CITY OF PACIFIC
ORDINANCE No. 2014-1886

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON RELATING TO INDIGENT DEFENSE STANDARDS, ADDING A NEW CHAPTER 9.97 TO THE PACIFIC MUNICIPAL CODE, SETTING STANDARDS FOR THE DELIVERY OF PUBLIC DEFENDER SERVICES AS REQUIRED BY RCW 10.101.030, WHICH STANDARDS SHALL INCLUDE COMPENSATION OF COUNSEL, DUTIES AND RESPONSIBILITIES OF COUNSEL, CASE LOAD LIMITS AND TYPES OF CASES, RESPONSIBILITY FOR EXPERT WITNESS FEES AND OTHER COSTS, REPORTS OF ATTORNEY ACTIVITY AND VOUCHERS, TRAINING, SUPERVISION, MONITORING AND EVALUATION OF ATTORNEYS, AND A NUMBER OF OTHER STANDARDS, SETTING AN EFFECTIVE DATE.

WHEREAS, it is a constitutional requirement, a requirement of Chapter 10.101 RCW and a public purpose that each person charged with a crime punishable by incarceration or involved in certain other proceedings that may result in loss of liberty or loss of fundamental rights, be provided with effective legal representation in order to ensure equal justice under law without regard to ability to pay; and

WHEREAS, it is the intention of the City Council, consistent with Chapter 10.101 RCW and other applicable law, to make such services available in an efficient manner that provides effective representation at reasonable cost to the City; and

WHEREAS, RCW 10.101.030 requires the City to adopt standards for the delivery of Public Defense Services, whether those services are provided by contract, assigned counsel or a public defender office; and

WHEREAS, the Washington State Bar Association has developed standards for Public Defense Services (2011); and

WHEREAS, the Washington Supreme Court by Order No. 25700-A-1004, as amended, has adopted new Standards for Indigent Defense and a certificate of compliance, including misdemeanor case load limits, effective January 1, 2015;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. New Chapter. That the Pacific Municipal Code shall be, and is hereby, amended to add Chapter 9.97, to read as follows; provided manifest and numbering errors shall be corrected prior to publication:

Chapter 9.97
PUBLIC DEFENSE SERVICES

Sections:

9.97.010 Statement of Intent and Interpretation.
9.97.020 Compensation.
9.97.030 Duties and Responsibilities of Counsel.
9.97.040 Caseload Limits, Private Practice Limits and Reporting.
9.97.050 Experts and Investigators.
9.97.060 Administration and Support Services.
9.97.070 Qualifications and Training.
9.97.080 Supervision, Monitoring and Evaluation of Attorneys.
9.97.090 Substitution Conflict Counsel.
9.97.100 Disposition of Client Complaints.
9.97.110 Termination and Removal of Defender Services.
9.97.120 Non-Discrimination.
9.97.130 Guidelines for Awarding Public Defense Contracts.
9.97.140 Update and Evaluation.

9.97.010 Statement of Intent and Interpretation.

These standards for Public Defense Services are adopted in order to comply with the requirements of RCW 10.101 and the Washington State Supreme Court Standards for Indigent Defense (CrRLJ 3.1 Standards). The provisions of these standards shall be broadly and liberally construed to achieve their stated purpose, which is to provide standards which afford "quality representation" in the provision of public defense to indigent criminal defendants. "Quality representation" describes the minimum level of attention, care, and skill that Washington citizens would expect of their State's criminal justice system. These standards may be amended from time to time to reflect changes in the rules established by the Washington State Supreme Court, the Washington State Bar Association Standard for Indigent Defense Services (WSBA Indigent Defense Standards), or interpretations of the rules and standards by the Washington courts.

9.97.020 Compensation.[1]

The City's public defender(s) compensation shall be established through negotiation of a contract for defender services. The compensation package should reflect the customary compensation of the community for similar services rendered by other publicly paid attorneys to a public client. The City shall consider training, experience, and the nature and extent of services requested and the time and labor required of the attorney undertaking defender services. Services which require extraordinary fees should be defined in the contract. Among the reasonable expenses to be covered by the contract include expert witnesses, investigative costs, and the administrative overhead costs of paraprofessionals, including, as needed, mental health professionals, social workers, and translators.

[1] WSBA Indigent Defense Standard 1

9.97.030 Duties and Responsibilities of Counsel.[2]

A. Public Defense Services shall be provided to all clients in a professional, skilled manner consistent with the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender's primary and most fundamental responsibility is to promote and protect the interests of the client.

B. Public Defense shall be provided to indigent clients whose eligibility has been determined by court appointment.

C. All Public Defenders providing services by contract shall quarterly certify their compliance with the standards for indigent defense by filing a Certification of Compliance as required by CrRLJ 3.1. Such forms shall be filed with the City of PACIFIC Municipal Court.

