



Meeting Agenda

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, March 23, 2021

5:30 PM

Online and Via Phone

Register to attend:

https://us02web.zoom.us/webinar/register/WN_kPSZID29TnmlcVhB4sf3Rg

1. ROLL CALL

1.A ANNOUNCEMENTS

1.B APPROVAL OF AGENDA

2. SPECIAL RECOGNITION - None

3. PUBLIC COMMENT

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

During this portion of the meeting, citizens 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 [21-0294](#) Approval of February 23, 2021 City Council Meeting Minutes

Attachments: [Minutes](#)

4.B [21-0296](#) Approval of February 26, 2021 City Council Special Meeting with Squaxin Tribal Council Minutes

Attachments: [Minutes](#)

- 4.C** [21-0295](#) Approval of March 2, 2021 City Council Special Meeting with Olympia School District Board Minutes
Attachments: [Minutes](#)
- 4.D** [21-0275](#) Approval of a Resolution Authorizing an Increase in City Staffing by Two Full-Time, Project-Funded Positions to Support the Procurement and Implementation of a New Financial Management and Information Technology Solution
Attachments: [Resolution](#)
- 4.E** [21-0276](#) Approval of a Resolution Authorizing Submittal of the Deschutes Watershed Plan to the Washington Department of Ecology
Attachments: [Resolution](#)
 [Utility Advisory Committee Letter of Recommendation](#)
 [Councilmember Madrone Letter of Support to WRIA 13 Committee](#)
 [Ecology's Deschutes WRE Committee website](#)
- 4.F** [21-0277](#) Approval of a Bid Award for the Miller and Central Lift Station Replacement Project
Attachments: [Summary of Bids](#)
 [Vicinity Map](#)
- 4.G** [21-0278](#) Approval of a Bid Award for the 2021 Pavement Repair Project
Attachments: [Summary of Bids](#)
 [Vicinity Map](#)
- 4.H** [21-0287](#) Approval of a Labor Contract with the Olympia Police Sergeants Association
Attachments: [Contract](#)
 [Economic Agreement Summary](#)

4. SECOND READINGS (Ordinances) - None

4. FIRST READINGS (Ordinances)

- 4.I** [21-0270](#) Approval of an Ordinance Amending OMC Chapter 2.100 to Amend the Word "Citizen" to "Community Member" and to Allow City Council Advisory Boards, Commissions, and Committees to Receive a Stipend for Meeting Attendance
Attachments: [Ordinance](#)

5. PUBLIC HEARING

- 5.A** [20-1004](#) Public Hearing on a Development Agreement with West Bay Development Group, LLC and Hardel Mutual Plywood Corporation

Attachments: [Development Agreement](#)
[Development Agreement Exhibits](#)
[Link to City Web Page](#)
[Hearing Examiner SEPA Appeal Decision](#)

6. OTHER BUSINESS - None

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. REPORTS AND REFERRALS

8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

8.B CITY MANAGER'S REPORT AND REFERRALS

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

City Council

Approval of February 23, 2021 City Council Meeting Minutes

Agenda Date: 3/23/2021
Agenda Item Number: 4.A
File Number:21-0294

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

Title

Approval of February 23, 2021 City Council Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, February 23, 2021

5:30 PM

Online and Via Phone

Register to Attend:

https://us02web.zoom.us/webinar/register/WN_xsb2jg0gRluEsdf12_qr4A

1. ROLL CALL

Present: 7 - Mayor Cheryl Selby, Mayor Pro Tem Clark Gilman, Councilmember Jim Cooper, Councilmember Yến Huýnh, Councilmember Dani Madrone, Councilmember Lisa Parshley and Councilmember Renata Rollins

1.A ANNOUNCEMENTS

There were no announcements.

1.B APPROVAL OF AGENDA

The agenda was approved.

2. SPECIAL RECOGNITION - None

3. PUBLIC COMMENT

The following people spoke: Annoyed Medic and Lucinda Vogelweid.

COUNCIL RESPONSE TO PUBLIC COMMENT (Optional)

4. CONSENT CALENDAR

4.A [21-0212](#) Approval of February 9, 2021 City Council Meeting Minutes

The minutes were adopted.

4.B [21-0055](#) Bills and Payroll Certification

The decision was adopted.

4.C [21-0116](#) Approval of a Resolution Authorizing a Lease Agreement with Senior Services of South Sound for Space at The Olympia Center

The resolution was adopted.

- 4.D** [21-0196](#) Approval of a Resolution Authorizing Amendment No. 3 to the Professional Services Agreement with KPG for the Franklin Street Improvements Project

The resolution was adopted.

- 4.E** [21-0201](#) Approval of a Resolution Authorizing an Intergovernmental Agreement Between the City of Lacey, the City Olympia, the City Of Tumwater, and Thurston County For Joint Animal Services Operations

The resolution was adopted.

- 4.F** [21-0205](#) Approval of a Resolution Authorizing a Supplemental Terms and Conditions Agreement with Columbia Ford, Inc. to Purchase Eleven Vehicles

The resolution was adopted.

4. SECOND READINGS (Ordinances)

- 4.G** [21-0211](#) Approval of an Ordinance Declaring a Continuing Public Health Emergency Relating to Coronavirus (COVID-19) - First and Final Reading

The ordinance was approved on first and final reading.

- 4.H** [21-0215](#) Approval of an Ordinance Amending Adoption of the 2018 International Building Codes Related to Residential Fire Sprinkler Location - First and Final Reading

The ordinance was approved on first and final reading.

Approval of the Consent Agenda

Councilmember Parshley moved, seconded by Councilmember Cooper, to adopt the Consent Calendar. The motion carried by the following vote:

Aye: 7 - Mayor Selby, Mayor Pro Tem Gilman, Councilmember Cooper, Councilmember Huýnh, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

4. FIRST READINGS (Ordinances) - None

5. PUBLIC HEARING - None

6. OTHER BUSINESS

- 6.A** [21-0209](#) 2021 Legislative Session Update

The report was received.

- 6.B [21-0197](#) Approval a of Bid Award for the Franklin Street Improvements Project

Councilmember Cooper moved, seconded by Councilmember Parshley, moved to award the construction contract to Sound Pacific Construction, LLC, in the amount of \$3,420,123.68, and authorize the City Manager to execute the contract. The motion carried by the following vote:

Aye: 7 - Mayor Selby, Mayor Pro Tem Gilman, Councilmember Cooper, Councilmember Huýnh, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

- 6.C [21-0198](#) Approval of a Resolution Adopting the Olympia Transportation Master Plan

Transportation Planning Supervisor Sophie Stimson presented the Transportation Master Plan.

Councilmembers asked clarifying questions. Councilmember Cooper asked that language regarding the rail corridors be modified to reflect that the removal the corridors would be studied before this would occur. Councilmembers agreed to this modification and Ms. Stimson noted this could be done with the addition of a single sentence.

Mayor Pro Tem Gilman moved, seconded by Councilmember Madrone, to approve a Resolution adopting the Olympia Transportation Master Plan. The motion failed by the following vote:

Aye: 7 - Mayor Selby, Mayor Pro Tem Gilman, Councilmember Cooper, Councilmember Huýnh, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

7. CONTINUED PUBLIC COMMENT

8. REPORTS AND REFERRALS

8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

Councilmembers reported on meetings and events attended.

Councilmember Madrone brought forward a referral, cosigned by Mayor Pro Tem Gilman and Councilmember Parshley, to the General Government Committee to plan a focused discussion with the Municipal Research and Services Center in order to better understand the Open Public Meetings Act. They also discussed having a full session of Jurassic Parliament Training sometime in 2022. The Council agreed to this approach.

8.B CITY MANAGER'S REPORT AND REFERRALS

City Manager Burney noted discussions regarding a legislative Capital Budget request for the City to obtain the Olympia Armory are ongoing.

9. EXECUTIVE SESSION

9.A [21-0208](#) Executive Session Pursuant to RCW 42.30.110(1)(b); RCW 42.30.110(1)(c) - Real Estate Matter

Mayor Selby recessed the meeting at 7:35 p.m. She asked the Council to reconvene in 5 minutes for an Executive Session Pursuant to RCW 42.30.110(1)(b) related to a real estate matter. She announced no decisions would be made, the meeting was expected to last no longer than 60 minutes, Mayor Selby reconvened the meeting at 7:40 p.m. The City Attorney was present at the Executive Session.

9. ADJOURNMENT

The meeting adjourned at 8:40 p.m.



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601 4th Avenue E.
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City Council

Approval of February 26, 2021 City Council Special Meeting with Squaxin Tribal Council Minutes

Agenda Date: 3/23/2021
Agenda Item Number: 4.B
File Number:21-0296

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

Title

Approval of February 26, 2021 City Council Special Meeting with Squaxin Tribal Council Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Friday, February 26, 2021

12:00 PM

Online and Via Phone

Special Joint Meeting with Squaxin Tribal Council

Attend: <https://us02web.zoom.us/j/86859209009>

1. ROLL CALL

Present: 7 - Mayor Cheryl Selby, Mayor Pro Tem Clark Gilman, Councilmember Jim Cooper, Councilmember Yến Huỳnh, Councilmember Dani Madrone, Councilmember Lisa Parshley and Councilmember Renata Rollins

OTHERS IN ATTENDANCE

Squaxin Island Tribal Council Members

Kris Peters, Chairman
Charlene Krise, Vice Chairman
Jeremie Walls, Secretary
Vince Henry, Member
David Whitener Jr., Member

Squaxin Island Tribe Staff

Ray Peters, Director
Jeff Dickison, Assistant Natural Resources Director

City of Olympia Staff

Jay Burney, City Manager
Keith Stahley, Assistant City Manager
Debbie Sullivan, Assistant City Manager
Rich Hoey, Public Works Director
Mike Reid, Economic Development Director
Paul Simmons, Parks, Arts & Recreation Director

2. BUSINESS ITEM

- 2.A** [21-0210](#) Annual Joint Meeting Between the Olympia City Council and the Squaxin Island Tribal Council

Councilmembers and staff discussed updating the Accord between the Squaxin Tribe and City of Olympia. The update would include replacing the photo that is on the current document. Staff along with a Council to Council subcommittee will work on an update.

The group discussed a Land Acknowledgment that will be displayed on new kiosk on Percival Landing. Historic Preservation Officer Marygrace Goddu will reach out to curator at the Squaxin Island Tribal Museum Jeremiah George to discuss opportunities for further partnerships along Percival Landing. This discussion will also occur in a Council to Council subcommittee.

The group discussed the proposed West Bay Yards development project. The Tribe will be involved as part of the Development Review, and they have noted they do not have any specific concerns with the Development Agreement. Chair Peters stated that restoration along West Bay is important and a pathway to achieving that is redevelopment.

West Bay Restoration Planning efforts and the need to revisit the planning process around the trestle and removal of the berm were also discussed. Staff will follow-up on this and further discussion through a Council to Council subcommittee is needed.

The group discussed developing a Memorandum of Understanding relating to Economic Development in order to define objectives, opportunities for action, and to define successful outcomes. Staff and a Council to Council subcommittee will work on this.

Mayor Selby and City Manager Burney will follow-up regarding the establishment of a Council to Council subcommittee and a subsequent meeting to move forward with developing plans and actions.

The discussion was completed.

3. ADJOURNMENT

The meeting adjourned at 1:26 p.m.



City Hall
601 4th Avenue E.
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City Council

Approval of March 2, 2021 City Council Special Meeting with Olympia School District Board Minutes

Agenda Date: 3/23/2021
Agenda Item Number: 4.C
File Number:21-0295

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

Title

Approval of March 2, 2021 City Council Special Meeting with Olympia School District Board Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, March 2, 2021

5:30 PM

Online and Via Phone

Special Joint Meeting with the Olympia School Board

Attend: [https://us02web.zoom.us/j/87999843926?](https://us02web.zoom.us/j/87999843926?pwd=YllvVnZlUy80UEMzd0trajRGQmJJZz09)

pwd=YllvVnZlUy80UEMzd0trajRGQmJJZz09

1. ROLL CALL

Present: 7 - Mayor Cheryl Selby, Mayor Pro Tem Clark Gilman, Councilmember Jim Cooper, Councilmember Yến Huýnh, Councilmember Dani Madrone, Councilmember Lisa Parshley and Councilmember Renata Rollins

OTHERS IN ATTENDANCE

OLYMPIA SCHOOL DISTRICT BOARD

Scott Clifthorne, President
Maria Flores, Vice President
Leslie Huff, Director
Justin McKaughan, Director
Hilary Seidel, Director
Rebecca McMillin-Hastings, Student Representative

OLYMPIA SCHOOL DISTRICT STAFF

Jennifer Priddy, Assistant Superintendent
Patrick Murphy, Superintendent
Kurt Cross, Capital Planning and Construction Director

CITY OF OLYMPIA STAFF

Jay Burney, City Manager
Keith Stahley, Assistant City Manager
Debbie Sullivan, Assistant City Manager
Rich Hoey, Public Works Director
Mike Reid, Economic Development Director
Kellie Purce Braseth, Strategic Communications Director
Paul Simmons, Parks, Arts & Recreation Director
Dr. Pamela Braff, Climate Program Manager
Laura Keehan, Parks Planning & Design Manager

2. BUSINESS ITEM

2.A [21-0221](#) Joint Meeting with the Olympia School Board

Superintendent Murphy discussed Olympia School District's (OSD) operation plans related to COVID-19 and thinking through the academic calendar. Currently they are implementing hybrid classes in some areas, with plans to expand. City Manager Burney shared an overview of how the City's operations have been impacted during this time as well.

Dr. Braff gave a brief overview of the Climate Action Plan and mitigation efforts in Olympia and Thurston County.

Superintendent Murphy shared OSD's climate efforts, how it is linked to student outcomes, associated metrics and shared examples on how the District is modeling those outcomes in their operations. Student Representative McMillin-Hastings shared the climate work from a student perspective.

Mayor Selby touched upon past discussions of a Cultural Access Tax and hopes to have some renewed energy on the subject in order to have that legislation on a future ballot. She asked if there was anyone on the school board who would like to work with her to reconstitute a previous group that was organized around this issue.

Superintendent Murphy gave an update on OSD's efforts and data regarding McKinney-Vento Homeless Children and Youth Assistance. He noted that the pandemic has made it challenging to identify families and students that would qualify for McKinney-Vento assistance due to the lack of having the students in person at school. Mr. Murphy will send a report to the City Council and School Board regarding this topic.

Director Simmons gave an update on efforts around a Regional Aquatic Facility Feasibility Study.

Assistant Superintendent Jennifer Priddy shared an overview of a request from OS' to purchase 20 acres of property owned by the City on Yelm Highway to build facilities for formal shared use; including one turf field, a rubber track, parking and potentially other uses. OSD is requesting to purchase 20 acres of the land or trade like-value upgrades and investments into the Yelm Highway property, or trade other land for parks projects, or trade other land to the City for common good or some combination of these. She shared that they are putting forward this request because the community will need a third high school and a fifth middle school in the next 10-20 years. She noted that High Schools need to be sited on 40 acres and that amount of acreage is rare in Olympia.

Councilmembers, Board members and staff asked questions throughout the meeting.

The discussion was completed.

3. ADJOURNMENT

The meeting adjourned at 8:08 p.m.



City Council

Approval of a Resolution Authorizing an Increase in City Staffing by Two Full-Time, Project-Funded Positions to Support the Procurement and Implementation of a New Financial Management and Information Technology Solution

Agenda Date: 3/23/2021
Agenda Item Number: 4.D
File Number:21-0275

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

Title

Approval of a Resolution Authorizing an Increase in City Staffing by Two Full-Time, Project-Funded Positions to Support the Procurement and Implementation of a New Financial Management and Information Technology Solution

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the Resolution approving an increase in City staffing by two full-time, project-funded positions to support the procurement and implementation of a new financial management and information technology solution.

Report

Issue:

Whether to approve a resolution increasing City staffing by two full-time, project-funded positions to support the procurement and implementation of a new financial management and information technology solution.

Staff Contact:

Debbie Sullivan, Assistant City Manager - Strategic Initiatives (360) 753-8499

Presenter(s):

None - Consent item only.

Background and Analysis:

The City's current financial management software system was purchased in the 1980's and does not meet the business needs of the City. It is inefficient, outdated technology that is difficult to use, lacks

reporting functions for analysis and decision-making, and does not integrate with other software applications.

In November 2020, the City contracted with the Government Finance Officers Association (GFOA) to identify and implement improved business processes based on industry best practices, develop a Request for Proposals for a new technology solution, and facilitate the selection process so the City procures the best solution for the best value. The City is on track to launch the RFP process by the end of March.

Implementation is anticipated to start in 2022 and continue through 2024. The City needs a full-time Performance Management Specialist skilled in process improvement and change management to serve as the Project Manager, and a full-time Senior Accountant to ensure the day-to-day business of the City continues while the City's financial system of record is successfully transitioned and implemented in a new technology solution.

The City has \$1.1M dedicated to this project. The cost to fund the two, temporary project-funded positions is approximately \$165,000 annually through 2024. The overall cost of the project will be determined once the technology solution and vendor is selected later in 2021. A funding strategy to purchase and maintain the new system will be presented to Council at that time.

Neighborhood/Community Interests (if known):

A new financial management and information system will enhance the City's accountability and transparency. A new system will allow staff to track and report financial information easier and faster and communicate it in a way that is easy to understand for the non-financial person.

Options:

1. Approve the Resolution authorizing an increase in City staffing by two full-time, project-funded positions to support the procurement and implementation of a new financial management and information technology solution.
2. Direct staff to make changes to the Resolution based on feedback from Council and approve an amended Resolution approving an increase in City staffing by two full-time, project-funded positions to support the procurement and implementation of a new financial management and information technology solution.
3. Do not approve the Resolution and direct staff to develop an alternative staffing solution to procure and implement the project.

Financial Impact:

Funding for the two project-funded positions will come from existing project reserves of \$1.1 million. An estimate for the full project will be refined once a software vendor is selected.

Attachments:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING AN INCREASE IN PROJECT-FUNDED CITY STAFF BY TWO FULL-TIME-EQUIVALENT POSITIONS TO SUPPORT THE PROCUREMENT AND IMPLEMENTATION OF A NEW ENTERPRISE FINANCIAL AND HUMAN RESOURCE SYSTEM

WHEREAS, the City's current financial management software system was purchased in the 1980's and is outdated and does not meet the business needs of the City; and

WHEREAS, the current financial management software system is inefficient, outdated technology that is difficult to use, lacks reporting functions for analysis and decision-making, and does not integrate with other software applications; and

WHEREAS, Human Resources does not have an integrated management system; and

WHEREAS, the City has worked with the Government Finance Officers Association since November 2020 to improve the City's businesses processes based on best practices and to develop a Request for Proposals to procure a technology solution; and

WHEREAS, the successful implementation of an enterprise financial and human resources system requires a full-time Performance Management Specialist skilled in process improvement and change management; and

WHEREAS, the new financial management system requires a full-time Senior Accountant to ensure the day-to-day business of the City continues while the City's financial system of record is successfully transitioned and implemented in a new technology solution; and

WHEREAS, the project funding for the procurement and implementation of a new financial management and human resources system has adequate funding to support two full-time, project-funded employees through 2024;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE that it approves the increase of City staffing by two full-time-equivalent, project-funded employees, one Performance Management Specialist and one Senior Accountant, to support the procurement and implementation of a new financial management and information technology solution through 2024, supported by project funding.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber
CITY ATTORNEY



City Council

Approval of a Resolution Authorizing Submittal of the Deschutes Watershed Plan to the Washington Department of Ecology

Agenda Date: 3/23/2021
Agenda Item Number: 4.E
File Number:21-0276

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

Title

Approval of a Resolution Authorizing Submittal of the Deschutes Watershed Plan to the Washington Department of Ecology

Recommended Action

Committee Recommendation:

Move to approve a Resolution authorizing staff representation on the Deschutes Watershed Restoration and Enhancement (WRE) Committee to vote on the Deschutes WRE Plan (Plan) for submittal to the Washington Department of Ecology (Ecology).

City Manager Recommendation:

Move to approve a resolution authorizing staff representation on the Deschutes Watershed Restoration and Enhancement (WRE) Committee to vote on the Deschutes WRE Plan (Plan) for submittal to the Washington Department of Ecology (Ecology) as recommended by the Land Use and Environment Committee.

Report

Issue:

Whether to approve a Resolution authorizing staff representation on the WRE Committee to vote on the Plan for submittal to Ecology for evaluation and possible rulemaking.

Staff Contact:

Donna Buxton, Groundwater Protection Program Manager, Public Works Water Resources,
360.753.8793

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

The Deschutes WRE Committee

The 2016 Washington State Supreme Court "Hirst Decision" changed how counties decide to approve or deny new building permits that propose to use domestic (permit-exempt) wells for a water source. In response to this decision, the Legislature passed the 2018 Streamflow Restoration law

(law; RCW 90.94). The law supports water availability for both salmon recovery and homes in rural Washington. It requires local watershed planning to improve streamflows and clarifies the process for counties to issue building permits for homes using a permit-exempt well.

As required by the law, Ecology convened the Deschutes WRE Committee to estimate the impact of permit-exempt well withdrawals on streamflows. The WRE Committee proposed projects and policy actions to offset this impact, while providing a net ecological benefit to the Deschutes watershed over the 20-year planning horizon.

The Deschutes Watershed Plan

The Plan provides a collaborative path forward to address technically and politically complex issues in regional water resources management. The WRE Committee prepared the Plan with the intent of implementation. Plan recommendation proponents have indicated commitment to investigate the feasibility of proposed projects and policy actions. Ecology policy interprets the law as not obligating any entity to implement projects, policy actions, or associated rulemaking.

Plan Implementation and Adaptive Management

The WRE Committee identified an adaptive management strategy to address uncertainty in the Plan and provide reasonable assurance of success through implementation. Strategy elements include oversight, project tracking, monitoring and research, and funding options.

Oversight would occur via the proposed Deschutes Watershed Council (DWC), a collaborative partnership of local entities, including Olympia, that invests in protecting, conserving, and restoring the watershed. Proposed DWC tasks include:

- Identifying water resource management solutions
- Tracking and reporting on project offsets and permit-exempt wells
- Establishing roles and responsibilities via formal agreements
- Pursuing and managing funding sources
- Maintaining institutional knowledge

The Plan identifies potential funding mechanisms for implementation activities including a request for sustainable funds from the Legislature; a permit-exempt well fee increase; and cost-sharing among DWC members. Projects and policy actions will be eligible for Ecology's \$300M 15-year statewide competitive WRE grant program.

Next Steps - Plan Approval and Rule Adoption

The WRE Committee must approve the Plan by consensus for submittal to Ecology in April 2021. If Ecology determines the Plan complies with the law, Ecology may initiate rulemaking. If the Committee does not reach consensus or the Plan does not comply with the law, the Salmon Recovery Funding (SRF) Board will review the Plan and make recommendations to Ecology. Ecology will then evaluate the SRF Board's recommendations and decide whether to initiate rulemaking on the revised Plan. Ecology has a June 30, 2021 legislative deadline to determine any rulemaking action.

Staff presented briefings on the Deschutes WRE Plan to the February 4, 2021 Utility Advisory Committee (UAC) and the February 18, 2021 Land Use and Environment Committee. The UAC demonstrated unanimous support in a letter of recommendation for staff representation on the WRE

Committee to vote on the Plan for submittal to Ecology. The Land Use and Environment Committee accepts and supports the UAC's letter of recommendation.

Neighborhood/Community Interests:

Every Deschutes WRE Committee meeting (since October 2018) includes a public comment period on the agenda. A League of Women Voters representative attended some early meetings. To date, no substantive comments have been received on the Plan by the public.

Options:

1. Approve a Resolution authorizing staff representation on the Deschutes Watershed Restoration and Enhancement (WRE) Committee to vote on the Deschutes WRE Plan (Plan) for submittal to the Washington Department of Ecology (Ecology). Staff ability to vote on the Plan could support a WRE Committee consensus approval of the Plan positioning Ecology to evaluate the Plan and initiate rulemaking, which could then support Plan implementation.
2. Do not approve a Resolution to authorize staff to vote on the Plan and provide direction to staff on next steps. If staff do not have authorization to vote on the Plan, consensus approval of the Plan would not be possible. Ecology would then seek technical recommendations on the Plan from the Salmon Recovery Funding Board and evaluate the revised Plan rather than the Plan developed by the WRE Committee.

Financial Impact: No commitment has been incurred. If the Deschutes Watershed Council forms, one funding proposal includes partners contributing funds to support part-time staff plus basic administrative costs via formal agreements among DWC members.

Attachments:

Resolution

Utility Advisory Committee Letter of Recommendation

Councilmember Madrone Letter of Support to WRIA 13 Committee

Ecology's Deschutes WRE Committee Website

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
AUTHORIZING SUBMITTAL OF THE DESCHUTES WATERSHED PLAN TO THE WASHINGTON
DEPARTMENT OF ECOLOGY**

WHEREAS, on January 18, 2018, the Washington Legislature passed the Streamflow Restoration law (RCW 90.94); and

WHEREAS, the Streamflow Restoration law requires adoption of a watershed plan for the water resource inventory area (WRIA) 13 Deschutes watershed; and

WHEREAS, the Streamflow Restoration law directed the Washington Department of Ecology (DOE) to convene local planning groups to develop watershed plans; and

WHEREAS, the Streamflow Restoration law requires a representative designated by each city within the WRIA 13 Deschutes watershed to participate on the local planning group;

WHEREAS, the City of Olympia is a participating representative on the local planning group; and

WHEREAS, DOE expects local planning group representatives to vet watershed plan components with appropriate decision makers within their entity and seek approval of the final plan components;

WHEREAS, DOE is requiring a consensus vote of approval by the local planning group for submittal of the plan to DOE for evaluation of compliance with the Streamflow Restoration law and possible rulemaking; and

WHEREAS, the plan generally identifies projects to offset potential consumptive use impacts of new permit-exempt domestic groundwater withdrawals on instream flows over the 2018–2038 planning horizon and provides a net ecological benefit to the Deschutes watershed; and

WHEREAS, the City Staff representative recommends the City of Olympia approve the plan; the plan will benefit the City and its residents through collaboration with local partners to implement regional water resource management solutions and by making the City eligible for grants to support our capital improvement program; and

WHEREAS, City staff representation on the local planning group seeks authority from City Council to vote on the plan;

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

The Olympia City Council hereby authorizes and directs City of Olympia staff representation on the WRIA 13 Deschutes watershed local planning group to vote on the Deschutes watershed plan for submittal to DOE.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY



March 5, 2021

Olympia City Council
PO Box 1967
Olympia, WA 98507-1967

Dear Mayor Selby and Council members:

SUBJECT: Deschutes Watershed Restoration and Enhancement Plan

The Utility Advisory Committee (UAC) provides this letter of recommendation to City Council regarding the Deschutes Watershed Restoration and Enhancement (WRE) Plan. The Deschutes WRE Plan (Plan) is required by the Streamflow Restoration law (law; RCW 90.94). The law supports healthy and sustainable salmon populations while ensuring rural communities have access to water.

The WRE Committee is chaired by the Washington State Department of Ecology (Ecology) and is charged with developing the Plan. Ecology expects WRE Committee members to obtain approval from their entities to vote on the Plan. The WRE Committee must cast a consensus vote to submit the Plan to Ecology for comparison with the law and possible rulemaking. Rulemaking means Ecology may amend the Deschutes Instream Flow Rule (Chapter 173-513 Washington Administrative Code).

The Plan forecasts 2,616 new domestic (permit-exempt) wells within the Deschutes watershed over the 2018-2038 planning horizon, including 25-50 new wells within the Olympia city limits and urban growth area. These new wells are estimated to impact streamflows by 435 acre-feet per year of consumptive water use. The Plan recommends dozens of projects and many policy actions to offset this potential impact. These projects and actions will support Thurston County's ability to approve new wells, forecast primarily in rural areas of the watershed.

The Plan contains 11 projects for Olympia all of which are currently in our Capital Improvement Program. The Plan also contains proposed policy actions. One action – the Deschutes Watershed Council – is anticipated to involve Olympia. The Deschutes Watershed Council is envisioned as a collaborative partnership of local stakeholders to support ongoing implementation of the Plan. Adaptive management components in the Plan support a net ecological benefit for the watershed. The WRE Committee developed the Plan fully intending implementation. Information about the Streamflow Restoration law and the Deschutes WRE Plan can be found on Ecology's public website: [Department of Ecology - Committees, Boards, and Workgroups \(wa.gov\)](https://www.ecy.wa.gov/Program/CommitteesBoardsandWorkgroups.aspx)

The UAC was briefed on the Plan on February 4, 2021 and invited to comment on it via Olympia's primary WRE Committee representative, Donna Buxton. The LUEC February 18, 2021 briefing will include the same invitation for the LUEC members to comment on the Plan. Ecology will finalize the Plan for the WRE Committee's vote on April 20, 2021.

Financial Implications Projects in the Plan are eligible for Ecology's WRE Grant Program. This program is supported by \$300M in legislative funding over 15 years. The Plan's funding sources for implementation include possible cost-sharing among members of the Deschutes Watershed Council, if formed.

Recommendation to City Council – The UAC supports Olympia staff representation on the WRE Committee to vote on the Deschutes WRE Plan for submittal to Ecology for evaluation and possible rulemaking. Further, the UAC encourages the City Council to support future staff engagement with implementing the Plan and to support the implementation of 11 projects within our Capital Improvement Program.

Donna Buxton, Public Works Department Groundwater Protection Program Manager, is available at dbuxton@ci.olympia.wa.us to answer questions about the Deschutes WRE Plan. I can also be reached at mbuffo@ci.olympia.wa.us regarding UAC's recommendation of support.

Sincerely,



MIKE BUFFO

Chair, Utility Advisory Committee

ec: UAC Members
Eric Christensen, Water Resources Director
Susan Clark, Water Resources Engineering & Planning Supervisor
Donna Buxton, Groundwater Protection Program Manager



March 17, 2021

To the WRIA 13 Deschutes Watershed Restoration and Enhancement Committee,

As chair of the Land Use and Environment Committee for the Olympia City Council, I would like to thank the WRIA 13 Committee for your important work to protect our water resources.

I am particularly enthusiastic about the recommendation to establish a Deschutes Watershed Council and eager to participate in the work to create this collaborative body. Restoring the watershed will require considerable effort and cooperation of all who depend on our shared natural resources. By establishing the Deschutes Watershed Council, we can create an environment rich in collaboration and possibilities.

There have been many successes for our neighbors to the north with the Nisqually Watershed Council. As indicated in their Nisqually Stewardship Plan: "The clear lesson of the Nisqually Watershed model is that investing in relationships, both institutional and interpersonal, pays tremendous dividends in meeting long-term goals and adapting to new challenges."

