



PACIFIC CITY COUNCIL AGENDA
Council Chambers - City Hall. 100 3rd Ave. SE

January 21, 2014
Tuesday

Workshop
6:30 p.m.

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL OF COUNCIL MEMBERS**
- 3. ADDITIONS TO/APPROVAL OF AGENDA**
- 4. AGENDA ITEMS**
 - A. Discussion: AB 14-008: Citizen Appreciation Dinner (5 min.)**
(Darcie Thach)
 - B. Discussion: AB 14-011: Resolution No. 14-101: Setting a public hearing (10 min.)**
for the formation of a Transportation Benefit District
(Ken Barnett)
 - C. Discussion: AB 14-012: Sound Cities Association position on the (10 min.)**
formation of a Transportation Benefit District by
King County Council.
(Mayor Guier)
 - D. Discussion: AB 14-013: Resolution No. 14-102: Acceptance of the (5 min.)**
Washington State Growth Management Update Grant
(Paula Wiech)
 - E. Discussion: AB 14-004: Marijuana Moratorium Discussion (30 min.)**
(Paula Wiech)
- 5. ADJOURN**



Agenda Bill No. 14-008

TO: Mayor Guier and City Council Members
FROM: Darcie Thach, Assistant Director Community Services
MEETING DATE: January 21, 2014
SUBJECT: Citizen Appreciation Dinner

ATTACHMENTS:

Previous Council Review Date: January 6, 2014

Summary: First Annual Citizen Appreciation Dinner to be scheduled March 22, 2014, 5:00pm to 7:00pm. The Mayor, and members of the City Council are asked to be present to help set up, serve, clean up, and other duties, to make this event a successful event.

Recommendation/Action: Recommend to approve the Citizen Dinner.

Motion for Consideration: I move to approve the first annual Citizen Appreciation Dinner.

Budget Impact:

Alternatives:

AGENDA ITEM NO. 4A



Agenda Bill No. 14-011

TO: Mayor Guier and City Council Members
FROM: Public Works
MEETING DATE: January 27, 2014
SUBJECT: Public Hearing for the formation of a Transportation Benefit District

ATTACHMENTS: Resolution 14-101

Previous Council Review Date: N/A

Summary: The City has been trying to develop alternatives to fund the construction of needed transportation improvements throughout the City. The formation of Transportation Benefit District (TBD) provides for local revenue to fund local transportation needs. The formation of a TBD requires a Public Hearing.

Recommendation/Action: Move forward to the meeting on January 27, 2014. Staff recommends Council approve Resolution No. 14-101.

Motion for Consideration: Move to approve Resolution No. 14-101, A RESOLUTION OF THE CITY OF PACIFIC, WASHINGTON, SETTING THE TIME AND PLACE FOR A PUBLIC HEARING ON FEBRUARY 3, 2014 AT 6:30 PM IN THE CITY OF PACIFIC COUNCIL CHAMBERS TO HEAR FROM THE PUBLIC ON THE CREATION OF A TRANSPORTATION BENEFIT DISTRICT, COMPRISING THE CORPORATE LIMITS OF THE CITY, TO FUND AND COMPLETE PROJECTS LISTED IN THE CITY'S SIX YEAR TRANSPORTATION IMPROVEMENT PLAN.

Budget Impact: The cost to have the public hearing is the cost of public notification, approximately \$350.

Alternatives: The Public Hearing is required to form a Transportation Benefit District. Until a Hearing is held, a TBD cannot be formed.

AGENDA ITEM NO. 4B

**CITY OF PACIFIC
WASHINGTON**

RESOLUTION NO. 14 - 101

A RESOLUTION OF THE CITY OF PACIFIC, WASHINGTON, setting the time and place for a public hearing on February 3, 2014 at 6:30 PM in the City of Pacific Council Chambers to hear from the public on the creation of a Transportation Benefit District, comprising the corporate limits of the City, to fund and complete projects listed in the City's Six Year Transportation Improvement Plan.

WHEREAS, the City of Pacific proposes creating a Transportation Benefit District as authorized by RCW 35.21.225 and governed by the provisions of Chapter 36.73 RCW; and

WHEREAS, a public hearing must be held prior to the creation.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON,
DOES RESOLVE AS FOLLOWS:**

Section 1. That said Transportation Benefit District shall be presented for hearing and determination on Monday, February 3, 2014, at the hour of 6:30 p.m. in the Council Chambers of the City of Pacific, at Pacific City Hall, Pacific, Washington, or as soon thereafter as the same may be heard, and that

Section 2. Notice of such hearing be given as approved by law.

ADOPTED BY THE CITY COUNCIL this 27th day of January, 2014.

CITY OF PACIFIC

LEANNE GUIER, MAYOR

ATTEST/AUTHENTICATED:

AMY STEVENSON-NESS, CITY CLERK

APPROVED AS TO FORM:

KEN LUCE, CITY ATTORNEY



AGENDA ITEM NO. 4C

Agenda Bill No. 14-012

TO: City Council Members

FROM: Mayor Leanne Guier

MEETING DATE: January 21, 2014

SUBJECT: Sound Cities Association Position regarding the formation of a Transportation Benefit District in King County

ATTACHMENTS: SCA PIC Agenda Item

Previous Council Review Date: N/A

Summary: Does the City Council want to support the County Council position regarding the formation of a county-wide transportation benefit district for King County?

Recommendation/Action:

Motion for Consideration:

Budget Impact:

Alternatives:

AGENDA ITEM NO. 4C



January 8, 2014
SCA PIC Meeting

Item 9:
Transportation Funding
Potential Future Action Item

*Do you want to support
the County Council position
Benefit
district*

SCA Staff Contact

Deanna Dawson, Executive Director, office 206-433-7170, Deanna@soundcities.org
Monica Whitman, Senior Policy Analyst, office 206-433-7169, monica@soundcities.org

Potential future action:

To bring the following policy position back for adoption at the next PIC meeting:

In order to address the critical transportation needs facing King County and cities throughout the County, the Sound Cities Association supports the formation of a countywide Transportation Benefit District (TBD) with 60% of the funds going to Metro for transit funding and 40% being distributed to the County and cities based on population for other transportation needs including local roads, sidewalks, bike paths, additional transit, and other transportation purposes as determined by the particular needs of the local jurisdiction. In order to ensure that dollars can be used as effectively and efficiently as possible to address the pressing transportation needs of each individual jurisdiction and to avoid the creation of additional burdensome bureaucracies, the funding raised should be provided to local jurisdictions through a direct distribution.

Background

On June 19, 2013 the Sound Cities Association Board unanimously adopted a position of support for passage of a statewide transportation package in order to address our state's critical transportation infrastructure needs. The Board also adopted a position of support for additional local options to address the transportation needs of counties and cities. Specifically, SCA urged the legislature to give local jurisdictions an additional funding mechanism in the form of authority to enact an up to 1.5% Motor Vehicle Excise Tax. SCA also supported the legislature designate that in King County, 60% of revenues raised by this funding mechanism be allocated to transit, with 40% allocated to cities and the county (distributed based on population) for local transportation needs.

Despite numerous negotiating sessions, the legislature was unable to come to agreement on a package in 2013. (See attachment A, Joint Statement from the Governor and bipartisan House and Senate transportation negotiators on transportation revenue package negotiations.)

Meanwhile, our cities and King County face significant transportation needs. While sales tax projections and labor negotiations with Amalgamated Transit Union (ATU) Local 587 have been encouraging, King County still faces the need for significant cuts to service at Metro Transit without additional funding sources. These cuts would be particularly devastating to residents of SCA member cities. As noted in past discussions, the bus is the family car for many residents in our cities. Substantial cuts to bus service would make it difficult or impossible for residents to get to their jobs, and needed community services.

The need for additional transportation funding for local roads and other local transportation infrastructure is similarly critical. Cities in King County maintain five thousand five hundred miles of streets plus bridges, sidewalks, drainage systems, traffic signals, bicycle and pedestrian facilities and trails. Revenue sources currently available to cities are not keeping pace with the costs of replacement and expansion to meet growth. King County cities have experienced a substantial downturn in revenues in the past decade. Many cities in King County have been forced to supplement their road funds with general fund dollars, which have themselves not been keeping pace with inflation. Using general fund dollars to maintain roads and other transportation infrastructure means that there are fewer dollars available to fund public safety, parks, human services, and other critical city services.

A lack of dedicated funding for transportation projects has made it increasingly difficult for King County cities to raise matching funds to compete for State and Federal transportation grant dollars, and State and Federal transportation grant opportunities have dwindled. King County cities are beset by failing roads and bridges, congested corridors and bottlenecked interchanges, which undermine the mobility of vehicles, buses and freight carriers to transport people and goods.

Cities in King County have over \$1.3 billion in maintenance and preservation needs alone over the next six years, and have identified a need of over \$3 billion for mobility projects over the next six years. Cities in King County are responsible for the repair and replacement of 22 bridges in King County with a sufficiency rating of fifty or less, equating to more than \$775 million in bridge repair/replacement costs over the next six years. The lack of adequate transportation funding for Cities is a public safety crisis in King County.

In 2013, the State Legislature balanced its operating budget in part by transferring all available funds from the Public Works Trust Fund, and directed most of the future tax revenues for the Public Works Trust Fund into K-12 education for the next six years. The Public Works Trust Fund provided grants and low-interest loans to local governments for the repair and maintenance of infrastructure. This action by the Legislature has resulted in a substantial reduction of funds available for King County cities, and has been a particular blow to smaller cities in King County.

Without an additional source of revenue, many transportation infrastructure projects planned by cities will not be able to move forward.

Many member cities have indicated that they cannot afford to wait for additional funding to maintain their transportation infrastructure.

Due to these needs, the King County Council is looking at moving forward with a ballot measure in 2014 to provide additional funding for transit, roads, and other transportation infrastructure. Existing State law would enable the King County Council to create a Transportation Benefit District (TBD), and (with voter approval) to raise revenues through funding sources including a sales tax, and a vehicle license fee. The County Council and Executive have proposed bringing this forward to the voters as a ballot measure as early as April 2014. Prior to going on recess in 2013, the County Council introduced two ordinances which would (if approved) establish a countywide TBD (see attachments B and C). The language is very similar in both ordinances. The second ordinance, attachment C, includes a resolution (see attachment D) authorizing the TBD to impose a sales tax and vehicle license fee with voter approval.

Existing State law enables a County to form a TBD and to enact (with voter approval) a sales tax of up to .2% and a vehicle license fee of up to \$100. Many cities in King County have formed their own TBD and enacted a vehicle license fee of \$20. A vehicle license fee of \$80 or less would not interfere with these already enacted TBDs, or cities that may wish to create a TBD within their cities in the future.

A .1% sales tax would raise approximately \$50 million annually, and a \$60 vehicle license fee would raise approximately \$80 million annually. Combined, these sources would raise over \$130 million, which is similar in scope to the approximately \$140 million that would have been raised by the local option sought by SCA from the legislature in 2013. (According to recent estimates, the total allocation to King County cities based on this funding source and the 60/40 revenue sharing proposal would amount to over \$53,000,000 in 2015.)

The proposal before the PIC is to bring forward a public policy position similar to that approved by SCA in 2013, and to support formation of a countywide TBD, with 60% of the funds going to Metro for transit funding and 40% being distributed to the County and cities based on population for other transportation needs. These would include local roads, but may also include sidewalks, bike paths, additional transit, or other transportation purposes, as determined by the particular needs of the local jurisdiction. In order to ensure that dollars can be used as effectively and efficiently as possible to address the pressing transportation needs of each individual jurisdiction and to avoid the creation of additional burdensome bureaucracies, it is proposed that the funding raised be provided to local jurisdictions through a direct distribution.

The proposal supported by SCA in 2013 was born of much collaboration and compromise between SCA's member cities, the City of Seattle, and King County, who worked together to come up with a package that could serve the needs of citizens and jurisdictions throughout our county. It is a balanced package that ensures that transportation needs are addressed holistically, with a healthy mix of funding for transit, rural roads, city streets, and other transportation needs in cities. We recognize that we cannot view our infrastructure needs in isolation, and that we need to partner together to make strategic investments now as a region in order to keep our economy growing.

The proposal has been supported by a broad coalition of local leaders, and SCA has been working in close partnership with a countywide coalition of regional community, business and labor leaders, and environmental, transit, education, social services, and social justice advocates known as Move King County Now. Due to the fact that the legislature did not pass a statewide transportation package or give local jurisdictions new tools to address their transportation needs in 2013, this coalition is now focused on moving forward with using existing tools to solve the transportation funding crisis in King County.

The County Council is on recess until January 13, 2014, and may move quickly upon returning if an April ballot date is chosen. PIC Chair Bernie Talmas, SCA Vice President John Marchione, and SCA Executive Director Deanna Dawson will keep SCA members informed of ongoing developments and need for possible action between the January 8, 2014 PIC meeting date and our next regularly scheduled PIC meeting on February 12, 2014.

Attachments

- A. Joint Statement from the Governor and bipartisan House and Senate transportation negotiators on transportation revenue package negotiations
- B. TBD Ordinance 2013-0527
- C. TBD Ordinance 2013-0526
- D. Resolution authorizing sales tax and vehicle license fee

JAY INSLEE
Governor



STATE OF WASHINGTON
Office of the Governor

Dec. 18, 2013

Contacts:

David Postman, Governor Inslee's Communications Office | 360-902-4136,
david.postman@gov.wa.gov

Joint Statement issued tonight from Governor Jay Inslee and the bipartisan House and Senate transportation negotiators on the next phase of transportation revenue package negotiations

"Through 12 negotiating sessions we made progress on finding a compromise package of statewide transportation improvements. But today it has become clear this phase of the process has run its course and we have not reached an agreement.