9.97.040 Caseload Limits[3], Private Practice Limits[4] and Reporting.[5]

A. The caseload of the Public Defender shall consist of misdemeanors and RALJ appeals to Superior Court. A case is defined as the filing of a document with the Court naming a person as a defendant or respondent, to which an attorney is appointed in order to provide representation.

B. No Public Defender performing services by contract shall exceed four hundred (400) cases in any calendar year. Contracts for Services shall prohibit the Public Defender from performing services under any other similar contract which, taken in conjunction with the services to be performed under the contract, would exceed the case count in any calendar year. The case count for a Public Defender who maintains a private practice shall be adjusted to reflect the relative percentage which criminal defense relates to the Public Defender's total practice. For example, based on an attorney whose practice consists of fifty percent (50%) services provided under contract to the City (adjusted for any other Public Defense Services performed for another entity) and fifty percent (50%) private practice, the total case count for such an attorney shall not exceed two hundred (200) cases.

C. The request for qualifications process for selection of a Public Defender and Public Defender Counsel shall strive to obtain a Public Defender whose experience and training is sufficient to comport with the caseload assumptions and credits assigned. Attorneys assigned to RALJ appeals shall have a minimum of one year's experience in RALJ appeals or in the event multiple attorneys perform services in the contract, a minimum of one attorney assigned to or supervising RALJ appeals shall have such experience.

D. The standards provided herein for caseloads may be adjusted up or down depending upon the complexity of any particular case. A Public Defender may request to have the weighting for an unusually complex case not addressed adequately by these standards increased depending upon the complexity and requirements of the case, and such adjustment shall not be unreasonably refused by the City. The maximum caseload for a

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[2] WSBA Indigent Defense Standard 2
[3] CrRLJ 3.1 Standard 3; WSBA Indigent Defense Standard 3
[4] CrRLJ 3.1 Standard 13; WSBA Indigent Defense Standard 13
[5] WSBA Indigent Defense Standard 8

particular attorney shall be adjusted downward when the mix of case assignments becomes weighted toward an unanticipated number of more serious offenses or case types that demand more investigation, legal research and writing, use of experts, and/or social workers or other expenditure of time and resources.

E. If a Public Defender or assigned counsel is carrying a caseload consisting of cases performed under contract with the City, as well as other criminal cases from other jurisdictions, including a mixed caseload of felonies and misdemeanors, these standards shall be adjusted proportionally to determine a full caseload. If the contract or assigned counsel also maintains a private law practice, the caseload shall be based upon the percentage of time that the lawyer devotes to public defense with the City.

F. Monthly reports shall be provided by the Public Defender to the Court Administrator. The report shall identify the number and type of cases assigned, attorney hours, case disposition, the case count year-to-date, and cases in which the Public Defender has been assigned a higher case count. The Public Defender case tracking and reporting system shall be maintained independently from client files so as to disclose no privileged information.

9.97.050 Experts[6] and Investigators.[7]

A. A Public Defense Contract shall provide reasonable compensation for an expert of the Public Defender's choosing. No appointment shall be from a pre-approved list designated by the City Attorney, the City Prosecutor, or other City officials. The services of expert witnesses will be provided under contract when approved by the Court through ex parte motion. The expert will be paid directly by the City.

B. Public defense attorneys shall use investigation services as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Normally, a ratio of one investigator to four attorneys shall be provided as necessary. Contracts for Public Defense Services shall include investigative services as a part of reimbursed overhead.

9.97.060 Administration[8] and Support Services.[9]

A. Contracts for public defense services and proposals submitted in pursuit of such contracts shall provide for or include adequate administrative costs and support, including but not limited to travel, telephones, law library and/or electronic research capabilities, financial accounting, case management systems, computers, word processing equipment and software, office space and supplies. The Public defense attorney shall have access to an office that accommodates confidential meetings with clients and a telephone system, internet access and postal address to ensure prompt response to client contact.

B. Public defense attorneys shall have adequate support staff to ensure the effective performance of defense counsel.

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[6] WSBA Indigent Defense Standard 4
[7] CrRLJ 3.1 Standard 6; WSBA Indigent Defense Standard 6
[8] CrRLJ 3.1 Standard 5; WSBA Indigent Defense Standard 5.2
[9] WSBA Indigent Defense Standard 7

9.97.070 Qualifications[10] and Training.[11]

A. Every Public Defender performing services under contract with the City shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court and possess a license to practice law in the State.

B. Public Defenders performing services under contract shall:

1. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to the practice area; and
2. Be familiar with the Washington Rules of Professional Conduct (WRPC); and
3. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and
4. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and
5. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
6. Complete seven (7) hours of continuing legal education within each calendar year and courses related to public defense practice; and
7. Have the opportunity to attend courses that foster trial advocacy skills and to review professional publications and other media; and
8. Complete and sign the Certification Form included in the Public Defense contract.

9.97.080 Supervision,[12] Monitoring and Evaluation[13] of Attorneys.

The City recognizes that smaller firms providing Public Defense Services may provide quality service through experienced practitioners. When applicable, public defenders should make provision for supervision, monitoring and evaluation in accordance with Bar Association standards or provide alternative methods for the supervision, monitoring and evaluation of attorneys which achieve substantially the same goals shall be given for effective supervision, monitoring and evaluation. Supervision and evaluation efforts should include review of time and caseload records, review and inspection of transcripts, in-court observations, and periodic conferences. Performance evaluations made by a supervising attorney should be supplemented by comments from judges, prosecutors, other defense lawyers and clients. Attorneys should be evaluated on their skill and effectiveness as criminal lawyers or as dependency or civil commitment advocates.

9.97.090 Substitution Conflict Counsel.[14]

A. The selection process for a Public Defender shall be by review of names and experience levels of the attorneys who will actually provide services, to ensure that they meet minimum qualifications. The Public Defender shall be prohibited from sub-contracting defense services without the express written consent of the City.

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[10] CrRLJ 3.1 Standard 14; WSBA Indigent Defense Standard 14
[11] WSBA Indigent Defense Standard 9
[12] WSBA Indigent Defense Standard 10
[13] WSBA Indigent Defense Standard 11
[14] WSBA Indigent Defense Standard 12

B. In the event of conflict or removal of the Public Defender, Conflict Counsel shall be available, either through a joint contract with the Public Defender and Conflict Counsel, by separate contract with Conflict Counsel or by court appointment. In the event that alternative or Conflict Counsel is required to be assigned, the Public Defender shall bear no part of the costs associated with the appointment of alternative or sub-Conflict Counsel. The Public Defender shall continue representation of clients as necessary upon conclusion of the agreement for public defense services.

C. Conflict Counsel shall adhere to the standards established by this Chapter, including but not limited to, an evaluation and reporting of the case count under the procedures set forth in this ordinance.

D. Conflict Counsel may be assigned by the Municipal Court upon the request of the Public Defender.

9.97.100 Disposition of Client Complaints.[15]

The Public Defender shall provide a method to respond promptly to client complaints. Complaints should first be directed to the attorney, firm or agency which provided representation. If the client feels that he or she has not received an adequate response, the City shall designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. The complaining client should be informed as to the disposition of his or her complaint within one week. Nothing herein shall bar a client from also filing a complaint with the Washington State Bar Association.

9.97.110 Termination and Removal of Defender Services.[16]

Termination of the contract shall occur for "good cause." Good cause shall include the failure of the contract Public Defender to render adequate representation to clients, the willful disregard of the rights and best interests of the client, and the willful disregard of the these standards. Termination may also occur for violation of the express terms of the contract, and these standards, provided, however, that the Public Defender shall be provided reasonable opportunity, following notice, to cure any technical contract violations that do not impair the provision of quality representation to the indigent client. Removal by the Court of counsel from representation normally should not occur over the objection of the attorney and the client.

9.97.120 Non-Discrimination.[17]

Neither the City, in its selection of an attorney, firm or agency to provide public defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation or handicap. Both the City and the contractor shall comply with all federal, state and local nondiscrimination requirements.

9.97.130 Guidelines for Awarding Public Defense Contracts.[18]

City attorneys, county prosecutors, and law enforcement officers shall not select the attorneys who will provide indigent defense services.[19] The City should award contracts for public

[15] WSBA Indigent Defense Standard 15
[16] WSBA Indigent Defense Standard 16
[17] WSBA Indigent Defense Standard 17
[18] WSBA Indigent Defense Standard 18

defense services only after determining that the attorney or firm chosen can meet accepted professional standards. Under no circumstances should a contract be awarded on the basis of cost alone. Attorneys or firms bidding for contracts must demonstrate their ability to meet these standards. Contracts should only be awarded to attorneys who have at least one year's trial experience.

9.97.140 Update and Evaluation.

The City will review and modify these standards as necessary when the rules established by the Washington State Supreme Court are applied and interpreted by the courts and, when appropriate, changes are adopted by the Bar Association and other administrative agencies.

Section 2. Severability. If any one or more section, subsections or sentences of this chapter are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this chapter and the same shall remain in full force and effect.

Section 3. Effective Date. This ordinance shall be in full force and effect from and after five (5) days from the date of its passage and publication as provided by law.

PASSED by the City Council of Pacific this 22 day of December, 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:

[19] RCW 10.101.040