ordinance.

\_\_\_\_\_-14 The City Council considers the Planning Commission's recommendation on the draft ordinance(s) during a regular City Council meeting (not a workshop). Another public hearing may be needed, depending on whether or not the City Council makes any changes to the Planning Commission's recommendation or the draft ordinance(s). (See, RCW 36.70A.035(2).) The City Council votes to adopt the ordinance(s).

\_\_\_\_\_-14 The City sends a copy of the adopted ordinance(s) to the Washington State Department of Commerce (RCW 36.70A.106).

## II. Summary of Opinion.

*Medical Marijuana:* The City should completely ban medical marijuana uses. This includes dispensaries, collective gardens and individual cultivation. Without a ban, there is the

possibility that the federal government could challenge the City's regulatory scheme and perhaps prosecute City officials, officers and staff. A complete ban will not affect anyone's ability to obtain medical marijuana, because it can be purchased from a state-licensed store selling recreational marijuana (if not in Pacific, then in Seattle, or some other city that allows recreational marijuana).

*Recreational Marijuana:* If the City is interested in allowing marijuana uses in Pacific (such as recreational marijuana production, processing and retailing), the City should only allow recreational marijuana uses that have obtained licenses from the State of Washington. The City should identify the zone where recreational marijuana uses will be the most compatible with surrounding uses. Because recreational marijuana uses are new and little is known about the secondary land use or environmental impacts of such uses, the City may want to allow these uses in a zone where the most intense uses can be absorbed, such as an industrial zone (as the most conservative position). The uses should only be allowed with a conditional use permit, so that the City can address the impacts of the individual uses on the surrounding properties to ensure compatibility. Recreational marijuana businesses should also be required to obtain a business license from the City, so a business license ordinance addressing these uses should also be adopted.

As an alternative, the City may ban recreational marijuana uses until the City can gather more information on the secondary land use impacts. Because the Liquor Control Board has begun issuing licenses and these businesses have opened, we soon will be able to observe the effects of these businesses on community and municipal services.

## **II. Background.**

A. *Medical Marijuana.* When the state law on the subject of medical marijuana (chapter 69.51A RCW) was originally adopted, the Legislature contemplated that the Department of Health would subsequently draft, adopt and enforce a comprehensive system of rules to regulate medical marijuana. It was also contemplated that local governments could be allowed to adopt zoning, business licensing requirements, health and safety requirements and business taxes addressing medical marijuana uses. RCW 69.51A.140. There were few regulations in chapter 69.51A RCW relating to medical marijuana uses, other than the definition of collective gardens in RCW 69.51A.085.

At the time these statutes were passed by the Legislature, the Governor was afraid that the federal government would prosecute the employees of the State of Washington who drafted, adopted and implemented these medical marijuana administrative rules. As a result, she vetoed all of the regulatory provisions, including the definitions. Many local jurisdictions believed that this "gutting" of the law eliminated any argument that medical marijuana dispensaries were legal, and debated how to address collective gardens. These local jurisdictions also worried that

they would be prosecuted by the federal government for adopting zoning and permitting schemes for medical marijuana uses.<sup>1</sup>

The City of Kent banned medical marijuana uses and its ordinance was challenged in court.<sup>2</sup> The City argued that the medical marijuana law<sup>3</sup> would only have legalized collective gardens if the participating patients were duly registered under the state's registration system, but the registry does not exist.<sup>4</sup> (It was part of the bill that was vetoed by the Governor.) The superior court ruled in favor of the City, and on appeal, the Court of Appeals agreed with this argument. In addition, the Court ruled that RCW 69.51A.140 "allows municipalities to regulate the production, processing and dispensing of medical marijuana," which "necessarily implies that a city retains its traditional authority to regulate all other uses of medical marijuana."<sup>5</sup> As a result, the Court held that the Washington medical marijuana laws "expressly authorize cities to enact zoning requirements to regulate or exclude collective gardens."<sup>6</sup>

B. *Recreational Marijuana.* In 2012, the Washington voters approved Initiative I-502, which allowed the State Liquor Control Board to regulate and tax recreational marijuana for persons 21 years of age or older. It defined recreational businesses (as producers, processors or retailers), required that the Board adopt rules for licensing of such businesses, and established certain siting limitations on the issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of certain sensitive uses, such as schools, playgrounds, etc.

The Board adopted these new rules (chapter 314-55 WAC) which requires criminal history background checks for licensees, establishes qualifications for licensees, limits the amount of space available for recreational marijuana production, allows marijuana production to take place indoors in a fully enclosed, secure facility or outdoors enclosed by a physical barrier with an 8 foot high fence, limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities (within the counties) based upon

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<sup>1</sup> The Clark County Commissioners asked the federal government whether their enforcement efforts would extend to the County's activities implementing the Washington State law on medical marijuana. The response from the Department of Justice read:

Anyone who knowingly carries out the marijuana activities contemplated by Washington state law, as well as anyone who facilitates such activities, or conspires to commit such violations, is subject to criminal prosecution as provided in the Controlled Substances Act. That same conclusion would apply with equal force to the proposed activities of the Board of ... County Commissioners and ... County employees.

Letter from Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Division Control, U.S. Department of Justice, Drug Enforcement Administration, dated January 17, 2012, addressed to the Clark County Board of Commissioners.

<sup>2</sup> *Cannabis Action Coalition v. City of Kent*, 322 P.3d 1246, 1253 (2014).

<sup>3</sup> ESSSB 5073, as codified in chapter 69.51A RCW.

<sup>4</sup> *Cannabis Action Coalition*, 322 P.3d at 1252.

<sup>5</sup> *Id.*, 322 P.3d at 1258.

<sup>6</sup> *Id.*

estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requires alarm and surveillance systems on the licensed premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, crop fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana-infused product serving sizes, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertisement limitations, explains the process for licensing suspension, revocation and penalties for violations, among other things. In sum, the administrative rules adopted by the Liquor Control Board provide for a more detailed and comprehensive system for the regulation of recreational marijuana than those few paragraphs in chapter 69.51A RCW (relating to medical marijuana).

C. *Federal law.* The manufacture, distribution and possession of marijuana is prohibited by federal law (the Controlled Substances Act, the “CSA”).<sup>7</sup> No state can authorize violations of federal law. The CSA supersedes state regulation of marijuana, even when it is used for medicinal purposes.

Since I-502 was adopted (allowing for recreational marijuana uses), the U.S. Department of Justice (“DOJ”) issued a memo to all U.S. Attorneys, advising that as long as states adopting laws governing marijuana have “sufficiently robust” regulatory and enforcement systems (on paper *and in practice*) to address the federal government’s identified enforcement priorities, then “enforcement of state laws by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.”<sup>8</sup> Here are the federal government’s identified enforcement priorities:

1. Preventing the distribution of marijuana to minors;
2. Preventing the revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

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<sup>7</sup> 21 U.S.C. 801, *et seq.*

<sup>8</sup> Memo dated 8-29-13 from the U.S. Department of Justice, Office of the Attorney General, James M. Cole to all United States Attorneys, “Guidance Regarding Marijuana Enforcement.”

5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property.

The DOJ warned in this letter that “if state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government *may seek to challenge the regulatory system itself* in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on these harms.”<sup>9</sup>

The federal government has already begun to challenge the medical marijuana laws in Washington. In early May, 2014, the federal government arrested medical marijuana growers in Stevens County. According to a news article about this bust, the:

Top Justice Department officials will refrain from prosecutions in states that have legalized some form of marijuana, providing those operations are not involved in any of the eight key activities such as selling to minors, using a state-sanctioned marijuana operation as a cover for other illegal activity, funneling money to organized crime or moving drugs across state lines. They also want to keep violence and guns out of marijuana operations and keep them off federal lands.<sup>10</sup>

Currently, marijuana businesses operate on a cash-only basis. This contributes to the public safety problem, because a cash-only business will attract guns and violence. The recent prosecution of the rural Stevens County medical marijuana growers involved the seizure of eight firearms.

On January 14, 2014, the Washington State Attorney General issued an opinion on recreational marijuana.<sup>11</sup> It is the Attorney General’s opinion that cities are not preempted by state law from banning recreational marijuana businesses, even if the business has been licensed by the Liquor Control Board. He also believes that cities could establish restrictions on recreational marijuana businesses licensed by the Liquor Control Board, even if such restrictions made it “impractical for a licensed marijuana business to locate within their jurisdiction.”

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<sup>9</sup> *Id.*, p.2, emphasis added.

<sup>10</sup> The Spokesman-Review, *Kettle Falls 5 case tests marijuana laws*, May 11, 2014 (attached).

<sup>11</sup> AGO 2014 No. 2.

### III. Analysis.

A. *Medical Marijuana.* It is unlikely that the City of Pacific would be able to adopt and enforce a regulatory scheme for medical marijuana that would satisfy the federal government's enforcement priorities. As an example, even if the City were to adopt all of the Liquor Control Board's rules for the licensing of recreational marijuana, *for licensing of medical marijuana businesses*, the City would also have the burden of enforcing them. This would involve substantial staff time and cost. If the City allowed medical marijuana uses without adopting a regulatory scheme (or if the City adopted a regulatory scheme but did not enforce it), the City, its officials, officers and staff could be exposed to criminal prosecution by the federal government.

It could be argued that the City could tax medical marijuana businesses to pay for the cost of this enforcement scheme. However, it is extremely likely that this tax would be challenged. After all, one reason medical marijuana businesses have not applied for licensing from the State as recreational marijuana businesses is because they do not want to pay taxes or be subject to increased regulation.

A City ban on all medical marijuana uses would not prevent any existing medical marijuana business from continuing to sell marijuana, *as long as it applied for and obtained a recreational marijuana license from the State*. Such a ban may prevent an existing medical marijuana business from operating from its current location in Pacific, depending on the type of ordinance that the City adopted on the subject of recreational marijuana uses.

B. *Recreational Marijuana.* If the City were interested in allowing recreational marijuana uses (such as production, processing and retail sales), the City could adopt ordinances identifying the zone(s) in which such uses could locate. The City could also impose general permitting and business licensing requirements on such uses. The State of Washington would bear the burden of implementing the extensive licensing scheme that it has adopted – and also be able to collect the revenues associated with the use to pay for enforcement. At this point in time, the State is not sharing these revenues with local governments.

If the City were interested in prohibiting recreational marijuana uses altogether, there are a number of facts that could be cited in support of a ban. First, the State's analysis of the environmental impacts of such uses was cursory, and the State has not complied with SEPA with regard to individual license applications. At this point in time, the City has no information about the secondary land use impacts of the businesses, such as traffic, noise, odor, need for additional police services, etc. The City doesn't even know whether the State will diligently perform their enforcement responsibilities with regard to recreational marijuana businesses with licenses. So, the City could adopt a ban until these secondary land use impacts are known.

**CONCLUSION.**

The City Attorney recommends a ban on medical marijuana uses. If the City can ban state-licensed recreational marijuana uses, but if it decides to allow them, they should be limited to the one zone or zones that can absorb the predicted secondary land use impacts. The ordinance should only allow such uses with a conditional use permit, so that the impacts of the individual use on surrounding properties can be addressed. A licensing ordinance should also be adopted.

If you have any questions about the above, please let me know. Thank you.

**ORDINANCE NO. 2014-1876**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO LAND USE AND ZONING, ALLOWING RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS AS A CONDITIONALLY PERMITTED USE IN THE LIGHT INDUSTRIAL (LI) ZONE; ALLOWING RECREATIONAL MARIJUANA RETAIL OUTLETS AS A CONDITIONALLY PERMITTED USE IN THE COMMERCIAL (C) ZONE; REQUIRING THAT SUCH USES OBTAIN A LICENSE FROM THE LIQUOR CONTROL BOARD AND CITY BUSINESS LICENSE, PROHIBITING SUCH USES FROM LOCATING WITHIN 1,000 FEET OF CERTAIN SENSITIVE USES, IDENTIFIED IN RCW 69.50.331; ESTABLISHING THE PROCEDURES TO OBTAIN A CONDITIONAL USE PERMIT, DESCRIBING THE CRITERIA FOR ISSUANCE, ISSUES FOR THE DECISION-MAKER TO CONSIDER IN FASHIONING CONDITIONS ON THE PERMIT, ADDRESSING SIGNS, SECURITY, REPORTING OF DISTURBANCES AND CITY INDEMNIFICATION; ADOPTING A NEW CHAPTER 20.78 TO THE PACIFIC MUNICIPAL CODE.

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WHEREAS, In November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt administrative rules to address the methods for producing, processing and packaging of recreational marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and method of transport of product throughout the state, taxing of marijuana-related activities, creation of a dedicated fund is created, consisting of marijuana excise taxes, license fees, penalties and other income: and

WHEREAS, the LCB issued new administrative regulations (adopted in chapter 314-55 WAC), which, among other things, prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, allows marijuana to take place indoors in a fully enclosed, secure facility or outdoors enclosed by a physical barrier with an 8 foot high fence, limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed

premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

WHEREAS, according to the administrative rules, the LCB will determine whether the recreational marijuana business licensee is within 1,000 feet of the sensitive uses identified in WAC 314-55-050(10) and shall not issue the license if it is within this area; and

WHEREAS, the LCB has begun issuance of licenses for recreational marijuana uses; and

WHEREAS, on January 14, 2014, the Washington State Attorney General issued an opinion finding that local governments are not preempted by state law from banning the location of a recreational marijuana business, even if the business has been licensed by the LCB (AGO 2014 No. 2)); and

WHEREAS, in the same Attorney General Opinion, the Attorney General also gave the opinion that cities could establish restrictions on recreational marijuana businesses licensed by the LCB, even if such restrictions made it “impractical for a licensed marijuana business to locate within their jurisdiction” (AGO 2014 No. 2); and

WHEREAS, the City adopted Ordinances 1804, 1823, 1843, 1848 and 1855, adopting moratoria or interim zoning on marijuana uses (including recreational marijuana uses); and

WHEREAS, on July 25, 2014, the City Council directed the Planning Commission to hold a public hearing on a draft ordinance that allowed recreational marijuana processors and producers as a conditionally permitted use in the light industrial zone, and recreational marijuana retailers and retail outlets as a conditionally permitted use in the commercial zone (among other draft ordinances); and

WHEREAS, on December 12, 2014, the Planning Director issued a SEPA threshold decision of nonsignificance on this draft Ordinance, which was/was not appealed (if appealed, describe the results of that appeal in a “whereas”); and

WHEREAS, on September 23, 2014, the Planning Director sent a copy of this draft Ordinance to the Washington State Department of Commerce, pursuant to RCW 36.70A.106; and

WHEREAS, on August 6, 2014, the Planning Commission held a public hearing on this draft Ordinance, and on August 6, 2014, transmitted its recommendation to the City Council; and

WHEREAS, on \_\_\_\_\_, the Council considered this draft ordinance during its regular meeting;

WHEREAS, on \_\_\_\_\_, the Council decided to adopt this ordinance \_\_\_\_\_; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC ORDAINS AS FOLLOWS:

Section 1. Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_, is hereby repealed.

Section 2. A new chapter 20.78 is hereby added to the Pacific Municipal Code, which shall read as follows:

**CHAPTER 20.78  
RECREATIONAL MARIJUANA**

- 20.78.001 Findings and Purpose.**
- 20.78.002 Definitions.**
- 20.78.003 Locational Criteria for Recreational Marijuana Uses.**
- 20.78.004 Business License Required.**
- 20.78.005 Recreational Marijuana Uses Conditionally Allowed In LI Zone.**
- 20.78.006 Signs and Advertising.**
- 20.78.007 Security Requirements.**
- 20.78.008 Report of Disturbances and Unlawful Activity.**
- 20.78.009 Visibility of Activities; Control of Emissions and Odor.**
- 20.78.010 No City Liability – Indemnification.**

**20.78.001 Findings and Purpose.**

A. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this Ordinance.

B. The purpose of this Ordinance is to establish where recreational marijuana producers, processors and retail businesses may locate in the City, and to describe the restrictions upon such uses. In addition to compliance with this Ordinance, every recreational marijuana processor, producer and retail outlet shall obtain a City business license under chapter 5.02 of the Pacific Municipal Code.

C. No part of this Ordinance is intended to conflict with the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under chapter 69.50 RCW, or any other local or state law, statute, rule or regulation. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of

the City Council that this Ordinance be interpreted to be compatible with city and state enactments and in furtherance of the public purposes that those enactments encompass.

**20.78.002 Definitions.** The definitions in this section apply throughout this Chapter, and the City also adopts the definitions in WAC 314-55-010 by reference.

A. “Child Care Center” means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

B. “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

C. “Deliver or Delivery” means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

D. “Elementary School” means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

E. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

F. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

G. “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

H. “Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

I. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

J. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

K. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

L. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

M. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

N. "Process" means to handle or process cannabis in preparation for medical or recreational use.

O. "Processor, Marijuana" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

P. "Producer, Marijuana" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

Q. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

R. "Public Park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

S. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to

unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

T. “Public Transit Center” means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

U. “Recreation center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.

V. “Retailer, Marijuana” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

W. “Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

X. “Secondary School” means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington State Superintendent of Public Instruction.

Y. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term “usable cannabis or usable marijuana” does not include marijuana-infused products or cannabis products.

**20.78.003. Locational Criteria for Recreational Marijuana Uses.**

A. No recreational marijuana producer or processor may locate or operate in any zoning district in the City, other than the Light Industrial (LI) zone, as the same exists within the Pierce County area of the City. A conditional use permit is required for such use.

B. No recreational marijuana retail business or retail outlet may locate or operate in any zoning district in the City, other than the Commercial (C) zone. A conditional use permit is required for such use.

B. No recreational marijuana producer, processor or retail business may locate or operate within one thousand (1,000) feet of any of the following:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Child care center;

5. Public park;
6. Public transit center;
7. Library; or
8. Any game arcade (where admission is not restricted to persons age twenty-one or older.<sup>1</sup>

**20.78.004. Business License.**

A. A valid, current license is required from the Washington State Liquor Control Board for operation of any recreational marijuana, producer, processor or retail business. A copy of this license shall be submitted to the City as part of the complete application for a conditional use permit required by Section 20.78.005 below.

B. A business license is required from the City for operation of any recreational marijuana producer, processor or retail business. No conditional use permit may issue unless the City also issues a business license for the recreational marijuana use.

**20.78.005 Recreational Marijuana Uses Conditionally Allowed.** In order to operate a recreational marijuana producer, processor or retail business, a conditional use permit under this Section is required.

A. Procedure for Conditional Use Permit Approval. A conditional use permit is a Type IV Permit and is processed under Chapter 16.30 PMC.

B. Requirements for Complete Application. The following materials shall be submitted to the City for a complete application for a conditional use permit:

1. Application form. \_\_\_\_ copies of a completed application form;
2. Date, name, address, telephone number and e-mail of the applicant;
3. Name, address, telephone number and e-mail of the owner of the property identified in the application;
4. Legal description of the subject property;
5. Description and photographs of existing site conditions;
6. Architectural drawings of all structures proposed to be developed on the subject property;
7. Complete application for a site plan, showing the proposed placement of structures on the property, together with access and circulation on the site;
8. Complete application for a grading plan;
9. Complete application for a landscaping plan;
10. Drawings of all proposed signs;
11. A SEPA Checklist;
12. Concurrency determination (water, sewer and traffic?)

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<sup>1</sup> This requirement is in RCW 69.50.331, and is a pre-requisite for the issuance of any recreational marijuana license. I am including this so that you can use it to review all of the land uses adjacent to and within the Light Industrial zone. If none of these uses are in or adjacent to the Light Industrial zone, you might want to delete this subsection.

13. A copy of all existing and proposed restrictions and covenants;
14. A narrative report or letter describing compliance with all applicable approval criteria in subsection C below.
15. The application fee established by the City.

C. Criteria for Approval. The City shall approve, approve with conditions or deny an application for a conditional use permit (or to enlarge or alter a conditional use permit) for a recreational marijuana business after making findings based on each of the criteria set forth below:

1. Generally.

a. That the conditional use is consistent with the objectives of the Zoning Code and the purpose of the zoning district in which the subject site/property is located;

b. That granting the conditional use will not be detrimental to the public health, safety or welfare. The factors to be considered in making this finding shall include, but not be limited to an evaluation whether:

c. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, and aesthetic considerations;

d. The proposed use raises no concerns regarding property damage or nuisance arising from noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust or visibility;

e. The proposed use presents no hazard to persons or property from possible explosion, contamination, fire or flood; and

f. There will not be an impact on surrounding areas arising from an unusual volume or character of traffic.

g. The characteristics of the conditional use as proposed and as it may be conditioned are reasonably compatible with the types of uses permitted in the surrounding area.

h. All required public facilities have adequate capacity to serve the proposal.

2. Site Design Standards.

a. The application complies with all of the applicable provisions of the underlying zone, including, but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;

b. The applicant shall be required to upgrade any existing development that does not comply with the applicable zoning provisions in conformance with chapter 16.12 PMC (Non-Conforming Development);

c. The application complies with all of the design standards in the Zoning Code applicable to: (a) access and circulation; (b) landscaping, vegetation, street trees, fences and walls; (c) parking and loading; (d) public facilities; (e) surface water management; (f) critical areas and any other applicable standards.

d. Existing conditions of approval required as part of a prior land division or permit shall be met.

3. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to:

- a. Limiting the hours, days, place and/or manner of operation;
- b. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
- c. Requiring larger setback areas, lot area, and/or lot depth or width;
- d. Limiting the building or structure height, size or lot coverage, and/or location on the site;
- e. Designating the size, number, location and/or design of vehicle access points or parking areas;
- f. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways or trails to be improved;
- g. Requiring landscaping, screening, drainage, water quality features and/or improvement of parking and loading areas;
- h. Limiting the number, size, location, height and/or lighting of signs;
- i. Limiting or setting standards for the location, design and/or intensity of outdoor lighting;
- k. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
- l. Requiring and designating the size, height, location and/or materials for fences; and
- m. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands.

D. Denial. The Director may recommend conditioning or denial of the conditional use permit application based on RCW 43.21C.060 (SEPA).<sup>2</sup> In addition, the City may deny the conditional use permit if it determines that the proposed use is materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

E. Deadline for Final Decision. A conditional use permit application shall be approved, approved with conditions or denied within one hundred-twenty (120) days after the application has been determined complete, unless the applicant consents in writing to a longer processing time period.

F. Effect of Approval.

1. Applies to authorized use only. Issuance of a conditional use permit shall be deemed to authorize only the particular use for which it is issued.

2. Binding on subsequent owners. All conditions of approval shall be binding upon the applicant, their successors and assigns, shall run with the land; shall limit and control the issuance and validity of certificates of occupancy; and shall restrict and limit the construction, location, use and maintenance of all land and structures within the development.

G Expiration, Extensions and Permit Implementation.

1. A conditional use permit shall become null and void one year after the effective date, unless one of the following has occurred:

a. A building permit has issued and construction begun and diligently pursued;

b. An occupancy permit has issued and the approved use has been established;

c. An extension has been granted by the Planning Director. Such extension shall be for a maximum of \_\_\_ days, and no extension may be granted which would extend the validity of the permit more than 18 months beyond the effective date of the permit. No extension will be granted if it necessitates modification of any condition of approval; or

d. The decision on the Conditional Use Permit has established a different expiration date.

2. Development of the Conditional Use shall not be carried out until the applicant has secured all other permits and approvals required by the City, or any applicable regional, state and federal agencies.

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<sup>2</sup> In order to deny an application under SEPA, the City must find that: (1) the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under chapter 43.21C RCW; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact. RCW 43.21C.060.

3. Any Conditional Use that has been initiated and then discontinued may not be re-established or recommenced except pursuant to a new conditional use permit. The following will constitute conclusive evidence that the conditional use has been discontinued:

a. A new permit has been issued to change the use of the lot and the new use has been established; or

b. The lot has not been used for the purpose authorized by the conditional use permit for more than 24 consecutive months. Lots that are vacant, or that are used only for storage of materials and equipment, will not be considered as being used for the purpose authorized by the conditional use. The expiration or revocation of a business or other license necessary for the conditional use to operate will suffice as evidence that the lot is not being used for as authorized by the conditional use permit.

**20.78.006 Signs and Advertising.<sup>3</sup>**

A. All signage and advertising for a recreational marijuana processor, producer or retail outlet shall comply with the applicable provisions of this Code, the Sign Code, Zoning Code and WAC 314-55-155 (and all applicable rules and regulations promulgated thereunder).

B. Violations of this Section relating to the Sign Code or Zoning Code shall result in a \_\_\_\_\_ fine. The City may enforce this section pursuant to chapter 16.14 of the Municipal Code. For violations of WAC 314-55-155 and 314-55-525, the City may report the violation to the State Liquor Control Board.

**20.78.007. Security Requirements.<sup>4</sup>** Security measures at all licensed premises shall comply with the requirements of WAC 314-55-083 (and all applicable rules and regulations promulgated thereunder).

**20.78.008. Report of Disturbances and Unlawful Activity.<sup>5</sup>**

A. All licensees and any agent, manager or employee thereof shall immediately report to the City Police Department any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed and permitted premises, including, but not limited to, any unlawful resale of marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.

B. Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches with each letter to be a minimum of one-half (1/2) inch in height, which shall read as follows:

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<sup>3</sup> This has been duplicated from the business license sample ordinance because not all cities and towns may decide to adopt a business license ordinance. If your city decides to use both, you may want to just cross reference the requirements, rather than duplicate the requirements in each chapter.

<sup>4</sup> See, footnote No. 1 above.

<sup>5</sup> See, footnote No. 1 above.

**WARNING:**

The City of Pacific Police Department must be notified of all disorderly acts, conduct or disturbances and all unlawful activities which occur on or within the premises of this licensed establishment.

