



Meeting Agenda

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, August 23, 2022

7:00 PM

Council Chambers, Online and
Via Phone

Register to Attend:

https://us02web.zoom.us/webinar/register/WN_dhfWDYsDRwKQMNb3ywi4aQ

1. ROLL CALL

1.A ANNOUNCEMENTS

1.B APPROVAL OF AGENDA

2. SPECIAL RECOGNITION

2.A [22-0793](#) Special Recognition - Fire Ops Training Helmet Presentation: Yén Huỳnh and Dontae Payne

2.B [22-0781](#) Special Recognition - Proclamation Recognizing 2022 Puget Sound Starts Here Month

Attachments: [Proclamation](#)

[Puget Sound Starts Here Website](#)

[Car Care Videos Website](#)

3. PUBLIC COMMENT

(Estimated Time: 0-30 Minutes) (Sign-up Sheets are provided in the Foyer.)

During this portion of the meeting, community members may address the City Council regarding items related to City business, including items on the Agenda. In order for the City Council to maintain impartiality and the appearance of fairness in upcoming matters and to comply with Public Disclosure Law for political campaigns, speakers will not be permitted to make public comments before the Council in these three areas: (1) on agenda items for which the City Council either held a Public Hearing in the last 45 days, or will hold a Public Hearing within 45 days, or (2) where the public testimony may implicate a matter on which the City Council will be required to act in a quasi-judicial capacity, or (3) where the speaker promotes or opposes a candidate for public office or a ballot measure.

Individual comments are limited to two (2) minutes or less. In order to hear as many people as possible during the 30-minutes set aside for Public Communication, the City Council will refrain from commenting on individual remarks until all public comment has been taken. The City Council will allow for additional public comment to be taken at the end of the meeting for those who signed up at the beginning of the meeting and did not get an opportunity to speak during the allotted 30-minutes.

COUNCIL RESPONSE TO PUBLIC COMMENT (Optional)

4. CONSENT CALENDAR*(Items of a Routine Nature)*

- 4.A** [22-0790](#) Approval of the August 16, 2022 City Council Meeting Minutes

Attachments: [Minutes](#)
- 4.B** [22-0787](#) Approval of a Labor Contract with Chauffeurs, Teamsters and Helpers Union Local No. 252

Attachments: [Contract](#)
 [Economic Agreement Summary](#)
- 4.C** [22-0789](#) Approval of a Substantial Amendment to Program Year 2021 Community Development Block Grant Annual Action Plan

Attachments: [Draft PY21 Substantial Amendment](#)
- 4.D** [22-0778](#) Approval of a Resolution Declaring a Need for the Housing Authority of Thurston County to Operate Within the Boundaries of the City of Olympia

Attachments: [Resolution](#)
- 4.E** [22-0779](#) Approval of a Resolution Authorizing an Agreement with Thurston County to Fund Services for People Impacted by Homelessness

Attachments: [Resolution](#)
 [Agreement](#)
- 4.F** [22-0782](#) Approval of a Resolution Accepting Federal Grant Funds for the Olympia Westside Pavement Preservation Project

Attachments: [Resolution](#)
 [Local Agency Federal Aid Project Prospectus](#)
 [Local Agency Agreement](#)
 [Vicinity Map](#)
- 4.G** [22-0784](#) Approval of a Resolution Authorizing an Amended Lease Agreement with MPH Holdings, LLC, for Premises at 1415 Harrison Avenue NW, Suites 101 and 201

Attachments: [Resolution](#)
 [Agreement](#)
- 4.H** [22-0791](#) Approval of a Resolution Authorizing the City Manager to Execute All Documents Necessary for the City of Olympia to Participate in an Opioid Settlement Negotiated by the Washington State Attorney General with Certain Opioid Distributors

Attachments: [Resolution](#)
 [Participation Form](#)
 [Allocation Agreement](#)

4. SECOND READINGS (Ordinances)

- 4.I [22-0769](#) Approval of an Ordinance Updating and Amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare
Attachments: [Ordinance](#)

4. FIRST READINGS (Ordinances) - NONE

5. PUBLIC HEARING - NONE

6. OTHER BUSINESS

- 6.A [22-0785](#) Approval of the 2022 Percival Plinth Project Peoples' Choice Award

Attachments: [Salmon Romance by Pat McVay](#)
[Underwater Disagreement by Eileen Lagasse](#)

- 6.B [22-0792](#) 2022 Police Auditor Mid-Year Report Briefing

Attachments: [2022 Civilian Police Auditor Mid-Year Report](#)

- 6.C [22-0780](#) Approval of an Ordinance Adopting a Vacant Properties Registration Program

Attachments: [Ordinance](#)

7. CONTINUED PUBLIC COMMENT

(If needed for those who signed up earlier and did not get an opportunity to speak during the allotted 30 minutes)

8. COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

9. CITY MANAGER'S REPORT AND REFERRALS

10. ADJOURNMENT

The City of Olympia is committed to the non-discriminatory treatment of all persons in employment and the delivery of services and resources. If you require accommodation for your attendance at the City Council meeting, please contact the Council's Executive Assistant at 360.753.8244 at least 48 hours in advance of the meeting. For hearing impaired, please contact us by dialing the Washington State Relay Service at 7-1-1 or 1.800.833.6384.



City Council

Special Recognition - Fire Ops Training Helmet Presentation: Yến Huỳnh and Dontae Payne

Agenda Date: 8/23/2022
Agenda Item Number: 2.A
File Number: 22-0793

Type: recognition **Version:** 1 **Status:** Recognition

Title

Special Recognition - Fire Ops Training Helmet Presentation: Yến Huỳnh and Dontae Payne

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Recognize Councilmember Yến Huỳnh and Councilmember Dontae Payne for their participation the Fire Ops Program.

Report

Issue:

Whether to recognize Councilmember Yến Huỳnh and Councilmember Dontae Payne for their participation the Fire Ops Program.

Staff Contact:

Erin Johnson, Fire Fighter, 360.753.8466

Presenter(s):

Erin Johnson, Fire Fighter

Background and Analysis:

Councilmember Yến Huỳnh and Councilmember Dontae Payne accompanied members of Olympia's Firefighter Union, IAFF Local 468, for Fire Ops. Fire Ops gives elected officials a chance to do what firefighters do, in full gear in very realistic simulations. The goal of Fire Ops is to foster better understanding of the difficult job firefighters perform and to provide time for conversation and idea sharing regarding the mission of the Fire Department and the City.

Councilmember Yến Huỳnh and Councilmember Dontae Payne were the most recent councilmembers to participate; this special recognition recognizes their participation in this valuable activity.

Neighborhood/Community Interests (if known):

Type: recognition **Version:** 1 **Status:** Recognition

There are no known community interests regarding this time.

Options:

1. Receive the recognition.
2. Do not receive the recognition
3. Receive the recognition at another time.

Financial Impact:

There is no financial impact for this special recognition.

Attachments:

None



City Council

Special Recognition - Proclamation Recognizing 2022 Puget Sound Starts Here Month

Agenda Date: 8/23/2022
Agenda Item Number: 2.B
File Number:22-0781

Type: recognition **Version:** 1 **Status:** Recognition

Title

Special Recognition - Proclamation Recognizing 2022 Puget Sound Starts Here Month

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Proclaim the month of September as Puget Sound Starts Here month.

Report

Issue:

Whether to r Proclaim the month of September as Puget Sound Starts Here month.

Staff Contact:

Susan McCleary, Senior Outreach Specialist, Public Works Water Resources, 360.570.3794

Presenters:

Susan McCleary

Kris Peters, Council Chairman, Squaxin Island Tribe

Background and Analysis:

Puget Sound Starts Here month proclamation is about honoring the life-giving waters of Puget Sound and the Salish Sea. During September we acknowledge the connection between the health of our beloved estuary and our collective wellbeing by supporting the Puget Sound Starts Here region-wide campaign.

In doing so we demonstrate our commitment to the Squaxin Island Tribe to the recovery of Budd inlet, the Deschutes River and salmon populations. While creating opportunities for community education, action and service.

The *Puget Sound Starts Here* campaign began in 2009. It connects hundreds of organizations across the Puget Sound region. The campaign builds a sense of place and raises awareness of the threats

facing Puget Sound and the harmful impacts of stormwater pollution. The campaign is a call-to-action, highlighting simple things we can all do to be better stewards of our shared watershed.

“Here” is where each of us live, work and play. It’s our backyards, driveways, neighborhoods, homes and businesses. Pollutants from fertilizer, spills, oil leaks, vehicle tires, pet waste, pesticides and sediment enter stormwater, which eventually flows into the Sound. As a campaign partner and local government, we can lead by example in our City operations and ask Olympia residents to participate in everyday actions to reduce our cumulative impacts on Puget Sound.

2022 Outreach Activities:

- In collaboration with our local Stream Team partners, City staff developed the Instagram Reel Challenge. We are inviting the Thurston community to submit a reel showing what Puget Sound means to them, and what actions they will take to protect it. The reel should be a 30-90 second video that can be created on a cell phone. A grand prize and runner-up prize for best reels will be awarded. Reels will be shared on Stream Team’s and our partner jurisdiction’s social media platforms.
- Olympia will again contribute funding to the STORM regional education and awareness digital ad campaign focused on car care behaviors. During 2021, the ad garnered 76,000 video starts and 46,000 completed video views from Olympia community members! In 2021, the videos were subtitled in Spanish, Korean and Vietnamese, and this year funding will support in-language voice-over for the videos.
- Staff distributed 14,000 coffee sleeves to Olympia coffee shops last September and will distribute them again this year. We had great feedback from our local coffee shops! The sleeves were designed by local artists and depict actions people can take to help prevent water pollution, such as practice natural yard care, use a commercial car wash, report spills, and bag and trash pet waste. Each sleeve has a QR code with a link to the Stream Team website for more information.

Neighborhood/Community Interests (if known):

The Olympia community has a history of caring about healthy environments and clean waters; they expect the City to play an active role in their protection.

Options:

1. Proclaim the month of September as Puget Sound Starts Here month.
2. Do not proclaim the month of September as Puget Sound Starts Here month.
3. Proclaim the month of September as Puget Sound Starts Here month at another time.

Financial Impact:

There is no financial impact related to the proclamation.

Attachments:

Proclamation

Website link: Puget Sound Starts Here

Website Link: Car Care Videos - *Puget Sound Starts Here* digital media ad campaign

PROCLAMATION

WHEREAS, we resolve to protect Puget Sound and its tributaries which are the source of our communities' wellbeing, health, economy and quality of life; and

WHEREAS, we acknowledge that we are on the land of the people of Steh-Chass of the Squaxin Island Tribe, the People of the Water, who have stewarded this land from time immemorial; and

WHEREAS, a healthy and vibrant Puget Sound defines our Northwest culture, as do the stories and experiences of indigenous people, our responsibility to honor the Medicine Creek Treaty, and our shared legacy for future generations; and

WHEREAS, the health of Puget Sound is declining, and creatures and plants great and small, from our bull kelp forests and salmon, to our orcas and shellfish are at risk from the human impacts of stormwater runoff, loss of natural habitats, and a changing climate; and

WHEREAS, we all have the power to protect our Puget Sound treasure, working together to discover and take clean water actions through the Puget Sound Starts Here Campaign and the Year of the Salish Sea; and

WHEREAS, the City of Olympia will continue to support programs and efforts that build a culture of water protection and raise awareness of the threats facing Puget Sound; and

NOW, THEREFORE, BE IT RESOLVED, the Olympia City Council does hereby proclaim September 2022 as

PUGET SOUNDS STARTS HERE MONTH

in the City of Olympia and will join with other governing bodies, organizations and community groups to strengthen stewardship of our shared watershed and encourage all to take action to improve the health of Puget Sound and the greater Salish Sea.

SIGNED IN THE CITY OF OLYMPIA, WASHINGTON THIS 9th DAY OF AUGUST 2022.

OLYMPIA CITY COUNCIL

*Cheryl Selby
Mayor*



City Hall
601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of the August 16, 2022 City Council Meeting Minutes

Agenda Date: 8/23/2022
Agenda Item Number: 4.A
File Number:22-0790

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of the August 16, 2022 City Council Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, August 16, 2022

7:00 PM

**Council Chambers, Online and Via
Phone**

Register to Attend:

https://us02web.zoom.us/webinar/register/WN_QqKSbGR5TM-QwWWGrEFOhQ

1. ROLL CALL

Present: 6 - Mayor Cheryl Selby, Mayor Pro Tem Clark Gilman, Councilmember Jim Cooper, Councilmember Y n Hu nh, Councilmember Dani Madrone and Councilmember Dontae Payne

Excused: 1 - Councilmember Lisa Parshley

1.A ANNOUNCEMENTS

Police Chief Rich Allen gave an update on the implementation of Body worn cameras has been delayed until October due to the vendor needing more time to get the system in place. He noted there will be an open house at Council Chambers on October 27 at 6 p.m, where officers will give a demonstration of the cameras. Chief Allen noted that on November 1 he will present the next phase of the implementation of cameras in police vehicles.

1.B APPROVAL OF AGENDA

The agenda was approved.

2. SPECIAL RECOGNITION - NONE

3. PUBLIC COMMENT

The following people spoke: Richard Burgess, Brandon Smith, and Peter Cook.

4. CONSENT CALENDAR

4.A [22-0774](#) Approval of the August 9, 2022 City Council Meeting Minutes

The minutes were adopted.

4.B [22-0733](#) Approval of Call for Artist in Residence

The decision was adopted.

- 4.C** [22-0773](#) Approval of a Resolution Authorizing an Access Agreement with Catholic Community Services to Construct Facilities on Quince Stormwater Property

The resolution was adopted.

- 4.D** [22-0722](#) Approval of a Resolution Authorizing an Agreement with Ice Rink Events for Installation, Operation and Removal of the Seasonal Ice Rink

The resolution was adopted.

- 4.E** [22-0758](#) Approval of a Resolution Authorizing an Amendment to an Agreement with Thurston County Medic One for Basic Life Support Services

The resolution was adopted.

4. SECOND READINGS (Ordinances)

- 4.F** [22-0738](#) Approval of an Ordinance Amending the Rental Housing Code, OMC Chapter 5.82

The ordinance was approved on second reading.

4. FIRST READINGS (Ordinances)

- 4.G** [22-0769](#) Approval of an Ordinance Updating and Amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare

The ordinance was approved on first reading and moved to second reading.

Approval of the Consent Agenda

to adopt the Consent Calendar. The motion carried by the following vote:

Aye: 6 - Mayor Selby, Mayor Pro Tem Gilman, Councilmember Cooper, Councilmember Huynh, Councilmember Madrone and Councilmember Payne

Excused: 1 - Councilmember Parshley

5. PUBLIC HEARING - NONE

6. OTHER BUSINESS

- 6.A** [22-0734](#) Preliminary 2023-2028 Capital Facilities Plan Briefing

Principal Planner Joyce Phillips gave a briefing on the Preliminary Capital Facilities Plan, 2023-2028 Financial Plan including key projects, revenues, and expenses.

Councilmembers asked clarifying questions.

The information was received.

- 6.B** [22-0762](#) Approval of a Resolution Advising of the Intent to Allocate Funding of an Increase to Staff by One Full-time Equivalent Position to Support the City of Olympia Cultural Access Program

Community Planning and Development Director Leonard Bauer discussed the Resolution advising intent to allocate funding to increase staff by one full-time equivalent position to support the City of Olympia Cultural Access program.

Councilmembers asked clarifying questions.

Councilmember Gilman moved, seconded by Councilmember Cooper, to approve the Resolution advising of the intent to allocate funding of an increase to staff by one full-time equivalent position to support the City of Olympia Cultural Access Program. The motion carried by the following vote:

Aye: 6 - Mayor Selby, Mayor Pro Tem Gilman, Councilmember Cooper, Councilmember Huynh, Councilmember Madrone and Councilmember Payne

Excused: 1 - Councilmember Parshley

- 6.C** [22-0763](#) Approval of a Resolution Establishing an Ad Hoc Committee for the City of Olympia Cultural Access Program

Mr. Bauer discussed the Resolution establishing an Ad Hoc Committee for the City's cultural access program.

Councilmembers asked clarifying questions.

Councilmember Payne moved, seconded by Councilmember Madrone to approve a Resolution establishing an Ad Hoc Committee for the City of Olympia Cultural Access Program. The motion carried by the following vote:

Aye: 6 - Mayor Selby, Mayor Pro Tem Gilman, Councilmember Cooper, Councilmember Huynh, Councilmember Madrone and Councilmember Payne

Excused: 1 - Councilmember Parshley

7. CONTINUED PUBLIC COMMENT - NONE

8. COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

Councilmembers reported on meetings and event attended.

Mayor Selby discussed a referral coming forward in a few weeks related to the City providing staff support related to sister city relationships.

9. CITY MANAGER'S REPORT AND REFERRALS

City Manager Burney reported last night there was a Regional Fire Authority Town Hall. He outlined future public engagement opportunities regarding the Regional Fire Authority.

10. ADJOURNMENT

The meeting adjourned at 8:21 p.m.



City Council

Approval of a Labor Contract with Chauffeurs, Teamsters and Helpers Union Local No. 252

Agenda Date: 8/23/2022
Agenda Item Number: 4.B
File Number: 22-0787

Type: contract **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Labor Contract with Chauffeurs, Teamsters and Helpers Union Local No. 252

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the labor agreements with Chauffeurs, Teamsters and Helpers Union Local No. 252.

Report

Issue:

Whether to approve the labor contract between the City of Olympia and Chauffeurs, Teamsters and Helpers Union Local No. 252.

Staff Contact:

Linnaea Jablonski, Human Resources Director, 360.753.8309

Presenter(s):

None - Consent Calendar Item

Background and Analysis:

The labor agreement covered by the Teamsters Local 252 expired on December 31, 2021. The contract covers thirty three (33) employees in the Police Department. The new agreement has been ratified by the Union. City staff is bringing it forward to the City Council for their consideration and approval.

The new proposed contract for Council consideration is attached.

The contract has a three-year term that will expire on December 31, 2024. Significant changes to the contracts are in the areas of wages.

Wages

Wage increases for this contract will be based on 90% of CPI-U with a 1.5% minimum and a 4%

maximum wage increase in 2022. An additional 1% wage increase will be given on July 1, 2022. 90% of CPI-U with a 1.5% minimum and a 4% maximum wage increase in 2023. 90% of CPI-U with a 1.5% minimum and a 4% maximum wage increase in 2024.

Medical/Dental/Vision Benefits

All medical/dental/vision benefits remain the same.

Neighborhood/Community Interests (if known):

There are no known neighborhood concerns regarding this labor contract.

Options:

1. Move to approve the labor agreement with Teamsters and authorize the City Manager to execute the agreements.
2. Do not approve the labor agreement with the Olympia as proposed and direct staff as to next steps.
3. Move to approve the labor agreement with Teamsters as amended by Council and authorize the City Manager to execute the agreements.

Financial Impact:

The cost to the City for implementing this contract in 2022 is \$225,926, which is equal to what was already included in the 2022 Operating Budget. A summary of the economic agreement summary is attached.

Attachments:

Contract

Economic Agreement Summary

COLLECTIVE BARGAINING AGREEMENT

BY AND BETWEEN



CITY OF OLYMPIA

AND



CHAUFFEURS, TEAMSTERS, AND HELPERS UNION LOCAL NO. 252
(Affiliated with the International Brotherhood of Teamsters)

TERM OF AGREEMENT

January 1, 2022 through December 31, 2024

TABLE OF CONTENTS

PREAMBLE.....	1
ARTICLE 1 – RECOGNITION.....	1
ARTICLE 2 – UNION REPRESENTATION.....	1
ARTICLE 3 – UNION-MANAGEMENT RELATIONS.....	2
ARTICLE 4 – NON-DISCRIMINATION.....	2
ARTICLE 5 – MANAGEMENT RIGHTS.....	3
ARTICLE 6 – GRIEVANCE PROCEDURE.....	3
ARTICLE 7 – HOURS OF WORK.....	5
ARTICLE 8 – HOLIDAYS	9
ARTICLE 9 – VACATION	11
ARTICLE 10 – SICK LEAVE	12
ARTICLE 11 – BEREAVEMENT LEAVE.....	14
ARTICLE 12 – LEAVE OF ABSENCE	14
ARTICLE 13 – WORKER’S COMPENSATION	15
ARTICLE 14 – JURY DUTY	15
ARTICLE 15 – MILITARY LEAVE.....	15
ARTICLE 16 – EDUCATIONAL OPPORTUNITIES.....	16
ARTICLE 17 - MEDICAL, LIFE, VISION, DENTAL INSURANCE BENEFITS	16
ARTICLE 18 -EMPLOYEE RECORDS, DISCIPLINE, DISCHARGE	18
ARTICLE 19 – PROBATION.....	19
ARTICLE 20 – LAYOFF, RECALL FROM LAYOFF, PROMOTION.....	19
ARTICLE 21 – SENIORITY	20
ARTICLE 22 – WAGES	21
ARTICLE 23 –WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND.....	21
ARTICLE 24 – UNIFORMS	22
ARTICLE 25 – SAFETY COMMITTEE	22
ARTICLE 26 – RETIREMENT	23
ARTICLE 27 – PARKING	23
ARTICLE 28 – SUBCONTRACTING.....	23
ARTICLE 29 – SAVINGS CLAUSE	24
ARTICLE 30 – NO STRIKE, NO LOCKOUT	24
ARTICLE 31 – ENTIRE AGREEMENT.....	24
ARTICLE 32 – TERM OF AGREEMENT	25
APPENDIX A – SALARY SCHEDULES.....	26

PREAMBLE

- A. The City of Olympia, a municipal corporation, hereinafter known as the “Employer”, does hereby enter into an agreement with Chauffeurs, Teamsters, and Helpers Union, Local NO 252, affiliated with the International Brotherhood of Teamsters, hereinafter known as “Union”, for the purpose of providing harmonious working relations between the Employer and the employees, establishing procedures for the resolution of differences, and rates of pay, hours of work, and other terms and conditions of employment.

ARTICLE 1 – RECOGNITION

- A. The Employer recognizes the Union as the sole and exclusive bargaining agent for the purpose of collective bargaining with respect to wages, hours, working conditions, and other conditions of employment, for all full-time and regular part-time support personnel employees of the City of Olympia Police Department, excluding supervisors, confidential employees, Legal Department, Division of Probation, Courts, Cadets, and all other employees as provided in PERC case No 13987-E-98-2342 and decision No 6372-A – PERB.

ARTICLE 2 – UNION REPRESENTATION

- A. The City shall recognize the Chauffeurs, Teamsters, and Helpers Union, Local 252, affiliated with the International Brotherhood of Teamsters (Union) as the sole and exclusive bargaining representative in all matters concerning wages, hours, and other conditions of employment for all employees described in the recognition clause.
- B. The Employer shall remain neutral when communicating with employees about Union membership. The Union shall have up to a thirty (30) minute orientation with new employees’ during the employee’s regular work hours. The Union will explain that it is the designated as the exclusive representative for all employees covered under the Collective Bargaining Agreement. The Union shall inform each new employee that membership in the Union is voluntary and only when an employee clearly and affirmatively consents to joining the Union may the Union collect dues/assessment. In addition, the Union shall explain to the new employee the rights and the benefits the employee would forgo by being a non-member. Such neutrality does not preclude the Employer from informing its employees that while they are a member of the Union whether they pay dues to the Union or not is up to the employee and the employee’s job is not dependent on paying Union dues.
- C. It is mutually agreed that only Union members of this unit shall engage in active participation in Union affairs of this unit or serve in a role of leadership of the unit such as: serving as a delegate or representative, serving on negotiating or other Union committees, or participating in other similar activities to the interest of the unit.

- D. For current Union members and those who choose to join the Union, the Employer shall deduct each pay period all appropriate Union dues and fees uniformly levied and shall continue to do so until notified by the Union or employee to stop such dues collection. The Employer shall transfer amounts deducted to the Union. Authorizations for Payroll Deduction are valid whether executed in writing or electronically.
- E. Whichever party (Employer or Union) that receives the original Authorization for Payroll Deduction from the employee, shall provide an electronic or hard copy of the authorization to the other party within ten (10) days of the employee executing the document.
- F. Indemnification and Hold Harmless: The Union agrees to indemnify and hold the Employer harmless for any action taken, including terminating an employee at the Union's request, for the purpose of complying with this Article.

ARTICLE 3 – UNION-MANAGEMENT RELATIONS

- A. All collective bargaining with respect to wages, hours, and working conditions and other conditions of employment shall be conducted by authorized representatives of the Union and authorized representatives of the Employer. Agreement reached between the parties to this contract shall become effective when signed by authorized representatives of the Employer and of the Union unless otherwise indicated. Should there be any conflict between City rules, regulations, or policy and this Agreement, this Agreement shall prevail.
- B. The Employer and the Union agree to establish a Labor/Management Committee composed of two (2) representatives from each side. The purpose of this committee shall be to resolve issues and to provide a forum for an exchange of ideas. The committee shall meet quarterly or as needed and shall establish an agenda for each meeting prior to the meeting. Each side shall determine a co-chair, and the meeting shall be chaired alternately between the two. The committee will operate on the principles of consensus and shall publish joint minutes of each meeting. The committee shall not have the authority to alter or interpret this Agreement, nor shall it substitute for the grievance procedure.

ARTICLE 4 – NON-DISCRIMINATION

- A. The Employer and the Union agree that they will not unlawfully discriminate against any employee by reason of race, color, creed, national origin, disability, sex, age, marital and family status, sexual orientation, genetic information or religion, as long as the employee is capable of meeting the job requirements. Sexual harassment shall be considered discrimination under this Article. The City's regulations related to Domestic Partners shall apply to those provisions of this Agreement where applicable.

- B. The Employer agrees to take corrective action including discipline to assure that conduct in violation of this Article is remedied and that such discrimination does not continue. Reprisal against a grievant or witness for a grievant is prohibited.
- C. The Employer agrees not to interfere with the rights of employees to become members of the Union, and there shall be no discrimination, interference, restraint, or coercion by the Employer or any Employer representatives against any employee because of Union membership or because of any legal employee activity on behalf of the Union.

ARTICLE 5 – MANAGEMENT RIGHTS

- A. Except as abridged or modified by this Agreement and except as indicated by State and Federal law, Management retains all rights granted by law to operate and manage the functions of the City, to control, direct, and schedule its operations and work force and to make any and all decisions affecting such operations, whether or not specifically mentioned herein and whether or not heretofore exercised. Such prerogatives shall include but not be limited to the sole and exclusive right to hire, terminate, promote, layoff, assign, classify, evaluate, transfer, suspend, discharge, and discipline employees, select and determine the number of employees, including the number assigned any particular work, increase or decrease that number, direct and schedule the work force, determine the location and type of operation, determine the schedule when overtime shall be worked, install or move equipment, determine the methods, procedures, materials, and operations to be utilized or to discontinue their performance.

ARTICLE 6 – GRIEVANCE PROCEDURE

- A. A grievance shall mean a dispute arising during the term of this Agreement involving the interpretation or application of the provisions of this Agreement. “Grievant” means an employee, a group of employees, or the Union having a grievance.
- B. Step One — Immediate Supervisor/Division Head
 - 1. A determined effort shall be made by all parties to resolve differences at the lowest possible level. An employee who thinks they are aggrieved shall discuss the facts with the immediate supervisor and attempt to resolve their issue. If unresolved, the employee or Union shall present their grievance in writing to the Division Head within fifteen (15) calendar days of the occurrence or the date when the employee reasonably should have known of the occurrence which gave rise to the grievance. The Division Head/Jail Manager shall attempt to resolve the issue and shall respond within seven (7) calendar days after receipt of the grievance.

C. Step Two — Police Chief

1. If the parties are unable to resolve the grievance in Step One above, the grievance shall be submitted in writing to the Police Chief within fifteen (15) calendar days of the Division Head's response or failure to respond. The written notice shall contain the factual allegations surrounding the occurrence, specific provision(s) of the contract violated, the proposed remedy sought by the grievant, and reasons for dissatisfaction with the Division Head's solution. The Police Chief may meet with the parties and shall reply in writing within fifteen (15) calendar days after receipt of the written grievance.

D. Step Three — City Manager

1. If the parties are unable to resolve the grievance in Step Two above, the grievance and all supporting documentation and information shall be submitted to the City Manager within fifteen (15) calendar days of the receipt of the Chief's response. The City Manager may meet with the grievant and the Union, and shall respond in writing with a decision within fifteen (15) calendar days of said meeting.

E. Step Four — Arbitration

1. If the employee is not satisfied with the response at Step Three, the Union may, within fifteen (15) calendar days of receipt of the answer at Step Three, request arbitration. If the parties are not able to mutually agree upon an arbitrator (including agreeing to request that a PERC arbitrator be assigned) the Union shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS), limited to our sub-region and accepting only arbitrators who are member of the Nation Arbitration Association. The parties shall alternately strike names from the list, a coin flip determining which party strikes the first name. The last remaining arbitrator on the list shall be requested to hear the grievance.
2. Each party shall be responsible for compensating its own witnesses and attorneys if utilized. The arbitrator's findings shall be final and binding on the parties. Costs of the arbitrator (and recording fees if mutually agreed) shall be shared equally by the parties.

- F. Time Limits The time limits expressed throughout this procedure may be waived or extended by mutual agreement of the parties in writing. The steps in the grievance procedure may be eliminated by mutual consent. Failure on the part of the Employer to respond within the prescribed time limits shall allow the processing of the grievance at the next appropriate step. Should the employee or the Union fail to take a grievance to the next step within the prescribed time limits, the grievance shall be deemed abandoned.

- G. The decision of the arbitrator shall be rendered within thirty (30) days, unless mutually extended. The arbitrator shall have no authority to make a decision contrary or inconsistent with or modifying in any way the terms of this Agreement. The decision of the arbitrator shall be final and binding upon the parties.

ARTICLE 7 – HOURS OF WORK

- A. Employees who are employed in Regular positions (to include those funded by Project Funds) are eligible to participate in benefit programs provided their position is budgeted for a half-time (.5 FTE) position and the employee works at least twenty (20) hours per week. Employees whose positions are budgeted for less than forty (40) hours per week will be eligible for benefit programs on a pro-rata basis according to the number of hours budgeted, subject to limitations imposed by external authorities such as insurance carriers and the State Department of Retirement Systems (DRS).
- B. Benefits will be provided to part-time employees who are budgeted for and are regularly scheduled for less than twenty (20) hours per week, when an assignment causes them to work more than twenty (20) hours per week for thirty (30) days or more. Benefit programs eligibility would begin the first of the month following the increase of hours and will continue while employee is regularly scheduled to work over twenty (20) hours per week. Benefits will be provided on a pro-rata basis and are subject to limitations imposed by external authorities such as insurance carriers and the State Department of Retirement Systems.
- C. Corrections Staff –
1. Work Schedules – In order to meet the staffing needs of the jail, flexible work schedules may be utilized. The length of the work day will be between eight (8) and eleven (11) hours on three (3) to five (5) day flexible work weeks depending on the annual hours scheduled. The regular work day for Corrections Officers shall be ten hours and forty minutes, excluding Jail Sergeant and MLO assignment.. The average scheduled weekly hours of duty in any year shall not exceed an average of forty hours per week. The employer agrees to comply with FLSA regarding hours worked. Starting and ending hours will vary depending on the work schedule to be set by the Employer in consultation with the employees. The employer recognizes that there are currently five (5) regular shifts (plus additional designated shifts for the Medical Liaison Officer (MLO) and Jail Sergeant). Any hours worked in addition to an employee's regularly scheduled hours shall be paid at the overtime rate. Mandatory in-service training day shall be a nine (9) hour day, however, for the purpose of travel time, travel time for the mandatory in-service training day shall not be paid as overtime until the employee has worked 10.67 hours.
 2. Work Periods – The work week shall be in conformance with the 7(k) exemption of the FLSA and shall be two work periods per month. Work schedules may be adjusted with two (2) weeks' notice to the employee, provided that changes

occur after the employee's regular days off, or overtime is paid for hours worked outside of the original schedule in that cycle. Regularly scheduled days off may change during quarterly shift schedule changes, which may result in the employee working longer than five consecutive days. If this occurs over two different work periods, the number of workdays shall start over at the beginning of the new work period. Overtime will not be paid to employees for hours worked on the previous pay period's days off if such overlap occurs.

3. Rest and Meal Breaks – Meal and rest breaks are paid time during the workday. The Employer shall offer the mid-work day meal. Based upon staffing needs employees may be required to take all breaks on the Criminal Justice Center Site.
4. Shift Differential – A shift differential of \$0.75 per hour shall be paid to employees who are scheduled to work an entire shift other than day shift. Day Shift is defined as Shift 1 (0500 – 1540) and Shift 2 (0740 – 1820).

When an employee is working their regularly scheduled shift in accordance with 7.1.D above, as it applies to Shift Differential, the employee will be compensated \$0.75 per hour for hours worked. The employer and the Union agree that this does not apply to partial over shifts unless the employee is working the entire shift.

5. Time off for instructors: Employees who are assigned to a graveyard shift and scheduled to provide assigned training shall be scheduled off the night prior to the training session if the training is scheduled for a four (4) hour training and both the night prior to the training and the night after the training if the training is scheduled for eight (8) hours or more.
6. Fatigue Management: Employee's on the 10 hour 40 minute schedule will not work more than 16 consecutive hours, including extra duty, in a 24-hour period. Employees on the 10 hour 40 minute schedule will have a minimum of 8 consecutive hours off duty in every 24-hour period. This does not apply to off-duty employment.
7. Exceptions may be made due to exigent, volunteer or emergency situations. The shift supervisor responsible for the overtime period shall approve such exceptions. Minimum staffing and other pre-scheduled special events do not constitute exigent or emergency circumstances. Employees who work a shift in excess of sixteen (16) consecutive hours due to the exceptions shall be paid double time (2X) the regular rate of pay until such employee is off duty for at least nine (9) hours.

D. Administrative Staff

1. Regardless of assignment, administrative staff are employees in the following classifications:
 - a. Program Assistant;
 - b. Secretary (Teamsters);
 - c. Computer Support Specialist;
 - d. Evidence Custodian;
 - e. Lead Worker;
 - f. Crime Analyst;
 - g. Senior Program Specialist; and
 - h. Outreach Specialist (Familiar Faces)
2. Work Day – The normal workday shall consist of eight (8) consecutive hours between the hours of 6:00 a.m. and 10:00 p.m. However, earlier or later starting times and ending times may be adopted. Such starting and ending times shall be set by the City and shall not result in the application of the overtime provision but shall be paid at the regular rate for eight (8) hours continuous work. The normal work week shall consist of five (5) consecutive days, Monday through Friday.
3. Alternative Work Schedules – Use of alternative work schedules are at the discretion of the City and may be denied, revised, or discontinued at any time based on the operational needs of the City. Use of alternative work periods will be reviewed to determine impact on City operations.
4. Rest and Meal Breaks – Employees shall be authorized one (1) fifteen (15) minute paid break, scheduled as near as possible to the middle of each half day shift, and a one (1) hour (one-half (1/2) hour if by mutual agreement) unpaid lunch break as near as possible to the middle of the shift.

2. Provisions Applicable to All Work Groups

1. Overtime – All overtime will be pre-approved by a supervisor. Any work performed after the employee's regularly scheduled workday shall be paid at one and one-half (1 ½) times the regular rate of pay. Part time employees will be paid at one and one-half (1 ½) times the regular rate of pay for all work performed after the equivalent of a full-time employees regularly scheduled work day. Employees who work a shift in excess of sixteen (16) consecutive hours shall be paid double time (2X) the regular rate of pay until such employee is off duty for at least nine (9) hours.
2. Training Time – Travel time for non-mandatory training shall be compensated as time worked. When mandatory training occurs on an employee's regularly scheduled days off, the employee shall be compensated at time and one-half (1 ½) for all hours, with a minimum of three (3) hours at the overtime rate.