"We agree that transportation infrastructure is important to our state and we remain committed to finding a solution in the regular legislative session that works for everyone.

"The next step in this process will be to continue this dialogue in the legislative process."

###

www.governor.wa.gov | [@GovInslee](https://twitter.com/GovInslee) [@WaStateGov](https://twitter.com/WaStateGov) | www.facebook.com/WaStateGov

Date Created:	12-16-13
Drafted by:	jr
Sponsors:	Rod Dembowski, Kathy Lambert, Larry Phillips
Attachments:	

1 ..title

2 AN ORDINANCE creating a countywide transportation

3 benefit district as authorized by chapter 36.73 RCW.

4 ..body

5 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

6 SECTION 1. Findings:

7 A. The 2008 recession had a deep and enduring impact to the economy in King
8 County, causing property and sales tax revenues that fund government transportation
9 services to drop unexpectedly.

10 B. As the largest labor market in the state, failure of the transportation system in
11 King County will have far reaching economic impacts across Washington.

12 C. The King County transit division ("Metro") is vital to the region's economic
13 health. Metro provided over one hundred fifteen million passenger trips in 2012 with
14 ridership expected to grow, more than one thousand five hundred companies provide
15 transit passes to their employees, over half of Metro's passengers are commuters and
16 current service levels keep approximately one hundred seventy-five thousand cars off our
17 roads every weekday.

18 D. Sales tax currently provides for sixty percent of Metro's operating fund, and
19 reductions in property tax revenue and the lack of growth in gas tax revenue will limit
20 key funding sources for city and unincorporated King County transportation projects.

21 E. The twenty-dollar congestion reduction charge authorized in 2011 was a
22 temporary measure while sustainable funding solutions were developed. The authority
23 for this implemented funding source expires at the end of May 2014.

24 F. In 2011, the King County council adopted the landmark King County Metro
25 Transit Strategic Plan for Public Transportation and Service Guidelines that established a
26 new course that prioritizes productivity, social equity and geographic value in the
27 ongoing development of the Metro system.

28 G. To respond to decreased revenues during the recession, Metro undertook a
29 number of measures to preserve service. Metro implemented system-wide reforms,
30 including restructuring the transit system to improve productivity and effectiveness and
31 discontinuing the Ride Free Area in downtown Seattle, saving nearly eight hundred
32 million dollars over five years. Metro has also increased revenue for transit through
33 property tax changes, through the implementation of the temporary congestion reduction
34 charge and through multiple fare increases raising fares by eighty percent since 2008.

35 H. Metro still faces an ongoing annual revenue shortfall up to seventy-five
36 million dollars to maintain existing service levels. Without new revenue, Metro will face
37 up to a seventeen-percent cut in service, or approximately six hundred thousand annual
38 hours of service cuts beginning in fall 2014.

39 I. The King County road services division ("road services") is responsible for an
40 unincorporated area road system that supports more than one million trips per day. The
41 system consists of about one thousand five hundred miles of county roads and one
42 hundred eighty bridges, plus numerous sidewalks and pathways, traffic signs and signals,
43 drainage pipes and culverts and other critical transportation infrastructure.

44 J. Road services' funding for maintenance of roads and bridges has declined by
45 more than one-third since 2009 due to annexations, declining property values, less state
46 and federal grant support and lower gas tax revenue. At the same time, the volume of
47 county road miles has not dropped proportionally while transportation safety,
48 preservation and other needs are increasing due to aging infrastructure, population
49 growth, development and changing travel patterns.

50 K. Property tax is road services's primary funding source, and property values in
51 unincorporated King County have declined significantly since the start of the recession.
52 The ability of property tax revenue to recover from its depressed levels is impeded by
53 statutory constraints limiting growth in tax collections to one percent per year, lower than
54 the rate of inflation.

55 L. Gas tax revenues, another major source of funding for road services, will not
56 increase with the rate of inflation as gasoline consumption stagnates due to more fuel
57 efficient cars and fewer vehicle miles travelled and because the tax rate per gallon is
58 fixed and does not adjust with inflation.

59 M. Future grant funding for capital projects is also uncertain as federal and state
60 decision-makers choose between competing interests for limited dollars.

61 N. The Strategic Plan for Road Services was approved by the council in 2010 to
62 provide key guidance to the agency about work priorities, including infrastructure service
63 and investment decisions. The plan gives top priority to basic goals: comply with legal
64 requirements; meet critical safety needs; and maintain and preserve the existing road
65 network.

66 O. Road services is reducing costs through reductions in management and
67 administrative costs, space consolidation and reductions to fleet equipment, and has
68 already reduced division staff by forty percent and implemented changes to service
69 priorities.

70 P. It is the county's responsibility to maintain, preserve and operate the
71 unincorporated area road system, and without dedicated funding to stabilize the declining
72 road system, roads services expects to close thirty-five bridges before they become
73 unsafe, restrict access to seventy-two miles of failing roadways and reduce storm service
74 on snowy and icy roads.

75 Q. Cities in King County maintain five thousand five hundred miles of streets
76 plus bridges, sidewalks, drainage systems, traffic signals, bicycle and pedestrian facilities
77 and trails. Existing facilities are aging.

78 R. King County cities have experienced a substantial downturn in revenues in the
79 past decade. Many cities in King County have been forced to supplement roads funds
80 with general fund dollars, which have themselves not been keeping pace with inflation.
81 Using general fund dollars to maintain roads and other transportation infrastructure
82 means that there are fewer dollars available to fund public safety, parks, human services,
83 and other critical city services.

84 S. A lack of dedicated funding for transportation projects has made it
85 increasingly difficult for King County and King County cities to raise matching funds to
86 compete for State and Federal transportation grant dollars, and State and Federal
87 transportation grant opportunities have dwindled.

88 T. King County cities are beset by failing roads and bridges, congested corridors
89 and bottlenecked interchanges, which undermine the mobility of vehicles, buses and
90 freight carriers to transport people and goods.

91 U. Cities in King County have over \$1.3 billion in maintenance and preservation
92 needs alone over the next six years, and have identified a need of over \$3 billion for
93 mobility projects over the next six years. Cities in King County are responsible for the
94 repair and replacement of 22 bridges in King County with a sufficiency rating of fifty or
95 less, equating to more than \$775 million in bridge repair/replacement costs over the next
96 six years. The lack of adequate transportation funding for Cities is a public safety crisis in
97 King County.

98 V. In 2013, action by the State Legislature related to the Public Works Trust
99 Fund resulted in a substantial reduction of funds available for King County cities,
100 including a greater relative impact on smaller cities in King County. Without an
101 additional source of revenue, many transportation infrastructure projects planned by cities
102 will not be able to move forward.

103 W. With new funding for transportation investments throughout King County,
104 there is an opportunity to catalyze construction jobs, enhance freight mobility for our
105 ports and create a pathway for retaining and growing new jobs for key industry sectors.

106 X. It is in the best interest of the citizens of the county to establish a
107 transportation benefit district to work together and regionally fund, acquire, construct,
108 operate, maintain and preserve roadway, public transportation or other mobility facilities,
109 services and programs, and any other project or program contained in the transportation
110 plan of the state, a regional transportation planning organization, a city or a county, and

111 to exercise any other functions or fund any other transportation improvements authorized
112 by chapter 36.73 RCW. Such a transportation benefit district should focus its
113 investments in local mobility and connecting within the district.

114 SECTION 2. There is created a transportation benefit district, to be known as the
115 King County transportation district, with geographical boundaries comprised of the limits
116 of the county, which shall have the authority to exercise the statutory powers in chapter
117 36.73 RCW.

118 SECTION 3.

119 A. The governing board of the transportation district shall be the King County
120 council acting in an ex officio and independent capacity, which shall have the authority to
121 exercise the statutory powers in chapter 36.73 RCW.

122 B. The King County treasurer shall be the treasurer of the transportation district.

123 C. The board shall develop and implement a material change policy for projects
124 that the district is implementing. The material change policy shall address major plan
125 changes that affect project delivery or the ability to finance the plan, in accordance with
126 RCW 36.73.160(1).

127 D. The board shall issue an annual report, in accordance with chapter 36.73 RCW.

128 SECTION 4. The district shall be dissolved in accordance with RCW 36.73.050.

129 SECTION 5. The district shall fund, acquire, construct, operate, maintain and
130 preserve public transportation facilities, services and programs, roads and any other
131 project contained in the transportation plan of the state, a regional transportation planning
132 organization, a city or the county, and exercise any other functions or fund any other
133 transportation improvement authorized by chapter 36.73 RCW. When authorized by

134 statute or by the voters in accordance with chapter 36.73 RCW, the board may impose any
135 one of or a combination of taxes, fees, charges and tolls, for purposes consistent with
136 chapter 36.73 RCW.

137 SECTION 6. For the purposes of defining a “transportation plan” under chapter
138 36.73 RCW and section 5 of this ordinance:

139 A. The transportation plan of the county includes the Transportation Element of
140 the King County Comprehensive Plan, the King County Metro Transit Strategic Plan for
141 Public Transportation, the King County Metro Transit Service Guidelines, the King
142 County Department of Transportation Strategic Plan for Road Services, the Transportation
143 Needs Report, the King County Roads Services CIP and any other plan concerning
144 transportation that is adopted by the metropolitan King County council; and

145 B. The transportation plan of the state, a regional transportation planning
146 organization or a city shall be as defined by each such entity.

147 SECTION 7. As authorized under chapter 36.73 RCW, this ordinance shall be
148 liberally construed to permit the accomplishment of its purposes.

149 SECTION 8. Severability. If any provision of this ordinance or its application to
150 any person or circumstance is held invalid, the remainder of this ordinance or the
151 application of the provision to other persons or circumstances is not affected.

Date Created:	December 13, 2013
Drafted by:	Wes Edwards, Transportation Planner, Regional Transportation Planning
Sponsors:	
Attachments:	None

1 ..title

2 AN ORDINANCE creating a countywide transportation
3 benefit district in King County, Washington, in order to
4 finance the acquisition, construction, operation,
5 maintenance and preservation of public transportation
6 facilities, services and programs, roads and any other
7 projects authorized by chapter 36.73 RCW.

8 ..body

9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10 SECTION 1. Findings:

11 A. The 2008 recession had a deep and enduring impact to the economy in King
12 County, causing property and sales tax revenues that finance government transportation
13 services to drop unexpectedly.

14 B. As the largest labor market in the state, failure of the transportation system in
15 King County will have far reaching economic impacts across Washington.

16 C. The King County transit division ("Metro") is vital to the region's economic
17 health. Metro provided over one hundred fifteen million passenger trips in 2012 with
18 ridership expected to grow; more than one thousand five hundred companies provide
19 transit passes to their employees; over half of Metro's passengers are commuters; and
20 current service levels keep approximately one hundred seventy-five thousand cars off our
21 roads every weekday.

22 D. Sales tax currently provides for sixty percent of Metro's operating budget, and
23 reductions in property tax revenue and the lack of growth in gas tax revenue will limit
24 key funding sources for city and unincorporated King County transportation projects.

25 E. The twenty-dollar congestion reduction charge authorized in Ordinance 17169
26 in 2011 was a temporary measure while sustainable funding solutions were developed.
27 King County's authority for this implemented funding source expires May 31, 2014.

28 F. In 2011, the King County council adopted the landmark King County Metro
29 Transit Strategic Plan for Public Transportation and Service Guidelines that established a
30 new course that prioritizes productivity, social equity and geographic value in the
31 ongoing development of the Metro transit system.

32 G. To respond to decreased revenues during the recession, Metro undertook a
33 number of measures to preserve service. Metro implemented system-wide reforms,
34 including restructuring the transit system to improve productivity and effectiveness and
35 discontinuing the Ride Free Area in downtown Seattle. Metro has also increased revenue
36 for transit through property tax changes, through the implementation of the temporary
37 congestion reduction charge and through multiple fare increases raising fares by eighty
38 percent since 2008. As a result, Metro realized nearly eight hundred million dollars in
39 savings and new revenues combined to support the system.

40 H. Metro still faces an ongoing annual revenue shortfall up to seventy-five
41 million dollars to maintain existing service levels. Without new revenue, Metro will face
42 up to a seventeen percent cut in service, or approximately six hundred thousand annual
43 hours of service cuts beginning in fall 2014.

44 I. The King County road services division is responsible for an unincorporated
45 area road network that supports more than one million trips per day. The system consists
46 of about one thousand five hundred miles of county roads and one hundred eighty
47 bridges, plus numerous sidewalks and pathways, traffic signs and signals, drainage pipes
48 and culverts and other critical transportation infrastructure.

49 J. The road services division's funding for maintenance of roads and bridges has
50 declined by more than one-third since 2009 due to annexations, declining property
51 values, less state and federal grant support and lower gas tax revenue. At the same time,
52 the volume of county road miles has not dropped proportionally while transportation
53 safety, preservation and other needs are increasing due to aging infrastructure, population
54 growth, development and changing travel patterns.

55 K. Property tax is the road services division's primary funding source, and
56 property values in unincorporated King County have declined significantly since the start
57 of the recession. The ability of property tax revenue to recover from its depressed levels
58 is impeded by statutory constraints limiting tax collections.