Please keep the City informed on how we can support the next steps.

Best,

Dani Madrone
Olympia City Council

Department of Ecology Committees, Boards, and Workgroups

[Portal ID #1962]

Overview

View our committees

Watershed Restoration and Enhancement Committee WRIA 13 Deschutes

[Ecology home](#) | [Water supply](#) | [Streamflow restoration](#) | WRIA 13 Deschutes Watershed Restoration and Enhancement Committee

Last revised: March 18, 2021

The Streamflow Restoration Act (RCW 90.94) is a new law affecting water resource management in Washington State. The law, passed in 2018, helps protect water resources while providing water for families in rural Washington.

- Read more about the [Streamflow Restoration law](#)

The law directs local planning groups in 15 watersheds to develop or update plans that offset potential impacts to instream flows associated with new permit-exempt domestic water use.

We are leading the WRIA 13 Deschutes Watershed Restoration and Enhancement Committee. Get more information:

- If you would like to receive notices about WRIA 13 Deschutes Watershed Restoration and Enhancement Committee meetings, [subscribe to the email list](#).

How the law affects this watershed

As of Jan. 19, 2018, new permit-exempt wells for domestic use in this watershed are:

- allowed 950 gallons per day as the maximum annual average (350 gallons per day during drought).
- subject to a \$500 fee.

Please contact your county for more information on these standards as they may change in the final watershed plan or any potential rulemaking.

This watershed:

- has an instream flow rule that does not regulate permit-exempt wells.
- is directed by Section 203 of the new law to adopt a watershed restoration and enhancement plan by June 30, 2021.

The Department of Ecology offers free [language services](#). We can provide information written in your preferred language and interpreters over the phone. For more information, please contact Angela Johnson at 360 407-6668.

Final Draft WRE Plan for Local Review

The chair distributed the draft watershed restoration and enhancement plan for review by entities on the Committee. The draft plan, appendices, and supporting resources are linked here:

- [Final Draft WRE Plan \(full version Chapters 1-7 and Appendices\)](#)
- [Final Draft WRE Plan \(Chapters 1-7 only\):](#)
 - [Appendix A: References](#)
 - [Appendix B: Glossary](#)
 - [Appendix C: Committee Roster](#)
 - [Appendix D: Approved Operating Principles](#)
 - [Appendix E: Regional Aquifer Units Within WRIA 13](#)
 - [Appendix F: Surface Water Quality Assessment Category 4 and 5 Listings in WRIA 13](#)
 - [Appendix G: Subbasin Delineation Memo](#)
 - [Appendix H: PE Growth and Consumptive Use Summary Technical Memo](#)
 - [Appendix I: Detailed Project Descriptions](#)
 - [Appendix J: Project Inventory](#)
 - [Appendix K: Policy Recommendation Proposals](#)
- [Draft Plan Compendium](#)
- [Plan Cover Memo](#)
- [Plan Review Timeline](#)
- [Plan Overview Slides \(ppt format\)](#)
- [WRIA 13 Committee Brochure](#)
- [Streamflow Restoration Program Overview](#)
- [Final NEB Guidance](#)
- [Streamflow Restoration Policy Interpretive Statement](#)

Meetings

This committee has until June 30, 2021 to complete plans that estimate the 20 year consumptive use from permit-exempt wells and identifies projects to offset that consumptive use. The plans will need to meet net ecological benefit.

The standing meeting date will be the 4th Wednesday of every month, from 9:00 am – 12:30 pm (unless otherwise noted). Meeting materials for past and upcoming meetings will be posted below.

In light of the current Coronavirus (COVID-19) situation and social distancing recommendations, we will host committee meetings online via WebEx only. The WebEx link and information will be available in the meeting agendas uploaded below. We respect the public's right to learn about environmental decisions affecting their communities and will do everything possible to keep people safe and accommodate public participation. We appreciate your flexibility and look forward to talking with you.

2021

January 27, 9:00 a.m. to 12:00 p.m., Special Additional January Meeting

- [Agenda](#)
- [Draft Meeting Summary](#)

January 20, 9:00 a.m. to 1:00 p.m., WebEx link is available in the agenda.

- [Agenda](#)
- [Draft Meeting Summary](#)

2020

December 16, 9:00 a.m. to 1:00 p.m., WebEx link is available in the agenda.

- [Agenda](#)
- [Meeting Summary](#)
- Meeting Materials:
 - [December 2020 Project Updates](#)

November 19, 9:00 a.m. to 1:00 p.m., WebEx link is available in the agenda.

- [Agenda](#)
- [Meeting Summary](#)

October 28, 9:00 a.m. to 1:00 p.m., Because of the current guidance to not hold in-person meetings, this meeting will be WebEx only. WebEx link is available in the agenda.

- [Agenda](#)
- [Meeting Summary](#)
- Meeting Materials:
 - [Reclaimed Water Policy Proposal](#)
 - [Chapter 6-Assurance of Plan Implementation Proposal](#)
 - [October 2020 Project Updates](#)

September 23, 9:00 a.m. to 1:00 p.m., Because of the current guidance to not hold in-person meetings, this meeting will be WebEx only. WebEx link is available in the agenda.

- [Agenda](#)
- [Meeting Summary](#)

August 26, 9:00 a.m. to 1:00 p.m., Because of the current guidance to not hold in-person meetings, this meeting will be WebEx only. WebEx link is available in the agenda.

- [Agenda](#)
- [Meeting Summary](#)
- Meeting Materials:
 - [Operating Principles Revisions](#)
 - [Project List Organization](#)

July 22, 9:00 a.m. to 1:00 p.m., Because of the current guidance to not hold in-person meetings, this meeting will be WebEx only. WebEx link is available in the agenda.

- [Agenda](#)
- [Meeting Summary](#)
- Meeting Materials:
 - [Adaptive Management Discussion Guide for July 2020](#)

June 24, 9:00 a.m. to 1:00 p.m., Because of the current guidance to not hold in-person meetings, this meeting will be WebEx only. WebEx link is available in the agenda.

- [Agenda](#)
- [Meeting Summary](#)
- Meeting Materials:
 - [Plan Proposals for Discussion at 6/24/20 Meeting](#)

May 27, 9:00 a.m. to 1:00 p.m., Because of the current guidance to not hold in-person meetings, this meeting will be WebEx only. WebEx link is available in the agenda. We appreciate your flexibility and look forward to talking with you.

- [Agenda](#)
- [Meeting Summary](#)

- [WebEx Getting Started Instructions](#)
- Meeting Materials:
 - [Adaptive Management Follow-Up Discussion Guide](#)
 - [Climate Resilience Follow-Up Discussion Guide](#)

April 29, 9:00 a.m. to 1:00 p.m., This meeting was rescheduled from its original date of 4/22/20. Because of the current guidance to not hold in-person meetings, this meeting will be WebEx only. WebEx link is available in the agenda. We appreciate your flexibility and look forward to talking with you.

- [Agenda](#)
- [WebEx Getting Started Instructions](#)
- [Meeting Summary](#)
- Meeting Materials:
 - [Draft Policy Recommendations](#)
 - [Adaptive Management Follow-Up Discussion Guide](#)
 - [Climate Resilience Follow-Up Discussion Guide](#)

March 25, 9:00 a.m. to 1:00 p.m., WebEx Only.

Because of the current guidance to not hold in-person meetings, this meeting will be WebEx only. WebEx link is available in the agenda. We appreciate your flexibility and look forward to talking with you.

- [Agenda](#)
- [Meeting Summary](#)
- Meeting Materials
 - [Policy/Regulatory Action and Adaptive Management Assignment](#)

February 26, 9:00 a.m. to 12:30 p.m., at Tumwater Fire Department Training Room, 311 Israel Rd. SW, Tumwater, WA 98501

- [Agenda](#)
- [Meeting Summary](#)

January 22, 9:00 a.m. to 12:30 p.m., at Tumwater Fire Department Training Room, 311 Israel Rd. SW, Tumwater, WA 98501

- [Agenda](#)
- [Meeting Summary](#)

2019

December 18, 9:00 a.m. to 12:30 p.m., at Tumwater Fire Department Training Room, 311 Israel Rd. SW, Tumwater, WA 98501

- [Agenda](#)
- [Meeting Summary](#)
- Meeting Materials
 - [Safety Factor Discussion Guide](#)
 - [Policy and Regulatory Action Discussion Guide](#)
 - [Local Plan Approval Form](#)

November 21, 1:00 p.m. to 3:30 p.m., at the Tumwater City Hall – Council Chambers, 555 Israel Rd. SW, Tumwater, WA 98501

*note this is a different meeting room than the Tumwater Fire Department and is in the adjacent City Hall building.

- [Agenda](#)
- [Meeting Summary](#)
- Meeting Materials:
 - [Watershed Restoration Enhancement Plan Outline Template](#)
 - [Watershed Restoration Enhancement Plan Local Approval Process Form](#)
 - [Adaptive Management Discussion Guide](#)

October 23, 9:00 a.m. to 12:30 p.m., at the Tumwater City Hall – Council Chambers, 555 Israel Rd. SW, Tumwater, WA 98501

*note this is a different meeting room than the Tumwater Fire Department and is in the adjacent City Hall building.

- [Agenda](#)
- [Meeting Summary](#)
- Meeting Materials:
 - [Climate Change Considerations Discussion Guide](#)

September 25, 9:00 a.m. to 12:30 p.m. at the LOTT Clean Water Alliance Board Room – 500 Adams St NE, Olympia WA 98501 (note new meeting location)

- [Agenda](#)
- [Meeting Summary](#)
- Meeting materials:
 - [September 13, 2019 draft workgroup meeting draft summary](#)
 - [Parking Information: Metered parking only, please see map for details](#)

August 28, 9:00 a.m. to 12:30 p.m. at the Lacey City Hall, Community Room, 420 College Ave SE, Lacey WA 98503

- [Agenda](#)
- [Meeting summary](#)
- Meeting materials:
 - [August 6, 2019 draft workgroup meeting summary](#)

August 6, 1:00 p.m. to 3:30 p.m. WORKGROUP MEETING (contact Angela Johnson for more information)

June 26, 9:00 a.m. to 12:30 p.m., at the Tumwater Fire Department Training Room, 311 Israel Rd. SW, Tumwater, WA 98501

- [Agenda](#)
- [Meeting summary](#)
- Meeting Materials:
 - [Water Right Acquisitions Handouts](#)

May 22, 9:00 a.m. to 12:30 p.m., at the Tumwater Fire Department Training Room, 311 Israel Rd. SW, Tumwater, WA 98501

- [Agenda](#)
- [Meeting summary](#)
- Meeting materials:
 - Growth Projection Discussion Guide
 - Subbasin Discussion Guide
 - Technical Workgroup draft meeting summary
 - [Landowner's Guide to Washington Water Rights](#)
 - [Permit-Exempt Domestic Well use in WA State](#)
 - [History of Water Law in WA](#)

May 21, 1:00 p.m. to 3:00 p.m., WORKGROUP MEETING (contact Angela Johnson for more information)

April 24, 9:00 a.m. to 12:30 p.m., at the Tumwater Fire Department Training Room, 311 Israel Rd. SW, Tumwater, WA 98501

- [Agenda](#)
- [Meeting summary](#)
- Meeting materials:
 - Technical Workgroup draft meeting summary
 - Thurston PUD presentation

April 22, 1:00 p.m. to 3:00 p.m., WORKGROUP MEETING (contact [Angela Johnson](#) for more information)

March 27, 9:00 a.m. to 12:30 p.m., at the Tumwater Fire Department Training Room, 311 Israel Rd. SW, Tumwater, WA 98501

- [Agenda](#)
- [Meeting summary](#)
- Meeting materials:
 - [WRIA 13 Local Planning Presentation Outline](#)
 - [Thurston County Planning Presentation](#)
 - [Lewis County Planning Presentation](#)
 - [Proposed meeting schedule](#)
- [Approved Operating Principles](#)

March 22, 1:00 p.m. to 3:00 p.m., WORKGROUP MEETING (contact [Angela Johnson](#) for more information)

February 27, 9:00 a.m. to 12:30 p.m., at the Tumwater Fire Department Training Room, 311 Israel Rd. SW, Tumwater, WA 98501

- [Agenda](#)
- [Meeting summary](#)
- Meeting materials:
 - [Revised operating principles—mark-up](#)
 - [Revised operating principles—clean](#)
 - [Instream flow video](#)
 - Instream flow presentation - link removed, contact Committee chair for copy

January 23, 9:00 a.m. to 12:30 p.m., at the Lacey City Hall, 420 College St. SE, Lacey, WA 98503

- [Agenda](#)
- [Meeting summary](#)
- Meeting materials:
 - [Plan components and timeline presentation](#)
 - [Draft timeline and key decisions](#)
 - [Hydrogeology presentation](#)
 - [Draft operating principles –revised](#)

2018

December 12, 12:30 p.m. to 4 p.m., at Thurston County PUD, 1230 Ruddell Rd. SE, Lacey, WA 98503

- [Agenda](#)
- [Meeting summary](#)
- Meeting materials:
 - [Draft operating principals](#)

October 25

- [Agenda](#)
- [Meeting summary](#)
- Meeting materials:
 - [ESSB 6091 - Map](#)
 - [Focus on: New streamflow restoration law](#)
 - [WRIA 13 Deshutes](#) - Basin map
 - [Presentation](#) - Watershed Restoration and Enhancement Committee Kickoff Meeting

Streamflow restoration implementation grants

We have launched a grant program for Streamflow Restoration implementation projects. The first round of grants will focus on projects that improve streamflows and instream resources.

- [Read more](#)

Resource materials:

- [Department of Ecology Streamflow Restoration Webpage](#)
- [Hirst v. Whatcom County](#)
- [Engrossed Substitute Senate Bill 6091](#)
- [RCW 90.94](#)
- [Streamflow Restoration Grants Fiscal Year 2019 Interim Funding Guidance](#)
- [Case law](#)
- [Final Net Ecological Benefit Guidance](#)
- [Streamflow Restoration Policy and Interpretative Statement](#)
- [NEB Outline Draft](#)

Contact:

Angela Johnson
Streamflow Restoration
angela.johnson@ecy.wa.gov
360 407-6668

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City Council

Approval of a Bid Award for the Miller and Central Lift Station Replacement Project

Agenda Date: 3/23/2021
Agenda Item Number: 4.F
File Number: 21-0277

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

Title

Approval of a Bid Award for the Miller and Central Lift Station Replacement Project

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to award the construction contract for the Miller and Central Lift Station Replacement Project to Nisqually Construction Services, LLC in the amount of \$2,125,578.55, and authorize the City Manager to execute the contract.

Report

Issue:

Whether to award the construction contract for the Miller and Central Lift Station Replacement Project to Nisqually Construction Services, LLC.

Staff Contact:

Randy Wesselman, Project Manager, Public Works, Engineering, 360.753.8477

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

The Miller and Central Lift Station, built in 1970, serves approximately 600 acres in northeast Olympia. It currently collects sanitary sewage from approximately 625 homes including some sewage that has already been pumped once by the Miller and Ann sewage lift station. It then pumps the sewage through a sewer pipe force main to the gravity sewer main at the intersection of Bethel Street and Miller Avenue.

The City hired a consultant to perform survey-level condition assessments of 16 sewer lift stations to develop planning level estimates for improved capital facilities planning. The consultant concluded that the Miller and Central Sewer Lift Station has reached the 50-year design life for original components and needed a complete overhaul including new pumps, motors, valves, electrical and

instrumentation/controls. Additionally, the consultant recommended replacement of the original 8-inch asbestos concrete force main. The Miller and Central Sewer Lift Station upgrade was identified in the 2013 Wastewater Management Plan.

The new lift station is sized to accommodate the projected 50-year development/build-out of the sewer basin.

The City bid the project starting on January 24, 2021 and opened bids on February 26, 2021. The low bid of \$2,125,578.55 is more than 20.8% above the Engineer's estimate. Staff evaluated the bid, in consultation with our design consultant of Gray and Osborne, and determined that it is reasonable, and we should move forward with awarding the contract for the following reasons:

- The difference between the high and low bid is approximately \$366,000. This indicates to staff that the contractors who bid viewed the project in a similar way. Rejecting the bids and rebidding the project would not likely result in different results.
- The amount of dewatering required, and the measures required to dispose of this water were underestimated in the final cost estimate. Additional detail regarding dewatering was developed and provided to contractors during the bid period. This additional information increased the cost that was bid for dewatering above that which was originally estimated.
- The design consultant indicated that recent bids they have opened for other similar projects have come in higher than the Engineer's estimate. They believe the bid is reasonable based on the current bidding climate.

Neighborhood/Community Interests (if known):

Staff notified the Northeast Neighborhood Association and property owners directly adjacent to the project.

Options:

1. Award the construction contract for the Miller and Central Lift Station Replacement Project to Nisqually Construction Services, LLC, in the amount of \$2,125,578.55, and authorize the City Manager to execute the contract. The project proceeds as planned.
2. Do not approve awarding the construction contract, reject all bids, and direct staff to rebid the project. This will cause a delay in improving the sewer lift station equipment which could potentially fail due to the age of certain components. A delay could also create higher costs and will require additional staff time.

Financial Impact:

This project is identified in the Capital Facilities Plan. Funding for the project comes from a combination of monthly utility rates and general facilities charges.

The low bid of \$2,125,578.55 is more than 20.8% above the Engineer's estimate. There are sufficient funds in the program budget to complete this project. Staff is submitting separately to Council a request for a budget modification to the allocation in the Capital Facilities Plan.

Overall project costs:

Total Low Bid:	\$ 2,125,578.55
Contingency to Award (10%):	\$ 212,560.00
Engineering: Design, Inspection, Consultants	\$ 705,361.45
Total Estimated Project Cost:	\$ 3,043,500.00

Available Project Funding:	\$ 3,043,500.00
----------------------------	-----------------

Attachments:

Summary of Bids

Vicinity Map

Project Name:	Miller and Central Lift Station Improvements
Project Number:	1960Q
Bid Opening Date:	2/26/2021

[illegible]



Miller and Central Lift Station Replacement

Project Map



0 0.01 0.02 Miles 1 inch = 80 feet

Map printed 3/11/2021

For more information, please contact:

Randy Wesselman, Project Manager

rwesselm@ci.olympia.wa.us

(360) 753-8477

This map is intended for 8.5x11" landscape printing.

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 Bid Award for the 2021 Pavement Repair Project

Agenda Date: 3/23/2021
Agenda Item Number: 4.G
File Number: 21-0278

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

Title

Approval of a Bid Award for the 2021 Pavement Repair Project

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to award the construction contract to Lakeside Industries, Inc. in the amount of \$531,966.50, and authorize the City Manager to execute the contract.

Report

Issue:

Whether to approve staff's recommendation to award the construction contract for the 2021 Pavement Repair project to Lakeside Industries, Inc.

Staff Contact:

Jeff Johnstone, P.E., Senior Engineer, Public Works Engineering, 360.753.8290

Presenter(s):

None - Consent Calendar item.

Background and Analysis:

This project is part of the Least Cost Pavement Preservation Program for the City. The program purpose is to extend the overall life of streets. Prior to chip sealing the streets, pavement repairs are required. This project will repair degraded pavement areas in preparation for future chip seal projects.

This project will complete pavement repairs at the following locations:

- Pacific Avenue - Phoenix Street to east City limits
- Central Street - 11th Avenue to 4th Avenue
- Sleater-Kinney Road - South City limits to north City limits
- 4th Avenue - McCormick Street to Frederick Street
- 11th Avenue - Capitol Way to Jefferson Street

- Jefferson Street - 11th Avenue to 7th Avenue
- Puget Street - Yew Avenue to San Francisco Street

Neighborhood/Community Interests (if known):

The community should expect delays for people driving, biking, and walking throughout the time construction is happening. The City will communicate with citizens, emergency responders, schools, Intercity Transit, and other stakeholders about the schedule and traffic impacts through Twitter, media releases, and postcards.

Options:

1. Award the construction contract to Lakeside Industries, Inc. in the amount of \$531,966.50, and authorize the City Manager to execute the contract.
The project proceeds as planned.
2. Reject all bids and direct staff to rebid the project. The time needed to rebid will delay construction. The cost may increase due to increased staff time to rebid the project.

Financial Impact:

This 2021 Pavement Repairs project is funded by the Street Repair/Reconstruction program.

The low bid of \$531,966.50 is approximately 30% less than the Engineer's estimate. There are sufficient funds in the budget to complete this project.

Overall project costs:

Total Low Bid:	\$ 531,966.50
Contingency to Award (10%):	\$ 55,000.00
Engineering: Design, Inspection, Consultants	\$ 150,000.00
Total Estimated Project Cost:	\$ 736,966.50

Available Project Funding:	
Transportation Benefit District	\$ 800,000.00
Transportation Gas Tax	\$ 106,648.00
REET	\$ 321,016.00

Total Available Project Funding	\$ 1,227,664.00
--	------------------------

Attachments:

Vicinity Map
Summary of Bids

SUMMARY OF BIDS RECEIVED



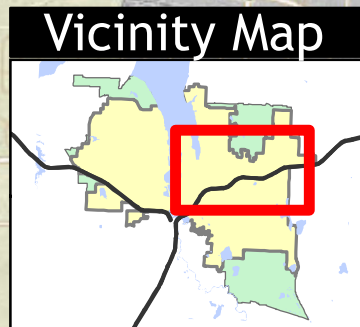
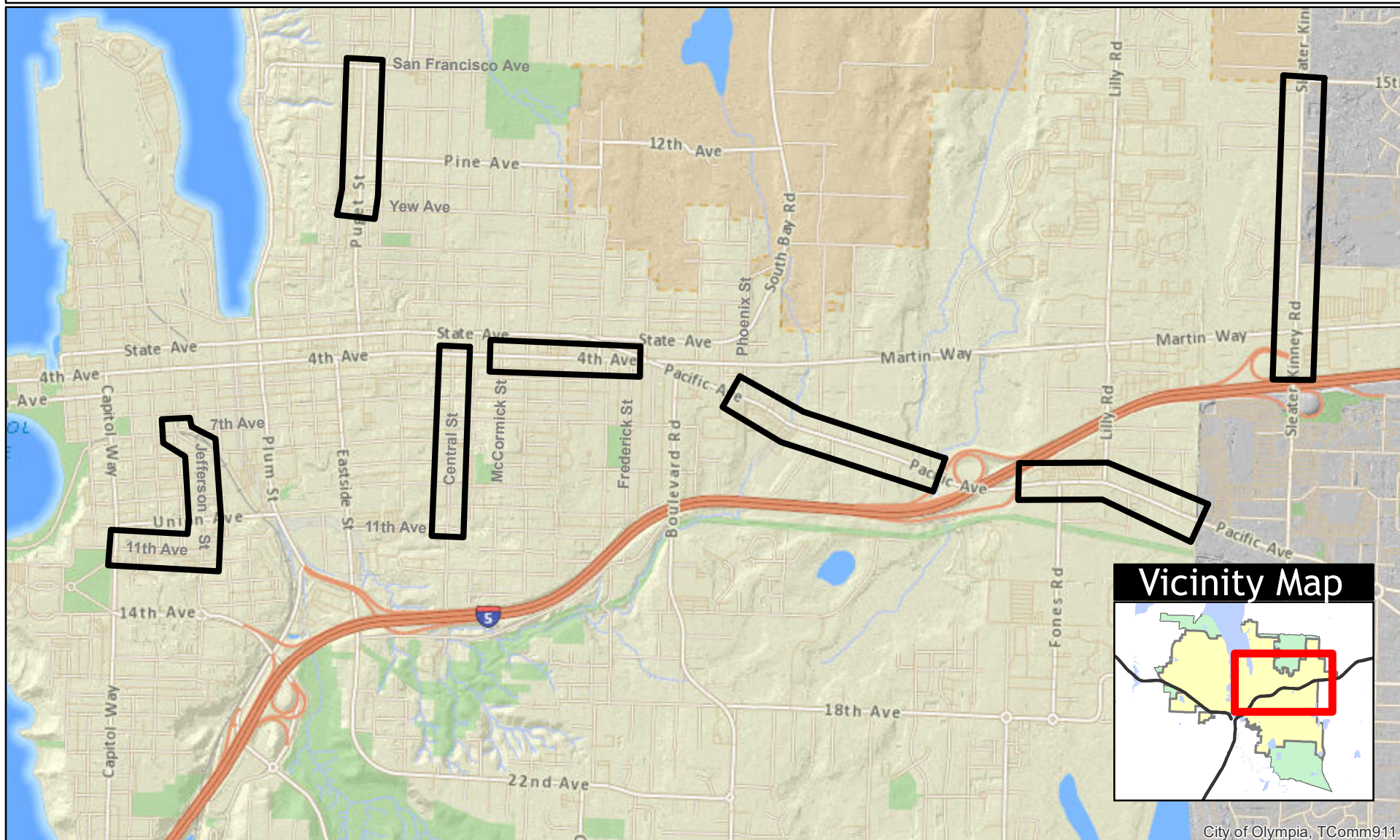
Project Name: 2021 Pavement Repair Project
Project Number: 2046G
Federal Project No.: N/A
Bid Opening Date: 3/4/2021

ENGINEER'S ESTIMATE	CITY OF OLYMPIA	\$	752,425.00
Bid #1	Lakeside Industries, Inc.	\$	531,966.50
Bid #2	Granite Construction	\$	633,149.50
Bid #3	Becker Blacktop, LLC	\$	650,305.00
Bid #4	Miles Resources, LLC	\$	651,082.00
Bid #5	Puget Paving & Construction	\$	673,573.00
Bid #6	Tucci & Sons, Inc.	\$	701,037.00



2021 Pavement Repair

Project #2046G



City of Olympia, TComm911

0 0.25 0.5
Miles 1 inch = 2,000 feet

LEGEND

 Project Area

Map printed 3/4/2021

For more information, please contact:

Fran Eide, P.E., City Engineer

feide@ci.olympia.wa.us

(360) 753-8422.

This map is intended for 8.5x11" landscape printing.

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 Labor Contract with the Olympia Police Sergeants Association

Agenda Date: 3/23/2021
Agenda Item Number: 4.H
File Number: 21-0287

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

Title

Approval of a Labor Contract with the Olympia Police Sergeants Association

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the labor agreement with the Olympia Police Sergeants Association and authorize the City Manager to execute the agreements.

Report

Issue:

Whether to approve the labor contract between the City of Olympia and the Olympia Police Sergeants Association.

Staff Contact:

Linnaea Jablonski, Human Resources Director, Strategic Initiatives, 360.753.8309

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

The labor agreement with the Olympia Police Sergeants Association expired on December 31, 2020. The contract covers twelve (12) Police Sergeants in the City's Police Department. The new agreement has been ratified by the Union and City staff is now bringing it forward for Council approval.

The contract has a three-year term that will expire on December 31, 2023. This three-year contract allows staff time to bargain the Olympia Police Guild contract which expires December 31, 2021 and will keep them on a staggered schedule. It also allows time for City staff to negotiate the City's other seven (7) labor agreements which all expire prior to 2023. Most of the contract changes relate to wages.

Wages

The Police Sergeant's pay, per the contract, is calculated at a rate of 17% above the Olympia Police Guild wages. Also, longevity was increased by .5% for all but the top step of scale. Detectives, Hiring/Training, Administrative Sergeants premium pay was increased from 3.3% to 4%.

Medical/Dental/Vision Benefits

All benefits remain the same as administered through Association of Washington Cities. Life insurance coverage for members increased from \$50,000 to \$150,000.

The remainder of the contract changes are administrative in nature including matching language to other agreements, including gender neutral language, or adding language to clarify operational or management needs.

Neighborhood/Community Interests (if known):

N/A

Options:

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

Financial Impact:

The cost to the City for implementing this contract in 2021 is \$75,088 which is included in the 2021 Operating Budget approved by Council. A summary of the economic agreement is attached.

Attachments:

Contract
Economic Agreement Summary

AGREEMENT BETWEEN
THE CITY OF OLYMPIA
AND
THE OLYMPIA POLICE SERGEANTS ASSOCIATION

For the period: January 1, 2021 – December 31, 2023



TABLE OF CONTENTS

<u>Preamble</u>	3
Article 1	<u>General</u>	3
Article 2	<u>Recognition</u>	4
Article 3	<u>Employee Rights</u>	4
Article 4	<u>Management Rights</u>	4
Article 5	<u>Strikes Prohibited</u>	4-5
Article 6	<u>Sergeants Association Activities</u>	5-6
Article 7	<u>Grievance Procedure</u>	6-8
Article 8	<u>Outside Employment</u>	8-9
Article 9	<u>Salaries</u>	9-11
Article 10	<u>Hours of Work</u>	12-13
Article 11	<u>Overtime and Call Back</u>	13-15
Article 12	<u>Court Appearances</u>	15
Article 13	<u>Annual Leave</u>	16-19
Article 14	<u>Paid Holidays</u>	19-21
Article 15	<u>Jury Service</u>	22
Article 16	<u>Uniforms</u>	22
Article 17	<u>Benefits and Retirement</u>	22-24
Article 18	<u>Physical Fitness</u>	24-26
Article 19	<u>Discipline and Discharge</u>	26
Article 20	<u>Personnel Records</u>	26-27
Article 21	<u>Parking and Vehicles</u>	27-28
Article 22	<u>Indemnification of Employees</u>	29
Article 23	<u>Dash Mounted Video System</u>	29
Article 24	<u>Reimbursement of Expenses</u>	29
Article 25	<u>Retirement ID</u>	29-30
Article 26	<u>Workforce Management Plan</u>	30
Article 27	<u>Seniority</u>	30
Article 28	<u>Savings Clause</u>	31
Article 29	<u>Entire Agreement</u>	31
Article 30	<u>Term</u>	31
Appendix A	<u>Salaries, Detective Clothing Allowance, Cleaning Allowance, Educational Incentive</u>	32
Appendix B	<u>Annual Leave Schedule</u>	33
Appendix C	<u>Uniforms</u>	34-35
Appendix D	<u>Bill of Rights</u>	36-40
Appendix E	<u>Physical Fitness Standards</u>	41-42

CONTRACT

By and Between

CITY OF OLYMPIA

And

OLYMPIA POLICE SERGEANTS ASSOCIATION

PREAMBLE

- A. This contract is made and entered into at Olympia by the City of Olympia, Washington, hereinafter referred to as the "City" and the Olympia Police Sergeants Association, hereinafter referred to as the "Sergeants Association".
- B. The purpose of this document is to set forth and record herein the basic and full agreement between the parties on those matters pertaining to wages, hours, and conditions of employment.