3. Call Back – The City agrees to pay a minimum of three (3) hours overtime at time and one-half (1 ½) the regular rate of pay to the employees called to return to work after having left work and/or when called in to work when not on duty unless the time extends to the employee's regular work shift or the employee is called back to rectify their own error.
4. Telephone Calls – Employees who are contacted by telephone, while off duty, by a supervisor or designee shall be compensated for business related calls on one-half (1/2) hour increments. Employees assigned to day shift will be paid in one (1) hour increments for business related calls received between 2200 (10:00 p.m.) and 0600 (6:00 a.m.). Employees assigned to graveyard shift will be paid in one (1) hour increments for business related calls during business hours (Monday – Friday, 0800 – 1700 hours). Telephone calls outside of the business hours shall be compensated in one-half (1/2) hour increments. The one (1) hour minimum applies only to calls received by employees as described above. It is not intended to cover shift swaps, overtime, etc. Examples are as follows:
 - a. A five (5) minute call will receive thirty (30) minutes of overtime at one and one-half (1 ½) pay.
 - b. A thirty-five (35) minute call will receive one (1) hour of overtime at one and one-half (1 ½) pay.
5. Compensatory Time – Compensatory time earned may be used only on the days mutually agreed by the employee and the City. Compensatory time may accumulate to the maximum of one hundred six point seven (106.7) hours but will be cashed out to fifty-four (54) hours in the December 5 paycheck of each year. Compensatory time may be used, at the employee's choice, for illness within the immediate family as defined in Article 10 – Sick Leave, Section C3. Employees are able to cash out compensatory time at their discretion throughout the year.
6. Standby Time – If the City determines there is a need to place employees on stand-by for an event or occasion, the City will post the date(s) and times employees are needed for stand-by duty. The City will first seek eligible employees who voluntarily agree to be on stand-by assignments. Employees on standby will provide the Employer a contact phone number and will acknowledge within fifteen (15) minutes. Employees on stand-by duty will not be confined to a particular location so long as they can respond with their duty uniforms and equipment within sixty (60) minutes of being called. An employee assigned to stand-by duty shall receive minimum wage per hour for stand-by pay.

ARTICLE 8 – HOLIDAYS

A. The following days shall be recognized and observed as paid holidays.

New Year's Day	January 1
Martin Luther King, Jr's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19 th
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	Fourth Friday in November
Christmas Day	December 25

1. In addition to the above listed holidays, each employee who has been employed by the City for at least six (6) months may select one (1) non-cumulative personal holiday each calendar year to be scheduled with mutual agreement. An additional non-cumulative personal holiday will be awarded each year the City achieves its Well City goals. Part-time employees accrue holiday time in an amount equal to the proportion of hours normally worked. The floating holiday may be used, at the employee's choice, for illness within the immediate family as defined in Article 10 – Sick Leave, Section C3.

B. Corrections Officers, Sergeants and CRU

1. Holiday pay shall be given in lieu of a day off for each recognized holiday. Holiday pay is calculated by dividing the yearly base salary by 2080 hours, then multiplying the result by eight (8) hours for the Jail Sergeant and Medical Liaison Officer. For Corrections Officers the formula is base pay divided by 2080 hours multiplied by ten and sixty-seven hundredths (10.67) hours. The stated multiplier numbers may, consistent with Section 5 and by mutual agreement between the parties be changed as needed when work schedules change.
2. Effective upon execution of this Agreement, employees whose shifts begin on the following designated holidays shall be paid at a rate of time and one-half (1 ½) rather than straight time for the entire shift: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, The Fourth of July, Labor Day, Veteran's Day, Thanksgiving, day after Thanksgiving, and Christmas. Employees who voluntarily swap an entire shift on one of the ten mentioned holidays with another employee who was scheduled to work, shall be paid at time and one-half (1 ½) pay. The employee originally scheduled to work shall receive regular holiday pay.
3. Holiday pay will be added to the employee's regular compensation during the pay period in which the holiday occurs with the exception of the personal

holiday, which will be paid during the pay period taken. Correction staff shall have the ability to cash out their personal holiday or take the day off in whichever pay period the employee prefers. Leave taken on scheduled holidays shall be charged against Vacation, Compensatory Time or Sick Leave. Vacation leave shall be given in accordance with Article 9 and sick leave in accordance with Article 10. The jail will observe holidays on the actual day of the holiday, with the exception of the Jail Sergeant and Medical Liaison Officer who shall observe holiday in accordance with the provisions contained in Section E below. Holidays may be taken as comp time up to the eighty (80) hour cap.

4. Part-time employees shall be compensated in proportion to the number of hours they work during the calendar month in which the holiday falls.

C. Administrative Employees:

1. Employees required to work on an established holiday shall be compensated at a rate of one and one-half (1 ½) time for all hours worked plus holiday pay.
2. All regular full-time employees shall receive their regular compensation for each holiday. Part-time employees shall be compensated in proportion to the number of hours they work during the calendar month in which the holiday falls. Holidays will be observed in accordance with the published City schedule. When a recognized and observed holiday falls on the regularly scheduled day off of an employee, that holiday will be the next regular, scheduled work day, or, by mutual agreement, the holiday may be the scheduled work day immediately preceding the holiday.
3. An employee who is on vacation leave or sick leave when a holiday occurs will receive holiday pay for the holiday, and it will not be charged against vacation or sick leave.

D. For the purpose of computing overtime, all holiday hours compensated shall be regarded as hours worked.

E. All full-time, regular non-exempt employees working an approved alternative work schedule shall have holiday pay calculated based on the number of hours normally scheduled to work on the day the holiday is observed. For example, an employee working a 4/10 schedule shall receive 10 hours of holiday pay. An employee working a 9/80 schedule shall receive nine hours of holiday pay if a holiday falls on a day the employee is scheduled to work nine hours, and eight hours of holiday pay if a holiday falls on a day an employee is regularly scheduled to work eight hours. Holiday pay for the non-cumulative personal holiday shall be determined by the regularly scheduled work hours of the day it is taken. This section does not apply to part-time employees.

ARTICLE 9 – VACATION

- A. All regular employees shall accrue vacation in accordance with the following schedule.

<u>During Years of Service</u>	<u>Hours Annually</u>	<u>Number of Days (8 hr.)</u>	<u>Number of Days (10.40 hr.)</u>
1	96	12	9.23
2	108	13.5	10.38
3, 4, 5	120	15	11.53
6, 7, 8, 9	132	16.5	12.69
10, 11, 12	144	18	13.84
13, 14	156	19.5	15.00
15, 16, 17	168	21	16.15
18, 19	180	22.5	17.30
20, 21, 22	192	24	18.46
23, 24	204	25.5	19.61
25+	216	27	20.76

- B. Maximum accrual is three hundred and twenty (320) hours or forty (40) eight (8) hour days.
- C. Regular benefits-eligible employees shall accrue vacation leave in accordance with Article 7. Probationary employees shall accrue but cannot use vacation leave.
- D. Accrued vacation shall be credited as earned vacation for each month of service in accordance with the schedule above.
- E. Vacation scheduling shall be based upon seniority, provided, in the judgment of the supervisor the operational needs of the City can be met. Employees shall request vacations, which are for one week or more in duration through consultation with their supervisor as far in advance as possible, however employees must have the time requested (which can include anticipated vacation leave) on the books when making the request. Such requests are to be made preferably two (2) weeks ahead unless by mutual agreement or in cases of emergency. Should there be any conflict between employee requests, the more senior employee's request shall be granted if requested prior to March 1 of each calendar year. Employees shall be expected to continue to be cooperative in scheduling vacation.
- F. Employees who have accrued the maximum amount of vacation leave shall not be precluded from exceeding that amount if they have requested and been denied the use of vacation leave, provided the denial is written and the supervisor is aware that the denial would result in the loss of vacation by the employee. If an employee is on sick leave on the date their accrual exceeds three hundred and twenty (320)

hours or forty (40) eight (8) hour days, the employee shall be allowed to accrue in excess of that amount for the duration of that incident of sick leave use.

- G. Vacation or Compensatory Time may be used, at the employee's choice, for illness within the immediate family as defined in Article 10 – Sick Leave, Section C3.
- H. All employees who separate from City service for any reason after the probationary period shall be paid for unused, accrued vacation leave up to a maximum of three hundred and twenty (320) hours or forty (40) eight (8) hour days.

ARTICLE 10 – SICK LEAVE

- A. Regular full-time employees shall accrue sick leave with pay at the rate of eight (8) hours of leave for each full month of continuous service. Any such leave accrued which is unused shall be accumulated for succeeding years for all regular full-time employees to a maximum of 960 hours.
- B. Regular benefits-eligible employees shall accrue sick leave in accordance with Article 7.
- C. Sick leave with pay shall be granted for the following reasons:
 - 1. Personal illness or physical incapacity,
 - 2. Enforced quarantine of the employee by a physician,
 - 3. Illness within the immediate family (father, mother, spouse, brother, sister, children, mother-in-law, father-in-law, daughter-in-law, son-in-law, grandparents, and grandchildren, domestic partner, domestic partner's children, domestic partner's parents) of the employee requiring the employee's presence,
 - 4. Medical or dental treatment for the employee or within the immediate family of the employee, as defined above, requiring the employee's presence.
 - 5. Leave for self or qualifying family members in accordance with RCW 49.76 for victims of domestic violence, sexual assault or stalking.
 - a. If authorized leave is taken for the purposes defined in Section C3 above, the employee may charge this time to vacation, compensatory time, floating holiday, or sick leave. For all other authorized use of leave as defined in Section C, the employee's sick leave accruals will be charged.
- D. An employee who intends to use sick leave shall notify the Employer via the method identified by the Employer for the respective work groups.

- E. Time off due to injury or illness after the employee has expended all leave, (sick leave, vacation and compensatory) shall be taken without pay.
- F. An employee may request from the City Manager a leave of absence without pay not to exceed twelve (12) months for a period of disability due to sickness or injury. A leave of absence without pay will not be granted until all accrued sick leave is exhausted. However, the employee may hold over forty (40) hours of (non-shared) sick leave for use after leave of absence is completed.
- G. Upon the birth, complication from birth, or adoption of a child or children, employees will be eligible for benefits under the Family and Medical Leave Act (FMLA).
 - 1. City Policy and federal law govern FMLA benefits. Leave of absence without pay will not be granted until all accrued sick leave is exhausted. The total absence shall not exceed six (6) months (retain one (1) week).
 - 2. Upon the expiration of the leave of absence without pay, the employee shall return to the same position, or equivalent position if that position no longer exists, as was held by the employee prior to the leave of absence.
 - 3. During the parental leave as described in Section G, the employer retains the right to ask the employee to consult with a physician to determine whether they may continue to work and for what period of time, and the employer shall receive such information and be entitled to have relevant questions answered.
- H. An employee may continue to purchase medical insurance through the City during sick leave without pay provided the City's insurance carrier permits such purchases. For employees on leave under Family and Medical Leave Act (FMLA) qualifying circumstances, the City will continue its medical coverage contribution for up to twelve (12) weeks inclusive of any sick leave. The City Policy and federal law govern FMLA benefits.
- I. If the City has reasonable grounds to believe sick leave is being abused, it may at its discretion require an employee to furnish substantiating evidence or a statement from a physician that the request for sick leave is justified. When an employee is returning to work from an extended illness or injury, the City may require a statement from a physician certifying that they are fit to return to work. Misuse of sick leave shall be grounds for disciplinary action.
- J. Nothing in this Article shall be interpreted as being contrary to the State "Paid Sick Leave law." See RCW 49.46. In the event of a conflict, State Law shall prevail.
- K. Starting January 1, 2022, upon retiring from the City, eligible employees will receive a cash out for their unused sick leave balance on a one (1) hour for four (4) hours basis with a maximum pay one hundred fifty (150) hours. All retirements

will be verified the Department of Retirement Services (DRS). All funds will be contributed to a Health Reimbursement Arrangement (HRA) for each employee.

ARTICLE 11 – BEREAVEMENT LEAVE

- A. Department heads shall grant regular full-time employees up to three (3) days of bereavement leave with pay in the event of a death in the employee's immediate family (father, mother, spouse, brother, sister, children, mother-in-law, father-in-law, daughter-in-law, son-in-law, grandchildren, grandparents, step-parents, step-children, step-siblings, domestic partner, domestic partner's children, domestic partner's parents) or any individual living in the employee's household. In extraordinary circumstances, additional time off may be requested and charged to sick leave or vacation.
- B. In the event of the death of a member of the employee's family other than those set forth above, bereavement leave may be granted and such leave shall be charged against the employee's sick leave. If there is no sick leave available, the employee may use vacation leave with the permission of the Police Chief or leave without pay with the permission of the City Manager.

ARTICLE 12 – LEAVE OF ABSENCE

- A. A regular employee may be granted non-medical leave of absence without pay for a period not to exceed twelve (12) months, by the City Manager, provided such leave can be scheduled without adversely affecting the operation of the City. All accrued but unused vacation must be used prior to the commencement of a leave of absence granted under this Article. See Article 10, Section F for medical leaves of absence.
- B. Requests for leave of absence without pay shall be in writing, shall be approved by the City Manager, shall contain reasonable justification for approval, and shall state the inclusive dates of such leave. A request for leave without pay by an employee in order to accept employment not in the City service shall, except in unusual circumstances, be considered as insufficient reason for approval of such request. The approval of such request and the terms under which it is granted, shall be set forth in writing by the City with a copy to the employee and the Union.
- C. No vacation or sick leave benefits or any other supplemental benefits shall accrue while an employee is on a leave of absence without pay; moreover, the employee's anniversary date will be adjusted by the length of the leave granted. The employee shall be allowed to continue insurance coverage through the City's plan by paying the premium, provided such coverage is permitted by the insurance carrier. Upon expiration of such regularly approved leave, the employee shall be reinstated in the position held at the time the leave was granted or to another equivalent position.

- D. An employee who is reinstated to their position after authorized leave of absence without pay, shall be paid at the same step in the range for their class that they were receiving at the time the leave of absence began. Failure on the part of the employee to report for duty promptly at the expiration of such leave shall be regarded as voluntary resignation.

ARTICLE 13 – WORKER’S COMPENSATION

- A. Worker’s Compensation shall be in accord with state law.
- B. Filing Requirement – For absence resulting from a work-related injury or illness, an employee is required to notify their supervisor immediately and file an application for Worker’s Compensation in accordance with state law.
- C. Compensation – An employee receiving time loss compensation may elect any of the following with regard to additional compensation.
 - 1. An employee may elect to receive only the time loss compensation available from the Workers’ Compensation benefit.
 - 2. An employee may elect to supplement time loss compensation with accrued sick leave, vacation pay and/or pay for compensatory time. Such leave may be used only to make up the difference between time loss compensation and the employee’s regular salary.
 - 3. Any overpayment, as a result of supplementing with sick leave, received by an employee, will be deducted from the employee’s paycheck(s) and the corresponding hours will be credited back to the employee’s sick leave bank.

ARTICLE 14 – JURY DUTY

- A. A City employee who is called for jury duty shall not suffer any loss of their regular City compensation during such absence. The employee shall also be allowed to keep compensation for jury duty. Time not worked because of such duty shall not affect vacation or sick leave accrued. Employees will report for work when less than a normal workday is required by such duties.

ARTICLE 15 – MILITARY LEAVE

- A. The City recognizes its obligation under Federal and State law and City Policy, Leave, Section 4.4 Military Leave.

ARTICLE 16 – EDUCATIONAL OPPORTUNITIES

- A. The parties agree that it is in their best interests to provide opportunities for employees to gain additional education in areas relating to their employment with the City. The City agrees to reimburse an employee for tuition expenses, subject to available City budget funds on a quarterly basis for Educational Assistance for such courses as may be approved in advance by the City Manager and in accordance with the City's Administrative Guidelines. The employee must submit proof of satisfactory completion of the course, and such proof shall be placed in the employee's personnel file.
- B. Employees shall apply in writing through their department head for benefits contained in this Article.

ARTICLE 17 - MEDICAL, LIFE, VISION, DENTAL INSURANCE BENEFITS

- A. For 2021-2024 Health and Welfare Benefits are available through the Association of Washington Cities (AWC) Benefit Trust are the Regence HealthFirst 250 Plan and Group Health \$20 Co-pay Plan.
- B. The City will pay 95% of the cost of medical insurance for regular full time employees and 85% of the cost of medical insurance for employee spouse and dependents, for employees in Insurance Plan 1.
- C. The City shall designate Medical Insurance Plan 1 for employees hired prior to January 1, 2013 and Plan 2 for employees hired on or after January 1, 2013. For Insurance Plan 2 the City will contribute 95% of the employee cost of the lowest base medical premium and 85% of the cost of the lowest base medical premium for spouse and dependents. The employee may elect either insurance option but the employee shall pay any cost in excess of the lowest base plan premium thru payroll deduction.
- D. Employees who are currently in one of the insurance plans and opt-out of the City's Medical Insurance Plan shall receive \$250.00 per month in lieu of any City provided medical insurance benefits, provided Federal or State law allows. Any new hired full-time employee will be given the opportunity to opt-out of insurance coverage upon proof of insurance coverage. However, if a married employee couple (except for currently participating employees as of July 1, 2016) is covered by City insurance, neither employee may receive the \$250 opt out provision for refusing the City's insurance.

Retirees Medical: **Effective June 1, 2022**, based upon the previous month’s hours of employment, the Employer shall transfer on the behalf of the employee one hundred percent (100% of the sum required to Retiree’s Welfare Trust for retirees medical coverage (RWT Plus) for each employee covered by this Agreement who has eighty (80) or more compensable hours in the preceding month. The premium payments shall be made to the Trust office in Seattle, Washington, by the 10th day of each month. All Scheduled monthly premium payments shall be deducted from each eligible employee via a payroll deduction.

1. The specific retiree medical program is listed below:

Program – RWT Plus	Monthly Premiums
Effective June 1, 2022	\$94.85
Effective January 1, 2023	TBD
Effective January 1, 2024	TBD

E. To ensure the City is maximizing its employer provided benefits, it is important to treat employees fairly and ensure employees understand their coverage. Accordingly, the City through its insurance provider may conduct a Dependent Eligibility Audit.

F. The following terms shall apply:

1. Dental – The City agrees to pay the full family premium for Delta Dental Plan E and Orthodontia Plan 3. Employees who opt-out of the City’s dental plan shall receive \$30.00 per month in lieu of any City provided dental plan, provided Federal or State law allows.
2. Vision – The City will pay 100% of the premiums for regular full-time employees and dependents for the Vision Service Plan - \$25.00 Deductible, and the Orthodontia Plan III.
3. Disability Plan – The City shall pay for a long-term disability plan providing, at a minimum, 50% base salary replacement (to a maximum of \$5,000 monthly salary) and a 180-day waiting period. The plan will offer employees a provision to “buy up” to enhance the benefit at their own expense.
4. Life Insurance – The City agrees to provide life insurance coverage of twenty thousand (\$20,000.00) for each employee, one thousand dollars (\$1000) for a spouse and each dependent child, and to make available through payroll deduction additional life insurance coverage for spouses and dependents of employees.
5. Regular Full-Time Employees – The above benefits and levels of coverage shall be applicable to all Regular employees in the bargaining unit in

accordance with Article 7. New employees shall be allowed one (1) week in which to determine which carrier's coverage they want.

6. Regular Part-Time Employees – The City agrees to pay a prorated share of the premium cost of medical and 100% of dental, vision and orthodontia insurance for each regular part-time benefits eligible employee based on the authorized F.T.E. of the regular part-time employee's position. For example, a 0.50 F.T.E. regular part-time benefits eligible employee shall have half of their medical premium paid.
7. Other – The City shall pay for Hepatitis A, B, DPT and tetanus inoculation for all employees potentially exposed to those diseases.

ARTICLE 18 -EMPLOYEE RECORDS, DISCIPLINE, DISCHARGE

- A. Employee personnel records shall be considered confidential and as such shall be accessible to the employee concerned, the employee's supervisor, the Police Chief, other City officials as authorized by the City Manager, and the Union representatives as authorized by the employee. Personnel files shall contain only information directly relevant to the employee's employment with the City. Employees may examine the file and shall have the right to rebut in writing any items in the file.
- B. Employees shall be disciplined and discharged only for just cause, and shall have the right to have a Union representative, i.e. Business Agent, and/or Shop Steward, present during disciplinary procedures except when an oral warning is being issued. In an internal investigation, Union representation shall not delay the initiation of the process for more than a reasonable period of time for travel purposes. However, depending on the severity of the issue, the City shall take into consideration the time of day, day of week, etc., in determining its urgency to schedule such investigatory meeting.
- C. Where appropriate, disciplinary action shall be progressive and may include the following measures:
 1. Documented oral warnings to be issued in private for minor infractions. Supervisors should inform the employee that an oral warning is being given and that the employee is being given an opportunity to correct the condition. Such disciplinary action will not be made part of the employee's personnel file. Oral warnings are not subject to the grievance process, however, the validity of such warnings may be raised by the Union if relied upon by the employer in a future discipline for which a grievance is processed. Record of oral warnings shall be destroyed after the employee's next annual review/evaluation.

2. Written warnings, which shall state definitely the problem to be remedied, and the expectations of the Employer of the steps the employee is to take to remedy it.
3. Demotion to a lesser classification in the case of the Lead Workers.
4. Suspension without pay.
5. Dismissal or discharge.
6. Suspension with pay may be utilized for purposes of investigation. Such investigation shall be conducted in as expedient a manner as practical.

ARTICLE 19 – PROBATION

- A. Each new employee shall serve a probation period of six (6) months, except Corrections Officers, who shall serve a probationary period of twelve (12) months. Probationary employees shall not have access to the grievance procedure for Grievances related to disciplinary actions.
- B. Time in a temporary position shall not be credited toward the probation period. No employee shall be employed as a temporary for longer than six (6) months.

ARTICLE 20 – LAYOFF, RECALL FROM LAYOFF, PROMOTION

- A. The provisions of this Labor Agreement shall govern layoff and recall as provided for below. The City's general policy on "Workforce Management Plan" will apply unless in conflict with this Agreement.
- B. Layoff
 1. Should the Employer decide to reduce the work force, layoffs shall be made by inverse seniority, provided in the judgment of the City, the remaining senior employee is qualified to perform the required work. In making that assessment, the replacement employee will be given a reasonable probationary period (not to exceed six (6) months) to demonstrate their abilities in the new position. However, if the employee is not performing at an acceptable level, the employee will be laid off. The former laid off employee will be recalled, if available.
 2. The Employer will give notice of at least thirty (30) days to the affected employee(s). No regular employee shall be laid off if there are any temporary or probationary employees doing bargaining unit work.\

C. Recall from Layoff

1. Any employee being laid off will be placed on a recall list. The list will be maintained for two years. It is the responsibility of the employee to keep the City informed of their current address and telephone number so that they can be notified in case of recall. If an employee fails to report for work within fifteen (15) working days from the date of recall, they will be considered to have voluntarily resigned and will be removed from the recall list. No temporary employees shall be hired to do bargaining unit work by the department while any regular employees are in layoff status.
2. Layoff is considered a separation from City service. Benefits and leave accruals will not accrue during layoff. The anniversary date will be adjusted.

D. Promotion

1. The Employer will consider candidates for promotion from within the bargaining unit before selecting employees from outside the bargaining unit. Vacancies will be posted for seven (7) working days.
2. An employee who is promoted shall be placed at the closest step in the new range that provides at least a five percent (5%) increase in salary.
3. The promotional probation period shall be six (6) months.
4. If, during the promotional probationary period, the employee is not performing at an acceptable level, as reasonably determined by the City, the employee will be reinstated to the previous position and pay rate without appeal even though this may necessitate the layoff of the employee occupying the position. In such cases, the Employer will provide the employee with a written explanation of the employee's failure to perform at an acceptable level and successfully complete the probation.
 - a. A promoted employee may, during the promotional probationary period, request to be returned to their previous position, if open, or to a similar position. Similar means the same pay range and step as the employee's previous position.

ARTICLE 21 – SENIORITY

- A. Employees in the bargaining unit shall accrue seniority from date of hire with the City into a position in the bargaining unit. Seniority shall be based on continuous service with the City within this bargaining unit including paid leave; however, seniority shall not be accrued while on layoff as per Article 21 and/or a requested non-medical leave of absence without pay per Article 10 and Article 13.

- B. Employees rehired by the Employer (this does not apply to those returning from layoff) and/or returning to this bargaining unit, except as referenced as above, will be considered as new employees under this Agreement.

ARTICLE 22 – WAGES

- A. Wages shall be as set forth in Appendix A. Employees shall normally be hired at the first step of the pay range, and shall receive an increase to the second step upon completion of twelve (12) months' employment. Increases to succeeding steps in the pay range shall occur annually on the anniversary date of the employee's assumption of their current classification.
- B. Whenever an employee is assigned by the unit supervisor or a manager to perform all or, substantially all of the duties of another higher paid classification for a period of more than one full working day in a work week, the employee shall receive the greater of the lowest step of the higher pay range or a seven percent (7%) increase for the entire period. Employees receiving the pay and performing the duties of a higher pay classification will be governed by that position's FLSA designation for the payment of overtime.
- C. All regular pay checks will be directly deposited to the bank account of the employee's choice.
- D. Bilingual Pay: Employees shall receive a bilingual pay allowance of 3.3% added to their base pay when language skills have been confirmed by an agreed upon language specialist or such other method as the City shall reasonably determine. Bilingual pay for members having conversational proficiency in Spanish, Asian regional languages, Pacific Islander, Russian, Slavic regional languages, and Sign Language can qualify for this incentive.
- E. Body Worn Cameras: Employees who are assigned a body worn camera shall receive a pay allowance of 2.0% hourly premium for all hours assigned to wear the camera.

ARTICLE 23 –WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND

- A. Effective January 2022 based on December 2021 hours, the Employer agrees to pay into the Western Conference of Teamsters Pension Trust Fund on account of each member of the bargaining unit, the following amounts which are to be computed monthly:
- B. Forty-three dollars and thirty- three cents (\$43.33) per month per employee who is compensated for a full calendar month (based upon straight time hours). Employees compensated for less than a full calendar month shall receive twenty-five cents (\$0.25) per straight time hour to a maximum of forty-three dollars and thirty-three cents (43.33)

It is understood by the parties that the total amount remitted (\$43.33 per month/\$0.25 per hour) by the Employer was partially funded via a pre-tax contribution by a payroll diversion of negotiated wages in an amount equal to twenty-two dollars and fifty-three cents (\$22.53 per month/\$0.13 per hour) for those employees compensated for a full month or \$0.13 per hour for those employees compensated for less than a full month.

- C. The total amount due for each calendar month shall be remitted in a lump sum not later than ten (10) days after the last business day of each month. The Employer agrees to abide by such rules as may be established by the Trustees of said Trust to facilitate the determination of the hours for which contributions are due, the prompt and orderly collection of such amounts and the accurate reporting and recording of such hours and such amounts paid on account of each member of the bargaining unit. Failure to make all payments herein provided for within the time specified shall be a breach of this Agreement.
- D. It is understood that if during the term of the agreement the bargaining unit wishes to increase the pension amount through an employee wage deferral, the parties shall meet to discuss the matter, any agreed upon modifications shall be outlined in an amendment which shall be attached to and incorporated into this agreement.

ARTICLE 24 – UNIFORMS

- A. When required, the City will provide uniforms. Jail employees shall be provided with all equipment as defined by the City, including trouser belts. The City will pay each employee eight hundred dollars (\$800) for dry cleaning of uniforms and purchase of specified footwear and undershirts divided into 2 semi-annual payments.
- B. CRU employees shall be provided with all required uniform tops and jackets. The City will pay each employee a clothing and footwear allowance of one hundred and fifty dollars (\$150.00).
- C. All employees who are provided uniforms are required to wear them during duty hours, unless other attire is deemed more appropriate for the duties of the day. All employees are to keep their appearance in accordance with grooming standards developed by the Labor-Management Committee.

ARTICLE 25 – SAFETY COMMITTEE

- A. Employees from this bargaining unit shall select one representative to participate on the Police Department Safety Committee.

ARTICLE 26 – RETIREMENT

- A. All employees in the bargaining unit shall be covered under the Public Employees Retirement System (PERS) or Public Safety Employee Retirement System (PSERS).
- B. Members shall be afforded the option to participate in the ICMA deferred compensation loan program. Members must follow the City's established guidelines and procedures for application, repayment, and terms. The City will observe all federal laws pertinent to this program. Members' failure to repay loan amounts and delinquency of loans could jeopardize the continued availability of the loan program and possibly the tax-exempt status of the entire plan. The IRS may amend/modify or eliminate the guidelines of the program at any time. Should the program be discontinued, any outstanding loans would continue but no future loans would be granted. The City reserves the right to cancel the loan program, for reasons to include, but not limited to: numerous defaults, delinquencies, or budgetary limitations of staff resources to administer the program.
- C. Members shall be afforded the option to participate in the City's Roth IRA.

ARTICLE 27 – PARKING

- A. The parking spaces located behind the jail will be reserved for OPD and Criminal Justice employees and city-owned OPD and Criminal Justice Center vehicles only.
- B. There will be eight (8) designated parking spaces for Teamsters members.

ARTICLE 28 – SUBCONTRACTING

- A. It is the general policy of the City to continue to utilize its employees to perform work they are qualified to perform. However, the City reserves the right to contract out and/or eliminate any work it deems necessary in the interests of efficiency, economy, improved work product, or emergency taking into consideration the effected employees. Nothing in this Agreement shall prevent the City from exercising its right concerning contracting out and/or eliminating any work or function performed by employees in this bargaining unit.
- B. When a decision to subcontract would result in the loss of work and/or the layoff of bargaining unit employees, the City will notify the Union and give it an opportunity to discuss the issue of sub-contracting such work.
- C. If the City's decision is to subcontract, then the City will notify the Union of the elimination and/or contracting of such work or functions and will bargain the impact of such action with the Union.

ARTICLE 29 – SAVINGS CLAUSE

- A. If any Article, or part thereof, of this Agreement or any addenda thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article should be restrained by such tribunal, the remainder of this Agreement and addenda shall not be affected thereby, and the parties shall enter into immediate collective bargaining negotiations to arrive at a mutually satisfactory replacement of such Article or addenda.
- B. It is agreed between the parties that nothing in this Agreement intends to abrogate existing monetary benefits not specifically referred to in this Agreement.

ARTICLE 30 – NO STRIKE, NO LOCKOUT

- A. The City and the Union recognize that the public interest requires the uninterrupted performance of all City services and to this end pledge their best efforts to avoid or eliminate any conduct contrary to this objective. During the term of this Agreement neither the Union nor the City shall cause, engage in, or sanction any work stoppage, slow down, action in sympathy, or other interference with City functions.
- B. In the event of unauthorized interruptions, the Union agrees it will join the City in requiring the members to return to work immediately. Upon failure, employees who engage in any of the foregoing actions shall be subject to disciplinary action, up to and including suspension or discharge. No individual shall receive any portion of their salary or benefits as provided by the City, while engaging in activities in violation of this Article.
- C. The City shall not engage in or cause any lockout or interruption of work of its employees during the term of this Agreement.

ARTICLE 31 – ENTIRE AGREEMENT

- A. The Agreement expressed herein in writing constitutes the entire Agreement between the parties and no oral or written statements shall add or supersede any of its provisions, unless mutually agreed upon by both parties and an amendment or revision to said article or section is properly adopted by the Union and the Employer.
- B. The parties acknowledge that each has the unlimited right and opportunity to make proposals with the respect to any matter deemed a proper subject for a collective bargaining agreement. The results of this exercise of the rights are set forth in this Agreement, provided however, if any issue is mutually agreed upon, the parties to the Agreement may amend any article or section herein.

ARTICLE 32 – TERM OF AGREEMENT

- A. This Agreement shall become effective January 1, 2022 and shall remain in effect until December 31, 2024.
- B. Should either party wish to inaugurate collective bargaining discussion over changes they may wish to introduce into this Agreement, it is agreed that notice of such intent shall be mailed to the authorized parties' signatory to the Agreement ninety (90) to sixty (60) days prior to the end of the final year of the contract.

SIGNED this _____ day of _____ 2022.

FOR THE UNION

FOR THE CITY

Brian Blaisdell, Secretary-Treasurer

Steven J. Burney, City Manager

Shandi Cardin, Business Agent

APPENDIX A – SALARY SCHEDULES

Effective January 1, 2022:

(Represents 4% COLA, Corrections Officers additional 3%, Secretaries reclassified to from Grade 646 to Grade 650, Jail Sgts 30% differential (single step) above Step 5 Correction Officer)

Classification	Grade	Step 1	Step 2	Step 3	Step 4	Step 5	
Crisis Response Specialist / Program Assistant	646	4,999.61	5,248.43	5,513.28	5,789.09	6,076.04	Monthly
Outreach Specialist/ Program Specialist Secretary	650	5,477.85	5,748.77	6,036.40	6,340.03	6,657.98	Monthly
Correction Officer	651	5,635.86	5,914.60	6,210.53	6,522.92	6,850.03	Monthly
Evidence Custodian	652	5,704.18	5,991.54	6,290.70	6,608.73	6,935.83	Monthly
Crisis Response Lead/ Lead Worker	654	5,872.31	6,161.19	6,468.92	6,793.78	7,132.63	Monthly
Sr. Program Assistant	656	6,149.28	6,451.76	6,774.02	7,114.22	7,469.04	Monthly
Crime Analyst	659	6,392.83	6,707.29	7,042.31	7,395.96	7,764.87	Monthly
Computer Support Specialist	660	6,712.17	7,042.62	7,394.70	7,765.77	8,153.06	Monthly
Jail Sergeant (30% differential above 651/5 Correction Officer)	664	8,905.04	-	-	-	-	Monthly

General Wage Increases:

Effective July 1, 2022: Employees will receive a 1.0% increase from January 1, 2022, base pay.

Effective January 1, 2023: Employees will receive a salary increase of 90% of Seattle- CPI-U (based on 2022 July to June CPI figures) with a minimum increase of 1.5% and a maximum increase of 4%.

Effective January 1, 2024: Employees will receive a salary increase of 90% of Seattle- CPI-U (based on 2023 July to June CPI figures) with a minimum increase of 1.5% and a maximum increase of 4%.

Longevity Pay:

Effective January 1, 2022, longevity pay will be paid within the following schedule. Payment will be made in a lump sum the pay period after the employee’s anniversary date.

Years of Service	1-6	7-10	11-14	15-18	19-22	23-26	27+
Per year	\$0	\$650.00	\$800.00	\$1050.00	\$1200.00	\$1350.00	\$1600.00

Assignment Pay:

Community Outreach Dog Handler: The Community Outreach Dog Handler Specialty will consist of Primary and Back Up handlers. Primary handlers will be responsible for the care and training of the Community Outreach Dog as defined in Department Policy.

A. Primary Handler: Employees assigned as a Primary Community Outreach Dog handler shall receive premium pay in the amount of three-point three percent (3.3%) of the employee’s base salary paid each month.

B. Hours of work for a designated primary community outreach dog handler shall include:

1. The regular shift for primary community outreach dog handler shall be reduced by one hour per workday, based on the existing schedule.
2. When a primary community outreach dog handler is on sick leave, compensatory time off, or vacation leave, and continues to provide care for the police canine, the officer’s leave bank will be charged in accordance with paragraph “1”.

C. Back Up Handler: back up handlers will provide handling services for the dog at events that primary handler is unavailable to attend, or those events in which a second handler may be useful. They may provide care for the dog during absences of the primary handler.

1. Back up handlers will not receive specialty pay unless they assume the work of the primary handler and are actively handling the dog, in which case they will receive three-point three percent (3.3%) for the hours they serve in that role. (i.e while they are primarily responsible for the care and control of the dog.)
2. Back Up Handlers will be selected on the same criteria as Primary Handlers and defined in Department Police.

3. Back Up Handlers will receive routine on-going training, paid for by the City, with the primary handler and the dog in order to successfully handle the dog in public.
4. In the event that the back up handler assumes the role of primary handler for twenty-four (24) hours or longer, they shall receive the benefit of the primary handler. These benefits shall end upon return of the dog to the primary handler.

1.5% assignment pay for Correctional Officer(s) that are assigned, certified instructors.

Corrections Officers shall receive an additional 5% of base pay for assignment by a supervisor or manager as a, Field Training Officer, or Medical Liaison Officer while training.

Corrections Officers shall receive an additional 1% of base pay for certified FTO while not training for the duration of the employee's probationary period.

A Corrections Officer will receive 5% assignment pay for each assignment held. Assignments may also be made so that no Corrections Officer holds more than one assignment at any time, depending on the operational needs of the City of Olympia and the Police Department.

Assignments may be of any duration, may be effective only during specific time periods, and may, if necessary for employee development and training purposes, be rotated on a regular or occasional basis between Corrections Officers.