59 L. Gas tax revenues, another major source of funding for the road services
60 division, will not increase with the rate of inflation as gasoline consumption stagnates due
61 to more fuel efficient cars and to fewer vehicle miles travelled, and because the tax rate
62 per gallon is fixed and does not adjust with inflation.

63 M. Future grant funding for capital projects is also uncertain as federal and state
64 decision-makers choose between competing interests for limited dollars.

65 N. The Strategic Plan for Road Services was approved by the council in 2010 to
66 provide key guidance to the agency about work priorities, including infrastructure service

67 and investment decisions. The plan gives top priority to basic goals: meet critical safety
68 needs, comply with legal requirements, and maintain and preserve the existing road
69 network.

70 O. The road services division is reducing costs through reductions in
71 management and administrative costs, space consolidation and reductions to fleet
72 equipment, and has already reduced division staff by forty percent and implemented
73 changes to service priorities.

74 P. Without funding to stabilize the declining road system, the roads services
75 division expects to close thirty-five bridges before they become unsafe, restrict access to
76 seventy-two miles of failing roadways and reduce storm service on snowy and icy roads
77 by two-thirds during the winter season.

78 Q. Cities in King County maintain five thousand five hundred miles of streets
79 plus bridges, sidewalks, drainage systems, traffic signals, bicycle and pedestrian facilities
80 and trails. Existing facilities are aging. Revenue sources currently available to cities are
81 not keeping pace with the costs of replacement and expansion to meet growth.

82 R. King County cities also are beset by failing roads and bridges, congested
83 corridors and bottlenecked interchanges, which undermine the mobility of cars, buses and
84 freight carriers to transport people and goods.

85 S. With new funding for transportation investments throughout King County,
86 there is an opportunity to catalyze construction jobs, enhance freight mobility for our
87 ports and create a pathway for retaining and growing new jobs for key industry sectors.

88 T. It is in the best interest of the citizens of the county to establish a
89 transportation benefit district to finance any transportation improvement authorized by

90 chapter 36.73 RCW, including but not limited to, the acquisition, construction, operation,
91 maintenance and preservation of public transportation facilities, services and programs,
92 roads and any other project contained in the transportation plan of the state, a regional
93 transportation planning organization, a city or the county.

94 U. The transportation benefit district is intended solely to finance transportation
95 improvements authorized by chapter 36.73 RCW, and is not intended to directly acquire,
96 construct, operate, maintain, preserve or otherwise provide transportation improvements.
97 It is further intended that local jurisdictions receiving funding from the transportation
98 benefit district will directly acquire, construct, operate, maintain, preserve or otherwise
99 provide any transportation improvement authorized by chapter 36.73 RCW.

100 V. The King County council anticipates that, in an effort to provide an efficient
101 operation of the transportation benefit district and avoid the potential for creating
102 duplicative staffing functions, the transportation benefit district will contract with King
103 County to utilize existing King County staff to provide administrative functions required
104 by the district to the extent allowed by applicable law.

105 SECTION 2. There is created a transportation benefit district, to be known as the
106 King County transportation district, with geographical boundaries comprised of the limits
107 of the county. The district shall have the authority to exercise the statutory powers in
108 chapter 36.73 RCW.

109 SECTION 3. A. The King County council shall be the governing board of the
110 transportation district, acting in an ex officio and independent capacity, which shall have
111 the authority to exercise the statutory powers in chapter 36.73 RCW.

112 B. The King County executive services finance director shall be the treasurer of
113 the transportation district.

114 C. The board shall develop and implement a material change policy for projects
115 that the district is implementing. The material change policy shall address major plan
116 changes that affect project delivery or the ability to finance the plan, in accordance with
117 RCW 36.73.160(1).

118 D. The board shall cause to be issued an annual report, in accordance with chapter
119 36.73 RCW.

120 SECTION 4. The district shall be dissolved in accordance with RCW 36.73.050.

121 SECTION 5. The transportation district is formed to finance, but not directly carry
122 out, any transportation improvement authorized by chapter 36.73 RCW, including, but not
123 limited to, the acquisition, construction, operation, maintenance and preservation of public
124 transportation facilities, services and programs, roads and any other project contained in
125 the transportation plan of the state, a regional transportation planning organization, a city
126 or the county. When authorized by statute or by the voters in accordance with chapter
127 36.73 RCW, the board may impose taxes, fees, charges or tolls, or any combination
128 thereof, for the purposes consistent with chapter 36.73 RCW.

129 SECTION 6. For the purposes of chapter 36.73 RCW and section 5 of this
130 ordinance:

131 A. "Transportation plan" includes the Transportation Element of the King County
132 Comprehensive Plan, the King County Metro Transit Strategic Plan for Public
133 Transportation, the King County Metro Transit Service Guidelines, the annual King
134 County Metro Transit Service Guidelines Report, the King County Department of

135 Transportation Strategic Plan for Road Services, the Transportation Needs Report, the
136 King County Roads Services CIP and any other plan concerning transportation that is
137 adopted by the King County council; and

138 B. The transportation plan of the state, a regional transportation planning
139 organization or a city shall be as identified by each entity.

140 SECTION 7. As authorized under chapter 36.73 RCW, this ordinance shall be
141 liberally construed to permit the accomplishment of its purposes.

142 SECTION 8. Severability. If any provision of this ordinance or its application to
143 any person or circumstance is held invalid, the remainder of this ordinance or the
144 application of the provision to other persons or circumstances is not affected.

Date Created:	December 13, 2013
Drafted by:	Wes Edwards, Transportation Planner, Regional Transportation Planning
Sponsors:	
Attachments:	

1 ..title

2 A RESOLUTION of the King County Transportation District;
3 submitting a ballot measure regarding transportation funding to the
4 qualified electors of the King County Transportation District at a
5 special election to be held on (DATE) and submitting a
6 proposition to district voters to authorize the district to fix and
7 impose a (RATE) sales and use tax within the district and a
8 (AMOUNT) dollar vehicle fee on all vehicles within the district to
9 finance the King County transit division (“Metro Transit”) and city
10 and unincorporated county transportation improvements in the
11 district; requesting that the King County Prosecutor prepare a ballot
12 title for the proposition; and appointing committees to prepare the
13 pro and con statements for the local voters’ pamphlet.

14 ..body

15 WHEREAS, in the last several years, new transportation challenges have emerged
16 affecting the funding of transportation improvements for King County Metro transit and all King
17 County cities and unincorporated King County, including a prolonged recession, and declined
18 gas-tax, property tax, and sales tax revenues; and

19 WHEREAS, the Revised Code of Washington (RCW), Chapter 36.73, provides for the
20 establishment of transportation benefit districts by cities and counties and authorizes those
21 districts to levy and impose various taxes and fees to generate revenues to support transportation

22 improvements that benefit the district and that are consistent with state, regional or local
23 transportation plans and necessitated by existing or reasonably foreseeable congestion levels; and

24 WHEREAS, King County Ordinance (#####) established the King County
25 Transportation District to finance, but not directly carry out, any transportation improvement
26 authorized by RCW chapter 36.73, including but not limited to, public transportation facilities,
27 services and programs, roads, and any other project contained in the transportation plan of the
28 state, a regional transportation planning organization, a city, or the county; and

29 WHEREAS, the King County Transportation District is intended solely to finance
30 transportation improvements authorized by RCW chapter 36.73, and is not intended to directly
31 acquire, construct, operate, maintain, preserve or otherwise provide any transportation
32 improvements. It is further intended that local jurisdictions receiving funding from the
33 transportation benefit district will directly acquire, construct, operate, maintain, preserve, or
34 otherwise provide any transportation improvement authorized by RCW chapter 36.73.

35 WHEREAS, the King County Transportation District may fix and impose up to a one
36 hundred dollar vehicle fee pursuant to RCW 82.80.140 with approval of a majority of district
37 voters; and

38 WHEREAS, the King County Transportation District may fix and impose up to a two-
39 tenths of one percent (0.2%) sales and use tax within the district pursuant to RCW 82.14.0455
40 with approval of a majority of district voters; and

41 WHEREAS, a vehicle fee up to eighty dollars imposed by the King County
42 Transportation District does not preclude individual cities and unincorporated King County from
43 continuing to collect or authorize future collection of a twenty dollar councilmanic vehicle fee
44 pursuant to RCW 82.80.140; and

45 WHEREAS, it is the intent of the Board of the King County Transportation District to
 46 distribute revenues, less administration costs, to jurisdictions in the district's boundaries by
 47 providing sixty percent of the combined revenues from the vehicle fee and sales and use tax
 48 revenues to support King County Metro Transit; and the remaining forty percent of combined
 49 revenues to be distributed to cities and unincorporated King County in a share equal to their
 50 percentage of countywide population; and

51 WHEREAS, the King County Transportation District cannot impose a voter approved
 52 sales and use tax that exceeds a period of ten years, unless extended by an affirmative public vote
 53 per RCW 82.14.0455.

54 BE IT RESOLVED BY THE KING COUNTY TRANSPORTATION DISTRICT:

55 SECTION 1. Fee and tax submittal to voters. To provide necessary financing for the
 56 purposes identified in section 3 of this resolution, the King County Transportation District shall
 57 submit to the qualified electors of the district a proposition authorizing the district to fix and
 58 impose a (AMOUNT) dollar vehicle fee to be added to any existing fees and to fix and impose a
 59 (RATE) of one percent (0. __%) to the sales and use tax.

60 SECTION 2. Distribution of revenues. The district sales and use tax and vehicle fee
 61 revenue shall first pay any administrative costs to the state Department of Licensing, state
 62 Department of Revenue, and any other administrative costs associated with the district's
 63 operations. The remaining combined revenue will be distributed in the following manner: sixty
 64 percent to King County Metro Transit; and forty percent to the cities within King County that
 65 enter into agreements with the district to participate and to unincorporated King County in shares
 66 equal to each entity's respective percentage of countywide population.

67 SECTION 3. Use of revenues. If approved by the qualified electors of the district, the
68 sales and use tax and vehicle fee revenue, less the administrative costs identified in section 2 of
69 this resolution, shall be used consistent with RCW chapter 36.73 to finance, but not directly carry
70 out, any transportation improvement authorized by RCW chapter 36.73, including but not limited
71 to, the acquisition, construction, operation, maintenance, and preservation of public
72 transportation facilities, services and programs, roads, any other project contained in the
73 transportation plan of the state, a regional transportation planning organization, a city or the
74 county. Further, the activities carried out with the sales and use tax and vehicle fee revenue will
75 include, but not be limited to:

- 76 A. the operation, maintenance and capital needs of Metro Transit;
- 77 B. the provision of Metro Transit public transportation services;
- 78 C. the acquisition, operation, maintenance and repair of Metro Transit vehicles and
79 equipment;
- 80 D. the implementation of transportation demand management programs;
- 81 E. the planning associated with transit service operations, technologies, and public
82 engagement to improve performance and reduce costs when possible;
- 83 F. the planning, design and implementation of capital improvement and preservation
84 projects for road system facilities, including facilities such as roads, bridges, signals, guardrails,
85 drainage systems, and pedestrian and bicycle pathways;
- 86 G. the operation, maintenance, repair, preservation and restoration of road system
87 facilities;
- 88 H. the provision of emergency responses to protect road system facilities and public
89 health and safety;

90 I. the enhancement of user safety while also maintaining existing safety standards and
91 legal requirements;

92 J. the management of intelligent transportation systems in including traffic cameras,
93 control equipment, and new technologies to optimize the existing transportation system;

94 SECTION 4. For the purposes of defining a transportation plan under RCW chapter
95 36.73 and section 3 of this resolution:

96 A. the transportation plan of King County includes the Transportation Element of the
97 King County Comprehensive Plan, the King County Metro Transit Strategic Plan for Public
98 Transportation, the King County Metro Transit Service Guidelines, the annual King County
99 Metro Transit Service Guidelines Report, the King County Department of Transportation
100 Strategic Plan for Road Services, the Transportation Needs Report, the King County Roads
101 Services CIP and any other plan concerning transportation that is adopted by the Metropolitan
102 King County Council; and

103 B. the transportation plan of the state, a regional transportation planning organization or
104 a city shall be as identified by each such entity.

105 SECTION 5. Call for special election. The King County Transportation District hereby
106 requests that the King County director of elections call a special election on (DATE), to
107 consider a proposition authorizing the district to fix and impose a vehicle fee in the amount of
108 (AMOUNT) dollars and to fix and impose a sales and use tax in the amount of (RATE) of one
109 percent (0. __%) for the purposes described in this resolution. The King County director of
110 elections shall cause notice to be given of this resolution in accordance with the state constitution
111 and general law and to submit to the qualified electors of the district, at the said special county
112 election, the proposition hereinafter set forth, in the form of a ballot title substantially as follows:

113 KING COUNTY TRANSPORTATION DISTRICT

114

115 PROPOSITION NO. ____

116

117 The Board of the King County Transportation District passed Resolution No. (###) concerning
118 funding for public transportation, roads and other transportation improvements. If approved, this
119 proposition would provide funding for King County Metro Transit, and city and unincorporated
120 King County transportation improvements. It would authorize the district to fix and impose a
121 sales and use tax of (RATE) of one percent (0. __%) to be collected from all taxable retail sales
122 and uses within the district under RCW 82.14.0455 for a term of ten years, and an annual vehicle
123 fee of (AMOUNT) (\$ __.00) dollars per registered vehicle under RCW 82.80.140.