C. It shall not be a defense to a prosecution of a code enforcement action under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed.

D. Failure to comply with the requirements of this Section shall be considered by the City in any action relating to the issuance or revocation of a permit.

**20.78.009. Visibility of Activities; Control of Emissions.<sup>6</sup>**

A. All activities of the recreational marijuana business, including, but not limited to, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted out of the public view.

B. No recreational marijuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the recreational marijuana business must be in effect at all times. In the event that any odors, dust, fluids or other substances exit a recreational marijuana business, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for the immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

**20.78.010. No City Liability – Indemnification.**

A. By accepting a permit issued pursuant to this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations.

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<sup>6</sup> See, footnote No. 1 above.  
1/5/15 SS

B. By accepting a permit issued pursuant to this Chapter, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, volunteers and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the recreational marijuana business that is the subject of the license.

Section 3. Adoption by Reference. The City hereby adopts WAC 314-55-010 through WAC 314-55-540 by reference, as well as RCW 69.50.101. Pursuant to RCW 35A.12.140 (for code cities), a copy of these rules and the statute adopted by reference has been on file in the office of the city clerk for use and examination by the public. A copy of these rules and statutes has also been on file while this ordinance has been under consideration by the council and after adoption.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Effective Date. This ordinance shall be effective five days after publication of an approved summary, which shall consist of the title.

PASSED by the City Council of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
MAYOR LEANNE GUIER

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
AMY STEVENSON-NESS, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_  
CAROL A. MORRIS, City Attorney

PUBLISHED:

1/5/15 SS

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Attachment  
3

EFFECTIVE DATE:

DRAFT

ORDINANCE NO. 2014-1872

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO MEDICAL MARIJUANA (CANNABIS), IMPOSING A COMPLETE PROHIBITION ON MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA COLLECTIVE GARDENS, IMPOSING SUCH BAN BASED ON THE AUGUST 29, 2013 MEMO FROM THE U.S. DEPARTMENT OF JUSTICE, IDENTIFYING THE FEDERAL GOVERNMENT’S ENFORCEMENT PRIORITIES REGARDING MARIJUANA, AND EXPRESSING THE COUNCIL’S INTENT TO MAINTAIN SUCH BAN UNTIL THE WASHINGTON STATE LEGISLATURE ADOPTS A REGULATORY SYSTEM FOR MEDICAL MARIJUANA CONSISTENT WITH THE FEDERAL GOVERNMENT’S ENFORCEMENT PRIORITIES, AND DECLARING AN EMERGENCY.

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WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government’s categorization of marijuana as having a “high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.” *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq; and

WHEREAS, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); and

WHEREAS, the intent of Initiative 692 was that qualifying “patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law,” (RCW 69.51A.005), but that nothing in the law “shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes” (RCW 69.51A.020); and

WHEREAS, the Washington State Legislature passed ESSSB 5073 in 2011, which directed employees of the Washington State Departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis; and

WHEREAS, this bill required that the Department of Health develop a secure registration system for licensed producers, processors and dispensers, but these provisions, together with many others relating to dispensaries and definitions, were vetoed by the Governor; and

WHEREAS, ESSSB 5073 provided that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, under certain defined circumstances (possession of a limited number of plants or usable cannabis, cultivation of a limited number of plants in the qualifying patient or designated care provider's residence or in a collective garden); and

WHEREAS, Washington's Governor vetoed all of the provisions relevant to medical marijuana dispensaries in ESSSB 5073 but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually within their residences and in collective gardens; and

WHEREAS, ESSSB 5073 was codified in chapter 69.51A RCW; and

WHEREAS, RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and to impose business taxes on the production, processing or dispensing of medical cannabis or cannabis products; and

WHEREAS, In November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt rules before December of 2013 to address the methods for producing, processing and packaging of recreational marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and method of transport of product throughout the state, taxing of marijuana-related activities, creation of a dedicated fund is created, consisting of marijuana excise taxes, license fees, penalties and other income: and

WHEREAS, on the LCB has now issued the new regulations (which appear in chapter 314-55 WAC), and which: prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, describes the manner in which marijuana growing may take place,<sup>1</sup> limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of

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<sup>1</sup> Under WAC 314-55-075, recreational marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

WHEREAS, the detailed licensing and comprehensive regulatory system for recreational marijuana in I-502 is substantially different from what little remains in chapter 69.51A RCW to regulate medical marijuana after the Governor's veto; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a Memorandum to all United States Attorneys, acknowledging that several states had adopted laws authorizing marijuana production, distribution and possession by establishing a regulatory scheme for these purposes; and

WHEREAS, in this Memo, the DOJ advised that in recent years, the DOJ has "focused its efforts on certain law enforcement priorities that are particularly important to the federal government," such as: (a) preventing the distribution of marijuana to minors; (b) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (c) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (d) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (e) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (f) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (g) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (h) preventing marijuana possession or use on federal property; and

WHEREAS, in this Memo, the DOJ warned that "[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified above] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms"; and

WHEREAS, in this Memo, the DOJ warned that a regulatory system adequate to this task "must not only contain robust controls and procedures on paper, it must also be effective in practice"; and

WHEREAS, in this Memo, the DOJ advised that "in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities [listed above]" and that federal prosecutors "should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong but effective state regulatory system"; and

WHEREAS, a comparison of the LCB’s proposed rules on recreational marijuana and chapter 69.51A RCW on medical marijuana demonstrates that there is virtually no state regulatory system for medical marijuana, and that even if local governments decided to adopt the type of medical marijuana system that would protect against the harms identified in the federal government’s enforcement priorities, most local governments do not have the resources to be able to enforce such regulations; and

WHEREAS, after considering the August 29, 2013 DOJ Memo, the City has determined that even if the City decided to adopt an ordinance on the subject of medical marijuana in order to provide the type of regulatory system that the DOJ might find adequate to protect against the harms identified in the federal government’s enforcement priorities, the City does not have the resources to enforce such a system; and

WHEREAS, the SEPA Responsible Official issued a threshold decision of non-significance for this ordinance; and

WHEREAS, on \_\_\_\_\_, the Planning Commission held a public hearing on this draft ordinance; and

WHEREAS, the Planning Commission recommended approval of this draft ordinance to the Council; and

WHEREAS, on \_\_\_\_\_, the Council considered this draft ordinance during its regular meeting; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF PACIFIC ORDAINS AS FOLLOWS:**

Section A. The City Council adopts the following ban on medical marijuana/medical cannabis and adopts the following related enforcement procedures:

**MEDICAL CANNABIS**

- Section 1 Findings.**
- Section 2 Definitions.**
- Section 3 Prohibited Activities.**
- Section 4 Uses Not Permitted in Any Zone.**
- Section 5 Violations.**
- Section 6 Enforcement.**

**Section 1. Findings.** The Council adopts all of the “whereas” sections of this Ordinance as findings to support this ban on medical marijuana, as well as the following:

A. The purpose of this Ordinance is to enact a ban medical cannabis or medical marijuana, which (1) explicitly prohibits medical marijuana dispensaries and prohibits medical marijuana collective gardens (including those defined in RCW 69.51A.085). This prohibition

will be enforced until such time as the Washington State Legislature acts to adopt a regulatory and enforcement system for medical marijuana uses that satisfies the enforcement priorities established by the federal government. Once the Washington State Legislature acts, the City shall evaluate the new medical marijuana laws to determine whether any local regulation of medical marijuana collective gardens is necessary, and if so, whether the City has the desire or the resources to adopt and enforce such local regulations. This ban may only be lifted by the City Council in an ordinance specifically adopted for this purpose.

B. It is also the purpose of this Ordinance to stem the negative impacts and secondary effects associated with the marijuana uses (on-going or predicted) in the City, including but not limited to the extraordinary and unsustainable demands that have been or will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to medical marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using medical marijuana prescriptions and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes. The State of Washington has adopted a strict regulatory and enforcement system for the cultivation, processing and sale of recreational marijuana, but there is no state-wide regulatory scheme for medical marijuana. The City acknowledges the federal government's recently medical marijuana enforcement efforts involving individuals/entities who/that attempted to avoid compliance with the more onerous recreational marijuana system by illegally operating medical marijuana collective gardens. Until new laws are adopted to bridge the gap between recreational and medical marijuana uses, and there is strict enforcement of these laws, the negative impacts and secondary effects described above are likely to occur/continue.

C. No part of this Ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. This Ordinance is not intended to address or invite litigation over the question whether the State of Washington's medical marijuana laws (or this City's medical marijuana laws) satisfy the federal government's enforcement priorities. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Ordinance be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

**11.01.002. Definitions.** For purposes of this Ordinance, the following definitions apply:

A. "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the

stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

B. "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

C. "Child Care Center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

D. "Collective Garden" means those gardens authorized under RCW 69.51A.085, which allows Qualifying Patients to create and participate in Collective Gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use, subject to certain limited conditions, including:<sup>2</sup>

(1) No more than ten Qualifying Patients may participate in a single collective garden at any time;

(2) A Collective Garden may contain no more than fifteen plants per Qualifying Patient, up to a total of forty-five plants;

(3) A Collective Garden may contain no more than twenty-four ounces of usable cannabis per patient up to a total of seventy-two ounces of usable cannabis; and

(4) A copy of each Qualifying Patient's valid documentation or proof of registration with the registry established in state law (now or in the future), including a copy of the Qualifying Patient's proof of identity, must be available at all times on the premises of the Collective Garden;

(5) No Usable Cannabis from the Collective Garden may be delivered to anyone other than one of the Qualifying Patients participating in the Collective Garden; and

(6) A business license must be obtained for the Collective Garden through the City.

E. "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

F. "Deliver or Delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

G. "Designated care provider" means a person who:

(1) Is eighteen years of age or older;

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<sup>2</sup> Additional definition appears in RCW 69.51A.085(2).

(2) Has been designated in writing by a patient to serve as a designated provider under chapter 69.51A RCW; and

(3) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and

(4) Is the designated provider to only one patient at any one time.

H. “Dispensary, Medical Marijuana” means: any location that does not meet the definition of a “Collective Garden” and does not have a license from the Liquor Control Board of the State of Washington for a marijuana producer, processor or retailer pursuant to I-502, where medical cannabis or marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold to a qualified patient, designated provider or any other member of the public. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell or give away medical cannabis or marijuana to a qualified patient, designated provider or any other member of the public.

I. “Dispense” means the interpretation of a prescription or order for medical cannabis, and pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare the prescription or order for delivery.

J. “Elementary School” means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

K. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

L. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

M. “Legal parcel” means a parcel of land for which one legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this ordinance.

N. “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

O. “Manager” means any person to whom a medical marijuana collective garden has delegated discretionary powers to organize, direct and carry on or control its operations. Authority to control one or more of the following functions shall be prima facie evidence that

such a person is a manager of the business: (a) to hire, select, or supervise employees or staff, including volunteers; (b) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (c) to disburse funds of the business other than for the receipt of regularly replaced items of stock; or (d) to make, or participate in making, policy decisions relative to operations of the business.

P. "Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

Q. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

R. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

S. "Medical (or medicinal) use of cannabis or marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(r), for the exclusive benefit of a Qualifying Patient in the treatment of his or her terminal or debilitating illness.

T. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

U. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

V. "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, or address, either alone or when combined with other sources, that establish the person is a Qualifying Patient or Designated Provider.

W. "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

X. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

Y. "Process" means to handle or process cannabis in preparation for medical or recreational use.

Z. "Processor, Marijuana" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

AA. "Producer, Marijuana" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

BB. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

CC. "Public Park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

DD. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

EE. "Public Transit Center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

FF. "Qualifying Patient" means a person who:

1. Is a patient of a health care professional;
2. Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;

3. Is a resident of the state of Washington at the time of such diagnosis;
4. Has been advised by that health care professional about the risks and benefits of the medical use of marijuana;
5. Has been advised by that health care professional that he or she may benefit from the medical use of marijuana; and
6. Is otherwise in compliance with the terms and conditions established in chapter 69.51A RCW.

GG. "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.

HH. "Residential treatment facility" means a facility providing for treatment of drug and alcohol dependency;

II. "Retailer, Marijuana" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

JJ. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

KK. "Secondary School" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington State Superintendent of Public Instruction.

LL. "Terminal or debilitating medical condition" means:

1. Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or
2. Intractable pain, limited for the purpose of this ordinance to mean pain unrelieved by standard medical treatments and medications; or
3. Glaucoma, either acute or chronic, limited for the purpose of this ordinance to mean increased intraocular pressure unrelieved by standard treatments and medications; or
4. Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or
5. Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or
6. Diseases, including anorexia, which result in nausea, vomiting, cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or
7. Any other medical condition duly approved by the Washington State Medical Quality Assurance Commission in consultation with the Board of Osteopathic Medicine and Surgery as directed in chapter 69.51A RCW.

MM. "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

NN. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term "usable cannabis or usable marijuana" does not include marijuana-infused products or cannabis products.

OO. "Valid documentation" means:

1. A statement signed and dated by a Qualifying Patient's Health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis/marijuana;
2. Proof of identity such as a Washington state driver's license or identocard, as defined in RCW 46.20.035; and
3. In the case of a Designated Provider, the signed and dated document valid for one year from the date of signature executed by the Qualifying Patient who has designated the Provider.

### **Section 3. Prohibited Activities.**

A. It is unlawful to own, establish, operate, use or permit the establishment or operation of a medical marijuana dispensary, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity in any marijuana business that does not have a license from the Liquor Control Board of the State of Washington.

B. It is unlawful to own, establish, operate, use, participate in or permit the establishment or operation of a medical marijuana collective garden, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity in any collective garden.

C. It is unlawful to lease, rent or otherwise allow any medical marijuana dispensary, or any medical marijuana collective garden outdoors, indoors, in any building, structure, premises, location or land in the City.

**Section 4. Use Not Permitted In Any Zone.** The use of any building, structure, location, premises or land for a medical marijuana dispensary or a collective garden is not currently allowed in the City, and medical marijuana dispensaries and collective gardens are not permitted use(s) in any zone. So long as this Ordinance remains in effect, the City shall not, determine either through interpretation or otherwise, that the use of any building, structure, location, premises or land as a medical marijuana dispensary or collective garden may be permitted in any zone.

**Section 5. No Vested or Nonconforming Rights.** This Ordinance prohibits medical marijuana dispensaries and collective gardens. Neither this Ordinance nor any other City Ordinance, City action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees,

attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any medical marijuana business, marijuana business or collective garden.

**Section 6. Violations.**

Any violations of this Ordinance may be enforced as set forth in Ordinance No. \_\_\_\_ (Enforcement of Zoning Code Violations) or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition, violations of this Ordinance may be deemed to be a public nuisance and may be abated by the City under the procedures set forth in state law for the abatement of public nuisances.

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

Section C. Effective Date. This ordinance shall be effective five days after publication of an approved summary, which shall consist of the title.

PASSED by the City Council of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MAYOR

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
City Clerk.

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_  
City Attorney

PUBLISHED:  
EFFECTIVE DATE:

**ORDINANCE NO. 2014-1877**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO BUSINESS LICENSES, ADOPTING BUSINESS LICENSE REQUIREMENTS FOR RECREATIONAL MARIJUANA USES, DESCRIBING THE REQUIREMENTS FOR LICENSE APPLICATIONS, FEES, INSPECTIONS, SIGNS, NECESSITY FOR REPORTING OF DISTURBANCES AND UNLAWFUL ACTIVITY, OPERATION AND LOCATION REQUIREMENTS, REQUIRING PAYMENT OF SALES TAX, ADDRESSING NONRENEWALS, SUSPENSIONS AND REVOCATION, INDEMNIFICATION AND ENFORCEMENT, ELIMINATING THE PREREQUISITE OF COMPLIANCE WITH FEDERAL LAW FOR ISSUANCE OF A CITY BUSINESS LICENSE; ADOPTING A NEW CHAPTER 5.12 TO THE PACIFIC MUNICIPAL CODE; AND AMENDING SECTION 5.02.135 OF THE PACIFIC MUNICIPAL CODE.

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WHEREAS, In November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt administrative rules to address the methods for producing, processing and packaging of recreational marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and method of transport of product throughout the state, taxing of marijuana-related activities, creation of a dedicated fund is created, consisting of marijuana excise taxes, license fees, penalties and other income: and

WHEREAS, the LCB issued new administrative regulations (adopted in chapter 314-55 WAC), which, among other things, prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, allows marijuana to take place indoors in a fully enclosed, secure facility or outdoors enclosed by a physical barrier with an 8 foot high fence, limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations,

including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

WHEREAS, according to the administrative rules, the LCB will determine whether the recreational marijuana business licensee is within 1,000 feet of the sensitive uses identified in WAC 314-55-050(10) and shall not issue the license if it is within this area; and

WHEREAS, the LCB has begun issuance of licenses for recreational marijuana uses; and

WHEREAS, on January 14, 2014, the Washington State Attorney General issued an opinion finding that local governments are not preempted by state law from banning the location of a recreational marijuana business, even if the business has been licensed by the LCB (AGO 2014 No. 2)); and

WHEREAS, in the same Attorney General Opinion, the Attorney General also gave the opinion that cities could establish restrictions on recreational marijuana businesses licensed by the LCB, even if such restrictions made it “impractical for a licensed marijuana business to locate within their jurisdiction” (AGO 2014 No. 2); and

WHEREAS, the City adopted Ordinances 1804, 1823, 1843, 1848 and 1855, adopting moratoria or interim zoning on marijuana uses (including recreational marijuana uses); and

WHEREAS, on July 25, 2014, the City Council directed the Planning Commission to consider an ordinance requiring a business license for recreational marijuana uses (among other things) in a public hearing; and

WHEREAS, on \_\_\_\_\_, the Planning Director issued a SEPA threshold decision of \_\_\_\_\_ on this draft Ordinance, which was/was not appealed (if appealed, describe the results of that appeal in a “whereas”); and

WHEREAS, on \_\_\_\_\_, the Council considered this draft ordinance during its regular meeting;

WHEREAS, on \_\_\_\_\_, the Council decided to adopt this ordinance \_\_\_\_\_; NOW, THEREFORE,

THE PACIFIC CITY COUNCIL OF THE CITY OF \_\_\_\_\_ ORDAINS AS FOLLOWS:

Section 1. Section 5.02.130 of the Pacific Municipal Code is hereby amended to read as follows:

**5.02.135 Application – Denial or revocation.** The city license office may deny an application for a business license or revoke a business license previously issued upon the following grounds:

A. In addition to the other penalties provided by law, any business license issued under the provisions of this chapter (or its predecessor) may be denied, revoked or suspended at any time, where the same was:

...

3. If the licensee violates any applicable city and state ~~or federal~~ law;  
or ...

Section 2. A new Chapter 5.12 is hereby added to the Pacific Municipal Code, which shall read as follows:

## **CHAPTER 5.12 RECREATIONAL MARIJUANA**

### **Sections:**

<b>5.12.001</b>	<b>Findings and Purpose.</b>
<b>5.12.002</b>	<b>Definitions.</b>
<b>5.12.003</b>	<b>License Required, Effective Date.</b>
<b>5.12.004</b>	<b>Relationship to Recreational Marijuana Laws and Other Laws</b>
<b>5.12.005</b>	<b>Designation of Licensing Authority.</b>
<b>5.12.006</b>	<b>Requirements of Application for License.</b>
<b>5.12.007</b>	<b>Inspection Fee.</b>
<b>5.12.008</b>	<b>Denial of Application.</b>
<b>5.12.009</b>	<b>Locational Criteria.</b>
<b>5.12.010</b>	<b>Change of Location.</b>
<b>5.12.011</b>	<b>Outdoor Signage and Advertising.</b>
<b>5.12.012</b>	<b>Security Requirements.</b>
<b>5.12.013</b>	<b>Report of Disturbances and Unlawful Activity.</b>
<b>5.12.014</b>	<b>Visibility of Activity and Control of Emissions.</b>
<b>5.12.015</b>	<b>Sales Tax</b>
<b>5.12.016</b>	<b>Inspection of Licensed Premises.</b>
<b>5.12.017</b>	<b>Nonrenewal, Suspension or Revocation of License.</b>
<b>5.12.018</b>	<b>No City Liability – Indemnification.</b>
<b>5.12.019</b>	<b>Other Laws Remain Applicable.</b>

### **5.12.001. Findings and Purpose.**

A. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this Chapter.

B. The purpose of this chapter is to describe the application process, qualifications and requirements to obtain a recreational marijuana business license, terms of such licenses, renewals, violations and penalties.

C. No part of this chapter is intended to or shall be deemed to conflict with the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. Nothing in this Chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Chapter shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Chapter be interpreted to be compatible with state enactments and in furtherance of the public purposes that those enactments encompass.

**5.12.002. Definitions.** The definitions in chapter 20.78.002 of the City Zoning Code apply to the administration, interpretation and enforcement of this Chapter 5.12 PMC.

**5.12.003 License Required -- Effective Date.**

A. It shall be unlawful for any person or entity to operate any recreational marijuana producer, processor or retail business without first having obtained a local license under this Chapter and a State license under Chapter 314-55 WAC, for each facility to be operated in connection with such business. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section.

B. No person shall be deemed to have any entitlement or vested right to licensing under this Chapter by virtue of having received any prior license or permit from the City, including, by way of example, any zoning permit, building permit for a medical marijuana use, wholesale food manufacturer's license, or any other license.

C. This Chapter is not intended to regulate the possession, cultivation or use of marijuana for medical use by anyone who may qualify as a Qualified Patient or Designated Care Provider, under chapter 69.51A RCW. This Chapter is not intended to license any medical marijuana use, collective garden, retailer or any other business associated with the use of marijuana for medical purposes, under chapter 69.51A RCW.

**5.12.004 Relationship to Recreational Marijuana Laws and Other Laws.**

Except as otherwise specifically provided herein, this Chapter incorporates the requirements and procedures set forth in I-502, as codified in chapter 69.50 RCW and chapter 314-55 WAC. In the event of any conflict between the provisions of this chapter 5.09 and the provisions of chapter 69.50 RCW or chapter 314-55 WAC, the more restrictive provision shall control.

**5.12.005 Designation of Licensing Authority.**

In accordance with Section \_\_\_\_\_ of the \_\_\_\_\_ Municipal Code, the \_\_\_\_\_ is designated as the local Licensing Authority for the purpose of administering this Chapter. The Licensing Authority shall have the following responsibilities:

A. To grant or deny licenses under this Chapter, to grant or deny transfers of ownership or location of the license and impose penalties against licensees in the manner provided by law.

B. To promulgate rules and regulations regarding the procedures for hearings before the Licensing Authority, and to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records at any hearing which the Authority is authorized to conduct. Any such subpoena shall be served in the same manner as a subpoena issued by the Washington courts.

C. To require any applicant or licensee to furnish any relevant information required by this Chapter.

**5.12.006 Requirements of Application for License; Payment of Application Fee.<sup>1</sup>**

A. A person or entity seeking a license pursuant to Washington State law under chapter 69.50 RCW and the provisions of this Chapter shall submit an application to the City on forms provided by the City. At the time of the application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for the processing of the application, as well as an inspection fee (as described in Section 5.12.007 below). In addition, the applicant shall present a suitable form of identification.

B. The applicant shall also provide the following information on a form approved by, or acceptable to, the Licensing Authority, which information may be required for the applicant, the proposed manager of the recreational marijuana business (production, processing or retail outlet) and all persons having a financial interest in such business that is the subject of the application, or, if the applicant is an entity, having a financial interest in the entity:

1. Name, address and date of birth;
2. An acknowledgement and consent that the City may conduct a background investigation, including a criminal history check, and that the City will be entitled to full and complete disclosure of all financial records of the recreational marijuana business, including records of deposit, withdrawals, balances and loans;
3. If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Washington Secretary of State, as applicable;

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<sup>1</sup> Keep in mind that the State will perform a criminal history background check, an investigation into the residency requirements, a financial investigation to verify the source of the funds used for the acquisition and start-up of the business, etc. WAC 314-55-020.

4. If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for the recreational marijuana use (production, processing or retail outlet);

5. A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to process, the proposed licensed premises;

6. Evidence of a valid State license for the recreational marijuana business;

7. A "to scale" diagram of the proposed licensed premises, no larger than eleven (11) inches by seventeen (17) inches, showing, without limitation, building layout, all entryways and exits to the proposed licensed premises, loading zones and all areas in which recreational marijuana will be stored, grown, manufactured or sold;

8. A comprehensive business operation plan for the recreational marijuana business which shall contain, at a minimum, the following:

(a) A security plan meeting the requirements of State law;

(b) A description of all products to be processed, produced, cultivated or sold;

(c) A plan for exterior signage that is in compliance with State law, this Chapter and the City's sign code, including photographs and/or illustrations of the proposed signage; and

9. Any additional information that the Licensing Authority reasonably determines to be necessary in connection with the investigation and review of the application.<sup>2</sup>

C. All recreational marijuana businesses shall obtain other required permits or licenses related to the operation of the business, including, without limitation, any development approvals or building permits required by this Code, the Building Code or the Zoning Code (chapter 20.78 PMC).

D. Upon receipt of a completed application, the Licensing Authority may circulate the application to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.

E. The City may, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this Article or other provisions of this Code, the Building Code or the Zoning Code.

**5.12.007. Inspection Fee.** In order for the license to issue, and upon renewal thereafter, the licensee shall pay to the City a non-refundable fee in an amount determined by the Licensing Authority to cover the costs associated with the individual inspection conducted pursuant to this Chapter.

**5.12.008. Denial of Application.** The Licensing Authority may deny any application for a license or license renewal that does not meet the requirements of Washington State Law or this Chapter. The Licensing Authority may deny any application that contains any false, misleading or incomplete information.

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<sup>2</sup> See, chapter 314-55 WAC to determine what factors will be considered by the State of Washington in order to issue a license.