Field Training Officer assignment will be made only when there is a probationary Corrections Officer on staff needing individual training and mentoring.

Assignments may be temporarily or permanently ended or discontinued for appropriate reasons, such as unsatisfactory performance by the assignee or if operationally they are no longer required.

Corrections Officers assigned as described above will receive written notification when assignments begin and end and copies of said notifications will be placed in employee files.

Corrections Officers will be eligible for assignment as a Medical Liaison Officer and Field Training Officer upon successful completion of the required one year probationary period.

Assignments are not considered promotions and the methods, procedures, and standards used in determining if, how and when assignments are made are at the discretion of the City.

Jail Employees:

Teamsters Legal Defense Fund: Effective January 1, 2022, and for the duration of the agreement, the cost of the Teamsters Legal defense fund shall be funded one hundred (100%) by the Employee by means of a payroll deduction.

Jail Sergeant:

The Jail Sergeant is not eligible to receive Assignment Pay, as outlined above, except Jail Sergeants who are certified and assigned by the City to be instructors shall be entitled to two percent (2%) instructor pay for each month the Jail Sergeant is designed as an instructor provided the Jail Sergeant maintains certification.

The City reserves the right to select any qualified and otherwise acceptable candidate (internal or external) for Jail Supervisors hired after initial selection in 2004.

Education Incentives:

Education Incentives for Jail Sergeants :

AA Degree -----	3% of base salary
BA/BS Degree -----	6% of base salary
MA/MS Degree -----	8% of base salary

APPENDIX B – PHYSICAL FITNESS

STATION 1 - OBSTACLE COURSE (43 seconds)

Under Barricade

Zig Zag Run

Balance Beam

Thirty (30) Yard Run

Pass	Fail	Testing Officer
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STATION 2 - 300-YARD RUN (90 seconds)

Pass	Fail	Testing Officer
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STATION 3 - VEHICLE PUSH - 10 FEET (13 seconds)

Pass	Fail	Testing Officer
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STATION 4 - BODY DRAG - 30 FEET (15 seconds)

Pass	Fail	Testing Officer
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For Corrections Employees who choose to participate in the physical fitness incentive: The physical fitness test will be conducted in a single session. Moving from one event to another will allow adequate rest between events. Testing is considered on-duty time. Testing will be held during the months of May and June. Employees will be provided at least two opportunities (one in each month) to pass the test. The test will normally be scheduled for a time while employees are on duty. For special circumstances such as serious illness or injury, at the Chief's discretion, an officer may be given another opportunity to test outside the normal testing times. Employees who successfully complete the test will be provided incentive pay equal to two percent (2%) of their base wage be added to their regular paycheck

Such incentives shall be considered earned for the following twelve-month period and must be re-earned each May or June to take effect July 1st.

**TEAMSTERS
ECONOMIC AGREEMENTS SUMMARY
AUGUST 2022**

The City and the Union are currently negotiating the labor contract for the period January 1, 2022 – December 31, 2024. The following summarizes the proposed agreement:

ITEM	AGREEMENT	ESTIMATED ANNUAL COST INCREASE
COLA on base salary	2022: 4% Jan 1, 2022 1% July 1, 2022 2023: *1.5% Min/4.0% Max 90% of Seattle CPI-U; 2024: *1.5% Min/4.0% Max 90% of Seattle CPI-U	2022: \$225,926 2023: \$68,353 2024: \$87,073
Increase of Benefits	2022: 2023: 2024:	2022: \$42,926 2023: \$34,997 2024: \$16,277
2022	TOTAL: As a percentage of annual payroll:	\$268,150 5%
2023	TOTAL: As a percentage of annual payroll:	\$103,350 2%
2024	TOTAL: As a percentage of annual payroll:	\$103,350 2%

These calculations are based on 47 positions

*COLA on salary for 2023 and 2024 are estimated at 2.5%.



City Council

Approval of a Substantial Amendment to Program Year 2021 Community Development Block Grant Annual Action Plan

Agenda Date: 8/23/2022
Agenda Item Number: 4.C
File Number:22-0789

Type: decision **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Substantial Amendment to Program Year 2021 Community Development Block Grant Annual Action Plan

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the proposed amendment to the Program Year (PY) 2021 Community Development Block Grant (CDBG) Annual Action Plan to reallocate existing CDBG CV funds to the new proposed public service activity, expansion of the Familiar Faces Program.

Report

Issue:

Whether to approve the proposed substantial amendment which reallocates CDBG funds to a new activity.

Staff Contact:

Anastasia Everett, CDBG Program Specialist, 360.280.6197

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

The CDBG Public Service Activity "Evening Downtown Ambassadors" originally received an award of \$100,000 of CDBG-CV funds. The pilot program ended in April of 2022 before the award was fully spent. The \$14,916.91 of unspent funds are being proposed to be allocated to the City's Familiar Faces Program. An additional \$6,685.36 of unallocated CDBG-CV funds are also being proposed to fund the activity, for a total of \$21,602.27.

The funds would provide for a temporary expansion of the Familiar Faces Program. One temporary peer specialist position would be created, and the position would serve low-income individuals who

are street dependent or experiencing homelessness in downtown Olympia. The funds expand the ability of the City to provide a compassionate and effective trauma-informed response to needs and impacts related to homelessness and street dependency in downtown, an important part of recovery from the COVID-19 pandemic. The project is designed to test the concept of expanding the Familiar Faces program to provide a dedicated resource for non-threatening but more time-consuming individuals in the downtown core.

Amendments to the CDBG Annual Action Plan normally require at least a 30-day process. The public comment period will begin on July 18 and end on August 19 at 12:00pm. The amendment will be brought to Council for consent approval on August 23.

Neighborhood/Community Interests (if known):

CDBG funds can be spent to meet the needs of low to moderate income individuals throughout the community.

Options:

1. Move to approve the proposed Substantial Amendment to the PY 2021 Annual Action Plan.
2. Provide staff with feedback and provide alternative direction.
3. Take other action.

Financial Impact:

\$21,602.27 of CDBG-CV funds are proposed to fund the Familiar Faces program. Upon successful allocation and spenddown of these funds, all the City's CDBG-CV award will be fully allocated, which helps us meet our timeliness goal of 80% spenddown by 2023.

Attachments:

Draft PY21 Substantial Amendment

PROPOSED SUBSTANTIAL AMENDMENT – OLYMPIA CDBG PROGRAM YEAR 2021

Overview: Staff recommend a *Substantial Amendment* to the current Program Year 2021 (9/1/21 – 8/31/22) CDBG Annual Action Plan to **reallocate CDBG-CV funding**. The City proposes a total of \$21,602.27 in unspent CDBG-CV federal funds to be allocated towards a new Public Service activity.

Project: Familiar Faces Program Funds would provide for a temporary expansion of the Familiar Faces Program. One temporary peer specialist position would be created, and the position would serve low-income individuals who are street dependent or experiencing homelessness in downtown Olympia. The funds expand the ability of the City to provide a compassionate and effective trauma-informed response to needs and impacts related to homelessness and street dependency in downtown, an important part of recovery from the COVID-19 pandemic. The project is designed to test the concept of expanding the Familiar Faces program to provide a dedicated resource for non-threatening but more time-consuming individuals in the downtown core.

Proposed Substantial Amendment: This proposed Substantial Amendment must go through our “**CDBG Citizen Participation Plan**” with 30 days for public comment. This public process can run concurrent to the Program Year 2021 Annual Action Plan public process. This meets the definition of a Significant Amendment to the Annual Action Plan because of the following:

- A change in allocation priorities, which is considered a change of federal funds awarded to a project of greater than 30 percent or \$30,000, whichever is greater;
- A major change in the scope of an activity;
- The addition or deletion of a specific activity;
- A change in the beneficiaries of an activities; or

CDBG Eligibility: Rental Rehabilitation is eligible for CDBG funding and meets the national objective of Low-Moderate-Income Limited Clientele Activity:

Other Public Services Not Listed in 03T and 05A-05Y 24 CFR 570.201(e)

DRAFT AMENDMENT OF PROGRAM YEAR 2021 CDBG ANNUAL ACTION PLAN

Highlighted in yellow is the proposed amendment to the Olympia PY 2021 Plan, to be funded by re-allocated funds from prior CDBG years:

Recipient	Project	HUD Goal(s)	HUD Objectives	Proposed Funding
City of Olympia	Familiar Faces	Public Services	LMC – Low/Moderate Income Limited Clientele	21,602.27
Olympia Community Solar	Housing	Rental Rehabilitation	LMH – Low/Moderate Housing	\$186,488.60 (PY 2015, 2016, 2017, 2018 reallocation)

Catholic Community Services	Housing	Homeless Facilities Rehabilitation	LMC – Low/Moderate Limited Clientele	\$90,000 (PY 2015 an 2020 reallocation and Program Income)
Rebuilding Together South Sound	Housing	Rental Rehabilitation	LMH – Low/Moderate Housing	\$100,000
Northwest Coop Development Center	Business Training and Technical Assistance	Economic Development	LMJ – Low/Moderate Jobs	\$50,000
Housing Authority Thurston County	Housing	Rental Rehabilitation	LMH – Low/Moderate Housing	\$50,000
Homes First	Housing	Housing Administration	LMH – Low/Moderate Housing	\$50,000
City of Olympia	Olympia Downtown Ambassadors	Public Services	LMC – Low/Moderate Income – Limited Clientele	\$50,000
City of Olympia	Program Administration	N/A	N/A	\$91,548
		PY 2021	ALLOCATIONS	\$709,638.87

PUBLIC COMMENT

The 30-Day public comment period runs from **July 18, 2022 – August 19, 2022**, offering the following options:

- **Written comments:** Olympia City Council, 601 4th Ave E, Olympia, WA 98501 ATTN: CDBG
- **Emails:** cdbg@ci.olympia.wa.us,
- **Phone calls:** 360.233.6197
- **Public hearing:** August 9, 2022 at 7:00 p.m. at City Council
- **Council Approval:** August 23, 2022 at 7:00 p.m. at City Council

For more information:

Anastasia Everett Community Development Block Grant Program Specialist
aeverett@ci.olympia.wa.us | 360.233.6197





City Council

Approval of a Resolution Declaring a Need for the Housing Authority of Thurston County to Operate Within the Boundaries of the City of Olympia

Agenda Date: 8/23/2022
Agenda Item Number: 4.D
File Number:22-0778

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Resolution Declaring a Need for the Housing Authority of Thurston County to Operate Within the Boundaries of the City of Olympia

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the Resolution declaring a need for the Housing Authority of Thurston County to operate within the boundaries of the City of Olympia.

Report

Issue:

Whether to approve the Resolution declaring a need for the Housing Authority of Thurston County to operate within the boundaries of the City of Olympia.

Staff Contact:

Darian Lightfoot, Housing Programs Manager, 360.280.8951

Presenter(s):

Consent Calendar Item.

Background and Analysis:

The Housing Authority of Thurston County is seeking approval to continue operations within the City of Olympia boundaries. This approval is a requirement of the Housing Authority's bond council and will allow the organization to continue to create and operate affordable housing throughout the City.

Neighborhood/Community Interests (if known):

The Housing Authority of Thurston County is a vital resource within the community. Granting this approval would allow the organization to continue their operations and provide housing to low-income residents.

Options:

1. Approve the Resolution granting the Housing Authority of Thurston County to operate within the boundaries of the City of Olympia.
2. Do not approve the Resolution granting the Housing Authority of Thurston County to operate within the boundaries of the City of Olympia.
3. Consider the Resolution at another time.

Financial Impact:

There is no financial impact of this resolution.

Attachments:

Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
DECLARING A NEED FOR THE HOUSING AUTHORITY OF THURSTON COUNTY TO
OPERATE WITHIN THE BOUNDARIES OF THE CITY OF OLYMPIA**

WHEREAS, RCW 35.82.070(14) provides that a housing authority may exercise its powers within the boundaries of any city not included in its area of operation if the governing or legislative body of that city adopts a resolution declaring that there is a need for the housing authority to exercise its powers within the city; and

WHEREAS, the City Council of the City of Olympia, Washington (the "City"), has determined that there is a need for the Housing Authority of Thurston County to exercise its powers within the jurisdictional boundaries of the City of Olympia; and

WHEREAS, the Housing Authority of Thurston County (the "Authority") has indicated that it is willing to exercise its powers within the City's boundaries;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

Section 1. Declaration of Need; Authorization. The Olympia City Council declares that there is a need for the Housing Authority of Thurston County to exercise its powers within the City of Olympia and authorizes and ratifies the Authority's exercise of such powers within the City.

Section 2. Effective Date. This resolution shall be in full force and effect from and after its adoption and approval.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2022.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber

CITY ATTORNEY



City Council

Approval of a Resolution Authorizing an Agreement with Thurston County to Fund Services for People Impacted by Homelessness

Agenda Date: 8/23/2022
Agenda Item Number: 4.E
File Number:22-0779

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Resolution Authorizing an Agreement with Thurston County to Fund Services for People Impacted by Homelessness

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve a Resolution authorizing an agreement between the City of Olympia and Thurston County to fund services for people impacted by homelessness.

Report

Issue:

Whether to approve a resolution authorizing an agreement between the City of Olympia and Thurston County to fund services for people impacted by homelessness.

Staff Contact:

Darian Lightfoot, Housing Programs Manager, 360.280.8951

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

The Scattered Site Pilot program began March 1, 2021, with the goal to support unhoused residents at established encampments throughout the city. Three encampments were identified including Ensign Road, Deschutes Parkway, and Wheeler Road. Deschutes Parkway was closed in December of 2021 and Wheeler Road is now being addressed by the Washington State Department of Transportation as that area is owned by the state.

This limited duration contract is being reestablished to recoup the unspent funds remaining on the contract and divert those funds to Ensign Road to help support waste removal on site. Tipping fees are approximately \$6,000 per month therefore the balance of this contract should cover the incurred

expenses for the month of September. The site is being prepped for closure in September, ending the costs for waste removal and sanitation along the road shortly after.

The initial contract ended June 20, 2022, halting the provider support at the identified encampments. The waste removal and sanitation continued, however, placing the financial cost on the city to address. The County has agreed to reenter into a contract to allow for full expenditure with an end date of September 30, 2022.

Neighborhood/Community Interests (if known):

Ongoing site management at Ensign Rd including waste removal, litter abatement, and sanitation are of great interest to the community. Keeping the road clear of debris helps to ensure safe passage for all residents.

Options:

1. Approve the Interlocal agreement between the City of Olympia and Thurston County to fund services for people impacted by homelessness.
2. Approve the Interlocal agreement with amendments between the City of Olympia and Thurston County to fund services for people impacted by homelessness.
3. Consider the Resolution at another time.

Financial Impact:

The initial contract for the Scattered Site pilot program had a budget of \$240,000. When the contract ended on June 20, 2022, an amount of \$5,911.30 remained unspent. This contract will recoup those unspent funds to cover the costs outlined in scope of work.

Attachments:

Resolution
Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF OLYMPIA AND
THURSTON COUNTY TO FUND SERVICES FOR PEOPLE IMPACTED BY HOMELESSNESS**

WHEREAS, on June 14, 2018, the Thurston County Board of County Commissioners (the County) declared homelessness a public health crisis in Thurston County, directing the Director of the Thurston County Public Health and Social Services to lead the response, committing support for community wide efforts to reduce homelessness; and

WHEREAS, on July 17, 2018, the Olympia City Council passed Ordinance No. 7146 finding and declaring a public health emergency relating to human health and environmental conditions caused by increasing homelessness in the City of Olympia (the City); and

WHEREAS, on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law providing for over \$2 trillion relief for American workers, families, and small businesses, and to preserve jobs for American industries; and

WHEREAS, the County received an allocation of \$3,882,592 in federal Emergency Solutions Grant-COVID (ESG-CV) through the Washington State Department of Commerce; and

WHEREAS, the County signed a grant agreement with the Washington State Department of Commerce on March 19, 2020, for the Washington State COVID-19 Outbreak Emergency Housing Grant (EHG) for \$999,376; and

WHEREAS, the purpose of the EHG Grant is to respond to the COVID-19 outbreak related to public health needs of people experiencing homelessness or otherwise in need of quarantine or isolation housing during the COVID-19 outbreak; and

WHEREAS, the County collects funds as authorized under RCW 36.22.179 to support local homeless housing services in support of the County’s Five-Year Homeless Crisis Response Plan; and

WHEREAS, the Regional Housing Council has recommended implementing a scattered site pilot project to provide site management and case management services to at least three sites where residents are living in vehicles or in an encampment; and

WHEREAS, people experiencing homelessness have lost access to hygiene services since the COVID-19 outbreak due to the closure of public hygiene facilities; and

WHEREAS, people experiencing homelessness have lost access to shelter services since the COVID-19 outbreak due to the social distance requirements in congregate shelter facilities; and

WHEREAS, the County desires to contract a portion of the EHG, ESG-CV, and other local resources the County has received to the City for hygiene, waste removal, and other related services for people

experiencing homelessness in Olympia and the Thurston County urban core to support hygiene best practices; and

WHEREAS, the County has determined that engaging with the City for the disbursement of the EHG and ESG-CV would yield efficiencies not available to the County alone; and

WHEREAS, the City and the County entered into an Interlocal Agreement on June 9, 2021, as amended on March 2, 2022, to accomplish these goals; and

WHEREAS, the Interlocal Agreement, as amended, expired on June 20, 2022, with a remaining balance of \$5,000; and

WHEREAS, the County has agreed to extend the Interlocal Agreement to allow for a full draw of the contract funds; and

WHEREAS, because the original Interlocal Agreement has expired, it is necessary for the City and the County to enter into a new Interlocal Agreement; and

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the form of Interlocal Agreement Between the City of Olympia and Thurston County to Fund Services for People Impacted by Homelessness and the terms and conditions contained therein.
2. The City Manager is authorized and directed to execute on behalf of the City of Olympia the Amendment to the Interlocal Agreement, and any other documents necessary to execute said Agreement, and to make any minor modifications or amendments as may be required and are consistent with the intent of the Agreement, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2022.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber

CITY ATTORNEY



Public Health and Social Services
Office of Housing and Homeless Prevention

FY 2022

Affordable Housing and Homeless
Services Contract
(COVID-19 Response)

Between:
Thurston County and City of Olympia
Contract Number: 2222-EHG2163-OLY-SS

For: Providing Emergency Housing Services related to COVID-19 Response

This grant provides a source of grant funding for COVID-19 response related to: low income housing capital projects, operations and maintenance, and supportive services to address the needs of people who are homeless, at-risk of homelessness, and at 50% AMI or lower.

Start date: 7/1/2022

PROFESSIONAL SERVICES CONTRACT

THURSTON COUNTY/City of Olympia

THIS CONTRACT is entered into in duplicate originals between **THURSTON COUNTY**, a municipal corporation, with its principal offices at 2000 Lakeridge Drive S.W., Olympia, Washington 98502, hereinafter "**County**," and the City of Olympia, with its principal offices at **601 4th Ave E, Olympia, WA 98501** hereinafter "**Contractor**," collectively referred to as "parties" and individually as "party."

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

GENERAL TERMS AND CONDITIONS

1. DURATION OF CONTRACT

The term of this Contract shall be from the date last executed below through **XX/XX/XXXX** unless renewed or terminated sooner as provided herein.

The term of this Contract shall begin on **July 1, 2022** and shall remain in effect through **September 30, 2022** unless renewed or terminated sooner as provided herein.

2. SERVICES PROVIDED BY THE CONTRACTOR

The Contractor represents that it is qualified and possesses the necessary expertise, knowledge, training, and skills, and has the necessary licenses and certifications to perform the services and comply with the special terms and conditions set forth in this Contract.

The Contractor shall perform the following services:

The Contractor shall perform the following services to provide hygiene, garbage, and related site management services to three locations within the City of Olympia for unsheltered persons living in the identified areas.

a. A detailed description of the services to be performed by the Contractor is set forth in Exhibit A, attached hereto and incorporated herein by reference.

b. The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the County.

c. The Contractor shall perform according to standard industry practice of the work specified by this Contract.

d. Time is of the essence in the performance of this Contract. The Contractor shall complete its work no later than the Contract termination date and in accordance with the schedule agreed to by the parties.

e. The Contractor shall, from time to time, during the progress of the work, confer with the County. At the County's request, the Contractor shall prepare and present status reports on its work.

3. SERVICES PROVIDED BY THE COUNTY

In order to assist the Contractor in fulfilling its duties under this Contract, the County may provide information as identified in Exhibit A.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

a. For Contractor:

Darian Lightfoot
Housing Programs Manager
601 4th Ave E Olympia, WA
98501 360-259-8066
dlightfo@ci.olympia.wa.us

b. For County:

Tom Webster
OHHP Program Manager
412 Lilly Road NE
Olympia, WA, 98506
360-867-2531
360-280-6265
Thomas.webster@co.thurston.wa.us

5. COMPENSATION

a. For the services performed hereunder, the Contractor shall be paid as set forth in Exhibit A, attached hereto and incorporated herein by reference. The maximum total amount payable by the County to the Contractor under this Contract shall not exceed **\$5,911.30**. In the event the County determines to renew this Contract in accordance with subsection 10.d. below, compensation for the renewed term may be: (1) funded at the same level; (2) proportionally adjusted based on availability of funds; or (3) funded at the discretion of the County.

b. The Contractor may submit invoices, as applicable, in accordance with Exhibit A for payment of completed work during the billing period. The County shall pay the Contractor for services rendered in the month following the actual delivery of the work and will remit payment within thirty days from the date of receipt of invoice.

c. No payment shall be made for any work performed by the Contractor, except for work identified and set forth in this Contract. The Contractor shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the County. Unless otherwise provided for in this Contract, the Contractor will not be paid for any invoices presented for payment prior to the execution of the Contract or after its termination.

d. In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Contract and such failure has not been cured within ten days following notice from the County, then the County may, in its sole discretion, upon written notice to the Contractor, withhold any and all monies due and payable to the Contractor, without penalty until such failure to perform is cured or otherwise adjudicated. "Substantial" for

purposes of this subsection means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

6. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the Contractor in the performance of any work required under this Contract, the Contractor shall make any and all necessary corrections without additional compensation. All work submitted by the Contractor shall be certified by the Contractor and checked for errors and omissions. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the County.

b. No amendment, modification or renewal shall be made to this Contract unless set forth in a written Contract Amendment, signed by an authorized representative of each party. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the County.

7. HOLD HARMLESS AND INDEMNIFICATION

a. To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County, its elected and appointed officers, officials, employees, agents and volunteers, harmless from and against any and all "Claims" by any and all persons or entities, including without limitation, their agents, licensees, or representatives, which (1) are caused in whole or in part by any act or omission, negligent or otherwise, of the Contractor, its employees, former employees, agents, representatives, volunteers, partners, shareholders, subcontractors in any tier or anyone for whose acts any of them may be liable, or (2) are directly or indirectly arising out of, resulting from, or in connection with the performance or failure to perform under this Contract. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the Claims are caused by the sole negligence of the County. "Claims" shall include, but not be limited to, claims, demands, actions, suits, liabilities, losses, damages, judgments, and expenses, including without limitation court and appeal costs, alternative dispute resolution costs, attorneys' fees, and expert witnesses fees and costs, of any nature whatsoever, and assertions that information supplied or used by the Contractor or subcontractors in any tier violates or infringes any patent, proprietary information, copyright, trademark, trade name, service mark or otherwise results in an unfair trade practice.

b. The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or subcontractor in any tier under the Washington State Industrial Insurance Act, Title 51 RCW, or by application of any other workers' compensation act, disability benefit act, or other employee benefit act, it being clearly agreed and understood by the parties hereto that the Contractor expressly waives any immunity the Contractor might have had under such acts. **By executing the Contract, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties.** The Contractor shall similarly require that each subcontractor it retains in connection with this Contract comply with the terms of this subsection, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by employees of the subcontractor.

c. The Contractor's indemnification obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all Claims.

d. In the event the Contractor enters into subcontracts if authorized under this Contract, the Contractor's subcontractors in any tier shall indemnify the County on a basis equal to or exceeding the Contractor's indemnity obligations to the County.

e. The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Contract.

8. THIRD PARTY CLAIMS HANDLING

a. A party seeking indemnification for a Claim ("Indemnified Party") shall promptly notify the other party from whom indemnification is sought ("Indemnifying Party") in writing of any Claim asserted against it. The notice shall include a copy of the Claim, and any summons, process, pleading or notice issued in any lawsuit or claim.

b. The Indemnifying Party reserves the right to control the investigation, trial and defense of the Claim and any lawsuit, action (including all negotiations to effect settlement), and appeal arising from it and employ or engage attorneys of its own choice.

c. The Indemnified Party may, at its sole cost, participate in the investigation, trial and defense of the lawsuit or action and any appeal without waiving the Indemnifying Party's obligations under this Contract.

d. The parties, their officers, employees, agents, and representatives shall fully cooperate in the defense of the claim or lawsuit, and shall provide one another all available information concerning the claim.

9. INSURANCE

1. Contractor shall provide evidence of:

a. **Commercial General Liability Insurance** using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. The insurance policy must cover defense costs without affecting limits available for third party liability payments as required herein. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate. Coverage must include employer's liability limits of no less than \$1,000,000 per accident for all covered losses.

i. The policy shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

ii. The CONTRACTOR'S Commercial General Liability insurance shall include the COUNTY, its officers, officials, employees and agents as additional insureds with respect to performance of services, and shall contain no special limitations on the scope of protection afforded to the COUNTY as additional insured.

b. **Workers' Compensation** Contractor shall maintain coverage as required by Title 51 RCW, and shall provide evidence of coverage or exemption to the Thurston County

Risk Management Division upon request. Contractor domiciled out of state shall maintain coverage under applicable workers' compensation law and provide proof of coverage on a state-approved form.

- c. **Business Auto Coverage** on ISO Business Auto Coverage form CA 00 01 including owned, non-owned and hired autos, or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor shall obtain evidence of personal auto liability coverage for each such person.
- d. **Excess or Umbrella Liability Insurance** (Over Primary), if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Such policy or policies shall include as insureds those covered by the underlying policies, including additional insureds. Coverage shall be "pay on behalf", with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to County for injury to employees of Contractor, subcontractors or others involved in the performance of services under this Contract. The scope of coverage provided is subject to approval by the County following receipt of proof of insurance as required herein.
- e. **Professional Legal Liability** on a policy form appropriate to Contractor's profession. Limits shall be no less than \$1,000,000 per claim. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the Contractor's services as defined by this Contract including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract.
- f. If the Contractor is a government entity obtaining liability insurance, with equivalent coverage as required in subsections (a) and (c) through (e), obtained through a government risk pool approved by the state of Washington is a substitute form of coverage acceptable to the County.

2. Other Insurance Requirements:

- a. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, agents or volunteers.
- b. **The Contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates and endorsements for each subcontractor.** All coverage for subcontractors shall be subject to all of the requirements stated herein.

- c. The Contractor shall maintain all required policies in force from the time services commence until services are completed. Where Professional Legal Liability coverage is written on a claims made form, the Contractor must provide evidence of the purchase of an extended reporting period or "tail" coverage for a three-year period after project completion, or otherwise maintain the coverage for the three-year period. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced.
- d. Contractor agrees to waive rights of recovery against County regardless of the applicability of any insurance proceeds, and to require all indemnifying parties to do likewise.
- e. All insurance coverage maintained or procured by Contractor or required of others by Contractor pursuant to this Contract shall be endorsed to delete the subrogation condition as to County, or must specifically allow the named insured to waive subrogation prior to a loss.
- f. All coverage types and limits required are subject to approval, modification and additional requirements by the County. The County reserves the right at any time during the term of the Contract to change the amounts and types of insurance required by giving the Contractor ninety days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the County and the Contractor may renegotiate Contractor's compensation. Contractor shall not make any reductions in the scope or limits of coverage that may affect County's protection without County's prior written consent. Written notice of cancellation or change shall reference the project name and contract number and shall be mailed to the County at the following address:
- Attn: Risk Analyst
Human Resources
2000 Lakeridge Drive S.W.
Olympia, Washington 98502
- g. The parties acknowledge that all insurance coverage required to be provided by Contractor or indemnifying party shall apply first and on a primary non-contributing basis in relation to any other insurance or self-insurance available to County.
- h. Contractor agrees not to self-insure or to use any self-insured retentions on any portion of the insurance required herein without the express agreement of the County and further agrees that it will not allow any indemnifying party to self-insure its obligations to County. If Contractor's existing coverage includes a self-insured retention, the self-insured retention must be declared to the County. The County may review options with the Contractor, which may include reduction or elimination of the self-insured retention, substitution of other coverage, or other solutions.
- i. The limits of insurance above shall be minimum requirements. The insurance limits are not intended to be an indication of exposure nor are they limitations on indemnification. Should the Contractor or a subcontractor in any tier maintain

insurance with limits of liability that exceed the required limits or coverage that is broader than as outlined above, those higher limits and broader coverage shall be deemed to apply for the benefit of any person or organization included as an additional insured, and those limits shall become the required minimum limits of insurance of this Contract.

3. Verification of Coverage and Acceptability of Insurers:

- a. The Contractor shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
- b. Proof of compliance with these insurance requirements, consisting of endorsements and certificates of insurance, shall be delivered to County prior to the execution of this Contract. If such proof of insurance is not delivered as required, or if such insurance is canceled at any time and no replacement coverage is provided, the County may, in its sole discretion, obtain any insurance it deems necessary to protect its interests. Any premium so paid by County shall be charged to and promptly paid by Contractor or deducted from sums due Contractor.
- c. Contractor shall maintain the required coverage during the entire term of this Contract. Coverage for activities under the Contract shall not be affected if the Contract is canceled or terminated for any reason.
- d. The Contractor or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Thurston County Risk Management Division.

10. TERMINATION AND RENEWAL

a. The County may terminate this Contract for convenience in whole or in part whenever the County, in its sole discretion, determines that such termination is in the best interests of the County. The County may terminate this Contract upon giving ten calendar days written notice by Certified Mail to the Contractor. In that event, the County shall pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the termination date specified in the notice. Payment shall be made in accordance with Section 5 of this Contract.

b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract and prior to normal completion, the County may elect to suspend or terminate this Contract, in whole or in part, as a termination for convenience with a ten calendar day notice to Contractor, to the extent possible, subject to renegotiation at the County's discretion under those new funding limitations and conditions. Termination or suspension under this paragraph shall be effective upon the date specified in the written notice of termination or suspension sent by the County to the Contractor. After the effective date, no charges incurred under this Contract are allowable.

Notwithstanding any provision to the contrary, funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the Board of County Commissioners of sufficient funds to support the work described in this Contract. Should such an appropriation not be approved, this Contract shall terminate at the close of the current appropriation year, and the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract after the date of termination.

c. If the Contractor breaches any of its obligations hereunder, and fails to cure the breach within ten days of written notice to do so by the County, the County may terminate this Contract, in which case the County shall pay the Contractor only for the costs of services accepted by the County, in accordance with Section 5 of this Contract. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor shall bear all costs and expenses incurred by the County in completing the work and all damage sustained by the County by reason of the Contractor's breach. If, subsequent to termination, it is determined for any reason that (1) the Contractor was not in default, or (2) the Contractor's failure to perform was not its fault or its subcontractor's fault or negligence, the termination shall be deemed to be a termination for convenience.

11. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

a. The Contractor shall perform the terms of this Contract using only its bona fide employees or agents who have the qualifications to perform under this Contract. The obligations and duties of the Contractor under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the County. Any work or services assigned or subcontracted for hereunder shall be subject to each provision of this Contract.

b. The Contractor warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for the Contractor, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

12. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

13. INDEPENDENT CONTRACTOR

a. The Contractor's services shall be furnished by the Contractor as an Independent Contractor and not as an agent, employee or servant of the County. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The Contractor acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and the Contractor is not entitled to any County benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other

insurance benefits, fringe benefits, or any other rights or privileges afforded to Thurston County employees.

c. The Contractor shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent or representative of the Contractor shall be or deem to be or act or purport to act as an employee, agent or representative of the County.

d. The Contractor shall assume full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal or state legislation which is now or may during the term of this Contract be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of this Contract.

e. The Contractor agrees to immediately remove any of its employees, representatives or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the County's contract representative or designee.

14. COMPLIANCE WITH LAWS

The Contractor shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, as now existing or hereafter adopted or amended.

The relationship contemplated by this Contract may implicate the Privacy Regulations under the Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104-191, 110 Stat. 1936 (1996) (HIPAA). The CONTRACTOR shall comply with HIPAA and applicable regulations contained in 45 CFR parts 160 and 164. The CONTRACTOR shall enter into a Business Associate Addendum with the COUNTY if the COUNTY determines that the CONTRACTOR will be acting as a Business Associate as defined under HIPAA.

15. ADDITIONAL TERMS AND CONDITIONS

- A. Contractor shall comply with audit requirements per 2 CFR Part 200 Subpart F.
- B. Thurston County, Commerce and the State of Washington are not liable for claims or damages arising from Contractor's performance of this subcontract.

16. SAFEGUARDING PERSONAL INFORMATION

- 1. Personal information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract. The CONTRACTOR agrees not to release, divulge, publish, transfer, sell or otherwise make known personal information without the express written consent of the entity or as provided by law.
- 2. The CONTRACTOR shall protect and maintain all Confidential Information gained by reason of any Agreement against unauthorized use, access, disclosure, modification or loss.
 - a. Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - b. Physically securing any computers, documents, or other media containing the Confidential Information.
 - c. Implementing appropriate physical, electronic and managerial safeguards, including staff training, to prevent unauthorized access to personal

information.

3. The COUNTY reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the CONTRACTOR through this Contract. To the extent required by law, the CONTRACTOR shall certify the return or destruction of all personal information upon expiration of this Contract.
4. Any breach of this Section may result in termination of the Contract. The CONTRACTOR agrees to indemnify and hold harmless the COUNTY for any damages related to the CONTRACTOR'S unauthorized use or disclosure of personal information.
5. The provisions of this Section shall be included in any CONTRACTOR'S subcontract(s) relating to the services provided under this Contract.
6. "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's license numbers, other identifying numbers, and any financial identifiers. Personal Information includes "Protected Health Information" as set forth in 45 CFR § 160.103 as currently drafted and subsequently amended or revised and other information that may be exempt from disclosure to the public or other unauthorized persons under either Chapters 42.56, 70.02, 70.24, 70.96A and 71.05, 42 CFR Part 2, and other federal and state statutes and regulations governing confidentiality or disclosure.
7. The compromise or potential compromise of Confidential Information must be reported to the COUNTY Contact designated on the Program Agreement within five (5) business days of discovery for breaches of less than 500 persons' protected data, and three (3) business days of discovery for breaches of over 500 persons' protected data. The parties must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law.

17. INSPECTION OF BOOKS AND RECORDS AND RETENTION

The County or its authorized representatives may, at reasonable times, inspect and audit the books and records of the Contractor relating to the performance of this Contract. This includes work of Contractor, any subcontractor or any other person or entity that performed connected or related work under this Contract. Such inspection and audit shall occur in Thurston County, Washington, or other reasonable locations that the County selects. The Contractor shall supply or permit the County to copy such books and records. The Contractor shall ensure that inspection, audit and copying rights of the County is a condition of any subcontract, agreement or other arrangement under which any other persons or entity may perform work under this Contract. The Contractor shall keep all books and records required by this Contract for six years after termination or expiration of this Contract. This Section shall survive the termination or expiration of this Contract. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six-year retention period.

18. NONDISCRIMINATION

The Contractor, its assignees, delegates or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race,

color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran or military status, sexual orientation or the presence of any disability. Implementation of this provision shall be consistent with RCW 49.60.400.

19. OWNERSHIP OF MATERIALS/WORK PRODUCED

a. With the exception of Section 19.c. below, material produced in the performance of the work under this Contract shall be “works made for hire” as defined by the U.S. Copyright Act of 1976, as amended, and shall be owned by the County. This material includes, but is not limited to, data, books, computer programs, plans, specifications, documents, films, pamphlets, reports, drawings, all forms of electronic media, sound reproductions, studies, surveys, tapes, and training materials. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

- a. An electronic copy of all or a portion of material produced shall be submitted to the County upon request or at the end of the project using the software or program and version specified by the County.
- b. County will not own or retain any ownership rights over building materials purchased with grant funds, nor will it own or retain any ownership rights over any permanent or temporary structure constructed with such building materials.