124

125 Should this vehicle fee and sales tax increase be approved?

126

127 Yes

128 No

129

130 SECTION 6. RCW 29A.32.280 provides that for each measure from a jurisdiction that is
131 included in a local voters' pamphlet, the legislative authority of that jurisdiction shall formally
132 appoint a committee to prepare arguments advocating voter approval of the measure and a
133 committee to prepare arguments advocating voter rejection of the measure.

134



Agenda Bill No. 14-013

TO: Mayor Guier and City Council Members
FROM: Paula Wiech, Planner
MEETING DATE: January 21, 2014
SUBJECT: Washington State Growth Management Update Grant Acceptance

ATTACHMENTS: Resolution No. 14-102
Interagency Agreement with Washington Department of
Commerce

Previous Council Review Date: September 3, 2013

Summary: The Washington State Growth Management Act (GMA) requires that cities “fully planning” under the Act update their Comprehensive Plans on a periodic basis. The City of Pacific is “fully planning” under the Act. It exists in two counties that require our Comprehensive Plan to conform to their Plans, and the State has set 2015 for both King and Pierce Counties to complete their periodic updates.

Comprehensive Plans “provide the framework for how our communities will grow. And like business plans, they must evolve over time to be effective.” (WA Dept. of Commerce)

The City of Pacific has revised several Chapters of its Comprehensive Plan text, and the Map several times since the last update required in 2004, but it has not fully kept up with changes in the Growth Management Act requirements.

The state is now helping small cities to “get current,” by offering grants to be used for updating Comprehensive Plans to meet required deadlines. They are offering the City of Pacific \$18,000 to make progress towards our 2015 deadline.

Recommendation/Action: Move forward to January 27th meeting to approve the acceptance of the Washington Department of Commerce Growth Management Update Grant in the amount of \$18,000.

Motion for Consideration:

Budget Impact:

Alternatives:

AGENDA ITEM NO. 4D

CITY OF PACIFIC
WASHINGTON

RESOLUTION NO. 14 - 102

A RESOLUTION OF THE CITY OF PACIFIC, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A WASHINGTON STATE DEPARTMENT OF COMMERCE GROWTH MANAGEMENT ACT UPDATE GRANT AGREEMENT

WHEREAS the Washington State Growth Management Act (GMA) requires that cities "fully planning" under the Act update their Comprehensive Plans on a periodic basis; and

WHEREAS the City of Pacific is "fully planning" under the Act, and exists in two counties that require the City's Comprehensive Plan to conform to their Plans; and

WHEREAS the State has set 2015 for both King and Pierce Counties to complete their periodic updates; and

WHEREAS the City of Pacific has been notified by the Washington State Department of Commerce that it has been approved for a grant in the amount of \$18,000 to assist in achieving a required 2015 Comprehensive Plan Update,

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON

Section 1. The Pacific City Council hereby authorizes the Mayor to execute a Washington State Department of Commerce Grant Agreement (attached as Exhibit A) in the amount of \$18,000 for activities associated with updating the City of Pacific Comprehensive Plan.

Section 2. This Resolution shall take effect and be in full force upon passage and signatures hereon.

CITY OF PACIFIC

LEANNE GUIER, MAYOR

ATTEST/AUTHENTICATED:

AMY STEVENESON-NESS, CITY CLERK

APPROVED AS TO FORM:

KEN LUCE, CITY ATTORNEY



Department of Commerce

Innovation is in our nature.

Interagency Agreement with

City of Pacific

through

Washington State Department of Commerce
Growth Management Services

For

Growth Management Act
Update Grant

Start date:

Date of Execution

This Page is Intentional Left Blank

TABLE OF CONTENTS

Special Terms and Conditions	1
Face Sheet.....	1
1. Contract Management	2
2. Compensation	2
3. Billing Procedures and Payment.....	2
4. Insurance.....	3
5. Order of Precedence	5
General Terms and Conditions	6
1. Definitions	6
2. Advance Payments Prohibited.....	6
3. All Writings Contained Herein.....	6
4. Amendments	6
5. Americans With Disabilities Act (ADA).....	6
6. Assignment	6
7. Attorney's Fees	6
8. Audit.....	6
9. Confidentiality/Safeguarding of Information	7
10. Conflict of Interest	8
11. Copyright Provision	8
12. Disputes	9
13. Duplicate Payment	9
14. Governing Law and Venue	9
15. Indemnification	10
16. Independent Capacity of the Grantee	10
17. Industrial Insurance Coverage.....	10
18. Laws.....	10
19. Licensing, Accreditation and Registration.....	11
20. Limitation of Authority	11
21. Noncompliance With Nondiscrimination Laws	11
22. Political Activities.....	11
23. Publicity.....	11
24. Recapture.....	11
25. Records Maintenance.....	11
26. Right of Inspection.....	12
27. Savings	12
28. Severability.....	12
29. Site Security	12
30. Subcontracting	12
31. Survival	12

32.	Taxes	13
33.	Termination for Cause	13
34.	Termination for Convenience.....	13
35.	Termination Procedures	13
36.	Treatment of Assets	14
37.	Waiver.....	14

Attachment A, Statement of Work

Attachment B, Budget

FACE SHEET

Contract Number: 14-63200-028

**Washington State Department of Commerce
Local Government & Infrastructure Division
Growth Management Services
Growth Management Act – Update Grant**

1. Grantee City of Pacific 100 3rd Avenue SE Pacific, WA 98047		2. Grantee Finance Representative Richard A. Gould Interim Finance Director (253) 929-6026 rgould@ci.pacific.wa.us	
3. Grantee Representative Paula Wiech Community Development/Public Works (253) 929-1111 pwiech@ci.pacific.wa.us		4. COMMERCE Representative Paul Johnson Senior Planner (360) 725-3048 paul.johnson@commerce.wa.gov PO Box 42525 Olympia, WA 98504	
5. Contract Amount \$18,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date Date of Execution	8. End Date 06/30/2015
9. Federal Funds (as applicable) N/A		Federal Agency: _____ CFDA Number _____	
10. Tax ID # 91-600-1483	11. SWV # SWV0017017-01	12. UBI # _____	13. DUNS # _____
4. Contract Purpose The last Pacific Comprehensive Plan Update was in 2004 with several periodic revisions. A thorough review and updates to all Chapters especially, Capital Facilities, Critical Areas, and Transportation text and maps is required. In addition, Pacific will reconsider its Urban Growth Areas, and annexing its Well Field and other properties.			
COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Grantee Terms and Conditions including Attachment “A” – Statement of Work, and Attachment “B” – Budget.			
FOR GRANTEE _____ Leanne Guier, Mayor City of Pacific _____ Date		FOR COMMERCE _____ Kendee Yamaguchi, Assistant Director Local Government and Infrastructure Division _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL	

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

1. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Contract.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed **eighteen thousand dollars (\$18,000)** for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Grantee's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

EXPENSES

Grantee shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Grantee for authorized expenses shall not exceed **\$18,000**, which amount is included in the Contract total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Grantee shall receive compensation for travel expenses at current state travel reimbursement rates

3. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE and upon execution of Agreement. Subsequent payments will be made upon receipt of deliverables consistent with the Statement of Work and/or required Status Report documenting progress of the project along with properly completed invoices.

Each Status Report and invoice shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number **14-63200-028**. If expenses are invoiced, provide a detailed breakdown of each type.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Contract.

Section 2, Advance Payments Prohibited, of the General Terms and Conditions attached hereto, does not apply to this Contract and is hereby deleted in its entirety.

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

4. INSURANCE

The Grantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect COMMERCE should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subgrantee, or agents of either, while performing under the terms of this Agreement.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of the Agreement start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Agreement, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Agreement activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subgrantees provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by the Grantee or its Subgrantee, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under contract to the Grantee. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Agreement shall be \$100,000 or the highest of planned reimbursement for the Agreement period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subgrantees that receive \$10,000 or more per year in funding through this Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name the Grantee as beneficiary.
- C. The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

Additional Provisions:

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The state of Washington, COMMERCE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. **Identification.** The policy must reference COMMERCE's Agreement number and the State agency name.
3. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by COMMERCE's Risk Manager, or the Risk Manager for the state of Washington, before the Agreement is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
4. **Excess Coverage.** By requiring insurance herein, COMMERCE does not represent that coverage and limits will be adequate to protect Grantee and such coverage and limits shall not limit Grantee's liability under the indemnities and reimbursements granted to COMMERCE in this Agreement.

Local Government Grantees that Participate in a Self-Insurance Program

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the Grantee may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Grantee shall provide: (1) a description of its self-insurance program, and (2) a certificate an/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Grantee's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Grantee shall provide annually to COMMERCE a summary of coverages and a letter of self insurance, evidencing continued coverage under Grantee's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self insurance will be provided on the anniversary of the start date of this Agreement.

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

5. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Statement of Work
- Attachment B – Budget
- add any other attachments incorporated by reference on the Face Sheet

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
- C. "COMMERCE" shall mean the Department of Commerce.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subgrantee/subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Contract under a separate contract with the Grantee. The terms "subgrantee/subcontractor" refers to any tier.

2. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by COMMERCE.

3. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

4. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The 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 telecommunications.

6. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

7. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

8. AUDIT

A. General Requirements

Grantees are to procure audit services based on the following guidelines.

The Grantee shall maintain its records and accounts so as to facilitate COMMERCE's audit requirement and shall ensure that Subgrantees also maintain auditable records.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

The Grantee is responsible for any audit exceptions incurred by its own organization or that of its Subgrantees.

COMMERCE reserves the right to recover from the Grantee all disallowed costs resulting from the audit.

As applicable, Grantees required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Grantee must respond COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

Grantees expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

- Grantor agency name
- State program name
- BARS account number
- Grantor
- COMMERCE Agreement number
- Agreement award amount including amendments (total grant award)
- Current year expenditures

If the Grantee is a state or local government entity, the Office of the State Auditor shall conduct the audit.

The Grantee shall include the above audit requirements in any subcontracts.

In any case, the Grantee's financial records must be available for review by COMMERCE.

C. Documentation Requirements

The Grantee must send a copy of the audit report described above no later than nine (9) months after the end of the Grantee's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

- Department of Commerce
- ATTN: Audit Review and Resolution Office
- 1011 Plum Street SE
- PO Box 42525
- Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Grantee must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

If the Grantee is required to obtain a Single Audit because of Circular A-133 requirements, no other report is required.

9. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

2. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
 3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B.** The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

10. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the GRANTEE terminate this contract if it is found after due notice and examination by the COMMERCE that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the COMMERCE shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the contract by the GRANTEE. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

11. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

12. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

13. DUPLICATE PAYMENT

The AGENCY shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

14. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

15. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee or its employees.

GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to GRANTEE'S or any subgrantee's performance or failure to perform the contract. GRANTEE'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

16. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent Grantee relationship will be created by this Contract. The Grantee and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

17. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

18. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (1).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

19. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

20. LIMITATION OF AUTHORITY

Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent

21. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

22. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

23. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

24. RECAPTURE

In the event that the Grantee fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

25. RECORDS MAINTENANCE

The GRANTEE shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

GRANTEE shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

26. RIGHT OF INSPECTION

The GRANTEE shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

27. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

28. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

29. SITE SECURITY

While on AGENCY premises, GRANTEE, its agents, employees, or subgrantees shall conform in all respects with physical, fire or other security policies or regulations.

30. SUBCONTRACTING

Neither the Grantee nor any Subgrantee shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of COMMERCE. In no event shall the existence of the subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties. This clause does not include contracts of employment between the Grantee and personnel assigned to work under this Contract.

Additionally, the Grantee is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Grantee and its subgrantees agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

31. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

32. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

33. TERMINATION FOR CAUSE

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Grantee shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Grantee: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

34. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

35. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case COMMERCE shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Grantee such sum as COMMERCE determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by COMMERCE, the Grantee shall:

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by COMMERCE, all of the rights, title, and interest of the Grantee under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of COMMERCE to the extent COMMERCE may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by COMMERCE any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by COMMERCE; and
7. Take such action as may be necessary, or as COMMERCE may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Grantee and in which COMMERCE has or may acquire an interest.

36. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed, as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subgrantees.

37. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Statement of Work

Grantee: City of Pacific

Summary: The last Pacific Comprehensive Plan Update was in 2004 with several periodic revisions. A thorough review and updates to all Chapters especially, Capital Facilities, Critical Areas, and Transportation text and maps is required. In addition, Pacific will reconsider its Urban Growth Areas, and annexing its Well Field and other properties.

Goals/ Actions/ Deliverables	Description	Start Date	End Date
Goal 1.0	Review relevant plans and regulations to determine if there are any sections that need revision.		
Action 1.1	Review the comprehensive plan using the Commerce periodic update checklist.	Date of Execution (DOE)	01/31/14
Action 1.2	Review the development regulations, including the critical areas regulations using the Commerce periodic update checklist.	DOE	01/31/14
Deliverable 1.1	First grant status report due to Department of Commerce.		12/31/13
Deliverable 1.2	Completed Commerce periodic update checklists for comprehensive plan and development regulations.		01/31/14
Performance Measure 1.0	Grantee has completed the required work to review of relevant plans and regulations to determine if there are any sections that need revision.		01/31/14

Goal 2.0	Conduct a public hearing to review proposed comprehensive plan and development regulations updates as identified in Goal 1.0, and with an emphasis on Critical Areas regulations and mapping, and Transportation Plan updates and counts. Seek citizen's proposals <u>citizen input</u> for updating current comprehensive plan goals, and policies and development regulations.		
Action 2.1	Prepare materials for the public hearing.	02/01/14	02/28/14
Action 2.2	Conduct a public hearing, present a list of proposed comprehensive plan and development regulations changes based on Commerce Department review and take citizen's testimony on revising current comprehensive plan goals, and policies and <u>development regulations</u> .	02/10/14	04/28/14
Action 2.3	Prepare a report of the above identified public hearing which becomes the scope of work for updating the comprehensive plan, the development regulations and the critical areas ordinance.	03/03/14	03/10/14
Deliverable 2.1	A report summarizing the public process, and a final scope of work for updating the comprehensive plan, the development regulations and the critical areas ordinance.		03/31/14
Deliverable 2.2	Second grant status report due to Department of Commerce.		03/31/14
Performance Measure 2.0	Grantee has produced an acceptable scope of work for updating the comprehensive plan, the development regulations and the critical areas ordinance.		03/31/14
Goal 3.0	Update the comprehensive plan, the development regulations and the critical areas ordinance as identified in Goal 2.0 above.		