**5.12.009. Location Criteria.**

A. No license shall be issued to a recreational marijuana producer, processor or retail outlet if the proposed licensed business is within one thousand feet of any of the following:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Child care center;
5. Public park;
6. Public transit center;
7. Library; or
8. Any game arcade (where admission is not restricted to persons age

twenty-one or older.

B. No license shall be issued to a recreational marijuana producers, processor or retail outlet unless the proposed business is located within the boundaries of the Light Industrial (LI) zone, within the Pierce County portion of the City, as required by PMC Section 20.78.003(A).

**5.12.010. Change of Location.**

A change in the location of a recreational marijuana business occurs any time a move by the licensee results in any change to the physical location address. A change in the location of such business requires the submission of a new application under Section 5.12.006 above.

**5.12.011. Outdoor Signage and Advertising.**

A. All signage and advertising for a recreational marijuana processor, producer or retail outlet shall comply with the applicable provisions of this Code, the Sign Code, Zoning Code and WAC 314-55-155 (and all applicable rules and regulations promulgated thereunder).

B. Violations of this Section relating to the Sign Code or Zoning Code shall result in a \_\_\_\_\_ fine. The City may enforce this section pursuant to chapter \_\_\_ of the Municipal Code. For violations of WAC 314-55-155 and 314-55-525, the City may report the violation to the State Liquor Control Board.

**5.12.012. Security Requirements.** Security measures at all licensed premises shall comply with the requirements of WAC 314-55-083 (and all applicable rules and regulations promulgated thereunder).

**5.12.013. Report of Disturbances and Unlawful Activity.**

A. All licensees and any agent, manager or employee thereof shall immediately report to the City Police Department any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licenses premises, including, but not limited to, any unlawful

resale of marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.

B. Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches with each letter to be a minimum of one-half (1/2) inch in height, which shall read as follows:

**WARNING:**  
The City of Pacific Police Department must be notified of all  
disorderly acts, conduct or disturbances and  
all unlawful activities which occur on or within the premises  
of this licensed establishment.

C. It shall not be a defense to a prosecution of a licensee under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed.

D. Failure to comply with the requirements of this Section shall be considered by the Licensing Authority in any action relating to the issuance, revocation, suspension or nonrenewal of a license.

**5.12.014. Visibility of Activities; Control of Emissions.**

A. All activities of the recreational marijuana business, including, but not limited to, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted out of the public view.

B. No recreational marijuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the recreational marijuana business must be in effect at all times. In the event that any odors, dust, fluids or other substances exit a recreational marijuana business, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for the immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

**5.12.015. Sales Tax.**

Each recreational marijuana business shall collect and remit City sales tax on all recreational marijuana paraphernalia and other tangible personal property used or sold at the licensed premises.

**5.12.016. Inspection of Licensed Premises.**

During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Police Department and all other City departments, as designated by the Licensing Authority, for the purpose of investigating and determining compliance with the provisions of this Chapter and any other applicable state and local laws and regulations.

**5.12.017. Nonrenewal, Suspension or Revocation of License.<sup>3</sup>**

A. The Licensing Authority, may, after notice and a hearing (using the procedures set forth in chapter \_\_\_ of this title), suspend, revoke or refuse to renew a license for any of the following reasons: (does the City have such procedures in the business licensing code?)

1. The applicant or licensee, or his or her agent, manager or employee, has violated, does not meet or has failed to comply with, any of the terms, requirements, conditions or provisions of this Chapter or with any applicable state or local law or regulation; or

2. The applicant or licensee, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its license pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of the issuance of the license.

B. Evidence to support a finding under Subsection (A) above may include, without limitation, a continuing pattern of disorderly conduct, a continuing pattern of drug-related criminal conduct within the premises of the business or in the immediate area surrounding such business, or an ongoing nuisance condition emanating from or caused by the recreational marijuana business. Criminal conduct shall be limited to the violation of state or City law.

**5.12.018. No City Liability – Indemnification.**

A. By accepting a license issued pursuant to this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations.

B. By accepting a license issued pursuant to this Chapter, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its officers,

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<sup>3</sup> The City's Business Licensing Title should include procedures for enforcement, including notice to the licensee/applicant of hearing, the procedures for a hearing, issuance of a decision, etc. This chapter should be referenced here.

elected officials, employees, volunteers and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the recreational marijuana business that is the subject of the license.

**5.12.019. Other Laws Remain Applicable.**

A. To the extent the State or the City adopts in the future any additional or stricter law or regulation governing the production, processing or sale of recreational marijuana, the additional or stricter regulation shall control the establishment or operation of any recreational marijuana business in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

B. If the State prohibits the production, processing, sale or other distribution of marijuana through the premises licensed under this Chapter, any license issued hereunder shall be deemed immediately revoked by operation of law.

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

Section 4. Effective Date. This ordinance shall be effective five days after publication of an approved summary, which shall consist of the title.

PASSED by the City Council of Pacific this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR LEANNE GUIER

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
City Clerk, Amy Stevenson-Ness

APPROVED AS TO FORM:  
Office of the City Attorney

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City Attorney, Carol Morris

PUBLISHED:  
EFFECTIVE DATE:

**CITY OF PACIFIC, WASHINGTON  
ORDINANCE NO. 2014-1878**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO THE RECREATIONAL AND MEDICAL USE OF MARIJUANA, ADOPTING A COMPLETE PROHIBITION ON THE SITING, ESTABLISHMENT, OPERATION OR LICENSING OF ANY STRUCTURES, PROPERTY, USES OR BUSINESSES RELATING TO RECREATIONAL OR MEDICAL MARIJUANA PRODUCTION, PROCESSING, CULTIVATION (WHETHER INDIVIDUAL OR GROUP CULTIVATION), STORAGE, SALE, DELIVERY, EXCHANGE OR BARTERING; ADOPTING FINDINGS TO SUPPORT THE PROHIBITION, DESCRIBING THE MANNER IN WHICH VIOLATIONS WILL BE ENFORCED, AND ADDING A NEW CHAPTER 20.08 TO THE PACIFIC MUNICIPAL CODE.

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**Medical Marijuana**

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment." *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq; and

WHEREAS, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); and

WHEREAS, the intent of Initiative 692 was that qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law," (RCW 69.51A.005), but that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes" (RCW 69.51A.020); and

WHEREAS, the Washington State Legislature passed ESSSB 5073 in 2011, which directed employees of the Washington State Departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis; and

WHEREAS, this bill required that the Department of Health develop a secure registration system for licensed producers, processors and dispensers, but these provisions, together with many others relating to dispensaries and definitions, were vetoed by the Governor; and

WHEREAS, ESSSB 5073 provided that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, under certain defined circumstances (possession of a limited number of plants or usable cannabis, cultivation of a limited number of plants in the qualifying patient or designated care provider's residence or in a collective garden); and

WHEREAS, Washington's Governor vetoed all of the provisions relevant to medical marijuana dispensaries in ESSSB 5073 but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually within their residences and in collective gardens; and

WHEREAS, ESSSB 5073 was codified in chapter 69.51A RCW; and

WHEREAS, RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and to impose business taxes on the production, processing or dispensing of medical cannabis or cannabis products, which the Washington Court of Appeals has interpreted to authorize complete bans on medical marijuana uses, such as collective gardens (*Cannabis Action Coalition v. City of Kent*, 322 P.2d 1246, 1253 (2014)); and

## **RECREATIONAL MARIJUANA**

WHEREAS, the Washington voters approved Initiative 502 (I-502) in 2012, which "authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and adds a new threshold for driving under the influence of marijuana"; and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (I-502, Sec. 4(1)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana processors to "process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers" (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license a marijuana retailer to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (I-502, Sec. 4(3)); and

WHEREAS, I-502 establishes certain siting limitations on the Washington State Liquor Control Board's issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Section 8); and

WHEREAS, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, the Washington State Liquor Control Board has adopted rules to implement I-502, which include, among other things: the state licensing of premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by which licensees may transport and deliver marijuana and marijuana products (among other things); and

WHEREAS, according to these rules, the LCB will determine whether the recreational marijuana business licensee is within 1,000 feet of the sensitive uses identified in WAC 314-55-050(10) and shall not issue the license if it is within this area; and

WHEREAS, the LCB has begun issuance of licenses for recreational marijuana uses; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a Memorandum to all United States Attorneys, acknowledging that several states had adopted laws authorizing marijuana production, distribution and possession by establishing a regulatory scheme for these purposes; and

WHEREAS, in this Memo, the DOJ advised that in recent years, the DOJ has “focused its efforts on certain law enforcement priorities that are particularly important to the federal government,” such as: (a) preventing the distribution of marijuana to minors; (b) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (c) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (d) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (e) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (f) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (g) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (h) preventing marijuana possession or use on federal property; and

WHEREAS, in this Memo, the DOJ warned that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified above] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms”; and

WHEREAS, in this Memo, the DOJ warned that a regulatory system adequate to this task “must not only contain robust controls and procedures on paper, it must also be effective in practice”; and

WHEREAS, in this Memo, the DOJ advised that “in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department’s enforcement priorities [listed above]” and that federal prosecutors “should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong but effective state regulatory system”; and

WHEREAS, on January 16, 2013, the Washington State Attorney General’s Office issued an opinion, which determined that local governments may decide to either zone or ban recreational marijuana uses within their jurisdictions; and

WHEREAS, while the LCB adopted one report on the environmental impacts associated with the cultivation of marijuana, the City is not aware of any other analyses performed by the State of Washington to determine the environmental or secondary land use impacts that a proliferation of medical and recreational marijuana uses would have on towns, cities and counties in Washington; and

WHEREAS, nothing indicates that the LCB will perform any analyses under the State Environmental Policy Act (SEPA) to determine the significant adverse environmental impacts associated with any individual licensee’s operation of a marijuana business and the LCB does not require the submission of a SEPA checklist as part of a recreational marijuana license application; and

WHEREAS, the City plans under the Growth Management Act (“GMA,” chapter 36.70A RCW), and is required to review any “action” under SEPA prior to adopting any comprehensive plan or development regulations; and

WHEREAS, given that the City has no environmental information upon which to make any determinations relating to marijuana uses, the City must collect the same from either the experiences of other areas or by empirical knowledge (after the use has located in the City and the impacts are known); and

WHEREAS, the City intends to take careful, deliberate steps to evaluate marijuana uses, and to perform the environmental analysis that the State omitted; and

WHEREAS, the City passed Ordinances 1804, 1823, 1843, 1848 and 1855, all of which adopted moratoria or interim zoning on medical and recreational marijuana uses and activities, which acknowledged marijuana’s uncertain legal status and the lack of information available to the City; and

WHEREAS, the City acknowledges that it has not budgeted any funds for the implementation of any medical marijuana enforcement scheme that could satisfy the DOJ's enforcement priorities; and

WHEREAS, the City Council therefore believes that the adoption of a complete ban on all marijuana uses, whether recreational or medical, is necessary to preserve the status quo;

WHEREAS, the City SEPA Responsible Official issued a \_\_\_\_\_ for this Ordinance on \_\_\_\_\_, 2014; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on \_\_\_\_\_, 2014, and submitted its written recommendation to the City Council; and

WHEREAS, on \_\_\_\_\_, 2014, the City Council (either adopted the ordinance as recommended by the Planning Commission or held another public hearing and adopted this Ordinance); NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC DOES ORDAIN AS FOLLOWS:

**Section 1.** Section A. The City Council adopts the following new chapter 20.08 to the Pacific Municipal Code:

**CHAPTER 20.08  
MEDICAL AND RECREATIONAL MARIJUANA**

**Sections.**

- 20.08.010 Findings.**
- 20.08.020 Definitions.**
- 20.08.030 Prohibited Activities.**
- 20.08.040 Uses Not Permitted in Any Zone.**
- 20.08.050 Violations.**
- 20.08.060 Enforcement.**

**20.08.010. Findings.** The Council adopts all of the “whereas” sections of this Ordinance as findings to support this ban on medical marijuana, as well as the following:

A. The purpose of this Chapter is to enact a ban medical cannabis/medical marijuana, which explicitly prohibits medical marijuana dispensaries, medical marijuana collective gardens (including those

defined in RCW 69.51A.085), individual cultivation of marijuana, recreational marijuana production, processing and retailing, including those recreational marijuana businesses licensed by the State of Washington Liquor Control Board. This prohibition will be enforced until such time as the Washington State Legislature acts to adopt a regulatory and enforcement system for medical marijuana uses that satisfies the enforcement priorities established by the federal government. Once the Washington State Legislature acts. The City Council also acknowledges that the State of Washington has not performed any environmental analyses that will assist cities, towns and counties in the adoption of local regulations addressing marijuana uses, or the environmental impacts associated with the individual recreational marijuana businesses. As a result, municipalities must therefore either develop their own analyses or observe these impacts after-the-fact (or, after the marijuana uses locate and begin operations in cities, towns and counties throughout Washington). Then, the municipalities will be required to “fix” the problems stemming from these uses with their already scarce resources.

B. It is also the purpose of this Ordinance to stem the negative impacts and secondary effects associated with all marijuana uses, whether medical or recreational, including but not limited to the extraordinary and unsustainable demands that have been or will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using marijuana prescriptions and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.

C. No part of this Ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. This Ordinance is not intended to address or invite litigation over the question whether the State of Washington’s medical marijuana laws (or this City’s medical marijuana laws) satisfy the federal government’s enforcement priorities. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Ordinance be

interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

**20.08.002. Definitions.** For purposes of this Ordinance, the following definitions apply:

A. "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

B. "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

C. "Child Care Center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

D. "Collective Garden" means those gardens mentioned in RCW 69.51A.085.

E. "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

F. "Deliver or Delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

G. "Dispensary, Medical Marijuana" means: any location that does not meet the definition of a "Collective Garden" and does not have a license from the Liquor Control Board of the State of Washington for a marijuana producer, processor or retailer pursuant to I-502, where medical

cannabis or marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell, barter, trade or give away medical cannabis or marijuana.

H. “Dispense” means the interpretation of a prescription or order for medical cannabis, and pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare the prescription or order for delivery.

I. “Elementary School” means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

J. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

K. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

L. “Legal parcel” means a parcel of land for which one legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this ordinance.

M. “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

N. “Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds

of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

O. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

P. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

Q. "Medical (or medicinal) use of cannabis or marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(r).

R. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

S. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

T. "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

U. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

V. "Process" means to handle or process cannabis in preparation for medical or recreational use.

W. "Processor, Marijuana" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

X. "Producer, Marijuana" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

Y. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

Z. "Public Park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

AA. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

BB. "Public Transit Center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

CC. "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.

DD. "Retailer, Marijuana" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

EE. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

FF. "Secondary School" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington State Superintendent of Public Instruction.

GG. "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

HH. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term "usable cannabis or usable marijuana" does not include marijuana-infused products or cannabis products.

**20.08.030. Prohibited Activities.**

A. It is unlawful to own, establish, site, operate, use or permit the establishment or operation of a medical marijuana dispensary, medical marijuana collective garden, or to produce, process or sell recreational marijuana. This prohibition extends to recreational marijuana producers, processors and retailers, even if the same are licensed by the State of Washington. This prohibition applies to any person who participates as an employee, contractor, agent or volunteer, or in any other manner or capacity in any marijuana business, regardless of whether it has a license from the State of Washington.

B. It is unlawful to perform any individual or group marijuana cultivation activities anywhere in the City, regardless of whether such individual or group cultivation is addressed in chapter 69.51A RCW.

C. It is unlawful to lease, rent or otherwise allow any medical marijuana dispensary, medical marijuana collective garden, recreational marijuana production, processing or retailing business, whether it is located outdoors, indoors, in any building, structure, premises, location or land in the City and regardless of whether activity has been licensed by the State of Washington.

D. The City shall not issue any business license for any medical marijuana or recreational marijuana business. Any business license obtained through misrepresentation of the activities conducted by the individual business shall be invalid and of no force and effect.

**20.08.040. Use Not Permitted In Any Zone.** The use of any building, structure, location, premises or land for a medical marijuana dispensary,

medical marijuana collective garden, recreational production, processing or retailing is not currently allowed in the City, and such uses and activities are not permitted use(s) in any zone. So long as this Ordinance remains in effect, the City shall not, determine either through interpretation or otherwise, that the use of any building, structure, location, premises or land as a one of these prohibited uses may be permitted in any zone.

**20.08.050. No Vested or Nonconforming Rights.** Neither this Ordinance nor any other City Ordinance, City action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any medical marijuana business, collective garden, or recreational marijuana producer, processor or retailer, even if licensed by the State of Washington.

**20.08.060. Violations.**

Any violations of this Ordinance may be enforced as set forth in chapter \_\_\_\_ (Enforcement of Zoning Code Violations), or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition, violations of this Ordinance may be deemed to be a public nuisance and may be abated by the City under the procedures set forth in state law for the abatement of public nuisances.

**Section 2. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 3. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**Section 4.** This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of Pacific this \_\_\_\_<sup>nd</sup> day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
\_\_\_\_\_, Mayor

AUTHENTICATED:

\_\_\_\_\_, City Clerk.

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_  
City Attorney

PUBLISHED:  
EFFECTIVE DATE:

**ORDINANCE NO. 2015-1888**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO LAND USE AND ZONING, ALLOWING RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS AS A CONDITIONALLY PERMITTED USE IN THE LIGHT INDUSTRIAL (LI) ZONE; PROHIBITING RECREATIONAL MARIJUANA RETAIL OUTLETS IN ALL ZONES IN THE CITY; REQUIRING THAT RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS OBTAIN A LICENSE FROM THE LIQUOR CONTROL BOARD AND A CITY BUSINESS LICENSE, PROHIBITING SUCH USES FROM LOCATING WITHIN 1,000 FEET OF CERTAIN SENSITIVE USES, IDENTIFIED IN RCW 69.50.331; ESTABLISHING THE PROCEDURES FOR THESE USES TO OBTAIN A CONDITIONAL USE PERMIT, DESCRIBING THE CRITERIA FOR ISSUANCE OF A CUP, INCLUDING THE ISSUES FOR THE DECISION-MAKER TO CONSIDER IN FASHIONING CONDITIONS ON THE CUP, ADDRESSING SIGNS, SECURITY, REPORTING OF DISTURBANCES AND CITY INDEMNIFICATION; ADOPTING A NEW CHAPTER 20.78 TO THE PACIFIC MUNICIPAL CODE.

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WHEREAS, In November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt administrative rules to address the methods for producing, processing and packaging of recreational marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and method of transport of product throughout the state, taxing of marijuana-related activities, creation of a dedicated fund is created, consisting of marijuana excise taxes, license fees, penalties and other income: and

WHEREAS, the LCB issued new administrative regulations (adopted in chapter 314-55 WAC), which, among other things, prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, allows marijuana to take place indoors in a fully enclosed, secure facility or outdoors enclosed by a physical barrier with an 8 foot high fence, limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed

premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

WHEREAS, according to the administrative rules, the LCB will determine whether the recreational marijuana business licensee is within 1,000 feet of the sensitive uses identified in WAC 314-55-050(10) and shall not issue the license if it is within this area; and

WHEREAS, the LCB has begun issuance of licenses for recreational marijuana uses; and

WHEREAS, on January 14, 2014, the Washington State Attorney General issued an opinion finding that local governments are not preempted by state law from banning the location of a recreational marijuana business, even if the business has been licensed by the LCB (AGO 2014 No. 2)); and

WHEREAS, in the same Attorney General Opinion, the Attorney General also gave the opinion that cities could establish restrictions on recreational marijuana businesses licensed by the LCB, even if such restrictions made it “impractical for a licensed marijuana business to locate within their jurisdiction” (AGO 2014 No. 2); and

WHEREAS, the City adopted Ordinances 1804, 1823, 1843, 1848 and 1855, adopting moratoria or interim zoning on marijuana uses (including recreational marijuana uses); and

WHEREAS, on July 25, 2014, the City Council directed the Planning Commission to hold a public hearing on a draft ordinance that allowed recreational marijuana processors and producers as a conditionally permitted use in the light industrial zone, and recreational marijuana retailers and retail outlets as a conditionally permitted use in the commercial zone (among other draft ordinances); and

WHEREAS, on December 12, 2014, the Planning Director issued a SEPA threshold decision of nonsignificance on this draft Ordinance, which was/was not appealed (if appealed, describe the results of that appeal in a “whereas”); and

WHEREAS, on \_\_\_\_\_, the Planning Director sent a copy of this draft Ordinance to the Washington State Department of Commerce, pursuant to RCW 36.70A.106; and

WHEREAS, on \_\_\_\_\_, the Planning Commission held a public hearing on this draft Ordinance, and on \_\_\_\_\_, transmitted its recommendation to the City Council; and

WHEREAS, on September 2, 2014, the Council considered the Planning Commission's recommendation during its regular meeting and rejected such recommendation;

WHEREAS, on \_\_\_\_\_, the Council held a public hearing on this ordinance; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC ORDAINS AS FOLLOWS:

Section 1. Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_, is hereby repealed. (This is a placeholder to repeal the existing interim zoning or moratorium.)

Section 2. A new chapter 20.78 is hereby added to the Pacific Municipal Code, which shall read as follows:

**CHAPTER 20.78  
RECREATIONAL MARIJUANA**

- 20.78.001 Findings and Purpose.**
- 20.78.002 Definitions.**
- 20.78.003 Locational Criteria for Recreational Marijuana Uses.**
- 20.78.004 Business License Required.**
- 20.78.005 Recreational Marijuana Uses Conditionally Allowed In LI Zone.**
- 20.78.006 Signs and Advertising.**
- 20.78.007 Security Requirements.**
- 20.78.008 Report of Disturbances and Unlawful Activity.**
- 20.78.009 Visibility of Activities; Control of Emissions and Odor.**
- 20.78.010 No City Liability – Indemnification.**

**20.78.001 Findings and Purpose.**

A. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this Ordinance.

B. The purpose of this Ordinance is to prohibit recreational marijuana retail outlets, to establish where recreational marijuana producers and processors may locate in the City, and to describe the restrictions upon such uses. In addition to compliance with this Ordinance, every recreational marijuana processor or producer shall obtain a City business license under chapter 5.02 of the Pacific Municipal Code.

C. No part of this Ordinance is intended to conflict with the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under chapter 69.50 RCW, or any other local or state law, statute, rule or regulation. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this

Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Ordinance be interpreted to be compatible with city and state enactments and in furtherance of the public purposes that those enactments encompass.

**20.78.002 Definitions.** The definitions in this section apply throughout this Chapter, and the City also adopts the definitions in WAC 314-55-010 by reference.

A. “Child Care Center” means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

B. “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

C. “Deliver or Delivery” means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

D. “Elementary School” means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

E. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

F. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

G. “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

H. “Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

I. “Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.

J. “Marijuana, Usable” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.

K. “Outdoors” means any location that is not “indoors” within a fully enclosed and secure structure as defined herein.

L. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

M. “Playground” means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

N. "Process" means to handle or process cannabis in preparation for medical or recreational use.

O. “Processor, Marijuana” means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

P. “Producer, Marijuana” means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

Q. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

R. “Public Park” means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

S. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and

the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

T. “Public Transit Center” means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

U. “Recreation center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.

V. “Retailer, Marijuana” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

W. “Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

X. “Secondary School” means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington State Superintendent of Public Instruction.

Y. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term “usable cannabis or usable marijuana” does not include marijuana-infused products or cannabis products.

**20.78.003. Locational Criteria for Recreational Marijuana Uses.**

A. No recreational marijuana producer or processor may locate or operate in any zoning district in the City, other than the Light Industrial (LI) zone, as the same exists within the Pierce County area of the City. A conditional use permit is required for such use.

B. No recreational marijuana retail business or retail outlet may locate or operate in any zoning district in the City, in any location.

B. No recreational marijuana producer or processor may locate or operate within one thousand (1,000) feet of any of the following:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Child care center;

5. Public park;
6. Public transit center;
7. Library; or
8. Any game arcade (where admission is not restricted to persons age twenty-one or older.<sup>1</sup>

**20.78.004. Business License.**

A. A valid, current license is required from the Washington State Liquor Control Board for operation of any recreational marijuana, producer or processor. A copy of this license shall be submitted to the City as part of the complete application for a conditional use permit required by Section 20.78.005 below.

B. A business license is required from the City for operation of any recreational marijuana producer or processor. No conditional use permit may issue unless the City also issues a business license for the recreational marijuana use.

**20.78.005 Recreational Marijuana Uses Conditionally Allowed.** In order to operate a recreational marijuana producer or processor, a conditional use permit under this Section is required.

A. Procedure for Conditional Use Permit Approval. A conditional use permit is a Type IV Permit and is processed under Chapter 16.30 PMC.

B. Requirements for Complete Application. The following materials shall be submitted to the City for a complete application for a conditional use permit:

1. Application form. \_\_\_\_\_ copies of a completed application form;
2. Date, name, address, telephone number and e-mail of the applicant;
3. Name, address, telephone number and e-mail of the owner of the property identified in the application;
4. Legal description of the subject property;
5. Description and photographs of existing site conditions;
6. Architectural drawings of all structures proposed to be developed on the subject property;
7. Complete application for a site plan, showing the proposed placement of structures on the property, together with access and circulation on the site;
8. Complete application for a grading plan;
9. Complete application for a landscaping plan;
10. Drawings of all proposed signs;
11. A SEPA Checklist;
12. Concurrency determination (water, sewer and traffic?)

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<sup>1</sup> This requirement is in RCW 69.50.331, and is a pre-requisite for the issuance of any recreational marijuana license. I am including this so that you can use it to review all of the land uses adjacent to and within the Light Industrial zone. If none of these uses are in or adjacent to the Light Industrial zone, you might want to delete this subsection.