20. DISPUTES

Differences between the Contractor and the County, arising under and by virtue of this Contract, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor shall be decided by the County’s contract representative or designee. All rulings, orders, instructions and decisions of the County’s contract representative shall be final and conclusive, subject to the Contractor’s right to seek judicial relief pursuant to Section 21.

21. CHOICE OF LAW, JURISDICTION AND VENUE

a. This Contract has been and shall be construed as having been made and delivered within the state of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the state of Washington, both as to its interpretation and performance.

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

22. CONFIDENTIALITY

The Contractor, its employees, agents, and subcontractors and their employees, shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Contract, except upon the prior written consent of the County or an order entered by a court of competent jurisdiction. The Contractor shall promptly give the County written notice of any judicial proceeding seeking disclosure of such information.

23. **SEVERABILITY**

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If any provision of this Contract is in direct conflict with any statutory provision of the state of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

c. Should the County determine that the severed portions substantially alter this Contract so that the original intent and purpose of this Contract no longer exists, the County may, in its sole discretion, terminate this Contract.

24. **ENTIRE CONTRACT**

This Contract consists of the General Terms and Conditions, all exhibits and attachments, including those incorporated herein by reference.

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

25. **NOTICES**

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 4. Notice shall be deemed to be given three days following the date of mailing or immediately if personally served.

26. **SURVIVABILITY**

The terms and conditions contained in this Contract which, by their sense and context, are intended to survive the expiration of this Contract shall survive.

The parties hereto acknowledge that the waiver of immunity set out in subsection 7.b. was mutually negotiated and specifically agreed to by the parties herein.

This Contract is executed by the persons signing below who warrant that they have the authority to execute this Contract.

CONTRACTOR:
City of Olympia

THURSTON COUNTY:
**For the Board of County Commissioners
Thurston County, Washington**

Richard T. Hoey, PE (Authorized Representative)
Interim Assistant City Manager

Ramiro Chavez

Ramiro Chavez
Thurston County Manager

Date

08/12/2022
Date

Approved as to Form

Approved as to Form
**JON TUNHEIM,
PROSECUTING ATTORNEY**

Mark Barber

Mark Barber, City Attorney

By: *Elizabeth Petrich*

Elizabeth Petrich
Chief Deputy Prosecuting Attorney

EXHIBIT A

PROFESSIONAL SERVICES CONTRACT

THURSTON COUNTY/City of Olympia

SCOPE OF SERVICES

1. The services to be performed by the Contractor under this Contract, which are described in Section 2 of the Contract (Services Provided by the Contractor), are set forth as follows:

Timeframe: July 1, 2022 through September 30, 2022

Scope of Work and Budget

The Contractor shall perform the following services to provide hygiene, garbage and related site management services to three locations within the City of Olympia for unsheltered persons living in the identified areas.

- a. The three locations include those living in vehicles on Ensign Road, people living unsheltered off Deschutes Parkway, and people living unsheltered off Wheeler Rd. Upon mutual agreement, the County and Contractor may agree to a change in location where services are provided.
- b. Source and provide chemical portable toilets and place them strategically in and around areas which the unsheltered population is known to congregate.
- c. Source and provide Hand Wash Stations and place them strategically in and around areas which the unsheltered population is known to congregate.
- d. Provide maintenance and cleaning to ensure toilets and hand wash stations remain tidy, and to minimize the chances of cross-contamination or spread of COVID-19 or any other illness.
- e. Source and provide a one-time intensive clean-up of the location to remove all accumulated garbage and debris, if needed.
- f. Source and provide regular garbage service collection and disposal at a level of service necessary to prevent an accumulation of garbage and debris.
- g. For those living in vehicles, source and provide regular service to pump or clean out septic or wastewater systems.
- h. Source and provide for off-site storage facilities for residents of the designated locations. Contractor shall determine a minimum and maximum storage limit for residents.
- i. In consultation with the County, source and provide a one-time service to address an emergency or urgent need that is necessary to protect health and safety or residents or community members.
- j. Maintain regular and open communication with case management and site governance contractor to coordinate services and share information.
- k. Provide regular updates to the County regarding the status of the contract, and any issues that arise in service provision.

Budget Line Item	Budget Amount
Initial Clean-Up	\$0
On-going Site Management	\$5,911.39
Urgent Need Activity	\$0
Total	\$5,911.39

The EHG funds must be expended by July 31, 2022 and invoiced to Thurston County by October 6, 2022.

Contractor shall submit an invoice (template provided by County) and supporting documents specified on the invoice for reimbursement on a monthly basis no later than the 10th day of the following month that services were rendered. Supporting documents include but are not limited to a signed invoice, general ledger summarizing expenses, receipts, and timesheets if appropriate. Under no condition should these funds supplant existing funds.

2. The services to be performed by the County under this Contract, which are described in Section 3 of the Contract (Services provided by the County) are set forth as follows (if applicable):

Not Applicable



City Council

Approval of a Resolution Accepting Federal Grant Funds for the Olympia Westside Pavement Preservation Project

Agenda Date: 8/23/2022
Agenda Item Number: 4.F
File Number:22-0782

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Resolution Accepting Federal Grant Funds for the Olympia Westside Pavement Preservation Project

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the Resolution authorizing the City Manager to execute all documents necessary to obligate funds for the Olympia Westside Pavement Preservation Project.

Report

Issue:

Whether to authorize the City Manager to execute all documents necessary to obligate funds for the Olympia Westside Pavement Preservation Project.

Staff Contact:

Jeff Johnstone, Project Manager, Public Works Engineering, 360.753.8290

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

In 2021, the City applied for a grant for the Olympia Westside Pavement Preservation Project. This project will apply a chip and fog seal pavement treatment to Harrison Avenue from Cooper Point Road to Division Street and Olympic Way from Harrison Avenue to the 4th/5th Avenue bridges. In June 2021, the Washington State Department of Transportation (WSDOT) awarded the City a National Highway System Asset Management Program grant of \$1,167,000.

In order to begin construction in 2023, the City needs to approve and execute the federal grant documents to obligate the funds for the design phase of the project. Olympia's Municipal Code Section 3.16.020(C) states that any contract, agreement or other document with a cost over \$300,000

shall be presented to the City Council for approval prior to execution by the City Manager.

Neighborhood/Community Interests (if known):

Completion of this project will have the following impacts on the community through implementation of the Least Cost Strategy for pavement preservation:

- Applying the right treatment to the right street at the right time will prolong the pavements life cycle by using strategic maintenance and intermediate low-cost treatments.
- This strategy allows us to defer reconstruction costs and get more value from the existing pavement.
- Stretches the available funding for pavement preservation.

Options:

1. Approve the Resolution authorizing the City Manager to execute all documents necessary to obligate funds for the Olympia Westside Pavement Preservation Project. The project will proceed as planned.
2. Direct staff to make modifications to the proposed Resolution. The project will proceed as planned.
3. Do not approve the proposed Resolution. The City will not proceed with the project and return the grant funds.

Financial Impact:

The Olympia Eastside Pavement Preservation Project is funded as follows:

Federal Grant \$1,167,000

Local Match - Transportation Capital Funds \$20,000

Total Project Cost \$1,187,000

Attachments:

Resolution

Local Agency Federal Aid Project Prospectus

Local Agency Agreement

Vicinity Map

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING A LOCAL AGENCY FEDERAL AID PROJECT PROSPECTUS AND LOCAL AGENCY AGREEMENT BETWEEN THE CITY OF OLYMPIA AND THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FOR NATIONAL HIGHWAY SYSTEM ASSET MANAGEMENT GRANT FUNDS FOR THE OLYMPIA WESTSIDE PAVEMENT PRESERVATION PROJECT

WHEREAS, the City of Olympia applied for and received National Highway System Asset Management Program grant funds (the Grant Funds) in June 2021 for the City's Olympia Westside Pavement Preservation Project (the Project); and

WHEREAS, with design approximately 30% complete, the current total estimated project cost is \$1,167,000. The cost estimate may change as staff finalizes the design; and

WHEREAS, the City must sign and submit to the Washington State Department of Transportation a Local Agency Federal Aid Project Prospectus and Local Agency Agreement for the Grant Funds; and

WHEREAS, per Olympia Municipal Code Section 3.16.020(C), it is necessary for the City Council to approve the Local Agency Federal Aid Project Prospectus and the Local Agency Agreement and authorize the signature for all documents necessary to obligate funds for the Project;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the Local Agency Federal Aid Project Prospectus and Local Agency Agreement between the City of Olympia and the Washington State Department of Transportation for National Highway System Asset Management Program grant funds for the Olympia Westside Pavement Preservation Project and the terms and conditions contained therein.
2. The City Manager is directed and authorized to execute on behalf of the City of Olympia the Local Agency Federal Aid Project Prospectus, Local Agency Agreement, and any other documents necessary to obligate funds and complete the work for the Olympia Westside Pavement Preservation Project, and to make any modifications as may be required and are consistent with the intent of the Prospectus and Local Agency Agreement, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2022.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber

CITY ATTORNEY



**Local Agency Federal Aid
Project Prospectus**

	Prefix	Route	()	Date	
Federal Aid Project Number				DUNS Number	
Local Agency Project Number		(WSDOT Use Only)		Federal Employer Tax ID Number	

Agency		CA Agency Yes No		Federal Program Title 20.205 Other	
Project Title			Start Latitude N		Start Longitude W
			End Latitude N		End Longitude W
Project Termini From-To			Nearest City Name		Project Zip Code (+4)
Begin Mile Post	End Mile Post	Length of Project		Award Type Local Local Forces State Railroad	
Route ID	Begin Mile Point	End Mile Point	City Number	County Number	County Name
WSDOT Region	Legislative District(s)		Congressional District(s)		Urban Area Number

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date	
				Month	Year
P.E.					
R/W					
Const.					
Total					

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width	Number of Lanes

Description of Proposed Work

Description of Proposed Work (Attach additional sheet(s) if necessary)

Local Agency Contact Person		Title		Phone	
Mailing Address			City	State	Zip Code
Project Prospectus	By _____ Approving Authority				
	Title				Date

Agency	Project Title	Date
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Type of Proposed Work			Roadway Width	Number of Lanes
Project Type (Check all that Apply)				
New Construction	Path / Trail	3-R		
Reconstruction	Pedestrian / Facilities	2-R		
Railroad	Parking	Other		
Bridge				

Geometric Design Data						
Description	Through Route			Crossroad		
Federal Functional Classification	Urban	Principal Arterial		Urban	Principal Arterial	
		Minor Arterial			Minor Arterial	
	Rural	Collector		Rural	Collector	
		Major Collector			Major Collector	
	NHS	Minor Collector		NHS	Minor Collector	
		Local Access			Local Access	
Terrain	Flat	Roll	Mountain	Flat	Roll	Mountain
Posted Speed						
Design Speed						
Existing ADT						
Design Year ADT						
Design Year						
Design Hourly Volume (DHV)						

Performance of Work		
Preliminary Engineering Will Be Performed By	Others	Agency
	%	%
Construction Will Be Performed By	Contract	Agency
	%	%

Environmental Classification	
Class I - Environmental Impact Statement (EIS) Project Involves NEPA/SEPA Section 404 Interagency Agreement	Class II - Categorically Excluded (CE) Projects Requiring Documentation (Documented CE)
Class III - Environmental Assessment (EA) Project Involves NEPA/SEPA Section 404 Interagency Agreements	

Environmental Considerations

Agency	Project Title	Date
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Right of Way

No Right of Way Needed * All construction required by the contract can be accomplished within the existing right of way.	Right of Way Needed	
	No Relocation	Relocation Required

Utilities

Railroad

No utility work required All utility work will be completed prior to the start of the construction contract All utility work will be completed in coordination with the construction contract	No railroad work required All railroad work will be completed prior to the start of the construction contract All the railroad work will be completed in coordination with the construction contract
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Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

FAA Involvement

Is any airport located within 3.2 kilometers (2 miles) of the proposed project? Yes No

Remarks

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Date _____ Agency
 By _____ Mayor/Chairperson



Agency

Address

CFDA No. 20.205 - Highway Planning and Construction
(Catalog of Federal Domestic Assistance)

Project No.

Agreement No.

For WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR Part 200, (4) 2 CFR Part 180 – certifying that the local agency is not excluded from receiving Federal funds by a Federal suspension or debarment, (5) the policies and procedures promulgated by the Washington State Department of Transportation, and (6) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name

Length

Termini

Description of Work

Project Agreement End Date

Claiming Indirect Cost Rate	
Yes	No

Proposed Advertisement Date

Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE			
% a. Agency			
% b. Other			
Federal Aid Participation Ratio for PE			
c. Other			
d. State Services			
e. Total PE Cost Estimate (a+b+c+d)			
Right of Way			
% f. Agency			
% g. Other			
Federal Aid Participation Ratio for RW			
h. Other			
i. State Services			
j. Total R/W Cost Estimate (f+g+h+i)			
Construction			
% k. Contract			
% l. Other			
m. Other			
Federal Aid Participation Ratio for CN			
n. Other			
o. Agency			
p. State Services			
q. Total CN Cost Estimate (k+l+m+n+o+p)			
r. Total Project Cost Estimate (e+j+q)			

Agency Official

By

Title

Agency Date

Washington State Department of Transportation

By

Director, Local Programs

Date Executed

Construction Method of Financing (Check Method Selected)

State Ad and Award

Method A - Advance Payment - Agency Share of total construction cost (based on contract award)

Method B - Withhold from gas tax the Agency's share of total construction cost (line 5, column 2) in the amount of

\$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on _____, _____, Resolution/Ordinance No. _____.

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, the Agency will repay to the State the sum or sums of federal

funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project. The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted

promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 60 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S. C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and

(c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary is notified by the Federal Highway Administration that the project is inactive.
- (5) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

XVII. Assurances

Local agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities, and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

Additional Provisions

Instructions

1. **Agency Name and Billing Address** – Enter the Agency of primary interest which will become a party to the agreement.
2. **Project Number** – Leave blank. This number will be assigned by WSDOT.
3. **Agreement Number** – Leave blank. This number will be assigned by WSDOT.
4.
 - a. **Project Description** – Enter the project name, total length of the project (in miles), and a brief description of the termini. Data entered here must be consistent with the name, length, and termini noted in the STIP and Project Prospectus
Example: (Name) “Regal Road”, (Length) “1.2 miles”, (Termini) “Smith Road to Main Street”
 - b. **Description of Work** – Enter a concise statement of the major items of work to be performed. Statement must be consistent with the description of work noted in the STIP and Project Prospectus.
Example: “Overlay Regal Road; install curb, gutter, and sidewalk; illumination; and traffic signal at the intersection of Regal Road and Dakota Avenue.”
 - c. **Project Agreement End Date** – Enter the Project Agreement End Date (mm/dd/yy). This date is based on the project’s Period of Performance (2 CFR 200.309).

For Planning Only projects – WSDOT recommends agencies estimate the end of the project’s period of performance and add three years to determine the “Project Agreement End Date”.

For PE and RW – WSDOT recommends agencies estimate when the phase will be completed and add three years to determine the “Project Agreement End Date”. For Construction – WSDOT recommends agencies estimate when construction will be completed and add three years to determine the “Project Agreement End Date”.
 - d. **Proposed Advertisement Date** – At construction authorization only, enter the proposed project advertisement date (mm/dd/yy).
 - e. **Claiming Indirect Cost Rate** – Check the Yes box if the agency will be claiming indirect costs on the project. For those projects claiming indirect costs, supporting documentation that clearly shows the indirect cost rate being utilized must be provided with the local agency agreement. Indirect cost rate approval by your cognizant agency or through your agency’s self-certification and supporting documentation is required to be available for review by FHWA, WSDOT and /or State Auditor. Check the No box if the agency will not be claiming indirect costs on the project. See section 23.5 for additional guidance.
4. **Type of Work and Funding (Round all dollar amounts to the nearest whole dollar)**
 - a. **PE** – Lines a through d show Preliminary Engineering costs for the project by type of work (e.g., consultant, agency, state services, etc.).

*Federal aid participation ratio for PE – enter ratio for PE lines with amounts in column 3.
 - **Line a** – Enter the estimated amount of agency work in columns 1 through 3.
 - **Line b & c** – Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.
 - **Line d** – State Services. Every project must have funding for state services. Enter the estimated amounts in columns 1 through 3.
 - **Line e** – Total of lines a + b + c + d.
 - b. **Right of Way** – If a Right of Way phase is authorized on the project, the appropriate costs are shown in lines f through i.

*Federal aid participation ratio for RW – enter ratio for RW lines with amounts in column 3.
 - **Line f** – Enter the estimated amount of agency work in columns 1 through 3.
 - **Line g & h** – Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.
 - **Line i** – State Services. Every project must have funding for state services. Enter the estimated amounts in columns 1 through 3.
 - **Line j** – Total of lines f + g + h + i.
 - c. **Construction** – Lines k through p show construction costs for the project by type of work (e.g., contract, consultant, agency, state services, etc.).

*Federal aid participation ratio for CN – enter ratio for CN lines with amounts in column 3.

- **Line k** – Enter the estimated cost of the contract.
- **Lines l, m, & n** – Enter other estimated costs such as utility and construction contracts or non-federally matched contract costs.
- **Line o** – Enter estimated costs of all construction related agency work.
- **Line p** – State Services. Every project must have funding for state services. Enter the estimated amounts in columns 1 through 3.
- **Line q** – Total Construction Cost Estimate. Total of lines k + l + m + n + o + p.

d. Total Project Cost Estimate

- **Line r** – Total Cost Estimate of the Project. Total of lines e + j + q.

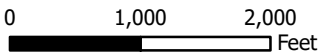
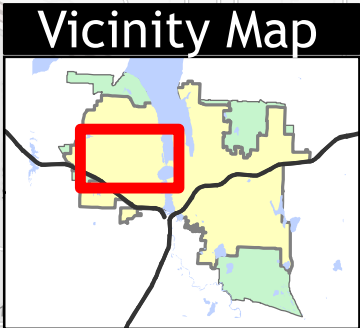
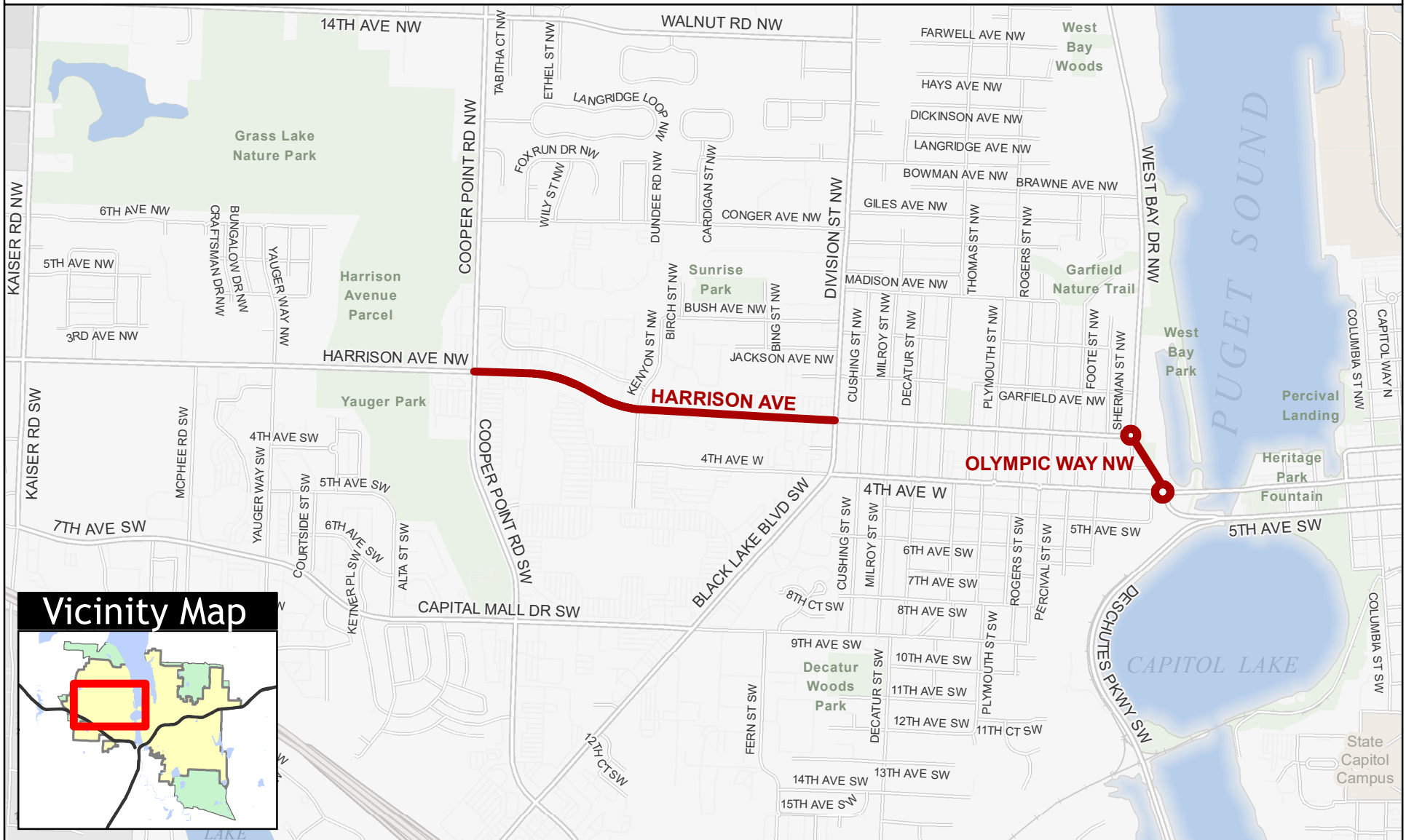
*Please remember, if the federal aid participation rate entered is not the maximum rate allowed by FHWA, then the participation rate entered becomes the maximum rate allowed.

- Signatures** – An authorized official of the local agency signs the agreement and enters their title and date of signature (mm/dd/yy). **Note:** Do NOT enter a date on the Date Executed line.
- Method of Construction Financing** – Choose the method of financing for the construction portion of the project.
 - Method “A”** is used when the state administers the contract for the agency.
 - Method “B”** is also used when the state administers the contract for the agency.
 - Method “C”** is used with projects administered by the local agency. The agency will submit billings monthly through the state to FHWA for all eligible costs. The billings must document the payment requests from the contractor. If state-force work, such as audit and construction engineering, is to receive federal participation, it will be billed to the agency and FHWA simultaneously at the indicated ratio. To show continuous progress agencies should bill monthly until agreement is closed.
- Resolutions/Ordinances** – When someone other than the County Executive/Chairman, County Commissioners/Mayor is authorized to sign the agreement, the agency must submit to WSDOT with the agreement a copy of the Resolution/Ordinance designating that individual.
- Parties to the Agreement** – Submit one originally signed agreement form to the Region Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their files. The agreement is first executed by the agency official(s) authorized to enter into the agreement. It is then transmitted to the state for execution by Local Programs. The agreement is dated at the time of final execution by Local Programs.



Olympia Westside Pavement Preservation

Project #2119G



Map printed 7/18/2022
 For more information, please contact:
 Jeff Johnstone, PE, Assistant City Engineer
 360.753.8290

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.





City Council

Approval of a Resolution Authorizing an Amended Lease Agreement with MPH Holdings, LLC, for Premises at 1415 Harrison Avenue NW, Suites 101 and 201

Agenda Date: 8/23/2022
Agenda Item Number: 4.G
File Number: 22-0784

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Resolution Authorizing an Amended Lease Agreement with MPH Holdings, LLC, for Premises at 1415 Harrison Avenue NW, Suites 101 and 201

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve a Resolution authorizing the City Manager to sign the MPH Holdings, LLC, Amended Lease Agreement for Suites 101 and 201 located at 1415 Harrison Avenue NW, in Olympia, Washington.

Report

Issue:

Whether to approve the Resolution authorizing the City Manager to sign the MPH Holdings, LLC, Amended Lease Agreement for Suites 101 and 201 located at 1415 Harrison Avenue NW, in Olympia, Washington.

Staff Contact:

Rich Allen, Chief, Olympia Police Department, 360.753.8147

Presenter(s):

None - Consent Calendar Item

Background and Analysis:

Since moving into City Hall, the police department has significantly expanded its workforce. The public safety levy, Crisis Response Unit (CRU) development and expansion, familiar faces program, body camera implementation and the addition of a police lieutenant brought 27 additional full-time employees into the organization, all requiring workspace.

Currently, the CRU team does not have enough appropriate space to work. As the CRU team continues to expand this will only become a more significant issue.

The Crisis Response Unit routinely coordinate responses to community members in crisis. Providing a secure, private space for the CRU and possibly Familiar Faces staff to work out of would be beneficial for the CRU team, Familiar Faces team and the Olympia Police Department (OPD) staff.

Suite 101 at 1415 Harrison Ave. would ensure a location for CRU and support staff to work out of, store necessary supplies, and have meeting and training space.

Suite 201 at 1415 Harrison Ave. will continue to be used by the Neighborhood Policing Unit.

Neighborhood/Community Interests (if known):

The Crisis Response Unit is a “community responder” program. Its team members have education and experience in mental health, substance use, or working with marginalized populations.

The Neighborhood Policing Unit engages with community groups to creatively address neighborhood concerns. The team works diligently to build relationships, be visible and accessible, participate in neighborhood activities and events, and proactively address criminal activity.

By utilizing Suites 101 and 201 at 1415 Harrison Ave, in Olympia, Washington, OPD will continue to have a presence on Olympia’s westside and will be able to expand critical crisis response services.

Options:

1. Approve a resolution authorizing the City Manager to sign the MPH Holdings, LLC, Amended Lease Agreement for Suites 101 and 201 located at 1415 Harrison Avenue NW, in Olympia, Washington.
2. Do not approve the resolution and request language modifications to the agreement. This will require additional staff time to reconstruct and/or renegotiate terms of the agreement while delaying a legal agreement for the Crisis Response Unit and Familiar Faces to occupy the space at 1415 Harrison Avenue NW, in Olympia, Washington.
3. Do not approve the resolution and provide staff with alternate direction. This will require additional staff time to reconstruct and/or renegotiate terms of the agreement while delaying a legal agreement for CRU and Familiar Faces to occupy the space at 1415 Harrison Avenue NW, in Olympia, Washington.

Financial Impact:

The Department is currently leasing one suite at a monthly rate of \$3,222.92. The lease of a second suite will increase the rent by \$2,774.08 a month for a total monthly expense of \$5,997. The sum shall be subject to adjustment on an annual basis as provided in Section 5 of the original lease. The Department has funds available in its existing budget to cover this expense. As a result, budget enhancements will not be required at this time.

Attachments:

Resolution
Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
APPROVING AN AMENDED LEASE AGREEMENT BETWEEN THE CITY OF OLYMPIA AND
MPH HOLDINGS, LLC, FOR PREMISES AT 1415 HARRISON AVENUE NW, SUITES 101 AND
201**

WHEREAS, the City of Olympia (Lessee) and MPH Holdings, LLC (Lessor) entered into a Lease Agreement on January 12, 2018, which included rental of approximately 2,2785 square feet of commercial space in a building located at 1415 Harrison Avenue NW, in 98502; and

WHEREAS, the parties wish to amend the lease to expand the amount of space to include an additional suite at the same address, as well as extra parking;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the form of the Amendment 1 to Lease Agreement between the City of Olympia and MPH Holdings, LLC. for lease of 1415 Harrison Avenue SW, Suites 101 & 102, and the terms and conditions contained therein.
2. The City Manager is authorized and directed to execute on behalf of the City of Olympia the Amendment 1 to Lease Agreement, and any other documents necessary to fulfill the terms of said Agreement, and to make any amendments or minor modifications as may be required and are consistent with the intent of the Agreement, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2022.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber

CITY ATTORNEY

**AMENDMENT 1 TO LEASE AGREEMENT
BETWEEN MPH HOLDINGS, LLC (LESSOR) AND
CITY OF OLYMPIA (LESSEE) FOR
1415 HARRISON AVENUE SW
SUITES 101 & 201
OLYMPIA, WA 98502**

LESSOR and LESSEE entered into a lease on January 12, 2018. That lease included rental of approximately 2,275 square feet of commercial space in a building located at 1415 Harrison Avenue NW, Olympia, WA 98502. This Amendment is to expand the amount of space to include an additional suite at the same address, as well as extra parking. Amendments are shown in track changes, below.

1. SECTION 1 is amended to read as follows:

PARTIES AND PREMISES: MPH Holdings, LLC (LESSOR) hereby leases to City of Olympia, and City of Olympia (LESSEE), leases from MPH Holdings, LLC approximately 3,830 square feet of commercial space, constituting a portion of the building upon certain real property having the abbreviated legal description of Section 15 Township 18 Range 2W PLAT WOODRUFF LTS 1-3 B 42 3/40 & VAC STS; and the common street address of 1415 Harrison Avenue NW, Suites 101 and 201, Olympia, WA 98502. The leased premises are as shown upon **Exhibit 1**, attached hereto and incorporated by this reference.

2. SECTION 3 is amended to read as follows:

LEASE COMMENCEMENT AND TERM: The term of this Lease Agreement-Amendment shall commence on the ~~1st day of February 2018~~, September 1, 2022, (the Rental Commencement Date), and continue for five (5) years ~~concluding on the 31st day of January, 2023~~ until the 31st day of January, 2025. The LESSEE shall have the option to renew this agreement for five (5) additional years by providing LESSOR with ninety (90) days written notice prior to the expiration date. Upon giving of such notice, the additional five years shall be upon the same terms and conditions as governed the initial term of the lease, unless any term or condition is mutually modified by a written agreement. If LESSEE does not give LESSOR notice of intent to exercise the option to extend, LESSOR may start marketing and/or showing the space to prospective tenants ninety (90) days prior to the end of the lease and LESSEE shall not unreasonably interfere with such showing.

3. SECTION 4 is amended to read as follows:

INITIAL MONTHLY RENT AND RENT COMMENCEMENT: LESSEE shall pay to LESSOR as initial monthly rent, ~~without notice, demand, deduction, or set-off~~, the sum of ~~Three Thousand Two Hundred Twenty Two Dollars and 92/100 Cents (\$3,222.92)~~ Five Thousand Nine Hundred and Ninety-Seven Dollars and 00/100 Cents (\$5,997.00) on or before the ~~1st day of February, 2018~~ September, 2022, and continuing thereafter on the first day of each

month for the lease term and any extension thereof. This sum shall be subject to adjustment on an annual basis as provided in Section 5 ~~below~~ of the original lease.

4 . SECTION 8 is amended to read as follows:

PARKING: Monthly Initial Rent shall include ~~25%~~40.89% of the on-site and off- site parking spaces for the shared use of the LESSEE, its employees, agents, licensees, and invitees, along with shared ADA accessible spaces. LESSEE shall have two (2) reserved parking spaces for Olympia Police Department patrol cars on-site, and these shall be included in their total parking spaces.

5. ALL OTHER TERMS AND CONDITIONS OF SAID AGREEMENT NOT AMENDED HEREIN REMAIN AS WRITTEN IN THE ORIGINAL AGREEMENT.

IN WITNESS WHEREOF, LESSOR and the LESSEE have caused this lease to be executed on the date of the last authoring signature of the parties affixed hereto.

LESSOR:
MPH HOLDINGS, LLC

By: _____
Shelby Hentges
Its: Managing Member

STATE OF WASHINGTON)) ss.
COUNTY OF THURSTON)

On the ____ day of _____ 2022, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Shelby Hentges, to me known to be the Managing Member of MPH Holdings, LLC, a Washington limited liability corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability corporation for the uses and purposes therein mentioned and on oath states that she is authorized to execute the said instrument.

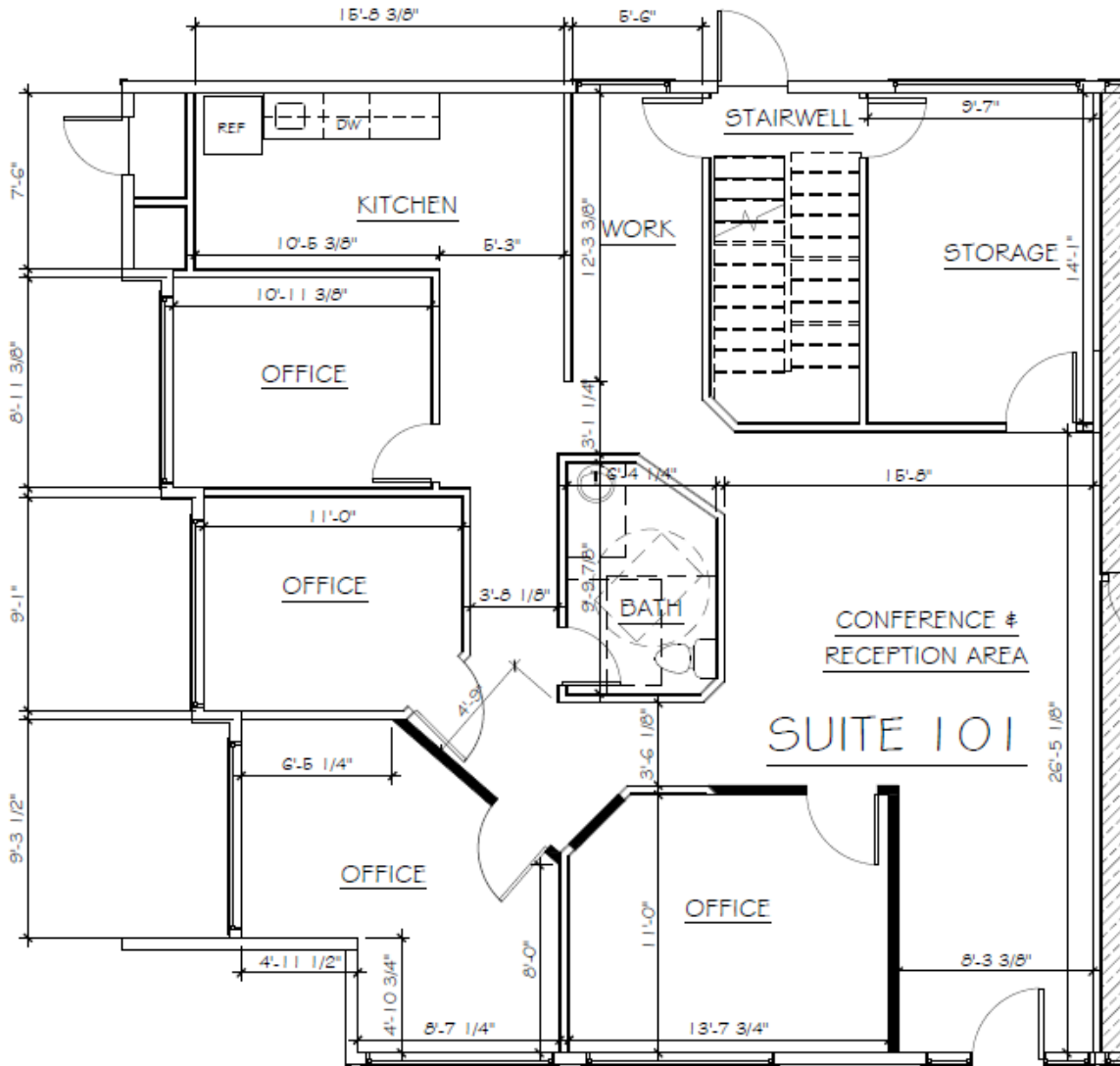
WITNESS my hand and official seal the day and year first above written.