Action 3.1	Update the comprehensive plan, the development regulations and the critical areas ordinance as identified in Goals 1 and 2 above.	03/17/14	04/30/14
Action 3.2	Add potentially new chapters such as public health, climate change, floodplain management and emergency management.	03/17/14	04/30/14
Deliverable 3.0	A draft updated comprehensive plan, development regulations and critical areas ordinance.		04/30/14
Performance Measure 3.0	Grantee has produced an acceptable updated version of the comprehensive plan, the development regulations and the critical areas ordinance.		04/30/14
Goal 4.0	Review the draft reports of the comprehensive plan, the development regulations and the critical areas ordinance with the Town Council and conduct a public hearing.		
Action 4.1	Prepare materials for the public hearing.	05/05/14	05/30/14
Action 4.2	Prepare a draft expanded SEPA checklist.	05/05/14	05/30/14
Action 4.3	Conduct a public hearing on the draft updated comprehensive plan, the development regulations and the critical areas ordinance.	06/02/14	06/13/14
Deliverable 4.1	Revised draft of the comprehensive plan, development regulations, and critical areas ordinance.	06/23/14	07/03/14
Deliverable 4.2	Third grant status report due to Department of Commerce.		06/30/14
Performance Measure 4.0	Grantee has produced an acceptable revised draft of the updated comprehensive plan, the development regulations and the critical areas ordinance.		07/03/14

Goal 5.0	Present the draft updated comprehensive plan, the development regulations and the critical areas ordinance for 60-day review by state agencies.		
Action 5.1	Review the draft updated comprehensive plan, the development regulations, and the critical areas ordinance with the South Prairie Town Council.	07/14/14	07/25/14
Action 5.2	Submit the draft updated comprehensive plan, the development regulations, the critical areas ordinance and the expanded SEPA checklist for 60-day review by state agencies.	07/14/14	09/15/14
Deliverable 5.1	Draft updated comprehensive plan, development regulations, critical areas ordinance and expanded SEPA checklist, reviewed and responded to it by state agencies.		09/15/14
Deliverable 5.2	Grant closeout report due to Department of Commerce.		09/30/14
Performance Measure 5.0	Grantee has produced an acceptable draft updated comprehensive plan, development regulations, critical areas ordinance and expanded SEPA checklist that was reviewed by state agencies.		09/30/14

Status Reports Due By:

1 st Status Report	December 31, 2013
2 nd Status Report	March 31, 2014
3 rd Status Report	June 30, 2014
Closeout Report	June 30, 2015

Reports:

- A. The GRANTEE shall submit a brief progress report on a form approved by COMMERCE which describes the progress made on the work program outlined in Attachment "A." Progress reports will be submitted on a Semi-annual calendar cycle. The semi-annual progress report shall also provide detail on the dedicated matching funds.
- B. The GRANTEE shall furnish, along with or prior to submitting the final invoice voucher, one copy of each final product designated in Attachment "A."

Budget

The budget shall consist of the following elements:

1. Category of Expenditures:

	SFY 2014	SFY 2015	Total
Salaries and Benefits	\$6,000	\$8,000	\$14,000
Goods and Supplies	\$500	\$1,000	\$1,500
Professional Services	\$11,400	\$4,600	\$16,000
Other Goods and Services	\$500	\$1,000	\$1,500
Total	\$18,400	\$14,600	\$33,000

2. Budget Summary:

	SFY 2014	SFY 2015	Total
Commerce Funds	\$14,400	\$3,600	\$18,000
Other Funds	\$4,000	\$11,000	\$15,000
Total	\$18,400	\$14,600	\$33,000

3. Payment Disbursement Schedule:

	Amount
Upon execution of the grant contract.	\$5,400
After submission of the second status report on or before March 31, 2014.	\$4,500
After submission of the third status report on or before June 30, 2014.	\$4,500
Upon completion of the contract and submission of final closeout report on or before June 30, 2015.	\$3,600

4. Special Budget Provisions:

- A. For CONTRACTS over \$30,000, the total amount of transfers of funds between line item budget categories shall not exceed ten (10) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten percent, the total budget shall be subject to justification and negotiation of a CONTRACT amendment by the GRANTEE and the DEPARTMENT.
- B. For CONTRACTS under \$30,000 the total amount of transfers of funds between line item budget categories shall not exceed twenty (20) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed twenty percent, the total budget shall be subject to justification and negotiation of a CONTRACT amendment by the GRANTEE and the DEPARTMENT.
- C. A sum of ten (10) percent of funds shall be withheld until all tasks, activities, and final products defined in ATTACHMENT "A" have been successfully completed by the GRANTEE and accepted fully by the DEPARTMENT.

5. Reimbursement Provisions

- A. Funds will be disbursed per the schedule established in Attachment "B."
- B. Only eligible project-related costs will be reimbursed. Ineligible costs include, but are not necessarily limited to: capital expenses, such as land acquisition or construction costs; purchase of machinery; hosting expenses, such as meals, lodging, or transportation incurred by persons other than staff and volunteers working directly on the project; lobbying or political influencing; and other costs which are not directly related to the project.
- C. Within twenty (20) days after receiving and approving the voucher, COMMERCE shall remit to the GRANTEE a warrant covering Commerce's share of the costs incurred for work performed.
- D. The final invoice voucher covering costs incurred for work performed on or before 06/30/2015 must be submitted by the GRANTEE prior 7/10/2015, to allow Commerce sufficient time to process it. Payment of the final voucher shall be contingent upon COMMERCE's receipt and approval of any products or deliverables designated in Attachment "A."



Agenda Bill No. 14-004

TO: Mayor Guier and City Council Members
FROM: Paula Wiech, Planner
MEETING DATE: January 21, 2014
SUBJECT: Medical and Recreational Marijuana Moratorium

ATTACHMENTS: Draft proposed Ordinance No. 14-0xx extending the Moratorium on Medical Marijuana processing, production and dispensing, and instituting a Moratorium on the same for Recreational Marijuana;

Draft proposed Ordinance No. 14-0xz, an interim zoning ordinance that allows Recreational Marijuana uses in a limited area; (Will be passed out at meeting on 01/21/14)

Opinion of the Attorney General of Washington;

Proposed House Bills 2144 and 2322.

Previous Council Review Date: January 13, 2014

Summary: Medical Marijuana use has been legal in the State of Washington since 1998. Recreational Marijuana use was approved by voters in November 2012. Cities and counties are charged with regulating the use of both in their jurisdictions and there have been legal challenges to those that do not allow the processing, production and dispensing of marijuana. Since August 8, 2011, the City of Pacific has adopted four Moratoriums relating to Medical Marijuana. The Planning Commission reviewed draft zoning regulations for Medical and Recreational Marijuana at their December 30, 2012 Meeting.

The City of Pacific medical marijuana moratorium expires February 12, 2014. Marijuana use is still illegal on a federal level, and the City of Pacific will not issue business licenses for activities that are illegal on a city, state or federal level.

On January 16th, the State Attorney General issued an opinion regarding whether local governments are preempted from banning the location of a Washington State Liquor Control Board licensed producer, processor, or retailer within their jurisdictions; or from making it impractical for them to locate through land use regulations or business license requirements. His Opinion states that "cities, towns, and counties derive their police power from article XI, section 11 of the Washington Constitution, not from statute."

According to another attorney, proposed House Bill 2322 would prohibit any municipality from "preventing or impeding the establishment of a recreational marijuana business."

AGENDA ITEM NO. 4E

In other news: House Bill 2144, first read on January 13, 2014, is proposing that a share of the 25% marijuana excise taxes be passed along to local jurisdictions.

Recommendation/Action: While considering the extension of the City of Pacific Moratorium on the processing, production and dispensing of Medical Marijuana, and the adoption of a Moratorium on the processing, production and dispensing of Recreational Marijuana; that Council also consider an interim zoning ordinance regulating Recreational Marijuana then, after six months, an ordinance banning Medical Marijuana processing, production and dispensing due to health and safety issues; among possible alternatives.

Motion for Consideration: Consider the adoption of an interim zoning ordinance regulating Recreational Marijuana and Medical Marijuana as a possible alternative to extending the City of Pacific Moratorium on the processing, production and dispensing of Medical Marijuana, or the adoption of a Moratorium on the processing, production and dispensing of Recreational Marijuana.

Budget Impact: ?

Alternatives:

CITY OF PACIFIC, WASHINGTON

ORDINANCE NO. 14-0xx

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, EXTENDING THE MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA COLLECTIVE GARDENS; EXTENDING THE MORATORIUM ON THE PROCESSING, PRODUCTION, AND DISPENSING OF MEDICAL MARIJUANA; EXTENDING THE EFFECTIVE DATE; ADOPTING A MORATORIUM ON THE PROCESSING, PRODUCTION, AND DISPENSING OF RECREATIONAL MARIJUANA; AND PROVIDING THAT THE MORATORIUM WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION.

WHEREAS, the City Council of the City of Pacific passed Ordinance 1804 on August 8, 2011, which established a six (6) month moratorium on the issuance of permits or licenses for medical marijuana collective gardens, and;

WHEREAS, the City Council of the City of Pacific passed Ordinance 12-1823 on February 13, 2012, which established a twelve (12) month moratorium on the issuance of permits or licenses for medical marijuana collective gardens, and;

WHEREAS, the City Council held a public hearing on February 25, 2013 to consider an extension of the moratorium on the production, processing and dispensing of Medical Marijuana, and was presented with a plan that will provide the Council with the desired draft zoning regulation, and;

WHEREAS, the City Council of the City of Pacific passed ordinance 13-1843 on February 25, 2013, which established a six (6) month moratorium on the issuance of permits or licenses for medical marijuana collective gardens, and;

WHEREAS, the City Council of the City of Pacific passed ordinance 13-1848 on August 12, 2013, which established a six (6) month moratorium on the issuance of permits or licenses for medical marijuana collective gardens, and the processing, production, and dispensing of medical marijuana;

WHEREAS, the moratorium was established in order to allow the City of Pacific Planning Commission to plan, process and provide the City Council with draft zoning regulations that would address the issues of permitting medical marijuana in use categories that would be compatible with the permitted uses of the zone(s), and;

WHEREAS, the Washington State Supreme Court has before it a case involving Medical Marijuana zoning regulations similar to those contemplated by the City of Pacific and is expected to rule on the legality of those regulations this year, and;

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;

WHEREAS, the City of Pacific does not have any regulations addressing facilities or uses identified in I-502, other than the requirements for a general business license, and;

WHEREAS, the Pacific Planning Commission has continued to review the issues of permitting both medical and recreational marijuana in use categories that would be compatible with the permitted uses of the zone(s), and;

WHEREAS, the Planning Commission has recommended that the City Council extend the moratorium on medical marijuana collective gardens, and the processing, production, and dispensing of medical marijuana, and also adopt a moratorium on the processing, production, and dispensing of recreational marijuana, until such time as the issues of regulation are clarified by the courts and the state, and;

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

Section 1. The recitals set forth above are hereby adopted as the Pacific City Council’s findings in support of the extension of the moratorium imposed by Ordinance 1804, Ordinance 12-1823 and Ordinance 13-1843, and the establishment of a moratorium on the processing, production and dispensing of medical marijuana.

Section 2. Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, an extension of the zoning moratorium established by Ordinance 1804 and extended by Ordinance 12-1823 ~~and~~, Ordinance 13-1843, **and Ordinance 13-1848** is hereby enacted in the City of Pacific prohibiting the licensing, establishment, maintenance or continuation of any medical marijuana collective garden, as defined in RCW 69.51A.085.

Section 3. Medical marijuana collective gardens as defined in Section 2 are hereby designated as prohibited uses in the City of Pacific. In accordance with the provisions of RCW 35A.82.020 and Pacific Municipal Code 5.02.138(2), no business license shall be issued to any person for a collective garden, which is hereby defined to be a prohibited use under the ordinances of the City of Pacific.

Section 4. Pursuant to the provisions of RCW 35A.63.220, a zoning moratorium is hereby enacted in the City of Pacific prohibiting the licensing, establishment, maintenance or continuation of ~~an~~ medical marijuana dispenser, distributor, producer or manufacturer as defined in RCW 69.51A.101 (as amended by 2013 c 3): (i) “Dispenser” means a practitioner who dispenses; (k) “Distributor” means a person who distributes; (j) “Distribute” means to deliver other than by administering or dispensing a controlled substance; (r) “Manufacture” means the production, preparation, propagation, compounding, conversion, or processing of a controlled

substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container; (ee) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

Section 5. Medical marijuana dispensers, distributors, producers or manufacturers, as defined in Section 4 are hereby designated as prohibited in the City of Pacific. In accordance with the provisions of RCW 35A.82.020 and Pacific Municipal Code 5.02.138(3), the dispensing, distribution, production or manufacture of medical marijuana are hereby defined to be prohibited uses under the ordinances of the City of Pacific.

Section 6. Recreational (I-502) marijuana dispensers, distributors, producers or manufacturers, as defined in Section 4 by RCW _____ are hereby designated as prohibited in the City of Pacific. In accordance with the provisions of RCW 35A.82.020 and Pacific Municipal Code 5.02.138(3), the dispensing, distribution, production or manufacture of marijuana are hereby defined to be prohibited uses under the ordinances of the City of Pacific.

Section 67. The moratorium set forth in this Ordinance shall be in effect for a period of six (6) months from the date this Ordinance is passed and shall automatically expire on that date, unless terminated sooner by the Pacific City Council.

Section 78. The Public Works/Community Development Director is hereby authorized and directed to implement the plan attached herein as "Attachment A."

Section 89. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 910. This Ordinance shall be in full force and effect five (5) business days after its publication according to law.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 12TH _____ DAY OF AUGUST **FEBRUARY**, 20134.

CITY OF PACIFIC

Leanne Guier, Mayor

ATTEST:

, City Clerk

APPROVED AS TO FORM:

, City Attorney

[back](#)

OPINIONS Bob Ferguson | 2013-2016 | Attorney General of Washington

**STATUTES—INITIATIVE AND REFERENDUM—ORDINANCES—
COUNTIES—CITIES AND TOWNS—PREEMPTION—POLICE POWERS—
Whether Statewide Initiative Establishing System For Licensing
Marijuana Producers, Processors, And Retailers Preempts Local
Ordinances**

1. **Initiative 502, which establishes a licensing and regulatory system for marijuana producers, processors, and retailers, does not preempt counties, cities, and towns from banning such businesses within their jurisdictions.**
2. **Local ordinances that do not expressly ban state-licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they properly exercise the local jurisdiction's police power.**

January 16, 2014

The Honorable Sharon Foster
Chair, Washington State Liquor Control Board
3000 Pacific Avenue SE
Olympia, WA 98504-3076

Cite As:
AGO 2014 No. 2

Dear Chair Foster:

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

1. **Are local governments preempted by state law from banning the location of a Washington State Liquor Control Board licensed marijuana producer, processor, or retailer within their jurisdiction?**
2. **May a local government establish land use regulations (in excess of the Initiative 502 buffer and other Liquor Control Board requirements) or business license requirements in a fashion that makes it impractical for a licensed marijuana business to locate within their jurisdiction?**

**BRIEF
ANSWERS**

1. No. Under Washington law, there is a strong presumption against finding that state law preempts local ordinances. Although Initiative 502 (I-502) establishes a licensing and regulatory system for marijuana producers, processors, and retailers in Washington State, it includes no clear indication that it was intended to preempt local authority to regulate such

[original page 2]

businesses. We therefore conclude that I-502 left in place the normal powers of local governments to regulate within their jurisdictions.

2. Yes. Local governments have broad authority to regulate within their jurisdictions, and nothing in I-502 limits that authority with respect to licensed marijuana businesses.

BACKGROUND

I-502 was approved by Washington voters on November 6, 2012, became effective 30 days thereafter, and is codified in RCW 69.50. It decriminalized under state law the possession of limited amounts of useable marijuana^[1] and marijuana-infused products by persons twenty-one years or older. It also decriminalized under state law the production, delivery, distribution, and sale of marijuana, so long as such activities are conducted in accordance with the initiative's provisions and implementing regulations. It amended the implied consent laws to specify that anyone operating a motor vehicle is deemed to have consented to testing for the active chemical in marijuana, and amended the driving under the influence laws to make it a criminal offense to operate a motor vehicle under the influence of certain levels of marijuana.

I-502 also established a detailed licensing program for three categories of marijuana businesses: production, processing, and retail sales. The marijuana producer's license governs the production of marijuana for sale at wholesale to marijuana processors and other marijuana producers. RCW 69.50.325(1). The marijuana processor's license governs the processing, packaging, and labeling of useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. RCW 69.50.325(2). The marijuana retailer's license governs the sale of useable marijuana and marijuana-infused products in retail stores. RCW 69.50.325(3).

Applicants for producer, processor, and retail sales licenses must identify the location of the proposed business. RCW 69.50.325(1), (2), (3). This helps ensure compliance with the requirement that "no license may be issued authorizing a marijuana business within one thousand 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." RCW 69.50.331(8).

Upon receipt of an application for a producer, processor, or retail sales license, the Liquor Control Board must give notice of the application to the appropriate local jurisdiction. RCW 69.50.331(7)(a) (requiring notice to the chief executive officer of the incorporated city or town if the application is for a license within an incorporated city or town, or the county legislative authority if the application is for a license outside the boundaries of incorporated

[original page 3]

cities or towns). The local jurisdiction may file written objections with respect to the applicant or the premises for which the new or renewed license is sought. RCW 69.50.331(7)(b).

The local jurisdictions' written objections must include a statement of all facts upon which the objections are based, and may include a request for a hearing, which the Liquor Control Board may grant at its discretion. RCW 69.50.331(7)(c). The Board must give "substantial weight" to a local jurisdiction's objections based upon chronic illegal activity associated with the applicant's operation of the premises proposed to be licensed, the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. RCW 69.50.331(9). Chronic illegal activity is defined as a pervasive pattern of activity that threatens the public health, safety, and welfare, or an unreasonably high number of citations for driving under the influence associated with the applicant's or licensee's operation of any licensed premises. RCW 69.50.331(9).[2]

In addition to the licensing provisions in statute, I-502 directed the Board to adopt rules establishing the procedures and criteria necessary to supplement the licensing and regulatory system. This includes determining the maximum number of retail outlets that may be licensed in each county, taking into consideration population distribution, security and safety issues, and the provision of adequate access to licensed sources of useable marijuana and marijuana-infused products to discourage purchases from the illegal market. RCW 69.50.345(2). The Board has done so, capping the number of retail licenses in the least populated counties of Columbia County, Ferry County, and Wahkiakum County at one and the number in the most populated county of King County at 61, with a broad range in between. See WAC 314-55-081.

The Board also adopted rules establishing various requirements mandated or authorized by I-502 for locating and operating marijuana businesses on licensed premises, including minimum residency requirements, age restrictions, and background checks for licensees and employees; signage and advertising limitations; requirements for insurance, recordkeeping, reporting, and taxes; and detailed operating plans for security, traceability, employee qualifications and training, and destruction of waste. See generally WAC 314-55.

Additional requirements apply for each license category. Producers must describe plans for transporting products, growing operations, and testing procedures and protocols. WAC 314-55-020(9). Processors must describe plans for transporting products, processing operations, testing procedures and protocols, and packaging and labeling. WAC 314-55-020(9). Finally, retailers must also describe which products will be sold and how they will be displayed, and may only operate between 8 a.m. and 12 midnight. WAC 314-55-020(9), -147.

The rules also make clear that receipt of a license from the Liquor Control Board does not entitle the licensee to locate or operate a marijuana processing, producing, or retail business in violation of local rules or without any necessary approval from local jurisdictions. WAC 314-

[original page 4]

-55-020(11) provides as follows: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances

including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

ANALYSIS

Your question acknowledges that local governments have jurisdiction over land use issues like zoning and may exercise the option to issue business licenses. This authority comes from article XI, section 11 of the Washington Constitution, which provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” The limitation on this broad local authority requiring that such regulations not be “in conflict with general laws” means that state law can preempt local regulations and render them unconstitutional either by occupying the field of regulation, leaving no room for concurrent local jurisdiction, or by creating a conflict such that state and local laws cannot be harmonized. *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010).

Local ordinances are entitled to a presumption of constitutionality. *State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009). Challengers to a local ordinance bear a heavy burden of proving it unconstitutional. *Id.* “Every presumption will be in favor of constitutionality.” *HJS Dev., Inc. v. Pierce County ex rel. Dep’t of Planning & Land Servs.*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003) (internal quotation marks omitted).

A. Field Preemption

Field preemption arises when a state regulatory system occupies the entire field of regulation on a particular issue, leaving no room for local regulation. *Lawson*, 168 Wn.2d at 679. Field preemption may be expressly stated or may be implicit in the purposes or facts and circumstances of the state regulatory system. *Id.*

I-502 does not express any indication that the state licensing and operating system preempts the field of marijuana regulation. Although I-502 was structured as a series of amendments to the controlled substances act, which does contain a preemption section, that section makes clear that state law “fully occupies and preempts the entire field of *setting penalties* for violations of the controlled substances act.” RCW 69.50.608 (emphasis added).[3] It also allows “[c]ities, towns, and counties or other municipalities [to] enact only those laws and

[original page 5]

ordinances relating to controlled substances that are consistent with this chapter.” RCW 69.50.608. Nothing in this language expresses an intent to preempt the entire field of regulating businesses licensed under I-502.

With respect to implied field preemption, the “legislative intent” of an initiative is derived from the collective intent of the people and can be ascertained by material in the official voter’s pamphlet. *Dep’t of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973); see also *Roe v. TeleTech Customer Care Mgmt., LLC*, 171 Wn.2d 736, 752-53, 257 P.3d 586 (2011). Nothing in the official voter’s pamphlet evidences a collective intent for the state regulatory system to preempt the entire field of marijuana business licensing or operation. Voters’ Pamphlet 23-30 (2012). Moreover, both your letter and the Liquor Control Board’s rules recognize the authority of local jurisdictions to impose regulations on state licensees. These facts, in

addition to the absence of express intent suggesting otherwise, make clear that I-502 and its implementing regulations do not occupy the entire field of marijuana business regulation.

B. Conflict Preemption

Conflict preemption arises “when an ordinance permits what state law forbids or forbids what state law permits.” *Lawson*, 168 Wn.2d at 682. An ordinance is constitutionally invalid if it directly and irreconcilably conflicts with the statute such that the two cannot be harmonized. *Id.*; *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998). Because “[e]very presumption will be in favor of constitutionality,” courts make every effort to reconcile state and local law if possible. *HJS Dev.*, 148 Wn.2d at 477 (internal quotation marks omitted). We adopt this same deference to local jurisdictions.

An ordinance banning a particular activity directly and irreconcilably conflicts with state law when state law specifically entitles one to engage in that same activity in circumstances outlawed by the local ordinance. For example, in *Entertainment Industry Coalition v. Tacoma-Pierce County Health Department*, 153 Wn.2d 657, 661-63, 105 P.3d 985 (2005), the state law in effect at the time banned smoking in public places except in designated smoking areas, and specifically authorized owners of certain businesses to designate smoking areas. The state law provided, in relevant part: “A smoking area may be designated in a public place by the owner” Former RCW 70.160.040(1) (2004), *repealed by* Laws of 2006, ch. 2, § 7(2) (Initiative Measure 901). The Tacoma-Pierce County Health Department ordinance at issue banned smoking in all public places. The Washington Supreme Court struck down the ordinance as directly and irreconcilably conflicting with state law because it prohibited what the state law authorized: the business owner’s choice whether to authorize a smoking area.

Similarly, in *Parkland Light & Water Co. v. Tacoma-Pierce County Board of Health*, 151 Wn.2d 428, 90 P.3d 37 (2004), the Washington Supreme Court invalidated a Tacoma-Pierce County Health Department ordinance requiring fluoridated water. The state law at issue authorized the water districts to decide whether to fluoridate, saying: “A water district by a

[original page 6]

majority vote of its board of commissioners may fluoridate the water supply system of the water district.” RCW 57.08.012. The Court interpreted this provision as giving water districts the ability to regulate the content and supply of their water systems. *Parkland Light & Water Co.*, 151 Wn.2d at 433. The local health department’s attempt to require fluoridation conflicted with the state law expressly giving that choice to the water districts. As they could not be reconciled, the Court struck down the ordinance as unconstitutional under conflict preemption analysis.

By contrast, Washington courts have consistently upheld local ordinances banning an activity when state law regulates the activity but does not grant an unfettered right or entitlement to engage in that activity. In *Weden v. San Juan County*, the Court upheld the constitutionality of the County’s prohibition on motorized personal watercraft in all marine waters and one lake in San Juan County. The state laws at issue created registration and safety requirements for vessels and prohibited operation of unregistered vessels. The Court rejected the argument that state

regulation of vessels constituted permission to operate vessels anywhere in the state, saying, “[n]owhere in the language of the statute can it be suggested that the statute creates an unabridged right to operate [personal watercraft] in all waters throughout the state.” *Weden*, 135 Wn.2d at 695. The Court further explained that “[r]egistration of a vessel is nothing more than a precondition to operating a boat.” *Id.* “No unconditional right is granted by obtaining such registration.” *Id.* Recognizing that statutes often impose preconditions without granting unrestricted permission to participate in an activity, the Court also noted the following examples: “[p]urchasing a hunting license is a precondition to hunting, but the license certainly does not allow hunting of endangered species or hunting inside the Seattle city limits,” and “[r]eaching the age of 16 is a precondition to driving a car, but reaching 16 does not create an unrestricted right to drive a car however and wherever one desires.” *Id.* at 695 (internal citation omitted).

Relevant here, the dissent in *Weden* argued: “Where a state statute licenses a particular activity, counties may enact reasonable regulations of the licensed activity within their borders but they may not prohibit same outright[,]” and that an ordinance banning the activity “renders the state permit a license to do nothing at all.” *Weden*, 135 Wn.2d at 720, 722 (Sanders, J., dissenting). The majority rejected this approach, characterizing the state law as creating not an unabridged right to operate personal watercraft in the state, but rather a registration requirement that amounted only to a precondition to operating a boat in the state.

In *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 594 P.2d 448 (1979), the Washington Supreme Court similarly upheld a local ban on internal combustion motors on certain lakes. The Court explained: “A statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated.” *Id.* at 108. The Court found no conflict because nothing in the state laws requiring safe operation of vessels either expressly or impliedly provided that vessels would be allowed on all waters of the state.

[original page 7]

The Washington Supreme Court also rejected a conflict preemption challenge to the City of Pasco’s ordinance prohibiting placement of recreational vehicles within mobile home parks. *Lawson*, 168 Wn.2d at 683-84. Although state law regulated rights and duties arising from mobile home tenancies and recognized that such tenancies may include recreational vehicles, the Court reasoned “[t]he statute does not forbid recreational vehicles from being placed in the lots, nor does it create a right enabling their placement.” *Id.* at 683. The state law simply regulated recreational vehicle tenancies, where such tenancies exist, but did not prevent municipalities from deciding whether or not to allow them. *Id.* at 684.

Accordingly, the question whether “an ordinance . . . forbids what state law permits” is more complex than it initially appears. *Lawson*, 168 Wn.2d at 682. The question is not whether state law permits an activity in some places or in some general sense; even “[t]he fact that an activity may be licensed under state law does not lead to the conclusion that it must be permitted under local law.” *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998) (finding no preemption where state law authorized licensing of “dangerous dogs” while city ordinance forbade ownership of “vicious animals”). Rather, a challenger must meet the heavy burden of proving that state law creates an entitlement to engage in an activity in circumstances outlawed by the local ordinance. For example, the state laws authorizing business

owners to designate smoking areas and water districts to decide whether to fluoridate their water systems amounted to statewide entitlements that local jurisdictions could not take away. But the state laws requiring that vessels be registered and operated safely and regulating recreational vehicles in mobile home tenancies simply contemplated that those activities would occur in some places and established preconditions; they did not, however, override the local jurisdictions' decisions to prohibit such activities.

Here, I-502 authorizes the Liquor Control Board to issue licenses for marijuana producers, processors, and retailers. Whether these licenses amount to an entitlement to engage in such businesses regardless of local law or constitute regulatory preconditions to engaging in such businesses is the key question, and requires a close examination of the statutory language.

RCW 69.50.325 provides, in relevant part:

(1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. . . .

(2) There shall be a marijuana processor's license to process, package, and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers, regulated by the state liquor control board and subject to annual renewal. . . .

[original page 8]

(3) There shall be a marijuana retailer's license to sell useable marijuana and marijuana-infused products at retail in retail outlets, regulated by the state liquor control board and subject to annual renewal. . . .

RCW 69.50.325(1)-(3). Each of these subsections also includes language providing that activities related to such licenses are not criminal or civil offenses under Washington state law, provided they comply with I-502 and the Board's rules, and that the licenses shall be issued in the name of the applicant and shall specify the location at which the applicant intends to operate. They also establish fees for issuance and renewal and clarify that a separate license is required for each location at which the applicant intends to operate. RCW 69.50.325.

While these provisions clearly authorize the Board to issue licenses for marijuana producers, processors, and retail sales, they lack the definitive sort of language that would be necessary to meet the heavy burden of showing state preemption. They simply state that there "shall be a . . . license" and that engaging in such activities with a license "shall not be a criminal or civil offense under Washington state law." RCW 69.50.325(1). Decriminalizing such activities under state law and imposing restrictions on licensees does not amount to entitling one to engage in such businesses regardless of local law. Given that "every presumption" is in favor of upholding local ordinances (*HJS Dev., Inc.*, 148 Wn.2d at 477), we find no irreconcilable conflict between I-502's licensing system and the ability of local governments to prohibit licensees from operating in their jurisdictions.

We have considered and rejected a number of counterarguments in reaching this conclusion. First, one could argue that the statute, in allowing Board approval of

licenses at specific locations (RCW 69.50.325(1), (2), (3)), assumes that the Board can approve a license at any location in any jurisdiction. This argument proves far too much, however, for it suggests that a license from the Board could override any local zoning ordinance, even one unrelated to I-502. For example, I-502 plainly would not authorize a licensed marijuana retailer to locate in an area where a local jurisdiction's zoning allows no retail stores of any kind. The Board's own rules confirm this: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements." WAC 314-55-020(11).

Second, one could argue that a local jurisdiction's prohibition on marijuana licensees conflicts with the provision in I-502 authorizing the Board to establish a maximum number of licensed retail outlets in each county. RCW 69.50.345(2); *see also* RCW 69.50.354. But there is no irreconcilable conflict here, because the Board is allowed to set only a maximum, and nothing in I-502 mandates a minimum number of licensees in any jurisdiction. The drafters of I-502 certainly could have provided for a minimum number of licensees per jurisdiction, which would have been a stronger indicator of preemptive intent, but they did not.

[original page 9]

Third, one could argue that because local jurisdictions are allowed to object to specific license applications and the Board is allowed to override those objections and grant the license anyway (RCW 69.50.331(7), (9)), local jurisdictions cannot have the power to ban licensees altogether. But such a ban can be harmonized with the objection process; while some jurisdictions might want to ban I-502 licensees altogether, others might want to allow them but still object to specific applicants or locations. Indeed, this is the system established under the state liquor statutes, which I-502 copied in many ways. *Compare* RCW 69.50.331 *with* RCW 66.24.010 (governing the issuance of marijuana licenses and liquor licenses, respectively, in parallel terms and including provisions for local government input regarding licensure). The state laws governing liquor allow local governments to object to specific applications (RCW 66.24.010), while also expressly authorizing local areas to prohibit the sale of liquor altogether. *See generally* RCW 66.40. That the liquor opt out statute coexists with the liquor licensing notice and comment process undermines any argument that a local marijuana ban irreconcilably conflicts with the marijuana licensing notice and comment opportunity.

Fourth, RCW 66.40 expressly allows local governments to ban the sale of liquor. Some may argue that by omitting such a provision, I-502's drafters implied an intent to bar local governments from banning the sale of marijuana. Intent to preempt, however, must be "clearly and expressly stated." *State ex rel. Schillberg*, 92 Wn.2d at 108. Moreover, it is important to remember that cities, towns, and counties derive their police power from article XI, section 11 of the Washington Constitution, not from statute. Thus, the relevant question is not whether the initiative provided local jurisdictions with such authority, but whether it removed local jurisdictions' preexisting authority.

Finally, in reaching this conclusion, we are mindful that if a large number of jurisdictions were to ban licensees, it could interfere with the measure's intent to supplant the illegal marijuana market. But this potential consequence is insufficient to overcome the lack of clear preemptive language or intent in the initiative itself. The

drafters of the initiative certainly could have used clear language preempting local bans. They did not. The legislature, or the people by initiative, can address this potential issue if it actually comes to pass.

With respect to your second question, about whether local jurisdictions can impose regulations making it “impractical” for I-502 licensees to locate and operate within their boundaries, the answer depends on whether such regulations constitute a valid exercise of the police power or otherwise conflict with state law. As a general matter, as discussed above, the Washington Constitution provides broad authority for local jurisdictions to regulate within their boundaries and impose land use and business licensing requirements. Ordinances must be a reasonable exercise of a jurisdiction’s police power in order to pass muster under article XI, section 11 of the state constitution. *Weden*, 135 Wn.2d at 700. A law is a reasonable regulation if it promotes public safety, health, or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued. *Id.* (applying this test to the personal watercraft ordinance); *see also Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 26, 586 P.2d 860 (1978) (applying this

[original page 10]

test to a zoning ordinance). Assuming local ordinances satisfy this test, and that no other constitutional or statutory basis for a challenge is presented on particular facts, we see no impediment to jurisdictions imposing additional regulatory requirements, although whether a particular ordinance satisfies this standard would of course depend on the specific facts in each case.

We trust that the foregoing will be useful to you.

ROBERT W.
FERGUSON
*Attorney
General*

JESSICA FOGEL
*Assistant
Attorney
General*

WTOS

[1] Useable marijuana means “dried marijuana flowers” and does not include marijuana-infused products. RCW 69.50.101(1).

[2] The provision for objections based upon chronic illegal activity is identical to one of the provisions for local jurisdictions to object to the granting or renewal of liquor licenses. RCW 66.24.010(12).

[3] RCW 69.50.608 provides: “The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.” The Washington Supreme Court has interpreted this provision as giving local jurisdictions concurrent authority to criminalize drug-related activity. *City of Tacoma v. Luvene*, 118 Wn.2d 826, 835, 827 P.2d 1374 (1992).

HOUSE BILL 2144

State of Washington

63rd Legislature

2014 Regular Session

By Representative Condotta

Prefiled 01/06/14.

1 AN ACT Relating to the establishment of a dedicated local
2 jurisdiction marijuana fund and the distribution of a specified
3 percentage of marijuana excise tax revenues to local jurisdictions;
4 amending RCW 69.50.530, 69.50.535, and 69.50.540; and providing an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 69.50.530 and 2013 c 3 s 26 (Initiative Measure No.
8 502) are each amended to read as follows:

9 (1) (~~There shall be~~) (a) Except as otherwise provided in (b) of
10 this subsection, there must be a fund, known as the dedicated marijuana
11 fund, which (~~shall~~) consists of all marijuana excise taxes, license
12 fees, penalties, forfeitures, and all other moneys, income, or revenue
13 received by the state liquor control board from marijuana-related
14 activities. The state treasurer (~~shall~~) must be custodian of the
15 fund.

16 (b) There must be a fund, known as the dedicated local jurisdiction
17 marijuana fund, which consists of marijuana excise taxes collected
18 under RCW 69.50.535(3). The state treasurer must be custodian of the
9 fund.

1 (2) All moneys received by the state liquor control board or any
2 employee thereof from marijuana-related activities (~~shall~~) must be
3 deposited each day in a depository approved by the state treasurer and
4 transferred to the state treasurer to be credited to the dedicated
5 marijuana fund or the dedicated local jurisdiction marijuana fund.

6 (3) Disbursements from the dedicated marijuana fund (~~shall~~) or
7 the dedicated local jurisdiction marijuana fund must be on
8 authorization of the state liquor control board or a duly authorized
9 representative thereof.

10 **Sec. 2.** RCW 69.50.535 and 2013 c 3 s 27 (Initiative Measure No.
11 502) are each amended to read as follows:

12 (1) There is levied and collected a marijuana excise tax equal to
13 twenty-five percent of the selling price on each wholesale sale in this
14 state of marijuana by a licensed marijuana producer to a licensed
15 marijuana processor or another licensed marijuana producer. This tax
16 is the obligation of the licensed marijuana producer.

17 (2) There is levied and collected a marijuana excise tax equal to
18 twenty-five percent of the selling price on each wholesale sale in this
19 state of useable marijuana or marijuana-infused product by a licensed
20 marijuana processor to a licensed marijuana retailer. This tax is the
21 obligation of the licensed marijuana processor.

22 (3) There is levied and collected a marijuana excise tax equal to
23 twenty-five percent of the selling price on each retail sale in this
24 state of useable marijuana and marijuana-infused products. This tax is
25 the obligation of the licensed marijuana retailer, is separate and in
26 addition to general state and local sales and use taxes that apply to
27 retail sales of tangible personal property, and is part of the total
28 retail price to which general state and local sales and use taxes
29 apply.

30 (4) All revenues collected from the marijuana excise taxes imposed
31 under subsections (1) through (3) of this section (~~shall~~) must be
32 deposited each day in a depository approved by the state treasurer and
33 transferred to the state treasurer (~~to be credited to the dedicated~~
34 ~~marijuana fund~~) as follows:

35 (a) All revenue collected from the marijuana excise tax imposed
36 under subsections (1) and (2) of this section and seventy percent of

1 revenue collected from the marijuana excise tax imposed under
2 subsection (3) of this section must be credited to the dedicated
3 marijuana fund.

4 (b) Thirty percent of revenue collected from the marijuana excise
5 tax imposed under subsection (3) of this section must be credited to
6 the dedicated local jurisdiction marijuana fund.

7 (5) The state liquor control board (~~shall~~) must regularly review
8 the tax levels established under this section and make recommendations
9 to the legislature as appropriate regarding adjustments that would
10 further the goal of discouraging use while undercutting illegal market
11 prices.