ARTICLE 1 - GENERAL

- A. The Sergeants Association agrees, and represents to the City that the Sergeants Association is duly authorized and empowered to contract for and on behalf of all employees in the bargaining unit and represents that it and its members will faithfully and diligently abide by and be strictly bound by all of the provisions of this Contract as herein set forth. The parties agree that in conferences and negotiations, the Sergeants Association will represent all employees in the bargaining unit.
- B. The City, agrees, and represents to the Sergeants Association that the City under the express limitations of this Agreement is duly authorized and empowered to contract for and on behalf of the City and for itself represents that it will faithfully and diligently abide by and strictly be bound by all of the provisions of this Contract as herein set forth.
- C. The parties are committed to a relationship of openness and communication and recognize the importance of collaboratively resolving issues in the Department. The parties recognize the importance of working together cooperatively in jointly seeking to improve the Department.

ARTICLE 2 - RECOGNITION

The City recognizes the Sergeants Association as the sole and exclusive bargaining representative for all full-time and regular part-time sergeants of the City of Olympia Police Department, excluding supervisors, confidential employees and all other employees for the purpose of representation and collective bargaining with regard to matters pertaining to wages, hours, and conditions of employment. Any agreements or MOU's made between the OPSA and the City shall be signed by the OPSA President or designee and one other elected OPSA Sergeant. The Employer agrees to notify the Sergeants Association not less than 30 days in advance of changes or public hearings affecting working conditions of any employee covered by this Agreement, except in emergency situations and provided that the Employer is aware of the changes or public hearings.

ARTICLE 3 - EMPLOYEE RIGHTS

Employees subject to this Agreement shall have the right of self-organization, to form or join labor organizations, and to bargain collectively through representatives of their own choosing.

ARTICLE 4 - MANAGEMENT RIGHTS

The Sergeants Association recognizes the prerogative of the City to manage or administer the Police Department in accordance with its responsibilities, powers, and authority, subject to other provisions of this Agreement. City prerogatives include, but are not limited to, the following items:

1. The right to establish reasonable rules and regulations;
2. The right to determine methods of operation and the introduction of new equipment;
3. The right to discipline, discharge, or suspend employees for cause;
4. The right to determine schedules of work and to establish the methods and processes by which work is to be performed;
5. The right to schedule overtime work and;
6. The right to take any action as may be necessary to carry out the mission of the City and the Department in situations of civil emergency as declared by the Emergency Management Director, Mayor, Governor, or President of the United States.

ARTICLE 5 - STRIKES PROHIBITED

- A. The Sergeants Association and its members, as individuals or as a group, will not initiate, cause, permit, or participate or join in any strike, work stoppage or slowdown, or any other restriction of work at any location in the City. Employees in the bargaining unit, while acting in the course of their employment, shall not honor any picket line established in the City by the Sergeants Association or any other labor organization when called upon to cross such picket line in the line of duty.

Disciplinary action, including discharge, may be taken by the City against any employee or employees engaged in a violation of this Article. Such disciplinary action may be undertaken at the option of the City (provided that a challenge to the discipline is subject to the grievance and arbitration provisions of this Agreement) and shall not preclude or restrict recourse to any other remedies, including an action for damages, which may be available to the City.

- B. In the event of a strike, work stoppage, slow-down, observance of a picket line or other restriction of work in any form, either on the basis of individual choice or collective employee conduct, the Sergeants Association will, within one hour of notification by the City, attempt to secure an orderly return-to work within two hours of such notification. This obligation and the obligations set forth in Section A above shall not be affected or limited by the subject matter involved in the dispute giving rise to the stoppage or by whether such subject matter is or is not subject to the grievance and arbitration provisions of this Agreement.

ARTICLE 6 - SERGEANTS ASSOCIATION ACTIVITIES

- A. The Sergeants Association's president or grievance committee chairman may briefly discuss grievances or potential grievances with Sergeants Association members on City time provided that they shall make arrangements to meet with the grievant on off-duty time to discuss the matters in detail. Official representatives of the Sergeants Association shall be given time off with pay to attend meetings with City representatives including but not limited to meetings concerning grievances. Sergeants Association representatives shall provide the City forty-eight (48) hours notice of the need to attend such meetings whenever reasonably possible. A maximum of three Sergeants Association representatives (no more than two from road patrol) shall be released with pay to attend bargaining negotiations with the City. The parties will work together to minimize the impact of negotiations on departmental operations, and the Sergeants Association will work with the City to ensure that no more than one Sergeant must be hired back on overtime.
- B. The Sergeants Association agrees that its officers, agents, affiliated organizations, and members of the bargaining unit will not solicit merchants, businesses, residents, or citizens located within the City of Olympia for contributions, donations, or to purchase tickets for any Sergeants Association-sponsored performance or advertising in any Sergeants Association or Sergeants Association-related publication or associate memberships in the Sergeants Association or any Sergeants Association-related organization without thirty (30) days prior written notice to the City Manager. Such notice shall include the dates such activity shall begin and end, the entities involved in such fundraising, and the methods to be employed in the specific campaign.
- C. Sergeants Association Membership – It shall be a condition of employment that all employees of the employer covered by this Agreement, shall remain members in good standing, and those who are not members on the execution date of this

Agreement, shall on or before the thirty-first (31st) day following the execution date of this Agreement, become and remain members in good standing in the Sergeants Association, or in lieu thereof pay a service charge equivalent to the regular Sergeants Association initiation fee and monthly dues to the Sergeants Association as a contribution towards the administration of this Agreement. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the thirty-first (31st) day following the beginning of such employment, become and remain members in good standing in the Sergeants Association or in lieu thereof pay a service charge equivalent to the regular Sergeants Association initiation fee and monthly dues to the Sergeants Association as a contribution towards the administration of this Agreement. Objections to joining the Sergeants Association which are based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall be observed. Any such employee shall pay an amount of money equivalent to regular Sergeants Association initiation fee and monthly dues to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the Sergeants Association. The employee shall furnish written proof to the Sergeants Association that such payment has been made.

- D. Payroll Deduction – Upon receipt of a voluntarily signed authorization by an employee covered by this Agreement, the Employer shall deduct from the employee's wage the regular monthly Sergeants Association membership dues payable to the Sergeants Association during the period. The employer shall remit said monthly dues to the Sergeants Association on a monthly basis.

ARTICLE 7 - GRIEVANCE PROCEDURE

- A. The purpose of this procedure is to provide for an orderly method for resolving grievances. A determined effort shall be made to settle any such differences at the lowest possible level in the grievance procedures, and there shall be no suspension of work or interference with the operations of the Department. Meetings or discussions involving grievances or these procedures shall occur outside of regular working hours unless otherwise mutually agreed.
- B. For the purpose of this Agreement, a grievance is defined as only those disputes involving the interpretation, application, or alleged violation of any provision of this Agreement and other written Agreements between the City and the Sergeants Association.
- C. Steps in the grievance procedure

Step 1. The grievant employee or the Sergeants Association shall present the grievance within fourteen (14) calendar days of its alleged occurrence to the Division Commander, who shall attempt to resolve it and shall respond to the grievance within seven (7) calendar days after receipt of the grievance.

- Step 2. If the grievant employee or the Sergeants Association is not satisfied with the solution of the Division Commander, the employee or Sergeants Association shall submit written notice to the Chief of Police or designee, and a copy to the Sergeants Association including: (1) statement of the grievance and relevant facts, (2) specific provision(s) of the contract violated, (3) remedy sought, and (4) reasons for dissatisfaction with the Division Commander's solution within ten (10) calendar days of the date of the Division Commander's response. The Chief of Police or designee shall attempt to resolve the grievance within fourteen (14) calendar days after receipt of the grievance.
- Step 3. If, after seven (7) calendar days from the date of the Chief's response, the grievance remains unresolved, the written grievance as set forth in Step 2 may be presented to the City Manager or his designee who shall respond to the grievance in writing within twenty-one (21) calendar days from the date of receipt, with a copy to the Sergeants Association.
- Step 4. If, after thirty (30) calendar days from the date of the City Manager's response, the grievance remains unresolved, the grievance as set forth in writing in Step 2 may be submitted to an arbitrator at the discretion of the Sergeants Association, in accordance with the following procedures:
- a. A Sergeants Association Representative and the City Manager or his designee shall communicate within seven (7) calendar days after notice of arbitration has been given to select an arbitrator. If the parties mutually agree, they may choose a mediator prior to submission to arbitration. The mediator may be selected by mutual agreement. Nothing said or done by the mediator or any party in the mediation or settlement discussions may be referenced or introduced into evidence at the arbitration hearing. If mediation does not result in a settlement, the parties may proceed to arbitration as provided in this Article. If the parties are unable to agree upon an arbitrator, they shall jointly request the Federal Mediation and Conciliation Service to provide a list of nine (9) names from the Northwest Region and the parties shall alternately strike one name from the list until only one name remains. A coin toss shall determine the party striking the first name. The one name remaining shall be the arbitrator.
 - b. It shall be the function of the arbitrator to hold a hearing at which the parties may submit their cases concerning the grievance. The hearing shall be kept private, and shall include only such parties in interest and/or designated representatives. The arbitrator shall render a decision within thirty (30) calendar days after such hearing. The power of the arbitrator shall have no authority to alter, modify, vacate or amend any terms of this Agreement. The decision of the arbitrator within these

stated limits shall be final and binding upon the parties to the grievance provided the decision does not involve action by the City which is beyond its jurisdiction. Neither the arbitrator nor any other person or persons involved in the grievance procedure shall have the power to negotiate new agreements or to change any of the present provision of this Agreement.

- c. The fees and expenses of the arbitrator shall be shared equally by the parties. Each party shall be completely responsible for all costs of preparing and presenting its own case, including compensating its own legal representatives, attorneys, and expert witnesses. If either party desires a record of the proceedings, it shall solely bear the cost of such record.
- d. In case of a grievance involving any continuing or other money claim against the City, no award shall be made by the arbitrator which shall allow any alleged accruals prior to thirty (30) days prior to the date when such grievance shall have first been presented.
- e. In the event the arbitrator finds that he has no authority or power to rule in the case, the matter shall be referred back to the parties without decision or recommendation on the merits of the case.

- D. Election of Remedies. An employee may either refer the discipline to arbitration or appeal said discipline to the Civil Service Commission by notifying the other party of its intent to appeal the grievance. In the case of disciplinary actions appealable to the Civil Service Commission and grievable under the terms of this contract, a written election of remedies shall be made after receipt of the Step 3 response. An employee may elect to either pursue an appeal to the Civil Service Commission or continue with the contractual grievance procedure, but not both. If mutually agreed, time limits will be extended to complete a reasonable investigation before the election of remedies is made.
- E. Any and all time limits specified in the grievance procedure may be waived by mutual agreement of the parties. Failure of the employee to submit the grievance in accordance with these time limits without such waiver shall constitute abandonment of that specific grievance.

ARTICLE 8 - OUTSIDE EMPLOYMENT

Permission to work at outside employment while an employee of the City must be approved in writing by the Chief of police or his designee. Outside employment will be approved if the following five conditions are met:

1. Be compatible with the employee's City duties.
2. In no way detract from the efficiency of the employee in City duties.

3. In no way be a discredit to the City or the Police Service.
4. Not take preference over extra duty required by City employment.
5. Not involve the use of Department uniforms or equipment unless authorized in writing by the Chief of Police or his designee.

It is understood that the Chief of Police or his designee, after conferring with the Sergeant and allowing a reasonable amount of time to resolve any conflict with the above criteria, may upon reasonable grounds revoke or restrict permission to hold outside employment.

ARTICLE 9 - SALARIES

A. Basic Salaries

1. Overall Approach and Philosophy: The City wants to encourage uniformed police officers, sergeants, and lieutenants to take on leadership roles through promotion and to recognize the value of the management role in the success of the Police Department. Therefore, the City agrees to treat the compensation for Police Department uniformed management employees different from both the Police Guild and from other independent employees. It is recognized that there should be an appropriate difference in pay between the ranks. In general, a percentage differential between ranks will be used to determine compensation for police sergeants rather than duplicating provisions of the Police Guild contract. From time to time, the City will review market data to ensure that differentials and levels of pay are competitive.
2. Police Officer Base Pay Defined: The differential will be added to a combination of the top step Police Officer pay plus the percent deferred compensation allowed in the Police Guild Contract.
3. Differential: The differential for Sergeants will be 17% above the Police Officer base pay as defined in item 2 above. Effective January 1, 2021 the Sergeants educational pay for AA and BA/BS degrees shall be as follows:

AA	3% of base salary	
BA	7.34% of base salary	

4. Education Incentive: Sergeants may earn an additional 2% education incentive pay for a Masters Degree. Time spent in pursuit of educational incentive pay is considered off-duty, personal time.
5. Longevity: LONGEVITY PAY SCHEDULE

Longevity pay will be re-instated and paid within the following schedule:

Years of Service	1-6	7-10	11-14	15-18	19-22	23-26	27 & More
% of Base Pay	0%	1.5%	3.5%	5.5%	7.5%	9%	10%

- B. Maintenance: Pay calculations will be adjusted annually effective January 1 based on changes in the Police Guild contract regarding top step Police Officer pay, deferred compensation, education incentive and longevity. In years where the Guild contract is being negotiated past the December 31 contract expiration date, the Sergeants will receive effective January 1, the same COLA received by Independent Employees. The City will make any further adjustment necessary to maintain the agreed upon differential shown in Section 9.A.3 upon execution of the new Police Guild Contract by the City and the Guild.
- C. Physical Fitness Incentive: Sergeants will be eligible to earn the physical fitness incentive as defined in [Appendix E](#).
- D. Special Pay: Premium pay at the amount indicated shall be given to the positions shown below. These positions are not permanent ranks but rather are provisional appointments made at the origination and termination of the Chief of Police.
1. Employees assigned to the Investigative Division as Detective Sergeants, shall receive premium pay in the amount of 4% of the Sergeant's base pay per month. Sergeants temporarily assigned to the Investigative Division for short-term projects or multi-jurisdictional investigations will receive premium pay in the amount of 4% of the Sergeants base pay per month for the duration of the assignment, so long as the project and/or assignment is not related to a light-duty assignment or part of their normal duties and responsibilities defined by their current assignment.
 2. Hiring and Training Sergeants shall receive premium pay in the amount of 4% of the Sergeant's base pay per month.
 3. Administrative Sergeants shall receive premium pay in the amount of 4% of the Sergeant's base pay per month.
 4. Sergeants assigned to the Community Policing Division as the Community Policing Sergeant shall receive premium pay in the amount of 3.3% of the Sergeant's base pay per month.
 5. Sergeants assigned to the Community Policing Division as the Walking Patrol Sergeant shall receive premium pay in the amount of 3.3% of the Sergeant's base pay per month.

6. Sergeants assigned to the Patrol Division as the Special Operations Sergeant shall receive premium pay in the amount of 3.3% of the Sergeant's base pay per month.
 7. Sergeant's serving as Firearms Instructors, Less Lethal/Crowd Control Instructors, Defensive Tactics (DT) Instructors (also includes Taser Instructor), or Emergency Vehicle Operator Course (EVOC) Instructors are generally required to participate in higher levels of training, design lesson plans, provide additional courtroom testimony, and may incur additional liability. These Sergeants shall receive premium pay in the amount equal to one percent (1%) of their base pay each month as long as they are currently certified and providing the training for OPD. Any additional Instructor positions that develop or are identified during the duration of this contract may be discussed outside of the formal contract negotiations, in regularly scheduled labor management meetings. Agreements on additional instructor positions not specifically written into this contract, that are mutually agreed upon, may be incorporated under the 1% premium pay in the form of an MOU. Sergeants assigned as the supervisor/managers for the Firearms Instructor Team, the Less Lethal/Crowd Control Instructor Team, Defensive Tactics (DT) Instructor Team, or the EVOC Instructor Team shall receive premium pay in the amount of 1% of the Sergeant's base pay per month.
 8. All motorcycle and mountain biked trained Sergeants, but not currently assigned, will receive the going specialty rate of pay of 3.3% when working a special detail that requires them to utilize their training for that event.
- E. Out of Classification. If a Sergeant is assigned to perform the duties and responsibilities of a Police Lieutenant on a temporary basis for a minimum of one eight-hour shift, that Sergeant shall be compensated at a rate of pay equal to 110% of the Police Sergeant base pay, including any special pay.
- F. Direct Deposit. All regular pay checks will be directly deposited to the bank account of the employer's choice.
- G. 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 Sergeants having conversational proficiency in Spanish, Asian, Pacific Islander, Russian, Slavic and Sign Languages can qualify for this incentive. Recertification of language skills must be made every three years within three months following the anniversary date of the certification. Those failing to recertify will lose the premium the first pay period following the 3-month certification time period.

ARTICLE 10 - HOURS OF WORK

- A. The regular work day shall be between eight and ten hours and 40 minutes.
- B. The average weekly hours of duty in any year shall not exceed an average of forty (40) hours.
- C. Any changes in the length of the work day or the work week during the life of this Agreement will only be made by mutual agreement. The Sergeants Association and the City agree to meet periodically to examine what changes, if any, should be made to the present schedule.
- D. Sergeants are expected to be at work on time and not leave until the end of their shift. Regularly scheduled duty hours are still between eight and ten hours and 40 minutes.
- E. The parties agree that annually the Sergeants Association shall bid on four separate three-month shifts (January through March, April through June, July through September, and October through December). Shift bidding will be done by seniority. The bidding for the next year will be conducted in October or November of the previous year.

The Association shall continue to conduct the annual shift bidding for each quarter; however, the Police Department Administration shall schedule at least two weeks in advance, the work schedule for any employee changing Patrol Teams at the start of each year, and the scheduling will be consistent with the employee's shift bid. Adjustments to the employee's work schedule for team changes shall occur after Christmas day and be completed within 14 days of the first change in the employee's regular schedule.

Sergeants changing from one patrol team to the other shall not work more than 15 days in any 28-day day period and shall not work more than five consecutive days without one or more days off, excluding any overtime assignments. Sergeants changing between a specialty assignment and patrol assignment shall not be required to work more than five consecutive days without one or more days off and shall work an average of 40 hours per week when averaged over any 28 day period, excluding any overtime assignments.

The Department retains the right to move a Sergeant to a different shift when it has reasonable cause to do so. If the City changes the work schedule of any employee the City shall give notice to the effected employee at least fourteen (14) days in advance. If notice to change a work schedule is given with less than 14 days notice, the employee shall have the option of working the original hours of scheduled work and working any additional hours to accommodate the change at the overtime rate of pay.

- F. For purposes of patrol shifts on duty during the change to Daylight Savings and back to Standard Time, the shift will begin one (1) hour earlier in the spring and one (1) hour later in the fall.

ARTICLE 11-OVERTIME AND CALL BACK

- A. Overtime: Overtime shall be defined as authorized work for the City performed in excess of the regular work day as designated excluding the daily training period. All overtime shall be compensated at the rate of time and one-half the regular rate of pay. Compensation for overtime shall take the form of cash or compensatory time, at the employee's option, except that compensatory time off accumulated shall not exceed eighty-five (85) hours per employee. Upon the accumulation of eighty-five (85) hours of compensatory time, all overtime shall take the form of cash until an employee's accumulation is less than eighty-five (85) hours, at which time the employee may again accumulate compensatory time subject to the eighty-five (85) hour maximum stated above. Employees who work a 10 hour and 40-minute work-day schedule may accumulate up to one hundred seven hours (107) of compensatory time. Requests to schedule compensatory or holiday time should be made ten (10) days in advance of the requested date, provided, however, that the compensatory time with less than ten (10) days' notice shall be allowed the time off if arrangements can be made for a replacement. If sixteen (16) or more hours are worked within a twenty-four (24) hour period, each additional hour beginning with the seventeenth (17th) hour shall be compensated at double time. Compensatory time may be used, at the employee's choice, for illness within the immediate family as defined in [Article 13 – Annual Leave](#).

Upon separation from the City of Olympia, final pay-out of accrued but unused compensatory time, for the purposes of final average compensation reported to the Washington State Department of Retirement Systems (DRS) will be limited to compensatory time earned within the last year of employment with the City. Compensatory time that is cashed out throughout the last year of employment will be reported to DRS as compensation as it is cashed out throughout the last year of employment."

- B. Call Back: The City agrees to pay a minimum of three (3) hours overtime at time and one-half the regular rate of pay to employees called back to work after having left work unless the time extends to the Sergeant's regular work shift or the employee is called back to rectify his or her own error which requires immediate correction.
- C. Phone Calls: Employees who are off-duty and receive a phone call from a ranking member of the City, or from a person acting at the discretion of a ranking employee of the City, or anyone employed by the Prosecuting Attorney's Office, or any Court, shall receive overtime pay as follows:

1. Sergeants working Day Shift or Swing Shift shall receive pay for the actual length of the call, with a minimum of thirty (30) minutes of overtime pay.
 2. Sergeants working the Graveyard Shift (also known as the Night Shift) shall receive pay for the actual length of the call, with a minimum of sixty (60) minutes of overtime pay.
 3. If the employee receives multiple phone calls, the employee will not be paid twice for the same period of time. For example, if the employee receives two phone calls that are each five (5) minutes long and are received fifteen (15) minutes apart, the employee would receive the thirty (30) minute or sixty (60) minute minimum, because they are within the same thirty (30) minute period. If the employee received one phone call for ten (10) minutes and a second phone call was received three hours later, the employee will receive the minimum overtime pay (thirty (30) minutes or sixty (60) minutes) for each call.
 4. Employees shall not receive overtime pay if the phone call is to correct the employee's own mistake.
 5. Employees shall not receive overtime pay if the purpose of the call is to ask the employee if they want to work voluntary overtime assignments.
- D. 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 agreed to be on stand-by assignments. All employees assigned to stand-by duty, who request one, will be given a cellular telephone or pager in good working order for the purpose of calling the employee into work or terminating the stand-by assignment. Employees on stand-by duty will not be confined to a particular location and may leave their residence with the cellular telephone or pager, so long as they can respond to the Police Department main station with their duty uniforms and equipment within sixty (60) minutes of being called by telephone or pager. An employee assigned to stand-by duty shall receive a rate of pay equal to the prevailing minimum wage described by law.
- E. Waiver of Overtime for Mutual Shift Exchanges: As the mutual exchange of shifts is solely for the convenience of employees, no overtime shall be paid to an employee who voluntarily trades shift time which exceeds the normal work day by virtue of such trade. Time worked beyond the normal traded shift shall be compensated as in Paragraph A.
- F. Whenever two or more overtime or premium rates may appear applicable to the same hour or hours worked by an employee, there shall be no pyramiding or adding together of such overtime or premium rates and only the higher of the applicable rates shall apply.

- G. Fatigue Management. Police Sergeants 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 also does not apply to off-duty employment.
- Exceptions may be made due to exigent or emergency situations. The shift supervisor responsible for the overtime period shall approve such exceptions. Examples of exigent overtime include but are not limited to: necessary report completion, SWAT callouts, major ongoing investigations such as homicides, robbery, rape, abducted or missing children, court appearances. Minimum staffing and other pre-scheduled special events do not constitute exigent or emergency circumstances.

Off-Duty Employment is voluntary extra Department-related work, approved, scheduled, and paid by the City, but is funded by a source other than the City. Sergeants working off-duty employment shall be compensated by overtime pay and not compensatory time.

ARTICLE 12 - COURT APPEARANCES

- A. Employees, on off-duty time or on vacation, who are subpoenaed to give testimony in court about events arising out of their employment shall be paid or compensated as follows: Time and one-half the regular rate of pay with a minimum of three (3) hours, except that those employees appearing for less than one hour immediately before or after their shift shall be paid a minimum of one (1) hour.
- B. Employees subpoenaed to give testimony shall be entitled to the hourly minimum if notification of cancellation is not received by 5:00 p.m. the calendar day prior to the scheduled court appearance, unless the cancellation occurs while the employee is on duty and is so notified. Employees who are off-duty and are under subpoena to give testimony, and have not received notification of cancellation or a change in date or time of the testimony or appearance, prior to 5:00 PM the calendar day prior to the scheduled court appearance, shall receive time and one half the regular rate of pay starting from the date and time posted on the subpoena, or an earlier time if requested by the prosecutor, until released for the day.
- C. All monies received for such services as a witness shall be surrendered to the City, except in those cases where the employee is not compensated for such an appearance by the City.

ARTICLE 13 - ANNUAL LEAVE

A. Annual Scheduled Leave

1. Employees shall accrue annual leave in accordance with the schedule set forth in [Appendix B](#).
2. The maximum accumulation of annual leave is 960 hours. However, if an employee submits a request for leave and the request is denied because of seniority preference or the needs of the City, leave credits may be allowed to accrue beyond the 960-hour limit. Such an employee will be required to take off those days earned above the 960-hour limit at the discretion of the City. Once such excess days are used, the employee's maximum permissible accumulation returns to 960 hours. Except for illness, injury, or death, the maximum number of hours that can be cashed out will remain at 480 hours.
3. When an employee is terminated, accrued annual leave up to a maximum of 480 hours shall be paid to the employee at the employee's current regular rate of pay and all add pays. If the employee is deceased, accrued annual leave up to a maximum of 960 hours shall be paid to the employee's estate.
4. Scheduling of leave (vacation) shall be based first upon the convenience of the operations of the City, as determined by the City, and secondly upon time in grade.

B. Unscheduled Annual Leave (Sick Leave)

1. All employees shall have their sick leave banks frozen at existing balances as of December 16, 2004.
2. Such frozen sick leave and unscheduled annual leave may only be used for illness, injury, and compassionate leave as follows:

The first three (3) days of any illness or injury shall be charged to annual leave for each occurrence. Any such leave for the fourth and subsequent days shall be charged to frozen sick leave (if available) computed from the first day. If an employee suffers a recurrence of a previous illness or injury which resulted in an unscheduled absence of four (4) days or more, all subsequent paid leave hours for this recurrence shall be charged to the employee's sick leave bank (if available) regardless of the length of such recurrence. The employee is required to provide a physician's verification that such disability is a recurrence of the same illness or injury.

3. No compensation for frozen sick leave balances shall be paid upon termination of employment.

4. Annual leave shall not accrue during leaves of absence without pay or layoffs.
5. Unscheduled annual leave and sick leave with pay shall be granted only for the following reasons:
 - a. personal illness or physical incapacity resulting from causes beyond the employee's control;
 - b. enforced quarantine of the employee by physician;
 - c. illness within the immediate family (mother, father, spouse, domestic partner, brother, sister, children, domestic partner's children, mother-in-law, father-in-law, domestic partner's parents, son-in-law, daughter-in-law, grandparent grandchild, domestic partner's grandchild or any person considered in loco parentis) of the employee requiring the employee's presence. If the department head feels that it is appropriate, the employee may be requested to provide documentation that the illness does in fact require the employee's presence and such documentation will be at the employer's expense;
 - d. Medical or dental treatment for the employee or within the immediate family of the employee as defined above, requiring the employee's presence. If the department head feels that it is appropriate, the employee may be requested to provide documentation of such medical treatment or of the need for the employee's presence and that such documentation will be at the expense of the employer. Shift employees shall make every effort to schedule such treatment when they are not on duty.
6. When an employee goes on unscheduled annual leave or sick leave, they must notify their supervisor within one (1) hour prior to the time they are required to report to work. Failure to do so may result in denial of leave pay. To receive leave pay in excess of three (3) working days, the employee must present a statement by a physician certifying that the employee's condition prevents them from performing the duties of their position during the period of illness. Expenses to obtain the certifying statement will be paid by the employer.
7. However, this requirement may be waived by the department head or designee. In addition, a physician's statement at the employer's expense may be required for sick leave of less than three (3) days duration. If a physician's statement certifying that an employee is not fit for work is required, and if the employee fails to supply it, the lost time shall be disallowed as sick leave and must be taken without pay.

If authorized leave is taken after an employee has expended all paid leave benefits, at the employee's option the lost time must either be charged against presently accumulated compensatory time or be taken without pay.
8. Absence for part of a day for reasons in accordance with the leave provisions shall be charged against accrued leave in an amount not less than one-quarter

hours. Holidays and other regular days off shall not be charged against paid leave.

9. If a LEOFF II employee is absent due to illness or injury in connection with their employment with the City, for which they receive payment from State Industrial Insurance, the City's supplemental payment shall be as provided for under State law. Paid leave shall be charged on a pro-rata basis in this case until exhausted up to the employee's regular pay as defined by State law. It is understood that annual leave, shall not accrue while an employee is receiving the LEOFF II time loss supplement as required by State law.
10. Unscheduled annual leave and sick leave is primarily intended to be used for rest and recuperation from illness or injury. Any abuse of paid leave privileges, such as working at another job while drawing sick leave pay from the City, will result in the loss of paid leave for the lost time and will serve as grounds for disciplinary action.

C. Sick Leave Without Pay

1. Upon application of probationary or permanent employee, a leave of absence without pay may be granted by an appointing authority for a period of disability due to sickness or injury.
2. Such leave may be limited to twelve (12) months. The appointing authority or the City Manager may from time to time require that the employee submit a certificate from the attending physician or from a designated physician. In the event of a failure or refusal to supply such certificate or if the certificate does not clearly show sufficient disability to preclude the employee from the performance of his other duties, the appointing authority may cancel such sick leave without pay and require the employee to report for duty on a specified date.
3. Sick leave without pay shall be granted only after all accrued annual paid leave, compensatory time, and sick leave have been exhausted.
4. An employee may continue to purchase medical insurance through the City during sick leave without pay provided such purchases are permitted by the City's insurance carrier and provided further that the employee pays for all premium costs of such insurance.
5. The appointing authority may terminate an employee if, at the end of the twelve (12) months of unpaid sick leave, he is unable to resume his duties.
6. This section shall not apply to employees covered by the Law Enforcement Officers and Fire Fighters Retirement System hired before October 1, 1977.

D. Compassionate Leave

Permanent fulltime employees shall be allowed up to three (3) consecutive work days leave with pay in the event of a death in the employee's immediate family (father, mother, spouse, domestic partner, brother, sister, children, domestic partner's children mother-in-law, father-in-law, domestic partner's parents, son-in-law, daughter-in-law, grandparent, grandchild, domestic partner's grandchild, or any person considered in loco parentis, and person living in household). In extraordinary circumstances, additional time off may be approved by the Chief or designee and charged to annual leave or compensatory time earned.

E. Family and Medical Leave

Family and medical leave shall be granted as required under the Family and Medical Leave Act (FMLA) and the current [City Policy](#).

In accordance with state law, an employee eligible for sick leave or other paid time-off under the State Family Care Act, shall be allowed to use any or all of the employee's choice of sick leave or other paid time-off including comp time for an illness or accident, disability (including maternity), or qualifying illness or disability of a qualified family member. As defined in [RCW 49.12.270](#) as amended, qualified family members are limited to children, spouse, parent, parent-in-law, or grandparent.

Employees, at the direction of the Police Chief or designee, may further be required to obtain a physician's verification of illness/injury when their illness, injury, or disability or the care of a qualified family member requires them to be absent from work, in accordance with state law. Documentation would be routed to and maintained in confidential files in Human Resources Department.

ARTICLE 14 - PAID HOLIDAYS

A. The following holidays are recognized and observed by the City as paid holidays for permanent fulltime employees:

New Year's Day	January 1st
Martin Luther King's Birthday	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Fourth Monday in May
Independence Day	July 4th
Labor Day	First Monday in September
Veterans Day	November 11th
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	The day after Thanksgiving Day
Day before Christmas	December 24th
Christmas Day	December 25th

1. For employees who's regularly scheduled shift begins and ends on the same date: the employee's holiday will begin at 0001 hours and end at midnight.
2. For employees who's regularly scheduled shift begins on one date and ends on the next date: The employee's holiday will include the entire shift which begins or ends on the holiday, including extensions of the shift both before or after the regularly scheduled shift, so long as there is not a separation of the regular shift and the extension(s), of not more than two hours. The employee shall be entitled to only one holiday-shift including any extensions, for each holiday described above.

B. Holiday pay and time off shall be governed as follows:

1. Employees who work on a holiday shall receive holiday-pay at a rate of one and one half (1.5) times the employee's regular rate of pay for all hours worked during the employee's holiday, and will be added to the pay that the employee would normally receive for the hours worked on that day.

Holiday pay will be calculated using the "basic rate of pay" and all "add pays" earned by the employee at the time of the holiday being compensated. The current method used to calculate "*Basic Pay Rates*" are as follows: Basic Salaries are described in [Article 9](#) and [Appendix "A"](#) of this agreement. Deferred compensation paid to employees by the City (as provided in Article 9 of this agreement) is defined as "basic pay for services rendered", and is therefore combined with the base wage (*Basic Salaries*) in Appendix A, to create the "*Basic Pay Rate*." Payroll staff uses the term "*Add-Pays*" to describe Education Incentive and Premium Pay, Fitness Pay, Longevity Pay, Bilingual Pay, Out of Classification Pay, and Special Pays/Premium Pays. Special Pays and Premium Pays currently include Detective assignments, and Training/Background Sergeant assignments. These "*Add-Pays*" are figured using the percentages of the "*Basic Pay Rate*" described in the CBA.

At the employee's option, employees working on their holiday may receive compensatory time at the rate of one and one half (1.5) times the hours worked, in lieu of holiday-pay, subject to the accrual limitations established in [Article 11](#) of this labor Agreement.

2. When the holiday falls on an employee's regularly scheduled workday, but the employee is given the entire holiday off, the employee shall receive their normal pay for all of the hours that the employee would normally be scheduled to work, at the regular rate of pay for the holiday time off.
3. When the holiday falls on an employee's regularly scheduled day off, the employee shall receive either:

- a) A full day off with pay on the employee's first regularly scheduled day of work preceding or following the days off in which the holiday fell. This day off must be approved by a supervisor, or;
- b) Holiday pay at the employee's regular straight-time rate of pay for all of the hours the employee would normally work during the employee's regular shift, in addition to the employee's regular wages during the pay period. If the employee works during the holiday on a scheduled day off, they shall receive holiday pay at a rate of one and one half (1.5) times the employee's regular rate of pay for all hours worked and it will be added to the overtime pay that the employee would normally receive for the hours worked on that day, and; if the number of hours worked is less than the number of hours the employee works in a regularly scheduled workday, the employee will also receive holiday pay at the straight-time rate for the remaining hours in the length of the employees normal hours.

At the employee's option, employees working on their holiday may receive compensatory time at the rate of one and one half (1.5) times the hours worked, or compensatory time at the straight-time rate when the straight-time rate applies as described in [Article 14, Section B.](#), Paragraphs 3 and 5, in lieu of holiday-pay; subject to the accrual limitations established in [Article 11](#) of this labor Agreement.

- 4. Employees assigned to Patrol shall work their normally scheduled shifts that fall on the employee's holidays. These employees may be allowed to have the holiday off if they submit a request and with the approval of a supervisor.
- 5. Employees assigned to the Detective Bureau, Walking Patrol, Traffic Unit or Administration shall be permitted to have the holidays off unless a supervisor directs them to work their regularly scheduled shift; or, the employee may work their regularly scheduled shift on the holiday with thirty days (30) advanced written notice of their intent to work the holiday. These employees who are directed to work on the holiday shall receive holiday pay at a rate of one and one half (1.5) times the employee's regular rate of pay for all hours worked during the employee's holiday, and will be added to the pay that the employee would normally receive for the hours worked on that day. These employees who voluntarily submitted the 30-day advanced written notice of their intent to work on the holiday shall receive holiday pay at a rate of straight-time for all of the hours worked during the employee's holiday.
- 6. The Department may not reschedule an employee's regular shift for the purpose of avoiding payment of holiday pay as provided above.

ARTICLE 15 - JURY SERVICE

An employee shall continue to receive his or her regular salary for any period of required service as a juror. Employees will be expected to report for work when less than a normal work day is required by such duties.

Employees working on swing or graveyard shifts who are required to perform jury duty on a scheduled work day will have their scheduled hours reduced by the time actually spent in jury service. The City may move employees temporarily to day shift for the period of jury service without advance notice.

ARTICLE 16 - UNIFORMS

- A. Sergeants: The City shall provide a complete uniform for each Sergeant as listed in [Appendix C](#). Once during the term of this agreement, each Sergeant will have the choice of uniform options listed in [Appendix C](#). The City shall also replace components of the uniform which have been damaged in the performance of duty.
- B. Sergeants assigned to Detectives: Every Sergeant assigned to Detectives, Hiring & Training, and Administration shall be given an allowance for clothing in the amount set forth in [Appendix A](#), which allowance shall be paid upon their assignment as a Detective Sergeant and which shall be paid quarterly following the first year of assignment.
- C. Footwear: The City agrees to pay each Sergeant an allowance of \$125.00 during the month of January of each year, for the purchase or repair of appropriate shoes or boots to be worn on duty. This allowance is considered a taxable fringe benefit and as such will be treated as income and taxable under applicable federal laws.
- D. Cleaning Allowance: All employees within the bargaining unit shall be given a cleaning allowance in the amount as set forth in [Appendix A](#), which allowance shall be paid quarterly.
- E. Employees who suffer a loss or damage to clothing and/or personal property shall be reimbursed for such loss or damage by the City, but in no case shall such reimbursement exceed two hundred dollars (\$200.00) per occurrence. Members shall refer to City of Olympia policy regarding damaged prescription personal items, such as prescription eyewear, hearing aids, etc.

ARTICLE 17 – Benefits and Retirement

The Sergeant's Association and the City agree to the medical, dental and vision insurance plans offered by the Association of Washington Cities Employee Benefit Trust (AWC). The

City agrees to maintain the benefits offered in those AWC plans at existing or substantially similar levels for the duration of this Agreement.

A. Dental Insurance

The City agrees to pay the total cost of dental insurance for employees and their eligible dependents for the Washington Dental Service Plan F and Orthodontia Plan II.

B. Medical Insurance

1. The City agrees to pay the total premium for employee medical coverage.
2. Beginning January 1, 2018, Sergeant's Association members will be able to choose between the AWC HealthFirst 250 Medical Plan and the AWC Employee Benefit Trust \$200 AD Plan
3. The City and the employee will continue to share the cost of dependent medical coverage. The City will contribute eighty-five percent (85%) and the employee fifteen percent (15%) of the total cost of dependent medical premiums.
4. Incentive Plan: Members of the collective bargaining unit, who opt out of the Medical Plans paid by the City of Olympia for employees, shall be paid an incentive of two hundred fifty dollars (\$250) per month by the City. The incentive plan will be available to employees upon the signing of this agreement. In order to receive the incentive, employees must provide proof of other medical coverage except for those employees who are voluntarily covered as a "spouse/partner" rather than as an "employee" under the City's insurance plan.

Employees of the City who are voluntarily covered as a "spouse/partner" rather than as an "employee" under the City's insurance plan must enroll during the open enrollment period. The city reserves the right to cease this program at any time for any reason. If the City ceases the program for any reason other than violation of state or federal law the City will do so during open enrollment.

5. 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 may conduct a Dependent Eligibility Audit annually.
6. Sergeants Association members shall be allowed to sign up for eligible pretax health expenses as part of the City's Flexible Spending Account plan.

C. Long Term Disability Insurance

The City will provide long term disability coverage of the Sergeant's Association choice with the City paying up to \$55 per employee per month toward the premium.

D. Life Insurance

The City agrees to provide a life insurance policy for each employee in the amount of \$150,000.

E. Vision Insurance

The City will pay 100% of the premiums for the employee and dependents for the Vision Service Plan, full family, no deductible, second pair rider.

F. The City shall not mandate employees to participate in any type of vaccinations.

ARTICLE 18 - PHYSICAL FITNESS

A. The Olympia Police Sergeants Association and the City of Olympia hereby agree that the City may implement voluntary physical fitness standards for employees. Specifically, the City and the Sergeants Association agree.

1. The Sergeants Association shall not object and shall agree to the implementation of voluntary physical fitness standards attached hereto as [Appendix E](#) and incorporated by reference.
2. In the event the City's physical fitness standards are found to violate State or Federal law, or the Constitution of the State of Washington or the United States, the City agrees to hold the Sergeants Association (as a legal entity) harmless for any claims or damages arising from physical fitness testing of employees provided that the City need not indemnify or hold the Sergeants Association harmless for any dishonest, fraudulent, criminal, or malicious act. In addition, either party may reopen negotiations on physical fitness standards in order to amend the standards to comply with legal requirements.
3. The Sergeants Association recognizes the City's right to amend entry level physical fitness hiring standards without bargaining with the Sergeants Association. The City recognizes the Sergeants Association's right to bargain over any proposed changes in the physical fitness standards for employees.
4. Any dispute involving the interpretation, application, or alleged violation of any provision of this article will be subject to the grievance procedure of the parties' collective bargaining agreement.

B. The City may implement voluntary physical fitness standards for employees. Specifically, the City and the Sergeant's Association agree:

1. The Sergeants Association shall not object and shall agree to the implementation of voluntary physical fitness standards attached hereto as Appendix E and incorporated by reference.
2. In the event the City's physical fitness standards are found to violate State or Federal law, or the Constitution of the State of Washington or the United States, the City agrees to hold the Sergeant's Association (as a legal entity) harmless for any claims or damages arising from physical fitness testing of employees provided that the City need not indemnify or hold the Sergeant's Association harmless for any dishonest, fraudulent, criminal, or malicious act. In addition, either party may reopen negotiations on physical fitness standards in order to amend the standards to comply with legal requirements.
3. The Sergeant's Association recognizes the City's right to amend entry-level physical fitness hiring standards without bargaining with the Sergeant's Association. The City recognizes the Sergeant Association's right to bargain over any proposed changes in the physical fitness standards for employees.
4. Any dispute involving the interpretation, application, or alleged violation of any provision of this article will be subject to the grievance procedure of the parties' collective bargaining agreement.

C.

Employees shall be allowed 40 minutes of on-duty time each workday for physical exercise in a City-provided exercise facility, under the following conditions:

1. Exercise time will not be allowed during the last three hours of the shift, if the employee has daily paperwork, or other tasks that need to be completed prior to the end of their shift.
2. Exercise time will not be allowed and may be interrupted when there is a call for service that is a call for service that is a Priority 1 and 2 crime in process and another Sergeant is not able to respond, or when there is a risk to the safety of persons or other officers. Exercise time may also be interrupted if the Sergeant is specifically requested to respond to the scene. Priority 3 & 4 calls (non-emergency) may wait until the exercise period is expired.
3. Sergeants are expected to make themselves patrol-ready when required or requested as above (C.2) without delay. Sergeants will not be permitted to shower on-duty as a result of the exercise period.
4. Longer voluntary exercise periods and shower time may be permitted for Training Days.

5. Sergeants assigned to specialty units shall be allowed to utilize part of their physical exercise time to shower prior to returning to duty.

6. Failure to receive the exercise time shall not result in any overtime liability for the employer.

7. If at any time law dictates that donning and doffing time must be reinstated and compensated by the City, the 30 minute on-duty physical exercise period each workday shall end and no longer be compensated by the City.

ARTICLE 19 - DISCIPLINE AND DISCHARGE

Discipline, including oral reprimand, written reprimand, suspension, demotion, reduction in salary, discharge, or other disciplinary sanction, shall be for just cause.

Disciplinary action which results in loss of pay shall be subject to the grievance procedure (up to and including arbitration) set forth in [Article 7](#). Disciplinary action which does not result in loss of pay (oral reprimand and written reprimand) shall be subject to the grievance procedure set forth in [Article 7](#), but may not be taken to arbitration under [Step 4 of Article 7](#). Provided, however, that in a grievance concerning disciplinary action which results in a loss of pay and which is based in part on the issuance of a prior reprimand, the employee shall be entitled to challenge the appropriateness of the prior reprimand in the grievance concerning discipline which resulted in loss of pay.

Submission of any grievance concerning discipline will follow the provisions of the grievance procedure as set forth in [Article 7](#).

ARTICLE 20 - PERSONNEL RECORDS

- A. A "personnel file" shall be defined as any file maintained by the City or Department (including supervisors) pertaining to the bargaining unit member's employment status, work history, training, disciplinary records, or other personnel related matter pertaining to the bargaining unit member. It is further understood that a personnel file does not include material relating to medical records, pre-appointment interview forms, Internal Affairs files, or applicant background investigation documents such as, but not limited to, psychological evaluations and polygraph results.
- B. Each employee's personnel files shall be open for review by the employee at reasonable times and with reasonable notice, provided that employees shall not have the right to review psychological evaluations or supervisor's notes prepared for the purpose of preparing employee's evaluations which are destroyed after the evaluation is prepared. The Employer shall maintain no secret personnel files not subject to inspection.

- C. Any complaint that is not sustained will be retained no longer than the current year plus three years, unless otherwise required by law. Any sustained violation of City Policy or the Police Department General Orders, not listed below, resulting in a verbal, written warning or suspension of 5 days or less will be retained no longer than the current year plus three years, unless otherwise required by law. Any sustained complaint of criminal law violations, City Administrative Guidelines pertaining to harassment, substance abuse, workplace violence or the Police Department's policy regarding truthfulness or a single suspension of more than 5 days may be retained indefinitely. Removal of any item will be requested by the employee.
- D. The Employer will promptly notify an employee upon receipt of a public disclosure request for information in the employee's personnel file. The Employer will also provide at least three (3) business days notice before releasing any requested documents. The Employer will allow the employee and the Sergeants Association the opportunity to legally object to unwarranted disclosures.

ARTICLE 21- PARKING & VEHICLES

- A. The City shall continue to provide free and reasonably secure parking for personal vehicles belonging to members of the Sergeant's Association; immediately before, during, and immediately after the employee's workday, at the workplace. The workday shall include the employee's regularly scheduled workday, overtime assignments, work related meetings, Sergeant's Association meetings with City Officials, and court appearances.

There shall be two secure parking lots for Association Members to park their personal vehicles. The primary parking lot is located inside the fence at City Hall; 601 4th Avenue East, Olympia; and a secondary parking lot located in the old Police Department fenced parking lot (now known as the Lee Creighton Law and Justice Center;) at 900 Plum Street SE., Olympia. All members of the Sergeant's Association shall be allowed to park in the primary parking lot, with the exception of Patrol Swing Shift Sergeants under the following conditions:

All sergeants regularly assigned to Swing Shift, may park at the Lee Creighton Law and Justice Center located at 900 Plum Street SE., inside the fenced parking lot (the old Police Department parking lot). The City will have police cars there for the Swing Shift Sergeants. The Swing Shift sergeants shall be there no later than at the start of their regularly scheduled shift; 1420 hours. All Swing Shift sergeants shall have ten minutes to drive an assigned police car to the New City Hall. Swing Shift sergeants are expected to be in the briefing room at 1430 hours for Swing Shift. Swing Shift sergeants shall then return their assigned police vehicles to the parking lot at the old City Hall during the last ten minutes of their shift. If Swing Shift sergeants are extending the end of their scheduled shift with overtime, they will include ten (10) minutes of paid overtime to return their assigned patrol car to the Lee Creighton Law and Justice Center fenced parking lot. If sergeants are working a period of overtime before the start of their regular shift, they will include ten (10)

minutes of overtime for taking their assigned police car from the Lee Creighton Law and Justice Center to City Hall. Any overtime assignments not connected to the sergeant's regularly scheduled shift, when using a police vehicle parked at the Lee Creighton Law and Justice Center, will include paid time for retrieving and returning the vehicle to the Lee Creighton Law and Justice Center parking lot, except for off-duty employment.

If sergeants are moving a police vehicle to, or from, the Lee Creighton Law and Justice Center parking lot while not wearing their ballistic vest, or not equipped with their patrol rifle, or not equipped with their duty pistol and other less than lethal equipment, shall not be required to stop for anyone attempting to flag down the sergeant. In such cases the sergeant will notify the dispatcher of the person needing an on-duty officer, and may direct the person to go to the police station by pointing, or by use of the public address system in the police vehicle.

Sergeants assigned to Swing Shift, but are working an overtime assignment other than Swing Shift on a day off; or, attending training at City Hall; or, attending a work related meeting; or, meeting with City Officials; or, going to court; shall be allowed to park in the secure parking lot at City Hall.

Swing Shift Sergeants electing to take their assigned patrol vehicle home will do so only during their respective workweek, (from the start of their patrol shift on their first workday of their workweek, to the end of their patrol shift on the last workday of their workweek,) and will be subject to the geographical boundaries and provisions of OPD General Order 17.5.5 (Authorized use of Department Vehicles). These sergeants will be afforded the 10-minute driving allowance, when they report to their first workday of each workweek. On the last workday of each workweek, Swing Shift Sergeants will be allowed the 10-minute driving allowance to return the car to the Lee Creighton Law and Justice Center parking lot. These Swing Shift Sergeants voluntarily participating in the Take-Home-Car Program will not get drive time, from the end of their first workday of the workweek, to the beginning of the last workday of their workweek. Sergeants not participating in the Take-Home-Car Program will get time to move patrol cars to/from the Lee Creighton Law and Justice Center.

All sergeants not assigned to Swing Shift will report to work at City Hall at their regularly scheduled times. The City shall provide these sergeants with free parking within the fenced police parking lot at City Hall.

If a parking space is not available for an Association Member's personal vehicle, the ~~Officer~~ sergeant may move a police vehicle to an available street parking space to make room in the fenced parking lot for their personal vehicle.

Beginning January 1st, 2022, the City of Olympia agrees to budget and maintain as part of the patrol fleet, three fully equipped patrol vehicles for the Patrol Sergeant's use. The intent is to provide one dedicated patrol vehicle for the Patrol Sergeant on dayshift, swing shift, and graveyard shift.

ARTICLE 22 - INDEMNIFICATION OF EMPLOYEES

The City shall provide legal defense and pay the cost of settlements and judgments for employees as provided in OMC Chapter 2.70. A member who disagrees with the City Manager's determination under OMC Chapter 2.70 may grieve that determination using the procedure set forth in [Article 7](#) of this Agreement.

ARTICLE 23 – DASH-MOUNTED VIDEO SYSTEMS

- A. To enhance the ability of law enforcement personnel to accurately document events, conditions, and statements made during traffic stops, arrests, critical incidents and other related contacts dash-mounted video and audio systems will be installed in all patrol vehicles. The specific department policy that will govern use, timing, recording, records retention and destruction of such recordings will be developed by the Police Guild labor management committee. The Sergeant's Association will have independent responsibility for contributing to and approving these policies on behalf of their membership. The video system shall not record at all times when the patrol vehicle is in use, but shall be in operation as defined by the department policy for the purposes described above. Sergeants shall not be required to wear or carry a remote microphone at any time. Sergeants will be allowed to view any such video recordings before making any written or recorded statements and may view the recordings while writing reports related to the recordings.
- B. Prior to any deployment and/or use of Body Cameras, the Parties agree to open the contract to negotiate through Labor Management the impacts and use of body camera technology.

ARTICLE 24 – REIMBURSEMENT OF EXPENSES

The Association agrees to request reimbursement of expenses in accordance with the City's general accounting policies. The City will notify the Association in writing of any changes made to these policies and to discuss issues related to implementation.

ARTICLE 25 – Retirement ID

Every Sergeant who is retiring from the Olympia Police Department in good standing and for reasons other than mental instability, shall receive an identification card from the Police Department by the retiring Sergeant's retirement date, provided that the Sergeant has given notice of the Sergeant's "intent to retire" two weeks or more in advance. The identification card shall bear a recent photograph of the retiring Sergeant, the card shall be signed by the Chief of Police and identify the Sergeant as a retired police officer. To be eligible for the Retired Law Enforcement Officer Identification Card, the retiring Sergeant shall have served for an aggregate of 15 or more years as a law enforcement officer and has a non-forfeitable right to benefits under the retirement plan of the State of Washington (LEOFF2) and is not prohibited by Federal law from receiving a firearm. The identification

card shall contain the following language on the backside of the card in a font that is reasonably legible:

The officer identified on this card retired in good standing from service with the Olympia Police Department as a full-time law enforcement officer, for reasons other than mental instability; was regularly employed as a law enforcement officer for an aggregate of 15 or more years; has a non-forfeitable right to benefits under the retirement plan of the agency and the State of Washington; before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person, for any violation of law, and had statutory powers of arrest. As long as the retired full-time law enforcement officer is not prohibited by Federal law from receiving a firearm, the retired officer is entitled to the privileges afforded by law.

***Revised Code of Washington (RCW) 9.41.060, and;
United States Code (USC) Title 18 Chapter 44 Section 926C.***

Every Sergeant who has given notice of their intent to retire two weeks in advance of the retirement date shall be allowed on-duty opportunities to qualify with their personal handgun(s), using the Department's qualification course for off-duty firearms or secondary weapons. Any such Sergeant who qualifies shall be issued a Certification of Firearms Qualification card from the Police Department bearing the Sergeant's name and stating that the Sergeant has met the qualification standards of the Olympia Police Department. The certificate shall be valid for one year of the date of the qualification and signed by the range officer making the certification. The date of the qualification shall be written on the certification card. The certification card shall also specify the type of firearm(s) (pistol and/or revolver) that the Sergeant has qualified with.

The intent of this Article is to enhance current retirement practices regarding retiree identification and badges.

ARTICLE 26 – WORKFORCE MANAGEMENT PLAN

In the event that workforce changes are necessary because of a fluctuation in city resources, [City of Olympia Policy 24, Workforce Management Plan](#) will be followed to the extent allowed by the labor agreement and the Civil Service Rules. Unless otherwise agreed, the labor agreement and the [Civil Service Rules](#) will prevail when there is a difference.

ARTICLE 27 – SENIORITY

Seniority shall be based upon time in grade in the order of appointment by the Police Chief. In the event multiple appointments/promotions are made on the same day, seniority will be granted in the order of the list from which they are promoted.

ARTICLE 28 - SAVINGS CLAUSE

Should any provisions of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or portions of this Agreement shall remain in full force and effect.

ARTICLE 29 - ENTIRE AGREEMENT

- A. The Agreement expressed herein in writing constitutes the entire Agreement between the parties and no express or implied or oral statements shall add to or supersede any of its provisions.
- B. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter appropriate for collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Sergeants Association, for the life of this Agreement, each voluntarily and unqualifiedly waive the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

ARTICLE 30 - TERM

This Agreement shall become effective on, January 1, 2021, upon signing by both parties. It shall remain in full force and effect until December 31, 2023.

IN WITNESS WHEREFORE, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THIS _____ DAY OF _____, 2021.

FOR THE CITY OF OLYMPIA

FOR THE OLYMPIA POLICE
SERGEANTS ASSOCIATION

Steven J. Burney, City Manager

Paul Evers, President

APPENDIX A

I. SALARIES

Effective January 1, 2021, base salary is:

Grade 065 - Sgts.	17% above Grade 810/5
Monthly Base Salary	10,043.40
Annual Base Salary	120,520.82
Hourly Base Rate	57.9427

II. DETECTIVE, HIRING AND TRAINING, AND ADMINISTRATIVE SERGEANT CLOTHING ALLOWANCE

One thousand dollars (\$1000) to be paid lump sum upon assignment during a Sergeant's first year of assignment to Detective Sergeant, Hiring and Training Sergeant, and Administrative Sergeant positions. The following year after assignment to these positions, the Sergeants assigned will receive seven hundred and fifty dollars (\$750) per year paid quarterly thereafter.

III. CLEANING ALLOWANCE

Seven hundred twenty-five dollars (\$725) per year to be paid quarterly.

APPENDIX B

- I. Annual leave shall be based on the following schedule:

Years of Service	Days
1	22
2	24
3 and 4	25
5-7	26
8-10	27
11-13	28
14-16	29
17-19	31
20-22	33
23+	35

APPENDIX C

I. UNIFORMS – Option 1

<u>ITEM</u>	<u>NUMBER ISSUED</u>
Jacket (all weather)	1
Shirt – Short Sleeve (Class B)	3
Shirt – Long Sleeve (Class A)	3
Trousers (Class A)	3
Uniform Dress Cap w/Rain Cover	1
Uniform Water Resistant Ball Cap	1
Raincoat	1
Neck Tie – Long	2
Shorts	1

II. UNIFORMS – Option 2

Jacket (all weather)	1
Shirts (Short Sleeve (Class B)	2
Shirts (Long Sleeve (Class A)	2
Trousers (Class A)	2
Shirts – Short Sleeve (Class C)	1
Shirts – Long Sleeve (Class C)	1
Trousers (Class C)	1
Uniform Dress Cap w/ Rain Cover	1
Uniform Water Resistant Ball Cap	1
Neck Tie (long)	1
Raincoat	1
Shorts	1

III. UNIFORMS – Option 3

Jacket (all weather)	1
Shirts – short sleeve (Class B)	1
Shirts – long sleeve (Class A)	1
Trousers (Class A)	1
Shirts – short sleeve (Class C)	2
Shirts – long sleeve (Class C)	2
Trousers (Class C)	1
Uniform Dress Cap w/Rain Cover	1
Uniform Water Resistant Ball Cap	1
Neck Tie (long)	1
Raincoat	1
Shorts	1

IV. ADDITIONAL UNIFORMS FOR SERGEANTS ASSIGNED TO TRAFFIC UNIT

Leather Motorcycle Jacket	1
Trousers (Motorcycle)	2

Boots (Motorcycle)	1
Rain Suit	1
Motorcycle Helmet	1
Leather Gloves	1

V. DEFINITIONS:

Class A Uniform: Is the same as the “dress uniform” and shall consist of the long sleeve shirt, necktie, trousers, black belt, eight point uniform cap and black shoes.

Class B Uniform: Shall consist of the long or short sleeve shirt, trousers, black belt, and black shoes.

Class C Uniform: Is the same as the “utility uniform” and shall consist of long or short sleeve shirt and trousers or shorts, which are machine washable.

APPENDIX D

SERGEANTS BILL OF RIGHTS

Sergeants Rights. It is agreed that the City has the right to discipline, suspend, or discharge any Sergeant for just cause.

Bill of Rights.

In an effort to ensure that investigations made by an officer or agency as designated by the Chief of Police of the Police Department are conducted in a manner which is conducive to good order and discipline, the employees shall be entitled to the protection of what shall hereafter be termed as the "Sergeants Bill of Rights." Nothing in this Article shall be constructed so as to prevent the interviewing by supervisory personnel of their subordinates as necessary for the conduct of department business. These guidelines apply whenever the Department decides to conduct an investigation of an employee, and that the results of the investigation can reasonably lead to discipline of the employee. Sergeants recognize the need to clarify citizen inquiries and complaints in a timely fashion.

Every Sergeant who becomes the subject of an internal investigation shall be provided a copy of the complaint if written or a written summary of the complaint if it is not available.

Any employee who becomes the subject of a criminal investigation shall have all rights accorded by the State and Federal constitutions and Washington law.

Forty-eight (48) hours before any interview commences, the Sergeant shall be informed, in writing, of the nature of the investigation, that they are considered to be a subjects at that stage of the investigation, and provided sufficient information concerning the factual nature or subject of the investigation so as to reasonably apprise the Sergeant of the specific allegations. A Sergeant may waive the 48-hour requirement in writing. The written notice requirement does not apply to an investigation not reasonably likely to result in an economic sanction, provided that in such instances an employee could assert a right to a 48-hour period to consult with a Sergeants Association representative and prepare for the interview. A Sergeant who is a witness and is not a subject shall be informed in the same manner as subjects provided that such notice need not be given forty-eight (48) hours in advance, provided further that witnesses retain whatever rights to representation they may be allowed law.

The interview of a Sergeant shall be at a reasonable hour, preferably when the Sergeant is on duty, unless the exigency of the interview dictates otherwise.

At the cost of the requesting party, the Sergeant or City may request that an investigative interview be recorded, either mechanically or by a stenographer. There can be no "off-the-record" questions. Upon request, the Sergeant under an investigation shall be provided an exact copy of any written statement the Sergeant has signed or, at the Sergeant's expense, a verbatim transcript of the interview.

The Sergeant will be required to answer any questions involving administrative (as opposed to criminal) matters under investigation. Prior to any questioning, the Sergeant will be notified in writing and acknowledge receipt of the following:

“You are about to be questioned as part of an internal investigation being conducted by the Police Department. You are hereby ordered to answer the questions which are put to you which relate to your conduct and/or job performance, or your fitness for duty, and to cooperate with this investigation. Your failure to cooperate with this investigation can be the subject of disciplinary action in and of itself, including dismissal. The statements you make or evidence gained as a result of this required cooperation may be used for administrative purposes but will not be used or introduced into evidence in a criminal proceeding.”

Sergeants who are subject to a criminal investigation shall be so advised.

Interviewing shall be completed within a reasonable time and shall be done under circumstances devoid of intimidation or coercion. Forty-eight (48) hours prior to all investigative interviews, the Sergeant shall be afforded an opportunity and facilities to contact and consult with his or her Sergeants Association representative before being interviewed, and to be represented by the Sergeants Association representative to the extent permitted by law. The Sergeant shall be entitled to such brief intermissions as the Sergeant shall reasonably request for personal necessities, meals, telephone calls, consultation with his or her representative, and rest periods.

The Sergeant shall not be subjected to any profane language nor threatened with dismissal, transfer or other disciplinary punishment as a guise to obtain the resignation of said Sergeant nor shall the Sergeant be subjected to intimidation in any manner during the process of interrogation. No promises or rewards shall be made to the said Sergeant as an inducement to answer questions.

Investigations shall be concluded within a reasonable period of time. Within a reasonable period after the conclusion of the investigation and no later than forty-eight (48) hours prior to a pre-disciplinary hearing, the Sergeant shall be advised of the results of the investigation and the recommended disposition (which may be a range of possible dispositions) and shall be provided a copy of the complete investigatory file.

All interviews shall be limited in scope to activities, circumstances, events, conduct or actions which pertain to the incident which is the subject of the investigation. Nothing in this section shall prohibit the Employer from questioning the Sergeant about information which is developed during the course of the interview.

No Sergeant shall be requested or required to submit to a polygraphs test; nor shall the Sergeant be dismissed for or shall any other penalty be imposed upon the Sergeant solely for a failure to submit to a polygraph test. This provision shall not apply to either the initial application for employment or to persons in the field of public law enforcement who are seeking promotion.

When a Sergeant, whether on or off duty, uses deadly force which results in the injury or death of a person, the Sergeant shall not be required to make a written or recorded statement for forty-eight (48) hours after the incident. The affected Sergeant may waive the requirements to wait forty-eight (48) hours.

Should any section, subsection, paragraph, sentence, clause or phrase in this Article be declared unconstitutional or invalid, for any reason, such decision shall not affect the validity of the remaining portions of this Article.

Medical or Psychological Examinations.

The Employer retains the right to require Sergeants to submit to medical or psychological examinations whenever there exists reasonable cause to believe a Sergeant is unfit for duty. Any relevant medical history of the Sergeant which the examining professional conducting a psychological evaluation requests shall be released by the Sergeant only to the examining professional.

The examining professional shall issue a written report to the Employer, as the client, provided however, a Sergeants Association representative with permission of the Sergeant shall have the right to meet with the examining professional to discuss the evaluation results and provided further that such report shall indicate only whether the Sergeant is fit or unfit for duty and in the event an Sergeant is unfit the expected prognosis and recovery period as well as any accommodations which could be made to allow an Sergeant to return to duty.

If the Sergeant believes that the conclusions of the examining professional are in error, They may obtain an additional examination at his/her own expense and the Employer will provide the examining professional with documents which were utilized by the Employer's examining professional.

The Employer will undertake to have the Employer's examining professional make him/herself available to answer appropriate questions by the examining professional who conducts the independent examination.

Should a Sergeant grieve a disciplinary or discharge action taken as a result of an examination, the Employer shall allow release of the examination and supporting documents upon which it relies for the action, and all other prior examinations of the Sergeant.

The Sergeant making the request for release or transfer of examination materials will execute waiver forms as needed.

Personnel Records

Contents. A "personnel file" shall be defined as any file maintained by the City or Department (including supervisors) pertaining to the Sergeant's employment status, work history, training, disciplinary records, or other personnel related matters. It is further understood that a personnel file does not include material relating to medical records, pre-

appointment interview forms, Internal Affairs files, or applicant background investigation documents such as, but not limited to, psychological evaluations and polygraph results. Each Sergeant's personnel files shall be open for review by the Sergeant at reasonable times and with reasonable notice, provided that Sergeants shall not have the right to review psychological evaluations. The Employer shall maintain no secret personnel files not subject to inspection.

Any complaint that is not sustained will be retained no longer than the current year plus three years, unless otherwise required by law. Any sustained violation of City Policy or the Police Department General Orders, not listed below, resulting in a verbal, written warning or suspension of 5 days or less will be retained no longer than the current year plus three years, unless otherwise required by law. Any sustained complaint of criminal law violations, City administrative Guidelines pertaining to harassment, substance abuse, workplace violence or the Police Department's policy regarding truthfulness or a single suspension of more than 5 days may be retained indefinitely. Removal of any item will be requested by the Sergeant.

The Employer will promptly notify a Sergeant upon receipt of a public disclosure request for information in the Sergeant's personnel file. The Employer will also provide at least three (3) business days' notice before releasing any requested documents. The Employer will allow the Sergeant and the Sergeants Association the opportunity to legally object to unwarranted disclosures.

USE OF FORCE

Statement of Purpose. The parties recognize that adequate training is critical for preventing unnecessary use of force and for minimizing the impact on a Sergeant who is involved in a situation where force must be used. The Department recognizes that it is its obligation to provide adequate training in this area, including the reactions of Sergeants in critical instances and in dealing with problems that result after being involved in a critical incident.

Procedures. Any time a major incident occurs involving a use of force as defined in the Department's Policy and Procedures Manual, the following will apply:
Upon arrival at a scene where use of force has taken place, representatives of the Department shall only request from the Sergeant that information needed to secure the scene, identify witnesses, and to follow-up and apprehend any perpetrators of the crime who may be at large or other exigent circumstances. The Department will not otherwise question the Sergeant (s) regarding any information regarding the incident, but will inform the Sergeant involved in the incident that they have the right to be allowed immediate access to any of the following:

- a. Their spouse;
- b. The Association's attorney and the attorney's agents;
- c. The Sergeant's personal attorney;
- d. Psychologists, psychotherapists, or ministers depending upon the Sergeant's choice;

- e. Peer support counselor;
- f. Sergeants Association Representative.

The Department will notify a Sergeants Association representative of the incident and allow the Sergeant to have access to the representative. The Department and the Sergeants Association shall mutually agree on designated peer support counselors.

The Department will conduct a thorough and competent investigation of the incident, including using the appropriate techniques for preservation of the scene if relevant where the use of force took place. All reports and findings from this investigation will be immediately made available to the Sergeants Association upon request. If the Department must preserve a chain of custody for weapon or weapons utilized in the incident, the Sergeant will be immediately issued replacement weapons unless it is clearly inappropriate to do so.

The Department will assign an interviewer to interview the Sergeant. If there are multiple investigators assigned because of the concurrent investigations that are underway, the investigators will coordinate so that one investigator will be primarily responsible for the interview. All attempts will be made to minimize the need for successive interviews.

No statement will be required within 48 hours after the incident. The interview of the Sergeant involved in a critical situation will be done under circumstances intended to minimize the traumatic effect of the interview on the Sergeant. The Sergeant will be given reasonable breaks and periods to prepare for the interview, and be given access to the above-listed personnel to be present during the interview upon request. If requested, the interview will be postponed until the Sergeant has been able to seek a single session of professional counseling before the interview takes place.

At the discretion of the Police Chief, the Sergeant may be placed on administrative leave.

While on administrative assignment, the City will allow access to the Sergeant's choice of counselors or doctors without loss of pay or benefits to the Sergeant.

When either the Sergeant or the Department believes that the Sergeant should return to the Sergeant's regular assignment, at the Department's option the Sergeant will provide a letter from his licensed treating counselor or doctor indicating that the Sergeant is ready to return to his regular duties or to modified duties. The Department at its option may request an independent medical exam, which will be conducted in conformity with the procedures outlined in this Agreement including section 2.16 of this Article.

After returning to duty, the Sergeant will be encouraged and allowed full access to counselors without loss of pay or benefits to the Sergeant while participating in such program.

APPENDIX E

Physical Fitness Test

RELEASE:

I hereby agree to hold the City of Olympia and its employees harmless for any personal injury or damages while participating in activities of the Police Officer Physical Fitness Test. I understand the risks involved and agree to participate voluntarily on duty.

Signature:

Print Name:

STATION 1 – OBSTACLE COURSE (43 seconds)

Under Barricade

Zig Zag Run

Balance Beam

Number of Attempts

Thirty (30) Yard Run

Pass

Fail

Testing Officer

STATION 2 – 300 YARD RUN (90 seconds)

Pass

Fail

Testing Officer

STATION 3 – VEHICLE PUSH – 10 FEET (13 seconds)

Pass

Fail

Testing Officer

STATION 4 – BODY DRAG – 30 FEET (15 seconds)

Pass

Fail

Testing Officer

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 during this month. 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, a Sergeant may be given another opportunity to test outside the normal testing times. Sergeants who successfully complete the test will be provided incentive pay equal to a percent of their base wage as described below which shall be added to their regular paycheck:

Years of Service (Based on the years of service the employee is currently in; not the year of service completed.)	1-10	11 – 14	15 – 18	19+
Incentive Pay (Percentage of Base Salary)	1%	1.5%	2%	2.5%

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 1. In the event the City's physical fitness standards are found to violate State or Federal law, or the Constitution of the State of Washington or the United States, and the test is no longer administered for this or any other reason, the City agrees to pay the premiums in the table above, minus 1%, of the employee's base wage to all employee's.

POLICE SERGEANT ECONOMIC AGREEMENTS SUMMARY

The City and the Union are currently negotiating the labor contract for the period January 1, 2021– December 31, 2023. The following summarizes the proposed agreement:

ITEM	AGREEMENT	ESTIMATED ANNUAL COST INCREASE
COLA on base salary	2021: 1.0% 2022: 1.0% Min/4.0% Max Tied to Police Guild Contract; CPI-U 2023: 1.0% Min/4.0% Max Tied to Police Guild Contract; CPI-U	(\$50,208) \$14,463 \$14,607
Education Pay	2021: 2022: 2023:	\$107,293 \$1,099 \$1,110
Payroll Tax on Increases	2021: 2022: 2023:	\$942 \$250 \$253
Specialty Pay **	2021: 2022: 2023:	\$7,178 \$789 \$797
Longevity Pay	2021: 2022: 2023:	\$734 \$892 \$901
Benefits	2021: 2022: 2023:	\$3,239 \$1,327 \$1,846
Shoe Allowance	2021: 2022: 2023:	\$240 \$0 \$0
Clothing Allowance	2021: 2022: 2023:	\$3,150 \$0 \$0
Life Insurance	2021: 2022: 2023:	\$2,520 \$0 \$0
2021	TOTAL: As a percentage of annual payroll:	\$75,088 0.13%
2022	TOTAL: As a percentage of annual payroll:	\$18,820 0.03%

2023	TOTAL: As a percentage of annual payroll:	\$19,514 0.03%
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*These calculations are based upon 12 employees.

** This includes an increase to the Detectives. Admin, and Hiring/Training to 4%.

***2022 and 2023 are based upon 1% COLA.



City Council

Approval of an Ordinance Amending OMC Chapter 2.100 to Amend the Word “Citizen” to “Community Member” and to Allow City Council Advisory Boards, Commissions, and Committees to Receive a Stipend for Meeting Attendance

Agenda Date: 3/23/2021
Agenda Item Number: 4.I
File Number:21-0270

Type: ordinance **Version:** 1 **Status:** 1st Reading-Consent

Title

Approval of an Ordinance Amending OMC Chapter 2.100 to Amend the Word “Citizen” to “Community Member” and to Allow City Council Advisory Boards, Commissions, and Committees to Receive a Stipend for Meeting Attendance

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Approve the Ordinance amending OMC Chapter 2.100 to amend the word “citizen” to “community member” and to allow City Council advisory boards, commissions, and committees to receive a stipend for meeting attendance, and forward to second reading.

Report

Issue:

Whether to approve the Ordinance amending OMC Chapter 2.100 to amend the word “citizen” to “community member” and to allow City Council advisory boards, commissions, and committees to receive a stipend.

Staff Contact:

Debbie Sullivan, Assistant City Manager - Strategic Initiatives, 360.753.8499

Presenter(s):

None - Consent Calendar

Background and Analysis:

The Olympia City Council utilizes advisory boards, commissions, and committees to share their opinions and perspectives, study issues, and develop recommendations related to certain to certain

topics. Their primary purpose is to provide judicious advice, from a community member perspective, to the City Council. The City has ten volunteer advisory boards, commissions, and committees. Depending on their workplan, they meet anywhere between six and 24 times per year. They serve as volunteers and do not receive a stipend or reimbursement to offset expenses like childcare, transportation, or meals.

Council appropriated \$50,000 in the 2021 Operating Budget to provide stipends for community members serving on Council's advisory boards, commissions and committees. The intent is to increase participation of low-income and traditionally underrepresented community members by reducing barriers. This proposed ordinance authorizes members to receive a stipend of \$25 per meeting attended with the option to waive. Participants who certify as low-income will receive \$50 per meeting attended. The stipends will start at the beginning of their term, which is April 1, 2021.

The Social Justice and Equity Commission is currently being formed and is not included in this proposed ordinance. The process to form the Commission is being led by a Founding Member Work Group, and the work group is being compensated through a Professional Services Agreement with the City. The Work Group, through a community engagement process, will recommend to Council the new Commission's make-up and terms, formal name, scope of work, and first-year work plan. Once Council formally establishes the permanent Social Justice & Equity Commission, OMC Chapter 2.100 will be amended to add that new Commission. This is anticipated to occur in early Summer 2021.

Neighborhood/Community Interests (if known):

Reducing barriers for community members to participate in Council appointed advisory boards, commissions, and committees will result in better representation of our community and elevate the voices of those who are traditionally underrepresented in City decision-making.

Options:

1. Approve the Ordinance amending OMC Chapter 2.100 to amend the word "citizen" to "community member" and to allow City Council advisory boards, commissions, and committees to receive a stipend for meeting attendance and forward to second reading.
2. Direct staff to make changes to the Ordinance amending OMC Chapter 2.100 based on Council feedback and forward to second reading.
3. Do not approve the Ordinance amending OMC Chapter 2.100.

Financial Impact:

Council appropriated \$50,000 for stipends in the 2021 Operating Budget for community members serving on advisory boards, commissions and committees.

Attachments:

Ordinance

Ordinance No. _____

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING
OLYMPIA MUNICIPAL CODE CHAPTER 2.100 RELATED TO CITY COUNCIL
ADVISORY BOARDS, COMMISSIONS AND COMMITTEES**

WHEREAS, the use of the word "citizen" within the wording of OMC Chapter 2.100 may be interpreted to limit who may participate on the Council's advisory boards, commissions and committees; and

WHEREAS, the Olympia City Council wishes to encourage the broadest possible participation by all community members within the City of Olympia, knowing that diversity and inclusion are to be valued and give strength to the viewpoints and recommendations provided to the City Council by its advisory boards, commissions, and committees; and

WHEREAS, the Council acknowledges it has the authority to create limited duration ad hoc boards, commissions, and committees to work upon emergent issues and to provide advice and recommendations to the City Council; and

WHEREAS, the Olympia City Council wishes to remove economic barriers to community members who may wish to serve upon the Council's boards, commissions, and committees but may need assistance with costs relating to transportation, meals or for child-care expenses; and

WHEREAS, Council finds that providing a stipend for meeting attendance will serve to remove or reduce barriers to participation by Olympia's community members on Council's boards, commissions and committees;

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

Section 1. Amendment of OMC 2.100. Olympia Municipal Code Chapter 2.100 is hereby amended to read as follows:

Chapter 2.100

CITIZEN COMMUNITY-MEMBER ADVISORY BOARDS, COMMISSIONS AND COMMITTEES

2.100.000 Chapter Contents

Sections:

Article I. ~~CITIZEN~~COMMUNITY-MEMBER ADVISORY BOARDS, COMMISSIONS AND COMMITTEES
APPOINTED BY THE OLYMPIA CITY COUNCIL

- 2.100.010 Purpose.
- 2.100.020 Boards, Commissions and Committees Established.
- 2.100.030 List —~~Citizen~~Community-Member Boards, Commissions and Committees Appointed by the Olympia City Council.
- 2.100.040 Members.
- 2.100.050 Term of Office.
- 2.100.060 Vacancies.
- 2.100.070 Rules of Procedure and Bylaws.

- 2.100.080 Annual Work Plan.
- 2.100.090 Staff Liaison Support.

Article II. ARTS COMMISSION

- 2.100.100 Established - Purpose.
- 2.100.110 Duties of Commission.
- 2.100.120 Budget.
- 2.100.130 Public Art –Purpose.
- 2.100.140 Public Art--Duties of Commission.
- 2.100.150 Public Art--Allocation of Municipal Funds.
- 2.100.160 Public Art--Definitions.
- 2.100.170 Public Art--Funds for Public Art.
- 2.100.180 Public Art--Municipal Art Fund.
- 2.100.190 Public Art--Administrative Guidelines –Public Art, Art Programs and Services.
- 2.100.200 Public Art--Maintenance and Conservation of Public Art.
- 2.100.210 Donations for Community Art Programs and Services; City Manager Authorized to Accept.
- 2.100.220 Donations for Community Art Programs and Services; Application of Ordinance.
- 2.100.230 Donations for Community Art Programs and Services; Community Arts Account Established.
- 2.100.240 Appropriation of Donations for Art Programs and Services.

Article III. BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE

- 2.100.250 Established -- Purpose.
- 2.100.270 Duties.

Article IV. LODGING TAX ADVISORY COMMITTEE

- 2.100.280 Established--Purpose.
- 2.100.290 Membership--Appointment.
- 2.100.300 Duties.
- 2.100.310 Relationship between the Lodging Tax Advisory Committee and City Council.

Article V. PARKS AND RECREATION ADVISORY COMMITTEE

- 2.100.320 Established--Purpose.
- 2.100.340 Duties.

Article VI. PLANNING COMMISSION

- 2.100.350 Established – Membership – Purpose.
- 2.100.360 Duties.
- 2.100.370 Powers of City Council.
- 2.100.380 Use Districts –Development Plan.
- 2.100.390 Comprehensive Plan –Purpose and Preparation.
- 2.100.400 Comprehensive Plan –Public Hearing--Copy Filing.
- 2.100.410 Comprehensive Plan –Modification Procedure.

Article VII. UTILITY ADVISORY COMMITTEE

- 2.100.420 Established –Purpose.
- 2.100.440 Powers and Duties.

Article VIII. HOME FUND ADVISORY BOARD

2.100.450 Established – Purpose.

2.100.480 Duties.

Article IX. ~~CITIZEN~~COMMUNITY REPRESENTATIVES FOR POLICE USE OF FORCE EVENTS

2.100.500 Established –Purpose.

2.100.520 Qualifications.

2.100.530 Duties.

NOTE: See OMC Chapter 18.76 for Design Review Board and OMC Chapter 18.84 for Heritage Commission-Historic Preservation.

Article I. ~~CITIZEN~~COMMUNITY-MEMBER ADVISORY BOARDS, COMMISSIONS AND COMMITTEES APPOINTED BY THE OLYMPIA CITY COUNCIL

2.100.010 Purpose

The purpose of this chapter is to create specific ~~citizen~~community-member advisory boards, commissions and committees appointed by the City Council, and provide uniform policies for the boards, commissions and committees enabled herein, to the extent possible. From time to time, the City Council may create advisory ad hoc boards, commissions and committees and appoint community members to such advisory groups. Ad hoc boards, commissions and committees shall be of a limited duration determined by the Olympia City Council. Community members appointed to the City Council's ad hoc boards, commissions and committees shall serve without compensation unless specifically retained as consultants, except for the stipend provided in OMC 2.100.040.C below.

2.100.020 Boards, Commissions and Committees Established

All ~~citizen~~community-member boards, commissions and committees appointed by the City Council shall be established by Ordinance of the City Council and which shall contain a statement of purpose and of duties. Except as may be otherwise provided by ordinance, the boards, commissions and committees appointed by Council are advisory in nature.

2.100.030 List —~~Citizen~~Community-Member Boards, Commissions and Committees Appointed by the Olympia City Council

The boards, commissions and committees appointed by the City Council are:

- A. Arts Commission (See OMC 2.100.100 - 2.100.240)
- B. Bicycle and Pedestrian Advisory Committee (See OMC 2.100.250 - 2.100.270)
- C. Design Review Board (See OMC 18.76)
- D. Heritage Commission (See OMC 18.12)
- E. Lodging Tax Advisory Committee (See OMC 2.100.280 - 2.100.310)
- F. Parks and Recreation Advisory Committee (See OMC 2.100.320 - 2.100.340)
- G. Planning Commission (See OMC 2.100.350 - 2.100.410)
- H. Utility Advisory Committee (See OMC 2.100.420 - 2.100.440)
- I. Home Fund Advisory Board (See OMC 2.100.450 - 2.100.480)
- J. ~~Citizen-Community~~ Representatives for Police Use of Force Events (See OMC 2.100.500 – 2.100.520)¹

2.100.040 Members

- A. Number of Members. Except as may be otherwise be provided by ordinance, each board, commission or committee shall consist of nine (9) members appointed by the City Council.
- B. Residency. Except as may be otherwise provided in the Olympia Municipal Code regarding a specific board, commission or committee, the majority of members on each board, commission and committee shall reside within the corporate limits of the City of Olympia or the City of Olympia Urban Growth Area.
1. This provision shall not apply to a board, commission or committee member when there is a member vacancy during a term of office resulting in less than a majority of the remaining members residing within the corporate limits of the City of Olympia or the Urban Growth Area. In this case, the residency requirement may be suspended for the remainder of the term that was vacated.
- C. Compensation. ~~All board, commission and committee members shall serve without compensation, except as determined by the Olympia City Council~~ All board, commission and committee members shall serve without compensation, but shall receive a stipend of Twenty-Five and no/100 Dollars (\$25.00) per meeting attended to defray expenses such as transportation, meals and child care. A member may waive receipt of any stipend offered by the City of Olympia. If a member certifies in writing they are a low-income person, as administratively determined by the City of Olympia, the stipend shall be \$50.00 per meeting attended.
- D. Appointment.
1. Members are appointed by majority vote of the Olympia City Council in an open public meeting.
 2. Members serve at the discretion of the City Council and may be removed from office for any reason by majority vote of the City Council in a public meeting.
 3. City employees are not eligible for appointment to a board, commission or committee during the term of their employment with the City.
- E. Recruitment. The City Council's General Government Committee shall develop and implement a public process to recruit potential board, commission and committee members.
- F. Diversity. Given the applicant pool and qualifications at the time of member recruitment, the City Council shall strive, to the best of its ability, to achieve diversity in geographic residence within the City, gender, age, profession, race and ethnicity on each board, commission and committee. No geographic, gender, age, profession, race, nor ethnicity restrictions shall be placed on applicant eligibility.
- G. Non-Partisan. All board, commission and committee positions are non-partisan.

2.100.050 Term of Office

- A. The term of office for board, commission and committee positions shall be three (3) years, except as modified by the City Council, and such terms shall commence on April 1.
- B. The terms shall be staggered so that as near as possible one-third of each board's, commission's and committee's membership shall expire each year.
- C. Terms shall be limited to three (3) full terms, nine (9) years, on any one board, commission or committee (except for the Design Review Board and the Heritage Commission). Partial terms will not be counted toward the number of terms considered. ~~Citizens-Community Members~~ or residents who have reached the term limit on any one board, commission or committee remain eligible to apply and serve on a different board, commission or committee. Upon a motion properly made and seconded, the City Council may waive a term limit restriction upon a vote of a majority of the City Council.

2.100.060 Vacancies

- A. Vacancies on boards, commissions or committees occurring during the term of office shall be filled based upon a timeline determined by the City Council's General Government Committee.
- B. Any person appointed to fill a vacancy shall be appointed for the remainder of the unexpired term.

2.100.070 Rules of Procedure and Bylaws

The General Government Committee of the City Council shall establish Rules of Procedure and Bylaws for boards, commissions and committees.

2.100.080 Annual Work Plan

Each board, commission and committee, except the Design Review Board, and ~~Citizen-Community Member~~ Representatives for Police Use of Force Events, shall present an annual work plan to the City Council for approval in a format and within parameters determined by the City Council's General Government Committee. Substantive changes to the work plan after approval by the City Council shall be submitted to the General Government Committee for consideration and recommendation to the full Council.

2.100.090 Staff Liaison Support

The City Manager, or designee, shall appoint a primary staff liaison for each board, commission and committee to ensure that meeting notifications and recordkeeping occurs consistent with applicable State laws; to provide professional guidance, issue analysis and recommendations; to assist the board, commission and committee with research, report preparation, and correspondence in keeping with the board's, commission's or committee's Council-approved work plan; and to perform other board, commission and committee liaison duties as may be assigned by the City Manager or designee.

Article II. ARTS COMMISSION

2.100.100 Established--Purpose

There is hereby established an Arts Commission (the Commission) to accomplish the following:

- A. To promote and encourage public programs to further the development and public awareness of, and interest in, the fine and performing arts and the cultural heritage of the area; and
- B. To advise the City Council in connection with the artistic and cultural development of the Olympia area; and
- C. To provide local artistic and cultural services to ~~citizens-community members~~ of the Olympia area by making available to the City and its ~~citizens-community members~~ expertise on the subject of visual and performing arts and cultural heritage; and
- D. To encourage donations, grants or other support to further expand artistic, cultural programs and services for the ~~citizens-community members~~ of the Olympia area; and
- E. To reach out to and work with the governments, institutions and ~~citizens-community members~~ of neighboring jurisdictions in connection with these purposes, and ultimately to include representatives of said jurisdictions on the ~~e~~Commission.

2.100.110 Duties of Commission

The Commission is empowered to take the following actions:

- A. To encourage, conduct, sponsor or cosponsor, on behalf of the City, public programs to further the development and public awareness of, and interest in, the fine and performing arts, and the area's cultural heritage;

- B. To provide recommendations to the City Council and other groups on cultural and artistic endeavors and projects in which the City becomes involved and to act as a representative of the community in such matters;
- C. To advise the City Council concerning the receipt of or purchase of works of art to be placed on municipal property;
- D. To encourage donations, grants and other support to further expand arts and cultural services and programs available to ~~citizens~~community members of Olympia and the region;
- E. To encourage participation in local artistic and cultural events and programs by ~~citizens~~community members and governments of neighboring jurisdictions;
- F. Review all proposed donations for art programs and services to ensure that such donations are consistent with the goals of the Commission and the authority of the City of Olympia. After such review, submit a recommendation on the proposed donation(s) to the Director of the Parks, Arts, and Recreation Department and the City Manager for formal acceptance or rejection provided the donation is under \$10,000 in value;
- G. Prepare and recommend to the City Council a plan that outlines the expenditures of donations received and held in the Community Art Account for art programs and services; and
- H. To take such other actions as the City Council may direct from time to time.

2.100.120 Budget

The Commission's programs and operating expenses shall be funded from the City General Fund and from grants, donations and other like sources. The City Manager shall include said budget within the annual operating budget of the City.

2.100.130 Public Art--Purpose

The City wishes to expand experience with visual and performing art. Such art has enabled people in all societies to understand more clearly their communities and individual lives. Artists capable of creating art for public places must be encouraged and Olympia's standing as a regional leader in public art enhanced. A policy is therefore established to direct the inclusion of works of art in public works of the City and to explore means for encouraging artists to live and work in Olympia. When opportunities and funding allow, the City may also support performing art in public places when such performing art is consistent with the Municipal Art Plan.

2.100.140 Public Art--Duties of Commission

To carry out its responsibilities hereunder, the Commission shall:

- A. Prepare and recommend to the City Council for approval a Municipal Art Plan and guidelines to carry out the City's Public Art Program, which shall include, but not be limited to:
 - 1. a method for the selection of artists or works of art and for placement of works of art at municipally owned, leased or rented property; and
 - 2. support of performing art programs, if consistent with the Municipal Art Plan.
- B. Recommend purchase of works of art or commission the design, execution and/or placement of works of art. The arts program staff shall advise the department responsible for a particular construction project of the Arts Commission's recommendation regarding the design, execution and/or placement of a work of art in connection with such construction project.

C. Review all proposed donation of works of art to the City, proposed donation of funds for the acquisition of works of art, if restricted or dedicated in any way, and proposed donation of sites for works of art to ensure that such donations are consistent with the goals of the Commission and the City.

D. Promulgate rules and regulations consistent with Sections 2.100.130 through 2.100.170 to facilitate the implementation of the Arts Commission's responsibilities.

2.100.150 Public Art--Allocation of Municipal Funds

Sections 2.100.130 through 2.100.170 of this chapter provide allocation of certain municipal funds for the purpose of selecting, acquisitioning and installing art works in public places and further provides that moneys collected be held in a "Municipal Art Fund" to be expended for projects and programs as prescribed in the "Municipal Art Plan" to be developed by the Arts Commission. All works of art purchased and commissioned under the Municipal Art Plan shall become a part of the City art collection developed, administered, and operated by the City Arts Program.

Moneys in the Municipal Art Fund may also be used for the following:

1. toward the creation of a live/work housing project for local artists;
2. toward the City's Public Art, as provided in the Municipal Art Plan.

2.100.160 Public Art--Definitions

A. "Commission" means the Olympia Arts Commission.

B. "Conservation" means those activities required to conserve, repair, or preserve the integrity of the ~~art work~~artwork and setting within which the ~~art work~~artwork is located.

C. "Construction project" means any capital project paid for wholly or in part by the City to construct any building, structure, park, street, sidewalk, or parking facility, or any portion thereof, within the limits of the City.

D. "Municipal Art Plan" means a plan outlining the City expenditures of designated funds for Public Art projects for a one-year period.

E. "Public Art" includes visual and performing arts.

F. "Routine maintenance" means:

1. Those activities associated with keeping an ~~art work~~artwork and its setting clean and well-ordered; and
2. The removal of graffiti, if it can be accomplished employing effective, pre-approved methods.

2.100.170 Public Art--Funds for Public Art

Moneys for the Municipal Art Fund shall be secured through the following methods:

A. An annual amount equaling up to one dollar per capita may be appropriated from the City's General ~~Fund~~Fund for Public Art; and

B. All requests for appropriations from the General Fund for new construction projects visible and usable by the public, and exceeding five hundred thousand ~~and no/100~~ dollars (~~\$500,000.00~~) shall include an amount equal to one percent of the estimated construction cost of such project for Public Art.

C. The Arts Program Manager, in consultation with City management and department directors, may suggest to the City Council other appropriate funds on a project basis.

2.100.180 Public Art--Municipal Art Fund

There is established in the City treasury a special fund designated "Municipal Art Fund" into which shall be deposited funds appropriated as contemplated by Section 2.100.170, together with gifts or bequests to the City for such purpose, and other funds as the City Council shall appropriate for Public Art, and from which expenditures may be made for specific Public Art in accordance with the Plan specified in Section 2.100.140. Moneys in the Municipal Art Fund may also be used toward the creation of a live/work housing project for local artists. Separate accounts shall be established within the Municipal Art Fund to segregate receipts by source or, when so directed by the City Council, for specific works of art. A percentage of the Municipal Art Fund will be appropriated for administrative costs associated with the project. Arts program staff salaries will not be funded from the Municipal Art Fund, except where specifically provided for art conservation. Donations received for Public Art projects and purposes shall be administered pursuant to applicable policies adopted by the City.

The interest accruing in the Municipal Art Fund shall be segregated as an art conservation reserve. Moneys held in the art conservation reserve may be expended for staff time, professional services, supplies, and operating costs associated with the conservation, repair, restoration, or maintenance of works of Public Art as prescribed in an annual maintenance plan to be developed by the Arts Commission. In the event that excess funds are accumulated in the art conservation reserve, a percentage of reserve funds may be expended for special maintenance projects as recommended by the Arts Commission and approved by the City Council.

2.100.190 Administrative Guidelines--Public Art, Art Programs and Services

The City Manager or designee is hereby authorized to promulgate administrative guidelines to carry out the provisions of Sections 2.100.130 through 2.100.240. Any major changes to said guidelines shall be submitted to the City Council for review.

2.100.200 Public Art--Maintenance and Conservation of Public Art

Routine maintenance of works of Public Art shall be performed by the Parks, Arts and Recreation Department consistent with the artist's specifications whenever possible. Minor routine costs shall be borne by the Parks, Arts and Recreation Department's budget. When routine maintenance costs exceed the resources of the Parks, Arts and Recreation Department, the Commission, in consultation with the arts program staff, may recommend the expenditure of art conservation reserve funds to support the cost of supplies and labor to perform routine maintenance.

Conservation, repair, and restoration of works of Public Art, once determined to be required by arts program staff and the Arts Commission, shall be performed by the artist or other contractor and the costs shall be fully born by the arts conservation reserve.

2.100.210 Donations for Community Art Programs and Services; City Manager Authorized to Accept

The City Manager is hereby authorized to accept on behalf of the City of Olympia donations for community art programs and services valued at less than \$10,000 and to carry out any conditions of the donation, so long as such conditions are within the authority of the City. The City Manager will, for each donation, communicate an appropriate acknowledgment of acceptance on behalf of the City of Olympia and an expression of appreciation.

Prior to making the City Manager's determination whether to accept a donation or whether any condition thereof is within the authority of the City, the City Manager shall receive and review the recommendation of the Arts Commission and the Director of the Parks, Arts and Recreation Department.

2.100.220 Donations for Community Art Programs and Services; Application of Ordinance

Sections 2.100.210, 2.100.230, 2.100.240 of this Chapter shall govern the receipt, holding and allocation of funds donated to the City only for the purpose of supporting community art programs and services.

2.100.230 Donations for Community Art Programs and Services; Community Arts Account Established

There is a special revolving account designated the "Community Arts Account" within the Special Accounts Control Fund. Donated funds received for community art programs and services pursuant to Sections 2.100.210, 2.100.230, and 2.100.240 shall be deposited into the "Community Arts Account." Funds held within the Community Arts Account shall be expended upon appropriation for arts programs and services set forth in the Municipal Art Plan for such programs and services approved by the City Council.

2.100.240 Appropriation of Donations for Art Programs and Services

Any donation given and received without conditions may be appropriated, pursuant to the Municipal Art Plan, for the enhancement or expansion of existing City art programs and services, or for the development of new art programs or services. If an approved donation is conditional, it shall be deposited in the Community Arts Account and may be used only for purposes set forth in the condition. In either event, a proper credit shall be given to the fund source, such as "this program sponsored by the City of Olympia Arts Commission with support provided by the Community Arts Account." Enhanced or expanded art programs and services funded from the Community Arts Account will continue only if funds are available to continue such programs.

Article III. BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE

2.100.250 Established--Purpose

There is hereby established a Bicycle and Pedestrian Advisory Committee of Olympia to advise the City Council on the encouragement and facilitation of the use of bicycles and walking as regular means of transportation or recreation, and provide for pedestrian and bicycle safety needs.

2.100.270 Duties

The Bicycle and Pedestrian Advisory Committee shall have the following duties:

- A. Oversee the development of a bicycling master plan for approval by the Council and propose plan amendments as appropriate based on an annual review. Oversee the development of a pedestrian master plan for approval by the City Council and propose amendments as appropriate based on an annual review;
- B. Establish a list of recommended bicycle and pedestrian facility priorities for consideration during the City's annual review of capital improvement projects;
- C. Review preliminary plans for creating/enhancing bicycle and pedestrian facilities;
- D. Make recommendations on roadway design standards;
- E. Share information about existing and proposed bicycling and pedestrian programs with other community groups concerned with bicycle and pedestrian programs and safety;
- F. Make recommendations on any bicycle/pedestrian matters with an emphasis on policy and planning issues;
- G. Periodically review the results of implementation of City development standards and policies to ensure that the bicycle and pedestrian related goals in the Olympia Comprehensive Plan are being constructively addressed;
- H. Advise the City Council on ~~citizen~~community member concerns on bicycle and pedestrian transportation matters; and
- I. Other duties as appropriate.

Article IV. LODGING TAX ADVISORY COMMITTEE

2.100.280 Established--Purpose

There is hereby established a Lodging Tax Advisory Committee to advise the City Council on potential annual uses of the lodging tax imposed and collected by the City of Olympia.

2.100.290 Membership--Appointment

A. There shall be five (5) members of the Lodging Tax Advisory Committee, one (1) of whom shall be a member of the Olympia City Council, two (2) of whom shall be representatives of businesses required to collect the lodging tax, and two (2) of whom shall be persons involved in activities eligible to be funded by revenue received from the lodging tax.

B. The City Council representative shall serve as committee chair. The appointment of the City Council member will be determined annually by the City Council.

2.100.300 Duties

The Lodging Tax Advisory Committee shall have the following powers and duties:

A. Establish a process for and make recommendations to the City Council concerning potential uses for the lodging tax levied and collected by the City of Olympia within guidelines established by the City Council; and

B. Annually review and report to the City Council on the effectiveness of the use of the lodging tax in meeting the goals and parameters for the tax as adopted by the Olympia City Council.

2.100.310 Relationship Between the Lodging Tax Advisory Committee and the Olympia City Council

A. The annual recommendations of the Lodging Tax Advisory Committee on potential uses of that tax and the report on effectiveness of the lodging tax in meeting the goals adopted by the City Council shall be made to the Olympia City Council in a timely manner prior to or as part of Council consideration of the following year's City budget.

B. The Lodging Tax Advisory Committee shall inform ~~citizens~~ community members and groups that its work is advisory in nature only, and that the City Council decides how to use the lodging tax.

Article V. PARKS AND RECREATION ADVISORY COMMITTEE

2.100.320 Established--Purpose

There is hereby established a Parks and Recreation Advisory Committee to advise the City Council on recreation matters enumerated in this chapter.

2.100.340 Duties

The Parks and Recreation Advisory Committee shall have the following powers and duties:

A. To make recommendations to the City Council concerning the future park, playground and other recreation resources of the City through the planning and development of a parks capital improvement plan;

B. To update the Comprehensive Park Plan to comply with the Interagency Committee for Outdoor Recreation Grant in Aid programs;

C. To make recommendations to the City Council regarding planning and development of public recreational facilities and programs;

- D. To cooperate with any departments and advisory bodies of the City and with public school authorities, Thurston County, the State of Washington, other cities and public and private entities in the furtherance of a well-rounded parks and recreation program;
- E. To make recommendations to the City Council on rules and regulations regarding use of City recreational facilities to best serve the interests of the public;
- F. To serve as liaison between ~~citizens~~ community members and the City Council on parks and recreation related matters;
- G. To make recommendations to the City Council regarding any matters affecting parks and recreation programs;
- H. If requested by the City Council or City Manager, to provide advice regarding the employment of parks and recreation personnel; and
- I. To carry out other parks and recreation related subjects assigned by the City Council or by ordinance.

Article VI. PLANNING COMMISSION

2.100.350 Established – Membership – Purpose

There is hereby established in the City, pursuant to RCW 35A.63.020, a Planning Commission, consisting of nine (9) members, to advise the City Council on the long range growth and development of Olympia, including changes to the City's Comprehensive Land Use Plan and zoning ordinance.

2.100.360 Duties

The Planning Commission is authorized and empowered to act as the research and fact-finding agency of the City. To that end, it may make surveys, provide analysis, undertake research, and make reports as generally authorized or requested by the City Council. The Planning Commission, upon such request or pursuant to such authority, may:

- A. Make inquiries, perform investigations and surveys concerning the resources of the City;
- B. Assemble and analyze any data obtained and formulate plans for the conservation of such resources and the systematic utilization and development thereof;
- C. Make recommendations from time to time as to the best methods of such conservation, ~~utilization~~ and development; and
- D. Cooperate with other public agencies in such planning conservation and development.

2.100.370 Powers of City Council

The City Council is authorized and empowered to provide for the preparation by the Planning Commission and the adoption and enforcement of coordinated plans for the physical development of the City. For this purpose, the City Council, as is deemed reasonably necessary or requisite in the interest of the health, safety, morals, and the general welfare, upon recommendation by its Planning Commission, by general ordinances of the City, may regulate and restrict the location and the uses of buildings and structures for residential, commercial, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the setback of buildings along highways, parks, or public water frontages; and the subdivision and development of land.

2.100.380 Use Districts--Development Plan

For any or all of such purposes the City Council, on recommendation of the Planning Commission, may divide the City or any portion thereof into districts of such size, shape and area, or may establish such

official maps, or development plans for the whole or any portion of the area of the City as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land.

2.100.390 Comprehensive Plan--Purpose and Preparation

All such regulations shall be worked out as parts of a comprehensive plan, which the Planning Commission shall prepare for the physical and other generally advantageous development of the City, and shall be designed, among other things, to encourage the most appropriate use of land throughout the City; to lessen traffic congestion and accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve and restore natural beauty and other natural resources; to facilitate the adequate provision of transportation, water, sewerage, and other public uses and requirements.

2.100.400 Comprehensive Plan--Public Hearing--Copy Filing

The Planning Commission may recommend to the City Council the ~~plan~~ Comprehensive Plan so prepared as a whole, or may recommend parts of the ~~plan~~ Comprehensive Plan by successive recommendations, said parts corresponding with geographic or political sections, divisions or subdivisions of the City, or with functional subdivisions of the subject matter of the plan; and may prepare and recommend any amendment or extension thereof or addition thereto. Before recommendation of the initial ~~plan~~ Comprehensive Plan to the City, the Planning Commission shall hold at least one public hearing thereon, giving notice of the time and place by one publication in a newspaper of general circulation in the City and in the official gazette, if any, of the City. A copy of the ordinance or resolution adopting or embodying such ~~plan~~ Comprehensive Plan or any part thereof or any amendment thereto, duly certified as a true copy by the City Clerk, shall be filed with the County Auditor. A like certified copy of any map or plat referred to or adopted by the ordinance or resolution shall likewise be filed with the County Auditor. The Auditor shall record the ordinance or resolution and keep on file the map or plat.

2.100.410 Comprehensive Plan--Modification Procedure

Any ordinance or ordinances, resolution or resolutions, adopting any such ~~plan~~ Comprehensive Plan or regulations, or any part thereof, may be amended, supplemented, changed or modified by subsequent ordinance or resolution adopted by the City Council upon recommendation of the Planning Commission.

Article VII. UTILITY ADVISORY COMMITTEE

2.100.420 Established--Purpose

There is hereby established a Utility Advisory Committee to act as a public advisor to the City Council, the City Manager's office and the Public Works Department on utility policy matters for the City's four public utilities: Water, Wastewater, Storm and Surface Water, and Waste ReSources. The Utility Advisory Committee shall also act to actively encourage broad public participation in the planning and construction of the utility infrastructure which sustains the community. In this advisory role the Committee shall:

- A. Develop an understanding of the range and depth of utility policy issues, the relationship utilities have in implementing the Comprehensive Plan, and the role the various utility master plans have in City development.
- B. Provide advice to the City Council, the City Manager's office, the Planning Commission, and the Public Works Department in developing the Capital Facility Plan.
- C. Provide policy advice and direction on the setting of utility rates.

D. Review the variety of public involvement tools available to encourage community participation, and make recommendations to the City Council on what tools to use to ensure broad community involvement in the planning and the building of the utilities.

2.100.440 Duties

The Utility Advisory Committee is authorized and empowered to act as the principal policy advisor to the City Council, the City Manager's office, and the Public Works Department on utility matters.

A. The Utility Advisory Committee may conduct research, perform analysis and prepare and develop reports and recommendations to the City regarding utility policy choices on issues such as utility rates, the utility related chapters of the Comprehensive Plan, the utility master plans, utility franchises, regulatory compliance with state and federal laws, levels of customer service and satisfaction, and the capital facilities of each of the City's four public utilities.

B. The Utility Advisory Committee shall also foster opportunities for expanding the public's involvement in the planning and delivery of public utility services.

C. In addition, the Utility Advisory Committee will provide advice to the City on management strategies to:

1. Maintain the community's investment in its utility infrastructure;
2. Respond to state and federal regulations;
3. Define the role the utilities play in managing and accommodating growth in the community; and
4. Evaluate operations to ensure the utilities are operated in a sustainable manner which assures stewardship for our natural, business, material, and human resources.

D. The Utility Advisory Committee shall present an annual work plan to the City Council for approval.

E. The Utility Advisory Committee shall present an annual report to the City Council for approval on the state of the utilities and the other work of the Utility Advisory Committee, including recommendations to improve the operations of the committee.

Article VIII. HOME FUND ADVISORY BOARD

2.100.450 Established – Purpose

There is hereby established a Home Fund Advisory Board to accomplish the following:

A. Advise the City Council concerning the formulation of processes, procedures and criteria for carrying out the goals of the Olympia Home Fund; and

B. Ensure the expenditures of Olympia Home Fund dollars and other resources are invested based upon the priorities and commitments made to voters by the City of Olympia.

2.100.480 Duties

The Home Fund Advisory Board shall have the following powers and duties:

A. Priority Setting.

1. To review the overall housing needs of vulnerable populations within the City.
2. To coordinate with other stakeholders, City boards, commissions and committees, government funders and other public and private partners to develop categories of need and priority projects to meet those needs consistent with statutory limitations on use of Home Fund dollars; and

3. To make recommendations to the City Council concerning appropriate low income housing projects and housing and mental health related services.
- B. Public Communication. To facilitate and recommend outreach to the community about the Home Fund priorities, projects, services and investments.
- C. Home Fund Allocations. To provide advice to the City Council on any proposed allocation of Home Fund dollars. This may be done through a subcommittee to expedite awards and reduce potential conflicts of interest.
- D. Coordination. To be familiar with other funding plans and funding sources in order to maximize investment in Home Fund projects. Partners may include, but are not limited to:

- Thurston County Five-Year Plan
- Olympia's CDBG Annual Plan and Five-Year Plan
- ' The Regional Housing Council
- Housing Action Team
- Thurston County Housing Authority
- Continuum of Care
- Housing Finance Commission
- Housing Trust Fund

Article IX. ~~CITIZEN-COMMUNITY MEMBER REPRESENTATIVES FOR POLICE USE OF FORCE~~ EVENTS²

2.100.500 Established--Purpose

There is hereby established a pool of six ~~citizen-community member~~ representatives to assist by monitoring certain independent investigations regarding police use of deadly force that results in substantial harm or great bodily harm to inform whether such use of force meets the good faith standard established in RCW 9A.16.040. For each use of deadly force event for which an independent investigation involving ~~citizens-community members~~ is needed, two ~~citizen-community member~~ representatives from this pool of six will be selected to serve.

2.100.520 Qualifications

~~The Citizen Representatives must meet the following requirements in order to serve as a citizen representative:~~
The following qualifications are required in order to serve as a community member representative:

- A. Must be available to serve on a team that will independently investigate a police use of deadly force event;
- B. Must have the ability to serve fairly and impartially;
- C. Must be available to serve during non-traditional working hours;
- D. Must be willing and able to attend the City of Olympia Police Department Citizen's Community Member's Academy as well as other training relevant to participation on an investigative team;
- E. Must be able to pass a background check that meets Criminal Justice Information Service (CJIS) requirements, as established by the Federal Bureau of Investigation;
- F. Must not have an active arrest warrant and must not have been convicted in any state of:
 1. Any felony; or

2. A gross misdemeanor or misdemeanor involving domestic violence; or
 3. Any other crime that could impact the ability of a ~~citizen-community member~~ representative to impartially serve as part of an independent team of investigators on a police use of deadly force matter;
- G. Must not be a City of Olympia officer, official, or employee, or an immediate family member of an City of Olympia officer, official, or employee. "Immediate family member" means parents, spouse, siblings, children, or dependent relatives;
- H. Must reside within the city limits of Olympia;
- I. Must be able to serve for the duration of a three-year term without compensation, except for the stipends permitted in OMC 2.100.040, and serve for one term only; and
- J. Must be willing to sign a confidentiality agreement at the inception of their service on an investigative team and maintain strict confidentiality through the end of any criminal trial and appeal period.

2.100.530 Duties

- A. When selected to do so, each ~~Citizen-Representative-community member representative~~ shall, fairly and impartially, monitor independent investigations regarding any police use of deadly force that results in substantial harm or great bodily harm to inform whether such use of force meets the good faith standard established in RCW 9A.16.040, as instructed by the lead investigator of such team.
- B. Each ~~Citizen-Representative-community member representative~~ must attend the City of Olympia Police Department ~~Citizen's Community Member's~~ Academy, as well as other training determined relevant to participation on an investigative team prior to assignment to an investigation;
- C. Each ~~Citizen-Representative-community member representative~~ must maintain strict confidentiality throughout any investigation to which they have been assigned until its end and the conclusion of any subsequent trial and appeal period.

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 shall remain 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 shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber
CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



City Council

Public Hearing on a Development Agreement with West Bay Development Group, LLC and Hardel Mutual Plywood Corporation

Agenda Date: 3/23/2021
Agenda Item Number: 5.A
File Number:20-1004

Type: public hearing **Version:** 1 **Status:** Public Hearing

Title

Public Hearing on a Development Agreement with West Bay Development Group, LLC and Hardel Mutual Plywood Corporation

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Hold a public hearing on a development agreement with West Bay Development Group, LLC and Hardel Plywood Corporation.

Report

Issue:

Whether the City Council should hold a public hearing on a development agreement with West Bay Development Group, LLC and Hardel Plywood Corporation.

Staff Contact:

Tim Smith, Planning & Engineering Manager, Community Planning and Development, 360.570.3915

Presenter(s):

Tim Smith, Planning & Engineering Manager, Community Planning and Development

Background and Analysis:

Legal Requirements for Development Agreements

Chapter 36.70B.170 of the Revised Code of Washington authorizes cities to enter into a written development agreement with a property owner. The City of Olympia's procedures for development agreements are contained in Chapter 18.53 of the Olympia Municipal Code (OMC).

An applicant may request the City Council to consider a development agreement to define specific parameters for a future project application. Development agreements are not required by the City. A development agreement is one of the few tools in the Olympia Municipal code that allow projects to be phased over several years. Development agreements typically address timelines for installation of

public improvements like roads, sidewalks, and sewer and water infrastructure that are required components of a project.

Following is a brief summary of those procedures as they relate to the proposed development agreement:

- The City Council is the authority to make a final decision on a development agreement.
- The City Council must hold a public hearing on the development agreement. Notice was provided for the public hearing consistent with the City's public notice requirements (OMC 18.78.040).
- A development agreement must be heard by the City Council prior to consideration of any application for development.
- A development agreement may address the development standards and other provisions that apply to the proposed development and vest to the development, the time frame of the agreement, and any mitigation measures to address potential impacts of the agreement. The attached development agreement would not change any existing City regulations as they would apply to the development but would ensure that current regulations apply to all phases of the development.
- The agreement includes exceptions for future state or federal regulations that may supersede the City's authority, and for new regulations addressing threats to public health and safety.
- Development agreements are recorded with Thurston County and remain in force and applicable to the property according to the terms of the agreement, even if the property is sold or transferred to another party.

Description of Site and Future Project

This public hearing is on the terms of the proposed development agreement. This public hearing is not a hearing or decision on the proposed development itself. As noted above, a development agreement must be heard by the City Council prior to consideration of any application for development.

The proposed development agreement is for an approximately 8-acre property located at 1210 West Bay Drive NE. The subject property is located east of West Bay Drive and adjacent to West Bay and is the site of the former Hardel Mutual Plywood manufacturing facility that operated between 1951 and 1996.

The anticipated future project is called West Bay Yards and will consist of approximately 478 market-rate rental housing units in five mixed-use buildings and approximately 20,500 square feet of complimentary retail, restaurant, and recreation uses. Site development is proposed in two phases, with building construction in three phases. The five buildings will be located above an elevated public plaza structure that will provide most of the parking for the development below grade. The plaza will enable the building foundations to be at the same grade as West Bay Drive.

The future mixed-use project as currently conceptualized is supported by the City's Comprehensive Plan and the Olympia Shoreline Master Program (SMP) and zoning regulations. The City amended its Comprehensive Plan and Zoning Map in 2003 from industrial to Urban Waterfront to promote urban levels of commercial and residential development in this area.

Summary of Development Agreement

This development agreement was processed in accordance with Chapter 18.53 of the Olympia Municipal Code. Staff from the Departments of Community Planning and Development and Public Works worked with West Bay Development Group, LLC and the City Attorney's office to draft the proposed development agreement (see attached).

This will be a large-scale project on a challenging site due to the historic use and its location on a shoreline of the State. Timing for permitting and installation of required site improvements is an important consideration. The development agreement establishes a framework for the sequencing of all these project components so that a piecemeal approach can be avoided.

The proposed timeline for the agreement is fifteen years. Site and building phasing plans in the agreement outline the timing for frontage improvements to West Bay Drive, onsite public utility infrastructure, shoreline restoration and public access, and construction of the five buildings. Each phase will be required to stand on its own in terms of meeting all City development standards for utility infrastructure and other onsite improvements such as parking and landscaping.

Shoreline restoration is also a component of the development agreement. The property boundary along the shoreline of West Bay will be restored consistent with the recommendations of the *City of Olympia West Bay Environmental Restoration Final Report*. The report was prepared by the City, Port of Olympia and the Squaxin Island Tribe and identifies potential restoration projects that can provide the opportunity to enhance the ecological functions of West Bay. The restoration final report includes opportunities for restoration of intertidal beach and marsh areas (in-water restoration). Restoration work would create a more natural beach with significant habitat function improvements.

Public access amenities to and along the waterfront are also addressed in the development agreement. The project will include a 24-foot wide esplanade along the project waterfront, which would be fully accessible to the public and eventually connect to a waterfront trail to the south consistent with City plans. The esplanade exceeds the City's standard for trails. A parking lot with several public access points and amenities will be provided for community use and access to the esplanade.

The proposed agreement provides that West Bay Development Group, LLC will apply for development permits for the property. A shoreline permit application will be reviewed for consistency with the City's adopted development regulations at the time of the execution of this agreement. Impact fees are vested to each of the three building phases. The first building permit application for each phase will vest impact fees for all the buildings in that phase. Other permits from state and federal agencies would also be required for the project.

SEPA

A nonproject State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) was issued by the City for the development agreement. An appeal of the DNS was filed, and an appeal hearing was held before the Olympia Hearing Examiner in February 2021. The appellant asked that the development agreement be required to undergo a SEPA Environmental Impact Statement (EIS). On summary judgment, the Hearing Examiner denied the appellant's appeal, concluding that the City's SEPA DNS was not issued erroneously. The Hearing Examiner decision is attached to this staff report.

A separate project-level SEPA review will be conducted by the City during the review of a project development application. Issues such as traffic, noise and other environmental considerations will be evaluated at that time.

Other Considerations

Historic operations at the site resulted in a 2007 Agreed Order between the State Department of Ecology and Hardel to investigate the site and prepare a Cleanup Action Plan. Remediation activities occurred in 2010. The project applicant is currently conducting additional investigations for due diligence and this work will be incorporated into the project-level SEPA review for the future development proposal. A development proposal must comply with Department of Ecology requirements for any additional cleanup of the site.

The subject property is not located in an area that qualifies for the City's Multifamily Tax Exemption Program. The property is also not eligible for reduced impact fees that apply to projects downtown and along certain transportation corridors in the City.

Neighborhood/Community Interests (if known):

There is significant interest from throughout the community regarding the future use of this waterfront and former industrial site. The City has received numerous written comments which are provided on the city web page related to this project. A link to that page is included as an attachment to this staff report.

Options:

Following the close of the public hearing, the City Council will consider the Development Agreement at the March 30, 2021 Council meeting to consider these options:

1. Approve a resolution approving the development agreement.
2. Do not approve a resolution.
3. Continue consideration of the resolution until a future Council meeting.

Financial Impact:

The development agreement itself does not have an immediate financial impact to the City. Provisions for the payment of impact fees in the agreement may result in payments below current rates for the second buildings in the first two phases if impact fees are raised subsequent to the application for building permits for the first buildings in those two phases.

Attachments:

Development Agreement
Development Agreement Exhibits
Link to City Web Page
Hearing Examiner SEPA Appeal Decision

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF OLYMPIA
AND
WEST BAY DEVELOPMENT GROUP, LLC
AND
HARDEL MUTUAL PLYWOOD CORPORATION**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is effective as of the date of the last authorizing signature affixed hereto. The parties to this Agreement are the City of Olympia, a Washington municipal corporation (“City”), West Bay Development Group, LLC, a Washington limited liability company (“Developer”), and Hardel Mutual Plywood Corporation, a Washington corporation (“Property Owner”) (individually, “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person or entity having ownership or control of real property within its jurisdiction pursuant to RCW 36.70B.170(1); and

WHEREAS, a development agreement made pursuant to that authority must set forth the development standards and other provisions that will apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, the Parties recognize development agreements must be consistent with applicable development regulations adopted by a local government planning under Chapter 36.70A RCW; and

WHEREAS, this Agreement relates to the development of a mixed-use project known as West Bay Yards (the “Project”) on the former Hardel Mutual Plywood Brownfield industrial site located at:

1210 West Bay Drive NW
Olympia, Washington 98502

(the “Property” or “Subject Property”); and

WHEREAS, Developer is under contract to purchase the Property from Property Owner for purposes of developing the Project.

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

GENERAL PROVISIONS

Section 1: The Project. The Project will re-develop the former Brownfield industrial property consisting of approximately seven upland acres (Thurston County Tax Parcel No. 7260-02-00100) in the City of Olympia with mixed-residential and commercial-uses. At full buildout, the Project will consist of approximately 478 market-rate rental housing units in five mixed-use buildings and approximately 20,500 square feet of complimentary retail, restaurant, and recreation uses.

The Project will include significant public access amenities, including a waterfront trail, and will also complete shoreline restoration along the Property boundary consistent with the recommendations identified in the *City of Olympia West Bay Environmental Restoration Assessment Final Report* (Coast & Harbor Engineering, 2016) for “Reach 5 – Hardel Plywood” and the City of Olympia Shoreline Master Program.

The Project is expected to be developed in phases as described in Section 11 of this Agreement. Developer will submit required shoreline, land use, and development applications to the City upon execution of this Agreement.

The Project will require review under the State Environmental Policy Act (“SEPA”) (RCW 43.21C) as well as a shoreline substantial development permit, site plan approval, design review, and issuance of construction, engineering, and building permits. The shoreline restoration component of the Project will also require approval and issuance of various federal and state permits.

Section 2: The Property. The Property is legally described in **Exhibit A**, which is attached hereto and incorporated herein by this reference.

Section 3: Definitions. As used in this Agreement, the following terms, phrases, and words have the meanings and be must interpreted as set forth in this Section.

“Adopting Resolution” means the Resolution which approves this Development Agreement, pursuant to RCW 36.70B.200.

“Council” means the duly elected legislative body governing the City of Olympia.

“Director” means the City’s Community Planning and Development Director.

“Effective Date” means the effective date of the Adopting Resolution.

“EDDS” means the Engineering Design and Development Standards adopted by the City of Olympia. See OMC 12.02.020.

“Existing Land Use Regulations” means the ordinances adopted by the City Council of Olympia in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards, and specifications applicable to the development of the Property, including, but not limited to, the Comprehensive Plan, the City’s Shoreline Master Program, the City’s Official Zoning Map and development standards, determinations made pursuant to SEPA, Concurrency Ordinance, the EDDS, and all other ordinances, codes, rules, and regulations of the City establishing standards in relation to the development of the Subject Property; and the divisions of land, whether through the subdivision process, the binding site plan process, or otherwise. This does not include any building or fire code that is state-mandated (*see* RCW 19.27.031); any other regulations resulting from superseding state or federal law; impact fees, mitigation fees; or any other fees or charges, except as specifically described or provided for in this Agreement.

“Property Owner” is the legal owner of the Property, Hardel Mutual Plywood Corporation, as of the Effective Date of this Agreement.

“Developer” is West Bay Development Group, LLC, the contract purchaser of the Property, as of the Effective Date of this Agreement.

“Project” means the anticipated development of the Property with the West Bay Yards mixed-use development, as further described in Section 11 below and **Exhibits B-F** attached hereto.

Section 4: Exhibits. Exhibits to this Agreement are as follows:

Exhibit A – Legal Description of the Subject Property

Exhibit B – Concept Site Plan – West Bay Yards

Exhibit C – Site Phasing Plan – West Bay Yards

Exhibit D – Building Phasing Plan – West Bay Yards

Exhibit E – Shoreline Conceptual Restoration Plan – West Bay Yards

Exhibit F – Construction Sequence – West Bay Yards

Section 5: Parties to Development Agreement. The Parties to this Agreement are:

“City”
City of Olympia
Post Office Box 1967
Olympia, Washington 98507

“Developer”
West Bay Development Group, LLC
Post Office Box 1376
Sumner, Washington 98390

“Property Owner”
Hardel Mutual Plywood Corporation
143 Maurin Road
Chehalis, Washington 98532

The Parties acknowledge that after the Effective Date the Property or a portion thereof may be sold or otherwise lawfully transferred to another party or parties, and unless otherwise expressly released, successor purchasers or transferees will remain subject to the applicable provisions of this Agreement related to such portion of the Property.

The Parties further acknowledge that the rights of the Property Owner under this Agreement terminate and will be of no further force and effect at such time as the Developer closes the pending transaction and becomes the legal owner of the Property.

Section 6: Term of Agreement. This Agreement commences upon the effective date of the Adopting Resolution approving this Agreement and continues in force for a period of fifteen (15) years, unless extended or terminated as provided herein. Following the expiration of the term or any extension thereof, or if sooner terminated, this Agreement has no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 7: Vested Rights or Developer; Uses and Standards. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms, and conditions specified in this Agreement are fully vested in the Developer under the Existing Land Use Regulations and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits attached hereto, or as expressly consented thereto by the Developer.

Section 8: Modifications. Any modifications from the approved permits or the Exhibits attached hereto requested by Developer may be approved in accordance with the provisions of the City’s code and under the Existing Land Use Regulations and do not require an amendment to this Agreement.

Section 9: Financing of Public Facilities. Developer acknowledges and agrees that it shall participate in the funding and/or development of its pro-rata share of the costs of public improvements in accordance with the city code and under the Existing Land Use Regulations.

Section 10: Land Use Development Application Fees. Land use application fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City, and applicable to permits and approvals for the Property, as long as such fees apply to similar applications and projects in the City.

Section 11: Phasing of Development

11.1 Site Development Phasing. The Developer shall construct and develop the Site improvements associated with the Project in two phases as generally depicted and described

in **Exhibit C**, subject to approval of all required shoreline, land use, and construction permits. Each phase will meet all applicable code requirements.

11.1.1 Phase 1. Phase 1 consists of construction of:

- frontage improvements on West Bay Drive from the southern Property boundary to north of the Woodard Trail pedestrian crossing;
- completion of a portion of shoreline restoration;
- construction of the waterfront trail;
- installation of public utility infrastructure (water, sewer, stormwater, roads, solid waste facilities) as generally depicted on **Exhibit C** and that will be specifically depicted on City approved construction permits; and
- any other site improvements required for Phase 1 to meet applicable code requirements as a “stand alone” project.

Construction of Phase 1 site improvements is anticipated to take approximately six months after issuance of required approvals and permits. Construction permits for Phase 1 site development may be issued once Developer receives all required City, state, and federal environmental and engineering approvals for Phase 1 shoreline restoration.

Completion bonding pursuant to Sections 2.050 and 2.030 of the Engineering Design and Development Standards will be required for the first three listed Site improvements in 11.1.2 prior to issuance of the first building permit for Phase 1. All of this work needs to be completed before a Certificate of Occupancy permit is issued for the last building in Phase 2, or 15 years after approval of this Agreement, whichever comes first.

11.1.2 Phase 2. Phase 2 of site development consists of:

- construction of remaining frontage improvements along West Bay Drive;
- completion of Phase 2 shoreline restoration;
- installation of remaining public utility infrastructure (water, sewer, stormwater, roads, solid waste facilities) as generally depicted on **Exhibit C** and described in Phase 2 narrative on Exhibit C, and that will be specifically depicted on City approved construction permits.; and
- any remaining Site improvements required for Phase 2 to meet applicable code requirements as a “stand alone” project.

Upon completion of Phase 1, the waterfront trail must remain open to the public except during periods of active adjacent site or building construction. Construction of Phase 2 site improvements is anticipated to take approximately six months after issuance of required approvals and permits. Construction permits for Phase 2 site development may be issued

once Developer receives all required City, state, and federal environmental and engineering approvals for Phase 2 shoreline restoration.

11.2 Building Phasing. The Developer shall construct and develop the site in three phases as generally depicted in **Exhibit D** and described below, subject to approval of all required shoreline, land use, and building permits. The Developer shall construct each phase within five (5) years from the date the first building permit issued for development of improvements within that phase is issued. It is expected that one or more building and site development phases may overlap. Building permits may be issued once Developer receives all required City, state, and federal environmental and engineering approvals for Phase 1 and 2 shoreline restoration described in the preceding Section. Each phase must meet all applicable code requirements.

11.2.1 Phase 1. Phase 1 consists of:

- the construction of the plaza level from south of Building 2 to north of Building 3;
- construction of Buildings 2 and 3; and
- construction of associated required parking and plaza level landscape, hardscape, and pedestrian amenities for Buildings 2 and 3.

11.2.2 Phase 2. Phase 2 consists of:

- the construction of the plaza level north of Building 3;
- construction of Buildings 4 and 5; and
- construction of associated required parking and plaza level landscape, hardscape, and pedestrian amenities for Buildings 4 and 5.

11.2.3 Phase 3. Phase 3 consists of:

- the construction of the plaza level from south of Building 2 to the southern boundary of the Property;
- construction of Building 1; and
- construction of associated required parking and plaza level landscape, hardscape, and pedestrian amenities for Building 1.

11.3 Duration of Phases. The building and site development phasing described in Section 11 of this Agreement must be included within the scope of the shoreline substantial development permit application submitted for the Project in order to set the time requirements for completion of improvements as part of the action on the shoreline substantial development permit as provided for in WAC 173-27-090.

11.4 Impact Fees. Notwithstanding any other provision of this Agreement to the contrary, the Developer vests to the City's impact fee schedule and ordinance (OMC Ch. 15) in effect at the time the first building permit is issued for the corresponding building permit

phase for the duration of that building phase. Vesting of impact fees under this provision lasts for the duration of the corresponding building phase only.

Section 12: Improvement of Public Lands. The Developer shall improve and, if necessary, dedicate to the City rights of way as required in the permits/approvals for each phase of the development, consistent with this Agreement and as set forth in its Exhibits.

Section 13: Default. Subject to extensions of time by mutual consent, in writing, failure or delay by any Party to this Agreement to perform any term or provision of this Agreement constitutes a default. In the event of an alleged default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice, in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30)-day period, the Party charged may not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30)-day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the complaining Party may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Olympia Municipal Code or state law for violations of this Agreement and the Code.

Section 14: Termination. This Agreement expires or terminates as provided below:

14.1 This Agreement automatically expires and is of no further force and effect if the development contemplated in this Agreement and all of the permits or approvals issued by the City for such development are not substantially underway prior to expiration of such permits or approvals. Such expiration requires no City Council action. Nothing in this Agreement extends the expiration date of any permit or approval issued by the City for any development.

14.2 This Agreement expires and is of no further force and effect if the Developer does not construct the Project substantially as described in this Agreement, or if the Developer submits applications for development of the Property that are inconsistent with this Agreement.

14.3 This Agreement terminates upon the expiration of the term identified in Section 6 or when the Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.

14.4 If not earlier terminated, this Agreement terminates as provided upon the passage of the time periods set forth in Section 6 without City Council action.

Section 15: Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Property or any portion thereof does not affect any of the Developer's obligations to comply with the City of Olympia Shoreline Master Program, the Comprehensive Plan, or any applicable zoning codes or subdivision map or other land use entitlements approved with respect to the Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees, or taxes.

Section 16: Effects of Termination on City. Upon termination of this Agreement as to the Developer of the Property, or any portion thereof, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this Agreement are no longer vested hereby with respect to the Property affected by such termination.

Section 17: Assignment and Assumption. The Developer may sell, assign, or transfer this Agreement with all its rights, title, and interests therein to any person, firm, or corporation at any time during the term of this Agreement.

Section 18: Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits, run with the land and the benefits and burdens bind and inure to the benefit of the Parties. The Developer, Property Owner, and every purchaser, assignee, or transferee of an interest in the Property, or any portion thereof, is obligated and bound by the terms and conditions of this Agreement, and is the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred to it.

Section 19: Amendment to Agreement; Effect of Agreement on Future Actions

19.1 This Agreement may be amended by mutual written consent of all the Parties, provided that any such amendment must follow the process established by law for the adoption of a development agreement.

19.2 Nothing in this Agreement prevents the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map, or development regulations affecting the Property during the term of this Agreement to the extent required by a serious threat to public health and safety, or as a result of superseding state or federal law.

Section 20: Releases. Developer and Property Owner may free itself from further obligations relating to the sold, assigned, or transferred Property, provided that the buyer, assignee, or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 21: Notices. Notices, demands, or correspondence to the City, Developer, or Property Owner are sufficiently given if sent by pre-paid First-Class U.S. mail to the addresses of the Parties as designated in Section 5. Notice to the City must be to the attention of both the City Manager and the Director of Community Planning and Development. The City is required to give notices to subsequent property owners only if the City is given written notice of their address for such Notice. The Parties may, from time to time, advise the other of new addresses for such Notices, demand, or correspondence.

Section 22: Applicable Law and Attorneys' Fees. This Agreement must be construed and enforced in accordance with the laws of the state of Washington. Venue for any action related to this Agreement is Thurston County Superior Court.

Section 23: Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a Party to challenge this Agreement or any provision herein, each Party will bear their own cost of defense and all expenses incurred in the defense of such actions, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing Party or Parties in such litigation.

Section 24: Specific Performance. The Parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and the Parties are entitled to compel specific performance of all material terms of this Agreement by any Party in default hereof.

Section 25: Severability. If any phrase, provision, or Section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the state of Washington that became effective after the effective date of the Resolution adopting this Agreement, and either Party in good faith determines that such provision or provisions are material to its entering into this Agreement, that Party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates set forth below.

**CITY:
CITY OF OLYMPIA**

Date: _____

By: _____
Steven J. Burney, City Manager

APPROVED AS TO FORM:

By _____
Deputy City Attorney

**DEVELOPER:
WEST BAY DEVELOPMENT GROUP,
LLC**

Date: _____

By: _____
L. Brandon Smith
Its: Governor

**PROPERTY OWNER:
HARDEL MUTUAL PLYWOOD
CORPORATION**

Date: _____

By: _____

Its: _____

[illegible]

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, said person acknowledged that he/she signed this
instrument, on oath stated that he/she was authorized to execute the instrument and
acknowledged it as the _____ of the City of Olympia, a
Washington municipal corporation to be the free and voluntary act of such party for the
uses and purposes mentioned in the instrument.

DATED: this _____ day of _____, 2020.

Print Name: _____
 Notary Public in and for the state of _____
 Washington, residing at: _____
 My appointment expires: _____

STATE OF WASHINGTON)
County of Thurston) ss:

I certify that I know or have satisfactory evidence that L. Brandon Smith is the person who appeared before me, said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Governor of West Bay Developer Group, LLC, a Washington limited liability company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: this day of , 2020.

Print Name: _____
Notary Public in and for the state of _____

Washington, residing at: _____

My appointment expires:_____

STATE OF WASHINGTON)

) **SS:**

County of Thurston)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as _____ of Hardel Mutual Plywood Corporation, a Washington corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: this _____ day of _____, 2020.

Print Name: _____

Notary Public in and for the state of

Washington, residing at: _____

My appointment expires: _____

Exhibit A

Legal Description of Property

PARCEL A:

That part of Block 2 of Schneider's Subdivision, as recorded in Volume 6 of Plats, page 77, records of Thurston County, Washington, lying North of the North line of the South 200 feet of Block 369 of Olympia Tide Lands extended West;

EXCEPTING THEREFROM right of way of Burlington Northern Inc.

PARCEL B:

Blocks 366, 367 and 369 of Olympia Tide Lands, records of Thurston County, Washington;

EXCEPTING THEREFROM the South 200 feet;

EXCEPTING THEREFROM right of way of Burlington Northern Inc.

PARCEL C:

Blocks 370 to 380 inclusive of Olympia Tide Lands, records of Thurston County, Washington;

TOGETHER WITH vacated streets attaching thereto by operation of law;

EXCEPTING THEREFROM that part of Lot 5 in said Block 380, lying Westerly of a line described as beginning at a point on the North line of said Block 380, North 84°07'33" East 30.7 feet from its Northwest corner and running thence South 3°23' East 159.01 feet to a point on the South line of said block, North 89°31'12" West 10.65 feet from its Southwest corner on the government meander line of Budd Inlet North 10°40'37" West 951.64 feet from the government meander corner at the Southeast corner of Hurd Donation Claim No. 59, Township 18 North, Range 2 West, W.M.;

EXCEPTING THEREFROM right of way of Burlington Northern Inc.

PARCEL D:

That part of Hurd Donation Claim No. 59, Township 18 North, Range 2 West, W.M., described as follows:

Beginning at the government meander corner at the Southeast corner of said Hurd Claim;

Running thence North 10°40'37" West 750.42 feet along the government meander line of Budd Inlet to the Southeast corner of tract conveyed to Delson Lumber Co., Inc., by deed dated September 7, 1948 and recorded under File No. 440337;

Running thence South 87°40'36" West along the South line of said Delson Lumber Co. tract 130 feet more or less to the Easterly line of West Bay Drive;

Thence Southeasterly along said Easterly line of West Bay Drive to the South line of said Hurd Claim;

Thence East along said South line 105 feet more or less to the POINT OF BEGINNING;

EXCEPTING THEREFROM right of way of Burlington Northern Inc.

PARCEL E:

That part of Hurd Donation Claim No. 59, Township 18 North, Range 2 West, W.M., described as follows:

Beginning at the Southeast corner of tract conveyed to Delson Lumber Co., Inc., by deed dated September 7, 1948 and recorded under File No. 440337, being a point on the government meander line of Budd Inlet, North 10°40'37" West 750.42 feet from the government meander corner at the Southeast corner of said Hurd Claim;

Running thence South 87°40'36" West along the South line of said Delson Lumber Co. tract 101.65 feet to the Easterly line of right of way of Burlington Northern Inc.;

Thence North 9°51'13" West along said Easterly line of right of way 71.93 feet;

Thence North 74°05' East 99.96 feet to said meander line;

Thence South 10°40'37" East along said meander line 95.81 feet to the POINT OF BEGINNING;

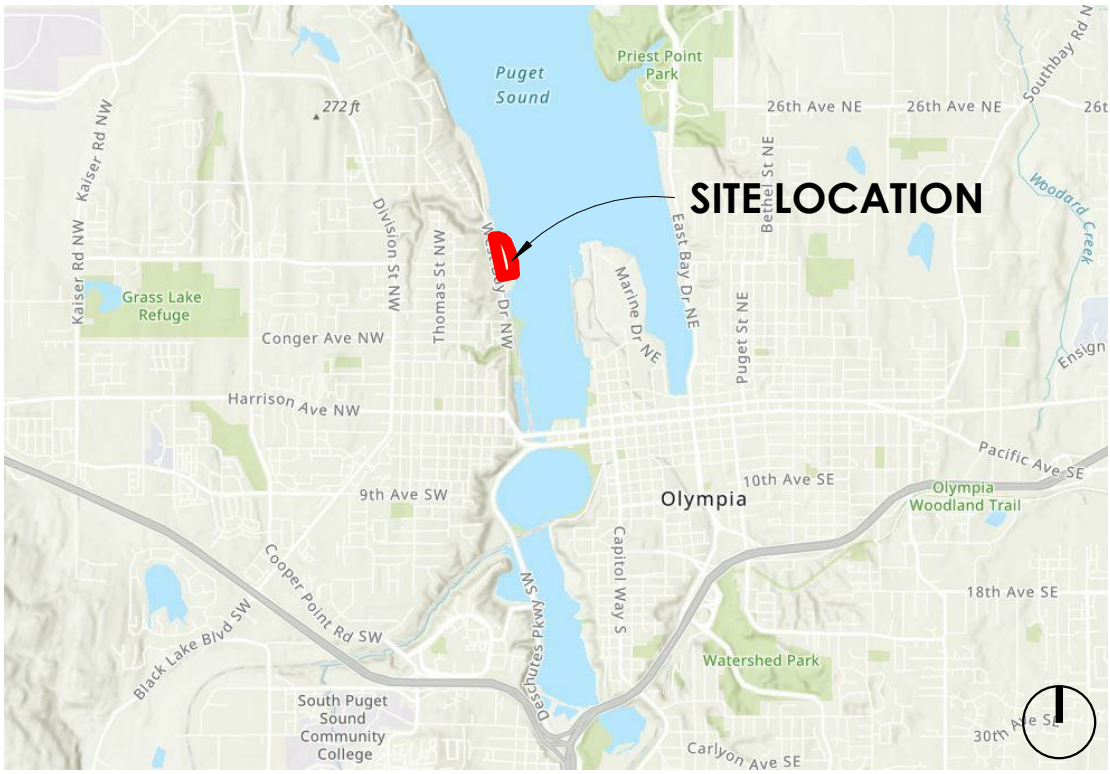
EXCEPTING THEREFROM right of way of Burlington Northern Inc.

In Thurston County, Washington.

Exhibit B

Concept Site Plan – West Bay Yards

VICINITY MAP - SITE LOCATION



SITE INFORMATION

ABBREVIATION LEGAL: SCHNEIDER LOT 1 BLK 2 LESS S 200F TGW PT HURD DLC
DAF: COM SE COR DLC W 95F N18-14W 2.215 CH; E 20F; N16-53W 140.5 F; W
47.5F; N10-45W 120F; W 130F; N10-45W 60F; E 120F; N10-

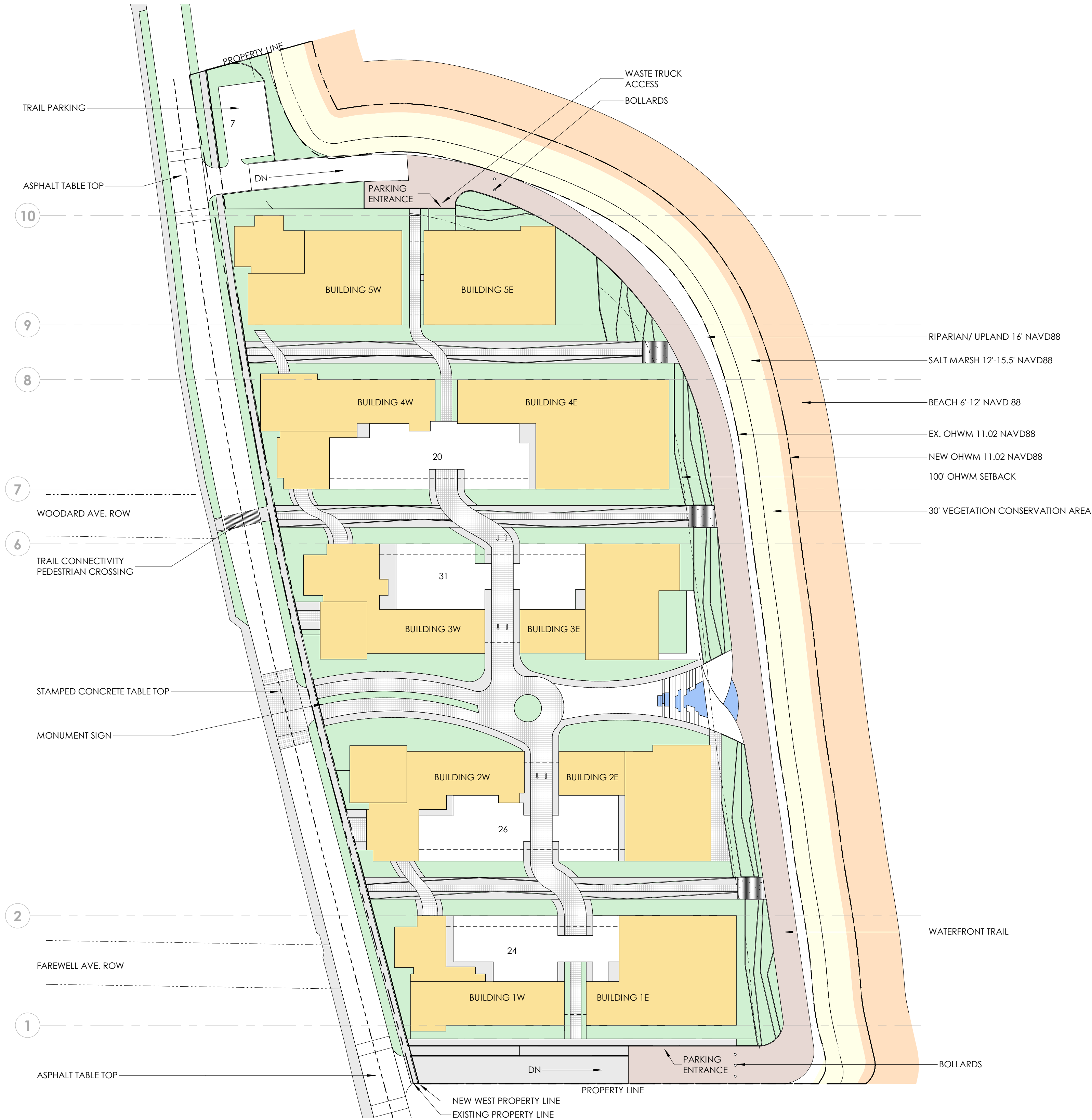
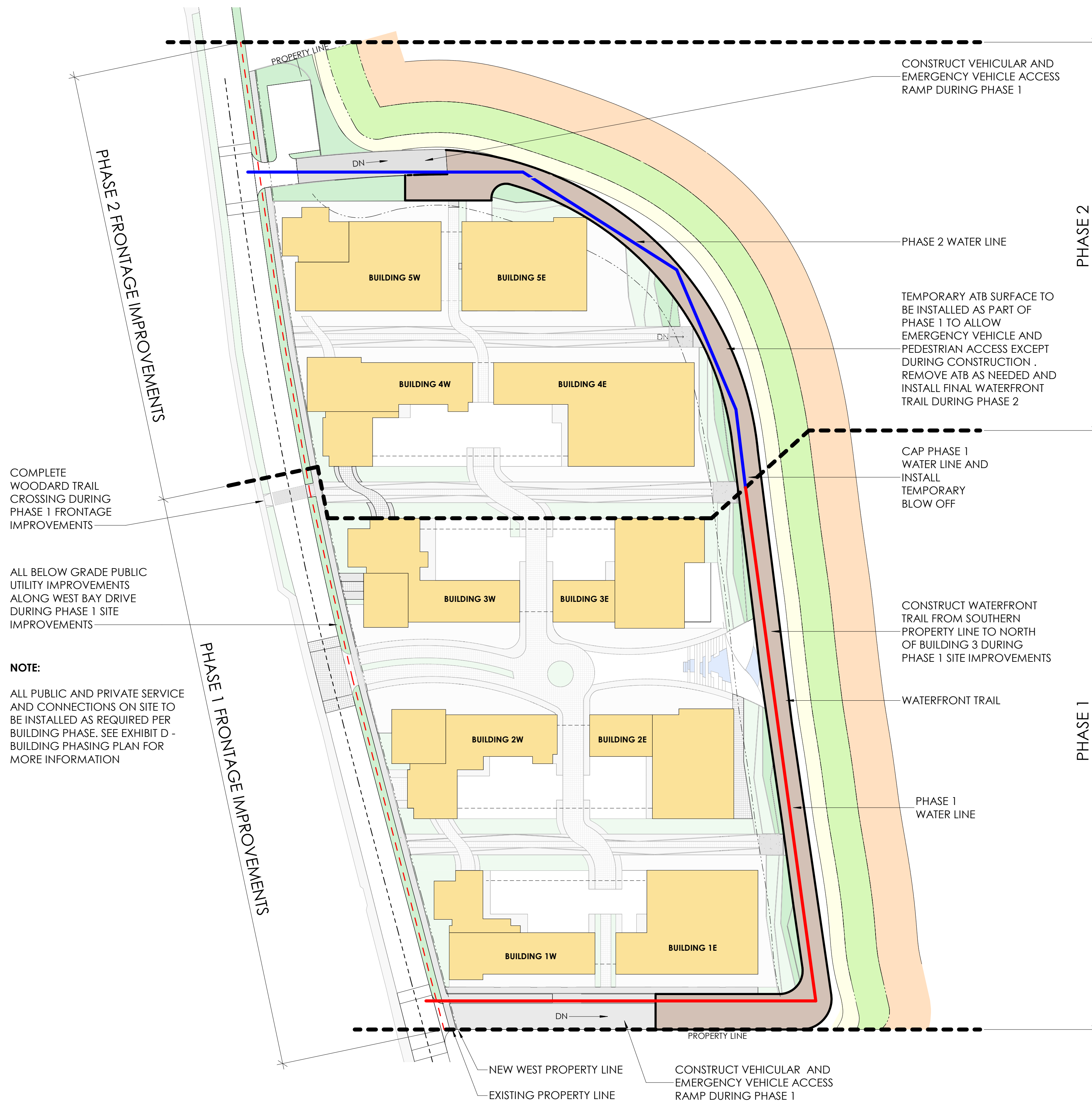


Exhibit C

Site Phasing Plan – West Bay Yards



PHASE 2 NARRATIVE

1. CONSTRUCTION OF REMAINING SHORELINE IMPROVEMENTS ALONG PROJECT BOUNDARY
2. CONSTRUCTION OF REMAINING FRONTAGE IMPROVEMENTS
3. CONSTRUCTION OF REQUIRED PUBLIC UTILITY INFRASTRUCTURE RELATED TO IMPROVEMENTS FOR BUILDINGS 4 (4W AND 4E) AND 5 (5W AND 5E).

SHORELINE PHASING

1. ENVIRONMENTAL PERMITS FOR SHORELINE RESTORATION WILL BE SUBMITTED FOR BOTH PHASE 1 AND PHASE 2 SIMULTANEOUSLY
2. NO CONSTRUCTION WILL OCCUR PRIOR TO APPROVAL OF ENVIRONMENTAL PERMITS FOR SHORELINE RESTORATION
3. SHORELINE RESTORATION WILL OCCUR IN TWO PHASES AS NOTED IN THE SITE PHASING DRAWING ON THIS SHEET
4. UPON APPROVAL OF ENVIRONMENTAL PERMITS FOR SHORELINE RESTORATION CONSTRUCTION OF SITE AND BUILDING IMPROVEMENTS FOR PHASE 1 WILL COMMENCE.
5. UPON COMPLETION OF PHASE 1 SHORELINE RESTORATION AND PHASE 1 SITE AND BUILDING IMPROVEMENTS PHASE 2 SHORELINE RESTORATION AND PHASE 2 SITE AND BUILDING IMPROVEMENTS WILL COMMENCE.

PHASE 1 NARRATIVE

1. CONSTRUCTION OF FRONTAGE IMPROVEMENTS ALONG WEST BAY DRIVE SOUTHERN PROPERTY BOUNDARY TO THE NORTH OF THE WOODARD TRAIL PEDESTRIAN CROSSING.
2. CONSTRUCT BELOW GRADE UTILITY IMPROVEMENTS ALONG WEST BAY DRIVE ALONG THE ENTIRETY OF WESTERN PROPERTY BOUNDARY.
3. CONSTRUCTION OF SHORELINE ENHANCEMENTS FROM SOUTHERN PROPERTY LINE TO NORTHERN EXTENT OF PHASE 1
4. CONSTRUCTION OF WATERFRONT TRAIL ALONG SOUTH, EAST, AND NORTHERN PROPERTY
5. CONSTRUCTION OF WATER LINE TO THE NORTHERN EXTENT OF PHASE 1
6. CONSTRUCTION OF ASSOCIATED PUBLIC UTILITY INFRASTRUCTURE RELATED TO IMPROVEMENTS FOR BUILDINGS 2 (2W AND 2E) AND 3 (3W AND 3E) AND FUTURE CONSTRUCTION OF BUILDING 1 (1W AND 1E).



WEST BAY YARDS
LUXURY WATERFRONT LIVING
OLYMPIA

SITE PHASING PLAN

WEST BAY DRIVE | OLYMPIA, WA
SCHEMATIC DESIGN | 10/30/20

0' 30' 60' 120'

A103.1



Exhibit D

Building Phasing Plan – West Bay Yards



PHASE 2 NARRATIVE

1. CONSTRUCTION OF PLAZA LEVEL FROM NORTH OF BUILDING 3 (3W AND 3E)
2. CONSTRUCTION OF BUILDING 4 (4E AND 4W), BUILDING 5 (5E AND 5W)
3. CONSTRUCTION OF PARKING LEVEL BELOW BUILDING 4 (4E AND 4W) AND BUILDING 5 (5E AND 5W)
4. CONSTRUCTION OF ADJACENT SITE AND PLAZA LANDSCAPING, HARDSCAPING AND PEDESTRIAN AMENITIES

PHASE 1 NARRATIVE

1. CONSTRUCTION OF PLAZA LEVEL FROM SOUTH OF BUILDING 2 (2W AND 2E) TO THE NORTH OF BUILDING 3 (3W AND 3E)
2. CONSTRUCTION OF BUILDING 2 (2E AND 2W) AND BUILDING 3 (3E AND 3W)
3. CONSTRUCTION OF PARKING LEVEL BELOW BUILDING 2 (2W AND 2E) AND 3 (3W AND 3E)
4. CONSTRUCTION OF ADJACENT SITE AND PLAZA LANDSCAPING, HARDSCAPING AND PEDESTRIAN AMENITIES
5. CONSTRUCT SOLID WASTE FACILITIES ADJACENT TO NORTHERN VEHICULAR RAMP. INTERNAL SOLID WASTE MANAGEMENT BY OWNER.
6. EMERGENCY VEHICLE ACCESS CONSTRUCTED DURING PHASE 1 AND MAINTAINED THROUGHOUT CONSECUTIVE PHASES

PHASE 3 NARRATIVE

1. CONSTRUCTION OF PLAZA LEVEL FROM SOUTH OF BUILDING 2 (2W AND 2E) TO THE SOUTH PROPERTY LINE
2. CONSTRUCTION OF BUILDING 1 (1W AND 1E)
3. CONSTRUCTION OF PARKING LEVEL BELOW BUILDING 1 (1W AND 1E)
4. CONSTRUCTION OF ADJACENT SITE AND PLAZA LANDSCAPING, HARDSCAPING AND PEDESTRIAN AMENITIES



WEST BAY YARDS
LUXURY WATERFRONT LIVING
OLYMPIA

BUILDING PHASING PLAN

WEST BAY DRIVE | OLYMPIA, WA
SCHEMATIC DESIGN | 10/12/20

0' 30' 60' 120'

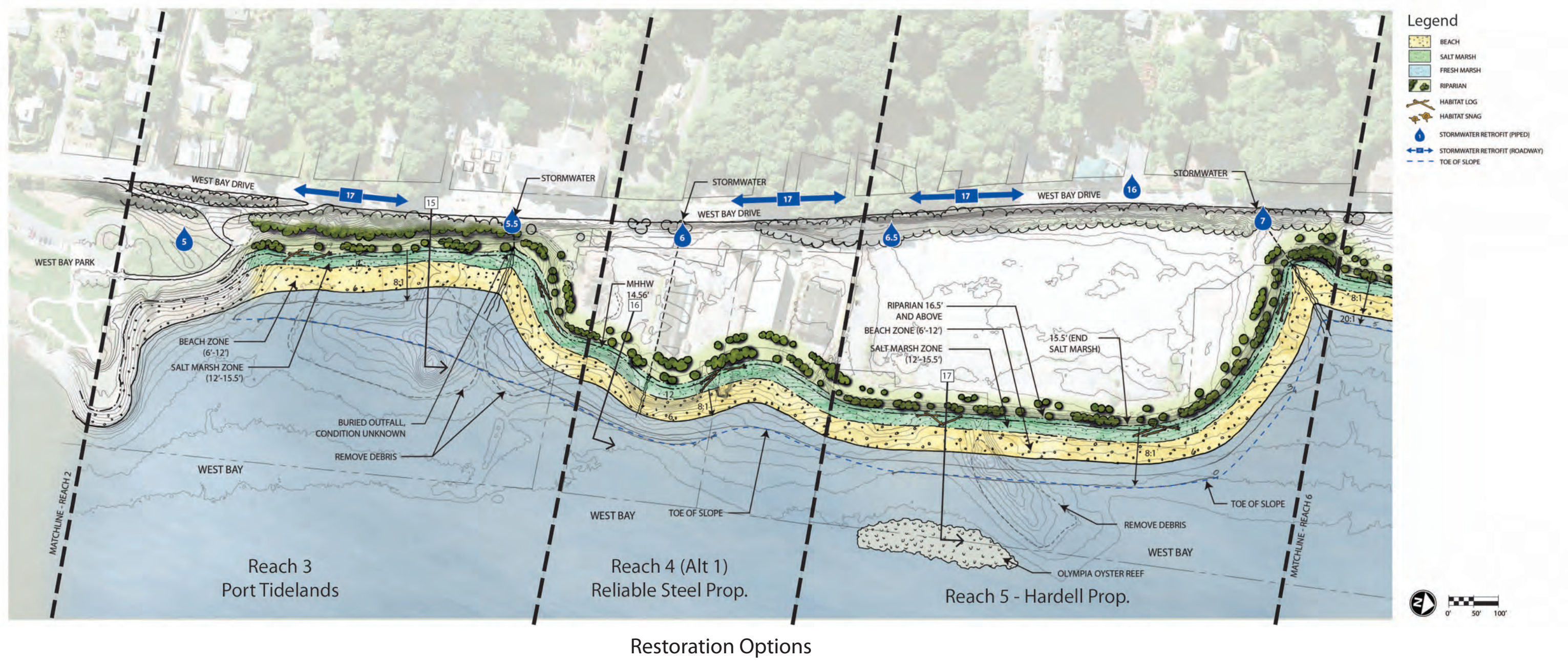
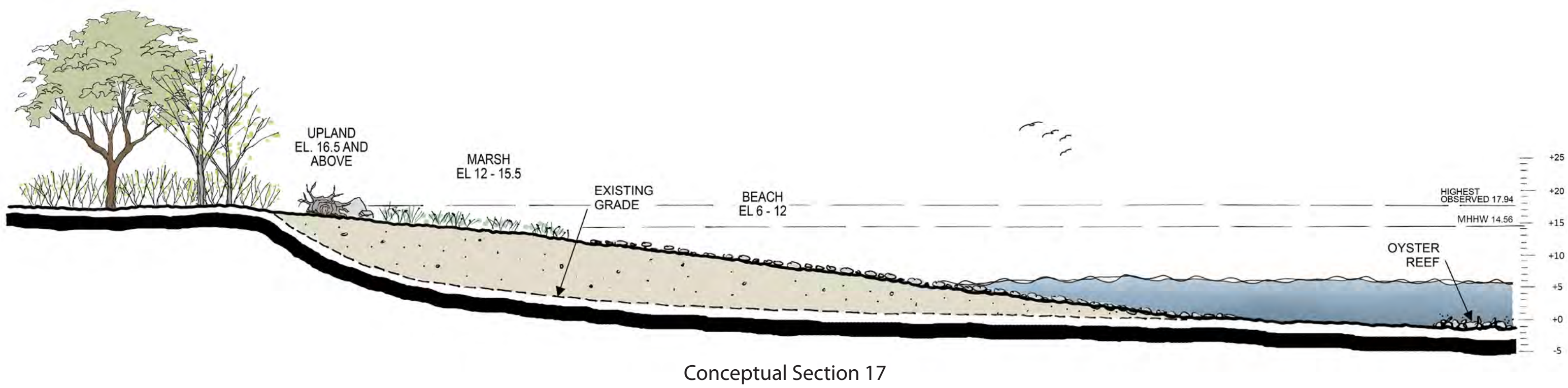


A103.2



Exhibit E

Shoreline Conceptual Restoration Plan – West Bay Yards



Reaches 3, 4, 5

Exhibit F

Construction Sequence

PHASE 1 —————>

PHASE 2 —————>

PHASE 3

SITE IMPROVEMENTS

1. CONSTRUCTION OF FRONTAGE IMPROVEMENTS ALONG WEST BAY DRIVE SOUTHERN PROPERTY BOUNDARY TO THE NORTH OF THE WOODARD TRAIL PEDESTRIAN CROSSING.
2. CONSTRUCT BELOW GRADE UTILITY IMPROVEMENTS ALONG WEST BAY DRIVE ALONG THE ENTIRETY OF WESTERN PROPERTY BOUNDARY.
3. CONSTRUCTION OF SHORELINE ENHANCEMENTS FROM SOUTHERN PROPERTY LINE TO NORTHERN EXTENT OF PHASE 1
4. CONSTRUCTION OF WATERFRONT TRAIL ALONG SOUTH, EAST, AND NORTHERN PROPERTY
5. CONSTRUCTION OF WATER LINE TO THE NORTHERN EXTENT OF PHASE 1
6. CONSTRUCTION OF ASSOCIATED PUBLIC UTILITY INFRASTRUCTURE RELATED TO IMPROVEMENTS FOR BUILDINGS 2 (2W AND 2E) AND 3 (3W AND 3E) AND FUTURE CONSTRUCTION OF BUILDING 1 (1W AND 1E).

BUILDING IMPROVEMENTS

1. CONSTRUCTION OF PLAZA LEVEL FROM SOUTH OF BUILDING 2 (2W AND 2E) TO THE NORTH OF BUILDING 3 (3W AND 3E)
2. CONSTRUCTION OF BUILDING 2 (2E AND 2W) AND BUILDING 3 (3E AND 3W)
3. CONSTRUCTION OF PARKING LEVEL BELOW BUILDING 2 (2W AND 2E) AND 3 (3W AND 3E)
4. CONSTRUCTION OF ADJACENT SITE AND PLAZA LANDSCAPING, HARDSCAPING AND PEDESTRIAN AMENITIES
5. EMERGENCY VEHICLE ACCESS CONSTRUCTED DURING PHASE 1 AND MAINTAINED THROUGHOUT CONSECUTIVE PHASES.

SITE IMPROVEMENTS

1. CONSTRUCTION OF REMAINING SHORELINE IMPROVEMENTS ALONG PROJECT BOUNDARY
2. CONSTRUCTION OF REMAINING FRONTAGE IMPROVEMENTS
3. CONSTRUCTION OF REQUIRED PUBLIC UTILITY INFRASTRUCTURE RELATED TO IMPROVEMENTS FOR BUILDINGS 4 (4W AND 4E) AND 5 (5W AND 5E).

BUILDING IMPROVEMENTS

1. CONSTRUCTION OF PLAZA LEVEL FROM NORTH OF BUILDING 3 (3W AND 3E)
2. CONSTRUCTION OF BUILDING 4 (4E AND 4W), BUILDING 5 (5E AND 5W)
3. CONSTRUCTION OF PARKING LEVEL BELOW BUILDING 4 (4E AND 4W) AND BUILDING 5 (5E AND 5W)
4. CONSTRUCTION OF ADJACENT SITE AND PLAZA LANDSCAPING, HARDSCAPING AND PEDESTRIAN AMENITIES

SITE IMPROVEMENTS

1. COMPLETED IN PREVIOUS PHASES

BUILDING IMPROVEMENTS

1. CONSTRUCTION OF PLAZA LEVEL FROM SOUTH OF BUILDING 2 (2W AND 2E) TO THE SOUTH PROPERTY LINE
2. CONSTRUCTION OF BUILDING 1 (1W AND 1E)
3. CONSTRUCTION OF PARKING LEVEL BELOW BUILDING 1 (1W AND 1E)
4. CONSTRUCTION OF ADJACENT SITE AND PLAZA LANDSCAPING, HARDSCAPING AND PEDESTRIAN AMENITIES

West Bay Yards

What's happening?

The City reviewed a *presubmission conference* application in May 2020 for property located at 1210 West Bay Drive. This is the site of the former Hardel Plywood facility.

[View presubmission documents](#)

A presubmission conference application is not a project application. A presubmission conference provides an opportunity for the City's Site Plan Review Committee to meet with property owners or project representatives.

Conceptual plans are reviewed by the committee and feedback is provided to assist a project representative in the preparation of a formal project application.

- [Conceptual submittal](#)
- [Site Plan Review Committee worksheets](#)

About the project

The future project would consist of approximately 478 market-rate rental housing units in five mixed-use buildings and approximately 20,500 square feet of complimentary retail, restaurant, and recreation uses.

Site development is proposed in two phases, with building construction in three phases. The five buildings will sit on top of an elevated public plaza structure that will provide most of the parking for the development below grade. The plaza will enable the building foundations to be at the same grade as West Bay Drive.

A project application has not yet been filed with the City. Once an application has been submitted, those documents will be posted here.

Draft Development Agreement

The developer, West Bay Development Group, LLC plans to submit a project development application to the City following the City Council's consideration of a draft *development agreement*.

[What is a development agreement?](#)

An applicant may request the City Council to consider a development agreement to define specific parameters for a future project application. Development agreements are not required by the City. A development agreement is one of the few tools in the Olympia Municipal code that allow projects to be phased over several years. Development agreements typically address timelines for installation of public improvements like roads, sidewalks, and sewer and water infrastructure that are required components of a project.

Specific requirements for development agreements can be viewed in the Olympia Municipal Code Chapter 18.53. Development agreements do not grant any approvals for a future project. The City of Olympia requires a development agreement associated with a specific project or development plan to be heard by the City Council prior to consideration of any related project application (OMC 18.53.040).

The representative for West Bay Yards submitted a Development Agreement application to the City in August 2020 (Application No. 20-3136).

[Components of the proposed development agreement](#)

- Timeline for the development agreement is 15 years.
- Site and building phasing plans in the agreement outline the timing for all site work and construction of five buildings over the 15-year period.
- Timing for payment of impact fees is established over the 15-year period.
- The property boundary along the shoreline of West Bay will be restored by the project applicant consistent with the recommendations of the City of Olympia West Bay Environmental Restoration Final Report. The report was prepared by the City, Port of Olympia and the Squaxin Island Tribe and identifies potential restoration projects that can provide the opportunity to enhance the ecological functions of West Bay.
- The project will include a 24-foot wide esplanade along the project waterfront, which would be accessible to the public and eventually connect to a waterfront trail to the south consistent with City plans.

The City Council will hold a public hearing on March 23, 2021 to consider the draft development agreement. The Council will consider the information below, in addition to any public testimony provided.

- [Hearing Notice March 23, 2021](#)
- [Draft development agreement](#)
- [Development agreement exhibits](#)
- [City staff report](#)
- [Written public comments \(Through March 15, 2021\)](#)

Development Agreement and Environmental Review under the State Environmental Policy Act (SEPA)

The City issued a non-project Determination of Nonsignificance (DNS) for the draft development agreement in November 2020. An appeal of the DNS was filed and an appeal hearing was held before the Olympia Hearing Examiner in February 2021. The appellant asked that the development agreement be required to undergo a SEPA Environmental Impact Statement (EIS).

On summary judgment, the Hearing Examiner denied the appellant's appeal, concluding that the City's SEPA DNS was not issued erroneously. SEPA-related documents for the draft development agreement are listed below.

[View SEPA documents](#)

- [SEPA checklist for the Development Agreement Document \(non-project SEPA\)](#)
- [SEPA DNS](#)
- [Hearing Examiner appeal decision](#)

What's next?

After the development agreement is considered by the City Council, the project applicant may submit a project application to the City for review. All applicable zoning, shoreline and environmental regulations and codes will apply and be considered during the City's permit review process.

The City will follow its standard public notification process. The City will host a neighborhood meeting for the public early in the review process to discuss the project and answer questions. The formal decision on a project application will be made by the Olympia Hearing Examiner after holding a public hearing. Written public comments will be accepted throughout the City's review process.

A project-level SEPA environmental review will be conducted by the City for the project application. Please see the Site Plan Review Committee's Presubmission Conference Worksheets listed above for the reports, studies and code submittal requirements for this project.

Stay informed

For questions on the proposed Development Agreement contact Tim Smith, Planning & Engineering Manager, at 360.570.3915 or tsmith@ci.olympia.wa.us.

For questions on the planned project, or to receive notice that the application has been submitted and when the neighborhood meeting is scheduled, contact Nicole Floyd, Principal Planner, at 360.570.3768 or nfloyd@ci.olympia.wa.us.

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The City of Olympia is committed to the non-discriminatory treatment of all persons in employment and the delivery of services and resources.

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

In re the Appeal of:)	HEARING NO. 20-3136
WEST BAY YARDS DEVELOPMENT)	
AGREEMENT,)	ORDER DENYING APPELLANTS'
)	MOTION FOR SUMMARY
OLYMPIA COALITION FOR)	JUDGMENT AND GRANTING
ECOSYSTEMS PRESERVATION,)	RESPONDENTS' MOTION FOR
)	SUMMARY JUDGMENT
Appellant,)	
)	
vs.)	
)	
CITY OF OLYMPIA COMMUNITY)	
PLANNING AND DEVELOPMENT)	
DEPARTMENT; WEST BAY)	
DEVELOPMENT GROUP, LLC; and)	
HARDEL PLYWOOD CORPORATION,)	
)	
Respondents.)	

THIS MATTER comes before the Hearing Examiner on Cross-Motions for Summary Judgment. Appellant, Olympia Coalition for Ecosystems Preservation ("Coalition"), moves for summary judgment and asks the Hearing Examiner to: (1) vacate the SEPA DNS and (2) require the City to prepare a EIS; or (3) in the alternative require the City to redo its SEPA Checklist and then issue a new Threshold Determination. Conversely, the Respondents, West Bay Development Group, LLC and Hardel Plywood Corporation ("West Bay"), move for summary judgment and ask the Hearing Examiner to uphold the City's SEPA Determination.

Coalition is represented by David Bricklin and Alex Sidles. The City of Olympia appears through its Senior Planner, Tim Smith, and is represented by Jeffery Myers, Special Counsel, and Michael Young, Deputy City Attorney. West Bay is represented by Heather Burgess and Tadeu Velloso.

The Hearing Examiner considered the following:

1. Notice of Appeal;
2. Appellant's Motion for Summary Judgment;

*Order Denying Appellant's
Motion for Summary
Judgment and Granting
Respondents' Motion for
Summary Judgment - 1*

CITY OF OLYMPIA HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

3. Declaration of L. Brandon Smith in Support of Applicant's Response and Cross-Motion for Summary Judgment;

4. Declaration of Heather L. Burgess in Support of Applicant's Response and Cross-Motion for Summary Judgment;

5. Applicant's Response and Cross-Motion for Summary Judgment;

6. City of Olympia's Response to Motion for Summary Judgment;

7. Appellant's Reply in Support of Summary Judgment.

All parties are in agreement that the matter is properly decided by summary judgment as there are no material issues of fact.

BACKGROUND

This appeal involves the City's SEPA review of a Development Agreement for the proposed redevelopment of the former Hardel Plywood facility along West Bay of Budd Inlet in the City of Olympia (the "Project Site"). The Project Site continues to be owned by Hardel but is under contract for purchase to West Bay. The Project Site has a well documented history of industrial contamination from its former use. Indeed, the ecology of much of West Bay has been compromised by industrial activities along its shorelines as well as various other activities related to urban development. These problems have led the City to undertake the "City of Olympia West Bay Environmental Restoration Assessment" ("West Bay Restoration Plan" or "Restoration Plan") dated February 26, 2016. It concludes that:

"The shorelines and intertidal areas within West Bay have been heavily altered and ample opportunity exists for restoration. Analysis shows that existing ecological and physical processes have been significantly impacted compared to historical conditions. The critical issues include disconnection of riparian forest and freshwater habitats from the Bay, conversion of shallow intertidal mud flats into navigable waters and uplands, loss of sediment and large wood inputs from bluffs and rivers/creeks, degradation of water quality by physical modification and untreated stormwater inputs, and degradation of intertidal areas by armoring, fill placement, and contamination."

1 The Restoration Plan subdivides West Bay into nine "reaches" each having one or more
2 possible alternatives for restoring ecological functions as well as providing recreational
3 opportunities and other improvements. The Project Sites shoreline is referred to as "Reach 5 –
4 Hardel Plywood". The Restoration Plan has a single proposed alternative for its restoration:

5 "One restoration alternative was developed for this reach that essentially
6 maintains the existing uplands and shoreline plan form, but creates fronting
7 intertidal beach and marsh areas primarily through placing beach substrates
8 offshore of the existing revetment. Riparian plantings could be installed above
9 the beach. Sea level rise adaptation could be included in this alternative. Given
10 the relatively deep water depths in this reach, substrate would be placed in the low
intertidal for establishment of an Olympia Oyster reef. Substrate placement may
require permission from WA DNR. Four conceptual stormwater improvement
opportunities that would be supportive of restoration were identified and
investigated in this reach, including treatment along West Bay Drive."

11 The West Bay Restoration Plan has not undergone SEPA review.

12 West Bay wishes to purchase the Project Site from Hardel and redevelop it into a mix of
13 residential and commercial uses known as "West Bay Yards" (the "Project"). The Project
14 envisions approximately 478 market-rate rental housing units in 5 mixed-use buildings along
15 with approximately 20,500 square feet of retail, restaurant and recreation uses. It would also
16 provide public access amenities including a waterfront trail as well as vegetation conservation
17 areas and shoreline restoration consistent with the recommendations found in the West Bay
18 Restoration Plan.

19 The first step in any possible redevelopment of the Project Site is the "West Bay Yards
20 Development Agreement" (the "Development Agreement"), proposed between the City and West
21 Bay. Under Olympia's Municipal Code, a development agreement is the required first step in
22 any development of this nature: "Any development agreement associated with a specific project
23 or development plan shall be heard by the City Council prior to consideration of any related
24 project application." OMC 18.53.040. The City interprets its ordinance as requiring the
25

1 Development Agreement to be in place before development applications are submitted. Thus,
2 this Development Agreement must be in place before West Bay can submit any development
3 applications to the City.

4 Development agreements are authorized by State law. RCW 36.70B.170-.210. Among
5 other things, "a development agreement must set forth the development standards and other
6 provisions that shall apply to and govern and vest the development, use, and mitigation of the
7 development of the real property for the duration specified in the agreement. A development
8 agreement shall be consistent with applicable development regulations adopted by local
9 government planning under Chapter 36.70A RCW." The statute specifically recognizes the right
10 to include mitigation measures, project phasing and vesting periods. RCW 36.70B.170(3)(c)(g)
11 and (i). Again, Olympia not only recognizes the benefit of development agreements but requires
12 that one be in place prior to development application.

13 The proposed Development Agreement approves the conceptual site plan; allows for site
14 development in two phases and building development in three phases; vests the development to
15 existing land use regulations at the time of the Agreement; and also vests impact fees to each
16 construction phase. It allows the development to take place over fifteen years.

17 The Development Agreement expressly recognizes the West Bay Restoration Plan and
18 declares:

19 "The Project will include significant access amenities, including a waterfront trail,
20 and will also complete shoreline restoration along the property boundary
21 consistent with the recommendations identified in the City of Olympia West Bay
22 Environmental Restoration Assessment Final Report (Coat and Harbor
Engineering, 2016) for "Reach 5 – Hardel Plywood" and the City of Olympia
[Shoreline] Master Program."

23 The Development Agreement expressly requires that shoreline restoration will be
24 completed as part of each phase's site development, and the waterfront trail shall be completed as
25 part of Phase 1.

1 It is worth noting that the Project's proposed residential and commercial uses are
2 permitted uses under the Project Site's current zoning designation of "Urban Waterfront"
3 ("UW"). The proposed uses are also permitted uses under the Project Site's current Shoreline
4 Environmental Designation (SED) of "Urban Intensity" ("UI") under the City's Shoreline Master
5 Program (SMP). The proposed uses are also consistent with the City's current Comprehensive
6 Plan and its Land Use Map. Stated slightly differently, the Development Agreement does not
7 allow for any land use that is not currently allowed under the City's development regulations.

8 The Development Agreement was submitted to the City along with the SEPA Checklist.
9 The Checklist makes clear that the "Proposal" subject to SEPA review is the proposed
10 Development Agreement, not the Project itself. In its review of the SEPA Checklist the City
11 concurs that the "Proposal" is the Development Agreement, not the Project. The City concludes
12 that the Development Agreement, on its own, does not have a probable significant environmental
13 impact and issued a SEPA DNS.

14 Coalition timely appealed the SEPA DNS and then moved for summary judgment. It
15 argues that the "Proposal" subject to SEPA review is the Project, not simply the Development
16 Agreement. Coalition notes that our courts have been insistent upon conducting environmental
17 review at the earliest opportunity and that the details of this Project are already well established –
18 indeed, essentially fixed – that SEPA review of the Development Agreement mandates
19 environmental review of the enter Project.

20 West Bay cross-motined for Summary Judgment. It argues, and the City concurs, that
21 the "Proposal" subject to early environmental review is the Development Agreement, not the
22 Project itself, and that there is nothing about this Development Agreement deserving heightened
23 review.

1 ANALYSIS

2 The resolution of this appeal and the cross-motions requires the answering of two
3 questions: (1) What is the "Proposal" currently subject to environmental review? and (2) Does
4 this "Proposal" have a probable significant, adverse environmental impact?

5 1. What is the "Proposal"?

6 Coalition notes that the principal features of the Project are well defined including the
7 conceptual site plan, phasing plan, restoration plan and construction sequence. Through the
8 Development Agreement, the City binds itself to all of the Project's detail and allows all
9 development to vest to current Development Regulations. As everything about the Project is
10 well known, Coalition does not see how – or why – substantive environmental review can be
11 deferred. To the contrary, Coalition argues that our courts have uniformly insisted upon
12 substantive environmental review at the earliest opportunity which, in this case, is now.

13 The City and West Bay acknowledge our courts' insistence upon early environmental
14 review but argue that this standard applies to the specific "Proposal" being reviewed. In this case
15 the Proposal is the Development Agreement, not the Project, and the mandate of early
16 environmental review applies only to the Development Agreement. The City/West Bay argue
17 that Coalition conflates two separate Proposals (the Development Agreement and the actual
18 Project) into a single Proposal, and that the conflation of the two is improper. The City and West
19 Bay add that the standard for review is the "clearly erroneous" standard, and that the Hearing
20 Examiner must affirm the City's decision "unless he is firmly convinced that a mistake has been
21 committed".

22 There is no question that our courts insist upon substantive environmental review at the
23 earliest opportunity. *King County v. Boundary Review Board*, 122 Wn.2d 648, 860 P.2d 1024
24 (1993); *Alpine Lakes v. Natural Resources*, 102 Wn. App. 1, 979 P.2d 929 (1999); *Lands*
25 *Council v. Parks & Rec. Comm'n*, 176 Wn. App. 787, 309 P.3d 734 (2013).

1 "[t]he risk of postponing environmental review is a 'dangerous incrementalism
2 where the obligation to decide is postponed successively while project momentum
3 builds.' 'It 'may begin a process of government action which can 'snowball' and
4 acquire virtually unstoppable administrative inertia.' 'To avoid this,
'decisionmakers need to be apprised of the environmental consequences *before*
the project picks up momentum, not after'". *King County* at 664.

5 This judicial insistence is firmly premised on SEPA's administrative regulations
6 including WAC 197-11-055(2):

7 "The lead agency shall prepare its Threshold Determination and Environmental
8 Impact Statement (EIS), if required, at the earliest possible point in the planning
9 and decision making process, when the principal features of a proposal and its
environmental impacts can be reasonably identified."

10 Again, Coalition argues that the "Proposal" is the Project itself and that both court
11 decisions and administrative regulations mandate its early environmental review.

12 But the City and West Bay respond that "Proposal" is defined by administrative
13 regulation. Per WAC 197-11-784:

14 "'Proposal means a proposed action. A proposal includes both actions and
15 regulatory decisions of agencies as well as any actions proposed by applicants. A
16 proposal exists at that stage in the development of an action when an agency is
presented with an application"

17 The only application the City has received is the Development Agreement. Actual
18 development applications have not yet been submitted, and cannot be submitted, until the
Development Agreement is approved.

19 I conclude that, pursuant to WAC 197-11-784, the City's decision to regard the
20 "Proposal" subject to SEPA review as the Development Agreement, not the Project, is not clearly
21 erroneous and should therefore be affirmed.

22 (2) Does this "Proposal" have a probable significant, adverse environmental impact?

23 The determination that the "Proposal" is the Development Agreement, not the Project
24 itself, is merely the starting point for SEPA review. The second question, then, is whether the
25

1 Development Agreement has a probable significant adverse environmental impact. This requires
2 a more careful analysis of the Development Agreement in relation to *Alpine Lakes* and *Lands*
3 *Council*. Both make clear that, even if the "Proposal" is a non-project action, it may still have
4 environmental impacts. These impacts may be in the form of an alteration to a site's land use
5 designation (*Lands Council*) or an assurance that future environmental review will be lessened
6 (*Alpine Lakes*).

7 But what determines whether a development agreement or similar non-project action has
8 a substantive environmental impact? The answer appears to be found in *Lands Council*. At page
9 795, the court begins its analysis by framing the question before it: "Was [this non-project
10 action] merely the adoption of a classification that would allow consideration of possible
11 development proposals in the future . . . or was it a final action approving some level of
12 development?" The court's framing of the question provides a dividing line between those non-
13 project actions that do not have environmental impacts (merely the adoption of a classification
14 that would allow consideration of possible development proposals in the future) from those non-
15 project actions that do have environmental impacts (a final action approving some level of
16 development). As applied to this appeal, does the Development Agreement merely allow
17 consideration of possible future development, or does it actually approve some level of
18 development?

19 The answer to this question requires a closer review of the Development Agreement. The
20 Agreement begins by noting that the Project "will complete shoreline restoration along the
21 property boundary consistent with the recommendations identified in the City of Olympia West
22 Bay Environmental Restoration [Plan]", and attaches a copy of the Plan to the Agreement. The
23 Development Agreement then goes on to approve the conceptual site plan; a two-pronged
24 phasing of site development including shoreline restoration in each phase; a three-pronged

1 phasing of building construction; a vesting of development regulations and a vesting of impact
2 fees to building phases.

3 Coalition argues that the Development Agreement's provisions for vesting and phasing
4 are sufficient enough on their own to warrant fuller environmental review. I respectfully
5 disagree. These provisions of the Development Agreement are expressly authorized by law.
6 RCW 36.70B.170(3). As earlier noted, the Project is a mix of uses that are permitted uses in the
7 site's current zoning designation and its Shoreline Environmental Designation, and are also
8 consistent with the City's Comprehensive Plan and its Land Use Map. The Development
9 Agreement does not allow for anything currently not allowed under the City's Development
10 Regulations. Nonetheless, Coalition argues that more intensive environmental review should
11 occur at this stage to examine possible future changes to development regulations, zoning
12 designations, shoreline designations, and comprehensive plans that might occur over the course
13 of this fifteen-year Development Agreement. But Coalition has not cited to any legal authority
14 for this argument and it is difficult to envision how such review would occur.

15 The more substantive argument raised by Coalition is that the Development Agreement's
16 inclusion of shoreline restoration as envisioned in the West Bay Restoration Plan requires fuller
17 environmental review. Put slightly differently, does the Development Agreement contain an
18 assurance from the City to West Bay that, if it satisfies the shoreline restoration requirements
19 contained in the Restoration Plan, the City will not ask for any additional shoreline restoration?
20 If the Development Agreement serves as such an assurance it has significant environmental
21 consequences requiring closer review in accordance with *Alpine Lakes*.

22 As noted early on, the West Bay Restoration Plan has not undergone SEPA review nor is
23 it adopted by reference in the City's most recent SMP or Comprehensive Plan (both of which
24 have undergone SEPA review). To date the environmental impacts of the Restoration Plan have
25

1 not been analyzed. The fact that the Restoration Plan is a noble and well intended effort to
2 restore the ecology of West Bay does not exempt it from SEPA review. "Even proposals
3 intended to protect or improve the environment may require an EIS. SEPA regulations do not
4 allow Threshold Determinations to be made by balancing the potential "good/bad" effects of a
5 proposal." *Alpine Lakes* at 15. Therefore, if the Development Agreement can be construed as
6 assuring West Bay of no greater shoreline restoration than is found in the Plan, this assurance
7 triggers heightened environmental review.

8 I conclude that the Development Agreement does not contain any such assurance. Both
9 the City and West Bay acknowledge that the Restoration Plan merely serves as a guide, and that
10 the Development Agreement makes no assurance that the City will not demand greater shoreline
11 restoration as part of any development. Therefore, and unlike *Alpine Lakes*, the Development
12 Agreement does not serve to limit future substantive environmental review of the Project's
13 shoreline restoration.

14 In summary, had the Development Agreement not incorporated the West Bay Restoration
15 Plan it would have been far easier to deny Coalition's Motion for Summary Judgment. In that
16 case it would simply have been a matter of concluding that the "Proposal" was the Development
17 Agreement, and that the Development Agreement merely provided for phasing and vesting as
18 expressly allowed by law. The incorporation of the West Bay Restoration Plan into the
19 Development Agreement significantly alters the analysis and requires a determination as to
20 whether it effectively establishes a maximum requirement for shoreline restoration without the
21 benefit of substantive SEPA review, not unlike that found in *Alpine Lakes*. I conclude that the
22 Development Agreement does not establish a maximum requirement for shorelines restoration
23 and that *Alpine Lakes* is therefore not applicable.

24 I therefore make the following:
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2. Any Conclusions of Law contained in the previous Background or Analysis

3. There are no material issues of fact and the matter may be resolved by summary judgment.

5. On appeal, the City's Threshold Determination is accorded substantial weight.

6. For purposes of SEPA review, the "Proposal" is the Development Agreement entered into between the City and West Bay.

8. Development agreements are encouraged as a means of strengthening public utility, encouraging private participation in comprehensive planning, and reducing the economic costs of development. RCW 36.70B.170.

*Order Denying Appellant's
Motion for Summary
Judgment and Granting
Respondents' Motion for
Summary Judgment - 11*

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10. To the extent that the Development Agreement between the City and West Bay approves the conceptual site plan, allows for phasing of site development and construction, and assures vesting to Development Regulations, it is merely the adoption of an agreement that allows for consideration of possible development proposals in the future, and does not actually approve some level of development.

11. If the incorporation of the West Bay Restoration Plan into the Development Agreement served as an assured maximum requirement of shorelines restoration for the Project, such assurance would require fuller environmental review. *Alpine Lakes*.

12. The incorporation of the Restoration Plan into the Development Agreement is not intended to provide such assurance nor do either the City or West Bay interpret it in such a manner. To the contrary, the Development Agreement does not preclude the City from demanding increased shoreline restoration beyond what is proposed in the Restoration Plan. The Restoration Plan is incorporated into the Development Agreement to serve as a guide, not as any assured level of restoration.

13. Even with the incorporation of the Restoration Plan into the Development Agreement, it remains the adoption of an agreement that allows consideration of possible development proposals in the future, and is not the final action of the City approving some level of development.

ORDER

Now, therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Appellant's Motion for Summary Judgment is **denied**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Respondents' Cross-Motion for Summary Judgment is **granted**.

1 DATED this 17 day of February, 2021.



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4 Mark C. Scheibmeir
City of Olympia Hearing Examiner