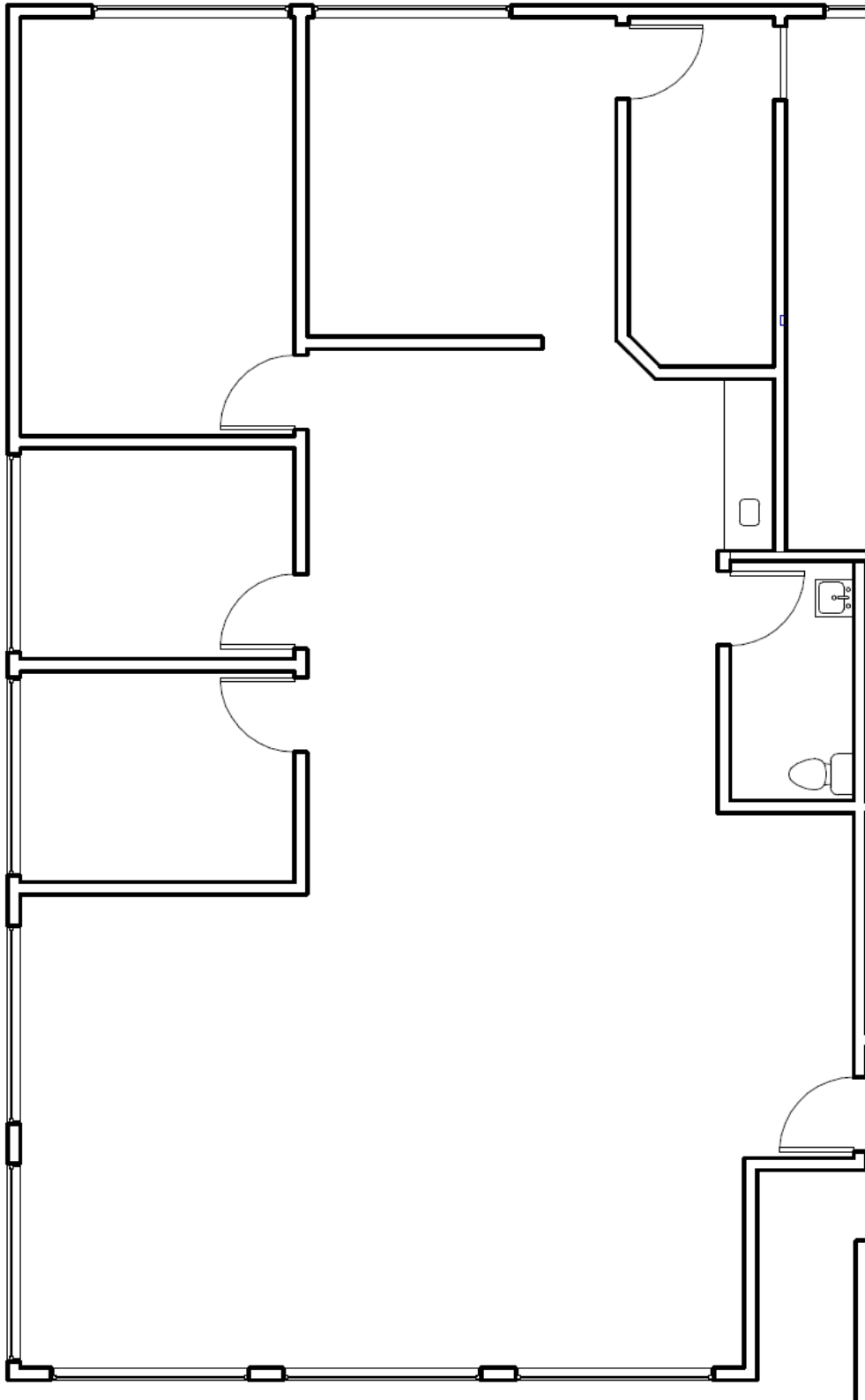
Signature

Print Name
NOTARY PUBLIC in and for the State of

Residing at _____
My appointment expires: _____

EXHIBIT 1- LEASED PREMISES- SUITES 101 & 201







City Council

Approval of a Resolution Authorizing the City Manager to Execute All Documents Necessary for the City of Olympia to Participate in an Opioid Settlement Negotiated by the Washington State Attorney General with Certain Opioid Distributors

Agenda Date: 8/23/2022
Agenda Item Number: 4.H
File Number:22-0791

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of a Resolution Authorizing the City Manager to Execute All Documents Necessary for the City of Olympia to Participate in an Opioid Settlement Negotiated by the Washington State Attorney General with Certain Opioid Distributors

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the Resolution Authorizing City Manager to Execute All Documents Necessary for the City of Olympia to Participate in an Opioid Settlement Negotiated by the Washington State Attorney General with Certain Opioid Distributors which will result in release of any claims belonging to the City of Olympia against the settling opioid distributors.

Report

Issue:

Whether to authorize the City Manager to execute the Participation Form, Allocation Agreement, and any other documents required for the City of Olympia to participate in the opioid settlement negotiated by the Washington Attorney General with opioid distributors Cardinal Health, AmerisourceBergen and McKesson.

Staff Contact:

Mark Barber, City Attorney, 360.753.8223

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

The City of Olympia has joined in federal multi-district court litigation to sue parties responsible for overdose deaths and harms resulting from use of opioids by residents of Olympia. The Attorney General of Washington (AGO), Bob Ferguson, brought a lawsuit against three of the largest opioid distributors, Cardinal Health, AmerisourceBergen and McKesson in King County Superior Court to recover monetary damages sustained by the state as a result of the reckless and negligent behavior of the distributors who profited from the opioid crisis at the expense of Washington state residents.

The AGO has negotiated a proposed settlement resolution with Cardinal Health, AmerisourceBergen and McKesson that will result in these three companies paying approximately \$518 million over 17 years as compensation for harms to Washington residents, if all conditions of the proposal are met. The proposed opioid distributor settlement will only be finalized after 100% of litigating Washington local governments, and 90% of non-litigating Washington local governments with a population over 10,000 agree to the settlement proposal by executing and returning a Participation Form before the deadline of September 23, 2022, for local government approval. The proposed Distributors - Washington Settlement Agreement lists the City of Olympia as 1 of 121 "Primary Subdivisions" of local governments in the state of Washington, and 1 of 37 "Litigating Subdivisions" subject to the terms of the distributors' settlement agreement.

The AGO strongly urges approval by local governments to the settlement proposal, while recognizing no settlement is perfect, this settlement will result in Washington state receiving significantly more than Washington would have received had the AGO accepted the national resolution earlier this year. If the requisite participation by Washington local governments does not occur, the state of Washington will not receive the \$518 million to help Washington combat the opioid epidemic. However, if approved, these financial resources will start flowing into Washington's communities, including the City of Olympia, to abate the opioid crisis that continues to devastate families across Washington state.

On March 22, 2022, the City of Olympia entered into a One Washington Memorandum of Understanding Between Washington Municipalities as a "Participating Local Government" and a "Litigating Local Government" in the United States District Court for the Northern District of Ohio in *In Re: National Prescription Opiate Litigation*, Case No. 1:17-md-02804-DAP to address a variety of issues including distribution of opioid funds, allocation, and abatement use. The City of Olympia qualifies as a "Litigating Local Government" as having filed suit against any Pharmaceutical Supply Chain Participant pertaining to the opioid epidemic prior to September 1, 2020.

Approval and execution of settlement documents including a Participation Form and an Allocation Agreement are necessary to complete the terms of the AGO's proposed settlement with the three opioid distributors. If all litigating Washington local governments and 90% of non-litigating local governments agree to the settlement's terms, the settlement may be finalized which will include the City of Olympia releasing any and all of its claims against the three settling opioid distributors.

Neighborhood/Community Interests (if known):

None known.

Options:

1. Approve the Resolution authorizing the City Manager to execute all documents necessary to participate in the AGO's opioid settlement with national opioid distributors Cardinal Health, AmerisourceBergen and McKesson, and releasing any claims by the City of Olympia against

said opioid distributors.

2. Do not approve the Resolution giving authorization to the City Manager to execute all documents necessary to participate in the AGO's opioid settlement with three national opioid distributors. If the Resolution is not approved, the City of Olympia, as a litigating local government, would be a cause for the AGO's \$518 million settlement to fail as 100% of litigating Washington local governments must agree to the settlement terms by September 23, 2022.

Financial Impact:

Over a period of 17 years, the City of Olympia would receive approximately \$1.3 million for opioid abatement, minus contractual attorneys' fees.

Attachments:

Resolution
Participation Form
Allocation Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO PARTICIPATE IN AN OPIOID SETTLEMENT NEGOTIATED BY THE WASHINGTON STATE ATTORNEY GENERAL AGAINST CERTAIN OPIOID DISTRIBUTORS

WHEREAS, the City of Olympia has joined in federal multi-district court litigation to sue parties responsible for overdose deaths and harms resulting from use of opioids by residents of Olympia; and

WHEREAS, the Attorney General of Washington (AGO), Bob Ferguson, brought a lawsuit against three of the largest opioid distributors, Cardinal Health, AmerisourceBergen, and McKesson in King County Superior Court to recover monetary damages sustained by the state as a result of the reckless and negligent behavior of the distributors who profited from the opioid crisis at the expense of Washington state residents; and

WHEREAS, the AGO has negotiated a proposed settlement resolution with Cardinal Health, AmerisourceBergen, and McKesson that will result in these three companies paying approximately \$518 million over 17 years as compensation for harms to Washington residents, if all conditions of the proposal are met; and

WHEREAS, the proposed opioid distributor settlement will only be finalized after 100% of litigating Washington local governments, and 90% of non-litigating Washington local governments with a population over 10,000 agree to the settlement proposal by executing and returning a Participation Form before the deadline of September 23, 2022, for local government approval; and

WHEREAS, the Distributors – Washington Settlement Agreement lists the City of Olympia as 1 of 121 “Primary Subdivisions” of local governments in the state of Washington, and 1 of 37 “Litigating Subdivisions” subject to the terms of the distributors’ settlement agreement; and

WHEREAS, the AGO strongly urges approval by local governments to the settlement proposal, while recognizing no settlement is perfect, this settlement will result in Washington state receiving significantly more than Washington would have received had the AGO accepted the national resolution earlier this year; and

WHEREAS, if the requisite participation by Washington local governments does not occur, the state of Washington will not receive the \$518 million to help Washington combat the opioid epidemic. However, if approved, these financial resources will start flowing into Washington’s communities, including the City of Olympia, to abate the opioid crisis that continues to devastate families across Washington state; and

WHEREAS, on March 22, 2022, the City of Olympia entered into a One Washington Memorandum of Understanding Between Washington Municipalities as a “Participating Local Government” and a “Litigating Local Government” in the United States District Court for the Northern District of Ohio in *In Re: National Prescription Opiate Litigation*, Case No. 1:17-md-02804-DAP to address a variety of issues

including distribution of opioid funds, allocation, and abatement use. The City of Olympia qualifies as a “Litigating Local Government” as having filed suit against any Pharmaceutical Supply Chain Participant pertaining to the opioid epidemic prior to September 1, 2020; and

WHEREAS, approval and execution of settlement documents including a Participation Form and an Allocation Agreement are necessary to complete the terms of the AGO’s proposed settlement with the three opioid distributors. That if all litigating Washington local governments and 90% of non-litigating local governments agree to the settlement’s terms, the settlement may be finalized which will include the City of Olympia releasing any and all of its claims against the three settling opioid distributors; and

WHEREAS, the Olympia City Council recognizes that a monetary settlement alone does not fully atone for despicable corporate behavior to profit off the misery and overdose deaths suffered by Olympia families and residents by companies interested solely in profit, the AGO’s proposed settlement is a first step on the road to abating the opioid epidemic;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the Participation Form and Allocation Agreement necessary for the City of Olympia to participate in the AGO’s proposed Distributors – Washington Settlement Agreement, and the terms and conditions contained therein.
2. The City Manager is authorized and directed to execute on behalf of the City of Olympia the Participation Form, Allocation Agreement, and any other documents that may be necessary to finalize and fully settle the AGO’s proposed settlement with Cardinal Health, AmerisourceBergen, and McKesson, and to make any amendments or minor modifications as may be required and are consistent with the intent of the settlement Agreement, or to correct any scrivener’s errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2022.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber

CITY ATTORNEY

Exhibit F
Subdivision Settlement Participation Form

Governmental Entity:	State:
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated May 2, 2022 (“*Distributors Washington Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Distributors Washington Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Distributors Washington Settlement, including the Distributor Global Settlement Agreement dated July 21, 2021 (“*Global Settlement*”) attached to the Distributors Washington Settlement as Exhibit H, understands that all terms in this Participation Form have the meanings defined therein, and agrees that by signing this Participation Form, the Governmental Entity elects to participate in the Distributors Washington Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 14 days of October 1, 2022 and prior to the filing of the Consent Judgment, secure the dismissal with prejudice of any Released Claims that it has filed.
4. The Governmental Entity agrees to the terms of the Distributors Washington Settlement pertaining to Subdivisions as defined therein.
5. By agreeing to the terms of the Distributors Washington Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after December 1, 2022.
6. The Governmental Entity agrees to use any monies it receives through the Distributors Washington Settlement solely for the purposes provided therein.
7. The Governmental Entity submits to the jurisdiction of the Washington Consent Judgment Court for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Distributors Washington Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in the Distributors Washington Settlement.

8. The Governmental Entity has the right to enforce the Distributors Washington Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Distributors Washington Settlement, including, but not limited to, all provisions of Section XI of the Global Settlement, and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Distributors Washington Settlement are intended by the Agreement Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Distributors Washington Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Distributors Washington Settlement.
11. In connection with the releases provided for in the Distributors Washington Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the date the Distributors Washington Settlement becomes effective pursuant to Section II.B of the Distributors Washington Settlement, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Distributors Washington Settlement.

12. Nothing herein is intended to modify in any way the terms of the Distributors Washington Settlement, to which Governmental Entity hereby agrees. To the extent this Participation Form is worded differently from Exhibit F to the Distributors Washington Settlement or interpreted differently from the Distributors Washington Settlement in any respect, the Distributors Washington Settlement controls.

I have all necessary power and authorization to execute this Participation Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____

**ALLOCATION AGREEMENT GOVERNING THE ALLOCATION OF FUNDS PAID
BY THE SETTLING OPIOID DISTRIBUTORS IN WASHINGTON STATE**

AUGUST __, 2022

This Allocation Agreement Governing the Allocation of Funds Paid by the Settling Opioid Distributors in Washington State (the “Allocation Agreement”) governs the distribution of funds obtained from AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation (the “Settling Distributors”) in connection with its resolution of any and all claims by the State of Washington and the counties, cities, and towns in Washington State (“Local Governments”) against the Settling Distributors (the “Distributors Settlement”). The Distributors Settlement including any amendments are attached hereto as Exhibit 1.

1. This Allocation Agreement is intended to be a State-Subdivision Agreement as defined in Section I.VVV of the Global Settlement (the “Global Settlement”), which is Exhibit H of the Distributors Settlement. This Allocation Agreement shall be interpreted to be consistent with the requirements of a State-Subdivision Agreement in the Global Settlement.
2. This Allocation Agreement shall become effective only if all of the following occur:
 - A. All Litigating Subdivisions in Washington and 90% of Non-Litigating Primary Subdivisions in Washington as the terms are used in Section II.C.1 of the Distributors Settlement must execute and return the Subdivision Settlement Participation Form, Exhibit F of the Distributors Settlement (the “Participation Form”) by **September 23, 2022**. This form is also attached hereto as Exhibit 2.
 - B. The Consent Judgment and Stipulation of Dismissal with Prejudice, Exhibit G of the Distributors Settlement, is filed and approved by the Court.
 - C. The number of Local Governments that execute and return this Allocation Agreement satisfies the participation requirements for a State-Subdivision Agreement as specified in Exhibit O of the Global Settlement.
3. Requirements to become a Participating Local Government. To become a Participating Local Government that can participate in this Allocation Agreement, a Local Government must do all of the following:
 - A. The Local Government must execute and return this Allocation Agreement.
 - B. The Local Government must release their claims against the Settling Distributors and agree to be bound by the terms of the Distributors Settlement by timely executing and returning the Participation Form. This form is attached hereto as Exhibit 2.

- C. Litigating Subdivisions must dismiss the Settling Distributors with prejudice from their lawsuits. The Litigating Subdivisions are listed on Exhibit B of the Distributors Settlement.
- D. The Local Government must execute and return the One Washington Memorandum of Understanding Between Washington Municipalities (“MOU”) agreed to by the Participating Local Governments in Washington State, which is attached hereto as Exhibit 3. As specified in Paragraph 10.A of this Allocation Agreement, the Local Government may elect in its discretion to execute the MOU for purposes of this Allocation Agreement only.

A Local Government that meets all of the conditions in this paragraph shall be deemed a “Participating Local Government.” Alternatively, if the requirements of Paragraphs 2(A), 2(B), and 2(C) of this Allocation Agreement are satisfied and this Allocation Agreement becomes effective, then all Local Governments that comply with Paragraph 3(B) of this Allocation Agreement shall be deemed a “Participating Local Government.”

- 4. This Allocation Agreement applies to the Washington Abatement Amount as defined in Section IV.A of the Distributors Settlement. The maximum possible Washington Abatement Amount for the Distributors Settlement is \$430,249,769.02. As specified in the Global Settlement, the Washington Abatement Amount varies dependent on the percentage of Primary Subdivisions that choose to become Participating Local Governments and whether there are any Later Litigating Subdivisions as defined in Section I.EE of the Global Settlement.
- 5. This Allocation Agreement does not apply to the Washington Fees and Costs as defined in Section V of the Distributors Settlement. After satisfying its obligations to its outside counsel for attorneys’ fees and costs, the State estimates that it will receive approximately \$46 million for its own attorneys’ fees and costs pursuant to Section V.B.1 of the Distributors Settlement. The State shall utilize any and all amounts it receives for its own attorneys’ fees and costs pursuant to Section V.B.1 of the Distributors Settlement to provide statewide programs and services for Opioid Remediation as defined in Section I.SS of the Global Settlement.
- 6. While this Allocation Agreement does not apply to the Washington Fees and Costs as defined in Section V of the Distributors Settlement, Section V.B.2 of the Distributors Settlement estimates that the Settling Distributors shall pay \$10,920,914.70 to Participating Litigating Subdivisions’ attorneys for fees and costs. The actual amount may be greater or less. This Allocation Agreement and the MOU are a State Back-Stop Agreement. The total contingent fees an attorney receives from the Contingency Fee Fund pursuant to Section II. D in Exhibit R the Global Settlement, the MOU, and this Allocation Agreement combined cannot exceed 15% of the portion of the LG Share paid to the Litigating Local Government that retained that firm (i.e., if City X filed suit with outside counsel

on a contingency fee contract and City X receives \$1,000,000 from the Distributors Settlement, then the maximum that the firm can receive is \$150,000 for fees.)

7. No portion of the Washington Fees and Costs as defined in Section V of the Distributors Settlement and/or the State Share as defined in Paragraph 8.A of this Allocation Agreement shall be used to fund the Government Fee Fund (“GFF”) referred to in Paragraph 10 of this Allocation Agreement and Section D of the MOU, or in any other way to fund any Participating Local Government’s attorneys’ fees, costs, or common benefit tax other than the aforementioned payment by the Settling Distributors to Participating Litigating Subdivisions’ attorneys for fees and costs in Section V.B.2 of the Distributors Settlement.
8. The Washington Abatement Amount shall and must be used by the State and Participating Local Governments for Opioid Remediation as defined in Section I.SS of the Global Settlement, except as allowed by Section V of the Global Settlement. Exhibit 4 is a non-exhaustive list of expenditures that qualify as Opioid Remediation. Further, the Washington Abatement Amount shall and must be used by the State and Participating Local Governments as provided for in the Distributors Settlement.
9. The State and the Participating Local Governments agree to divide the Washington Abatement Amount as follows:
 - A. Fifty percent (50%) to the State of Washington (“State Share”).
 - B. Fifty percent (50%) to the Participating Local Governments (“LG Share”).
10. The LG Share shall be distributed pursuant to the MOU attached hereto as Exhibit 3 as amended and modified in this Allocation Agreement.
11. For purposes of this Allocation Agreement only, the MOU is modified as follows and any contrary provisions in the MOU are struck:
 - A. The MOU is amended to add new Section E.6, which provides as follows:

A Local Government may elect in its discretion to execute the MOU for purposes of this Allocation Agreement only. If a Local Governments executes the MOU for purposes of this Allocation Agreement only, then the MOU will only bind such Local Government and be effective with respect to this Allocation Agreement and the Distributors Settlement, and not any other Settlement as that term is defined in Section A.14 of the MOU. To execute the MOU for purposes of this Allocation Agreement only, the Local Government may either (a) check the applicable box on its signature page of this Allocation Agreement that is returned or (b) add language below its signature lines in the MOU that is returned indicating that the Local Government is executing or has

executed the MOU only for purposes of the Allocation Agreement Governing the Allocation of Funds Paid by the Settling Opioid Distributors in Washington State.

- B. Exhibit A of the MOU is replaced by Exhibit E of the Global Settlement, which is attached as Exhibit 4 to this Agreement.
- C. The definition of “Litigating Local Governments” in Section A.4 of the MOU shall mean Local Governments that filed suit against one or more of the Settling Defendants prior to May 3, 2022. The Litigating Local Governments are listed on Exhibit B of the Distributors Settlement, and are referred to as Litigating Subdivisions in the Distributors Settlement.
- D. The definition of “National Settlement Agreement” in Section A.6 of the MOU shall mean the Global Settlement.
- E. The definition of “Settlement” in Section A.14 of the MOU shall mean the Distributors Settlement.
- F. The MOU is amended to add new Section C.4.g.vii, which provides as follows:

“If a Participating Local Government receiving a direct payment (a) uses Opioid Funds other than as provided for in the Distributors Settlement, (b) does not comply with conditions for receiving direct payments under the MOU, or (c) does not promptly submit necessary reporting and compliance information to its Regional Opioid Abatement Counsel (“Regional OAC”) as defined at Section C.4.h of the MOU, then the Regional OAC may suspend direct payments to the Participating Local Government after notice, an opportunity to cure, and sufficient due process. If direct payments to Participating Local Government are suspended, the payments shall be treated as if the Participating Local Government is foregoing their allocation of Opioid Funds pursuant to Section C.4.d and C.4.j.iii of the MOU. In the event of a suspension, the Regional OAC shall give prompt notice to the suspended Participating Local Government and the Settlement Fund Administrator specifying the reasons for the suspension, the process for reinstatement, the factors that will be considered for reinstatement, and the due process that will be provided. A suspended Participating Local Government may apply to the Regional OAC to be reinstated for direct payments no earlier than five years after the suspension.”

- G. Consistent with how attorney fee funds for outside counsel for Participating Local Subdivisions are being administered in most states across the country, the Government Fee Fund (“GFF”) set forth in the

MOU shall be overseen by the MDL Fee Panel (David R. Cohen, Randi S. Ellis and Hon. David R. Herndon (ret.)). The Fee Panel will preside over allocation and disbursement of attorney's fees in a manner consistent with the *Motion to Appoint the Fee Panel to Allocate and Disburse Attorney's Fees Provided for in State Back-Stop Agreements* and the *Order Appointing the Fee Panel to Allocate and Disburse Attorney's Fees Provided for in State Back-Stop Agreements*, Case No. 1:17-md-02804-DAP Doc #: 4543 (June 17, 2022).

- H. The GFF set forth in the MOU shall be funded by the LG Share of the Washington Abatement Amount only. To the extent the common benefit tax is not already payable by the Settling Distributors as contemplated by Section D.8 of the MOU, the GFF shall be used to pay Litigating Local Government contingency fee agreements and any common benefit tax referred to in Section D of the MOU, which shall be paid on a pro rata basis to eligible law firms as determined by the Fee Panel.
- I. To fund the GFF, fifteen percent (15%) of the LG Share shall be deposited in the GFF from each LG Share settlement payment until the Litigating Subdivisions contingency fee agreements and common benefit tax (if any) referred to in Section D of the MOU are satisfied. Under no circumstances will any Non-Litigating Primary Subdivision or Litigating Local Government be required to contribute to the GFF more than 15% of the portion of the LG Share allocated to such Non-Litigating Primary Subdivision or Litigating Local Government. In addition, under no circumstances will any portion of the LG Share allocated to a Litigating Local Government be used to pay the contingency fees or litigation expenses of counsel for some other Litigating Local Government.
- J. The maximum amount of any Litigating Local Government contingency fee agreement (from the Contingency Fee Fund pursuant to Section II. D in Exhibit R the Global Settlement) payable to a law firm permitted for compensation shall be fifteen percent (15%) of the portion of the LG Share paid to the Litigating Local Government that retained that firm (i.e., if City X filed suit with outside counsel on a contingency fee contract and City X receives \$1,000,000 from the Distributors Settlement, then the maximum that the firm can receive is \$150,000 for fees.) The firms also shall be paid documented expenses due under their contingency fee agreements that have been paid by the law firm attributable to that Litigating Local Government. Consistent with the Distributors Settlement and Exhibit R of the Global Settlement, amounts due to Participating Litigating Subdivisions' attorneys under this Allocation Agreement shall not impact (i) costs paid by the subdivisions to their attorneys pursuant to a State Back-Stop agreement, (ii) fees paid to subdivision attorneys from the Common Benefit Fund for common benefit work performed by the attorneys pursuant to Section II.C of Exhibit R of the Global Settlement, or (iii) costs paid to subdivision attorneys from the MDL Expense Fund

for expenses incurred by the attorneys pursuant to Section II.E of the Global Settlement.

- K. Under no circumstances may counsel receive more for its work on behalf of a Litigating Local Government than it would under its contingency agreement with that Litigating Local Government. To the extent a law firm was retained by a Litigating Local Government on a contingency fee agreement that provides for compensation at a rate that is less than fifteen percent (15%) of that Litigating Local Government’s recovery, the maximum amount payable to that law firm referred to in Section D.3 of the MOU shall be the percentage set forth in that contingency fee agreement.
 - L. For the avoidance of doubt, both payments from the GFF and the payment to the Participating Litigating Local Governments’ attorneys for fees and costs referred to in Paragraph 6 of this Allocation Agreement and Section V.B.2 Distributors Settlement shall be included when calculating whether the aforementioned fifteen percent (15%) maximum percentage (or less if the provisions of Paragraph 10.K of this Allocation Agreement apply) of any Litigating Local Government contingency fee agreement referred to above has been met.
 - M. To the extent there are any excess funds in the GFF, the Fee Panel and the Settlement Administrator shall facilitate the return of those funds to the Participating Local Governments as provided for in Section D.6 of the MOU.
12. In connection with the execution and administration of this Allocation Agreement, the State and the Participating Local Governments agree to abide by the Public Records Act, RCW 42.56 *eq seq.*
 13. All Participating Local Governments, Regional OACs, and the State shall maintain all non-transitory records related to this Allocation Agreement as well as the receipt and expenditure of the funds from the Distributors Settlement for no less than five (5) years.
 14. If any party to this Allocation Agreement believes that a Participating Local Government, Regional OAC, the State, an entity, or individual involved in the receipt, distribution, or administration of the funds from the Distributors Settlement has violated any applicable ethics codes or rules, a complaint shall be lodged with the appropriate forum for handling such matters, with a copy of the complaint promptly sent to the Washington Attorney General, Complex Litigation Division, Division Chief, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104.
 15. To the extent (i) a region utilizes a pre-existing regional body to establish its Opioid Abatement Council pursuant to the Section 4.h of the MOU, and (ii) that

pre-existing regional body is subject to the requirements of the Community Behavioral Health Services Act, RCW 71.24 *et seq.*, the State and the Participating Local Governments agree that the Opioid Funds paid by the Settling Distributors are subject to the requirements of the MOU and this Allocation Agreement.

16. Upon request by the Settling Distributors, the Participating Local Governments must comply with the Tax Cooperation and Reporting provisions of the Distributors Settlement and the Global Settlement.
17. Venue for any legal action related to this Allocation Agreement (separate and apart from the MOU, the Distributors Settlement, or the Global Settlement) shall be in King County, Washington.
18. Each party represents that all procedures necessary to authorize such party's execution of this Allocation Agreement have been performed and that such person signing for such party has been authorized to execute this Allocation Agreement.

FOR THE STATE OF WASHINGTON:

ROBERT W. FERGUSON
Attorney General

JEFFREY G. RUPERT
Division Chief

Date: _____

DRAFT

FOR THE PARTICIPATING LOCAL GOVERNMENT:

Name of Participating Local Government: _____

Authorized signature: _____

Name: _____

Title: _____

Date: _____

A Local Government may elect in its discretion to execute the MOU for purposes of this Allocation Agreement only by checking this box (see Paragraph 10.A of this Allocation Agreement):

Local Government is executing the MOU in the form attached hereto as Exhibit 3, but which is further amended and modified as set forth in this Allocation Agreement, only for purposes of this Allocation Agreement.

EXHIBIT 1
Distributors Settlement

DRAFT

EXHIBIT 2
Subdivision Settlement Participation Form
(Exhibit F of the Distributors Settlement)

DRAFT

EXHIBIT 3

One Washington Memorandum of Understanding Between Washington Municipalities

DRAFT

EXHIBIT 4
Non-Exhaustive List of Expenditures that Qualify as Opioid Remediation
(Exhibit E of the Global Settlement)

DRAFT

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City Council

Approval of an Ordinance Updating and Amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare

Agenda Date: 8/23/2022
Agenda Item Number: 4.1
File Number:22-0769

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Updating and Amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve on second reading an ordinance updating and amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare.

Report

Issue:

Whether to approve an ordinance updating and amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare by incorporating by reference certain state crimes in Title 9 RCW, Crimes and Punishments, and Title 9A RCW, the Washington Criminal Code, and by amending certain chapters and sections of Title 9 OMC.

Staff Contact:

R. Tye Graham, Chief Prosecutor, Legal Department, 360.753.8449

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Background and Analysis did not change from first to second reading.

In order to give the City the authority to prosecute a state statute, the statute must be adopted and incorporated by reference into the Olympia Municipal Code (OMC).

A comprehensive review of OMC Title 9 - Public Peace, Morals and Welfare (Title 9 OMC) has identified needed updates and amendments. The proposed ordinance updates the OMC by

incorporating by reference certain crimes in Title 9 RCW, Crimes and Punishments, and Title 9A RCW, the Washington Criminal Code, and amends certain chapters and sections of Title 9 OMC as described below.

Section 1 - OMC Chapter 9.04 - Aiding or Abetting Crime. Adopts:

- RCW 9A.28.020 - Criminal Attempt (attempting a crime).
- RCW 9A.28.030 - Criminal Solicitation (soliciting or enticing someone to commit a crime).
- RCW 9A.28.0940 - Criminal Conspiracy (working in concert to commit a crime).
- All Class C felony crimes. By adopting the state versions of criminal attempt, criminal solicitation, and criminal conspiracy, the City can enforce attempted Class C felonies set forth in chapter 9A.28 RCW that are declined by the Thurston County Prosecutor's Office and then returned to the City to be prosecuted as a Gross Misdemeanor.

As the heavy workload in the Thurston County Prosecutor's office continues, a number of felony cases are declined and returned to the City. This proposed amendment would allow the City to enforce those felonies as a Gross Misdemeanor.

Section 2 - OMC Chapter 9.08 - Offenses Against Government.

- Adopts RCW 9A.44.132 - Failure to Register as a Sex Offender or Kidnapping Offender. Currently, only conviction of a Gross Misdemeanor sex offense requires registration. Adoption of this crime would permit the City to enforce that registration requirement.

Section 3 - OMC 9.16 - Offenses Against Public Peace.

- Repeals OMC 9.16.050(E) - Offenses in Public - Crime of Riot and replaces it by adoption of RCW 9A.84.010 - Criminal Mischief.
- The crime of Riot pointed to a definition no longer found in the RCW. The crime of Criminal Mischief has the same elements as the old crime of Riot, but with a new name. This is an important tool for the Olympia Police Department when managing demonstrations or public assemblies that have escalated into unlawful behavior under state law.
- Repeals OMC 9.16.100 - .170, removing limitations imposed on Teen Dance Clubs. Sections are outdated; no current businesses within the City meet this definition.
- Amends OMC 9.16.180 - Pedestrian Interference to make the mental intent element consistent throughout the crime.

Section 4 - OMC 9.20.010 - Crimes Against Persons - State Statutes Adopted by Reference.

- Adopts the crimes of Custodial Interference, Criminal Mistreatment, Abandonment of a Dependent Person, Leaving a Child With a Sex Offender, Sexual Misconduct, Disclosing of Intimate Images, and the Special Allegation of Sexual Motivation. Cases alleging crimes of Custodial Interference, Criminal Mistreatment, and Disclosing Intimate Images currently occur a few times a year for review by City Prosecutors. A special allegation is a modifier to another crime, in this case it alleges that the criminal was motivated with sexual gratification in the

execution of the crime. This occurs most often in cases of Assault where someone is grabbed or touched in an intimate location.

Section 5 - OMC 9.36 - Liquor Offenses.

- Amended by adopting various sections of Title 66 RCW - Alcoholic Beverage Control as they apply to liquor. The wording between the OMC and RCW versions are nearly identical, but to avoid a change in State policy on liquor, this adoption should be made.

Section 6 - OMC 9.40 - Offenses Against Property.

- Repeals OMC 9.40.110 - Disposal of Litter - Penalty of Violation and adopts RCW 70A.200 060 - Littering Prohibited - Penalties - Litter Cleanup Restitution Payment.
- Adopts the crimes of Possession of Another's ID (identification), Computer Trespass, Spoofing, and Electronic Data Tampering. In a society that is very dependent on smart phones, these crimes are starting to occur by domestic violence offenders in an effort to monitor and control their victims.

Section 7 - OMC 9.44 - Offenses By or Against Juveniles.

- Adopts RCW 9.68A.090 Crime of Communication with a Minor for Immoral Purposes.
- Creates the crime of Assault of a Child in the Fourth Degree. In the RCW, Assault of a Child in the First, Second, and Third degree are the same crimes with the same penalties as Assault in the First, Second, and Third Degrees. The State does not have a crime for Assault of a Child in the Fourth Degree. The purpose of this crime is to better inform prosecutors, judges, and anyone who has the authority and need to see a person's criminal history. For instance, if an offender is being sentenced for Assault of a Child in the Second Degree, seeing this crime on the offender's criminal history will have an effect upon the terms of sentencing by the court.

Section 8 - OMC 9.48.170 - Weapons and Fireworks - State Statutes Adopted by Reference.

- Updates OMC 9.48.170 - State Statutes Adopted by Reference related to weapons and fireworks.
- Adopts RCW 9.41.305 Open Carry of Weapons Prohibited on State Grounds and Municipal Buildings. RCW 9.41.305 was amended by the last legislative session to allow local governments to prohibit the open carry of firearms in municipal buildings that are used by the governing body of the local government, or any location used by the governing body for public meetings or hearings by local government. There are requirements as to posting signs of the prohibition.
- Adopts RCW 9A.49.020 and .030 Unlawful Discharge of a Laser in the First and Second Degrees and RCW 77.15.460 Possession of a Loaded Shotgun or Rifle in a Vehicle. The Laser offenses are crimes that were seen during demonstrations and public assemblies when persons used lasers against the eyes of Olympia Police officers.

Section 9 - OMC 9.62 - Domestic Violence and Protection Orders.

- Revises the adoption of RCW crimes for violations of protection orders. In ESSHB 1320, the legislature moved the civil protection orders within the RCW to Title 7.105, effective July 1,

2022. The City's prosecutors are currently unable to enforce those violations. This section also revises the Domestic Violence in the Presence of a Child ordinance to better clarify that it carries a mandatory minimum sentence and fine for any Domestic Violence crime in the presence of a child, as well as allows for the charging of a separate crime for committing a domestic violence crime in the presence of a child.

Neighborhood/Community Interests (if known):

There is an inherent interest in protecting the public's safety and property, protecting children from violence, and appropriately holding offenders accountable for their conduct.

Options:

1. Approve on second reading the ordinance updating and amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare.
2. Approve on second reading the ordinance updating and amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare with specific modifications.
3. Do not approve the ordinance. If the updated and amended ordinance is not approved, the City's prosecutors will be unable to enforce violations of civil protection orders. It is possible the Thurston County Prosecutor's Office may be able to assist prosecuting City crimes based upon the recent Interlocal Agreement, but it is not desirable given the County Prosecutor's current case backlog.

Financial Impact:

There is no financial impact related to this action.