12 **Sec. 3.** RCW 69.50.540 and 2013 c 3 s 28 (Initiative Measure No.
13 502) are each amended to read as follows:

14 (1) All marijuana excise taxes collected from sales of marijuana,
15 useable marijuana, and marijuana-infused products under RCW 69.50.535,
16 and the license fees, penalties, and forfeitures derived under chapter
17 3, Laws of 2013 from marijuana producer, marijuana processor, and
18 marijuana retailer licenses (~~shall~~) deposited in the dedicated
19 marijuana fund must every three months be disbursed by the state liquor
20 control board as follows:

21 ~~((+))~~ (a) One hundred twenty-five thousand dollars to the
22 department of social and health services to design and administer the
23 Washington state healthy youth survey, analyze the collected data, and
24 produce reports, in collaboration with the office of the superintendent
25 of public instruction, department of health, department of commerce,
26 family policy council, and state liquor control board. The survey
27 (~~shall~~) must be conducted at least every two years and include
28 questions regarding, but not necessarily limited to, academic
29 achievement, age at time of substance use initiation, antisocial
30 behavior of friends, attitudes toward antisocial behavior, attitudes
31 toward substance use, laws and community norms regarding antisocial
32 behavior, family conflict, family management, parental attitudes toward
33 substance use, peer rewarding of antisocial behavior, perceived risk of
34 substance use, and rebelliousness. Funds disbursed under this
35 subsection may be used to expand administration of the healthy youth
36 survey to student populations attending institutions of higher
37 education in Washington;

1 ~~((2))~~ (b) Fifty thousand dollars to the department of social and
2 health services for the purpose of contracting with the Washington
3 state institute for public policy to conduct the cost-benefit
4 evaluation and produce the reports described in RCW 69.50.550. This
5 appropriation ~~((shall))~~ ends after production of the final report
6 required by RCW 69.50.550;

7 ~~((3))~~ (c) Five thousand dollars to the University of Washington
8 alcohol and drug abuse institute for the creation, maintenance, and
9 timely updating of web-based public education materials providing
10 medically and scientifically accurate information about the health and
11 safety risks posed by marijuana use;

12 ~~((4))~~ (d) An amount not exceeding one million two hundred fifty
13 thousand dollars to the state liquor control board as is necessary for
14 administration of chapter 3, Laws of 2013;

15 ~~((5))~~ (e)(i) Of the funds remaining after the disbursements
16 identified in subsections ~~((1))~~ (a) through ~~((4))~~ (d) of this
17 ~~((section))~~ subsection:

18 ~~((a))~~ (A) Fifteen percent to the department of social and health
19 services division of behavioral health and recovery for implementation
20 and maintenance of programs and practices aimed at the prevention or
21 reduction of maladaptive substance use, substance-use disorder,
22 substance abuse or substance dependence, as these terms are defined in
23 the Diagnostic and Statistical Manual of Mental Disorders, among middle
24 school and high school age students, whether as an explicit goal of a
25 given program or practice or as a consistently corresponding effect of
26 its implementation; PROVIDED, That:

27 ~~((i))~~ (I) Of the funds disbursed under ~~((a))~~ (e)(i)(A) of this
28 subsection, at least eighty-five percent must be directed to evidence-
29 based and cost-beneficial programs and practices that produce
30 objectively measurable results; and

31 ~~((ii))~~ (II) Up to fifteen percent of the funds disbursed under
32 ~~((a))~~ (e)(i)(A) of this subsection may be directed to research-based
33 and emerging best practices or promising practices.

34 (ii) In deciding which programs and practices to fund, the
35 secretary of the department of social and health services ~~((shall))~~
36 must consult, at least annually, with the University of Washington's
37 social development research group and the University of Washington's
38 alcohol and drug abuse institute;

1 ~~((b))~~ (B) Ten percent to the department of health for the
2 creation, implementation, operation, and management of a marijuana
3 education and public health program that contains the following:

4 ~~((i))~~ (I) A marijuana use public health hotline that provides
5 referrals to substance abuse treatment providers, utilizes evidence-
6 based or research-based public health approaches to minimizing the
7 harms associated with marijuana use, and does not solely advocate an
8 abstinence-only approach;

9 ~~((ii))~~ (II) A grants program for local health departments or
10 other local community agencies that supports development and
11 implementation of coordinated intervention strategies for the
12 prevention and reduction of marijuana use by youth; and

13 ~~((iii))~~ (III) Media-based education campaigns across television,
14 internet, radio, print, and out-of-home advertising, separately
15 targeting youth and adults, that provide medically and scientifically
16 accurate information about the health and safety risks posed by
17 marijuana use;

18 ~~((e))~~ (C) Six-tenths of one percent to the University of
19 Washington and four-tenths of one percent to Washington State
'0 University for research on the short and long-term effects of marijuana
21 use, to include but not be limited to formal and informal methods for
22 estimating and measuring intoxication and impairment, and for the
23 dissemination of such research;

24 ~~((d))~~ (D) Fifty percent to the state basic health plan trust
25 account to be administered by the Washington basic health plan
26 administrator and used as provided under chapter 70.47 RCW;

27 ~~((e))~~ (E) Five percent to the Washington state health care
28 authority to be expended exclusively through contracts with community
29 health centers to provide primary health and dental care services,
30 migrant health services, and maternity health care services as provided
31 under RCW 41.05.220;

32 ~~((f))~~ (F) Three-tenths of one percent to the office of the
33 superintendent of public instruction to fund grants to building bridges
34 programs under chapter 28A.175 RCW; and

35 ~~((g))~~ (G) The remainder to the general fund.

36 (2) All marijuana excise taxes from sales of marijuana, useable
37 marijuana, and marijuana-infused products that are collected and
38 deposited under RCW 69.50.535 in the dedicated local jurisdiction

1 marijuana fund must be disbursed every three months by the state liquor
2 control board to the local jurisdiction where the retail sale
3 originated. Each local jurisdiction with retail sales must receive
4 revenue distributions based on their proportional amount of the total
5 revenues in the dedicated local jurisdiction marijuana fund from sales
6 within their jurisdiction.

7 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2014.

--- END ---

HOUSE BILL 2322

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Sawyer, Condotta, Appleton, Kirby, Fey, Farrell, Fitzgibbon, Hunt, Reykdal, Springer, and Ryu

Read first time 01/15/14. Referred to Committee on Government Accountability & Oversight.

1 AN ACT Relating to prohibiting local governments from taking
2 actions preventing or impeding the creation or operation of commercial
3 marijuana businesses licensed by the liquor control board; amending RCW
4 66.08.170, 82.08.170, and 66.08.050; adding a new section to chapter
5 69.50 RCW; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50 RCW
8 to read as follows:

9 (1) Cities, counties, and towns must cooperate with the liquor
10 control board with respect to the establishment within their
11 jurisdictional boundaries of businesses involved in the production,
12 processing, or sale of recreational marijuana where such businesses are
13 licensed under RCW 69.50.325. Subject to the regulatory requirements
14 of this chapter, licensed marijuana businesses attempting to locate
15 within the jurisdictional boundaries of a municipality must be treated
16 the same as other businesses within that jurisdiction with respect to
17 ordinances or regulations that include, but are not limited to, those
18 pertaining to local business licensing, zoning, and land use.

1 (2) Cities, counties, and towns are prohibited from enacting any
2 ordinance or other regulation pertaining to business licensing, zoning,
3 or land use that has the effect of preventing or impeding the
4 establishment of a recreational marijuana business licensed under RCW
5 69.50.325. In the event the liquor control board determines that a
6 municipality has engaged in regulatory practices that impede the
7 establishment of such businesses in violation of this section, the
8 liquor control board may:

9 (a) Penalize the offending municipality by making it ineligible to
10 receive any funds from the liquor revolving fund established in RCW
11 66.08.170 and the liquor excise tax fund established under RCW
12 82.08.170. Upon the determination that a municipality is ineligible to
13 receive moneys from such funds under this section, the liquor control
14 board may direct the state treasurer to withhold the revenues to which
15 a county, city, or town would otherwise be entitled from the liquor
16 revolving fund and the liquor excise tax fund. In the event the liquor
17 control board later determines that the offending municipality has
18 become compliant with the requirements of this section, it shall direct
19 the state treasurer to resume distributing revenues from these funds to
20 the municipality; and

21 (b) Bring legal action in superior court against the offending
22 municipality for injunctive relief for violations of this section. The
23 municipality shall pay all court costs and other litigation-related
24 expenses for legal actions brought under this section.

25 **Sec. 2.** RCW 66.08.170 and 2011 1st sp.s. c 50 s 959 are each
26 amended to read as follows:

27 (1) There shall be a fund, known as the "liquor revolving fund",
28 which shall consist of all license fees, permit fees, penalties,
29 forfeitures, and all other moneys, income, or revenue received by the
30 board. The state treasurer shall be custodian of the fund. All moneys
31 received by the board or any employee thereof, except for change funds
32 and an amount of petty cash as fixed by the board within the authority
33 of law shall be deposited each day in a depository approved by the
34 state treasurer and transferred to the state treasurer to be credited
35 to the liquor revolving fund. During the 2009-2011 fiscal biennium,
36 the legislature may transfer funds from the liquor revolving (~~account~~
37 ~~fund~~) fund to the state general fund and may direct an additional

1 amount of liquor profits to be distributed to local governments.
2 Neither the transfer of funds nor the additional distribution of liquor
3 profits to local governments during the 2009-2011 fiscal biennium may
4 reduce the excess fund distributions that otherwise would occur under
5 RCW 66.08.190. During the 2011-2013 fiscal biennium, the state
6 treasurer shall transfer from the liquor revolving fund to the state
7 general fund forty-two million five hundred thousand dollars for fiscal
8 year 2012 and forty-two million five hundred thousand dollars for
9 fiscal year 2013. The transfer during the 2011-2013 fiscal biennium
10 may not reduce the excess fund distributions that otherwise would occur
11 under RCW 66.08.190. Sales to licensees are exempt from any liquor
12 price increases that may result from the transfer of funds from the
13 liquor revolving fund to the state general fund during the 2011-2013
14 fiscal biennium. Disbursements from the revolving fund shall be on
15 authorization of the board or a duly authorized representative thereof.
16 In order to maintain an effective expenditure and revenue control the
17 liquor revolving fund shall be subject in all respects to chapter 43.88
18 RCW but no appropriation shall be required to permit expenditures and
19 payment of obligations from such fund.

20 (2) Transfers of funds to local governments from the liquor
21 revolving fund are subject to the provisions of section 1 of this act.
22 Local governments are ineligible to receive such funding if the liquor
23 control board determines that the local government is noncompliant with
24 the requirements of section 1 of this act.

25 **Sec. 3.** RCW 82.08.170 and 2012 2nd sp.s. c 5 s 4 are each amended
26 to read as follows:

27 (1) Except as provided in subsection (4) of this section, during
28 the months of January, April, July, and October of each year, the state
29 treasurer must make the transfers required under subsections (2) and
30 (3) of this section from the liquor excise tax fund and then the
31 apportionment and distribution of all remaining moneys in the liquor
32 excise tax fund to the counties, cities, and towns in the following
33 proportions: (a) Twenty percent of the moneys in the liquor excise tax
34 fund must be divided among and distributed to the counties of the state
35 in accordance with the provisions of RCW 66.08.200; and (b) eighty
36 percent of the moneys in the liquor excise tax fund must be divided

1 among and distributed to the cities and towns of the state in
2 accordance with the provisions of RCW 66.08.210.

3 (2) Each fiscal quarter and prior to making the twenty percent
4 distribution to counties under subsection (1)(a) of this section, the
5 treasurer shall transfer to the liquor revolving fund created in RCW
6 66.08.170 sufficient moneys to fund the allotments from any legislative
7 appropriations for county research and services as provided under
8 chapter 43.110 RCW.

9 (3) During the months of January, April, July, and October of each
10 year, the state treasurer must transfer two million five hundred
11 thousand dollars from the liquor excise tax fund to the state general
12 fund.

13 (4) During calendar year 2012, the October distribution under
14 subsection (1) of this section and the July and October transfers under
15 subsections (2) and (3) of this section must not be made. During
16 calendar year 2013, the January, April, and July distributions under
17 subsection (1) of this section and transfers under subsections (2) and
18 (3) of this section must not be made.

19 (5) All transfers of funds to local governments from the liquor
20 excise tax fund are subject to the provisions of section 1 of this act.
21 Local governments are ineligible to receive such funding if the liquor
22 control board determines that the local government is noncompliant with
23 the requirements of section 1 of this act.

24 **Sec. 4.** RCW 66.08.050 and 2012 c 2 s 107 are each amended to read
25 as follows:

26 The board, subject to the provisions of this title and the rules,
27 must:

28 (1) Determine the nature, form and capacity of all packages to be
29 used for containing liquor kept for sale under this title;

30 (2) Execute or cause to be executed, all contracts, papers, and
31 documents in the name of the board, under such regulations as the board
32 may fix;

33 (3) Pay all customs, duties, excises, charges and obligations
34 whatsoever relating to the business of the board;

35 (4) Require bonds from all employees in the discretion of the
36 board, and to determine the amount of fidelity bond of each such
37 employee;

1 (5) Perform services for the state lottery commission to such
2 extent, and for such compensation, as may be mutually agreed upon
3 between the board and the commission;

4 (6) Accept and deposit into the general fund-local account and
5 disburse, subject to appropriation, federal grants or other funds or
6 donations from any source for the purpose of improving public awareness
7 of the health risks associated with alcohol consumption by youth and
8 the abuse of alcohol by adults in Washington state. The board's
9 alcohol awareness program must cooperate with federal and state
10 agencies, interested organizations, and individuals to effect an active
11 public beverage alcohol awareness program;

12 (7) Perform all other matters and things, whether similar to the
13 foregoing or not, to carry out the provisions of this title and chapter
14 69.50 RCW regarding the production, processing, and sale of
15 recreational marijuana, and has full power to do each and every act
16 necessary to the conduct of its regulatory functions, including all
17 supplies procurement, preparation and approval of forms, and every
18 other undertaking necessary to perform its regulatory functions
19 whatsoever, subject only to audit by the state auditor. However, the
20 board has no authority to regulate the content of spoken language on
21 licensed premises where wine and other liquors are served and where
22 there is not a clear and present danger of disorderly conduct being
23 provoked by such language or to restrict advertising of lawful prices.

24 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

--- END ---