13. A copy of all existing and proposed restrictions and covenants;
14. A narrative report or letter describing compliance with all applicable approval criteria in subsection C below.
15. The application fee established by the City.

C. Criteria for Approval. The City shall approve, approve with conditions or deny an application for a conditional use permit (or to enlarge or alter a conditional use permit) for a recreational marijuana business after making findings based on each of the criteria set forth below:

1. Generally.

a. That the conditional use is consistent with the objectives of the Zoning Code and the purpose of the zoning district in which the subject site/property is located;

b. That granting the conditional use will not be detrimental to the public health, safety or welfare. The factors to be considered in making this finding shall include, but not be limited to an evaluation whether:

c. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, and aesthetic considerations;

d. The proposed use raises no concerns regarding property damage or nuisance arising from noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust or visibility;

e. The proposed use presents no hazard to persons or property from possible explosion, contamination, fire or flood; and

f. There will not be an impact on surrounding areas arising from an unusual volume or character of traffic.

g. The characteristics of the conditional use as proposed and as it may be conditioned are reasonably compatible with the types of uses permitted in the surrounding area.

h. All required public facilities have adequate capacity to serve the proposal.

2. Site Design Standards.

a. The application complies with all of the applicable provisions of the underlying zone, including, but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;

b. The applicant shall be required to upgrade any existing development that does not comply with the applicable zoning provisions in conformance with chapter 16.12 PMC (Non-Conforming Development);

c. The application complies with all of the design standards in the Zoning Code applicable to: (a) access and circulation; (b) landscaping, vegetation, street trees, fences and walls; (c) parking and loading; (d) public facilities; (e) surface water management; (f) critical areas and any other applicable standards.

d. Existing conditions of approval required as part of a prior land division or permit shall be met.

3. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to:

- a. Limiting the hours, days, place and/or manner of operation;
- b. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
- c. Requiring larger setback areas, lot area, and/or lot depth or width;
- d. Limiting the building or structure height, size or lot coverage, and/or location on the site;
- e. Designating the size, number, location and/or design of vehicle access points or parking areas;
- f. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways or trails to be improved;
- g. Requiring landscaping, screening, drainage, water quality features and/or improvement of parking and loading areas;
- h. Limiting the number, size, location, height and/or lighting of signs;
- i. Limiting or setting standards for the location, design and/or intensity of outdoor lighting;
- k. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
- l. Requiring and designating the size, height, location and/or materials for fences; and
- m. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands.

D. Denial. The Director may recommend conditioning or denial of the conditional use permit application based on RCW 43.21C.060 (SEPA).<sup>2</sup> In addition, the City may deny the conditional use permit if it determines that the proposed use is materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

E. Deadline for Final Decision. A conditional use permit application shall be approved, approved with conditions or denied within one hundred-twenty (120) days after the application has been determined complete, unless the applicant consents in writing to a longer processing time period.

F. Effect of Approval.

1. Applies to authorized use only. Issuance of a conditional use permit shall be deemed to authorize only the particular use for which it is issued.

2. Binding on subsequent owners. All conditions of approval shall be binding upon the applicant, their successors and assigns, shall run with the land; shall limit and control the issuance and validity of certificates of occupancy; and shall restrict and limit the construction, location, use and maintenance of all land and structures within the development.

G Expiration, Extensions and Permit Implementation.

1. A conditional use permit shall become null and void one year after the effective date, unless one of the following has occurred:

a. A building permit has issued and construction begun and diligently pursued;

b. An occupancy permit has issued and the approved use has been established;

c. An extension has been granted by the Planning Director. Such extension shall be for a maximum of \_\_\_ days, and no extension may be granted which would extend the validity of the permit more than 18 months beyond the effective date of the permit. No extension will be granted if it necessitates modification of any condition of approval; or

d. The decision on the Conditional Use Permit has established a different expiration date.

2. Development of the Conditional Use shall not be carried out until the applicant has secured all other permits and approvals required by the City, or any applicable regional, state and federal agencies.

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<sup>2</sup> In order to deny an application under SEPA, the City must find that: (1) the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under chapter 43.21C RCW; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact. RCW 43.21C.060.

3. Any Conditional Use that has been initiated and then discontinued may not be re-established or recommenced except pursuant to a new conditional use permit. The following will constitute conclusive evidence that the conditional use has been discontinued:

a. A new permit has been issued to change the use of the lot and the new use has been established; or

b. The lot has not been used for the purpose authorized by the conditional use permit for more than 24 consecutive months. Lots that are vacant, or that are used only for storage of materials and equipment, will not be considered as being used for the purpose authorized by the conditional use. The expiration or revocation of a business or other license necessary for the conditional use to operate will suffice as evidence that the lot is not being used for as authorized by the conditional use permit.

**20.78.006 Signs and Advertising.<sup>3</sup>**

A. All signage and advertising for a recreational marijuana processor or producer shall comply with the applicable provisions of this Code, the Sign Code, Zoning Code and WAC 314-55-155 (and all applicable rules and regulations promulgated thereunder).

B. Violations of this Section relating to the Sign Code or Zoning Code shall result in a      fine. The City may enforce this section pursuant to chapter 16.14 of the Municipal Code. For violations of WAC 314-55-155 and 314-55-525, the City may report the violation to the State Liquor Control Board.

**20.78.007. Security Requirements.<sup>4</sup>** Security measures at all licensed premises shall comply with the requirements of WAC 314-55-083 (and all applicable rules and regulations promulgated thereunder).

**20.78.008. Report of Disturbances and Unlawful Activity.<sup>5</sup>**

A. All licensees and any agent, manager or employee thereof shall immediately report to the City Police Department any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed and permitted premises, including, but not limited to, any unlawful resale of marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.

B. Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches with each letter to be a minimum of one-half (1/2) inch in height, which shall read as follows:

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<sup>3</sup> This has been duplicated from the business license sample ordinance because not all cities and towns may decide to adopt a business license ordinance. If your city decides to use both, you may want to just cross reference the requirements, rather than duplicate the requirements in each chapter.

<sup>4</sup> See, footnote No. 1 above.

<sup>5</sup> See, footnote No. 1 above.

**WARNING:**

The City of Pacific Police Department must be notified of all disorderly acts, conduct or disturbances and all unlawful activities which occur on or within the premises of this licensed establishment.

C. It shall not be a defense to a prosecution of a code enforcement action under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed.

D. Failure to comply with the requirements of this Section shall be considered by the City in any action relating to the issuance or revocation of a permit.

**20.78.009. Visibility of Activities; Control of Emissions.<sup>6</sup>**

A. All activities of the recreational marijuana business, including, but not limited to, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted out of the public view.

B. No recreational marijuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the recreational marijuana business must be in effect at all times. In the event that any odors, dust, fluids or other substances exit a recreational marijuana business, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for the immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

**20.78.010. No City Liability – Indemnification.**

A. By accepting a permit issued pursuant to this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations.

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<sup>6</sup> See, footnote No. 1 above.  
1/5/15 SS

B. By accepting a permit issued pursuant to this Chapter, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, volunteers and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the recreational marijuana business that is the subject of the license.

Section 3. Adoption by Reference. The City hereby adopts WAC 314-55-010 through WAC 314-55-540 by reference, as well as RCW 69.50.101. Pursuant to RCW 35A.12.140 (for code cities), a copy of these rules and the statute adopted by reference has been on file in the office of the city clerk for use and examination by the public. A copy of these rules and statutes has also been on file while this ordinance has been under consideration by the council and after adoption.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Effective Date. This ordinance shall be effective five days after publication of an approved summary, which shall consist of the title.

PASSED by the City Council of \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR LEANNE GUIER

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
AMY STEVENSON-NESS, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_  
CAROL A. MORRIS, City Attorney

PUBLISHED:

EFFECTIVE DATE:

**ORDINANCE NO. 2015-1889**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO LAND USE AND ZONING, ALLOWING RECREATIONAL MARIJUANA RETAIL OUTLETS AS A CONDITIONALLY PERMITTED USE IN THE COMMERCIAL (C) ZONE; PROHIBITING RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS IN ALL ZONES IN THE CITY; REQUIRING THAT RECREATIONAL MARIJUANA RETAIL OUTLETS OBTAIN A LICENSE FROM THE LIQUOR CONTROL BOARD AND A CITY BUSINESS LICENSE, PROHIBITING SUCH USES FROM LOCATING WITHIN 1,000 FEET OF CERTAIN SENSITIVE USES, IDENTIFIED IN RCW 69.50.331; ESTABLISHING THE PROCEDURES FOR THESE USES TO OBTAIN A CONDITIONAL USE PERMIT, DESCRIBING THE CRITERIA FOR ISSUANCE OF A CUP, INCLUDING THE ISSUES FOR THE DECISION-MAKER TO CONSIDER IN FASHIONING CONDITIONS ON THE CUP, ADDRESSING SIGNS, SECURITY, REPORTING OF DISTURBANCES AND CITY INDEMNIFICATION; ADOPTING A NEW CHAPTER 20.78 TO THE PACIFIC MUNICIPAL CODE.

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WHEREAS, In November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt administrative rules to address the methods for producing, processing and packaging of recreational marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and method of transport of product throughout the state, taxing of marijuana-related activities, creation of a dedicated fund is created, consisting of marijuana excise taxes, license fees, penalties and other income: and

WHEREAS, the LCB issued new administrative regulations (adopted in chapter 314-55 WAC), which, among other things, prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, allows marijuana to take place indoors in a fully enclosed, secure facility or outdoors enclosed by a physical barrier with an 8 foot high fence, limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed

premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

WHEREAS, according to the administrative rules, the LCB will determine whether the recreational marijuana business licensee is within 1,000 feet of the sensitive uses identified in WAC 314-55-050(10) and shall not issue the license if it is within this area; and

WHEREAS, the LCB has begun issuance of licenses for recreational marijuana uses; and

WHEREAS, on January 14, 2014, the Washington State Attorney General issued an opinion finding that local governments are not preempted by state law from banning the location of a recreational marijuana business, even if the business has been licensed by the LCB (AGO 2014 No. 2)); and

WHEREAS, in the same Attorney General Opinion, the Attorney General also gave the opinion that cities could establish restrictions on recreational marijuana businesses licensed by the LCB, even if such restrictions made it “impractical for a licensed marijuana business to locate within their jurisdiction” (AGO 2014 No. 2); and

WHEREAS, the City adopted Ordinances 1804, 1823, 1843, 1848 and 1855, adopting moratoria or interim zoning on marijuana uses (including recreational marijuana uses); and

WHEREAS, on July 25, 2014, the City Council directed the Planning Commission to hold a public hearing on a draft ordinance that allowed recreational marijuana processors and producers as a conditionally permitted use in the light industrial zone, and recreational marijuana retailers and retail outlets as a conditionally permitted use in the commercial zone (among other draft ordinances); and

WHEREAS, on December 12, 2014 the Planning Director issued a SEPA threshold decision of nonsignificance on this draft Ordinance, which was/was not appealed (if appealed, describe the results of that appeal in a “whereas”); and

WHEREAS, on \_\_\_\_\_, the Planning Director sent a copy of this draft Ordinance to the Washington State Department of Commerce, pursuant to RCW 36.70A.106; and

WHEREAS, on September 2, 2014, the Council considered the Planning Commission’s recommendation during its regular meeting and rejected such recommendation;

WHEREAS, on \_\_\_\_\_, the Council held a public hearing on this ordinance; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC ORDAINS AS FOLLOWS:

Section 1. Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_, is hereby repealed.  
(This is a placeholder to repeal the existing interim zoning or moratorium.)

Section 2. A new chapter 20.78 is hereby added to the Pacific Municipal Code, which shall read as follows:

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**20.78.001 Findings and Purpose.**

A. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this Ordinance.

B. The purpose of this Ordinance is to prohibit recreational marijuana producers and processors, to establish where recreational marijuana retail outlets may locate in the City, and to describe the restrictions upon such uses. In addition to compliance with this Ordinance, every recreational marijuana retail outlets shall obtain a City business license under chapter 5.02 of the Pacific Municipal Code.

C. No part of this Ordinance is intended to conflict with the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under chapter 69.50 RCW, or any other local or state law, statute, rule or regulation. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Ordinance be interpreted to be compatible with city and state enactments and in furtherance of the public purposes that those enactments encompass.

**20.78.002 Definitions.** The definitions in this section apply throughout this Chapter, and the City also adopts the definitions in WAC 314-55-010 by reference.

A. “Child Care Center” means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

B. “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

C. “Deliver or Delivery” means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

D. “Elementary School” means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

E. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

F. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

G. “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

H. “Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

I. “Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.

J. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

K. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

L. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

M. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

N. "Process" means to handle or process cannabis in preparation for medical or recreational use.

O. "Processor, Marijuana" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

P. "Producer, Marijuana" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

Q. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

R. "Public Park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

S. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

T. “Public Transit Center” means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

U. “Recreation center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.

V. “Retailer, Marijuana” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

W. “Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

X. “Secondary School” means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington State Superintendent of Public Instruction.

Y. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term “usable cannabis or usable marijuana” does not include marijuana-infused products or cannabis products.

**20.78.003. Locational Criteria for Recreational Marijuana Uses.**

A. No recreational marijuana retailer or retail outlet may locate or operate in any zoning district in the City, other than the Commercial (C) zone, as the same exists within the **Pierce** County area of the City. A conditional use permit is required for such use.

B. No recreational marijuana producers or processor may locate or operate in any zoning district in the City, in any location.

B. No recreational marijuana retailer or retail outlet may locate or operate within one thousand (1,000) feet of any of the following:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Child care center;
5. Public park;
6. Public transit center;
7. Library; or

8. Any game arcade (where admission is not restricted to persons age twenty-one or older).<sup>1</sup>

**20.78.004. Business License.**

A. A valid, current license is required from the Washington State Liquor Control Board for operation of any recreational marijuana retail outlet. A copy of this license shall be submitted to the City as part of the complete application for a conditional use permit required by Section 20.78.005 below.

B. A business license is required from the City for operation of any recreational marijuana retail outlet. No conditional use permit may issue unless the City also issues a business license for the recreational marijuana use.

**20.78.005 Recreational Marijuana Uses Conditionally Allowed.** In order to operate a recreational marijuana retail outlet, a conditional use permit under this Section is required.

A. Procedure for Conditional Use Permit Approval. A conditional use permit is a Type IV Permit and is processed under Chapter 16.30 PMC.

B. Requirements for Complete Application. The following materials shall be submitted to the City for a complete application for a conditional use permit:

1. Application form. \_\_\_\_\_ copies of a completed application form;
2. Date, name, address, telephone number and e-mail of the applicant;
3. Name, address, telephone number and e-mail of the owner of the property identified in the application;
4. Legal description of the subject property;
5. Description and photographs of existing site conditions;
6. Architectural drawings of all structures proposed to be developed on the subject property;
7. Complete application for a site plan, showing the proposed placement of structures on the property, together with access and circulation on the site;
8. Complete application for a grading plan;
9. Complete application for a landscaping plan;
10. Drawings of all proposed signs;
11. A SEPA Checklist;
12. Concurrency determination (water, sewer and traffic?);
13. A copy of all existing and proposed restrictions and covenants;
14. A narrative report or letter describing compliance with all applicable approval criteria in subsection C below.
15. The application fee established by the City.

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<sup>1</sup> This requirement is in RCW 69.50.331, and is a pre-requisite for the issuance of any recreational marijuana license. I am including this so that you can use it to review all of the land uses adjacent to and within the Light Industrial zone. If none of these uses are in or adjacent to the Light Industrial zone, you might want to delete this subsection.

C. Criteria for Approval. The City shall approve, approve with conditions or deny an application for a conditional use permit (or to enlarge or alter a conditional use permit) for a recreational marijuana business after making findings based on each of the criteria set forth below:

1. Generally.

a. That the conditional use is consistent with the objectives of the Zoning Code and the purpose of the zoning district in which the subject site/property is located;

b. That granting the conditional use will not be detrimental to the public health, safety or welfare. The factors to be considered in making this finding shall include, but not be limited to an evaluation whether:

c. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, and aesthetic considerations;

d. The proposed use raises no concerns regarding property damage or nuisance arising from noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust or visibility;

e. The proposed use presents no hazard to persons or property from possible explosion, contamination, fire or flood; and

f. There will not be an impact on surrounding areas arising from an unusual volume or character of traffic.

g. The characteristics of the conditional use as proposed and as it may be conditioned are reasonably compatible with the types of uses permitted in the surrounding area.

h. All required public facilities have adequate capacity to serve the proposal.

2. Site Design Standards.

a. The application complies with all of the applicable provisions of the underlying zone, including, but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;

b. The applicant shall be required to upgrade any existing development that does not comply with the applicable zoning provisions in conformance with chapter 16.12 PMC (Non-Conforming Development);

c. The application complies with all of the design standards in the Zoning Code applicable to: (a) access and circulation; (b) landscaping, vegetation, street trees, fences and walls; (c) parking and loading; (d) public facilities; (e) surface water management; (f) critical areas and any other applicable standards.

d. Existing conditions of approval required as part of a prior land division or permit shall be met.

3. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to:

- a. Limiting the hours, days, place and/or manner of operation;
- b. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
- c. Requiring larger setback areas, lot area, and/or lot depth or width;
- d. Limiting the building or structure height, size or lot coverage, and/or location on the site;
- e. Designating the size, number, location and/or design of vehicle access points or parking areas;
- f. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways or trails to be improved;
- g. Requiring landscaping, screening, drainage, water quality features and/or improvement of parking and loading areas;
- h. Limiting the number, size, location, height and/or lighting of signs;
- i. Limiting or setting standards for the location, design and/or intensity of outdoor lighting;
- k. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
- l. Requiring and designating the size, height, location and/or materials for fences; and
- m. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands.

D. Denial. The Director may recommend conditioning or denial of the conditional use permit application based on RCW 43.21C.060 (SEPA).<sup>2</sup> In addition, the City may deny the conditional use permit if it determines that the proposed use is materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

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<sup>2</sup> In order to deny an application under SEPA, the City must find that: (1) the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under chapter 43.21C RCW; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact. RCW 43.21C.060.

E. Deadline for Final Decision. A conditional use permit application shall be approved, approved with conditions or denied within one hundred-twenty (120) days after the application has been determined complete, unless the applicant consents in writing to a longer processing time period.

F. Effect of Approval.

1. Applies to authorized use only. Issuance of a conditional use permit shall be deemed to authorize only the particular use for which it is issued.

2. Binding on subsequent owners. All conditions of approval shall be binding upon the applicant, their successors and assigns, shall run with the land; shall limit and control the issuance and validity of certificates of occupancy; and shall restrict and limit the construction, location, use and maintenance of all land and structures within the development.

G Expiration, Extensions and Permit Implementation.

1. A conditional use permit shall become null and void one year after the effective date, unless one of the following has occurred:

a. A building permit has issued and construction begun and diligently pursued;

b. An occupancy permit has issued and the approved use has been established;

c. An extension has been granted by the Planning Director. Such extension shall be for a maximum of \_\_\_ days, and no extension may be granted which would extend the validity of the permit more than 18 months beyond the effective date of the permit. No extension will be granted if it necessitates modification of any condition of approval; or

d. The decision on the Conditional Use Permit has established a different expiration date.

2. Development of the Conditional Use shall not be carried out until the applicant has secured all other permits and approvals required by the City, or any applicable regional, state and federal agencies.

3. Any Conditional Use that has been initiated and then discontinued may not be re-established or recommenced except pursuant to a new conditional use permit. The following will constitute conclusive evidence that the conditional use has been discontinued:

a. A new permit has been issued to change the use of the lot and the new use has been established; or

b. The lot has not been used for the purpose authorized by the conditional use permit for more than 24 consecutive months. Lots that are vacant, or that are used only for storage of materials and equipment, will not be considered as being used for the purpose authorized by the conditional use. The expiration or revocation of a business or other license necessary for the conditional use to operate will suffice as evidence that the lot is not being used for as authorized by the conditional use permit.

**20.78.006 Signs and Advertising.<sup>3</sup>**

A. All signage and advertising for a recreational marijuana processor or producer shall comply with the applicable provisions of this Code, the Sign Code, Zoning Code and WAC 314-55-155 (and all applicable rules and regulations promulgated thereunder).

B. Violations of this Section relating to the Sign Code or Zoning Code shall result in a      fine. The City may enforce this section pursuant to chapter 16.14 of the Municipal Code. For violations of WAC 314-55-155 and 314-55-525, the City may report the violation to the State Liquor Control Board.

**20.78.007. Security Requirements.<sup>4</sup>** Security measures at all licensed premises shall comply with the requirements of WAC 314-55-083 (and all applicable rules and regulations promulgated thereunder).

**20.78.008. Report of Disturbances and Unlawful Activity.<sup>5</sup>**

A. All licensees and any agent, manager or employee thereof shall immediately report to the City Police Department any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed and permitted premises, including, but not limited to, any unlawful resale of marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.

B. Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches with each letter to be a minimum of one-half (1/2) inch in height, which shall read as follows:

WARNING:  
The City of Pacific Police Department must be notified of all  
disorderly acts, conduct or disturbances and  
all unlawful activities which occur on or within the premises  
of this licensed establishment.

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<sup>3</sup> This has been duplicated from the business license sample ordinance because not all cities and towns may decide to adopt a business license ordinance. If your city decides to use both, you may want to just cross reference the requirements, rather than duplicate the requirements in each chapter.

<sup>4</sup> See, footnote No. 1 above.

<sup>5</sup> See, footnote No. 1 above.

C. It shall not be a defense to a prosecution of a code enforcement action under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed.

D. Failure to comply with the requirements of this Section shall be considered by the City in any action relating to the issuance or revocation of a permit.

**20.78.009. Visibility of Activities; Control of Emissions.<sup>6</sup>**

A. All activities of the recreational marijuana business, including, but not limited to, displaying, selling and storage, shall be conducted out of the public view.

B. No recreational marijuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the recreational marijuana business must be in effect at all times. In the event that any odors, dust, fluids or other substances exit a recreational marijuana business, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for the immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

**20.78.010. No City Liability – Indemnification.**

A. By accepting a permit issued pursuant to this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations.

B. By accepting a permit issued pursuant to this Chapter, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, volunteers and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the recreational marijuana business that is the subject of the license.

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<sup>6</sup> See, footnote No. 1 above.

Section 3. Adoption by Reference. The City hereby adopts WAC 314-55-010 through WAC 314-55-540 by reference, as well as RCW 69.50.101. Pursuant to RCW 35A.12.140 (for code cities), a copy of these rules and the statute adopted by reference has been on file in the office of the city clerk for use and examination by the public. A copy of these rules and statutes has also been on file while this ordinance has been under consideration by the council and after adoption.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Effective Date. This ordinance shall be effective five days after publication of an approved summary, which shall consist of the title.

PASSED by the City Council of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR LEANNE GUIER

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
AMY STEVENSON-NESS, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_  
CAROL A. MORRIS, City Attorney

PUBLISHED:  
EFFECTIVE DATE:

## Recreational and Medical Marijuana Ordinances

### Summary

Ordinance	Conditionally allows producers (CUP) LI zone	Conditionally allows Processors (CUP) LI zone	Conditionally allows Retail Sales (CUP) C zone	Allows Medical Marijuana Dispensaries	Allows Medical Marijuana Collective Gardens
<b>Ord. 2014-1876</b> ( <i>Conditionally allows producers &amp; processors in LI zone and recreational sales in C zone.</i> )	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<i>Does not address medical marijuana</i>	<i>Does not address medical marijuana</i>
<b>Ord. 2014-1872</b> ( <i>Prohibits medical marijuana dispensaries and collective gardens</i> )	<i>Does not address recreational sales</i>	<i>Does not address recreational sales</i>	<i>Does not address recreational sales</i>	No	No
<b>Ord. 2014-1877</b> ( <i>Adopts Business License procedures</i> )	No	No	No	No	No
<b>Ord. 2014-1878</b> ( <i>Prohibits medical marijuana dispensaries &amp; collective gardens &amp; recreational marijuana sale, producers &amp; processors</i> )	No	No	No	No	No
<b>Ord 2015-1888</b> ( <i>Prohibits recreational marijuana sales. Conditionally allows producers &amp; processors in LI zone</i> )	<b>Yes</b>	<b>Yes</b>	No	<i>Does not address medical marijuana</i>	<i>Does not address medical marijuana</i>
<b>Ord. 2015-1889</b> ( <i>Prohibits marijuana producers &amp; processors. Conditionally allows recreational sales in C zone</i> )	No	No	<b>Yes</b>	<i>Does not address medical marijuana</i>	<i>Does not address medical marijuana</i>
<b>Ord. 2015-xxxx</b> ( <i>Extend Interim zoning regulations prohibiting medical and recreational sales</i> )	No	No	No	No	No

## Recreational and Medical Marijuana Ordinances

### Council Actions

Ordinance	Planning Commission Rec.	Council Action	CC Public Hearing Required	Staff Recommendation
<b>Ord. 2014-1876</b> ( <i>Conditionally allows producers &amp; processors in LI zone and recreational sales in C zone.</i> )	<i>Adopt Ord. 2014-1876</i>	<b><i>Adopt PC Rec.</i></b>	<b>No</b>	If the Council should approve recreational marijuana, it should only be allowed conditionally (Conditional Use Permit (CUP)) in specific zones. The CUP process requires a public hearing and allows review and approval on a case by case basis.
		Does not adopt PC Rec & adopts different Ord.	<b>Yes</b>	
<b>Ord. 2014-1872</b> ( <i>Prohibits medical marijuana dispensaries and collective gardens</i> )	<b><i>Do Not adopt Ord. 2014-1872</i></b>	<b><i>Adopt PC Rec.</i></b>	<b>No</b>	Recommend a ban on all medical marijuana uses. The City does not have the funding to provide the enforcement of regulatory controls regarding medical marijuana operations.
		Does not adopt PC Rec. and adopts Ord.	<b>Yes</b>	
<b>Ord. 2014-1877</b> ( <i>Adopts Business License procedures</i> )	<i>Adopt Ord. 2014-1877</i>		<b>No</b>	Adopt ordinance. Provides procedures to license marijuana operations.
<b>Ord. 2014-1878</b> ( <i>Prohibits medical marijuana dispensaries &amp; collective gardens &amp; recreational marijuana sale, producers &amp; processors</i> )	No Rec. provided.	Adopt Ord.	<b>Yes</b>	Prohibits all marijuana uses. If Council conditionally allows recreational marijuana, do not adopt.
<b>Ord 2015-1888</b> ( <i>Prohibits recreational marijuana sales. Conditionally allows producers &amp; processors in LI zone</i> )	Not Reviewed by PC	Adopt Proposed Ord.	<b>Yes</b>	Alternative to Ord. 2014-1876. Council would need to justify allowing producers & processors and not allowing recreational sales.
<b>Ord. 2015-1889</b> ( <i>Prohibits marijuana producers &amp; processors. Conditionally allows recreational sales in C zone</i> )	Not Reviewed by PC	Adopt Proposed Ord.	<b>Yes</b>	Alternative to Ord. 2014-1876. Council would need to justify allowing recreational sales and not allowing producers and processors.
<b>Ord. 2015-xxxx</b> ( <i>Extend Interim zoning regulations prohibiting medical and recreational sales</i> )	Not Reviewed by PC	Adopt Extension of Interim Zoning Regulations	<b>Yes</b>	Council will need to provide findings, facts, and conclusions to justify the extension of the interim zoning standards.



Agenda Bill No. 15-002

**TO:** Mayor Guier and City Council Members  
**FROM:** Richard Gould, City Administrator  
**MEETING DATE:** January 5, 2015  
**SUBJECT:** Waste Management Contract Review

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**ATTACHMENTS:**

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**Previous Council Review Date:**

**Summary:** In order for our city attorney to be able to review the proposed contract with Waste Management, Council must authorize the review.

**Recommended Action:** By consensus, forward the contract with Waste Management to Carol Morris, City Attorney, for review.

**Motion for Consideration:**

**Budget Impact:**

**Alternatives:**



Agenda Bill No. 15-003

**TO:** Mayor Guier and City Council Members  
**FROM:** John Calkins  
**MEETING DATE:** Monday December 15, 2014  
**SUBJECT:** Emergency Management Preparedness Grant (EMPG)

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**ATTACHMENTS:**

- Resolution No. 2015-223
- 2015 Emergency Management Preparedness Grant Agreement

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**Previous Council Review Date:** None

**Summary:** The Police Department in coordination with the Department of Emergency Management has derived an approved plan with the Department of Homeland Security for the Emergency Management Preparedness Grant.

**Recommendation/Action:** Approve allocation of EMPG funding to support on-going Emergency Management Preparedness efforts within the City of Pacific.

**Motion for Consideration:** A motion to approve Fiscal Year 2015 EMPG Project as Outlined and to accept the Grant Funding in the amount of \$14,673.00

**Budget Impact:** There is a 50% matching fund requirement. In the past four years, we have covered all matching funds with Emergency Management duties. The matching funds for the EMPG are derived from Emergency Management Training Hours. As many of the staff are in need of ICS (Incident Command System) training. The overall salary costs associated with training are utilized to reflect the matching component of this grant. Also as the City is in review of its CEMP (Comprehensive Emergency Management Plan) the hours dedicated to this are also used to offset the matching requirement.

**Alternatives:** None, this is also the last year of EMPG funding as the Federal Funds have depleted.

**City of Pacific  
Washington**

**RESOLUTION NO. 2015-223**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC,  
WASHINGTON AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH  
DEPARTMENT OF EMERGENCY MANAGEMENT.**

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**WHEREAS**, the City of Pacific Police Department coordinates closely with the Department of Emergency Management, and

**WHEREAS**, the City of Pacific is eligible for Federal Funding under the Emergency Management Preparedness Grant (EMPG) and

**WHEREAS**, the needs of the City for preparedness and continuity of services is vital to the citizens that are served, and

**WHEREAS**, an approved EMPG Plan has been approved by the Department of Homeland Security to allow allocation of the funding to that of the City of Pacific.

**THEREFOR, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC,  
WASHINGTON**

**Section 1.** The Pacific City Council hereby authorizes the Mayor to sign and enter into the 2015 contract with the Department of Emergency Management, attached as Exhibit A.

**Section 2.** This Resolution shall take effect and be in full force upon passage and signatures heron.

**PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE  
15<sup>TH</sup> DAY OF DECEMBER, 2014.**

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**Leanne Guier, Mayor**

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**Amy Stevenson Ness, City Clerk**

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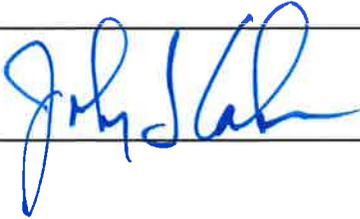
**Carol Morris, City Attorney**

# SIGNATURE AUTHORIZATION FORM

WASHINGTON STATE MILITARY DEPARTMENT  
Camp Murray, Washington 98430-5122

*Please read instructions on reverse side before completing this form.*

NAME OF ORGANIZATION CITY OF PACIFIC POLICE DEPARTMENT	DATE SUBMITTED 5 NOVEMBER 2014
PROJECT DESCRIPTION SECURITY CAMERA INSTALLATION	CONTRACT NUMBER E15-165

1. AUTHORIZING AUTHORITY		
SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE
	LEANNE GUIER	MAYOR, 2016
	JOHN T. CALKINS	CHIEF OF POLICE

2. AUTHORIZED TO SIGN CONTRACTS/CONTRACT AMENDMENTS		
SIGNATURE	PRINT OR TYPE NAME	TITLE
	JOHN T. CALKINS	CHIEF OF POLICE
	STEPHANIE SHOOK	PD SPECIALIST

3. AUTHORIZED TO SIGN REQUESTS FOR REIMBURSEMENT		
SIGNATURE	PRINT OR TYPE NAME	TITLE
	STEPHANIE SHOOK	PD SPECIALIST
	RICHARD GOULD	FINANCE DIRECTOR

## INSTRUCTIONS FOR SIGNATURE AUTHORIZATION FORM

This form identifies the persons who have the authority to sign contracts, amendments, and requests for reimbursement. It is required for the management of your contract with the Military Department (MD). Please complete all sections. One copy with original signatures is to be sent to MD with the signed contract, and the other should be kept with your copy of the contract.

When a request for reimbursement is received, the signature is checked to verify that it matches the signature on file. **The payment can be delayed if the request is presented without the proper signature.** It is important that the signatures in MD's files are current. Changes in staffing or responsibilities will require a new signature authorization form.

1. **Authorizing Authority.** Generally, the person(s) signing in this box heads the governing body of the organization, such as the board chair or mayor. In some cases, the chief executive officer may have been delegated this authority.
2. **Authorized to Sign Contracts/Contract Amendments.** The person(s) with this authority should sign in this space. Usually, it is the county commissioner, mayor, executive director, city clerk, etc.
3. **Authorized to Sign Requests for Reimbursement.** Often the executive director, city clerk, treasurer, or administrative assistant have this authority. It is advisable to have more than one person authorized to sign reimbursement requests. **This will help prevent delays in processing a request if one person is temporarily unavailable.**

If you have any questions regarding this form or to request new forms, please call your MD Program Manager.

# OMB Circular A-133 Audit Certification Form

## Audits of States, Local Governments, and Non-Profit Organizations

Contact Information	
Subrecipient (Sub-Grantee) Name (Agency, Local Government, or Organization): <b>CITY OF PACIFIC POLICE DEPARTMENT</b>	
Authorized Chief Financial Officer (Central Accounting Office): <b>RICHARD GOULD, FINANCE DIRECTOR</b>	
Address: <b>100 3RD AVE SE, PACIFIC, WA 98047</b>	
Email: <b>RGOULD@CI.PACIFIC.WA.US</b>	Phone #: <b>253-929-1117</b>

**Purpose:** As a pass-through agency of federal grant funds, the Washington Military Department/Emergency Management Division (WMD/EMD) is required by Office of Management and Budget (OMB) Circular A-133 to monitor activities of subrecipients to ensure federal awards are used for authorized purposes and ensure that subrecipients expending \$500,000 or more in federal awards during their fiscal year have met the OMB Circular A-133 Audit Requirements. Your entity is a subrecipient subject to such monitoring by MIL/EMD because it is a non-federal entity that expends federal grant funds received from MIL/EMD as a pass-through entity to carry out a federal program. OMB Circular A-133 can be found at [http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf), and it should be consulted when completing this form.

**Directions:** As required by OMB Circular A-133, non-federal entities that expend \$500,000 in federal awards in a fiscal year shall have a single or program-specific audit conducted for that year. If your entity *is not* subject to A-133 requirements, you must complete Section A of this Form. If your entity *is* required to complete an A-133 Audit, you must complete Section B of this form. When completed, you must sign, date, and return this form with your grant agreement contract and every fiscal year thereafter until the grant agreement contract is closed. Failure to return this completed Audit Certification Form may result in delay of grant agreement processing, withholding of federal awards or disallowance of costs, and suspension or termination of federal awards.

**SECTION A: Entities NOT subject to the audit requirements of OMB Circular A-133**

Our entity is not subject to the requirements of OMB Circular A-133 because (check all that apply):

- We did not expend \$500,000 or more of *total* federal awards during the fiscal year.
- We are a for-profit agency.
- We are exempt for other reasons (describe):

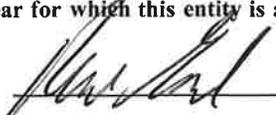
However, by signing below, I agree that we are still subject to the audit requirements, laws and regulations governing the program(s) in which we participate, that we are required to maintain records of federal funding and to provide access to such records by federal and state agencies and their designees, and that WMD/EMD may request and be provided access to additional information and/or documentation to ensure proper stewardship of federal funds.

**SECTION B: Entities that ARE subject to the requirements of OMB Circular A-133**

(Complete the information below and check the appropriate box)

- We completed our last A-133 Audit on [enter date]\_\_\_\_\_ for Fiscal Year ending [enter date]\_\_\_\_\_. There were no findings related to federal awards from WMD/EMD. No follow-up action is required by WMD/EMD as the pass-through entity.  
**A complete copy of the audit report, which includes exceptions, corrective action plan and management response, is either provided electronically to [contracts.office@mil.wa.gov](mailto:contracts.office@mil.wa.gov) or provide the state auditor report number: \_\_\_\_\_.**
- We completed our last A-133 Audit on [enter date]\_\_\_\_\_ for Fiscal Year ending [enter date]\_\_\_\_\_. There were findings related to federal awards.  
**A complete copy of the audit report, which includes exceptions, corrective action plan and management response, is either provided electronically to [contracts.office@mil.wa.gov](mailto:contracts.office@mil.wa.gov) or provide the state auditor report number: \_\_\_\_\_.**
- Our completed A-133 Audit will be available on [enter date]\_\_\_\_\_ for Fiscal Year ending [enter date]\_\_\_\_\_. We will forward a copy of the audit report to you at that time unless it will be available online at: [http://www.\\_\\_\\_\\_\\_](http://www._____).

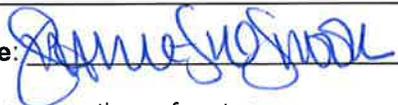
I hereby certify that I am an individual authorized by the above identified entity to complete this form. Further, I certify that the above information is true and correct and all relevant material findings contained in audit report/statement have been disclosed. Additionally, I understand this Form is to be submitted every fiscal year for which this entity is a subrecipient of federal grant funds from MIL/EMD until the grant agreement contract is closed.

Signature of Authorized Chief Financial Officer:  Date: 12-15-14

Print Name & Title: RICHARD GOULD, FINANCE DIRECTOR

## WORKSHEET

<b>Subrecipient Agency:</b> CITY OF PACIFIC POLICE DEPARTMENT				
<b>Grant and Year:</b> 2014-2015			<b>Agreement Number:</b> E15-165	
<b>Completed by:</b>	STEPHANIE SHOOK	RECORDS SPECIALIST	253-929-1130	
	<i>Name</i>	<i>Title</i>	<i>Telephone</i>	
<b>Date Completed:</b> 5 NOVEMBER 2014				
<b>STEP 1</b>				
Is your grant agreement less than \$25,000?	YES <input checked="" type="checkbox"/>	STOP, no further analysis needed, GO to Step 6	NO <input type="checkbox"/>	GO to Step 2
<b>STEP 2</b>				
In your preceding fiscal year, did your organization receive 80% or more of its annual gross revenues from federal funding?	YES <input type="checkbox"/>	GO to STEP 3	NO <input type="checkbox"/>	STOP, no further analysis needed, GO to Step 6
<b>STEP 3</b>				
In your preceding fiscal year, did your organization receive \$25,000,000 or more in federal funding?	YES <input type="checkbox"/>	GO to STEP 4	NO <input type="checkbox"/>	STOP, no further analysis needed, GO to Step 6
<b>STEP 4</b>				
Does the public have access to information about the total compensation* of senior executives in your organization?	YES <input type="checkbox"/>	STOP, no further analysis needed, GO to step 6	NO <input type="checkbox"/>	GO to STEP 5
<b>STEP 5</b>				
Executive #1	Name:			
	Total Compensation amount: \$			
Executive #2	Name:			
	Total Compensation amount: \$			
Executive #3	Name:			
	Total Compensation amount: \$			
Executive #4	Name:			
	Total Compensation amount: \$			
Executive #5	Name:			
	Total Compensation amount: \$			
<b>STEP 6</b>				
If your organization does not meet these criteria, specifically identify below <b>each</b> criteria that is not met for your organization: <u>For Example: "Our organization received less than \$25,000."</u>				
OUR ORGANIZATION WILL BE RECIEVING LESS THAN \$25,000				

**Signature:**  \_\_\_\_\_

**Date:** 10NOV14 \_\_\_\_\_

\* Total compensation refers to:

- Salary and bonuses
- Awards of stock, stock options, and stock appreciation rights
- Other compensation including, but not limited to, severance and termination payments
- Life insurance value paid on behalf of the employee

Additional Resources:

<http://www.whitehouse.gov/omb/open>

<http://www.hrsa.gov/grants/ffata.html>

<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>

<http://www.grants.gov/>

**Washington State Military Department  
HOMELAND SECURITY GRANT AGREEMENT FACE SHEET**

1. Sub-grantee Name and Address: <b>City of Pacific Police Department 113 3rd Avenue SE Pacific, WA 98407-1395</b>		2. Grant Agreement Amount: <b>\$14,673</b>		3. Grant Agreement Number: <b>E15-165</b>	
4. Sub-grantee Contact, phone/email: <b>John Calkins , 253-929-1130 jcalkins@ci.pacific.wa.us</b>		5. Grant Agreement Start Date: <b>June 1, 2014</b>		6. Grant Agreement End Date: <b>August 31, 2015</b>	
7. Department Program Manager, phone/email: <b>Kristin Ramos, 253-512-7083 kristin.ramos@mil.wa.gov</b>		8. Data Universal Numbering System (DUNS): <b>022828735</b>		9. UBI # (state revenue): <b>179-000-203</b>	
10. Funding Authority: <b>Washington State Military Department (the "DEPARTMENT") and the U.S. Department of Homeland Security (DHS)</b>					
11. Funding Source Agreement #: <b>EMW-2014-EP-00033-S01</b>		12. Program Index # & OBJ/SUB-OJ <b>743PT NZ</b>		13. CFDA# & Title: <b>97.042 14EMPG</b>	
14. TIN: <b>91-6001483</b>					
15. Service Districts: (BY LEGISLATIVE DISTRICT): <b>30</b> (BY CONGRESSIONAL DISTRICT): <b>9</b>		16. Service Area by County(ies): <b>Pierce/King</b>		17. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____	
18. Agreement Classification <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Collaborative Research <input type="checkbox"/> A/E <input type="checkbox"/> Other _____			19. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency		
20. Sub-Grantee Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO			21. Sub-Grantee Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER		
22. PURPOSE: <b>Provide U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) Emergency Management Performance Grant (EMPG) funds to local jurisdictions and tribes with emergency management programs to sustain and enhance those programs as described in the Work Plan.</b>					
IN WITNESS WHEREOF, the Department and Sub-Grantee acknowledge and accept the terms of this Grant Agreement, including all referenced Exhibits and Attachments which are hereby incorporated in and made a part hereof, and have executed this Grant Agreement as of the date and year written below. This Grant Agreement Face Sheet; Special Terms & Conditions (Exhibit A); General Terms and Conditions (Exhibit B); Work Plan (Exhibit C); Milestone Timeline (Exhibit D); Budget (Exhibit E); and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Grant Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Grant Agreement shall be deemed to exist or to bind any of the parties hereto.					
In the event of an inconsistency in this Grant Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:					
<ol style="list-style-type: none"> <li>1. <b>Applicable Federal and State Statutes and Regulations</b></li> <li>2. <b>Work Plan</b></li> <li>3. <b>Special Terms and Conditions</b></li> <li>4. <b>General Terms and Conditions, and,</b></li> <li>5. <b>Other provisions of the grant agreement incorporated by reference.</b></li> </ol>					
WHEREAS, the parties hereto have executed this Grant Agreement on the day and year last specified below.					
FOR THE DEPARTMENT:			FOR THE APPLICANT:		
_____ Signature Richard A. Woodruff, Contracts Administrator Washington State Military Department		_____ Date	_____ Signature Richard Gould, City Manager/Finance Director		_____ Date
BOILERPLATE APPROVED AS TO FORM: Brian E. Buchholz (signature on file) 8-27-2014 Assistant Attorney General			APPROVED AS TO FORM (if applicable): _____ Applicant's Legal Review _____ Date		

Form 10/27/00 kdb

**SPECIAL TERMS AND CONDITIONS****ARTICLE I. KEY PERSONNEL**

The individuals listed below shall be considered key personnel for point of contact under this Grant Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUB-GRANTEE		MILITARY DEPARTMENT	
Name	<b>John Calkins</b>	Name	<b>Gary Stumph</b>
Title	<b>Chief of Police</b>	Title	<b>Program Coordinator</b>
E-Mail	<b>jcalkins@ci.pacific.wa.us</b>	E-Mail	<b>gary.stumph@mil.wa.gov</b>
Phone	<b>253-929-1130</b>	Phone	<b>253-512-7483</b>
Name	<b>Stephanie Shook</b>	Name	<b>Kristin Ramos</b>
Title	<b>Records Specialist</b>	Title	<b>Program Manager</b>
E-Mail	<b>sshook@ci.pacific.wa.us</b>	E-Mail	<b>kristin.ramos@mil.wa.gov</b>
Phone	<b>253-929-1130</b>	Phone	<b>253-512-7083</b>
Name		Name	<b>Dalton Gamboa</b>
Title		Title	<b>Program Assistant</b>
E-Mail		E-Mail	<b>Dalton.gamboa@mil.wa.gov</b>
Phone		Phone	<b>253-512-7044</b>

**ARTICLE II. ADMINISTRATIVE, FINANCIAL, AND PROGRAMMATIC REQUIREMENTS**

The Sub-grantee shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by FEMA applicable to the FY 2014 EMPG Program, including, but not limited to, all criteria, restrictions and requirements of the "Department of Homeland Security Funding Opportunity Announcement FY 2014 Emergency Management Performance Grant" document published by FEMA, the DHS Award Announcement Letter for Grant No. EMW-2014-EP-00033, and the federal regulations commonly applicable to DHS/FEMA grants, which are incorporated herein by reference.

The Sub-grantee acknowledges that since this Agreement involves federal funding, the period of performance described herein will likely begin prior to the availability of appropriated federal funds. The Sub-grantee agrees that it will not hold the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds.

The Sub-grantee agrees that it will not hold the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement or any type of payment if federal funds are not appropriated or in a particular amount.

**A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:**

The following requirements, which must be met prior to reimbursement, apply to all DHS/FEMA Preparedness Grants administered by the Department.

**1. REIMBURSEMENT & BUDGET REQUIREMENTS**

- a. This is a fixed price, reimbursement Grant Agreement. Within the total Agreement amount, travel, sub-contracts, salaries and wages, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

- b. Any travel or subsistence reimbursement allowed under the Agreement shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, but shall not exceed federal maximum rates set forth at <http://www.gsa.gov> without prior written approval by Department key personnel.
- c. Receipts and/or backup documentation for any approved budget line items that are authorized under this Agreement must be maintained by the Sub-grantee and be made available upon request by the Department, and local, state, or federal auditors.
- d. The Sub-grantee will submit reimbursement requests to the Department by submitting a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to [HLS.Reimbursements@mil.wa.gov](mailto:HLS.Reimbursements@mil.wa.gov) no later than the due dates listed within the Milestone Timeline (Exhibit D), but not more frequently than monthly.
- e. Any request for extension of a due date will be treated as a request for Amendment of the Agreement and must be submitted to the Department's Key Personnel sufficiently in advance of the due date to provide adequate time for Department review and consideration, and can be granted or denied within the Department's sole discretion.
- f. All work under this Agreement must end on or before the Agreement End Date, and the final reimbursement request must be submitted to the Department within 45 days after the Agreement End Date, except as otherwise authorized by written amendment of the Agreement unless written approval is issued from the Department as permitted by amendment.
- g. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Agreement Amount.
- h. No equipment or supply costs will be reimbursed until the related equipment/supplies have been received by the Sub-grantee and invoiced by the vendor.
- i. Requests for reimbursement of equipment purchases must include a copy of the vendor's invoice and packing slip or a statement signed and dated by the Sub-grantee's authorized representative that states "all items invoiced have been received in good working order, are operational, and have been inventoried according to contract and local procurement requirements".
- j. Failure to timely submit complete reports and reimbursement requests as required by this Agreement (including but not limited to those reports in the Milestone Timeline) will prohibit the Sub-grantee from being reimbursed until such complete reports and reimbursement requests are submitted and the Department has had reasonable time to conduct its review.
- k. Final reimbursement requests will not be approved for payment if the Sub-grantee is not current with all reporting requirements contained in this Agreement.

- i. Cumulative changes to budget categories in excess of 10% of the Agreement amount will not be reimbursed without prior written authorization from the Department. In no case shall the total budget amount exceed the Agreement amount. Budget categories are as specified or defined on the Budget Sheet Exhibit E of the Agreement. Any changes to budget categories other than in compliance with this paragraph will not be reimbursed.
- m. The Sub-grantee is to ensure that Federal funds received under this Agreement do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. The EMPG Program prohibits supplanting, and the Sub-grantee may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds.

## 2. REPORTING REQUIREMENTS

- a. The Sub-grantee shall submit with each reimbursement request a report describing completed Work Plan activities for which reimbursement is sought in the format provided by the Department.
- b. In conjunction with the next annual grant cycle application process, the Sub-grantee shall submit to the Department's Key Personnel a final report describing all completed activities under this Agreement and new activities for which grant funding will be sought in the upcoming grant cycle's Work Plan. If a Sub-grantee will not be applying for grant funding during the next annual grant cycle application process, the Sub-grantee will submit a final report with its final reimbursement request to the Department detailing progress on all activities listed in the Work Plan.
- c. In conjunction with the final report, the Sub-grantee shall submit a separate report detailing how the EMPG Exercise and Training requirements were met for all personnel funded in any part through any source of funding under this Agreement.
- d. The Sub-grantee shall also comply with the **Federal Funding Accountability and Transparency Act** (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the Department Attachment #1 attached to and made a part of this Agreement.
- e. The Sub-grantee shall participate in the State's annual capabilities assessment for the State Preparedness Report.

## 3. EQUIPMENT MANAGEMENT

All equipment purchased under this Agreement, by the Sub-grantee or a contractor, will be recorded and maintained in the Sub-grantee's equipment inventory system.

- a. Allowable equipment categories for the FY 2014 EMPG Program are listed on the web-based version of the Authorized Equipment List (AEL) located at the DHS Lessons Learned Information Sharing Responder Knowledge Base Home Page sponsored by FEMA at <http://www.ilis.dhs.gov/knowledgebase>. Reimbursement will only be provided for purchases of the following equipment: (1) equipment identified on the AEL as applicable to the EMPG program for which the Sub-grantee has received written approval from the Department Key

Personnel prior to purchase and, (2) equipment not identified on the AEL as allowable under the EMPG Program for which the Sub-grantee has received written approval from FEMA through the Department Key Personnel prior to purchase. Sub-grantees must contact the Department Key Personnel for assistance in seeking FEMA approval for purchase of equipment not on the AEL. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or FEMA adopted standards to be eligible for purchase using EMPG Program funds. No reimbursement will be provided unless the appropriate prior written approval has been provided.

- b. Upon successful completion of the terms of this Agreement, all equipment purchased through this Agreement will be owned by the Sub-grantee, or a recognized sub-recipient for which a contract, sub-Grant Agreement, or other means of legal transfer of ownership is in place.
- c. The Sub-grantee, or a recognized sub-recipient/sub-contractor, shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment including all questions of liability. The Sub-grantee shall develop appropriate maintenance schedules and procedures to ensure the equipment is well maintained and kept in good operating condition.
- d. The Sub-grantee shall maintain equipment records that include: a description of the property; the manufacturer's serial number, model number, or other identification number; the source of the equipment, including the Catalogue of Federal Domestic Assistance (CFDA) number; who holds the title; the acquisition date; the cost of the equipment and the percentage of Federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the property.
- e. Records for equipment shall be retained by the Sub-grantee for a period of six years **from the date of the disposition, replacement, or transfer**. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the Sub-grantee until all litigation, claims, or audit findings involving the records have been resolved.
- f. The Sub-grantee shall take a physical inventory of the equipment and reconcile the results with the property records **at least once every two years**. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Sub-grantee to determine the cause of the difference. The Sub-grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
- g. The Sub-grantee shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated and a report generated and sent to the Department.
- h. If the Sub-grantee is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return.
- i. When original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

- i. Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the Sub-grantee with no further obligation to the awarding agency.
- ii. Items of equipment with a current per-unit fair market value of more than \$5,000 may be retained or sold and the Sub-grantee shall compensate the Federal-sponsoring agency for its share.
- j. As a recipient of federal funds, the Sub-grantee must pass on equipment management requirements that meet or exceed the requirements outlined above for all sub-contractors, consultants, and sub-recipients who receive pass-through funding from this Agreement.
- k. The Sub-grantee must obtain and maintain all necessary certifications and licenses for the equipment. Sub-grantees are solely responsible for ensuring equipment eligibility.

**4. ENVIRONMENTAL AND HISTORICAL PRESERVATION**

The Sub-grantee shall ensure full compliance with FEMA's Environmental Planning and Historic Preservation (EHP) Program.

- a. Sub-grantees proposing projects that have the potential to impact the environment, **including but not limited to** construction of communication towers, modification or renovation of existing buildings, structures and facilities, or new construction including replacement of facilities, **must** participate in the FEMA EHP review process.
- b. The EHP review process involves the submission of a detailed project description that explains the goals and objectives of the proposed project along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- c. The Sub-grantee agrees that to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed before** funds are released to carry out the proposed project.

**5. PROCUREMENT**

The Sub-grantee shall comply with all procurement requirements of 44 CFR Part 13.36, Procurement and as specified in the General Terms and Conditions, Exhibit B, A.28. All sole source contracts expected to exceed \$100,000 must be submitted to the Department for review and approval prior to the Sub-grantee's award and execution of a contract. This requirement must be passed on to all of the Sub-grantee's sub-contractors, at which point the Sub-grantee will be responsible for reviewing and approving their sub-contractors' sole source justifications.

**6. SUB-GRANTEE MONITORING**

- a. The Department will monitor the activities of the Sub-grantee from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.
- b. To document compliance with OMB Circular A-133 requirements, the Sub-grantee shall complete and return to the Department Attachment #2 "OMB Circular A-133 Audit Certification Form" with the signed Agreement

and each fiscal year thereafter until the Agreement is closed, upon which the completed form is incorporated in and made a part of this Agreement.

- c. Monitoring activities may include, but are not limited to:
  - i. review of performance reports;
  - ii. monitoring and documenting the completion of Agreement deliverables;
  - iii. documentation of phone calls, meetings, e-mails and correspondence;
  - iv. review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement work plan, budget and federal requirements;
  - v. observation and documentation of Agreement related activities, such as exercises, training, funded events and equipment demonstrations;
  - vi. on-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The Sub-grantee is required to meet or exceed the monitoring activities, as outlined above, for all sub-contractors, consultants, and sub-recipients who receive pass-through funding from this Agreement.

## **7. NIMS COMPLIANCE**

- a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain and deliver the core capabilities needed to achieve a secure and resilient nation.
- b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive (PPD)-8, to guide activities within the public and private sector and describes the planning, organizing, equipping, training and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.
- c. The Sub-grantee agrees that in order to receive Federal Fiscal Year 2014 (FFY14) federal preparedness funding, to include EMPG, NIMS compliance requirements for 2014 must be met.

## **B. EMPG PROGRAM SPECIFIC REQUIREMENTS**

- 1. The Department receives EMPG Program funding from the DHS/FEMA, which is provided to assist state, local and tribal governments enhance and sustain all-hazards emergency management capabilities as authorized by Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §§ 5121 et seq.) and Section 662 of the Post Katrina Emergency Management Act (6 U.S.C. § 762).
- 2. The Sub-grantee shall comply with all applicable federal laws, regulations and guidance referenced in the "Department of Homeland Security Funding Opportunity Announcement FY 2014 Emergency Management Performance Grant" document published by FEMA, which can be found at <http://www.fema.gov/preparedness-non-disaster-grants> and are hereby incorporated in and made a part of this Agreement.
- 3. A portion of the FFY14 EMPG grant was identified by the state to be passed through to local jurisdictions and tribes with emergency management programs

to supplement their local/tribal operating budgets to help sustain and enhance emergency management capabilities under WAC 118-09.

4. The Sub-grantee shall use the EMPG funds authorized under this Agreement only to perform tasks as described in the Work Plan of the Sub-grantee's application for funding, as approved by the Department and incorporated into this Agreement. Funding may not be used to replace or supplant existing local or tribal government funding of emergency management programs.
5. The Sub-grantee shall provide a fifty percent match of **\$14,673** of non-federal origin. To meet matching requirements, the Sub-grantee cash matching contributions must be reasonable, allowable, allocable, and necessary under the grant program and must comply with all Federal requirements and regulations, including but not limited to 2 CFR Part 225, 2 CFR Part 215.23, and 44 CFR Part 13.24. An appropriate mechanism must be in place to capture, track, and document match.
6. Exercises that are implemented with EMPG Program funds under this Agreement must meet the requirements of the FFY14 EMPG Program. All personnel funded in any part through any source of funding under this Agreement shall participate in no less than three exercises in a 12-month period.
7. All personnel funded in any part through any source of funding under this Agreement shall complete the following training requirements and record proof of completion: NIMS Training IS 100, IS 200, IS 700, and IS 800 and the FEMA Professional Development Series IS 120, IS 230, IS 235, IS 240, IS 241, IS 242, and IS 244.

#### **C. DHS FFY14 EMPG TERMS AND CONDITIONS**

As a recipient of EMPG Program funding, the Sub-grantee shall comply with all applicable DHS terms and conditions of the FFY14 EMPG Award Letter documents for DHS Grant No. EMW-2014-EP-00033, which are incorporated herein by reference, including but not limited to the following:

1. *Administrative Requirements* – The administrative requirements that apply to DHS award recipients originate from two sources:
  - a. Office of Management and Budget (OMB) Circular A-102, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* (also known as the “A-102 Common Rule”). These A-102 requirements are also located within DHS regulations at Title 44, Code of Federal Regulations (CFR) Part 13.
  - b. *OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, relocated to 2 CFR Part 215.*
2. *Cost Principles* – The cost principles that apply to DHS award recipients originate from one of the following sources:
  - a. OMB Circular A-21, *Cost Principles for Educational Institutions*, relocated to 2 CFR Part 220.
  - b. OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, relocated to 2 CFR Part 225.
  - c. OMB Circular A-122, *Cost Principles for Non-Profit Organizations*, relocated to 2 CFR Part 230.
3. *Audit Requirements* – The audit requirements for State, Local and Tribal recipients of DHS awards originate from OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*.

4. *Acknowledgement of Federal Funding from DHS* -- The Sub-grantee must acknowledge its use of Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
5. *Activities Conducted Abroad* -- The Sub-grantee must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
6. *Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.)* – The Sub-grantee must comply with the Act, which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
7. *Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101-12213)* – The Sub-grantee must comply with the requirements of Titles I, II, and III of the Act, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.
8. *Best Practices for Collection and Use of Personally Identifiable Information (PII)* – If a Sub-grantee collects PII, it is required to have a publically-available privacy policy that describes what PII they collect, how they use the PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate. The *DHS Privacy Impact Assessments* is available as a resource on this requirement at: [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_guidance\\_june2010.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_guidance_june2010.pdf) and [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_template.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_template.pdf), respectively.
9. *Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), codified at 6 CFR Part 21 and 44 CFR Part 7* – The Sub-grantee must comply with the requirements of the Act, which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
10. *Civil Rights Act of 1968* – The Sub-grantee must comply with the Act, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 CFR Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (see 24 CFR § 100.201).
11. *Copyright* – The Sub-grantee must affix the applicable copyright notices of 17 U.S.C. § 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under Federal financial assistance awards, unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations).
12. *Debarment and Suspension* –The Sub-grantee must comply with Executive Orders 12549 and 12689, which provide protection against waste, fraud and

abuse by debarring or suspending those persons deemed irresponsible in their dealings with the Federal government.

13. *Drug-Free Workplace Regulations* – The Sub-grantee must comply with the *Drug-Free Workplace Act of 1988* (412 U.S.C. § 701 et seq.), which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. These regulations are codified at 2 CFR 3001.
14. *Duplication of Benefits* – The Sub-grantee must comply with 2 CFR Part 225, Appendix A, paragraph (C)(3)(c), which provides that any cost allocable to a particular Federal award or cost objective under the principles provided for in this authority may not be charged to other Federal awards to overcome fund deficiencies.
15. *False Claims Act and Program Fraud Civil Remedies* – The Sub-grantee must comply with the requirements of 31 U.S.C. § 3729 which set forth that no recipient of federal payments shall submit a false claim for payment. See also 38 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.
16. *Federal Debt Status* – The Sub-grantee is required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129 and form SF-424B, item number 17 for additional information and guidance.
17. *Fly America Act of 1974* – The Sub-grantee must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the *International Air Transportation Fair Competitive Practices Act of 1974* (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.
18. *Hotel and Motel Fire Safety Act of 1990* – In accordance with Section 6 of the Act (15 U.S.C. § 2225(a)), the Sub-grantee must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, 15 U.S.C. § 2225.
19. *Limited English Proficiency (Civil Rights Act of 1964, Title VI)* – The Sub-grantee must comply with the Act's prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. In order to facilitate compliance with Title VI, recipients are encouraged to consider the need for language services for LEP persons served or encountered in developing program budgets. Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, *DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language

services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <http://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

20. *Lobbying Prohibitions* – The Sub-grantee must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.
21. *Non-supplanting Requirement* – The Sub-grantee must ensure that Federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. Where federal statutes for a particular program prohibits supplanting, applicants or recipients may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds.
22. *SAFECOM* – If the Sub-grantee is awarded funds to provide emergency communication equipment and related activities, the Sub-grantee must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications ([http://www.safecomprogram.gov/ecg/2014.safecom\\_guidance\\_final.pdf](http://www.safecomprogram.gov/ecg/2014.safecom_guidance_final.pdf)).
23. *Title IX of the Education Amendments of 1975 (Equal Opportunity in Education Act)* – The Sub-grantee must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. These regulations are codified at 6 CFR Part 17 and 44 CFR Part 19.
24. *Trafficking Victims Protection Act of 2000* – The Sub-grantee must comply with the requirements of the government-wide award term which implements Section 106(g) of the *Trafficking Victims Protection Act (TVPA) of 2000*, as amended (22 U.S.C. § 7104), located at 2 CFR Part 175. This is implemented in accordance with OMB Interim Final Guidance, Federal Register, Volume 72, No. 218, November 13, 2007.

In accordance with the statutory requirement, the Agreement shall be terminated, without penalty, if the Sub-grantee:

- a. Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
  - b. Procures a commercial sex act during the period of time that the award is in effect; or
  - c. Uses forced labor in the performance of the award or subawards under the award.
25. *Rehabilitation Act of 1973* – The Sub-grantee must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or

activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment.

26. *USA Patriot Act of 2001* – The Sub-grantee must comply with the requirements of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c. Among other things, the USA PATRIOT Act prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose.
27. *Use of DHS Seal, Logo, and Flags* – The Sub-grantee must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
28. *DHS Specific Acknowledgements and Assurances* – The Sub-grantee acknowledges and agrees, and will require any sub-recipients, contractors, successors, transferees, and assignees to acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff:
  - a. Cooperate with any compliance review or complaint investigation conducted by DHS.
  - b. Give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance
  - c. Submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate back-up documentation to support the reports.
  - d. Comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed program guidance.
  - e. If, during the past three years, the Sub-grantee has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS awarding office and the DHS Office of Civil Rights and Civil Liberties.
  - f. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the Sub-grantee, or the Sub-grantee settles a case or matter alleging such discrimination, the Sub-grantee must forward a copy of the complaint and findings to the DHS Component and/or awarding office.

The United States has the right to seek judicial enforcement of these obligations.

**Washington State Military Department  
GENERAL TERMS AND CONDITIONS  
Department of Homeland Security (DHS)/  
Federal Emergency Management Agency (FEMA)  
Grants**

**A.1 DEFINITIONS**

As used throughout this Grant Agreement, the following terms will have the meaning set forth below:

- a. "**Department**" means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.
- b. "**Sub-grantee**" means the government or other eligible legal entity to which a sub-grant is awarded and which is accountable to the Grantee for the use of the funds provided under this Grant Agreement, and includes all employees of the Sub-grantee and any sub-contractor retained by the Sub-grantee as permitted under the terms of this Grant Agreement. The term "Sub-grantee" and "Contractor" may be used interchangeably in this Agreement.
- c. "**Sub-grantee Agent**" means the official representative and alternate designated or appointed by the Sub-grantee in writing and authorized to make decisions on behalf of the Sub-grantee.
- d. "**Grantee**" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is an entire legal entity even if only a particular component of the entity is designated in the grant award document. For the purpose of this Grant Agreement, the state of Washington is the Grantee. The Grantee and the DEPARTMENT are one and the same.
- e. "**Monitoring Activities**" means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, authorities and policies.
- f. "**Investment Justification**" means grant application investment justification submitted by the sub-grantee describing the project for which federal funding is sought and provided under this Grant Agreement. Such grant application investment justification is hereby incorporated into this Grant Agreement by reference.
- g. "**PL**" – is defined and used herein to mean the Public Law.
- h. "**CFR**" – is defined and used herein to mean the Code of Federal Regulations.
- i. "**OMB**" – is defined and used herein to mean the Office of Management and Budget.
- j. "**WAC**" – is defined and used herein to mean the Washington Administrative Code.
- k. "**RCW**" – is defined and used herein to mean the Revised Code of Washington.

**A.2 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)**

Non-federal entities, as subrecipients of a federal award, that expend **\$500,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the Office of Management and Budget (OMB) Circular A-133-Audits of States, Local Governments, and Non-Profit Organizations (amended June 27, 2003, effective for fiscal years ending after December 31, 2003, and further amended June 26, 2007). Non-federal entities that spend less than **\$500,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in Circular A-133. As defined in Circular A-133, the term "non-federal entity" means a State, local government, or non-profit organization, and the term "State" includes Indian tribes. Circular A-133 is available on the OMB Home Page at <http://www.omb.gov>.

SUB-GRANTEES that qualify as subrecipients required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised

Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement. The SUB-GRANTEE has the responsibility of notifying its auditor and requesting an audit in compliance with Circular A-133, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by Circular A-133.

The SUB-GRANTEE shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records.

The SUB-GRANTEE is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The SUB-GRANTEE must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the SUB-GRANTEE all disallowed costs resulting from the audit.

Once the single audit has been completed, the SUB-GRANTEE must send a full copy of the audit to the DEPARTMENT and a letter stating there were no findings, or if there were findings, the letter should provide a list of the findings. The SUB-GRANTEE must send the audit and the letter no later than nine (9) months after the end of the SUB-GRANTEE's fiscal year(s) to:

**Contracts Office  
Washington Military Department  
Finance Division, Building #1 TA-20  
Camp Murray, WA 98430-5032**

In addition to sending a copy of the audit, the SUB-GRANTEE must include a corrective action plan for any audit findings and a copy of the management letter if one was received.

If SUB-GRANTEE claims it is exempt from the audit requirements of Circular A-133, SUB-GRANTEE must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUB-GRANTEE fiscal year(s) to:

**Contracts Office  
Washington Military Department  
Finance Division, Building #1 TA-20  
Camp Murray, WA 98430-5032**

The DEPARTMENT retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The SUB-GRANTEE shall include the above audit requirements in any sub-contracts.

Conducting a single or program-specific audit in compliance with Circular A-133 is a material requirement of this Grant Agreement. In the absence of a valid claim of exemption from the audit requirements of Circular A-133, the SUB-GRANTEES failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with Circular A-133; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.3 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. SUB-GRANTEE shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.4 AMENDMENTS AND MODIFICATIONS

The SUB-GRANTEE or the DEPARTMENT may request, in writing, an amendment or modification of this Grant Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the DEPARTMENT and the SUB-GRANTEE. No other understandings or agreements, written or oral, shall be binding on the parties.

A.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The SUB-GRANTEE must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.6 ASSURANCES

DEPARTMENT and SUB-GRANTEE agree that all activity pursuant to this Grant Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Grant Agreement, the SUB-GRANTEE certifies that the SUB-GRANTEE is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Grant Agreement by any federal department or agency.

If requested by the DEPARTMENT, the SUB-GRANTEE shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the SUB-GRANTEE for this Grant Agreement shall be incorporated into this Grant Agreement by reference.

Further, the SUB-GRANTEE agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The SUB-GRANTEE certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUB-GRANTEE may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<http://www.sam.gov>) maintained by the federal government. The SUB-GRANTEE also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/>). The SUB-GRANTEE also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' Debarred Vendor List (<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx>).

**A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING**

As required by 10 CFR Part 601, the Sub-grantee hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Sub-grantee to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Grant Agreement, grant, loan, or cooperative agreement, the Sub-grantee will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Sub-grantee will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

**A.9 CONFLICT OF INTEREST**

No officer or employee of the DEPARTMENT; no member, officer, or employee of the SUB-GRANTEE or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the SUB-GRANTEE who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Grant Agreement.

The SUB-GRANTEE shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

**A.10 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES**

The SUB-GRANTEE and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of the SUB-GRANTEE's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the DEPARTMENT may rescind, cancel, or terminate the Grant Agreement in whole or in part in its sole discretion. The SUB-GRANTEE is responsible for all costs or liability arising from its failure to comply with applicable law, regulation, executive order, OMB Circular or policy.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the SUB-GRANTEE's responsibilities with respect to services provided under this Grant Agreement is prohibited except by prior written consent of the DEPARTMENT or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the Department, a representative appointed by the Contractor and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.13 LEGAL RELATIONS

It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Grant Agreement.

To the extent allowed by law, the SUB-GRANTEE, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the SUB-GRANTEE, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Grant Agreement.

To the extent allowed by law, the SUB-GRANTEE further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the SUB-GRANTEE, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the SUB-GRANTEE, or SUB-GRANTEE's agents or employees.

Insofar as the funding source, the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act.

A.14 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the DEPARTMENT's Authorized Signature and the Authorized Signature of the assigned SUB-GRANTEE Agent or Alternate for the SUB-GRANTEE Agent, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or

condition of this Grant Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives.

Further, only the Authorized Signature representative or Alternate for the SUB-GRANTEE shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

**A.15 LOSS OR REDUCTION OF FUNDING**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the DEPARTMENT may unilaterally reduce the scope of work and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the SUB-GRANTEE an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

**A.16 NONASSIGNABILITY**

Neither this Grant Agreement, nor any claim arising under this Grant Agreement, shall be transferred or assigned by the SUB-GRANTEE.

**A.17 NONDISCRIMINATION**

The SUB-GRANTEE shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Grant Agreement.

**A.18 NOTICES**

The SUB-GRANTEE shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

**A.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)**

The SUB-GRANTEE represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the SUB-GRANTEE's performance under this Grant Agreement. To the extent allowed by law, the SUB-GRANTEE further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the SUB-GRANTEE to so comply.

**A.20 OWNERSHIP OF PROJECT/CAPITAL FACILITIES**

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Grant Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUB-GRANTEE. The SUB-GRANTEE shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the state of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.21 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.22 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Grant Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Grant Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.23 PUBLICITY

The SUB-GRANTEE agrees to submit to the DEPARTMENT prior to issuance all advertising and publicity matters relating to this Grant Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The SUB-GRANTEE agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT. The SUB-GRANTEE may copyright original work it develops in the course of or under this Grant Agreement; however, pursuant to 44 CFR 13.34, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Grant Agreement shall include an acknowledgement of FEMA's financial support, by CFDA number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.24 RECAPTURE PROVISION

In the event the SUB-GRANTEE fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws and/or the provisions of the Grant Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Grant Agreement termination. Repayment by the SUB-GRANTEE of funds under this recapture provision shall occur within 30 days of demand. In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs thereof, including attorney fees.

A.25 RECORDS

- a. The SUB-GRANTEE agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the SUB-GRANTEE's contracts, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Grant Agreement (the "records").
- b. The SUB-GRANTEE's records related to this Grant Agreement and the projects funded may be inspected and audited by the DEPARTMENT or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the SUB-GRANTEE with the terms of this Grant Agreement and to determine the appropriate level of funding to be paid under the Grant Agreement.
- c. The records shall be made available by the SUB-GRANTEE for such inspection and audit, together with suitable space for such purpose, at any and all times during the SUB-GRANTEE's normal working day.

- d. The SUB-GRANTEE shall retain and allow access to all records related to this Grant Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Grant Agreement.

**A.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN**

While the DEPARTMENT undertakes to assist the SUB-GRANTEE with the project/statement of work/work plan (project) by providing grant funds pursuant to this Grant Agreement, the project itself remains the sole responsibility of the SUB-GRANTEE. The DEPARTMENT undertakes no responsibility to the SUB-GRANTEE, or to any third party, other than as is expressly set out in this Grant Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the SUB-GRANTEE, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the SUB-GRANTEE shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The SUB-GRANTEE shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the SUB-GRANTEE in connection with the project. The SUB-GRANTEE shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

**A.27 SEVERABILITY**

If any court of rightful jurisdiction holds any provision or condition under this Grant Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Grant Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Grant Agreement are declared severable.

**A.28 SUB-CONTRACTING**

The SUB-GRANTEE shall use a competitive procurement process in the award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or with OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the SUB-GRANTEE.

Sub-Grantees must comply with the following provisions regarding procurement, and all Sub-Grantee contracts with sub-contractors or sub-recipients must contain the following provisions regarding procurement, per 44 CFR Part 13.36(i):

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (All contracts more than the simplified acquisition threshold).
2. Termination for cause and for convenience by the grantee or sub-grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000).
3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter

- 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub-grantees).
4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub-grants for construction or repair).
  5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2,000 awarded by grantees and sub-grantees when required by Federal grant program legislation).
  6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and sub-grantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).
  7. Notice of awarding agency requirements and regulations pertaining to reporting.
  8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
  9. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
  10. Access by the grantee, the sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
  11. Retention of all required records for three years after grantees or sub-grantees make final payments and all other pending matters are closed.
  12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (All contracts, sub-contracts, and sub-grants of amounts in excess of \$100,000).
  13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

The DEPARTMENT reserves the right to review the Sub-Grantee procurement plans and documents, and require the Sub-Grantee to make changes to bring its plans and documents into compliance with the requirements of 44 CFR Part 13.36. The Sub-Grantee must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Sub-Grantee and DEPARTMENT to make a determination on eligibility of project costs.

All sub-contracting agreements entered into pursuant to this Grant Agreement shall incorporate this Grant Agreement by reference.

#### A.29 SUB-GRANTEE NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Grant Agreement. The SUB-GRANTEE, and/or employees or agents performing under this Grant Agreement are not employees or agents of the DEPARTMENT in any manner whatsoever. The SUB-GRANTEE will not be presented as nor claim to be an officer or

employee of the DEPARTMENT or of the State of Washington by reason of this Grant Agreement, nor will the SUB-GRANTEE make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Grant Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the SUB-GRANTEE is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Grant Agreement.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Grant Agreement, the SUB-GRANTEE shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the SUB-GRANTEE or its staff required by statute or regulation that are applicable to Grant Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Grant Agreement, the SUB-GRANTEE may terminate this Grant Agreement by providing written notice of such termination to the DEPARTMENTS's Key Personnel identified in the Grant Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Grant Agreement, the DEPARTMENT, in its sole discretion and in the best interests of the State of Washington, may terminate this Grant Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing to the SUB-GRANTEE. Upon notice of termination for convenience, the DEPARTMENT reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the SUB-GRANTEE from incurring additional obligations of funds. In the event of termination, the SUB-GRANTEE shall be liable for all damages as authorized by law. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR CAUSE

In the event the DEPARTMENT, in its sole discretion, determines the SUB-GRANTEE has failed to fulfill in a timely and proper manner its obligations under this Grant Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the SUB-GRANTEE unable to perform any aspect of the Grant Agreement, or has violated any of the covenants, agreements or stipulations of this Grant Agreement, the DEPARTMENT has the right to immediately suspend or terminate this Grant Agreement in whole or in part.

The DEPARTMENT may notify the SUB-GRANTEE in writing of the need to take corrective action and provide a period of time in which to cure. The DEPARTMENT is not required to allow the SUBGRANTEE an opportunity to cure if it is not feasible as determined solely within the DEPARTMENT's discretion. Any time allowed for cure shall not diminish or eliminate the SUB-GRANTEE's liability for damages or otherwise affect any other remedies available to the DEPARTMENT. If the DEPARTMENT allows the SUB-GRANTEE an opportunity to cure, the DEPARTMENT shall notify the SUB-GRANTEE in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the DEPARTMENT, or if such corrective action is deemed by the DEPARTMENT to be insufficient, the Grant Agreement may be terminated in whole or in part.

The DEPARTMENT reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the SUB-GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the SUB-GRANTEE, if allowed, or pending a decision by the DEPARTMENT to terminate the Grant Agreement in whole or in part.

In the event of termination, the SUB-GRANTEE shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Grant Agreement and the replacement or cover Grant Agreement and all administrative costs directly related to the replacement Grant Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the SUB-GRANTEE: (1) was not in default or material breach, or (2) failure to perform was outside of the SUB-GRANTEE's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

#### A.33 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the DEPARTMENT terminates this Grant Agreement, the SUB-GRANTEE shall follow any procedures specified in the termination notice. Upon termination of this Grant Agreement and in addition to any other rights provided in this Grant Agreement, the DEPARTMENT may require the SUB-GRANTEE to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Grant Agreement as has been terminated.

If the termination is for convenience, the DEPARTMENT shall pay to the SUB-GRANTEE the agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the DEPARTMENT prior to the effective date of Grant Agreement termination, and the amount agreed upon by the SUB-GRANTEE and the DEPARTMENT for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the DEPARTMENT, (iii) other work, services and/or equipment or supplies which are accepted by the DEPARTMENT, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Grant Agreement. If the termination is for cause, the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. The DEPARTMENT shall have no other obligation to the SUB-GRANTEE for termination. The DEPARTMENT may withhold from any amounts due the SUB-GRANTEE such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this Grant Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT in writing, the SUB-GRANTEE shall:

- a. Stop work under the Grant Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Grant Agreement except as may be necessary for completion of such portion of the work under the Grant Agreement as is not terminated;
- c. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the SUB-GRANTEE under the orders and sub-contracts so terminated, in which case the DEPARTMENT

- has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the DEPARTMENT to the extent the DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
  - e. Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the Grant Agreement had been completed, would have been required to be furnished to the DEPARTMENT;
  - f. Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT in compliance with all contractual requirements; and
  - g. Take such action as may be necessary, or as the DEPARTMENT may require, for the protection and preservation of the property related to this Grant Agreement which is in the possession of the SUB-GRANTEE and in which the DEPARTMENT has or may acquire an interest.

A.34 TRAVEL AND SUBSISTENCE REIMBURSEMENT

Unless the Grant Agreement specifically provides for different rates, any travel or subsistence reimbursement allowed under the Agreement shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended. The SUB-GRANTEE may be required to provide to the Department copies of receipts for any travel related expenses other than meals and mileage (example: parking) that are authorized under this Agreement.

A.35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The SUB-GRANTEE is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Grant Agreement. The SUB-GRANTEE may set utilization standards, based upon local conditions or may utilize the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.36 WAIVERS

No conditions or provisions of this Grant Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Grant Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Grant Agreement.

A.37 VENUE

This Grant Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Grant Agreement shall be the Superior Court of Thurston County, Washington. The SUB-GRANTEE, by execution of this Grant Agreement acknowledges the jurisdiction of the courts of the State of Washington.

### 14EMPG WORK PLAN

**Emergency Management Organization: City of Pacific Police Department**

The purpose of EMPG is to assist with the enhancement, sustainment and improvement of state, local, and tribal emergency management programs. Activities conducted using EMPG funding should relate directly to the five elements of emergency management: prevention; protection; response; recovery, and mitigation. Washington State does not require a specific number of activities to receive EMPG funding. However, there are required capabilities that must be conducted in order to remain eligible for EMPG funding, including but not limited to the ability to communicate and warn, educate the public, train and exercise, plan and be NIMS compliant. The Work Plan delineates the EMO's emergency management program planning and priority focus for this grant cycle (to include 14EMPG grant and local funds).

<b>Program Area #1</b>		Security Camera Installation	
Senior and Community Centers may be used as warming shelters or temporary overnight shelter during incidents. Cameras are required for monitoring of entry points and doors for security.			
<b>Emergency Management Function:</b>		Facilities	
<b># Activity</b>			<b>Sustainment or Enhancement</b>
<b>ACTIVITIES</b>	1	Camera Installation	Enhancement
	<i>Description:</i>	Following local approved procurement processes, purchase and install cameras in the Senior and Community Centers for when they are utilized as temporary overnight shelters to monitor entry points, following Environmental and Historical Preservation (EHP) requirements.	
<b>Program Area #2</b>		EOC Security	
The EOC is utilized by many staff members within the City. A secure storage locker for the EOC is required for officers to securely store their respective response equipment while working in the EOC.			
<b>Emergency Management Function:</b>		Prevention	
<b># Activity</b>			<b>Sustainment or Enhancement</b>
<b>ACTIVITIES</b>	1	Secure Storage	Enhancement
	<i>Description:</i>	Following local approved procurement processes, purchase and install approved secure storage in the EOC for staff to secure response equipment during emergency activations only, following Environmental and Historical Preservation (EHP) approval guidelines, per federal requirements.	
<b>Program Area #3</b>		Long-term food supplies	
Supplies the City had on hand for emergency preparedness were past expiration and discarded without replacement. During a recent activation there were no supplies available to sustain operations.			
<b>Emergency Management Function:</b>		Operational Planning	
<b># Activity</b>			<b>Sustainment or Enhancement</b>
<b>ACTIVITIES</b>	1	Long-term Food Storage	Sustainment
	<i>Description:</i>	Following local approved procurement processes, purchase long-term, shelf stable food products (Mt. House Foods 25 year shelf life) to enhance sustainment of long term activations	

**MILESTONE TIMELINE****FFY14 Emergency Management Performance Grant Program**

<b>MILESTONE</b>	<b>TASK</b>
June 1, 2014	Start of Grant Agreement performance period.
March 31, 2014	Submit reimbursement request
August 31, 2015	End of grant performance period.
October 15, 2015	Submit final reimbursement request, additional reports, and/or deliverables.

**Budget Sheet**

**FFY14 Emergency Management Performance Grant Program**

SOLUTION AREA	BUDGET CATEGORY	AMOUNT	NARRATIVE
<b>PLANNING</b>	Goods & Services	\$ 3,210	Longterm Food Storage
	Travel/Per Diem	\$ -	
	Indirect	\$ -	
	<i>Subtotal</i>	\$ 3,210	
<b>EQUIP</b>	Equipment	\$ 11,463	Cameras and Safe
	Indirect	\$ -	
	<i>Subtotal</i>	\$ 11,463	
<b>TOTAL Grant Agreement Contract</b>			
		<b>AMOUNT: \$ 14,673</b>	

- City of Pacific Police Department will provide a match of **\$14,673**, 50% of the total project cost (local/tribal budget plus EMPG award), of non-federal origin.
- Cumulative changes to budget categories in excess of 10% of the grant agreement award will not be reimbursed without prior written authorization from the Department.
- This award will not be used to supplant the local/tribal funds.
- The Department's Reimbursement Spreadsheet must accompany each reimbursement request submitted.
- The Sub-grantee agrees to make all records available to Department staff, upon request.

Funding Source: U.S. Department of Homeland Security - PI# 743PT – EMPG

**ADDITIONAL AGREEMENT PROVISIONS AND WORKSHEET**  
**For Compliance With The**  
**Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282) (FFATA)**

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website. Federal awards include grants, subgrants, loans, awards, cooperative agreements, and other forms of financial assistance as well as contracts, subcontracts, purchase orders, task orders, and delivery orders. The legislation does not require inclusion of individual transactions below \$25,000 or credit card transactions before October 1, 2008. However, if an award is initially below this amount yet later increased, the act is triggered. Due to this variability in compliance Subrecipients are **required** by the Military Department to be familiar with the FFATA requirements and complete this Worksheet for *each contract* for the State's submission in to the FFATA portal.

**ADDITIONAL PROVISIONS**

- A. This grant agreement contract (subaward) is supported by federal funds, requiring compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act) and Office of Management and Budget Guidance (OMB). Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note). By entering into this grant agreement contract, the sub-grantee agrees to provide all applicable reporting information to the Washington Military Department (WMD) required by FFATA and OMB Guidance.
- B. The FFATA requires the OMB to establish a publicly available online database (USASpending.gov) containing information about entities that are awarded Federal grants, loans, and contracts. As required by FFATA and OMB Guidance, certain information on the first-tier subawards related to Federal contracts and grants, and the executive compensation of awardees, must be made publicly available.
- C. For new Federal grants beginning October 1, 2010, if the initial subaward is equal to or greater than \$25,000, reporting of the subaward and executive compensation information is required. If the initial subaward is below \$25,000 but subsequent grant modifications result in a total subaward equal to or over \$25,000, the subaward will be subject to the reporting requirements as of the date the subaward exceeds \$25,000. If the initial subaward equals or exceeds \$25,000 but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the subaward continues to be subject to the reporting requirements of the Transparency Act and OMB Guidance.
- D. As a Federal grant subawardee under this grant agreement contract, your organization is required by FFATA, OMB Guidance and this grant agreement contract to provide the WMD, as the prime grant awardee, all information required for FFATA compliant reporting by WMD. This includes all applicable subawardee entity information required by FFATA and OMB Guidance, subawardee DUNS number, and relevant executive compensation data, as applicable.
  1. Data about your organization will be provided to USASpending.gov by the WMD. System for Award Management (SAM) is a government wide registration system for organizations that do business with the Federal Government. SAM stores information about awardees including financial account information for payment purposes and a link to D&B for maintaining current DUNS information, <http://www.sam.gov>. WMD requires SAM registration and annual renewal by your organization to minimize unnecessary data entry and re-entry required by both WMD and your organization. It will also reduce the potential of inconsistent or inaccurate data entry.
  2. Your organization must have a Data Universal Numbering System (DUNS) number obtained from the firm Dun and Bradstreet (D&B) (<http://www.dnb.com>). A DUNS number provides a method to verify data about your organization. D&B is responsible for maintaining unique identifiers and organizational linkages on behalf of the Federal Government for organizations receiving Federal assistance.

- E. The WMD, as the prime awardee, is required by FFATA to report names and total compensation of the five (5) most highly compensated officers of your organization (as the subawardee) if:
1. Your organization (the subawardee), in the preceding fiscal year, received 80 percent or more of its annual gross revenues from Federal awards and \$25,000,000 or more in annual gross revenues from Federal awards; and
  2. The public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.

“Total compensation” for purposes of this requirement generally means the cash and non-cash value earned by the executive during the past fiscal year and includes salary and bonus; awards of stock, stock options and stock appreciation rights; and other compensation such as severance and termination payments, and value of life insurance paid on behalf of the employee, and as otherwise provided by FFATA and applicable OMB guidance.

- F. If (1) in the preceding fiscal year your organization received 80 percent or more of its annual gross revenues from Federal awards and \$25,000,000 or more in annual gross revenues from Federal awards, and (2) the public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986, insert the names and total compensation for the five most highly compensated officers of your organization in the table below.

## WORKSHEET

<b>Subrecipient Agency:</b>				
<b>Grant and Year:</b>		<b>Agreement Number:</b>		
<b>Completed by:</b>				
<i>Name</i>	<i>Title</i>	<i>Telephone</i>		
<b>Date Completed:</b>				
<b>STEP 1</b>				
Is your grant agreement less than \$25,000?	YES <input type="checkbox"/> ( ) ↓	STOP, no further analysis needed, GO to Step 6	NO <input type="checkbox"/> ( ) ↓	GO to Step 2
<b>STEP 2</b>				
In your preceding fiscal year, did your organization receive 80% or more of its annual gross revenues from federal funding?	YES <input type="checkbox"/> ( ) ↓	GO to STEP 3	NO <input type="checkbox"/> ( ) ↓	STOP, no further analysis needed, GO to Step 6
<b>STEP 3</b>				
In your preceding fiscal year, did your organization receive \$25,000,000 or more in federal funding?	YES <input type="checkbox"/> ( ) ↓	GO to STEP 4	NO <input type="checkbox"/> ( ) ↓	STOP, no further analysis needed, GO to Step 6
<b>STEP 4</b>				
Does the public have access to information about the total compensation* of senior executives in your organization?	YES <input type="checkbox"/> ( ) ↓	STOP, no further analysis needed, GO to step 6	NO <input type="checkbox"/> ( ) ↓	GO to STEP 5
<b>STEP 5</b>				
Executive #1	Name:			
	Total Compensation amount: \$			
Executive #2	Name:			
	Total Compensation amount: \$			
Executive #3	Name:			
	Total Compensation amount: \$			
Executive #4	Name:			
	Total Compensation amount: \$			
Executive #5	Name:			
	Total Compensation amount: \$			
<b>STEP 6</b>				
If your organization does not meet these criteria, specifically identify below <b>each</b> criteria that is not met for your organization: <u>For Example: "Our organization received less than \$25,000."</u>				

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\* Total compensation refers to:

- Salary and bonuses
- Awards of stock, stock options, and stock appreciation rights
- Other compensation including, but not limited to, severance and termination payments
- Life insurance value paid on behalf of the employee

Additional Resources:

<http://www.whitehouse.gov/omb/open>

<http://www.hrsa.gov/grants/ffata.html>

<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>

<http://www.grants.gov/>

## OMB Circular A-133 Audit Certification Form

### Audits of States, Local Governments, and Non-Profit Organizations

A. Contact Information	
Subrecipient (Sub-Grantee) Name (Agency, Local Government, or Organization):	
Authorized Chief Financial Officer (Central Accounting Office):	
Address:	
Email:	Phone #:

**Purpose:** As a pass-through agency of federal grant funds, the Washington Military Department/Emergency Management Division (WMD/EMD) is required by Office of Management and Budget (OMB) Circular A-133 to monitor activities of subrecipients to ensure federal awards are used for authorized purposes and ensure that subrecipients expending \$500,000 or more in federal awards during their fiscal year have met the OMB Circular A-133 Audit Requirements. Your entity is a subrecipient subject to such monitoring by MIL/EMD because it is a non-federal entity that expends federal grant funds received from MIL/EMD as a pass-through entity to carry out a federal program. OMB Circular A-133 can be found at [http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf), and it should be consulted when completing this form.

**Directions:** As required by OMB Circular A-133, non-federal entities that expend \$500,000 in federal awards in a fiscal year shall have a single or program-specific audit conducted for that year. If your entity **is not** subject to A-133 requirements, you must complete Section A of this Form. If your entity **is** required to complete an A-133 Audit, you must complete Section B of this form. When completed, you must sign, date, and return this form with your grant agreement contract and every fiscal year thereafter until the grant agreement contract is closed. Failure to return this completed Audit Certification Form may result in delay of grant agreement processing, withholding of federal awards or disallowance of costs, and suspension or termination of federal awards.

#### SECTION A: Entities NOT subject to the audit requirements of OMB Circular A-133

Our entity is not subject to the requirements of OMB Circular A-133 because (check all that apply):

- We did not expend \$500,000 or more of *total* federal awards during the fiscal year.
- We are a for-profit agency.
- We are exempt for other reasons (describe):

However, by signing below, I agree that we are still subject to the audit requirements, laws and regulations governing the program(s) in which we participate, that we are required to maintain records of federal funding and to provide access to such records by federal and state agencies and their designees, and that WMD/EMD may request and be provided access to additional information and/or documentation to ensure proper stewardship of federal funds.

#### SECTION B: Entities that ARE subject to the requirements of OMB Circular A-133

(Complete the information below and check the appropriate box)

- We completed our last A-133 Audit on [enter date]\_\_\_\_\_ for Fiscal Year ending [enter date]\_\_\_\_\_. There were no findings related to federal awards from WMD/EMD. No follow-up action is required by WMD/EMD as the pass-through entity.  
**A complete copy of the audit report, which includes exceptions, corrective action plan and management response, is either provided electronically to [contracts.office@mil.wa.gov](mailto:contracts.office@mil.wa.gov) or provide the state auditor report number: \_\_\_\_\_.**
- We completed our last A-133 Audit on [enter date]\_\_\_\_\_ for Fiscal Year ending [enter date]\_\_\_\_\_. There were findings related to federal awards.  
**A complete copy of the audit report, which includes exceptions, corrective action plan and management response, is either provided electronically to [contracts.office@mil.wa.gov](mailto:contracts.office@mil.wa.gov) or provide the state auditor report number: \_\_\_\_\_.**
- Our completed A-133 Audit will be available on \_\_\_\_\_ [enter date] for Fiscal Year ending \_\_\_\_\_ [enter date]. We will provide electronic copy of the audit report to [contracts.office@mil.wa.gov](mailto:contracts.office@mil.wa.gov) at that time or provide the state auditor report number: \_\_\_\_\_.

I hereby certify that I am an individual authorized by the above identified entity to complete this form. Further, I certify that the above information is true and correct and all relevant material findings contained in audit report/statement have been disclosed. Additionally, I understand this Form is to be submitted every fiscal year for which this entity is a subrecipient of federal grant funds from MIL/EMD until the grant agreement contract is closed.

Signature of Authorized Chief Financial Officer: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

**Jerold McGlothlin**

**From:** travis@257protection.com  
**Sent:** Friday, November 07, 2014 12:58 PM  
**To:** Jerold@257protection.com  
**Subject:** [FWD: Please complete]  
**Attachments:** 3369\_001.pdf



----- Original Message -----

**Subject:** Please complete  
**From:** Stephanie Shook <sshook@ci.pacific.wa.us>  
**Date:** Thu, November 06, 2014 5:41 pm  
**To:** "travis@257protection.com" <travis@257protection.com>

Travis-

Please complete and return to me- Thank You.

*Stephanie Shook*  
*2014 L.E.I.R.A. President*  
*Records Specialist- Public Information Officer*  
*Pacific Police Department*  
*133 3rd Ave SE Pacific, WA 98047*  
*(253)929-1130 (253) 929-1194 Fax*  
*SShook@ci.pacific.wa.us*



*Attn: Stephanie*  
*(253) 961-1943*

**Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form**

NAME 25/7 PROTECTION		Doing business as (DBA) 25/7 PROTECTION	
ADDRESS 17750 WEST VALLEY HWY TUKWILA, WA 98188	Applicable Procurement or Solicitation #, if any:	WA Uniform Business Identifier (UBI) 60267472411	Federal Employer Tax Identification #: 208020247
This certification is submitted as part of a request to contract.			

**Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

**READ CAREFULLY BEFORE SIGNING THE CERTIFICATION.** Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business activity.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

Bidder or Contractor Signature: *Jerald McElathlin* Date: 11/7/2014  
 Print Name and Title: Jerald McElathlin President/CEO

## FEDERAL DEBARMENT, SUSPENSION INELIGIBILITY and VOLUNTARY EXCLUSION

### (FREQUENTLY ASKED QUESTIONS)

#### What is "Debarment, Suspension, Ineligibility, and Voluntary Exclusion"?

These terms refer to the status of a person or company that cannot contract with or receive grants from a federal agency.

In order to be debarred, suspended, ineligible, or voluntarily excluded, you must have:

- had a contract or grant with a federal agency, and
- gone through some process where the federal agency notified or attempted to notify you that you could not contract with the federal agency.
- Generally, this process occurs where you, the contractor, are not qualified or are not adequately performing under a contract, or have violated a regulation or law pertaining to the contract.

#### Why am I required to sign this certification?

You are requesting a contract or grant with the Washington Military Department. Federal law (Executive Order 12549) requires Washington Military Department ensure that persons or companies that contract with Washington Military Department are not prohibited from having federal contracts.

#### What is Executive Order 12549?

Executive Order 12549 refers to Federal Executive Order Number 12549. The executive order was signed by the President and directed federal agencies to ensure that federal agencies, and any state or other agency receiving federal funds were not contracting or awarding grants to persons, organizations, or companies who have been excluded from participating in federal contracts or grants. Federal agencies have codified this requirement in their individual agency Code of Federal Regulations (CFRs).

#### What is the purpose of this certification?

The purpose of the certification is for you to tell Washington Military Department in writing that you have not been prohibited by federal agencies from entering into a federal contract.

#### What does the word "proposal" mean when referred to in this certification?

Proposal means a solicited or unsolicited bid, application, request, invitation to consider or similar communication from you to Washington Military Department.

#### What or who is a "lower tier participant"?

Lower tier participants means a person or organization that submits a proposal, enters into contracts with, or receives a grant from Washington Military Department, OR any subcontractor of a contract with Washington Military Department. If you hire subcontractors, you should require them to sign a certification and keep it with your subcontract.

#### What is a covered transaction when referred to in this certification?

Covered Transaction means a contract, oral or written agreement, grant, or any other arrangement where you contract with or receive money from Washington Military Department. Covered Transaction does not include mandatory entitlements and individual benefits.

### **Sample Debarment, Suspension, Ineligibility, Voluntary Exclusion Contract Provision**

**Debarment Certification.** The Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If requested by Washington Military Department, the Contractor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference.



**TO:** Mayor Guier and City Council Members  
**FROM:** John Calkins  
**MEETING DATE:** January 12, 2015  
**SUBJECT:** Surplus of 2000 Chevrolet Pick Up

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**ATTACHMENTS:**

- Resolution No. 2015-224
  - Exhibit A
- 

**Previous Council Review Date:** None

**Summary:** The vehicle was purchased in 2002 and after 12 years in service, 150,000 miles, the vehicle is not safe and in need of serious repairs.

**Recommendation/Action:** Allow Police to surplus the vehicle.

**Motion for Consideration:** Make a motion to surplus the 2000 Chevrolet pick up.

**Budget Impact:** The budget impact will be positive after we surplus the vehicle.

**Alternatives:** Keep the vehicle in the police inventory and don't use it.

**City of Pacific  
Washington**

**RESOLUTION NO. 2015-224**

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC,  
WASHINGTON AUTHORIZING THE PACIFIC POLICE DEPARTMENT TO  
SURPLUS 2000 CHEVROLET PICK UP.**

**WHEREAS**, the City of Pacific purchased the truck used in 2002 for police purposes, and

**WHEREAS**, the Police Department utilized the vehicle for twelve years, and

**WHEREAS**, the truck is in need of extreme repair, and

**WHEREAS**, the truck is unsafe to operate and has over 150,000 miles of service.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
PACIFIC, WASHINGTON**

**Section 1.** The City Council hereby authorizes the Pacific Police Department to surplus the vehicle, marked as Exhibit A.

**Section 2.** This Resolution shall take effect and be in full force upon passage and signatures hereon.

**PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON  
THE 12<sup>TH</sup> DAY OF JANUARY, 2015.**

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**Leanne Guier, Mayor**

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**Amy Stevenson-Ness, City Clerk**

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**Carol Morris, City Attorney**

## **EXHIBIT A**

2000 Chevrolet Pick Up

VIN 1GCGK29UOYE26376



**TO:** Mayor Guier and City Council Members  
**FROM:** John Calkins, Public Safety Director  
**MEETING DATE:** January 12, 2015  
**SUBJECT:** Surplus of eleven outdated computers.

---

**ATTACHMENTS:**

- Resolution No. 2015-225
  - List of model and serial numbers of the computers.
- 

**Previous Council Review Date:** None

**Summary:** The Police Department purchased the computers over the years and they are outdated and of no use to the department.

**Recommendation/Action:** Surplus the computers.

**Motion for Consideration:** Make a motion to allow the police department to surplus eleven outdated computers.

**Budget Impact:** None

**Alternatives:** None

**City of Pacific  
Washington**

**RESOLUTION NO. 2015-225**

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC,  
WASHINGTON AUTHORIZING THE PACIFIC POLICE DEPARTMENT TO  
SURPLUS ELEVEN LAPTOP COMPUTERS.**

**WHEREAS**, the City of Pacific purchased the computers over the years, and

**WHEREAS**, the Police Department utilized the computers for several years, and

**WHEREAS**, the computers are all outdated and have not been used for three years;  
and

**WHEREAS**, there is no value to the computers.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
PACIFIC, WASHINGTON**

**Section 1.** The City Council hereby authorizes the Pacific Police Department to surplus eleven outdated computers, as described in Exhibit A.

**Section 2.** This Resolution shall take effect and be in full force upon passage and signatures hereon.

**PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON  
THE 12<sup>TH</sup> DAY OF JANUARY, 2015.**

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**Leanne Guier, Mayor**

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**Amy Stevenson-Ness, City Clerk**

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**Carol Morris, City Attorney**

TO: CHIEF CALKINS

FROM: LT. EDWIN MASSEY

DEATE: 10-16-2014

SUBJECT: SURPLUS COMPUTERS

The following listed laptop computers have been in storage as surplus;

Panasonic CF28 Serial 1EKYA01282  
Panasonic CF29 Serial 5JKSA471960  
Panasonic CF29 Serial 5JKSA71961  
Panasonic CF29 Serial 5JKSA71895  
Panasonic CF29 Serial 5JKSA71916  
Panasonic CF29 Serial 5JKSA71887  
Panasonic CF30 Serial 8HKB77516  
Panasonic CF30 Serial 8HKYB77577  
Panasonic CF30 Serial 8HKYB77582  
Panasonic CF30 Serial 7GKSA48674  
CTX Inter Inc, EZ Book Serial 74X9041370

Recommending these computers be added to any other list of equipment requiring disposal.

  
LT. EM



Agenda Bill No. 15-006

**TO:** Mayor Guier and City Council Members  
**FROM:** John T. Calkins, Public Safety Director  
**MEETING DATE:** January 5, 2014  
**SUBJECT:** King County Inter-Local Agreement (ILA) LiveScan

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**ATTACHMENTS:**

- Resolution No. 2015-226
- Interlocal Agreement with King County

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**Previous Council Review Date:** N/A

**Summary:** Livescan in an electronic fingerprinting station that submits fingerprints and palm prints to the King County AFIS (automated fingerprint identification section) of the King County Sherriff Office (KCSO) latent unit. The system is supported by the KCSO under a tax levy at this time.

**Recommended Action:** Approve the ILA with King County for continued use of the Livescan System as currently in place.

**Motion for Consideration:** "I move to"

**Budget Impact:** No budget impact we currently have a Livescan unit that was secured under grant funding in 2009.

**Alternatives:** Not entering into an ILA with KCSO AFIS program for utilization of Livescan would result in this agency submitting hard copy prints of fingerprinted individuals result in a fee of \$14.75-20.00 depending on the reason for fingerprint submission.

**CITY OF PACIFIC  
WASHINGTON**

**RESOLUTION NO. 2015-226**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, AUTHORIZING EXECUTION OF THE INTERLOCAL AGREEMENT WITH KING COUNTY FOR USE OF ELECTRONIC FINGERPRINT CAPTURE EQUIPMENT (AFIS LIVESCAN PROGRAM).**

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**WHEREAS**, the Automated Fingerprint Identification System (AFIS) has proven to be an effective crime-fighting tool in furtherance of the health, welfare, benefit and safety of the residents in King County; and

**WHEREAS**, The City of Pacific Police Department has a Livescan system currently in use purchased under a previous grant in 2009; and

**WHEREAS**, since January 1, 2013, the County has continued to provide effective AFIS services to public law enforcement agencies within King County, through a voter approved six year levy; and

**WHEREAS**, The City of Pacific will benefit from the electronic submission of fingerprints versus hard copy prints, reducing the overall cost of fingerprint submissions in electronic format and so the City wishes to continue to use AFIS services through Electronic Fingerprint Capture Equipment, including the necessary software and computer equipment, and system maintenance services;

**WHEREAS**, for all of the above reasons, the City desires to enter into an Interlocal Agreement with King County to approve placement of the Fingerprint Capture Equipment in the City, and to reimburse the County for same;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, DOES RESOLVE AS FOLLOWS:**

**Section 1.** The Pacific City Council hereby authorizes the Mayor to execute the Interlocal Agreement with King County regarding the continued use of the Livescan Program and to pay the related costs, as set forth in Section V on page 3 of the ILA, attached hereto as Exhibit A.

**Section 2.** This Resolution shall take effect and be in full force upon passage and signatures hereon.

**PASSED BY THE CITY OF PACIFIC CITY COUNCIL AT A REGULAR MEETING THEREOF ON JANUARY 5, 2015.**

CITY OF PACIFIC

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Leanne Guier, Mayor

ATTEST/AUTHENTICATED:

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Amy Stevenson-Ness, City Clerk

APPROVED AS TO FORM:

---

Carol Morris, City Attorney



KING COUNTY SHERIFF'S OFFICE  
516 Third Avenue, W-116  
Seattle, WA 98104-2312  
Tel: 206-296-4155 • Fax: 206-296-0168

John Urquhart  
Sheriff

October 2, 2014

Chief John Calkins  
Pacific Police Department

Dear Chief Calkins,

Please find an enclosed Interlocal Agreement (ILA) regarding your police department's use of electronic fingerprint capture equipment. As the manager of King County's Regional Automated Fingerprint Identification System (AFIS), I respectfully request your city's review and approval of this ILA.

Through levy funding, the AFIS program provides Livescans (electronic fingerprint stations) and Mobile ID (handheld remote fingerprint devices) to police agencies in the county. This equipment is the means by which fingerprints are transmitted into the AFIS, resulting in the positive identification of individuals.

Currently, no ILA exists that addresses the use and maintenance of this equipment. The ILA essentially memorializes practices in place for many years at agencies using Livescans. It also contains a policy that your agency would be agreeing to implement for use of Mobile ID devices.

The ILA is the same for each city and/or entity within King County. It was vetted with a sampling of jurisdictions within King County and reflects those agencies' input. To provide background information to aid in your approval process, I have included a sample for a council meeting agenda item. The sample contains additional information not detailed in this letter.

I hope to have this returned as soon as feasible, and I will follow up within two months. Once the ILA is printed and signed, it can be scanned and sent to me via email. I will return a fully signed version after Executive Constantine signs. Please let me know if a hard copy is preferable.

Thank you for your attention to this request. Should you have questions, please feel free to contact me.

Best Regards,

A handwritten signature in blue ink that reads "Carol Gillespie".

Carol Gillespie, Program Manager  
King County Regional AFIS  
(206) 263-2721  
[carol.gillespie@kingcounty.gov](mailto:carol.gillespie@kingcounty.gov)

Enclosures

cc: AFIS Advisory Committee Chair Robin Fenton

**INTERLOCAL AGREEMENT BETWEEN  
KING COUNTY AND THE CITY OF PACIFIC**

for use of

**ELECTRONIC FINGERPRINT CAPTURE EQUIPMENT**

THIS AGREEMENT is entered into between King County ("County") and the city of Pacific ("Agency"). The County and the Agency may be referred to individually as a "Party" or collectively as "Parties."

WHEREAS, the Automated Fingerprint Identification System (AFIS) has proven to be an effective crime-fighting tool in furtherance of the health, welfare, benefit and safety of the residents within King County; and

WHEREAS, since January 1, 2013, the County has continued to provide effective AFIS services to public law enforcement agencies within King County, through a voter approved six (6) year levy, as authorized by King County Ordinance No. 17381; and

WHEREAS, the Agency wishes to use AFIS services through Electronic Fingerprint Capture Equipment ("FP Equipment") including the necessary software and computer equipment, and system maintenance services;

NOW, THEREFORE, for and in consideration of the promises and covenants contained in this Agreement, the Parties hereto agree as follows:

**I. PURPOSE**

The purpose of this Interlocal Agreement is to establish the terms under which FP Equipment, which the County approves for placement in the Agency, will be used and maintained. This applies to FP Equipment previously approved for placement in the Agency and FP Equipment approved for placement in the Agency during the term of this agreement. The goals of this Agreement are to:

- Protect the public by assisting law enforcement in identifying potentially wanted or dangerous subjects before they are released from custody.
- Protect law enforcement officers by providing information important to officer safety prior to the release of detained individuals.
- Provide efficiency and accuracy in criminal record reporting to the Washington State Patrol ("WSP") and the Federal Bureau of Investigation ("FBI").
- Improve the quantity and quality of fingerprints available for search in the King County Regional AFIS Database.

FP Equipment is defined as:

- Livescan: stationary electronic fingerprint capture equipment used to obtain full sets of fingerprints for purposes of searching and storing in AFIS;
- Mobile ID: mobile electronic fingerprint capture equipment used to obtain prints from two fingers for purposes of searching AFIS to determine an individual's identity. These prints are not stored in AFIS.

## II. CONTRACT ADMINISTRATION

- A. This Agreement shall be administered by the King County Sheriff through the Regional AFIS Manager or other designee and the Agency Chief of Police or its designee. Each Party's governing body shall approve this Agreement. Each Party shall inform the other within thirty (30) days of this Agreement's execution of its respective contract administrator.

## III. GENERAL TERMS AND CONDITIONS

- A. The County, in its sole discretion, will decide whether to place FP Equipment in the Agency.
- B. All FP Equipment purchased by the County and located at the Agency's site shall remain the property of the County.
- C. The County may require the Agency to return FP Equipment to the County at any time, for any reason.
- D. All FP Equipment that has been installed by the King County Regional AFIS Program will be available for use by any other law enforcement agency operating within King County, if feasible, and no charge for the use of those devices by other agencies will be levied by the Agency.
- E. All FP Equipment shall be used exclusively for biometric purposes only.
- F. Statistics, or any information, which is pertinent to the FP Equipment and AFIS Program and requested by the King County Regional AFIS Manager, will be compiled by the Agency and submitted as needed.
- G. The Agency shall cooperate with the FBI if contacted through a post-processing review of a Mobile ID match in its database.
- H. The County may remove any Agency employee's rights to use FP Equipment at any time, for any reason.
- I. The Agency shall ensure that no Agency employee, officer or agent sells, transfers, publishes, discloses, or otherwise makes available any FP Equipment, software, documentation or copies thereof to any third party without the express written authorization of the County.
- J. The Agency agrees to notify the County immediately of any FP Equipment access code of any person who leaves Agency employment so that the County may delete that person's access code in order to maintain the integrity of the AFIS.
- K. The Agency will comply with all FP Equipment requirements as detailed in attached Exhibit A. The Regional AFIS Manager may revise these requirements at any time. Any revised requirements will be provided to the Agency and automatically incorporated as a new Exhibit A to this agreement. No council approval will be required to amend the Exhibit A.
- L. The Agency will comply with the Regional AFIS Program Biometric Handheld Fingerprint Identification Policy. Copy attached as Exhibit B. The Regional AFIS Manager may revise this policy at any time. Any revised policy will be provided to the Agency and automatically incorporated as a new Exhibit B to this agreement. No council approval will be required to amend the Exhibit B.

#### **IV. AGENCY LIAISONS AND TRAINING**

- A. The Agency shall assign at least one (1) Liaison. The Agency may assign separate Liaisons for each type of FP Equipment.
- B. All Agency Liaisons are required to attend training in the proper use of and the administrative functions of the FP Equipment. Training shall be provided by the County designated Trainer.
- C. Agency Liaisons for Livescan are responsible to work with the County to schedule staff training, provide user access, perform queue maintenance, and conduct system troubleshooting and testing.
- D. Agency Liaisons for Mobile ID are responsible to work with the County to schedule Agency staff to install the Mobile ID software, schedule staff training, and conduct system troubleshooting and testing.
- E. All Agency FP Equipment Operators are required to attend County provided training in the proper use of the FP Equipment by the County designated Trainer.

#### **V. INSTALLATION AND MAINTENANCE OF ELECTRONIC FINGERPRINT CAPTURE EQUIPMENT**

##### **A. Costs paid by County**

The County shall pay for the one-time delivery and installation of the FP Equipment approved for placement in the Agency. The County shall be responsible for all maintenance costs on the FP Equipment, unless otherwise specified below.

##### **B. Costs paid by Agency**

The Agency shall pay the following costs related to FP Equipment:

1. Any cost for office space remodeling which may be necessary to accommodate the Agency's Livescan installation;
2. Any internal infrastructure which may be necessary to connect the Agency to the King County Network. This infrastructure may include a Local Area Network, wiring, or other equipment;
3. Services in connection with the relocation of the FP Equipment or the additional removal of items of equipment, attachments, features, or other devices, except as may be mutually agreed by written amendment to this Agreement;
4. Electrical work external to the Agency's FP Equipment;
5. Repair or replacement of damaged or lost FP Equipment from any cause whatsoever, while in the care, custody and/or control of the Agency;
6. Repair or replacement to FP Equipment due to the FP Equipment being modified, damaged, altered, moved or serviced by personnel other than County's Contractor or its authorized representative;
7. Purchase of consumable FP Equipment supplies, such as printer toner cartridges, cleaning supplies, and gloves;

8. Agency employee salary cost and any overtime pay which may be necessary to complete initial or ongoing use or training for FP Equipment;
  9. Cost of integrating any Agency system to the FP Equipment.
  10. Costs associated with moving FP Equipment.
  11. Costs associated with preventative cleaning of FP Equipment.
- C. The County shall act as the point of contact for any questions or service calls from the Agency that need to be relayed to the FP Equipment Contractor. The County shall have a contact person available twenty-four (24) hours a day, seven (7) days a week.
  - D. The Agency shall provide a means of gaining access to the FP Equipment twenty-four (24) hours a day, seven (7) days a week for the purpose of installation, service calls, regular maintenance and special maintenance, when agreed upon in advance between parties. The Agency shall permit the County and/or the FP Equipment Contractor prompt and free access to the FP Equipment, including the ability to access the Livescan remotely.
  - E. The Agency will not make or permit any person other than the County or the FP Equipment Contractor to make any adjustment or repair to the FP Equipment. The Agency will not relocate, modify, change, or attempt to connect said FP Equipment without the prior written permission of the AFIS Regional Manager. The Agency will not attempt to service the FP Equipment, except for normal cleaning, and will not permit anyone other than the County or the FP Equipment Contractor to perform maintenance services in connection with the FP Equipment.
  - F. The Agency shall promptly notify the County of any error, defect, or nonconformity in the FP Equipment.
  - G. The Agency shall perform preventative cleaning of the FP Equipment in accordance with the written instructions and schedules provided by the County.
  - H. Any local system or network changes that would affect the FP Equipment or King County network must be reviewed by King County prior to implementation.
  - I. The Agency shall provide and maintain the network required to submit electronic fingerprint transmissions, in compliance with the FP Equipment Security Policy as described in Exhibit A.

## **VI. DURATION, TERMINATION AND AMENDMENT**

- A. This Agreement shall become effective when it is signed by both Parties.
- B. This Agreement shall continue in full force and effect from year to year unless modified or terminated in accordance with the terms of this Agreement.
- C. This Agreement may be terminated or suspended by either Party without cause, in whole or in part, by providing the other Party's administrator, as described in Article 2, thirty (30) days advance written notice of the termination.
- D. If County or other expected or actual funding is withdrawn, reduced, or limited in any way the County may, upon written notification to the Agency's administrator, as described in Article 2, terminate or suspend this Agreement in whole or in part and such termination or suspension may take place immediately.

- E. This Agreement shall terminate without penalty in the event that, in the opinion of the County, AFIS levy proceeds are, for whatever reason, no longer available for purposes of this Agreement.
- F. Upon termination of this Agreement, the Agency shall cooperate in the return of all King County property to the County. Such a return would be coordinated by the Regional AFIS Manager.
- G. As described in Section III.M and N, any changes to Exhibit A or B may be made by the Regional AFIS Manager. All other amendments to this Agreement must be agreed to in writing by the parties.

## **VII. INDEMNIFICATION AND LIMITATION OF LIABILITY**

- A. In no event will the County be liable for loss of data, loss of use, interruption of service, incompleteness of data and/or for any direct, special, indirect, incidental or consequential damages arising out of this Agreement or any performance or non-performance under this Agreement.
- B. The Agency shall indemnify, defend and hold harmless the County and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of or in any way relating to the installation, maintenance or use of the County's FP Equipment including any claimed violation of any person's civil rights. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the Agency's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity of claims made by the Agency's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the Agency shall defend the same at its sole cost and expense; provided, that, the County retains the right to participate in said suit at its own expense if any principle of governmental or public law is involved; and if final judgment be rendered against the County and its officers, agents, and employees, or any of them, or jointly against the County and the Agency and their respective officers, agents, and employees, or any of them, the Agency shall satisfy the same.
- C. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the Agency, its employees, contractors or others by reason of this Agreement.
- D. The Agency shall protect, indemnify and save harmless the County, its officers, agents and employees from any and all claims, costs and losses whatsoever occurring or resulting from (1) the Agency's failure to pay any compensation, wage, fee, benefit or tax, and (2) the supplying to the Agency of work, services, materials or supplies by Agency employees or agents or other contractors or suppliers in connection with or in support of performance of this Agreement.
- E. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

## **VIII. CHOICE OF LAW AND VENUE**

This Agreement will be governed by the laws of the State of Washington, both as to interpretation and performance. Any action at law, suit in equity or other judicial proceeding for the enforcement of this Agreement may be instituted only in King County Superior Court.

## **IX. DISPUTES**

The Parties shall use their best, good-faith efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. Both Parties will make a good faith effort to continue without

delay to carry out their respective responsibilities under this Agreement while attempting to resolve the dispute under this section.

**X. NO THIRD PARTY BENEFICIARIES**

There are no third party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any person or entity that is not a party hereto.

**XI. WARRANTY OF RIGHT TO ENTER INTO AGREEMENT**

The Parties each warrant they have the authority to enter into this Agreement and that the persons signing this Agreement for each Party have the authority to bind that Party.

**XII. ENTIRE AGREEMENT**

No change or waiver of any provision of the Agreement shall be valid unless made in writing and executed in the same manner as this Agreement. Except as to modifications to Exhibits A & B, the governing body of each Party shall approve any amendment to this Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous agreements, written or oral, between the Parties with respect to the subject matter hereof.

<b>KING COUNTY</b>	<b>AGENCY:</b>
_____	_____
NAME OF PERSON SIGNING	NAME OF AGENCY
_____	_____
TITLE OF PERSON SIGNING	NAME OF PERSON SIGNING
_____	_____
DATE SIGNED	TITLE OF PERSON SIGNING
	_____
	DATE SIGNED

**EXHIBITS:**

- A: FP Equipment Requirements
- B: Biometric Handheld Fingerprint Identification Policy

## EXHIBIT A

### FINGERPRINT EQUIPMENT REQUIREMENTS

#### I. LIVESCAN SPECIFIC REQUIREMENTS

##### A. Environmental

The County shall provide an Uninterruptible Power Supply (“UPS”) to be used with the Livescan equipment at no cost to the Agency.

The Agency shall provide the County with a minimum of two fixed IP addresses to be used only for the Livescan system and fingerprint card printer.

Cities must provide the proper environment for the Livescan, to include:

1. Consistent temperature ranging from 60 to 80 degrees Fahrenheit.
2. Consistent humidity ranging from 20% to 80% non-condensing.
3. Network connections no more than 3-4 feet from equipment.
4. Total of 4 power outlets within 3-4 feet of the Livescan system.

*Note: It is recommended that Cities have a dedicated 120V, 15Amp, 60Hz power line for the Livescan to avoid circuit overload.*

##### B. Local Interfaces

Livescans may be integrated with local records management systems provided that:

1. All development and installation costs are paid by the Agency
2. The integration specifications are provided for review and approval by the County prior to implementation
3. The integration is tested by the County prior to implementation

##### C. Fingerprint, Palmprint and Arrest Record Transmission

1. All Agency criminal misdemeanor, gross misdemeanor, and felony fingerprints and palmprints, on both adults and juveniles, will be electronically transmitted to the King County Regional AFIS database for search and registration.
2. The King County Regional AFIS will transmit the Agency’s fingerprint images, charge and demographic data, electronically to the Washington State Patrol for processing.
3. The Agency will be solely responsible for the accuracy of all demographic and charge information on its fingerprint and palmprint submissions. The County will not edit any suburban Agency demographic or charge information prior to submitting to Washington State Patrol.

## **II. MOBILE IDENTIFICATION SPECIFIC REQUIREMENTS**

The Agency must provide the proper environment for the Mobile ID software, to include:

- A. The Mobile Data Terminal or patrol vehicle mounted laptop running Windows 7 (32 or 64 bit) operating system.
- B. The patrol vehicle must be a physically secure location according to current Criminal Justice Information Services Security Policy.

## **III. QUALITY CONTROL**

Maintaining the quality of the Regional AFIS database is important in order to continue our region's ability to identify criminals and solve crimes. The Agency shall submit electronically captured fingerprints and palmprints (where applicable) to the Regional AFIS database that are of the best possible quality. The County will provide training to Agency staff, either through the FP Equipment Contractor or the County. The Agency and County will work together to ensure that all users are trained to competency. The County will review the quality of electronically captured prints and inform Agency of operators not meeting standards. These operators may be required to repeat training, and must improve their overall quality, in order to maintain access to the FP Equipment.

## **IV. NETWORKING**

The Agency will provide coordination of Agency IT staff, when needed, to ensure secure networking is in place.

The Agency shall report, in advance when possible, all network changes and/or outages which have the potential to disrupt FP Equipment connectivity. Reporting can be made via the King County Service Request Line (206-263-2777) or the AFIS IT mailbox ([AFISITHelp@kingcounty.gov](mailto:AFISITHelp@kingcounty.gov)).

## **V. SECURITY**

### **A. Roles and Responsibilities**

Each participating Agency is responsible for establishing appropriate security control.

All member Cities shall provide security awareness briefing to all personnel who have access to King County FP Equipment.

### **B. Monitoring**

All access attempts are logged and/or recorded and are subject to routine audit or review for detection of inappropriate or illegal activity.

Security-related incidents that impact County FP Equipment data or communications circuits shall be reported immediately upon discovery by the Agency to the King County Regional AFIS Program.

### **C. Physical Security**

Cities must assume responsibility for and enforce the system's security standards with regard to all Cities and users it services. The Agency must have adequate physical security to protect against any unauthorized access to FP Equipment, or stored/printed data at all times.

#### D. Network Environment Security

Cities hosting the connection of FP Equipment shall ensure adequate security measures are taken to provide protection from all forms of unauthorized and unsolicited access to FP Equipment. These security measures will be in compliance with Federal Information Processing Standard (FIPS) 140-2.

Cities are required to provide, manage, and maintain a firewall that segments the FP Equipment from any foreign non-public safety networks.

Any exceptions to this or any other network security requirement must be approved by the Regional AFIS Manager under the guidance of King County by and through its Sheriff's Office Information Services Section and King County Information Technology.

If a security breach occurs and personal identifiable information or confidential data is released or compromised, the host Agency shall bear the responsibility and costs to notify affected individuals whose information was released or compromised. This will be completed in accordance with any applicable state or federal laws.

## EXHIBIT B



### BIOMETRIC HANDHELD FINGERPRINT IDENTIFICATION POLICY King County Regional Automated Fingerprint Identification System (AFIS)

#### I. PURPOSE

To provide direction for the use of the biometric handheld fingerprint identification devices, more commonly known as a mobile identification device or Mobile ID. If an agency wishes to adopt its own or deviate from this policy, the agency must present its request to the Regional AFIS Manager.

#### II. PROGRAM

King County's regional AFIS program has initiated a Mobile ID project, involving the use of wireless remote fingerprint identification throughout the county. The project is designed to assist in identifying persons whose identities are in question. While the fingerprint verification process already exists in King County, Mobile ID moves this function to law enforcement first responders, resulting in a more timely identification process.

The system scans the fingerprints at the Mobile ID device and transmits wirelessly to the King County AFIS. If the fingerprints are in the AFIS database, a positive match returns the person's specific identifiers to the Mobile ID device or officer's mobile computer.

In the future, a simultaneous search may also be conducted to search Washington State Patrol's AFIS database and an FBI database known as the Repository for Individuals of Special Concern (RISC).

- A. Only officers trained by AFIS program staff and operating under the guidelines of the Mobile ID project may use the device.
- B. In the event that lack of usage by the assigned officer is a concern, the AFIS program will communicate with the agency and provide retraining and/or direct a reassignment of the device.
- C. Any use of the device not consistent with this policy and/or law enforcement purposes may result in reassignment or forfeiture of the device, and/or a deactivation of access to the AFIS database. Additionally, any violation of the Mobile ID policy/procedure, or of federal or state law, may subject the officer to internal discipline by his/her agency.

#### III. PROCEDURE

The use or retention of any Mobile ID-collected data shall conform to federal and state laws. It must also conform to individual agency policy as well as the AFIS program procedure as follows:

- A. An officer may use Mobile ID when there is probable cause to arrest a suspect.
- B. An officer may also use Mobile ID during a Terry Stop based upon reasonable suspicion. If a person provides a driver's license or other valid means of identification, or gives the officer a name that can be confirmed through a driver's license check, that form of identification should suffice without the use of Mobile ID. However, if there are articulable facts that give rise to reasonable suspicion regarding the accuracy of a person's identity, the officer may use Mobile ID to verify identity.
- C. Absent probable cause or reasonable suspicion of criminal activity, a person may consent to an officer's request to use Mobile ID. However, the consent must be voluntary as defined by current Washington case law; i.e., the person must be informed that he/she has a right to refuse the officer's request.
- D. Use of the device shall be documented in any report generated as a result of the contact. The officer must articulate the specific facts that support the basis for the use of Mobile ID and must state the voluntary compliance of the Mobile ID if used without arrest, probable cause, or reasonable suspicion.



Agenda Bill No. 15-007

**TO:** Mayor Guier and City Council Members  
**FROM:** Amy Stevenson-Ness, City Clerk/Personnel Manager  
**MEETING DATE:** January 5, 2015  
**SUBJECT:** **Appointment of Mayor Pro-Tem**

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**ATTACHMENTS:** N/A

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**Previous Council Review Date:** N/A

**Summary:** As Council Member John Jones was the Mayor Pro-Tem for 2014, a new Mayor Pro-Tem needs to be selected.

**Recommendation/Action:** A motion is needed to waive the Council Rules of Procedure in order to appoint a Mayor Pro-Tem at tonight's meeting.

**Motion for Consideration:** "I move to waive the Council Rules of Procedure to appoint Council Member XX as Mayor Pro-Tem for 2015."

**Budget Impact:**

**Alternatives:**



Agenda Bill No. 15-008

**TO:** Mayor Guier and City Council Members  
**FROM:** Amy Stevenson-Ness, City Clerk/Personnel Manager  
**MEETING DATE:** January 5, 2015  
**SUBJECT:** **Appointment of Council President**

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**ATTACHMENTS:** N/A

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**Previous Council Review Date:** N/A

**Summary:** As Council Member Josh Putnam was the Council President and his term expired on December 31, 2014, a new Council President needs to be selected.

**Recommendation/Action:** A motion is needed to waive the Council Rules of Procedure in order to appoint a Council President at tonight's meeting.

**Motion for Consideration:** "I move to waive the Council Rules of Procedure to appoint Council Member XX as Council President for 2014."

**Budget Impact:**

**Alternatives:**



Agenda Bill No. 15-009

**TO:** Mayor Guier and City Council Members  
**FROM:** Amy Stevenson-Ness, City Clerk/Personnel Manager  
**MEETING DATE:** January 5, 2015  
**SUBJECT:** Council Committee Appointments

**ATTACHMENTS:** N/A

**Previous Council Review Date:**

**Summary:** Annually, the Council discusses the structure and assignment of the Council Committees and external Council Committees and Special Positions. Below are a list of current Committees and who currently serves on each Committee, as known:

COMMITTEE	Garberding	Jones	Kave	Oliveira	Putnam	Steiger	Walker	Mayor Guier
Committee of the Whole	X	X	X	X	X	X	X	X
Finance Committee	X	X	X					
Governance Committee			X	X	X			
Public Works Committee	X				X	X		
Public Safety Committee	X		X	ALT		X		
Human Services Committee		X		X			X	
Technology Committee		X		X			X	
<b>EXTERNAL COMMITTEES</b>								
Valley Regional Fire Authority*		X		ALT			X	
Council Parliamentarian							x	
Hotel/Motel Advisory				X				X
Solid Waste			X			X		
Farmers Market Board							X	
<b>COUNCIL LIAISONS</b>								
Cities and Schools Forum		X						

Suburban Cities Association (SCA)			ALT					X
South County Area Transportation Board (SCATBD)			ALT					X
Pierce County Regional Council (PCRC)					X			

\*The Mayor serves as a representative to this board along with two Council members.

\*\*Comprised of the City Clerk, Council members Putnam and Steiger, and Public Works Director and Public Safety Director.

**Recommendation/Action:** Provide direction to staff on any changes to committee assignments.

**Motion for Consideration:**

**Budget Impact:** N/A

**Alternatives:**