Attachments:

Ordinance

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING VARIOUS CHAPTERS AND SECTIONS OF OLYMPIA MUNICIPAL CODE TITLE 9 — PUBLIC PEACE, MORALS AND WELFARE

WHEREAS, the criminal statutes of the Revised Code of Washington (RCW) have been subject to numerous updates and changes by the Washington State Legislature in recent legislative sessions, most notably in the areas of domestic violence and computer crimes; and

WHEREAS, a comprehensive review of Olympia Municipal Code (OMC) Title 9 – Public Peace, Morals and Welfare (Title 9 OMC) has identified that update and amendment of Title 9 OMC is needed; and

WHEREAS, the proposed ordinance updates the OMC by incorporating by reference certain crimes in Title 9 RCW, Crimes and Punishments, and Title 9A RCW, the Washington Criminal Code, and amends certain chapters and sections of Title 9 OMC; and

WHEREAS, the City Council determines it to be in the best interest of the residents of the City of Olympia to amend Title 9 OMC as proposed; and

WHEREAS, this Ordinance is adopted pursuant to Article 11, Section 11 of the Washington State Constitution and any other applicable authority;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 9.04. Olympia Municipal Code Chapter 9.04 is hereby amended to read as follows:

Chapter 9.04

AIDING OR ABETTING CRIME

9.04.000 Chapter Contents

Sections:

9.04.010 Unlawful acts designated.

9.04.020 State statutes adopted by reference.

9.04.010 Unlawful acts designated

With regard to any crime described under this title, it is further unlawful to: with intent to commit an offense under this title, aid, agree to aid, abet, or cause another person to commit a crime described in this title.

~~A.—With intent to commit a specific crime, do any act which is a substantial step toward the commission of that crime and which constitutes an attempt to commit that crime. It is no defense under this section that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission;~~

~~B.—With intent to commit an offense under this title, aid, agree to aid, abet, solicit, or cause another person to commit a crime described in this title.~~

9.04.020 State statutes adopted by reference

A. The following sections of the Revised Code of Washington, as they appear now or are hereafter amended, are hereby adopted by reference as though fully set forth in this chapter:

- RCW 9A.28.020 – Criminal attempt
- RCW 9A.28.030 – Criminal solicitation
- RCW 9A.28.040 – Criminal conspiracy

B. All Class C felony crimes set forth in the Revised Code of Washington, as they appear now or are hereafter amended, are hereby adopted by reference for the purposes of charging a gross misdemeanor for any violation of any of the crimes set forth in chapter 9A.28 RCW.

Section 2. Amendment of OMC 9.08. A NEW SECTION 9.08.100 is hereby added to Olympia Municipal Code Chapter 9.08, to read as follows:

Chapter 9.08

OFFENSES AGAINST GOVERNMENT

9.08.000 Chapter Contents

Sections:

- 9.08.010 Definitions.
- 9.08.020 Obstructing a public servant or officer.
- 9.08.025 Making a false or misleading statement to a public servant.
- 9.08.030 Hindering a law enforcement official.
- 9.08.040 Resisting arrest.
- 9.08.050 Rescue from official detention.
- 9.08.055 Introducing contraband into jail.
- 9.08.060 Escape.
- 9.08.065 Bail Jumping.
- 9.08.070 False reporting.
- 9.08.080 Refusing to summon aid for a police officer.
- 9.08.090 Misrepresentation as police officer.
- 9.08.100 State statutes adopted by reference.

9.08.100 State statutes adopted by reference

The following sections of the Revised Code of Washington, as they appear now or are hereafter amended, are hereby adopted by reference as though fully set forth in this chapter:

- RCW 9A.44.132 – Failure to register as sex offender or kidnapping offender

Section 3. Amendment of OMC 9.16. Olympia Municipal Code Chapter 9.16 is hereby amended to read as follows:

Chapter 9.16

OFFENSES AGAINST PUBLIC PEACE

9.16.000 Chapter Contents

Sections:

- 9.16.010 Definitions.
- 9.16.020 Disorderly conduct.
- 9.16.030 Failure to disperse.
- 9.16.040 Disruption of school activities.
- 9.16.050 Offenses in public.
- 9.16.055 Opening or consuming liquor in public place.
- 9.16.060 Public parades and demonstrations.
- 9.16.090 Public events--Criminal activity.
- ~~9.16.100 Teen dances--Regulation--Purpose.~~
- ~~9.16.110 Teen dances--Definitions.~~
- ~~9.16.120 Teen dance club--License required.~~
- ~~9.16.130 Teen dance club--License exceptions.~~
- ~~9.16.140 Teen dance club--License application requirements.~~
- ~~9.16.150 Teen dance club--License permit issuance.~~
- ~~9.16.160 Teen dance club--License suspension or revocation.~~
- ~~9.16.170 Teen dance club--Regulations.~~
- 9.16.180 Pedestrian interference.
- 9.16.190 State statutes adopted by reference.

9.16.010 Definitions

For the purpose of this chapter, certain words and terms are defined as follows:

- A. "Public safety order" is an order issued by a peace officer designed and reasonably necessary to prevent or control a serious disorder, and promote the safety of persons or property.
- B. "School" has its ordinary meaning and also includes colleges, community colleges and institutions of higher education.

9.16.020 Disorderly conduct

A person is guilty of disorderly conduct if, without lawful authority, the person knowingly:

- A. Is involved in conduct and/or uses language that is abusive, threatening, or intimidating and which causes alarm for safety of others or creates risk of assault, riot or other public disorders;
- B. Intentionally disrupts a lawful assembly or meeting of persons, without lawful authority;
- C. Is involved in conduct which unreasonably disrupts the public peace; and/or
- D. Causes a public noise disturbance or is in possession and control of property on which a public noise disturbance occurs. The following sounds are determined to be public noise disturbances:
 - 1. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;
 - 2. The creation of frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or

internal combustion engine within a residential district, so as to unreasonably disturb or interfere with the peace comfort and repose of owners or possessors of real property.

3. Yelling, shouting, hooting, whistling or singing on or near the public streets, particularly between the hours of eleven p.m. and seven a.m. or at any time and place so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property.

4. The creation of frequent, repetitive or continuous sounds which emanate from any building, structure, apartment, or condominium, which unreasonably interferes with the peace, comfort, and repose of owners or possessors of real property, such as sounds from musical instruments, audio sound systems, band sessions, or social gatherings.

5. Sound from motor vehicle audio sound systems, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than fifty feet from the vehicle itself.

6. Sound from portable audio equipment, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator.

The foregoing provisions shall not apply to regularly scheduled events at parks, such as public address systems for baseball games or park concerts.

Provided that the foregoing enumeration of acts and noises shall not be construed as excluding other acts and noises which offend the public peace.

9.16.030 Failure to disperse

A person is guilty of failure to disperse if:

A. The person congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person or substantial harm to property; and

B. The person refuses or intentionally fails to obey a public safety order to move, disperse or refrain from specified activity in the immediate vicinity.

9.16.040 Disruption of school activities

A person is guilty of disruption of school activities if the person comes upon a school ground, or street, sidewalk, or public way adjacent thereto without lawful reason, and intentionally causes substantial disruption of the activities of the school.

9.16.050 Offenses in public

It is unlawful for a person to:

A. Refuse to pay proper fare in public conveyances; or

B. Intentionally fight with another person in a public place and thereby create a substantial risk of:

1. Injury to a person who is not actively participating in the fight; or

2. Damage to the property of a person who is not actively participating in the fight; or

C. Expectorate upon the floor, walls or furniture of any public conveyance or public building; or

D. Intentionally throw any objects at, against or upon any house, building, structure, vehicle or premises of another person or of the city without the consent of that person or the city; or

~~E. Commit the crime of riot as defined in RCW 9A.84.010.~~

9.16.055 Opening or consuming liquor in public place

A. It is unlawful for a person to open any container which contains intoxicating liquor, or possess any such container which has been opened, or drink any intoxicating liquor in a public conveyance or public place not previously authorized by law, by a permit, or specifically approved in writing pursuant to a previously established policy by the City Manager or the City Manager's designee.

B. Notwithstanding ~~OMC chapter 9.64 OMC~~, every person who violates any provision of this section shall be guilty of a class 3 civil infraction under chapter 7.80 RCW.

C. It shall be unlawful for any person to fail to appear as directed when served with a citation and notice to appear in Municipal Court and shall be subject to the penalty set forth in OMC 9.64.010(A).

9.16.060 Public parades and demonstrations

A. Whenever any person or persons plan to have any procession, demonstration, or parade through or upon the streets of the city, which procession, demonstration, or parade will use the roadway section of the public right-of-way or will disrupt sidewalk pedestrian traffic in a significant way, the persons or person who will have charge, supervision, management or direction of such procession, demonstration, or parade are encouraged to, prior to such event, notify the chief of police of the city or the city manager or designee of the intention to conduct such parade, demonstration, or procession. The person or persons in charge, supervision, management or management of such processions, demonstration, or parade are encouraged to, prior to the event, discuss and plan with the chief of police or the city manager or designee the place within the city where such parade, demonstration, or procession will occur or commence its march and the proposed route, the street names, the approximate time expected to be consumed and the approximate number of persons and/or automobiles or other vehicles expected to take part.

B. On receipt of such notice, the chief of police or the city manager or designee shall meet with the person(s) involved and discuss the proposed time, place, number of persons involved, and the manner in which the procession, demonstration, or parade shall be carried out; provided, however, that if in the judgment of the chief of police, the city manager or designee, a parade, demonstration, or procession of the size, at the time, and along the route indicated will unduly interfere with vehicle or pedestrian traffic, or endanger persons or property within the city or endanger the persons involved in the procession, demonstration, or parade, the chief of police or the city manager or designee may suggest reasonable alternative time(s) and/or routes or locations for such activity.

9.16.090 Public events--Criminal activity

A. No person shall physically and intentionally or knowingly interfere with any public event activity in a manner which unreasonably disrupts the activity or causes participants therein to be seriously distracted from their performance. For purposes of this section, "activity" includes any parade, procession, race, game, exhibition or similar activity which is conducted on a public street and is an official part of a public event. The term "public event" shall be defined as set forth in Section 10.64.010.

B. No person shall commit any offense against public peace as defined in Chapter 9.16 or commit a crime against persons as defined in Chapter 9.20 while attending or in conjunction with a public event. Any person who engages in such conduct or commits a felony while attending or in conjunction with a public event may, in the case of private property, be ordered removed from the property on which the event is held by any person(s) having lawful authority over the event or, in the case of a public street, by a law enforcement officer. With respect to a public street, a court of competent jurisdiction may issue an order prohibiting the person from returning to the property on which the event is held for the duration of the event if there is cause to believe that further violations would occur if the person were allowed to return. Any violation of such an order lawfully issued shall constitute criminal trespass pursuant to Section 9.40.080.

C. Any violation of this section shall constitute a misdemeanor and be punishable by a fine not to exceed five hundred dollars, and/or by a jail sentence not to exceed ninety days.

9.16.100—Teen dances—Regulation—Purpose

Sections 9.16.100 through 9.16.170 are an exercise of police power for the protection of the public welfare, health and safety of those minors that attend and patronize teen dance clubs. The city council finds and declares that the problems of runaway children, drug abuse, alcohol abuse and abuse of children are pervasive and that the city has received complaints in the past from neighbors of teen clubs complaining of such vandalism, excessive noise, public urination, etc.; and that such problems are of such magnitude that they are a matter of city concern and are contributed to by unregulated teen clubs. Sections 9.16.100 through 9.16.170 are intended to regulate teen clubs, to address the above-referenced problems and to diminish the negative impact of unregulated teen clubs.

9.16.110—Teen dances—Definitions

For purposes of Sections 9.16.100 through 9.16.170, and unless the context plainly requires otherwise, the following definitions are adopted:

A. "Teen dance" means any dance generally open to the public but which is attended primarily by persons under the age of twenty and which:

1. Is conducted for a profit, direct or indirect; or
2. Requires a monetary payment of a fee, membership or other charge or contribution for many of the persons admitted.

B. "Teen dance club" means any place or premises where a teen dance is conducted, operated or maintained on an ongoing or regular basis and includes the premises in or on which the teen dance is conducted, operated or maintained, together with all hallways, bathrooms and all privately owned adjoining areas and open spaces on or above the premises in or on which the teen dance is conducted, including areas for vehicular parking, which are accessible to the public during the dance and which are subject to the control of the person or entity conducting, operating or maintaining the teen dance.

C. "Person" includes any natural person and, in addition, a corporation, partnership or unincorporated association.

D. "Director" means the director of administrative services for the city of Olympia.

9.16.120—Teen dance club—License required

It is unlawful for an owner, tenant, lessee or permittee of a building or premises to operate or allow to be operated therein a teen dance club without a current and valid teen dance club license issued pursuant to Sections 9.16.100 through 9.16.170. A separate license is required for each teen dance club premises and the same shall at all times be conspicuously posted and maintained thereon.

The director shall prescribe the form of such license, number the same and shall indicate thereon the location of the licensed teen dance club. An annual fee of thirty dollars shall be imposed for each license issued.

9.16.130—Teen dance club—License exceptions

A license hereunder is not required for any teen dance club which is operated and maintained by:

- A. An accredited school or college;
- B. The city of Olympia; or
- C. A religious, charitable or nonprofit organization or corporation which has received tax exempt status under IRC Paragraph 501(C) (3), 26 USC, as now or hereafter amended.

9.16.140—Teen dance club—License application requirements

Any person seeking a teen dance club license, who will actually operate said club, shall complete and file a written application with the director which shall include the following information:

- A.— The name and address of the applicant;
- B.— The location of the premises for which the license is sought;
- C.— Whether the applicant is the owner, tenant, lessee or permittee of said premises;
- D.— The name of the officers, directors, or partners if the applicant is a corporation or partnership;
- E.— A statement that the applicant will actually operate and manage the teen dance club;
- F.— A statement or confirmation that the premises comply with all zoning, building and other regulations of the city of Olympia; and
- G.— Any other information deemed necessary by the director.

9.16.150—Teen dance club—License permit issuance

A.— Upon receipt of an application for a teen dance club license, the director shall refer the application to the police chief for a criminal background check of the applicant. The license shall be issued unless:

- 1.— The applicant or any of its officers or partners has been convicted within the past five years of any crime involving improper conduct toward minors, any crime involving use or possession of controlled substances or any sex offenses;
- 2.— The premises for which the license is sought does not comply with the zoning, building or other regulations of the city; or
- 3.— The applicant has not submitted the required fee therefor.

B.— Any permits so issued shall be conspicuously posted in the premises for which the teen dance club license is sought. The license shall be effective for the calendar year for which it was issued.

9.16.160—Teen dance club—License suspension or revocation

A.— Any license issued hereunder may be suspended or revoked upon a finding by the director of any of the following:

- 1.— The applicant has failed to disclose a material fact or has given any false statement or information in the application which bears on its issuance;
- 2.— The applicant, or any officer or partner thereof, has committed any crimes or act since the issuance of the license which would have been grounds for a denial thereof;
- 3.— There has occurred upon the dance hall premises repeated violations of Chapter 9.24 of the Olympia Municipal Code (offenses against public decency);
- 4.— There has been repeatedly occurred upon the premises of the licensed teen dance club the possession, consumption or supplying of liquor, as defined in RCW 66.04.010(15) by or to persons under the age of twenty-one years;
- 5.— There has repeatedly occurred on the premises of the teen dance club the possession, supplying or use by any person of marijuana, cocaine, or any other controlled substance as defined in RCW 69.50.101(D) not prescribed by a licensed physician for use by the person possessing, receiving or using the same;

~~6.— There has repeatedly occurred acts of vandalism, excessive noise, disturbance of the peace or public urination or defecation on the licensed premises or in the immediate vicinity thereof by persons patronizing said licensed teen dance club; or~~

~~7.— If there repeatedly occurs any violation of Section 9.16.170 of this chapter.~~

~~B.— Any person aggrieved by a suspension, vacation or, denial of a teen dance club license shall be entitled to a review hearing before the city manager prior to the effective date of said suspension or revocation. Notice of an intended suspension or revocation and the reasons therefor shall be sent to the applicant or the applicant's agent, officers or partners at least ten days prior to the intended suspension or revocation period. The notice shall inform the applicant/agent, officer or partner of the applicant's/agent's, officer's or partner's right to a hearing, upon request therefor, prior to the date of suspension or revocation.~~

~~**9.16.170— Teen dance club—Regulations**~~

~~No person conducting or operating a teen dance club shall permit any person, other than an employee, to leave that area of the dance club for which an admission fee is charged and return thereto unless the person pays a readmission fee equal to, or greater than, one half of the original price of the original price of admission.~~

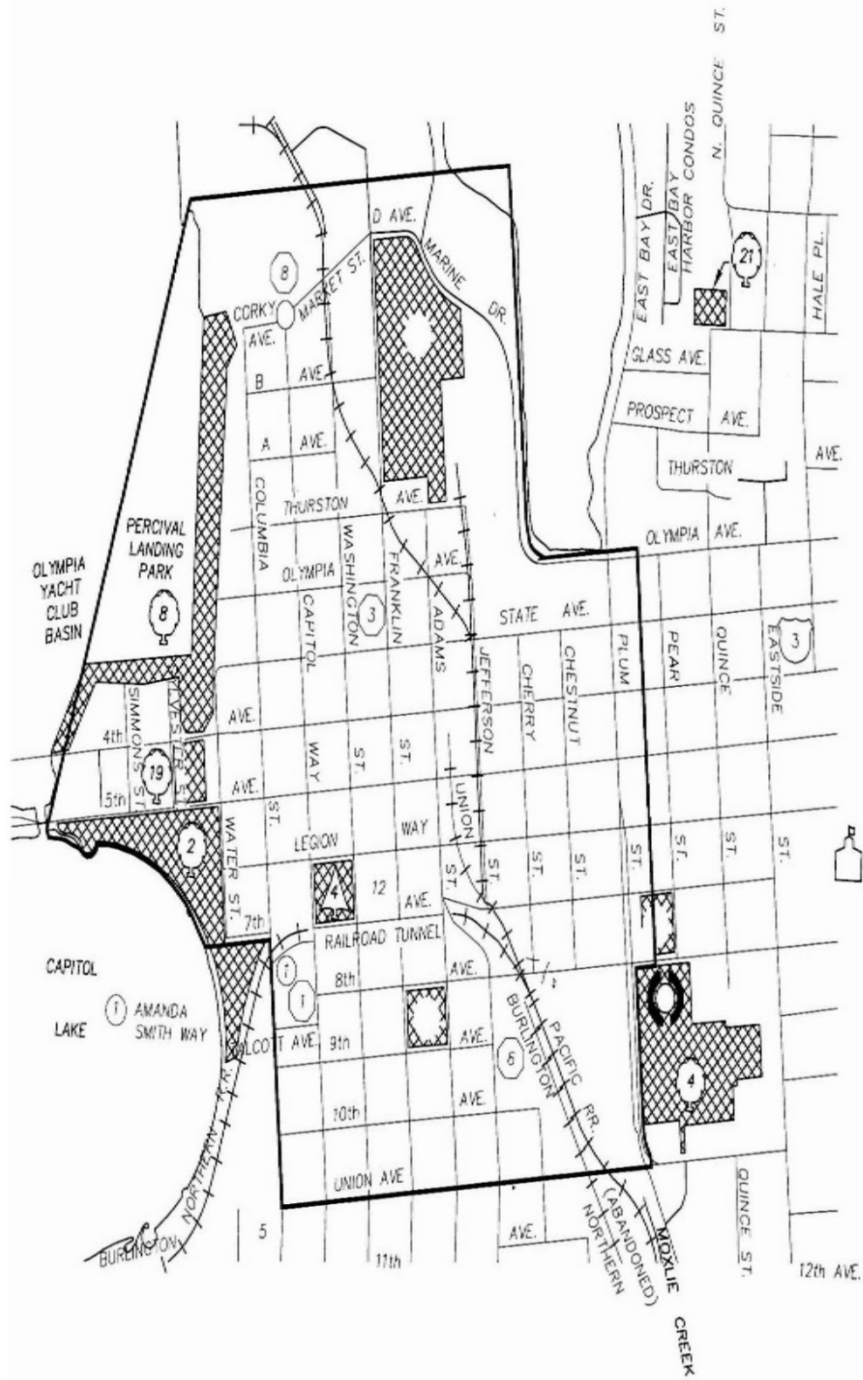
9.16.180 Pedestrian interference

A. A person is guilty of pedestrian interference if, in a public place, the person obstructs pedestrian or vehicular traffic.

B. The following definitions apply in this section:

1. "Downtown Commercial Zone" means the area depicted in Figure 1, attached hereto and incorporated herein, showing the areas within the City of Olympia in which conduct is prohibited under subsections B.2.b and B.2.c of this section.

Figure 1



PROJECT NO.	CITY OF OLYMPIA	DRAWING NAME
DRAWN BAM	PEDESTRIAN INTERFERENCE RESTRICTIONS	DECEMBER 2006
SCALE NTS		

2. "Obstruct pedestrian or vehicular traffic" means to:

- a. In a public place, ~~intentionally~~ knowingly walk, stand, sit, lie, grasp a person, or place an object in such a manner as to obstruct or impede, or tending to obstruct or impede, the free passage of any person or vehicle, or to require another person or a driver of a vehicle to take action to avoid physical contact; or
- b. at any time knowingly vend on any sidewalk, street or alley within the Downtown Commercial Zone as depicted in Figure 1 of this section; or
- c. between the hours of 7 a.m. and 12 a.m., sit or lie on any sidewalk, street or alley within the Downtown Commercial Zone as depicted in Figure 1 of this section. A culpable mental state is not required, and need not be proven, for an offense as defined under this subsection. No person shall be cited under this subsection unless the person engages in conduct prohibited by this subsection after having been notified by a law enforcement officer that the conduct violates this subsection.

3. Affirmative Defenses. It is an affirmative defense under subsections B.2.b and B.2.c, that the defendant must prove by a preponderance of the evidence, that the defendant was:

- (i) Sitting or lying down on a publicly-owned sidewalk or alley due to a medical emergency;
- (ii) Utilizing, as the result of a disability, a wheelchair, walker, or similar device to move about on the publicly-owned sidewalk or alley;
- (iii) Operating or patronizing a commercial establishment conducted on any sidewalk, street or alley pursuant to a street use permit;
- (iv) Vending, sitting or lying down on any sidewalk, street or alley within any portion of the Downtown Commercial Zone where such conduct is approved by the City as part of participation in or attendance at a parade, festival, rally, or demonstration; provided, however, that this defense shall not be available to a defendant refusing to obey a reasonable request or order by a police officer to move to prevent obstruction of a public street, alley, sidewalk or building or entrance or doorway into or out of a building open to the public, or to maintain public safety by dispersing those gathered in dangerous proximity to a fire or hazard;
- (v) Sitting on a chair or bench supplied by a public agency or by the abutting private property owner or lessee for that purpose, pursuant to a temporary street use or other applicable permit or authorization if required;
- (vi) Sitting or standing on a publicly-owned sidewalk within a bus stop zone while waiting for public or private transportation;
- (vii) Waiting in a line to purchase tickets to or attend a performance or public event, or to gain entry to a business adjacent to the publicly-owned sidewalk or alley;

Provided, however, that nothing in any of these affirmative defenses shall be construed to permit any conduct which is prohibited by ~~OMC-9.16.180.B.2.a~~ 9.16.180(b)(2)(a).

4. "Public place" means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks, and streets open to the general public including places that serve food or drink or provide entertainment, in the doorways and entrances to buildings or dwellings and the grounds enclosing them.

5. "Sit or Lie" means to sit or lie directly upon a sidewalk, street, or alley, or to sit or lie down upon any blanket, sleeping bag, bedroll, tarpaulin, cardboard, or any other similar object placed upon the sidewalk, street or alley.

6. "Vend" means to offer for sale, whether orally or through the use of written or printed media, any item of value to another person.

9.16.190 State statutes adopted by reference

The following sections of the Revised Code of Washington, as they appear now or are hereafter amended, are hereby adopted by reference as though fully set forth in this chapter:

RCW 9A.84.010 Criminal mischief

Section 4. Amendment of OMC 9.20.010. Olympia Municipal Code Section 9.20.010 is hereby amended to read as follows:

9.20.010 State statutes adopted by reference.

The following sections of the Revised Code of Washington (RCW), as they appear now or are hereafter amended, are hereby adopted by reference as though fully set forth in this chapter:

RCW 9A.36.070 – Coercion

RCW 9A.36.041 - Assault in the fourth degree

RCW 9A.40.070 – Custodial interference in the second degree

RCW 9A.40.080 – Custodial interference – Assessment of costs – Defense-Consent defense, restricted

RCW 9A.42.035 – Criminal mistreatment in the third degree

RCW 9A.42.037 – Criminal mistreatment in the fourth degree

RCW 9A.42.080 – Abandonment of a dependent person in the third degree – Exception

RCW 9A.42.090 – Abandonment of a dependent person - Defense

RCW 9A.42.110 – Leaving a child in the care of a sex offender

RCW 9A.44.096 – Sexual misconduct with a minor in the second degree

RCW 9A.46.020 – Harassment

RCW 9A.46.030 – Place where committed

RCW 9A.46.040 – Court ordered requirements upon person charged with crime – Violation

RCW 9A.46.050 – Arraignment – No-contact order

RCW 9A.46.080 – Order restricting contact - Violation

RCW 9A.46.110 – Stalking

RCW 9A.86.010 – Disclosing intimate images

RCW 9.61.230 - Telephone harassment

RCW 9.61.240 – Permitting Telephone to be Used

RCW 9.61.250 – Telephone harassment- Offense, where deemed committed

RCW 9.61.260 – Cyberstalking

RCW 9.94A.835 – Special allegation – Sexual motivation – Procedures

Section 5. Amendment of OMC 9.36. Olympia Municipal Code Chapter 9.36 is hereby amended to read as follows:

Chapter 9.36

LIQUOR OFFENSES

9.36.000 Chapter Contents

Sections:

9.36.010 ~~Purpose and interpretation~~ State statutes adopted by reference.

9.36.020 ~~Definitions. Sales to persons apparently under the influence of liquor.~~

9.36.030 ~~Disposition of liquor.~~

9.36.035 ~~Sales to persons apparently under the influence of liquor.~~

9.36.040 ~~General regulations.~~

9.36.050 ~~Frequenting places where liquor unlawfully kept or disposed of.~~

9.36.060 ~~Seized liquor to be turned over to the Board.~~

9.36.070 ~~Prosecution Description of offense.~~

9.36.080 ~~Pleading particulars of offense.~~

9.36.090 ~~Prosecution Proof of sale.~~

9.36.100 ~~Exemptions.~~

9.36.010—Purpose and interpretation

~~This chapter shall be deemed an exercise of the police power of the city, pursuant to RCW 66.08.120, as an aid to the enforcement of the Washington State Liquor Act (Chapter 62, Laws of 1933, Extraordinary Session), RCW Title 66, and all of its provisions shall be liberally construed for the accomplishment of that purpose.~~

9.36.020—Definitions

~~In this chapter, unless the context otherwise requires:~~

~~A. "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by fermentation or distillation of grain, starch, molasses, or sugar or other substances, including dilutions and mixtures of the substance.~~

~~B. "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage, including ale, stout and porter, containing more than four percent of alcohol by weight shall be referred to as "strong beer."~~

~~C. "Board" means the Liquor Control Board, constituted under the Washington State Liquor Act.~~

~~D. "Consumed" includes the putting of liquor to any use, whether drinking or otherwise.~~

~~E. "Dentist" means a practitioner of dentistry, duly and regularly licensed and engaged in the practice of the practitioner's profession within the state pursuant to RCW Chapter 18.32.~~

~~F. "Imprisonment" means confinement in the city jail.~~

~~G. "Liquor" includes the four varieties of liquor defined in this section (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks~~

that are drinkable liquids and all preparations of mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

H.—"Malt liquor" means beer, strong beer, ale, stout, and porter.

I.—"Package" means any container or receptacle used for holding liquor.

J.—"Permit" means a permit for the purchase of liquor under the Washington State Liquor Act.

K.—"Person" means individual, copartnership, association or corporation.

L.—"Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of the medical practitioner's profession within the state pursuant to RCW 18.29.010 and RCW Chapter 18.71.

M.—"Prescription" means a memorandum signed by a physician and given by that physician to a patient for the obtaining of liquor pursuant to the Washington State Liquor Act for medicinal purposes.

N.—"Public place" includes streets and alleys; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

O.—"Regulation" means regulations made by the Board under the Washington State Liquor Act, RCW Title 66.

P.—"Sale" and "sell" includes exchanges, barter, and traffic, and also includes selling or supplying or distributing, by any means whatsoever, liquor, or any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person, and also includes a sale or selling within the state to a foreign consignee or the foreign consignee's agent in the state.

Q.—"Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent alcohol by weight.

R.—"Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural products containing sugar, to which any saccharin substances may have been added before, during or after fermentation, and containing not more than seventeen percent alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent alcohol by weight.

9.36.030—Disposition of liquor

It is unlawful to manufacture, sell, possess, consume, give away, use, procure for another, solicit for, import, transport or otherwise dispose of any liquor except as authorized or permitted by the provisions of RCW Title 66, as amended.

9.36.035—Sales to persons apparently under the influence of liquor

A.—No person shall sell any liquor to any person apparently under the influence of liquor.

B.—A violation of this section is a gross misdemeanor.

9.36.040—General regulations

A.— No window blinds, screens, shades, paint or other obstructions shall be placed or maintained, during open or closed hours, on any window or opening of the salesroom of any licensed premises, preventing a clear, uninterrupted view of the interior of the premises from the street.

B.— No licensee shall conduct an establishment where booths are a part of the equipment unless they are open at one end and are without doors, curtains or other obstructions.

C.— All licensed premises used in the manufacture, storage or sale of liquor shall be at all times open to inspection by any authorized inspector of the Board or peace officer of the city.

D.— Licensed premises must always be equipped with safe drinking water, equipment for proper sterilization of eating and drinking utensils and a method for the sanitary disposal of sewage as provided for in the rules and regulations of the Washington State Board of Health, which are, by reference, made a part of this chapter.

E.— It is unlawful for any person, partnership, firm or corporation within the corporate limits of the city to sell, loan, give or deliver gasoline or other motor vehicle fuel to any person apparently in a state of intoxication.

9.36.050—Frequenting places where liquor unlawfully kept or disposed of

It is unlawful for any person to frequent or be found in any place where intoxicating liquors are being unlawfully kept or disposed of.

9.36.060—Seized liquor to be turned over to the Board

In every case in which liquor is seized by a police officer of the city, it shall be the duty of the chief of police of this city to report in writing to the Board the particulars of such seizure, and to deliver immediately such liquor to the Board at such place as may be designated by it.

9.36.070—Prosecution—Description of offense

The description of any offense under this chapter in the language of this chapter or of the Washington State Liquor Act, or any language of like effect, so far as the same may be applicable shall be sufficient in law, and any exception, provision, excuse for qualification, whether it occurs by way of provision or in the description of the essence in this chapter, or in the Washington State Liquor Act, may be proved by the defendant but need not be specified or negated.

9.36.080—Pleading particulars of offense

In describing any offense respecting the manufacture, sale, possession, consumption, gift, use, procurement for another, solicitation for or other disposal of any liquor, in any complaint, summons, convictions warrant or proceeding under this chapter, it shall be sufficient to state the same without stating the name or kind of such liquor or the price thereof, or to whom it was sold or disposed of, or by whom consumed, or from whom it was purchased or received; and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, kept, given, purchased, or consumed, except in the case of the offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal more or less than such quantity.

9.36.090—Prosecution—Proof of sale

In any proceeding under this chapter, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this chapter.

9.36.100—Exemptions

Nothing in this chapter shall apply to wine or beer manufactured in any home for consumption therein, and not for sale.

9.36.010 State statutes adopted by reference

RCW 66.04.010 - Definitions

RCW 66.04.011 – “Public place” not to include certain parks and picnic areas

RCW 66.04.021 – “Retailer,” “spirits distributor,” and “spirits importer.”

RCW 66.24.481 – Public place or club-License or permit required-Penalty

RCW 66.28.200 – Keg registration-Special endorsement for grocery store licensee-Requirements of seller

RCW 66.28.210 – Keg registration-Requirements of purchaser

RCW 66.28.220 – Keg registration-Identification of containers-Rules-Fees-Sale in violation of rules unlawful

RCW 66.28.230 – Keg registration-Furnishing to minors-Penalties

RCW 66.44.090 – Acting without license

RCW 66.44.250 – Drinking in public conveyance-Penalty against individual-Restricted application

RCW 66.44.290 – Minor purchasing or attempting to purchase liquor-Penalty

RCW 66.44.300 – Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor sold

9.36.020 Sales to persons apparently under the influence of liquor

A. No person shall sell any liquor to any person apparently under the influence of liquor.

B. A violation of this section is a gross misdemeanor.

Section 6. Amendment of OMC 9.40. Olympia Municipal Code Chapter 9.40 is hereby amended to read as follows:

Chapter 9.40

OFFENSES AGAINST PROPERTY

9.40.000 Chapter Contents

Sections:

9.40.010 Definitions.

9.40.020 State statutes adopted by reference.

9.40.040 Receiving stolen property.

9.40.060 Unlawful issuance of bank check.

9.40.070 Criminal impersonation.

9.40.080 Criminal trespass.

9.40.090 Property damage.

9.40.095 Graffiti.

9.40.100 Bill posting and distribution – Commercial advertising.

~~9.40.110 Disposal of litter – Penalty for violation.~~

9.40.115 Unlawful Balloon Releasing.

- 9.40.120 Interfering with utility apparatus or public fountains.
- 9.40.130 Auction sales.
- 9.40.140 False advertising.
- 9.40.150 Reckless Burning.

9.40.010 Definitions

For the purpose of this chapter certain words and terms are defined as follows:

A. "Building" means any structure, vehicle, railway car, aircraft or watercraft used for overnight lodging of persons or for carrying on of business therein.

B. "Credit card" means any instrument or device, whether incomplete, revoked or expired, whether known as a credit card, credit plate, charge plate, courtesy card, or by any other name, issued with or without fee for the use of the cardholder in obtaining money, goods, services or anything else of value, including satisfaction of a debt or the payment of a check drawn by a cardholder, either on credit or in consideration of an undertaking or guaranteed by the issuer.

C. "Damage," for the purpose of ~~Section OMC~~ 9.40.090, in addition to its ordinary meaning, includes cutting, marring, injuring, defacing, spoiling, breaking or destroying any fence, sidewalk, house, building, tree, plant or other property, public or private, within the city, whether real or personal property, by any means, including the attachment of any handbills, posters or newspapers thereto; or without municipal authority, to deface, mutilate, tear down, rearrange, or destroy any signboard, street sign, public notice, poster, or post within the corporate limits of the city. Damage also includes any diminution in the value of property as a consequence of an act.

D. "Deception" occurs when an actor knowingly:

1. Creates or confirms another's false impression which the actor does not believe to be true; or
2. Fails to correct another's false impression which the actor previously has created or confirmed; or
3. Prevents another from acquiring information material to the disposition of the property involved; or
4. Promises performance which the actor does not intend to perform or knows will not be performed; or
5. Uses a credit card without authorization or which the actor knows to be stolen, forged, revoked or canceled.

E. "Obtained" means:

1. In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or
2. In relation to labor or service, to secure performance thereof for the benefit of the obtainer or another.

F. "Owner" means a person, other than the actor, who has possession of or any other interest in the property involved, and without whose consent the actor has no authority to exert control over the property.

G. "Service" includes but is not limited to labor, professional service, transportation service, the supplying of hotel or motel accommodations, restaurant services, entertainment, the supplying of

equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water.

H. "Stolen" means property obtained by theft, robbery, or extortion.

I. "Wrongfully obtains" or "exerts unauthorized control" means to take the property or services of another and includes but is not necessarily limited to conduct known as "common law larceny."

9.40.020 State statutes adopted by reference

The following sections of the Revised Code of Washington (RCW), as they appear now or are hereafter amended, are hereby adopted by reference as though fully set forth in this chapter:

RCW 9A.48.090 – Malicious Mischief in the Third Degree

RCW 9A.52.100 – Vehicle Prowling in the Second Degree

RCW 9A.56.050 – Theft in the Third Degree

RCW 9A.56.170 – Possessing Stolen Property in the Third Degree

RCW 9A.56.330 – Possession of Another’s Identification

~~RCW 9A.48.090 – Malicious Mischief in the Third Degree~~

RCW 9A.90.050 – Computer Trespass in the Second Degree

RCW 9A.90.070 - Spoofing

RCW 9A.90.090 – Electronic Data Tampering in the Second Degree

RCW 70A.200.060 – Littering Prohibited – Penalties – Litter Cleanup Restitution Payment

9.40.040 Receiving stolen property

A. A person is guilty of theft if the person receives, possesses, retains or disposes of property of another, having value of two hundred fifty dollars or less, knowing that it has been stolen or consciously disregarding a substantial risk that it has been stolen, unless the property is received, retained or disposed of with purpose to restore to the owner.

B. The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of receiving stolen property.

C. Receiving stolen property is a gross misdemeanor.

9.40.060 Unlawful issuance of bank check

A. Any person who, with intent to defraud, makes, or draws, or utters or delivers any check, draft or order for the payment of money in an amount of two hundred fifty dollars or less upon any bank or other depository, knowing at the time of such drawing or delivery that the maker or drawer has not sufficient funds in, or credit with such bank or depository, in full upon its presentation, is guilty of unlawful issuance of a bank check. The word "credit" as used in this section shall be construed to mean an arrangement or understanding with the bank for the payment of such check or draft or order. The uttering or delivery of such a check, draft or order to another person, firm or corporation without such funds or credit to meet the same shall be prima facie evidence of an intent to defraud.

B. Unlawful issuance of a bank check is a gross misdemeanor.

9.40.070 Criminal impersonation

A person is guilty of criminal impersonation if the person:

- A. Assumes a false identity and does an act in the person's assumed character with the intent to defraud another or for any other unlawful purpose; or
- B. Pretends to be a representative of some person or organization and does an act in the person's pretended capacity with the intent to defraud another or for some other unlawful purpose.

9.40.080 Criminal trespass

- A. A person is guilty of criminal trespass if the person knowingly enters or remains unlawfully in or upon the premises of another.
- B. "Enter or remain unlawfully" means an unlicensed, uninvited or otherwise unprivileged entry into or remaining in or upon premises. A license or privilege to enter or remain in public premises which are only partly open to the public is not a license or privilege to enter or remain in that part of the premises which are not open to the public.
- C. In any prosecution under this section, it is an affirmative defense that:
 - 1. The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed that actor to enter or remain; or
 - 2. The actor was attempting to serve legal process, which includes any document required or allowed to be served upon persons or property by any statute, ordinance, governmental rule or regulation, or court order, excluding delivery by the mails of the United States. This defense is available only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process.
- D. If the court finds that the accused committed criminal trespass pursuant to the provisions of this section and if the court receives sufficient evidence that the acts committed leading to that finding were intentionally targeted against the victim or victims in substantial part because of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or the victim's or victims' mental, physical or sensory disability, or the accused's perception thereof, the court shall impose a minimum fine of not less than five hundred dollars and a minimum jail sentence of not less than five days for each such offense. Neither the mandatory minimum jail sentence nor the mandatory minimum fine shall be suspended or deferred, nor shall the jail sentence be served by alternative means.
- E. Any person convicted under this section where the court receives sufficient evidence that the person's acts were targeted as described in subsection (D) above shall be guilty of a gross misdemeanor.

9.40.090 Property damage

- A. A person is guilty of property damage if the person intentionally causes physical damage to the property of another.
- B. If the court finds that the accused committed criminal trespass pursuant to the provisions of this section and if the court receives sufficient evidence that the acts committed leading to that finding were intentionally targeted against the victim or victims in substantial part because of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or the victim's or victims' mental, physical or sensory disability, or the accused's perception thereof, the court shall impose a minimum fine of not less than five hundred dollars and a minimum jail sentence of not less than five days for each such offense. Neither the mandatory minimum jail sentence nor the mandatory minimum fine shall be suspended or deferred, nor shall the jail sentence be served by alternative means.
- C. Any person convicted under this section where the court receives sufficient evidence that the person's acts were targeted as described in subsection (B) above shall be guilty of a gross misdemeanor.

D. "Physical damage," in addition to its ordinary meaning, includes the total or partial alteration, damage, obliteration or erasure of records, information, data, computer programs or their computer representation, which are recorded for use in computers or the impairment, interruption or interference with the use of such records, information, data or computer programs; or the impairment, interruption or interference with the use of any computer or services provided by computers. "Physical damage" also includes any diminution in the value of any property, real or personal, as a consequence of an act.

E. Property damage is a gross misdemeanor punishable as described in OMC 9.64.010.

9.40.095 Graffiti

A. A person is guilty of graffiti if the person intentionally writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person.

B. Subsection (A) of this section shall not apply to any person who has permission from the owner, operator or custodian of the property.

C. Graffiti is a gross misdemeanor punishable as described in OMC 9.64.010.

9.40.100 Bill posting and distribution –Commercial advertising

It is unlawful for any person to post or attach any bills, handbills, posters, newspapers or other papers of a purely commercial advertising nature on any post, fence, tree, building or other structure, except upon billboards or other structures erected for that purpose. It is further unlawful to hand out, distribute, or scatter any such commercial advertising upon the streets, alleys or other public places of the city, or to throw them in the yards of the city, or to place them in or upon automobiles without the consent of the owner.

~~9.40.110 Disposal of litter –Penalty for violation~~

~~No person shall throw, drop, deposit, discard, or otherwise dispose of litter, as that term is defined in RCW 70.93.030 (4), upon any public property within the city or upon private property within the city not owned by that person or in the waters of the city whether from a vehicle or otherwise, including but not limited to any sidewalk, street, alley, highway or park, except:~~

~~A. When such property is designated by the city for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose;~~

~~B. Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters;~~

~~C. Any person violating any provisions of this section is guilty of a misdemeanor and the fine or bail forfeiture for such violation shall not be less than ten dollars for each offense, and, in addition thereto, in the sound discretion of the judge, such person may be directed by the judge to pick up and remove from any public place or private property, with prior permission of the legal owner, upon which it is established by competent evidence that such person has deposited litter.~~

9.40.115 Unlawful Balloon Releasing

It is unlawful to intentionally release or cause to be released any balloon, with or without attachments, any part of which balloon or its attachments are made from a non-biodegradable material, and which balloon is filled with a lighter-than-air gas. Anyone convicted of this misdemeanor shall be punished by a fine of no more than \$100.

9.40.120 Interfering with utility apparatus or public fountains

A. It is unlawful for any person to cut, alter, change, remove, disconnect or connect with, or in any manner interfere, meddle or tamper with any water main, pipe, stopcock on a meter hydrant, pump or conduit, or any gas pipe, main or meter, or any electrical wire, cable or conduit owned or used by the city

or by any private owner, without the permission or consent of the proper city officials or of the private owner or owners.

B. It is unlawful to obstruct, divert, hinder, tamper with, pollute, or interfere with any public spring or fountain within the city.

9.40.130 Auction sales

A. Record of Facts. In addition to the requirements of RCW-Chapter 18.12 RCW, before an auction sale is held within the city, the auctioneer or the owner of the merchandise to be sold shall provide the city clerk-treasurer a full and complete record in ink of the following facts concerning such property:

1. A description of each and every article of goods, wares and merchandise to be sold;
2. The name and the address of the owner of such property, together with the name and residence of the person, firm or corporation from whom such property was purchased;
3. As and when such property is sold at auction, a complete and detailed list shall be kept showing the date, article, and price paid for such article, and to whom it was sold;
4. Such records shall be kept at the place of business of any auctioneer conducting a sale within the city for a period of at least two years after the date of holding such sale, and shall be subject to inspection by the police of the city.

B. False Representation Unlawful. No auctioneer shall make any false representation, or permit to be made any false representation over the auctioneer's name or by those within the auctioneer's employ, as to the character, condition, value, or present or previous ownership of any property offered for sale, nor substitute any other article for an article sold, nor make any false statement as to the name and amount for which any article is sold, and shall not permit any person to act as the auctioneer's accomplice or capper for the purpose of making mock bids at any auction.

C. Time Limit. All auction sales shall close not more than ten days from the date of the beginning of such sale, and no auction shall be held by any merchant more often than once a year within the city.

D. Exceptions. The provisions of this section shall not apply to auctions of real estate, livestock, perishable fruits and produce, nor to the auction of a complete stock as a whole, nor to sales by judicial officers or by public officers held in the manner prescribed by law, nor to sales of used household furniture and effects, nor to sales by an executor, administrator, or guardian.

E. Notice that Purchases may be Returned. With regard to the sale of jewelry or appliances as those terms are defined in RCW 18.12.010, the auctioneer shall cause to be displayed in a prominent place on the premises where the auction is being conducted a notice allowing the return of an item in the same condition as when purchased, for the amount paid, if returned within ~~forty-eight~~ 48 hours from the time of purchase. The notice shall be of sufficient size as to be readily discernible by the bidders.

9.40.140 False advertising

A. The publishing, circulating or placing before the public, or causing directly or indirectly to be made, published or circulated, or placed before the public in the city, in a newspaper, handbill, poster, circular, pamphlet, or other notice or publication, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertising contains any assertion, representation, or statement of fact which is untrue, deceptive or misleading, with the intent to increase the consumption of, or to induce the public in any manner to enter into any obligation relating to, or to acquire any interest or title in such merchandise, securities or services shall be considered false advertising.

B. It is unlawful for any person, firm or corporation to do or carry on, or to permit to be done or carried on, any false advertising in the city; provided, however, that this shall not apply to the owner or publisher

of a newspaper publishing such advertisements in good faith and without knowledge of the falsity thereof.

9.40.150 Reckless Burning

A. A person is guilty of reckless burning if the person knowingly causes a fire or explosion, whether on the person's own property or that of another, and thereby recklessly places a building or other structure, or any other property, in danger of destruction or damage.

B. Reckless burning is a gross misdemeanor.

Section 7. Amendment of OMC 9.44. Olympia Municipal Code Chapter 9.44 is hereby amended to read as follows:

Chapter 9.44

OFFENSES BY OR AGAINST JUVENILES

9.44.000 Chapter Contents

Sections:

- 9.44.010 Definitions.
- 9.44.020 Offenses in taverns.
- 9.44.030 Person under twenty-one prohibited where intoxicants are served.
- 9.44.040 State statutes adopted by reference.
- 9.44.050 False identification to obtain liquor.
- 9.44.060 Firearms.
- 9.44.070 Tobacco to minor.
- 9.44.080 Assault of a child in the fourth degree.

9.44.010 Definitions

For the purpose of this chapter, certain words and terms are defined as follows:

- A. "Liquor" means liquor as defined in the Washington State Liquor Act (RCW 66.040.010(16)).
- B. "Minor" means any person less than eighteen years of age, unless otherwise specifically designated.
- C. "Tavern" means any establishment with special space and accommodations for sale by the glass, and for consumption on the premises, of beer; except, that bona fide restaurants, dining rooms and cafes serving commercial food to the public shall not be classified as a tavern during the hours such food service is made available to the public.

9.44.020 Offenses in taverns

It is unlawful for any person, firm or corporation within the city:

- A. To serve or to allow to remain on the premises in a tavern any person under ~~twenty-one~~ 21;
- B. For any person under ~~twenty-one~~ 21 to enter or remain on the premises of any tavern.

9.44.030 Person under ~~twenty-one~~ 21 prohibited where intoxicants are served

A. It is unlawful for any person having charge of a public place in the city where intoxicating liquors are served to admit or to allow any person under ~~twenty-one~~ 21 to remain on the premises contrary to the laws of the state.

B. It is unlawful for any person under the age of ~~twenty-one~~ 21 to enter or remain in any public place where intoxicants are served.

9.44.040 State statutes adopted by reference

The following sections of the Revised Code of Washington (RCW), as it appears now or is hereafter amended, is hereby adopted by reference as though fully set forth in this chapter:

RCW 9.68A.090 – Communication with minor for immoral purposes-Penalties

RCW 66.44.270- Furnishing Liquor to Minors - Possession, use – Penalties –
Exhibition of effects – Exceptions

9.44.050 False identification to obtain liquor

It is unlawful for anyone knowingly to transfer any identification of age to a person under the age of twenty-one years for the purpose of permitting such person to obtain liquor, or for such person to use such identification or make false representation as to the person’s age for the purpose of obtaining liquor or gaining admittance to a tavern.

9.44.060 Firearms

A. It is unlawful for anyone to sell, give, furnish or cause to be furnished, or permit to be sold, given, furnished or cause to be furnished to a minor a pistol, rifle, shotgun or similar firearm, or any ammunition for the same.

B. It is unlawful for a minor to purchase, possess, or use any firearm or any ammunition for the same.

C. In any prosecution under this section, it is an affirmative defense that the firearm is being used or is about to be used immediately at a rifle range or that such minor is to immediately embark on a lawful animal hunt and such minor possesses a lawful hunting license and is accompanied by a person over the age of eighteen years.

9.44.070 Tobacco to minor

It is unlawful for any person to sell, give, furnish or cause to be furnished to any minor any cigarette, cigar or tobacco in any form, or for a minor to possess same.

9.44.080 Assault of a child in the fourth degree

A. A person eighteen years of age or older is guilty of the crime of assault of a child in the fourth degree if the child is under the age of thirteen and the person commits the crime of assault in the fourth degree as defined in RCW 9A.36.041(1) against the child.

B. Assault of a child in the fourth degree is a gross misdemeanor.

Section 8. Amendment of OMC 9.48.170. Olympia Municipal Code Section 9.48.170 is hereby amended to read as follows:

Chapter 9.48 - WEAPONS AND FIREWORKS

9.48.170 State statutes adopted by reference

The following sections of the Revised Code of Washington (RCW) - Chapters 7.94 and 9.41, as now or hereafter amended, relating to firearms and dangerous weapons, defining crimes and prescribing penalties, are hereby adopted by reference as though fully set forth in this chapter:

RCW 7.94

7.94.120

RCW 9.41

9.41.010

9.41.050

9.41.060

9.41.070

9.41.075

9.41.090

9.41.094

9.41.0975

9.41.098

9.41.110

9.41.120

9.41.140

9.41.230

9.41.240

9.41.250

9.41.260

9.41.270

9.41.280

9.41.300

9.41.800

9.41.810

RCW 7.105.460 – Enforcement and penalties-Extreme risk protection orders-False petitionsRCW 9.41.010 – Terms definedRCW 9.41.050 – Carrying firearmsRCW 9.41.060 – Exceptions to restrictions on carrying firearmsRCW 9.41.070 – Concealed pistol license-Application-Fee-RenewalRCW 9.41.075 – Concealed pistol license-RevocationRCW 9.41.090 – Dealer deliveries regulated-Hold on delivery-Fees authorizedRCW 9.41.094 – Waiver of confidentialityRCW 9.41.0975 – Officials and agencies-Immunity, writ of mandamusRCW 9.41.098 – Forfeiture of firearms-Disposition-ConfiscationRCW 9.41.110 – Dealer’s licenses, by whom granted, conditions, fees-Employees, fingerprinting and background checks-Wholesale sales excepted-Permits prohibitedRCW 9.41.120 – Firearms as loan securityRCW 9.41.140 – Alteration of identifying marks-ExceptionsRCW 9.41.230 – Aiming or discharging firearms, dangerous weaponsRCW 9.41.240 – Possession of pistol or semiautomatic assault rifle by person from eighteen to twenty-oneRCW 9.41.250 – Dangerous weapons-PenaltyRCW 9.41.260 – Dangerous exhibitionsRCW 9.41.270 – Weapons apparently capable of producing bodily harm-Unlawful carrying or handling-Penalty-ExceptionsRCW 9.41.280 – Possessing dangerous weapons on school facilities-Penalty-ExceptionsRCW 9.41.300 – Weapons prohibited in certain places-Local laws and ordinances-Exceptions-PenaltyRCW 9.41.305 – Open carry of weapons prohibited on state capitol grounds and municipal buildingsRCW 9.41.800 – Surrender of weapons or licenses-Prohibition on future possession or licensing

RCW 9.41.810 - Penalty

RCW 9A.49.010 - Definitions

RCW 9A.49.020 – Unlawful discharge of a laser in the first degree

RCW 9A.49.030 – Unlawful discharge of a laser in the second degree

RCW 77.15.460 – Loaded rifle or shotgun in vehicle-Unlawful use or possession-Unlawful use of a loaded firearm-Penalty

Section 9. Amendment of OMC 9.62. Olympia Municipal Code Chapter 9.62 is hereby amended to read as follows:

Chapter 9.62

DOMESTIC VIOLENCE AND PROTECTION ORDERS

9.62.000 Chapter Contents

Sections:

9.62.010 State statutes adopted by reference.

9.62.020 Violation of protective order.

9.62.025 Definitions.

9.62.030 Domestic Violence in the presence of children - Penalty.

9.62.040 Domestic Violence in the presence of children.

9.62.010 State statutes adopted by reference

The following sections of the Revised Code of Washington, as they appear now or are hereafter amended, are hereby adopted by reference as though fully set forth in this chapter:

~~RCW 26.50.010 – Definitions~~

~~RCW 26.50.110 – Violation of order – Penalties~~

RCW 7.105.010 – Definitions

RCW 7.105.450 – Enforcement and penalties-Other than antiharassment protection orders and extreme risk protection orders

RCW 7.105.455 – Antiharassment protection orders

RCW 10.99.010 – Purpose – Intent

RCW 10.99.020 – Definitions

RCW 10.99.030 – Law enforcement officers – Training, powers, duties – Domestic violence reports

RCW 10.99.040 – Duties of court – No-contact order

RCW 10.99.045 – Appearances by defendant – Defendant’s history – No-contact order

RCW 10.99.050 – Victim contact – Restriction, prohibition – Violation, penalties – Written order – Procedures – Notice of change

RCW 10.99.055 – Enforcement of orders

RCW 10.99.060 – Prosecutor’s notice to victim – Description of available procedures

- RCW 10.99.070 – Liability of peace officers
- RCW 10.99.080 – Penalty assessment (as amended by 2015 c 265)
- RCW 10.99.080 – Penalty assessment (as amended by 2015 c 275)
- RCW 10.99.090 – Policy adoption and implementation
- RCW 10.99.100 – Sentencing – Factors – Defendant’s criminal history
- RCW 10.99.901 – Construction – Chapter applicable to state registered domestic partnerships

9.62.020 Violation of protective order

- A. A person is guilty of Violation of Protective Order if the person knowingly violates an order of protection or order of restraint issued by any court.
- B. Violation of Protective Order is a gross misdemeanor.

9.62.025 Definitions

- A. “Child” or “children” as used in this section means any person under 18 years of age.
- B. “In the presence of” as used in this section means being in the immediate vicinity of or in close proximity to the criminal acts.

9.62.030 Domestic Violence in the presence of children - Penalty

- A. If the Olympia Municipal Court finds that the accused committed any crime under Title 9 of the Olympia Municipal Code OMC and the Court receives sufficient evidence that the crime was committed against a family or household member or intimate partner, as defined in RCW ~~10.99.020~~ 7.105.010, and that the crime was committed in the presence of a child or children, the Court shall impose a minimum fine of not less than ~~Five Hundred Dollars and no/100~~ (\$500.00) and a minimum jail sentence of not less than ~~five~~ (5) days for each such offense. Neither the mandatory minimum jail sentence nor the mandatory minimum fine shall be suspended or deferred, nor shall the jail sentence be served by alternative means.
- B. ~~“Child” or “children” as used in this section means any person under eighteen years of age.~~
- C. ~~“In the presence of” as used in this section means being in the immediate vicinity of or in close proximity to the criminal acts.~~
- D. ~~Any person convicted of a crime under Title 9 of the Olympia Municipal Code and if the acts leading up to such conviction were, pursuant to this ordinance, committed in the presence of a child or children shall be guilty of a misdemeanor.~~

9.62.040 Domestic Violence in the presence of children

Any person convicted of a crime of domestic violence, as defined in RCW 10.99.020, under Title 9 OMC and if the acts leading up to such conviction were, pursuant to this ordinance, committed in the presence of a child or children shall be guilty of a misdemeanor.

Section 10. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 11. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 12. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 13. Effective Date. This Ordinance shall take effect thirty (30) days after passage and publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber
CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of the 2022 Percival Plinth Project Peoples' Choice Award

Agenda Date: 8/23/2022
Agenda Item Number: 6.A
File Number: 22-0785

Type: recommendation **Version:** 1 **Status:** Other Business

Title

Approval of the 2022 Percival Plinth Project Peoples' Choice Award

Recommended Action

Committee Recommendation:

The Arts Commission recommends approving the purchase of "Salmon Romance" by Pat McVay and "Underwater Disagreement" by Eileen Lagasse as determined by public vote.

City Manager Recommendation:

Move to approve the purchase of "Salmon Romance" by Pat McVay and "Underwater Disagreement" by Eileen Lagasse as determined by public vote.

Report

Issue:

Whether to approve the purchase of "Salmon Romance" by Pat McVay and "Underwater Disagreement" by Eileen Lagasse as determined by public vote.

Staff Contact:

Angel Nava, Arts Program Specialist, Parks, Arts and Recreation, 360.753.8384

Presenter(s):

Angel Nava, Arts Program Specialist, Parks, Arts and Recreation
Jim Burlingame, Chair, Olympia Arts Commission

Background and Analysis:

Annually, the first month of the Percival Plinth Project loaned sculpture exhibition is dedicated to a public vote to determine the winner of the Peoples' Choice Award, which is a purchase prize. The vote took place the month of July, through the City platform Engage Olympia.

On August 11, 2022 Mrs. Nava shared the results of the 2022 Percival Plinth Project Peoples' Choice vote with the Arts Commission. 522 votes were received, a 30% increase from 2021, and *for the first time in the project's twelve-year history, there was a tie.*

With each receiving 80 votes, both “Salmon Romance” by Pat McVay and “Underwater Disagreement” by Eileen Lagasse tied for first place in the public vote.

Commissioners deliberated ways to resolve the tie, including a re-vote among the two winners and making a recommendation to Council of just one sculpture. Staff noted there were sufficient funds in the Municipal Art Fund to purchase both pieces. Without a process in place for the occasion of a tie, Commissioners determined to support the results of the public vote by recommending purchase of both sculptures receiving top votes, and will revisit the process before the next installation of the Percival Plinth Project.

Of the sculpture “Salmon Romance,” the artist notes:

I want to show the amazing energy of these creatures who return to their birthplace to create a new generation. This complex sculpture is carved from a single block of salvaged cedar.

Of the sculpture “Underwater Disagreement,” the artist notes:

Two unrelated projects have become a battle royal in the deep titled “Underwater Disagreement”

Comments submitted by the public with their vote for “Salmon Romance” included:

- “It is fitting for our community and its history with the salmon, but also, it is dynamic and gives a sense of motion, history, and interconnectedness.”
- “Incredible height and presence - every angle was striking. The silver wash made the fish look iridescent - very cool!”
- “Returning salmon is an important piece of our ancestral tribal culture and continues to be celebrated today. Salmon is life.”

Comments submitted by the public with their vote for “Salmon Romance” included:

- “I think it’s a very detailed and clever piece, the use of recycled material is very intriguing and creative. There is clearly a lot of effort put into the sculpture, and it showcases the artistic aspect of Olympia in an incredible way.”
- “The piece reminds me of the things we don’t see but know are there. When you see this sculpture by the bay, you are reminded that there is more beneath the surface of your view. Which is kind of a metaphor. Also the piece is just visually interesting!”
- “I like everything about this piece. The artist did a great job capturing an undersea battle, and I look forward to seeing more of her work!”

Neighborhood/Community Interests (if known):

Public input is solicited through banners, press releases and an online vote.

Options:

1. Approve purchase of “Salmon Romance” by Pat McVay and “Underwater Disagreement” by Eileen Lagasse as winners of the 2022 Percival Plinth People’s Choice vote.
2. Do not approve purchase of “Salmon Romance” by Pat McVay and “Underwater Disagreement” by Eileen Lagasse, and direct the Arts Commission to revisit the recommendation.
3. Make another decision.

Type: recommendation **Version:** 1 **Status:** Other Business

Financial Impact:

\$15,325 From the Municipal Art Fund

Attachments:

“Salmon Romance” by Pat McVay

“Underwater Disagreement” by Eileen Lagasse







City Council

2022 Police Auditor Mid-Year Report Briefing

Agenda Date: 8/23/2022
Agenda Item Number: 6.B
File Number: 22-0792

Type: information **Version:** 1 **Status:** Other Business

Title

2022 Police Auditor Mid-Year Report Briefing

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Receive a briefing on the 2022 Police Auditor Mid-Year Report.

Report

Issue:

Whether to receive a briefing on the 2022 Police Auditor Mid-Year Report.

Staff Contact:

Debbie Sullivan, Assistant City Manager, 360.753.8499

Presenter(s):

Tara Parker, Police Auditor, Clarity Investigations and Consulting, PLLC

Background and Analysis:

The purpose of the Police Auditor is to increase public trust and confidence in the police department and its' professional standards, internal investigations, complaint processes, and responses to public demonstrations and crowd management. Tara Parker of Clarity Investigations and Consulting, PLLC serves as the Civilian Police Auditor for the City Council.

The Police Auditor will present the 2022 Mid-Year Report to the City Council which covers incidents between January 1 and June 30, 2022. The Mid-Year Report includes: the number and types of use of force reports that have been audited; the number and types of complaint investigations recorded by the Office of Professional Standards that have been audited; findings; observations; corrective actions; and recommendations for improvements to Department policies and practices.

The Community Livability and Public Safety Committee has received monthly status reports that summarize the use of force reports, complaints, and crowd management operational plan and after-event reports audited by the Police Auditor. These reports along with the 2022 Mid-Year Report are

available on the City's website.

Neighborhood/Community Interests (if known):

The community is interested in improving transparency and accountability by using a Civilian Police Auditor to provide an independent review of investigations and complaints against the Olympia Police Department.

Options:

1. Receive a briefing from the Police Auditor on the 2022 Mid-Year Report.
2. Do not receive a briefing from the Police Auditor on the 2022 Mid-Year Report and schedule for a future meeting.

Financial Impact:

Council appropriated a \$100,000 to cover Police Auditor Services in 2022.

Attachments:

2022 Civilian Police Auditor Mid-Year Report

POLICE AUDITOR MID-YEAR REPORT

VIA EMAIL ONLY

DATE: August 15, 2022

TO: Olympia City Council
cc City of Olympia City Manager and Chief of Police

FROM: Tara L. Parker, Police Auditor

RE: Police Auditor Mid-Year Report re January 1 - June 30, 2022

I. Executive Summary

Between January 1 and June 30, 2022, the Olympia City Council Police Auditor reviewed 35 incidents involving the use of force by members of the Olympia Police Department (OPD), and two incidents involving the use of force by the City of Olympia Jail staff. All of those matters were audited and found to be thorough, objective, free of bias, and consistent with OPD policies.

The Auditor also reviewed the investigation files of twelve misconduct complaints against OPD employees. One investigation of allegations of serious misconduct was generated by the Department and, after the Department sustained the allegations, the officer resigned in lieu of termination. A second investigation was reported by the officer who was accused of wrongdoing during an incident and the Department found no misconduct. The ten complaints that were initiated by community members alleged service level (discourteous or unprofessional) misconduct and none were sustained. All of those investigations were audited and found to be thorough, objective, free of bias, and consistent with OPD policies.

The Auditor also reviewed five Crowd Management Operational Plans and After-Action reports related to public demonstrations related to a broad range of ideological views. The Auditor found that they were all consistent with the Department's Guiding Principles for Demonstrations and Crowd Management and there was not any indication of differing plans or responses by the OPD.

Additionally, the Auditor found that the OPD's trainings regarding First Amendment rights and Crowd Management practices were thorough, unbiased, and consistent with Department policies and best practices.

Finally, the Auditor makes two recommendations: First, the Auditor recommends that the Department develop a new way for officers to report incidents where there was a potential appearance of force, but no actual use of force. The current practice of reporting those incidents as "Use of Force" incidents creates inaccurate records and artificially boosts the Department's Use of Force numbers. And second, the Auditor recommends that the Department collaborate with the Auditor to establish protocols for analyzing BWC data to ensure that reviews of that data are consistent, fair, and unbiased.

II. Background

The purpose of employing the Police Auditor is to increase public trust and confidence in the Police Department by providing an independent review and audit of the Police Department's uses of force and its internal investigations regarding complaints against the Olympia Police Department or its employees. On November 2, 2020, the Olympia City Council selected the law firm of Ogden Murphy Wallace, PLLC, and specifically, attorney Tara Parker, to serve as its Police Auditor in 2021. In July 2022, Ms. Parker founded Clarity Investigations and Consulting, PLLC, and the City Council voted to contract with Ms. Parker to continue serving as the Police Auditor. In its 2022 contract, the City Council expanded the Police Auditor's duties and responsibilities to include examining uses of force, complaint investigations, and public demonstration responses for indicia of unlawful bias and civil rights violations. The full scope of the Police Auditor's duties and responsibilities are as follows:

The Civilian Police Auditor will be responsible for the following:

1. Review of police professional standards investigations relating to complaints about the Police Department or its employees to determine if the investigations meet Department standards and are complete, thorough, objective, and fair.
2. Review of all uses of force, complaints, and internal investigations as defined in Olympia Police Department General Orders to determine if they are

consistent with Police Department policies, without indication of unlawful bias, protect civil rights, and are in alignment with best practices.

3. Provide an impartial review of the Police Department's internal investigative process and verification of the Department's compliance with established policy and procedures.

4. Provide an impartial review of the Department's responses to public demonstrations and crowd management when events result in physical injury, extensive property damage, or is determined by the City Manager to be appropriate for review by the Police Auditor to determine if the response was in alignment with the Police Department's applicable General Orders and Guiding Principles for Demonstrations and Crowd Management.

5. Review and recommend revisions to Police Department policies, procedures, and training related to complaints, use of force, and the internal investigative process based on audit findings. Revisions will be in alignment with best practices regarding diversity, equity, and inclusion, while ensuring public safety and protection of First Amendment and other constitutional rights.

6. Filing a mid-year and annual written report to the City Council, with a copy to the City Manager and Police Chief. The Auditor's report shall not contain the names of employees, complainants, or witnesses; and will include:

- Summary of use of force statistics, including but not limited to:
 - Types of use of force used
 - Subject Demographics
 - Indications of bias
 - Whether the use of force led to serious injury
- A finding on each complaint and internal investigation audited indicating either:
 - That the Department's internal investigation met the Department's standards and established investigative best practices; or
 - After response to a request for further investigation, the case failed to meet the above standards, and reasons supporting such finding.
- A summary of the complaints and internal investigations audited, including:
 - Date complaint received
 - Classification
 - General Description
 - Investigative Findings

- Corrective Actions
- Police Auditor Findings
- When additional complaint investigations were requested and OPD's
- Responses
- Findings on each complaint case audited
- Summaries of data in graphic and narrative form
- Analysis of key trends and patterns
- Recommendations for revisions to policy, procedures, and training
- A list of the updated policies, procedures and trainings related to the Police Auditor Scope of Work

7. The Police Auditor will present the mid-year and annual reports at a City Council meeting.

III. Methodology

The Police Auditor receives weekly reports from the Office of Professional Standards. Each report contains the following information:

- All new use of force checklists entered into Record Management System, which includes several data points and documents:
 - Race, sex, age of subjects
 - Name, rank, race, and sex of officers
 - Officer's years of service
 - Reasons for initial contact between subjects and officers
 - Whether any minors were present at the scene
 - The number of officers and suspects present when force was used
 - Type of force used
 - De-escalation efforts
 - Injuries and medical treatments
 - Weapons used by subjects or officers
 - Influence of drugs, alcohol, or mental illness
 - Arrests or charges
 - Witness statements
 - Photos
 - Videos
 - Associated case reports
 - Other documentary evidence
- Immediate Supervisor review reports and determinations
- Management review reports and determinations
- Defensive Tactics Use of Force Team reviews and training points, when applicable

- Information regarding all internal and external complaints regarding OPD Officers
 - Complaint
 - Classification
 - Investigation details and findings
 - Learning and resolution
- All Crowd Management Operational Plans and after-action reports regarding public demonstrations.

The Police Auditor's process includes:

- Tracking all data listed above;
- Seeking additional information when necessary;
- Consulting with the Chief of Police and the Professional Standards Lieutenant regarding observations, policies, practices, and departmental developments;
- Examining the data for trends;
- Reviewing all files to determine
 - Completeness
 - Thoroughness
 - Objectiveness
 - Fairness
 - Indicia of Bias
- Examining Department practices for compliance with OPD policies; and
- Noting areas that may be improved by procedural or policy changes.

IV. Policies Regarding Complaints

Complaints about members of the Olympia Police Department can be received in many ways including in-person, by telephone, by written documents, and by email. Complaints can also be filed via the complaint form on the city's website. All complaints must be thoroughly and fairly investigated in accordance with the standards set forth in OPD Policy 1010.

Complaints are sorted into one of two categories:

- **Serious Misconduct** complaints include allegations of excessive use of force and civil rights violations. Complaints in this category are assigned to a department manager to investigate. These investigations are also reviewed by legal counsel when they are completed.
- **Service Level** complaints include allegations of rudeness, poor work performance and minor policy violations. Service Level complaints are generally assigned to first line supervisors to investigate and address.

Internal Affairs investigation reports must include the following information:

- A. The date of the incident;
- B. The name of the employee(s) involved;
- C. The date the case was assigned;
- D. The names and contact information for the complainants or affected individuals in the complaint;
- E. A written report containing:
 1. A concise but complete synopsis of the allegations;
 2. A narrative presenting the details of the investigation, including a chronological summary of the investigation, witness interviews, etc.;
 3. The findings of fact - including, by numerical listing, a summary of the findings of fact, including citation of any violations of policy and/or law involved;
 4. An investigator's log showing the dates and times of contacts and other key actions related to the investigation.
- F. Appendices containing:
 1. Transcripts of interviews with the complainant(s) and key witnesses;
 2. Letters and written statements from employees, community members, and witnesses;
 3. Copies of all related reports;
 4. Copies of all memos or formal letters related to the investigation.
- G. Photographs, video tapes, audio tapes and other relevant supporting materials shall also be submitted with the final report;
- H. The date the final report is submitted;
- I. The name and signature of the assigned investigator.

At the conclusion of an investigation, the investigator will reach a finding in accordance with the Department's policies. The standard of proof for all internal investigations is by "a preponderance of the evidence." This is a lower standard than what a criminal case requires which is "proof beyond a reasonable doubt."

In July 2022, the OPD Policy 1010, regarding Personnel Complaints, was revised.¹ The new Personnel Complaint policy contains categories and disposition terms that were broadly approved by the Department since January 2022; accordingly, the Department utilized the update terminology in reports prior to the final publication of the revised policy. The key definitions and categories are as follows:

Complaint Definition – A communication, verbal or written, conveying dissatisfaction with the performance or conduct of the Department or one or more of its members. Complaints are classified in one of the below categories:

¹ The full policy can be found at <https://public.powerdms.com/OlympiaPD/tree/documents/1662358>.

1. **Inquiry** – A matter in which there is a question regarding conduct or performance. Such inquiries generally include clarification regarding policy, procedures, or the response to specific incidents handled by the Department.
2. **Personnel complaints** - include any allegation of misconduct, or improper job performance against an employee of the police department that, if true, would constitute a violation of department policy or of applicable federal, state, or local law, policy, or rule, or CJTC decertification/suspension/revocation criteria found in section 1010.16 of this policy. Personnel complaints may be generated internally or by the public.
3. **Informal complaint**- A matter in which there is no expectation, from the complainant, that an investigation will occur and the supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.
4. **Formal complaint**- A matter in which a supervisor or manager determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or the Professional Standards Unit, depending on the seriousness and complexity of the investigation.

Wrongdoing – (as defined in RCW 10.93.190 – Officer’s Duty to Intervene) means conduct that is contrary to law or contrary to the policies of the witnessing officer’s agency, provided that the conduct is not de minimis or technical in nature.) “Wrongdoing” – even if true - may or may not be determined to be misconduct pursuant to City of Olympia policies if such “wrongdoing” involves allegations that a City of Olympia officer violated the policy of a witnessing officer’s agency.

Preliminary Investigation – A cursory fact-finding activity where the Office of Professional Standards investigator or a supervisor seeks to determine if sufficient information exists before deciding whether or not an investigation is feasible or warranted.

1010.6.4, COMPLAINT DISPOSITIONS

Each complaint shall be classified with one of the following dispositions:

No Finding – When the investigation shows one of the two following conditions to be present:

1. The complainant failed/declined to disclose information to further the investigation.

2. The allegations relate exclusively to another agency, and the complaint and/or the complainant has been referred to that agency.

Unfounded - When the investigation shows that the alleged behavior did not occur or was patently false.

Exonerated - When the investigation shows the alleged behavior occurred, but also shows such acts to be justified, lawful, and proper.

Not sustained - When the investigation fails to disclose sufficient facts to prove or disprove that the alleged behavior occurred.

Sustained - When the investigation discloses sufficient facts to prove the alleged behavior occurred.

Resolved – Resolved may be used as a disposition for inquiries and informal complaints only.

Without Merit – The Professional Standards Lieutenant, with approval of the Chief or Police or designee, may close an investigation if one of the following conditions are demonstrated:

1. Positive proof (photos, video, audio tape, etc.) clearly establishes that the allegation is untrue; or
2. The facts indicate that the allegation is clearly inconsequential or frivolous and no tangible harm can be reasonably associated with the behavior; or
3. The facts indicate that the allegation was made maliciously and with wanton disregard for the truth; or
4. The complaint does not involve the Olympia Police Department or its employees.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall recommend appropriate action with regard to any additional allegations.

All investigations and findings are reviewed by the Professional Standards Lieutenant and the Chief of Police. All service level complaint investigations must be completed within sixty (60) days from the date the case is received by the Department. All investigations into allegations of Serious Misconduct must be completed within ninety (90) days from the date the case is received by the Department, unless extended by the Professional Standards Lieutenant with the approval of the Chief of Police.

Any sustained complaint is referred to the employee's supervisor or manager for corrective action. The determination of corrective action is based on the severity and repetitiveness of the violation.

Corrective actions include the following:

- Counseling and coaching
- Oral warning
- Written warning
- Performance improvement plan
- Suspension without pay
- Reduction in pay or rank
- Last chance agreement
- Termination

The Office of Professional Standards (OPS) is responsible for managing the formal accountability system. OPS is managed by the Chief of Police. All records are tracked, stored, and maintained in the Department Records Management System (RMS). OPS provides all information regarding external and internal complaints about OPD employees to the Police Auditor on a weekly basis. The Police Auditor also has independent access to the RMS database.

V. Uses of Force January 1 – June 30, 2022

A. Use of Force Records

In the first six months of 2022, OPD officers reported uses of force in thirty-five incidents. The Olympia Jail reported uses of force in two incidents. Each of the use of force incidents was subject to internal, multi-level review and the Department determined that the officers' actions were within policy. The Auditor reviewed each of those files and determined the officer's actions were within policy.

With respect to five of those incidents, officers submitted Use of Force reports and submitted the records for supervisory review, despite asserting that there was not "use of force" per Department policy.

In one incident, the Department determined an officers' use of his handgun was contrary to the Department's training – though not a specific policy violation – and directed the matter to its Firearms Training Team for review and follow-up. The Firearms Training Team reviewed this incident and decided

there was no specific extra training needed for the officer other than counseling about options for carrying the handgun in his utility vest.

Additional key data regarding the 37 use of force files is as follows:

Types of Force Used

- 28 involved takedowns by means of defensive tactics such as pain compliance techniques, control holds, and physical restraint².
- 4 involved use of the Bola Wrap, a remote restraint device that does not rely on pain compliance.³
- 2 incidents involved the deployment of Conductive Energy Weapons (CEW or CED Taser probes).
- 1 incident involved kinetic impact rounds from a less lethal shotgun.
- 1 incident involved pepper spray.

Subject Demographics

- 16 incidents involved white male subjects.
- 9 incidents involved white female subjects.
- 6 incidents involved Black male subjects.
- 4 incidents involved a Black female subject.⁴
- 1 incident involved an Asian female subject.
- 1 incident involved an Indigenous male subject.

Additional Key Data

- None of the incidents led to serious injuries.
- 26 of the incidents involved subjects who appeared to be mentally ill and/or impaired by alcohol or drugs and were not compliant with de-escalation efforts.

² Three of these incidents were reported as precautions where there was no use of physical force per Department policy, but the officers still noted them as takedowns. The thirty-six Types of Force Used, rather than 37, because, in two instances, no type of force was noted in reports that were filed as precautions and one incident involved two uses of force.

³ In early 2021, the OPD purchased Bola Wrap Remote Restraint devices. The Bola Wrap is a hand-held, pre-escalation and apprehension tool that discharges a Kevlar tether to temporarily restrain uncooperative suspects and persons in crisis from a safe distance to minimize injuries or the need for higher levels of force.

⁴ One Black female subject was transgender.

B. Use of Force Trends

1. There Was No Evidence of Racial or Gender-Identity Bias

The 12 incidents where officers used force in encounters with people of color, and the one incident involving a transgender person, were thoroughly scrutinized by the Auditor and found to have been justified and within policy. There was no evidence that the officers' interactions with subjects of color differed from their interactions with white subjects. The records involving the transgender person indicated that officers consistently referred to by her proper name and pronouns, and treated her with dignity and respect throughout the incident.

The records involving marginalized persons were generally more detailed and more thorough than reports regarding white, cisgendered people. Those records also provided detailed descriptions of de-escalation efforts and often involved other law enforcement agencies and CRU personnel. Two of the reports involving Black subjects did not technically involve uses of force but were filed as a precaution because observers could have perceived wrongdoing. Collectively, the records indicate that OPD officers are attentive to their need to demonstrate the utmost care in their interactions with marginalized people and their willingness to have such interactions scrutinized.

2. The Vast Majority of Instances Necessitating Uses of Force Involved Individuals in Crisis.

Twenty-nine of the incidents where officers used force to subdue and arrest individuals involved subjects who were suffering from mental illness and/or severely impaired by drugs or alcohol. The records show that those individuals did not respond to officers' de-escalation efforts, nor did they comply with orders to cease conduct that posed serious dangers to themselves and others. The records indicate that the OPD consistently called for Crisis Response Unit (CRU) assistance during such encounters and refrained from intervening prior to the CRU response. Because the Auditor did not review encounters that did not involve uses of force, it is not known how many encounters with individuals in crisis were successfully concluded through de-escalation efforts and/or assistance from the CRU. In other words, we cannot discern from use of force records alone whether the Department's training on crisis response and de-escalation, and its coordination with the CRU, has lessened officer's uses of force in encounters with individuals in crisis.

3. The Department Demonstrates a High Level of Transparency and Openness to Scrutiny

Five Use of Force reports were submitted by officers who reported conduct that did not include physical force that necessarily required such reports. The officers who reported those five incidents stated they did so as a precaution because the subjects or third parties indicated that they would bring allegations of excessive force or civil rights violations. This trend was not observed in 2021. The OPD has a practice of documenting incidents involving “perception of force” or “looks like force” in its Use of Force system so that those incidents are thoroughly reviewed and documented. Neither the Department nor the Auditor has identified any other law enforcement agency that does this. The Department recognizes that this practice makes it appear that officers used force more often than they actually did. This matter is discussed further in the Recommendations section below.

C. OPD Procedural Changes

The OPD has continued to enhance the clarity and thoroughness of its use of force reporting. The officers’ reports have included increasingly detailed and coherent descriptions of the relevant circumstances, de-escalation efforts, how force and defensive tactics were employed. This has enhanced accountability, transparency, and the efficiency of follow-up actions.

The Department also moved forward on the process of obtaining and using body worn cameras (BWC). This equipment will enhance reporting, transparency, accountability, opportunities to learn, and the capacity to capture criminal acts and aid prosecutions. Furthermore, the Department completed its public outreach and communication efforts and completed a draft policy for use of BWCs. However, there have been supply chain issues that held up the delivery. The supplier, Axon, is scheduled to deliver the equipment and provided training to the OPD on October 6, 2022.

A third way in which the OPD has significantly enhanced its use of force practices is through providing trainings regarding First Amendment rights and effective, unbiased Crowd Management practices. Those training materials were reviewed by the Auditor and determined to be thorough, unbiased, and meet Department standards and best practices.

Finally, throughout 2022, the Department has submitted its Crowd Management Operational Plans and After-Action reports related to all public demonstrations for review by the Auditor. The Auditor reviewed

such documents for five public demonstrations between January 1 and June 30. The organizers and participants in those events held a broad range of ideological views. There was not, however, any indication of differing plans or responses by the OPD. They were all consistent with the Department's Guiding Principles for Demonstrations and Crowd Management.

VI. Misconduct Complaints

The Office of Professional Standards received and investigated twelve misconduct complaints between January 1 and June 30, 2022. Ten of the complaints came from members of the community and two misconduct investigations were generated internally by OPD employees or City staff.

All of the complaint investigations were audited and determined to have met Department standards.

One of the internally generated investigations resulted in sustained findings of serious allegations and the Department recommended termination. The employee resigned and the Department reported the matter to the Criminal Justice Training Commission, in accordance with RCW 43.101.135, which mandates such reports.

The second internal investigation was filed by an officer as a precaution because an individual complained about excessive force and civil rights violations at the scene, as well as an intent to file a complaint. The Department investigated the matter and found no improper conduct. The individual who complained verbally during the incident declined to provide additional information to further the investigation. The matter was therefore closed without further action.

The 2022 Complaint records are summarized below.

Complaint Investigation Details

Record Number/ Date Filed	Classification	General Description	Investigative Findings	Corrective Actions	Police Auditor Findings
IA 21-006 11/15/21	Serious	Officer interfered with another law enforcement agency's dangerous dog investigation after the dog caused the death of the officer's family dog. Contrary to the directive of the investigating agency, and while in uniform, the officer approached the dangerous dog owner and demanded and took possession of the dog.	Sustained three policy violations: 320.5.9, Conduct unbecoming an officer. 320.5.9, Interference with a law enforcement agency investigation. 32.5.2, Misuse of OPD status for improper purpose.	The officer resigned in lieu of termination. This was reported to the Criminal Justice Training Commission per RCW 43.101.135.	Met Department standards.
1069 1/31/22	Service	Complainant emailed City Manager alleging wrongful vehicle stop. OPS made three failed attempts to contact Complainant and records review showed the stop was proper.	Exonerated	N/A	Met Department standards.
1068 1/30/22	Service	Person trespassed from business premises for refusing to wear a mask and engaging in disorderly conduct complained of excessive force and civil rights violations. Officer involved filed the complaint as a precaution. The Department investigated the incident and found no misconduct.	No further action required	N/A	Met Department standards.

1070 2/11/22	Unspecified	Municipal Court and prosecutor sent emails from Complainant to OPD. Complainant declined to file a report or follow up.	Exonerated	N/A	Met Department standards.
1071 3/14/22	Service	Anonymous complaint submitted on-line contained vague allegation of non-response by OPD, with insufficient information for follow-up.	Unfounded	N/A	Met Department standards.
1072 3/18/22	Service	Anonymous on-line complaint contained insufficient information for follow-up.	Unfounded	N/A	Met Department standards.
1075 5/2/22	Service	The Complainant alleged via email that the OPD failed to properly follow up after an arrest. Department records showed the OPD actions were within Department standards.	Not Sustained	N/A	Met Department standards.
1076 5/2/22	Service	The Complainant emailed allegations of multiple unwarranted vehicular stops and harassment. The Department investigated and found most of the stops, at transient camps, occurred in the City of Lacey. The Complainant did not provide sufficient detail to allow further investigation into stops in Olympia. The Complainant was advised how to report any future concerns and informed that the matter would be documented by the	Not Sustained	N/A	Met Department standards.

		OPS. She expressed satisfaction.			
1077 5/4/22	Service	Complainant emailed the OPD and City Council members alleging the OPD failed to perform requested welfare check on her sister. Records showed that an officer was unsuccessful in his attempt to contact the person of concern. The officer was then diverted to an emergency, where he was injured and sent to the ER. The second officer read the first officer's notes and believed the welfare check was completed.	Unfounded	Officer was counseled by his supervisor regarding making clearer notes in call records.	Met Department standards.
1078 5/23/22	Service	On-line complainant alleged an OPD officer was rude to him. The Department emailed him and called him twice for more information, but was unable to make contact.	Not Sustained	N/A	Met Department standards.
1079 5/20/22	Service	On-line complainant alleged an OPD officer was rude to him. The Department emailed him and called him twice for more information, but was unable to make contact.	Not Sustained	N/A	Met Department standards.
1069 1/31/22	Service	Complainant emailed City Manager alleging wrongful vehicle stop. OPS made three failed attempts to contact Complainant and records review showed the stop was proper.	Exonerated	N/A	Met Department standards.

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A. Trends Observed re Complaints

1. The Department is Responsive, Thorough and Fair in Addressing Community Complaints.

Ten of the eleven 2021 Misconduct Complaints from the community arose from individuals who felt an officer had been discourteous or unprofessional, typically by using disrespectful language or failing to provide services to the complainants' satisfaction. In those cases that provided the Office of Professional Standards (OPS) with sufficient information to follow up, OPS thoroughly investigated the matters and communicated with the complainants about their concerns and the records. Where applicable, OPS further advised the complainants about how to effectively address future concerns and assured them that the matter would be recorded in the OPD database.

In response to a community member's complaints of misconduct during an incident, an officer filed a complaint report. The OPS thoroughly investigated the matter and found no misconduct.

2. The Department is Proactive, Thorough and Fair in Initiating and Investigating Serious Misconduct Concerns.

The Department initiate one Internal Affairs investigation into circumstances that raised concerns of serious misconduct. The investigation, which was thorough, fair, and unbiased, resulted in sustained findings and recommended termination. The officer resigned in lieu of termination and the matter was properly reported to the Criminal Justice Training Commission per RCW 43.101.135.

VII. Recommendations

1. Clarify Use of Force Reporting Policies and Procedures

As stated above, five out of thirty-five Use of Force reports were, more accurately, "perception of force" incidents that did not involve physical force exerted by an officer that mandated such reporting under OPD policies. Such reports constituted a substantial proportion - seventeen percent – of all Use of Force reports. As noted above, this practice is commendable because it enhances transparency and accountability, while also potentially mitigating risk to the Department and the City. The practice is also

extraordinary, as no other law enforcement agency is known to engage in this practice. Law enforcement agencies may reasonably refrain from this practice because it artificially increases the number of recorded uses of force.

Although this practice is commendable, reporting “perceptions of force” as uses of force is problematic in at least three ways. First, the reporting officers are in the awkward position of reporting a use of force while also reporting that they did not use force. Second, because “perception of force” reports are submitted via the Use of Force checklists, they artificially enhance the Department’s Use of Force numbers. And third, using the Use of Force checklist for “perception of force” reports creates data-tracking problems because the checklist requires the officers to specify the type of force used (which they did in some cases but not in others) even though no force was used.

Accordingly, the Auditor recommends that the Department develop an alternative way for officers to record these incidents. One possibility is to specify that “perception of force” reports be classified as pursuant to OPD Policy 300.7.1, which may be broadly read to require officers to submit reports of such incidents. Policy 300.7.1 mandates that officers notify supervisors, “following the application of force” in several circumstances that warrant taking extra precautions. For example, supervisory notification is required when an individual indicates intent to pursue litigation; an individual was forced to the ground or would reasonably appear to be forced to the ground; or an individual alleges unreasonable force was used or that any of the above has occurred. Policy 300.7.1 does not specify whether “application of force” for this purpose includes the de minimis types of force employed in the five incidents at issue.

Such reporting is commendable and should be encouraged because any circumstance where people involved or observing police action complain about misconduct should be thoroughly reported and reviewed. Nonetheless, it distorts the Department’s records regarding uses of force to include incidents where officers are not truly reporting that they used force.

2. Develop Protocols for Reviewing Body Worn Camera Data in Use of Force Reviews.

As stated above, the Department has completed a draft policy for the BWC program and is considering community feedback in that process. Once implemented, BWC footage will be submitted to the Auditor as part of the Use of Force reports and, where applicable, complaint investigations. It is therefore

imperative that protocols for reviewing that data meet best practices. Accordingly, prior to the deployment of BWCs, the Auditor recommends that the Department collaborate with the Auditor to develop BWC data review policies that ensure such reviews are fair, unbiased, and consistent.

VIII. Conclusion

As demonstrated above, the records reviewed by the Auditor indicate that the Department's performance has met Department standards and best practices in several respects. First, the OPD has engaged in compliant and substantially transparent, unbiased uses of force and complaint investigations throughout the first six months of 2022. Second, the Department has demonstrated that it has prepared for and attended to public demonstrations in thorough and unbiased ways that are consistent with the Department's Guiding Principles for Demonstrations and Crowd Management. Third, the OPD has engaged in thorough trainings regarding First Amendment rights and effective, unbiased Crowd Management practices. And fourth, throughout 2022, the Department's Crowd Management Operational Plans and After-Action reports related to public demonstrations have been thorough, unbiased, and consistent with Department policies and best practices.

In closing, the Auditor makes two recommendations. First, the Auditor recommends that the Department develop a new way for officers to report incidents where there was a potential appearance of force, but no actual use of force. The current practice of reporting those incidents as "Use of Force" incidents creates inaccurate records and artificially boosts the Department's Use of Force numbers.

And second, the Auditor recommends that the Department collaborate with the Auditor to establish protocols for analyzing BWC data to ensure that reviews of that data are consistent, fair, and unbiased.



City Council

Approval of an Ordinance Adopting a Vacant Properties Registration Program

Agenda Date: 8/23/2022
Agenda Item Number: 6.C
File Number:22-0780

Type: ordinance **Version:** 1 **Status:** 1st Reading-Not Consent

Title

Approval of an Ordinance Adopting a Vacant Properties Registration Program

Recommended Action

Committee Recommendation:

The Land Use & Environment Committee recommends approval of an Ordinance establishing a vacant properties registration program.

City Manager Recommendation:

Move to approve t Ordinance establishing a vacant properties registration program.

Report

Issue:

Whether to adopt a vacant properties registration program.

Staff Contact:

John Mahone, Lead Code Enforcement Officer, Community Planning & Development, 360.753.8393

Presenter(s):

Leonard Bauer, Director, Community Planning & Development

John Mahone, Lead Code Enforcement Officer, Community Planning & Development

Background and Analysis:

Background

The Olympia Code Enforcement program plays an important role in the health, safety and welfare of the City of Olympia. Part of code enforcement officers' responsibilities are to enforce adopted property maintenance codes (OMC 16.06). The establishment of a vacant property registration program will assist with addressing issues that sometimes arise with vacant properties. Periodically Code Enforcement staff receive inquiries from the public about registering vacant properties.

Vacant properties can be challenging when they become attractive nuisances in our community. When issues occur, locating absentee property owners and ensuring that the actual property owner/s are held responsible for the condition of their abandoned/vacant property is a difficult and time-consuming process.

Having a vacant property registration program can assist with locating absentee property owners and ensure there is an entity or person responsible for abandoned/vacant properties.

The goal of the registration program will be to have direct contact information for a property owner or representative; having vital information available to disseminate with other departments when needed and quicker response times to address abandoned/vacant property conditions.

The Cities of Bremerton and Auburn have abandoned/vacant property registration programs and Olympia staff have incorporated some of their 'lessons learned' into the proposed ordinance.

Summary of Ordinance

The Vacant Property Registration program will provide accurate information of property ownership of abandoned and vacant properties in our community by requiring registration annually when properties are:

- vacant for 90-180 Days
- lack utilities for 90-180 Days
- are in pre-, mid- or full foreclosure status
- are bank owned (REO)
- show indicators that the structure has not been occupied (e.g., no window covers, tall weeds/grass, junk/debris on the premises, etc.)
- or a combination of any of the above.

The ordinance requires a current, local representative or contact of the owner, property manager, agent or party who has a vested interest in the property. It also includes property maintenance standards that will assist with more prompt response at these abandoned/vacant properties on property maintenance issues, illicit or nuisance activity, or any other concerns.

This program will assist the Olympia Police Department, Olympia Fire Department as well as Community Planning & Development with pertinent and relevant ownership information.

Neighborhood/Community Interests (if known):

Enforcement of civil codes and maintenance of private properties is of strong interest to the entire community.

Options:

1. Adopt the attached Ordinance establishing a vacant properties registration program.
2. Do not adopt the attached Ordinance establishing a vacant properties registration program.
3. Adopt the Ordinance with specific modifications.

Financial Impact:

A proposed registration fee will offset administrative costs for the program. Community Planning and Development's analysis of the number of properties likely to be required to register shows that the vacant property registration program, as proposed, can be administered within the existing City budget.

Type: ordinance **Version:** 1 **Status:** 1st Reading-Not Consent

Attachments:
Ordinance

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, ESTABLISHING A VACANT PROPERTIES REGISTRATION PROGRAM AND RESPONSIBILITIES FOR PROPERTY MAINTENANCE, AND ADDING A NEW SECTION TO OLYMPIA MUNICIPAL CODE CHAPTER 16.06 - PROPERTY MAINTENANCE CODE

WHEREAS, the Olympia City Council has adopted the International Property Maintenance Code, as amended, in Chapter 16.06 of the Olympia Municipal Code as the City's property maintenance code; and

WHEREAS, the intent of the City's property maintenance code is to ensure public health, safety, and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises; and

WHEREAS, the City's property maintenance code regulates and governs the conditions and maintenance of all property, buildings, and structures, and is enforced primarily by the City's appointed Code Enforcement Officers and Building Official; and

WHEREAS, the City Council finds that vacant properties, including those that are abandoned, uninhabited, or unimproved; those that have been foreclosed or are subject to foreclosure; and those that are otherwise under a notice of default, have an adverse and deleterious impact on the vitality and livability of the areas in which they are located and on the general well-being of the City and its residents; and

WHEREAS, significant numbers of vacant properties that have been foreclosed, are subject to foreclosure, or are otherwise under a notice of default, are owned and/or controlled by entities and/or individuals outside the Olympia area and/or whose identity is unclear due to legal proceedings regarding property ownership; and

WHEREAS, as a result, those entities and individuals may be difficult for City Code Enforcement Officers to identify or locate; and

WHEREAS, property owners, or others in control of property, outside the Olympia area may be less aware of City property maintenance codes and regulations, or reluctant to voluntarily incur the cost and expense of adequately maintaining those properties to the standard established in those codes and regulations; and

WHEREAS, the City Council finds it necessary that certain registration and maintenance requirements be imposed on the owners and others in control of abandoned and vacant real property in order to minimize, if not eliminate, adverse effects those properties have on the City and its residents, and on the public health, safety, and welfare;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 16.06. Olympia Municipal Code Chapter 16.06 is hereby amended to add a NEW SECTION 16.06.090, Vacant Property Registration, to read as follows:

Chapter 16.06

PROPERTY MAINTENANCE CODE

16.06.000 Chapter Contents

Sections:

- 16.06.010 International Property Maintenance Code adopted -- Purpose and Administration.
- 16.06.020 Definitions.
- 16.06.030 General Requirements.
- 16.06.040 Light, Ventilation and Occupancy Limitations.
- 16.06.050 Plumbing Facilities and Fixture Requirements.
- 16.06.060 Mechanical and Electrical Requirements.
- 16.06.070 Fire Safety Requirements.
- 16.06.080 Referenced Standards.
- 16.06.090 Vacant Property Registration.

NEW SECTION 16.06.090 Vacant Property Registration

A. GENERAL

901.1 Intent. It is the purpose and intent of the Olympia City Council to establish an vacant real property registration program to ensure that the owners of certain vacant properties are known by the City and other interested parties and can be reached if necessary; to ensure that owners of vacant properties are aware of the property maintenance codes and regulations; and to ensure that owners meet the minimum standards of maintenance of vacant properties.

901.2 Requirement to Register Certain Vacant Properties. An owner of, lender for, or other person responsible for a property that is vacant and uninhabited or vacant and in default (or both) shall register such property with the City of Olympia.

901.3 Definitions. For the purposes of this chapter, the following words and phrases are defined as follows:

1. "Accessible" means a property that is accessible through a compromised or breached gate, fence, wall, or similar condition or a structure or building that is unsecured or breached (or both) in such a way as to allow access to the interior space by unauthorized persons.
2. "Beneficiary" means a lender or holder of a note secured by a deed of trust.
3. "Borrower" means any owner as defined in this section who becomes obligated on a real estate loan agreement, either directly or indirectly, and includes mortgagors, vendees under conditional land sales contracts, and grantors under trust deeds.
4. "City" means City of Olympia.
5. "Days" means consecutive calendar days.
7. "Deed of trust" means an instrument by which title to real estate is transferred to a third-party trustee as security for a real estate loan and often used in Washington instead of a mortgage. This definition applies to any and all subsequent deeds of trust, i.e., second trust deed or third trust deed.

7. "Deed in lieu of foreclosure/sale" means a recorded document that transfers ownership of property from the borrower to the lender in lieu of foreclosure, including a trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust.

8. "Default" means the failure to fulfill a contractual obligation, monetary, or conditional.

9. "Director" means the Director of Community Planning and Development or the Director's designee.

10. "Downtown Core" means the Downtown Olympia Historic District and its vicinity that exhibits storefronts, building designs, and historic character consistent with the Historic District.

11. "Evidence of vacancy" means any condition that on its own or combined with other conditions present would lead a reasonable person to believe that the property is vacant and not occupied by authorized persons. Such conditions include, for example, overgrown or dead vegetation; accumulation of newspapers, circulars, flyers or mail; past due utility notices or disconnected utilities; accumulation of trash, junk, or debris; statements by neighbors, passersby, delivery agents, or government employees that the property is vacant; and for residential properties, the absence of window coverings such as curtains, blinds, or shutters; the absence of furnishings or personal items consistent with residential habitation.

12. "Foreclosure" means the foreclosure process by which a property, placed as security for a real estate loan, is sold at auction and a deed of trust foreclosure or a judgment is obtained to satisfy the debt if the borrower defaults on the real estate loan.

13. "Lender" means any person who makes, extends, or holds a real estate loan agreement and includes a mortgagee; a beneficiary under a deed of trust; an underwriter under a deed of trust; a vendor under conditional land sales contracts; a trustee; and a successor in interest to any mortgagee, beneficiary, vendor, or trustee. The term also includes any mortgagee, beneficiary, or trustee that accepts a deed in lieu of foreclosure.

14. "Local" means within Thurston County.

15. "Notice of default" means a default has occurred under a deed of trust and that the beneficiary intends to proceed with a trustee's sale.

16. "Out of area" means outside Thurston County.

17. "Owner" means any natural person, partnership, association, corporation, or other entity having legal title in real property, including any borrower as defined in this section.

18. "Property" means any unimproved or improved, residential or commercial real property, or portion thereof, situated in the City, and includes the buildings or structures located on the property regardless of condition.

19. "Responsible person" or "person responsible" means any person, partnership, association, corporation, or fiduciary having legal or equitable title to, or any interest in, any real property, including an owner, borrower, or lender as defined in this section, or a lessee of leased property, if the lessee is responsible for property maintenance.

20. "Securing" or "secure" means such measures as may be directed by the Director that assist in rendering the property inaccessible to unauthorized persons, including the repairing of fences and

walls, chaining or padlocking of gates, and the repair, replacement, or boarding of doors, windows, or other openings.

21. "Trustee" means the person, partnership, firm, corporation, or other entity holding a deed of trust to a property.

22. "Trustor" means a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.

23. "Vacant" means a property that is not legally occupied.

24. "Vacant and in default" means a property that has been vacant and any one or more of the following apply to property: (1) it is under a current notice of default or notice of trustee's sale (or both); (2) it is the subject of a pending tax assessor's lien sale; (3) it has been the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure; or (4) it has been transferred under a deed in lieu of foreclosure or sale.

25. "Vacant and uninhabited" means a property that has been vacant with no water or sewer utilities provided to the property for six continuous months or more.

901.4 Administration.

The Director shall administer this chapter and shall promulgate procedures to administer the registration, maintenance, security, and related provisions as authorized in this chapter. The Director may establish reasonable fees for services provided under the program. Fines and penalties for violations are set by the City Council and are set forth in OMC 16.06.010(G).

901.5 Maintenance.

The owner of, lender for, or other person responsible for any vacant property shall properly maintain, secure, and post such property as required by this chapter. This obligation is in addition to any other applicable requirement of this code or other law.

901.6 Responsible Party – Local Property Manager.

a. Responsible Party. When any act as required under this chapter applies to more than one of an owner, lender, or other responsible person, one or more or all are responsible for performing such act and may be charged with a violation of this chapter for failure to act. If information is required to be provided, then all must provide such information. However, it is sufficient if the performance of the act or the providing of information is accomplished by anyone.

b. Local Property Manager. If the owner, lender, or other person responsible for a property subject to the registration requirement of subsection 901.2, above, is a corporation or resides or has a principal place of business out of area, the owner, lender, or other person responsible shall retain a local property manager authorized to act to comply with this chapter.

901.7 Registration Contents. Each registration must contain the following:

a. Information for both the beneficiary and trustee: name (corporation or individual);

b. The street or office address (not a post office box) and, if different, the mailing address;

c. A direct contact name (a person representing a corporation or an individual);

d. Contact information for the person handling the foreclosure or vacant property registration (email and phone number); and

e. In the case of a corporation or out of area owner, lender, or other responsible person, the telephone number and other contact information of the local property manager authorized to act to comply with this chapter.

901.8 Registration Outlines.

a. A registration is valid for one calendar year following the date on which registration is initially submitted to the City. Subsequent registrations are required and due each year thereafter on the anniversary of the submittal date of the initial registration until such time as the property is transferred or becomes legally occupied.

b. An owner, lender, or other responsible person who is required to register a property pursuant to this chapter shall keep such property registered and shall comply with all the maintenance, security, and posting requirements of this chapter for the entire time such property remains vacant and in default or vacant and uninhabited.

c. When a property subject to the registration requirement of subsection 901.2, above, becomes occupied or title is transferred, the prior owner, lender, or other responsible person shall notify the Director in writing within 14 days of the occupancy or transfer.

d. Any owner, lender, or other responsible person required to register a property pursuant to this chapter shall report any change of information contained in the registration within 14 days of the change.

901.9 Property Inspection.

a. An owner of, lender for, or other person responsible for a property subject to the registration requirement of subsection 901.2, above, shall conduct, or cause to be conducted, an inspection of such property on a monthly basis. Such inspection is to verify that the property is still vacant and in default or vacant and uninhabited and whether the maintenance, security, posting and other requirements of this chapter, and any other applicable laws, are being met.

b. If a property is not vacant, but is in default, the lender shall inspect, or cause to be inspected, the property monthly to determine whether the property has become vacant and in default until (1) the borrower or other party remedies the default; or (2) the foreclosure is completed and ownership is transferred to a new owner who is not the former beneficiary or another lender; or (3) it is found to be vacant or shows evidence of vacancy, at which time it is deemed vacant and in default, and the lender shall, within 14 days of that inspection, register the property with the Director on forms or in the manner provided by the City.

c. The lender shall continue to inspect, or cause to be inspected, the property after a foreclosure sale where the title was transferred to the beneficiary of a deed of trust involved in the foreclosure, or the underwriter of the deed of trust, or any other person or entity who held a security interest in the property, and any property transferred under a deed in lieu of foreclosure/sale. If upon inspection the property is found to be vacant, it is automatically deemed vacant and in default and must be registered within 14 days as required in this chapter.

d. The owner, lender, or other responsible person shall report the result each of these inspections to the City as required by the Director.

e. Inspections conducted pursuant to this chapter are intended only for the purposes set forth in this chapter and not for purposes of triggering disclosure obligations to potential real property purchasers

901.10 Maintenance Requirements.

a. An owner of, lender for, or other person responsible for any vacant property shall maintain and keep such property free of nuisance conditions including:

1. Weeds, overgrown vegetation, trash, junk, debris, building materials, and junk vehicles.
2. Accumulation of newspapers, circulars, flyers, notices (except those required by federal, state, or local law), and discarded personal items including, furniture, clothing, and appliances.
3. Graffiti, tagging, or similar markings, which must be removed or painted over with an exterior grade paint that matches or coordinates with the color of the exterior of the structure.
4. In the downtown core, conditions that do not maintain and preserve the historic aesthetics and character (windows free of obstruction, graffiti, etc.).

b. An owner of, lender for, or person responsible for any vacant property shall:

1. Maintain the property's yard in accordance with City requirements and standards;
2. Secure any pond, pool, or hot tub and ensure that it does not become a nuisance or a danger to the public;
3. Take any other action necessary to prevent giving the appearance that the property is abandoned; and
4. Register the property with the City of Olympia Police Department trespass program.

901.11 Securing and Posting Requirements.

a. Securing. An owner of, lender for, or other person responsible for any vacant property shall secure such property to prevent access by unauthorized persons, including the following: the closure and locking of windows, doors (walk-through, sliding, and garage), gates, and any other opening of such size that it may allow a child or any other person to access the interior of the property and or structure. Securing also includes boarding up as applicable. Material used for boarding up must be painted with an exterior grade paint that matches or coordinates with the color of the exterior of the structure.

b. Posting. An owner of, lender for, or other person responsible for any vacant property shall post the name and 24-hour contact phone number of the local property manager. The posting must be no less than 18 inches by 24 inches, and must be of a font that is legible from a distance of 45 feet, and must contain, along with the name and a 24-hour contact number, the words:

"THIS PROPERTY MANAGED BY [insert name]" and

"TO REPORT PROBLEMS OR CONCERNS CALL [insert local telephone number]."

The posting must be placed on the interior of a window facing the street to the front of the property so it is visible from the street, or secured to the exterior of the building or structure

facing the street to the front of the property so it is visible from the street, or, if no such area exists, on a stake of sufficient size to support the posting in a location that is visible from the street to the front of the property but not readily accessible to vandals. Exterior posting must be constructed of, and printed with, weather resistant materials.

901.12 Enforcement.

a. In the event the Director finds an owner of, lender for, or other person responsible for a property subject to the registration requirement of subsection 901.2, above, has failed to meet the maintenance, securing, or posting requirements of this chapter, the Director shall send notice of said failure to the owner, lender, or other responsible person at the address listed on the tax rolls of the County or at such other address as may be known to the Director. The notice must set out the nature of the failure(s) to be corrected and must give the owner, lender, or other responsible person no more than 14 days from the date of the notice to correct the failure, unless an imminent danger exists in which case the Director may require the owner, lender, or other responsible person to take immediate action to cure the condition creating the imminent danger. In the event the owner, lender, or other responsible person fails to remedy the matters within the time set out in the notice (or make, in the view of the Director, adequate arrangements otherwise) the City may seek enforcement pursuant to OMC 4.44.06, and any other applicable City code or state law.

b. Violations of this chapter constitute a public nuisance and in addition to the provisions of this chapter, may be enforced pursuant to chapter 4.44 OMC - Uniform Civil Enforcement, chapter 16.10 OMC - City Building Code, chapter 16.32 OMC - City Fire Code, chapter 16.06 OMC - Property Maintenance/Nuisance Properties, and any other applicable City code or state law.

901.13 Vacant properties subject to City code enforcement action.

The owner of, lender for, or other person responsible for a vacant property that has been boarded up or otherwise secured by the City or its contractor as a result of City code enforcement action is not as a result of such action relieved of the obligation to comply with all applicable requirements of this code, including the maintenance requirements of subsection 901.10, above, and the securing and posting requirements of subsection 901.11, above.

901.14 Additional maintenance and security.

In addition to the enforcement remedies established in this chapter and applicable City code, the Director may require the owner of, lender for, or other person responsible for a property subject to the registration requirement of subsection 901.2, above, to implement additional maintenance or security measures, including securing all doors, windows, or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard, disconnecting utilities, or any other measures as may be reasonably calculated to arrest the decline of the property, prevent unauthorized entry, or ensure maintenance of the property in accordance with this code.

901.15 Abatement of nuisance on property that is abandoned and in mid-foreclosure.

When the City sends notice to a mortgage servicer that a property has been determined to be abandoned, in mid-foreclosure, and a nuisance pursuant to chapter 7.100 RCW, the mortgage servicer must abate the nuisance identified in such notice within 14 days of the mortgage servicer's receipt of the notice. If the mortgage servicer has not abated the nuisance within 14 days, the City may enter and abate the nuisance and the City may recover the costs of such abatement pursuant to RCW 7.100.070, or as otherwise provided by this Code or by other law.

901.16 Penalty.

The City of Olympia has designated certain violations of the Olympia Municipal Code to be civil infractions and pursuant to authority from chapter 7.80 RCW. The purpose of civil infractions, as set forth in chapter 4.50 OMC, is remedial. Use of the civil infraction procedure in chapter 4.50 OMC will better protect the public from the harmful effects of certain violations of the Olympia Municipal Code, aid and streamline enforcement, and partially reimburse the City for the expenses of enforcement and the related judicial process. Unless stated otherwise, a civil infraction is an additional and concurrent penalty and may be imposed with other penalties.

901.17 Retroactive application.

The provisions of this section can be applied retroactively. Vacant properties and structures existing on the date of adoption of this section are not vested.

Section 2. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Section 3. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances remains unaffected.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance is effective 30 days after passage and publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: