McCleary City Council
Agenda

April 12th, 2017 6:30 PM

Flag Salute

Roll Call: ___Pos. 1- Orffer, ___ Pos. 2-Richey , ___ Pos. 3- Peterson, ___ Pos. 4- Blankenship, ___ Pos. 5- Ator

Public Hearing

Mayor Comments

Public Comment

Executive Session

Minutes	**Tab A**	3-15-17; 3-22-17	Introduction **X**	Action **X**
Approval of Vouchers			Introduction **X**	Action **X**
Staff Reports	**Tab B**	Dan Glenn		
	Tab C	Todd Baun		
	Tab D	Staff Reports		
Old Business	**Tab E**	Cash Handling Policy		
	Tab F	Utility Billing Policy		
	Tab G	Nusiance Update		
	Tab H	WWTP Solids update		
New Business	**Tab I**	CERB Grant		
	Tab J	3rd Street Project Amendment		
Ordinances	**Tab K**	Zoning Txt Amend; Hosp & RTF, Draft C		
Resolutions	**Tab L**	Cash Handling & Utility Billing Policies Resolution		

Mayor Council Comments

Public Comments

Executive Session

Adjournment or Recess Meeting

Please turn off Cell Phones- Thank you

Americans with Disabilities Act (ADA) Accommodation is Provided Upon Request

The City of McCleary is an equal opportunity provider and employer.

La ciudad de McCleary as un proveedor de igualdad de oportunidades y el empleador

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, March 15, 2017, 8:00 pm

ROLL CALL AND FLAG SALUTE	Councilmembers Orffer, Richey, Peterson, Blankenship and Ator were in attendance.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, Chief Blumer and Dan Glenn.
PUBLIC HEARING	None.
EXECUTIVE SESSION	None.
MINUTES APPROVED	None.
VOUCHERS	None.
MAYOR'S COMMENTS	Mayor Schiller stated the agenda is short as there are only two items that will be discussed during the meeting.
PUBLIC COMMENT	None.
CITY ATTORNEY REPORT	None.
DIRECTOR OF PUBLIC WORKS REPORT	None.
POLICE CHIEF BLUMER	None.
SUPPLEMENTAL AGREEMENT NO. 6 - THIRD STREET IMPROVEMENT PROJECT	Skillings Connolly, Inc., has completed the design for the Third Street Roadway Improvement Project. It has been determined that the project will need to complete a right-of-way phase. The additional cost will be $3,000. **It was moved by Councilmember Ator, seconded by Councilmember Blankenship to authorize the Mayor to sign the supplemental agreement with Skillings Connolly in the amount of $3,000. Motion Carried 5-0.**
ADOPT DEFININITION ORDINANCE	The Council had a lengthy discussion on the zoning code definition ordinance and talked about the potential mental health facility that is planning on opening in the old Mark Reed Hospital site. The Council discussed what would be in the best interest for McCleary. The main question is regarding what direction the City wants to go; should the City allow this type of mental health facility to operate in McCleary or decide it is not in the best interest of the community as a whole. The public members that were in attendance during the workshop left and did not stay for the Regular Council Meeting. **It was moved by Councilmember Blankenship, seconded by Councilmember Ator to adopt version C Amending the MMC Zoning Code Definitions.** After discussion, Mayor Schiller stated he believed it would be best to wait on taking action until the public could be in attendance at the next Council meeting, which is on March 22, 2017. **Motions were rescinded.**
PUBLIC COMMENT	Due to the topic and increased public interest, Mayor Schiller will hold the next City Council Meeting at the Community Center where more seating is available.
MEETING ADJOURNED	**It was moved by Councilmember Ator, seconded by Councilmember Richey to recess the meeting at 8:45 pm. The next meeting will be Wednesday, March 22nd, 2017 at 6:30 pm at the McCleary Community Center. Motion Carried 5-0.**

Approved by Mayor Brent Schiller and Clerk-Treasurer Wendy Collins.

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, March 22, 2017 at the Community Center

ROLL CALL AND FLAG SALUTE — Councilmembers Orffer, Richey, Peterson, Blankenship and Ator were in attendance.

ABSENT — None.

STAFF PRESENT — Present at the meeting were Todd Baun, Wendy Collins, Chief Blumer, Randy Bunch, Paul Nott and Dan Glenn.

PUBLIC HEARING — None.

MAYOR'S COMMENTS — Mayor Schiller announced that he moved the meeting to the Community Center because he understands the topic for discussion tonight is sensitive to most people and he expected a large turnout. After the presentation, he will open the meeting up for public comment. He set ground rules for comments making the limit five minutes per person. At the end of the agenda, there will be another opportunity for public comment.

PRESENTATION — Representatives spoke on behalf of the proposed mental health facility moving into the Mark Reed Hospital site. Todd Broderius from Great Rivers Behavioral Health, Linda Reese and Cameron Coltharp from Telecare Corporation and Jim Preston from Telecare Pierce County gave a presentation on what type of mental health facility will be moving in there and provided information on security and what the culture will be like for patients who are brought there. Renee Jenson from Summit Pacific Medical Center also spoke in support of the Great Rivers Behavioral Health clinic along with Grays Harbor County Sheriff Rick Scott and Hoquiam Police Chief Jeff Myers.

Linda Reese reported that Telecare has been in business over 50-years. They are both family and employee owned. They operate four ENT, (Evaluation and Treatment Center's), facilities in Washington. They are not a substance abuse center, a flop house or provide homeless people a shelter. They are specifically a mental health facility.

Grays Harbor County Sheriff, Rick Scott, spoke in support of the facility. He said there is no place for these people in the County. They are not criminals so jail is not a proper placement and they cannot be held in a hospital. This is the type of facility that is vitally needed for our County.

Hoquiam Police Chief, Jeff Myers, reiterated what Sheriff Scott stated. As a public servant, he deals with these type of people that suffer from serious mental illness and they need a place to help them become stable. This facility provides a unique opportunity to help these people. If this facility was opening in Hoquiam, he would be in full support of it. He said they cannot continue to detain mental health patients in emergency rooms because it is against their constitutional rights. The hospital cannot treat them with medications and must release them back into the community after doing nothing to help them become stable. They need a safe place to go that provides the medical treatment they need. We need a facility in Grays Harbor that serves Grays Harbor residents. He said it is a concern from the law enforcement standpoint. They have the crisis clinic in Hoquiam that they have to respond to. There was a woman that was not treated properly for mental health and over time, she eventually stabbed someone and killed them. He said this person was not treated for mental illness and it ended very badly. They need a facility to treat these people.

Cameron Coltharp addressed the type of facility this will be. He said they are a lockdown facility that protects the patients from the community more than it protects the community from the patients. They will have high security windows that are multi pane but do not have bars. The doors will be metal and wood framed with magnetic door locks. They will install a security fence with a residential-type appearance that will typically be ten-feet tall. The fence will not be a prison yard fence. They added that they sometimes provide security for a facility, however, it is unusual to have security inside their program. There is no actual limit for how long a client can stay. Fourteen-days is not the actual limit and they could run longer, if needed. The facility inside is a residential style facility more than an institution style. The residents will have common areas and it will feel more like a home during their stay.

Linda Reese continued stating there will be a "no restraint" culture and staffing is at least 4 clients per 1 staff ratio, with daytime hours almost a 1-1 ratio. They train their staff with certified crisis prevention training and provide the clients with "minimize treatment", meaning they are not hands-on. When the police are called, which is rare, it is typically because one of their clients wants to press charges against somebody or they want to interview someone regarding a past incident. There properties have a 14% readmission rate within 30 days.

Jim Preston stated one of the tools that they use is they establish a rapport with their clients and believe the best security is to treat them with dignity and respect. They have clients that are shocked at how kindly they are treated. Zero restraint is their goal and zero readmission is also their goal, although they don't always achieve that. Cameron Coltharp added that there are three reasons for being placed in an involuntary facility; they are threat to themselves, they are gravely disabled or they are a potential/perceived threat to others.

Telecare is a private mental care service provider. They are contracted with BHO. Great Rivers received the grant from the Department of Commerce to use the funds to remodel the building. They are also the ones that fund these services so they put out a RFP for someone to run the facility on a day-to-day business, because that is not what they do. They are contracting with Telecare to run it. Great Rivers will own it but Telecare will be operating it.

Todd Broderius stated they signed a 25-year lease with Summit Pacific Hospital and acquired a two-million dollar grant for remodeling the building and bringing it up to current code standards. The grant money is not for operations. They stated they operate on a three-to-four million dollar annual budget. The contract between Great Rivers and Telecare is open-ended with an opportunity to opt out if either side decides to end it, with advanced notice.

Cameron Coltharp responded this will not be a volunteer or walk-in clinic. Linda Reese stated the clients will be taken back to the location they came from when they are released. It is not court-ordered to do this, it is their own policy to do this. They try really hard to be a good neighbor. They do not allow people to be loitering around. They generally install some type of fence covering for the privacy and dignity of their residents. When they are outside in their courtyard, it should be invisible to the local community. She added that property values actually go up, not down, when they move into an abandoned building. This is due to the fact of the improvements and having it operational compared to an un-kept and abandoned building. Todd Broderius added there is not a step-down facility intended to be located in McClearv.

The Satsop business park was considered as a location, however, it would have cost more to prepare the building. The Mark Reed site is already set up as a hospital so minimal changes and improvements are required.

Grays Harbor County cannot promise they will respond immediately if something happens at the new facility. Historically, when something happens in McCleary, they send deputies to assist as backup when they can. The facility will not provide security or help fund another McCleary Police Officer for added protection. Telecare did provide a security officer in another new facility for six-months and found they didn't need to continue paying for it because it was not needed.

Renee Jensen spoke in support of the facility being placed in McCleary. She spoke about mental illness and the challenges of finding locations for helping those suffering from mental illness in Grays Harbor. Summit Pacific Hospital cannot treat mental illness patients. They treat physical illness, not mental health illness, which limits them to anything they can provide for this type of patient. McCleary has this beautiful opportunity that is a gift. She said the hospital has no skin in this game. They leased the Mark Reed site for $275.00 per year and there is no money to be had. Her intension was to be good partners with McCleary by bringing in new jobs, bringing new commerce and to support coffee shops, restaurants, and gas stations. She wants this community to be growing and vibrant and she believes this is the best use of tax payer's money. She added the Council has an opportunity to make a difference by helping people get better and she begged them not to turn their backs on those in need.

The hospital did not add this facility to the Summit Pacific Center because the new Wellness Center that is planned is a revenue-generated facility. The hospital cannot receive funds for behavioral health because they are strictly serving physical health. They operate and fund completely different. They could not rent to a mental health facility because that type of business could not pay the rent to operate it. It would not be cost-effective. The Mark Reed site will be ready after minimal improvements.

The process for getting a patient to the mental health facility will start with an officer taking the patient to Summit Pacific Hospital, or another hospital, for stabilization. After the doctor has stabilized them, they are then transported to a mental facility where a bed is available. If a bed is not available, the hospital is obligated to assist them for 72 hours before releasing them back into the community. There is no limit on the length of stay at the mental health facility, if a longer stay is needed. Their intent is a short stay, however, there are occasional times when someone is on a legal hold, they will have to stay until the legal release is provided.

Cameron Coltharp urged the City Council to table the decision for the zoning definition changes tonight. When asked why he objects to the decision on the definitions, he replied he didn't understand why they were only changing the definitions of a hospital and residential treatment facility without making changes to the zoning code itself. Councilmember Blankenship said the definition we have is outdated. Mayor Schiller added that yes, it is outdated, but he also believes Todd Baun, the Public Works Director, told them in their meeting in May that we were in the process of updating our zoning definitions. Mr. Coltharp didn't remember hearing that but it doesn't mean Mr. Baun did not say that. Councilmember Blankenship stated at the workshop he asked for an impact study for the resources of the City and Mr. Coltharp responded that they have not done that. He wasn't aware if that would be part of the process. Todd Broderius believes the impact of the City is being discussed tonight in person. Councilmember Blankenship said their experiences for impacts are on big cities, not for a City of our small size. That is comparing apples to oranges.

Cameron Coltharp is confused about the process they are going through because he was not aware in May that they would have to go through any specific process. The perception was that is was a permitted use. Councilmember Blankenship said that the only information the Council received was from last week. Prior to that, they had no information. He believes the call was initiated by Joy at Summit Pacific Hospital on the information that was taken from a City Council Meeting that started the snowball affect. He believes Great Rivers and Telecare have kept the City in the dark. Renee Jensen said she could not release any information until a provider was selected.

Councilmember Blankenship understands the need for this type of facility in the County but he has great concern over it being put in an R-1 residential zone. Also, to hear the representatives tonight say the decision to put it there is solely based on a financial reason causes him even more concern. Renee Jensen believes it might be beneficial for the Council to go visit some of the facilities so they have a better understanding of how they operate.

PUBLIC COMMENT

Mayor Schiller commended the Council for their great questions and involvement. He opened the floor to public comment and reminded everyone to not exceed five minutes per person.

Gary Atkins has an Aunt who is bipolar and mentally unstable and he has noticed over the years that she mentally comes and goes. He doesn't want to see this program here and he feels we are being railroaded into it. He worries that when people are in the program for 30 days, they will come and hang around town to try to get back in for another 30 days. McCleary, a town of 1600, will have more riffraff people hanging around. A year ago he and his Mother-In-Law were mooned by a mentally unstable person. Today, he got back into town and the same guy was picked up and taken away. Mr. Atkins asked, "If you can't cure an alcoholic in four days, how can you cure a mental ill person in four days?" He does not want this in his community.

Laura Vaughan is confused and will try to remain respectful as she responds. She listened to everyone that spoke tonight and stated you can put lipstick on a pig and it is still a pig. Her backyard boarders this facility and she is scared for her kids. She said most of her questions have been answered so she wants to ask about the lack of guarantees. Who will guarantee her kids safety? She heard the people state there have been no instances but another person stated they have responded to them so she sees it as conflicting information. She wants to see the proof of their claims. She said this is all about money for them but what will they do to keep her family safe? She loves her community, neighborhood and home. Now she won't feel safe and won't be able to teach her kids to ride a bike on the street. She heard the representatives say they are really good at what they do but where is the proof and how will they guarantee the safety of her children? She said they have not provided any type of proof. She asks the Council not to table the vote tonight. This is only about money for them. What jobs are they going to provide for our town? They will bring people from the outside to work. It won't actually employee McCleary people. There are not enough police to handle this and she worries about the safety of our small Police Department.

Kathy Elofson has lived here along time. She cannot say if she is for or against it, but knows that about 40-years ago, McCleary missed out on the Shelton prison. McCleary is bad off and everything is going downhill. She has foster children in her home and had an incident recently and it took more than an hour for a response. The officer told her he could drive the foster child to Olympia but would just have to let her out. Even though she is only fourteen-years old, he could not go in with her. She thinks we need a facility like this. She doesn't live next to it but believes there is a need. McCleary is dying. It used to be a place where everyone local worked at the school and other businesses but now you don't recognize anyone.

Fred Ortquist doesn't understand this because three-years ago, the City was going to condemn the hospital but now it's uncondemned. He doesn't understand this. The streets are not even being fixed and there is no legal sewer system on that street and there is no storm drain either. He was told the City does not have the money. He has had sewer issues for years now that are caused by tree roots. The taxpayers are not going to pay for another boondoggle.

EXECUTIVE SESSION

None.

MINUTES APPROVED

It was moved by Councilmember Ator, seconded by Councilmember's Peterson and Richey to approve the minutes from the March 8, 2017 meeting. Motion Carried 5-0.

VOUCHERS

Accounts Payable checks approved were 42465 - 42533 including EFT's in the amount of $212,886.28.

It was moved by Councilmember Ator, seconded by Councilmember Peterson to approve the vouchers. Motion Carried 5-0.

CITY ATTORNEY REPORT

Dan Glenn stated the first issue tonight is to address the definitions amendment then the next step is referring a zoning classification to the hearing examiner. Tonight is very limited on what action can be taken. In Growth Management Cities (GMA), they are mandated to allow mental facilities with conditional use. Grays Harbor County is not a GMA County so the mandate does not affect McCleary.

Dan Glenn received a call from the legal council for the BHO and his position is that under the City's current hospital definition, this would be a permitted use. Mr. Glenn respectfully disagrees. He believes this type of operation does not include the characteristics as defined as a hospital even under the existing code.

Councilmember Orffer is getting conflicting information because she is being told that this is a permitted use and now Mr. Glenn is telling her it is not. She asked which is correct? Dan Glenn stated that they were told that Mr. Baun, at a meeting, indicated that. He said Mr. Baun, at a prior meeting, indicated that that is incorrect.

DIRECTOR OF PUBLIC WORKS REPORT

Todd Baun stated the original meeting they had in May when it was presented as a residential treatment facility, which under our current definition for a hospital is so vague that it could fall underneath our current definition for a hospital, he felt. That is the point when he asked for guidance on it. Councilmember Blankenship asked Todd to confirm that this was a meeting conducted on May 9, 2016, which the Council was not made aware of the contents of that meeting and Todd confirmed that is correct. Mr. Baun went through the meeting timeline to remind the Council of when the steps took place. After September 2016, he provided the Council with a packet on residential treatment facilities, information was also shared at the workshop in October 2016, and it was mentioned at a Council meeting. Between May 9th and September 14th, he did not have any contact with anyone other than getting something from the Department of Commerce.

POLICE CHIEF BLUMER

None.

AMEND MMC ZONING CODE

The Council has in their packet the recommendations from the hearing examiner; add a definition of "residential treatment facility", change the current definition of "hospital" and reduce the current time that a legal nonconforming use my continue being discontinued from 4 years to 1 year [MMC 17.36.020(D)]. No comments were made.

NON CONFORMING USE AND STRUCTURES

This was addressed at the same workshop as the definitions amendment and has been discussed in detail. No comments were made.

CASH HANDLING POLICY AND UTILITY BILLING POLICY

Wendy Collins reported the State Auditor gave a recommendation to implement policies for cash handling and utility billing. To fulfill that requirement, and remain compliant, these policies are being introduced tonight for the Council to review. They are processes and procedures to ensure public resources are safeguarded and to keep strong internal controls. Staff will ask for the Council to approve them at the next meeting.

ZONING CODE DEFINITIONS ORDINANCE

It was moved by Councilmember Blankenship, seconded by Councilmember Richey to adopt Ordinance 830 RELATING TO ZONING, AMENDING SECTIONS 17.12.010 AND 17.36.020 MMC, PROVIDING AN EFFECTIVE DATE AND FOR SEVERABILITY & CORRECTION. Roll Call taken with Councilmember's Blankenship and Richey voting in the affirmative and Councilmember's Orffer, Peterson and Ator voting against. Ordinance Failed 3-2.

Mayor Schiller commended the Council for their hard work on this process and knows this was a tough vote. They will continue to work on it and hopefully get a resolve because it's in the best interest of the citizens of McCleary. He knows this is going to be a very emotional subject. He has no standing either way on this and is looking forward to hearing more from the providers. Mayor Schiller has to go into homeless camps for his day job and it's not a fun task. They have to have law enforcement present because they are worried about the safety of his employees. It's a long, hard trail ahead for the Council, but they will come together and find a solution.

Councilmember Blankenship wanted to add that tonight's decision is not based on whether the facility goes in there. It was simply to update our out-of-date definitions. He thinks the voting decision tonight was a wrong. We have an outdated definition of a hospital. We do not have a definition for a residential treatment facility and we are going to have to revisit this again after spending a large amount of time working on this.

PUBLIC COMMENT

Donna Neary has lived on Birch Street for over 20-years and has not had to lock her doors at night until now. She will not feel safe anymore. She heard the presenters say they have not had any significant issue at their current facilities. She wants that defined because what may seem insignificant to them may be very significant to her. She has never felt so helpless in a situation as this. Her elderly neighbors feel the same way. She will do whatever she has to do to fight this situation.

Alice Larson said she manages Crisis for Grays Harbor County. She moved to Ocean Shores in May and this is her new community. She loves how people work together to make things happen. This is the first time in her career that she has dealt a lot with homeless people. She helped open the shelter in Aberdeen during the cold weather and found the people are not treated humanely. They have people outside screaming bloody murder outside the facility. That is not what will be coming to McCleary. In her current situation, she can read them their civil rights and detain them. She cannot do her job because she cannot find a facility in the State to take them. She has a 12-hour window to find a place for treatment. If she gets new evidence, she can restart that 12-hour window. There are people that are not being treated and this new facility is one big part that can start making people's lives better.

Councilmember Richey asked her if some of the people placed in these facilities have criminal records and she replied that some do. She said a lot of the criminal activity is disorderly conduct, stealing from the store because they are hungry and others will break a window just to get arrested so they have a warm bed for the night. Councilmember Richey believes the criminal element and the danger element is being brushed over tonight. He believes the term used earlier of it being lipstick on a pig is a little rough but it does seem that everything is being presented a little flowery. She agreed and said she is on the front line and there are some pretty sick folks out there. Sometimes they do well and sometimes they don't. She thinks we can start to help by providing a safe place for them. It will also help prevent suicides because they will have a place to go and get the proper help they need.

Councilmember Blankenship agreed with her but still believes that placing this in a neighborhood is not the best location when there are other options available. Ms. Larson understands his position.

Fred Ortquist reiterated his statement on fixing the storm drain and sewer system. He has been fighting city hall for 55-years now.

Laura Vaughan wanted to know if the sewer and storm drain improvements are part of the renovation project. Mayor Schiller said they have not seen a site plan and as of now, that is putting the cart before the horse. Ms. Vaughan asked when their target date of opening is and Mayor Schiller said they are going back to the drawing board and still have work to do so he doesn't have an answer.

MEETING ADJOURNED

It was moved by Councilmember Ator, seconded by Councilmember Richey to recess the meeting at 8:44 pm. The next meeting will be Wednesday, April 12, 2017 at 6:30 pm. Motion Carried 5-0.

Approved by Mayor Brent Schiller and Clerk-Treasurer Wendy Collins.

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary

FROM: DANIEL O. GLENN, City Attorney

DATE: April 6, 2017

RE: LEGAL ACTIVITIES as of APRIL 12, 2017.

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

1. **ELECTION INFORMATION**: As you know, municipal elections are held in the "off" years a/k/a the odd numbered years. As a point of information, the Office of the County Auditor has provided me the following information in relation to McCleary:

A. General:

1. Filing Dates: Filing for Office Begins May 15 and Ends May 19.

2. Primary Election on August 1 but only if three or more persons file for the same office. If less than three, no primary for the position and it is decided in the November election.

3. The indication is there is a filing fee of $12.00 required and the appropriate filing document must be submitted to the County Auditor's office by that last date of May 19.

B. Specific to McCleary: According to the Auditor's records, the following positions are up for election this year. I have set out both the technical council position number and the one of you who currently holds that position.

Mayor	Brent Schiller
Council Pos 2 (2 year term)	Dustin Richey

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

Council Pos 3	Lawrence Peterson
Council Pos 4	Ben Blankenship
Council Pos 5	Pam Ator

Given that famous adage that "time flies", I have little doubt that the May 19th date will quickly arrive.

2. **ZONING DEFINITION ORDINANCE, VERSION C:**

A. Matter of Reconsideration: It is my understanding the ordinance may be back before you in terms of a motion to reconsider the action taken at the last Council Meeting. At that time, a motion was made to adopt the ordinance which was seconded. However, when the matter was called for and votes entered, the motion to adopt failed with two affirmative and three negative.

If there is a desire to reconsider this ordinance at this meeting, one of the three Council Members who voted on the prevailing side would need to make a motion to reconsider that action. If the motion receives a second and, upon a vote, is approved by a majority, the Council will then have it back before you as if the first vote had not been taken. It is then open to discussion and action.

B. What If...?: It is my understanding from the discussion at the last meeting and discussions I have had since the meeting, one of the concerns about the adoption of the definitional ordinance as a free standing item without a recommendation from the Hearing Examiner on the matter of within what zones and under what classifications, for example Permitted or Conditional Use, the "residential treatment facility" use would be allowed would constitute a prohibitive action. While I can understand the concerns, it is my recommendation and opinion that the two phase approach of adoption of the definitional ordinance and then the immediate referral of the matter of development of zoning provisions for the use is the appropriate approach.

I recognize that it is one person's opinion and recommendation. Also, that you are the persons with the authority to make the decision. So why do I make that recommendation?

1. I would note it is my opinion that currently our Zoning Code does not have a classification for this use. I realize that a position has been put forward that it fits within the definition of a hospital under our Code. The definitional section of the Code defines a hospital as follows:

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

"Hospital" means an institution specialized in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons, **and licensed by state law to provide facilities in surgery, obstetrics, and general medical practice.** (Emphasis added.)

The explanation, both as to written material and oral presentations, as to the nature of the intended use did not include any indication that it would be licensed for the bolded purposes. Thus, currently we appear to have no formal provisions at all in terms of considering such uses.

2. If you choose to adopt the definitional ordinance, as I have mentioned in prior Reports, the immediate next step would be to refer to the Hearing Examiner the matter of consideration of the establishment of provisions in the classification elements of the Code relating to this particular use, as well as hospitals. (Hospitals are currently conditional uses in residential zones, but not allowed in a C 1 zone, if the current chart on our website is up to date.) By providing definitions which have been adopted by the Council and approved by the Mayor, the Hearing Examiner will be working with specific in place definitions rather than definitions which may or may not be adopted at a later stage.

3. **GROUP HOMES**: The matter of the consideration of the type of facility being proposed by Telecare has actually raised a broader potential zoning issue, that is the matter of group homes. My initial review of our current set of definitions for zoning purposes led me to find definitions for "adult family home", which deals with housing for up to six adults and "housing for the elderly" which ties a minimum age of 60. These are very specific definitions. It may well be appropriate to review the entire matter, including whether our current use classifications are consistent with the provisions of the State's Housing Policy Act (RCW 35A.63.240) and the Federal Fair Housing Act (42 USC 3601, et seq.)

For your review, I am attaching two articles I believe provide some background on this general area. The MRSC article speaks specifically to the subject of Group Homes. The other, which I also found during my research, is one dealing more specifically with how the federal act applies to facilities of a general nature such as is being considered. Given the complexity of the application of municipal zoning provisions to this general type of use as a result of the federal and state Fair Housing Acts and the goal of insuring the City complies with applicable federal and state provisions, the research will continue.

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

4. **RESOLUTION SETTING FORTH COUNCIL MEETING POLICIES & PRACTICES:** As a piece of information, some years ago I prepared a resolution for review which set out proposed rules and policies for meetings, including agenda process, reconsideration, etc. So far as I can determine, it was never adopted. If you would like, I can update it and provide it to you for your review.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

MRSC
Local Government Success

Group Homes

Introduction

Although there is not a specific legal definition of a "group home," that term has come to commonly refer to group residential environments for people with disabilities, mental or physical.

The increase in the numbers of group homes desiring to locate in residential areas has been controversial, as have municipal attempts to regulate their location. As a result, federal and state laws have attempted to address the discrimination these homes have experienced, primarily in urban settings.

This page provides information on the various laws that apply to local regulation of group living arrangements, on how local governments have approached regulating such arrangements, and on limitations on such regulation. The recently updated paper, Regulating Group Homes in the Twenty First Century: The Limits of Municipal Authority (04/2013), by Ted Gathe, provides a particularly helpful overview of the legal issues involving the siting and regulation of group homes.

Statutes

- Federal Fair Housing Act Amendments of 1988 - 42 U.S.C. § 3601 et seq.
- Washington Housing Policy Act - RCW 35.63.220, RCW 35A.63.240, RCW 36.70.990:

> No [city/county] may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602).

- RCW 70.128.140(2):

> An adult family home must be considered a residential use of property for zoning and public and private utility rate purposes. Adult family homes are a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings.

Selected Court Decisions/Attorney General Opinions

Federal Case Law

- *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995) - FHAA violated by zoning ordinance
  The U.S. Supreme Court held that the 1988 Fair Housing Act amendments prevent a city from enforcing a zoning ordinance limiting the number of unrelated persons who could live in a dwelling located in an area zoned for single family use, if no similar restrictions are imposed on all residents of all dwellings. In addition, the Court held that the

FHA's exemption for local maximum occupancy restrictions, which limit the number of occupants per dwelling typically in regard to floor space or the number and type of rooms, did not apply to the city's single family zoning restrictions.

- *Bay Area Addiction v. City of Antioch*, 179 F.3d 725 (9th. Cir 1999) - ADA applies to zoning ordinances
  The Ninth Circuit Court of Appeals held that Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act apply to zoning ordinances.
- *Gamble v. City of Escondido*, 104 F.3d 300 (9th Cir. 1997) - Group home denial based on size upheld
  The city denied a conditional use permit application to construct a single-family residence of 10,360 square feet with eight bedrooms and twelve bathrooms to house 15 elderly disabled adults with the lower portion serving as an adult day care facility. The basis for the denial was that the proposed building was too large for the lot and did not conform in size and bulk with neighborhood structures. The court concluded that the city's concern for the character of the neighborhood was legitimate and nondiscriminatory.
- *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491 (W.D. Wa. 1997) - Group home dispersion requirement invalid
  The federal district court in held that a city ordinance violated both the Fair Housing Act and the Washington Law Against Discrimination in imposing burdens on group facilities for children and people with disabilities that are not placed in families, including a 1,000-foot dispersion requirement and a limit on the number of residents in certain zones.

State Case Law

- *Sunderland Family Treatment Services v. Pasco*, 107 Wn. App.109 (2001) - Group home for handicapped youth in a residential area
  The court of appeals reversed the city's denial of a special use permit to operate a group care facility for handicapped youth in a residential area. The court held that, under RCW 35A.63.240, an ordinance governing home occupations in residential areas may not be applied differently to group care facilities for the handicapped than to "families" so as to allow the exclusion of group care facilities for the handicapped from residential neighborhoods in circumstances where "families" would not be excluded.
- *Sunderland Family Treatment Services v. Pasco*, 127 Wn.2d 782 (1995) - "Troubled youth" not considered handicapped
  The state supreme court has ruled that the fair housing protections for the handicapped in RCW 35A.63.240 did not extend to "troubled youth" staying in a "crisis residential center" located in a residential neighborhood. The definition of "handicap" does not include an impairment resulting from environmental, cultural, or economic disadvantage.

Attorney General Opinions

- AGO 1992 No. 25 - preemption of zoning ordinances related to state-licensed residential care facilities

RCW 70.128.175(2) provides that adult family homes shall be permitted uses in all areas zoned for residential or commercial purposes, and it preempts local zoning ordinances that prohibit the location of an adult family home within a certain distance of other similar facilities. The fact that the state licenses residential care facilities, other than adult family homes, does not in and of itself preempt local zoning ordinances that prohibit the location of such facilities within a certain distance of other similar facilities.

First published in the California Real Property Journal, a quarterly publication of the Real Property Law Section of the State Bar of California.

Alcoholism, Drug Addiction, and the Right to Fair Housing:

How The Fair Housing Act Applies To Sober Living Homes

By Matthew M. Gorman, Anthony Marinaccio, and Christopher Cardinale*

I. INTRODUCTION

In 2007, staff working at a city in east Los Angeles County was notified that a small single family home in a quaint residential neighborhood was occupied by more than ten unemployed drug addicts, most of whom were on parole, with little or no supervision by authorities or others. Investigation of the home revealed that its two bedrooms had been illegally subdivided and furnished with bunk beds. The living room had been divided with drywall and make-shift plumbing had been installed for an extra toilet. A tent had been pitched in the backyard to house additional occupants, and the garage had been furnished with carpet, a toilet, a shower, and beds. In fact, all occupants were found to be parolees with alcohol or drug addictions, most were unemployed, and many had lived there for only a few days or more due to the frequency in turnover. To make matters worse, the home was located next door to a family with three children, across the street from another family with four children, and within walking distance of an elementary school bus stop.

Prompted by neighbor complaints, city councilmember outrage, and public safety concerns from police, the city took steps to vacate the home. These efforts met resistance. The property owner claimed that the residents were "disabled individuals" protected from dislocation under the Federal Fair Housing Act ("FHA" or the "Act"),[1] and that they were entitled to continue residing at that house because it was a "*sober living home*" which provided an environment of support and sobriety necessary for recovery.

Miles away, a multi-million dollar mansion is charging wealthy occupants thousands of dollars to reside in a serene environment, free of alcohol and drugs, to assist in recovery from addiction. When faced by complaints of neighboring properties, the operators of this facility also claimed that it was a "*sober living home*," protected from regulation pursuant to the FHA.

While in Orange County, whole sections of beachfront neighborhoods have been converted to so-called "*sober living homes*." The operators object to city and neighborhood complaints on the ground that their operations are protected by the FHA.

These scenarios may sound strange, but they are certainly true. They illustrate a challenging issue in residential land use and Fair Housing Act jurisprudence: Where should individuals undergo rehabilitation for alcohol and drug addiction? How does the Fair Housing Act affect local government's authority to regulate and restrict alcohol and drug recovery facilities? With the advent of "sober living homes" – homes designed to incorporate alcohol and drug addiction recovery into normal residential life – these issues have been pushed to the forefront in many communities and will likely face increasing attention as the popularity of sober living treatment advances.

This article summarizes the legal characteristics of sober living homes and how they are regulated under their relation with the FHA. In particular, this article illustrates how the FHA is being used by owners and residents of sober living homes to advance their establishment and operation, and it explores what local jurisdictions can do to regulate sober living homes in light of FHA requirements.

II. WHAT IS A SOBER LIVING HOME?

There are many variations among sober living facilities and operators; however, all emphasize the same facets of life under their roofs. The location of a sober living or alcohol recovery home in a drug free, single family neighborhood plays a crucial role in an individual's recovery by providing a supportive environment that promotes self esteem, helps create an incentive not to relapse, and avoids the temptations that the presence of drug use can create.[2]

A plethora of for-profit and non-profit organizations operate sober living facilities, ranging from the single landlord who rents his/her home to individuals with alcohol or drug addictions to the corporation that employs a full-time staff of treatment professionals and owns multiple facilities across numerous cities or states. A good example of the "sober living model" is Oxford House, a well-known network of sober living facilities that operate throughout the United States and internationally. Although each residence is an independent organization, the umbrella organization, Oxford House, serves as a network connecting other sober living homes in the area. According to Oxford House, 1,200 self-sustaining homes operate on its model, serving 9,500 people at any one time, totaling more than 24,000 annually.[3] Oxford House operates on the theory that those recovering from drug and alcohol addictions will remain sober if they live in a supportive environment with those suffering similar addictions.[4]

Whether sober living facilities follow the Oxford House model or some other approach, their locations vary from high end beach communities that mirror resort living, to dilapidated single family homes located in high crime neighborhoods plagued by poverty. Reactions to sober living facilities can be similarly varied. Some view sober living facilities as service providers, providing much-needed support to individuals recovering from addictions. For others, sober living facilities are viewed as blight in the community, often becoming most problematic when neighbors and nearby residents learn that large numbers of alcohol and drug addicts reside together near them.

Nearly any single family home can become a "sober living home" by adopting that label and renting rooms to individuals with alcohol or drug addictions. It is not uncommon for landlords seeking to maximize their rents to adopt the sober living moniker even though no actual sober living programs are implemented at the site. Abuses of the sober living model abound, with some single family homes housing upwards of twenty or thirty individuals under the guise of

"sober living" when, in fact, these homes provide no meaningful program for recovery and do not adhere to "legitimate" sober living guidelines.

This creates significant confusion for cities, counties, and other agencies charged with regulating residential land use and assisting disabled individuals. In perhaps the most well-known jurisdiction facing problems posed by sober living facilities, the City of Newport Beach has experienced an extreme concentration of sober living facilities, which have transformed neighborhoods from a relaxed beach going atmosphere to a quasi-clinical community providing services from a patchwork of residential buildings. In this context, neighborhood outrage prompted regulation by the city, ultimately precipitating an FHA lawsuit by sober living operators.[5]

Indeed, it is difficult for those agencies to discern between "legitimate" sober living facilities, which employ good faith measures to assist individuals in their alcohol or drug addiction recovery, from "illegitimate" facilities which use the "sober living" title as a front for questionable rental practices. This confusion can be complicated by the various state licensing provisions that regulate facilities providing care for the disabled or for those recovering from addiction. In California, the Department of Social Services[6] and the Department of Alcohol and Drug Programs,[7] are responsible for licensing and supervising specified facilities which may operate as sober living programs, or which may provide housing or services similar to that provided by unlicensed sober living facilities.[8] The California Attorney General has noted the difference between licensed facilities and non-licensed sober living homes. Licensed facilities are different "from facilities that simply provide a cooperative living arrangement for persons recovering from alcohol and other drug problems. The latter 'sober living environments' are not subject to licensing from the Department."[9] Such licensed facilities enjoy substantial protections from local regulation and therefore make it difficult for local agencies to police sober living homes and to prohibit "illegitimate" sites from operating.

III. HOW DOES THE FHA APPLY TO SOBER LIVING HOMES?

A. HISTORIC ROOTS DEFINING DRUG AND ALCOHOL ADDICTION AS A DISABILITY

The crux of the FHA's application to sober living facilities is based on the definition of a "disability." The FEHA does not address alcoholism or drug abuse as disabilities that would be protected under FEHA; however, it includes the definition of a "disability" found in the Americans with Disabilities Act ("ADA") if it provides results in "broader protection of the civil rights of individuals with a mental disability or physical disability . . . or would include any medical condition not included."[10] As amended in 1988, the FHA prohibits discrimination in housing on the basis of handicap. As amended, the Act defines "handicap" as:

> "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
>
> (2) a record of having such an impairment, or
>
> (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance."[11]

In determining whether substance abuse would be considered a handicap, Congress' intent is important to discern.[12] Such intent was first formed when Congress first formed its intent when it adopted the Rehabilitation Act a few years prior to the FHA.[13] Under the Rehabilitation Act:

> "[I]ndividuals who have a record of drug use or addiction but who are not currently using illegal drugs would continue to be protected if they fell under the definition of handicap.... Just like any other person with a disability, such as cancer or tuberculosis, former drug-dependent persons do not pose a threat to a dwelling or its inhabitants simply on the basis of status. Depriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery."[14]

Ultimately, Congress determined that many terms of the Rehabilitation Act should apply to the FHA, and courts have later found that the term "physical or mental impairment" under the FHA includes diseases such as drug addiction (when it is not caused by current illegal use of a controlled substance) and alcoholism.[15] Thus, although many would not, at first glance, realize that a handicapped person includes one suffering from alcoholism or drug addiction; in fact the FHA extends its protections to such persons. In 2000, the Ninth Circuit held: "It is well established that individuals recovering from drug or alcohol addiction are handicapped under the Act [FHA]."[16]

B. ESTABLISHING ALCOHOL OR DRUG ADDICTION AS A DISABILITY UNDER THE FHA

To demonstrate a disability under the FHA, a plaintiff must show: (1) a physical or mental impairment that substantially limits one or major life activities, (2) a record of having such an impairment, and (3) that the plaintiffs are regarded as having such an impairment.[17] However, a plaintiff must show not only that he was an alcoholic in the past, but also that his past alcoholism substantially limited one or more major life activities.[18] To be substantially limited, the impairment must prevent or severely restrict the person from activities that are centrally important to most people's lives, and it must be long term.[19]

However, to qualify as a handicap under the FHA, the person must not be currently abusing alcohol and/or drugs. The FHA expressly limits protection to not include "current, illegal use of or addiction to a controlled substance."[20] Although the FHA does not define what it means to be a current drug user, courts rely upon the ADA and the Rehabilitation Act to determine what is "current drug use." At the time of the alleged discrimination the plaintiff must prove he was not using illegal drugs – even if the person later uses illegal drugs again at the time the complaint is filed or at the time of trial.[21] Thus, an individual with an alcohol or drug addiction may qualify for preferential housing rights pursuant to the FHA.

C. NEXUS BETWEEN THE ADDICTION DISABILITY AND HOUSING NEED

Of course, disability due to an alcohol or drug addiction does not immediately entitle an individual to live wherever he or she wants. To qualify as disabled under the FHA, there must be a ***nexus*** that links the treatment of the disability with the need for housing. In the context of sober living homes this nexus arguably exists when living at a particular location is, in and of itself, a means of treating the alcohol or drug disability.

Typically, this nexus is shown by asserting that a supportive, sober residential environment is necessary for sobriety and addiction recovery. Individuals with alcohol or drug addiction allege that such environments foster sobriety, and encourage trust and camaraderie between residents that is necessary for recovery. Plaintiffs argue that they would suffer substantial limitations and risk "falling off the wagon" if not for living in a sober living environment. Courts have agreed with this theory.[22]

Sober living advocates assert this nexus when claiming FHA protection over sober living facilities. For example, when recovering alcohol and drug addicts live together, "house rules" prohibiting the consumption of alcohol and drugs, requiring attendance at "house meetings" to encourage sobriety, mutual support are established. House rules are intended to maximize efforts to cope with, and overcome addiction. Merely living in a sober house may be viewed as a necessary means of accommodating one's disability such that the FHA essentially entitles the right to live there.

Applying the FHA in this way opens the door to any number of living arrangements intended to assist those recovering from alcohol or drug addiction. Essentially, anywhere a sober environment is provided, or where support for addiction recovery is encouraged, might be viewed as location where an alcohol or drug addict may assert FHA protections.

For example, in 2007, the City of Newport Beach attempted to address the "clustering" f multiple unlicensed sober living homes by imposing restrictions on the establishment and operation of "group residential uses," aimed at curbing a perceived saturation of sober living facilities in neighborhoods.[24] Such efforts prompted a lawsuit by an operator, "Sober Living by the Sea," alleging FHA violations and other claims.[24] In addition, Sober Living by the Sea filed a complaint with the U.S. Department of Housing and Urban Development alleging violations of the Federal housing laws. According to the City's website, the City has since settled the lawsuit with Sober Living by the Sea and other sober living home operators.[25] However, certain sober living facilities remain in operation despite continued opposition from residents, and recent reports have indicated that lawsuits by other sober living operators continue.[26] Such events illustrate that FHA may significantly complicate local agencies' efforts to regulate sober living operations, and highlight the means by which sober living operators can challenge local regulation.

D. WHAT LOCATIONS MAY QUALIFY AS SOBER LIVING HOMES PROTECTED BY THE FHA?

Despite the broad application of FHA requirements to locations claiming to offer a sober living experience, there are some limits to applying ıe Act.

First, the FHA itself is limited to "dwellings." The Fair Housing Act makes it unlawful "[t]o refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."[27] A dwelling includes "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families."[28] Although the FHA does not define what a residence is, courts have interpreted the definition of a residence to be the ordinary meaning of the term.[29]

The definition of a dwelling is important because many sober living homes offer short term residencies and experience high turnover rates. Because tenancies at sober living homes vary dramatically the way residents treat their facilities and how they view these facilities are important indicators for whether the structure will be considered a dwelling under the FHA.

Although a dwelling is covered by the FHA, temporary shelters are not. Dwellings must be intended for use as a residence. Two factors determine whether a facility is a dwelling under the FHA: first is whether the facility is intended or designed for occupants who intend to remain : the facility for a significant period; and sec- .nd is whether the occupants of the facility would view it as a place to return to during that period.[30] Courts typically find that a "significant period of time" is longer than one would normally stay in a motel and can be for as short as two weeks.[31]

Locations viewed as "temporary dwellings," such as boarding homes, halfway houses, flop houses, and similar locations, have been found to be "dwellings" under the FHA.[32] Notably, however, a homeless shelter is **not** considered a "dwelling" protected under the FHA because it only provides emergency, overnight shelter.[33] Thus, application of the FHA to such "temporary" sober living establishments may be of limited use in some contexts.

Similarly, in reviewing the differences between a "home" and a "hotel," the more occupants treat the structure like their home by performing tasks such as cooking their own meals, cleaning their own rooms and the premises, doing their own laundry, and spending free time in the common areas the more likely courts will determine that a structure is a dwelling for purposes of the FHA.[34]

Under these definitions, a sober living home may qualify as a home or a hotel depending on how the living situation is arranged. Often, a sober living home does not provide anything more than a bed, while other homes provide actual care, such as prepared meals and cleaning services. Although many sober living homes provide some form of counseling and guidance, sparse supervision is not uncommon and residents who can care for themselves are often allowed a high degree of independence.

IV. HOW DOES A SOBER LIVING HOME ASSERT THE FHA?

FHA violations may be established either by (1) showing ***disparate impact*** based upon a practice or policy of a particular group; or (2) by "showing that the defendant failed to make ***reasonable accommodations*** in rules, policies, or practices so as to afford people with disabilities an equal opportunity to live in a dwelling."[35]

A. DISPARATE IMPACT

To prove disparate impact under the FHA, a plaintiff must demonstrate that the challenged practice actually or predictably results in discrimination.[36] If a plaintiff is able to establish discrimination, the defendant must then prove his or her action further a legitimate government interest and that there is no alternative available to serve the interest would have a less discriminatory effect.[37] Further, when plaintiffs are merely requesting to remove an obstacle to housing, rather than creating new housing units, a local government must establish a more substantial justification for its conduct.[38]

In the context of sober living homes, it is often difficult to prove a disparate impact because similar group living arrangements such as fraternity or sorority houses and other group homes may also be excluded from a particular zone, so a sober living home would have to prove that the exclusion disparately impacts substance abusers more so than those living under different group arrangements.[39] Other types of land use or building regulations, such as building codes, may also be of little value to plaintiffs asserting disparate impact claims because such regulatory measures are applied uniformly.[40]

However, disparate impact analysis is easier to prove when there is evidence of discriminatory intent. For example, in *Oxford House v. Town of Babylon*, the town attempted to evict residents of a sober living home from a single family home because the town code defined a single family home as a building established for the residency of not more than one family.[41] In *Town of Babylon*, an Oxford House was established in a single family neighborhood. Soon thereafter nearby residents complained that they did not want recovering alcoholics and drug addicts living in their neighborhood.[42] Because the record of town council meetings contained discriminatory statements against alcoholics, the court found the town had evicted a sober living home from a single family neighborhood because it disliked alcoholics.[43]

Plaintiffs requested that the town modify the definition of a family. Although the court agreed that the town's interest in its zoning ordinance was substantial, it found that evicting the residents from a sober living home did not further that interest because evidence showed that the house was well maintained, the town had not received many complaints from neighbors, and the house did not alter the residential character of the neighborhood.[44] Relying on the FHA, the court balanced plaintiff's claim of discriminatory impact against the City's justification.[45] When balancing the interests, the discriminatory impact was far greater than the town's interests which may not have been supported by substantial evidence. Further, the court found that two factors weighed heavily in plaintiff's favor. First, evidence of discriminatory intent by the town; and second, evidence that plaintiff wanted the town to eliminate an obstacle to housing rather than suing the city to compel the city to building housing.[46] Consequently, plaintiff had proven a disparate impact under the FHA because the town's policy of preventing a sober living home from being established in a single family neighborhood disparately impacted individuals with alcohol and drug addiction.[47]

B. REASONABLE ACCOMMODATION

Under the FHA, it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling."[48] Under the FHA, a handicap is defined as a physical or mental impairment which substantially limits one or more major life activities of a person.[49] As stated by the Central District of California in *Behavioral Health Services v. City of Gardena*:

> "[A city] must accommodate plaintiffs when the accommodation is necessary [i.e., when plaintiffs' disability prevents them from use of the property unless exceptions are granted] and does not impose undue financial or administrative burdens, or require a fundamental alteration of the zoning program."[50]

An accommodation is reasonable under the FHA if it does not cause undue hardship, fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve.[51] Courts have applied the reasonable accommodations requirements to zoning ordinances and other land use regulations and practices thereby requiring cities to make reasonable accommodations for those disabled under the FHA's definition.[52] Under similar laws, courts have held that even one incident of a denial of reasonable accommodation is sufficient to trigger a violation.[53] Thus, a three-part test is applied in determining whether a reasonable accommodation is necessary: (1) the accommodation must be reasonable and (2) necessary, and must, (3) allow a substance abuser equal opportunity to use and enjoy a particular dwelling.[54] To determine if an accommodation is reasonable the Court must determine whether the accommodation would undermine a legitimate governmental purpose and effect of an existing zoning ordinance, and must consider the benefit to the handicapped person, and the costs associated with such an accommodation.[55] In particular, an accommodation is unreasonable if it would cause an undue financial and administrative burden on the local jurisdiction.[56] In sum, a reasonable accommodation changes a rule of general applicability to make it less burdensome on a handicapped person.

Consequently, courts have held that municipalities must change, waive or make exceptions in their zoning rules to afford people with disabilities the same access to housing as those who are without disabilities.[57] However, a municipality is not required to make fundamental or substantial modifications from its municipal or zoning code to accommodate a disabled person.[58] The crux of the issue often becomes what is considered a reasonable versus a substantial modification.

A local government or private entity must make an accommodation if it is reasonable and necessary to afford handicapped persons equal opportunity to use and enjoy housing.[59] A court will look at many factors to determine whether or not an accommodation would be reasonable, including whether the accommodation would undermine the legitimate purposes of zoning regulations and the benefits that the accommodation would provide to the handicapped person.[60] Further, a reasonable accommodation cannot require an undue financial and administrative burden on a local government.[61] However, the city may not impose unreasonable restrictions if it grants a reasonable accommodation.[62]

C. STANDING AND EXHAUSTION OF REMEDIES

One who seeks a reasonable accommodation from a governmental regulation, ordinance or practice must do so through the agency's established procedure to obtain the relief that he/she seeks. A plaintiff must first provide the governmental entity an opportunity to accommodate the plaintiff through the entity's established procedures used to adjust the neutral policy in question.[63]

The first hurdle plaintiffs must establish when challenging an ordinance or decision by a government body is whether the plaintiff has ***standing***. Issues concerning standing under the FHA are similar to those under other laws for the disabled, such as the ADA. In general, those rules permit non-disabled persons to assert claims under the law on behalf of individuals who are disabled.[64] Under the FHA, one has standing if one would have standing under Article III of the U.S. Constitution.[65] Under the FEHA, any "aggrieved person" may bring suit to seek relief for a discriminatory housing practice.[66] An "aggrieved person" is one who has been injured by a discriminatory housing practice.[67]

An organization is allowed to bring a suit on its own under the FHA when its purpose is frustrated and when it expends resources because of a discriminatory action.[68] For example, in *Fair Housing of Marin v. Combs*, Fair Housing of Marin ("FHM") filed suit alleging discrimination against African-Americans which caused the group to suffer injury to its ability to provide outreach and education to end unlawful discrimination practices and alleging it had to spend additional resources in response to defendant's discriminatory actions.[69] The Ninth Circuit held that FHM established standing to sue under the FHA because the defendant's illegal housing discrimination injured FHM's outreach programs, requiring it to implement alternate programs in the community to compensate for the discrimination.[70]

In addition, an organization is allowed to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interest it seeks to vindicate is germane to the organization's interests; and (3) neither the claim asserted nor the relief requested requires the individual participation of its members.[71]

Perhaps more important than who may bring a lawsuit is whether the lawsuit is ***ripe***. "To prevail on a reasonable accommodation claim, plaintiffs must first provide the governmental entity an opportunity to accommodate them through the entity's established procedures used to adjust the neutral policy in question."[72] In *Oxford House v. City of St. Louis*, the Eighth Circuit found that plaintiff did not have a claim of failure to make a reasonable accommodation when plaintiff had not applied for a variance even after the city had requested that plaintiff (a sober living home with eight residents) first apply for a variance.[73] The court stated, "The Oxford Houses must give the City a chance to accommodate them through the City's established procedures for adjusting the zoning code."[74] However, a plaintiff is not first required to appeal a decision through the local body and may file suit once a reasonable accommodation is first denied.[75] The first approval may require a public hearing which is not considered unreasonable if applied evenly to the handicapped and non-handicapped.[76] Therefore, a public hearing may be required to receive a reasonable accommodation and that alone is not considered unreasonable.

Accordingly, although a disabled individual must first request a reasonable accommodation and follow the local jurisdiction's procedures to receive a reasonable accommodation, it may not have to follow the appeal procedure once the first denial occurs. It is important to note this because a lawsuit is subject to dismissal without a determination of the merits if there is no standing or the issue is not ripe for review.

V. PITFALLS AND POSSIBILITIES IN REGULATING SOBER LIVING SITES

As the foregoing makes clear, FHA claims involving sober living facilities typically involve two competing interests: (1) the interests of individuals recovering from addition, often represented by landowners or organizations which provide addiction recovery services; versus (2) the interests of residents who seek to preserve the "family-friendly" character of their neighborhoods, often represented by city attorneys, county counsel, or other public agency attorneys (or attorneys hired by citizen groups opposed to sober living facilities in their neighborhoods). These disputes arise after a claimed sober living home is established in a single family residential neighborhood bringing with it unfamiliar and seemingly unrelated faces living together, congregating on porches and front yards, or wandering nearby streets. Disturbances arise, eventually leading to phone calls to the police, complaints to the local officials, and ultimately for demands by the city or county to intervene and shut down the sober living home.

It is at this point where FHA requirements may first become a concern. Faced with such claims, local jurisdictions may determine that a sober living site does not operate as a "single family home," but rather constitutes a "board-and-care facility," "rooming house," or similar type of group living facility which may not be permitted in a single family neighborhood, or which my be subject to land use or business permit requirements in order to lawfully operate. Typically, code enforcement citations are issued or other legal steps are taken to enforce such provisions against the facility, in response to which the facility operator or owner raises the FHA as a basis for challenge, asserting that enforcement is unlawful because doing so would infringe upon the fair housing rights of residents, each of which are "disabled" due to their alcohol or drug addiction.

A. THE LEGAL ENVIRONMENT IN WHICH FHA CLAIMS ARE MADE

A local jurisdiction's authority to regulate sober living facilities is derived from its general police powers. Article XI, Section 7, of the California Constitution grants local governments the authority to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."[77] Additionally, the Planning and Zoning Law[78] authorizes cities and counties to regulate the use of buildings and land for residential purposes,[79] and numerous other provisions vest in local agencies broad authority to regulate residential uses and housing within their jurisdictions.[80] When disputes involving sober living facilities arise, cities and counties often seek to regulate the facility's operations or prohibit its existence entirely. *FHA claims are therefore pitted against these authorities. As such, issues triggered by sober living sites often concern local government's legitimate state law powers, and whether they are preempted by the interests sought to be advanced by the FHA.

Significantly, because sober living facilities are a relatively new form of residential use, and because they involve the interplay of unique and technical legal provisions, most local jurisdictions lack a standard land use definition for such facilities in their zoning and regulatory codes. Thus, when problems with sober living facilities ise, municipalities must categorize the facilities within existing land use definitions in order to regulate them. Many local codes define "boarding houses," "rooming houses," or similar types of "group living facilities" as unique residential use which are regulated according to established zoning provisions, often requiring the owner to obtain a Conditional Use Permit or other discretionary approval for the use to occur.

Therefore, a municipality faced with a problematic sober living facility may, for example, assert that the facility is an un-permitted boarding house, and may cite the owner or pursue legal action to shut the facility down based on such authority. Alternatively, where the sober living facility is located in single family zone, a municipality may assert that the sober living facility is an unlawful multi-family use which is prohibited in that location. Similarly, it may claim that that the facility operates as a residential "business," akin to a residential hotel or hostel rather than a residence, and therefore is prohibited in residential zones. Municipalities may also discover building code, housing code, and other technical problems with facilities that have been illegally remodeled to accommodate occupancies beyond that for which the structure was originally designed.

In response to such claims, the sober living operator may rely on the FHA to assert that e city's authorities are unlawful because they either: (a) create a ***disparate impact***, so as to discriminate against disabled individuals (i.e., those with an alcohol or drug addiction); or (b) require ***reasonable accommodation***, so as to grant the site an exemption from strict application of the city's authorities. Plaintiffs filing suit under the FHA often bring actions alleging both ***disparate impact*** and ***reasonable accommodation*** theories.[81] Of course, the analyses for each theory are different. Disparate impact analysis focuses on neutral policies that disparately impact handicapped persons,[82] whereas reasonable accommodation analysis focuses on whether a local jurisdiction could make an exemption to a policy to allow a handicapped person to use and enjoy a dwelling.[83]

Despite the restrictions imposed on a municipality's ability to enforce otherwise generally applicable zoning restrictions, there are some exemptions created by the FHA. Application of these exemptions, however, is often complicated. For example, in *City of Edmonds v. Oxford House*, the Supreme Court dealt with an FHA exemption allowing "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling."[84] Specifically, the Court analyzed a provision of the City's zoning code governing areas zoned for "single family residences."[85] The section at issue defined "family as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons."[86] The Court held that the exemption did not apply to provisions designed to "foster the family character of a neighborhood," and instead applied only to occupancy limits seeking to prevent overcrowding in living quarters.[87] As such, the City's single family residence zoning requirement was not exempt from the FHA, and the City was required to permit operation of the facility.

The maximum occupancy exemption was also at issue in *Turning Point, Inc. v. City of Caldwell*.[88] After receiving complaints from its citizens regarding a dwelling that was housing homeless individuals suffering from disabilities, the City imposed a 15 person occupancy limit on the dwelling.[89] The City imposed the limitation "to preserve the integrity of the neighborhood."[90] However, the court invalidated the limitation after finding it "unreasonable."[91] Instead, the court ordered the occupancy set at 25, a number supported by the City Building Inspector's analysis of the dwelling.[92]

Another FHA exemption was analyzed in *Gibson v. County of Riverside*, which dealt with a City ordinance imposing age restrictions on persons occupying dwelling units in the zoned area.[93] Pursuant to the FHA, developments qualifying as housing for older persons ("HOP") can discriminate based on family status.[94] Analyzing the ordinance at issue, the court cited three requirements, recognized by congress, that must be met by housing developments seeking to qualify as a HOP: 1) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons; 2) the occupation of at least 80 percent of the units by at least one person 55 years of age or older and; 3) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.[95] While the individuals challenging the ordinance were not handicapped in *Gibson*, this exemption does apply to sober living homes, and is valid if the three requirements are met.

Exemptions under the FHA do allow cities some leeway in enforcing zoning and planning schemes. However, because exemptions are exceptions to the general rule prohibiting discrimination, the exceptions are construed narrowly.[96]

B. PRACTICE POINTERS FOR AGENCY COUNSEL AND SOBER LIVING ADVOCATES

Concerns are often greatest when the sober living operator is perceived as "illegitimate." For example, some operators offer housing to individuals with alcohol or drug addiction in "flop-houses" or boarding homes designed to house as many individuals as possible where residents do not follow any sober living regimen and might not be in treatment for addiction. Indeed, the residents may themselves be viewed as vulnerable, emotionally or mentally disturbed individuals who are being taken advantage of because they have few other places to find housing; or they may be viewed as social deviants who feign disability in order to "work the system."

The problems such facilities pose to a neighborhood can be enormous because their residents often do suffer from one or more emotional or mental disabilities, are often unemployed, or loiter in and around the premises, congregate in yards, or create a fearful presence in the neighborhood which disrupts the "family-friendly" character of a traditional single family neighborhood. The outrage voiced by residents and neighbors in such circumstances can be extreme, and the operator may raise the FHA not as a legitimate basis for defense, but as a tactic to remain operating without governmental challenge.

Because of the deference, courts have shown to the FHA operators of "illegitimate" facilities have used the FHA and their residents' disabilities as a tool to avoid local government oversight. An operator facing city enforcement may, for example, assert the FHA's reasonable accommodation requirements as a shield to avoid liability and to coerce the city to allow the facility to remain operating. This stands in stark contrast to "legitimate" sober living facilities, some of which may be licensed by the state or affiliated with hospitals or respected clinics. Such "legitimate" facilities may face similar public outcry, and may likewise assert the protections of the FHA to avoid local government regulation.

For practitioners who represent cities, counties, or interest groups concerned about the potential impact that a sober living facility will have on a neighborhood, facing such claims can be challenging, as passionate residents and public officials demand prompt action ,while concern for potential liability for violating the FHA requires counsel to proceed very cautiously.

Often, applying the FHA's requirements strictly, methodically, and uniformly will "ferret-out" ıe legitimate sober living sites from those that merely use the FHA as a mask for otherwise unprotected operations. Counsel should consider answering the following questions:

1. Are the residents truly "disabled?" Only those with a disability are protected under the FHA. Counsel should verify the claimed disability prior to considering FHA claims. For example, merely claiming that a house is used for "sober living" is insufficient to establish protections under the FHA. Residents must actually be "disabled" meaning they must actually be recovering from alcohol or drug addiction. While an operator may have standing to assert FHA protections on their behalf, this does not waive the obligation to show that residents are in fact disabled. Sites which claim to be "sober living homes," but are fronts for flophouses, may be unable to establish FHA protection. Residents' disabilities should be verified.

2. Is the site a "dwelling?" The FHA applies to "dwellings" only, and while it may be difficult to differentiate between a site which provides in-and-out transitional housing from a true "dwelling," courts have found that merely providing a place for someone to sleep for the night is insufficient. For example, motels are not dwellings, even though some other short term rental situations such as boarding houses, halfway homes, and flop houses are considered ıvellings. Investigating the actual living condi-.ıons and terms of occupancy may help determine whether the site is a "dwelling" under the FHA, or a transitional facility outside the FHA's protections.[97]

3. Does mere "occupancy" at a site make it a "residence?" While case law has not addressed this point, a colorable argument could be made that the FHA applies only to "residences," and not to occupancies which are temporary or transitional in nature. If, for example, a sober living site has a weekly turnover of occupants, it may be a stretch to argue that the FHA was intended to apply to such sites because they do not function as true housing which the FHA was adopted to protect. "Legitimate" sober living facilities typically provide long-term residencies in order to provide a sufficient period for recovery. Focusing on the length of occupancy may be helpful in determining the legitimacy of the facility. Additionally, there is authority to support the proposition that such impermanent occupancies may be excluded from single family residential zones because they do not adhere to the "residential" character of those areas.[98] Although this issue has not been clearly delineated by the courts, excluding sober living sites on this basis may be proper both under the FHA and principles of zoning.

4. Has the *nexus* between the ·sability and the need for housing been .stablished? The FHA applies where housing is needed in order to accommodate disability. Even when reasonable accommodation is sought, it must be "necessary" to address the disability.[99] Thus, in the context of sober living, it must be determined why living at a particular site serves the residents' alcohol or drug addiction. "Legitimate" sober living sites should be able to demonstrate this connection through group living arrangements that support sobriety, encourage recovery through mutual support of housemates, and provide services that help residents cope with their addictions. "Illegitimate" facilities may be unable to show such factors, or may have such routine turnover in occupancy that the connection is too tenuous to be valid.

5. Even if the FHA applies, must *reasonable accommodation* be granted? As noted previously, while disabled individuals are entitled to reasonable accommodation from government restrictions which impact their use or enjoyment of housing, such does not automatically exempt all contrary provisions. Rather, accommodation from government restrictions may be denied if it imposes undue financial or administrative burdens on the agency or requires a fundamental alteration of an agency's zoning provisions.[100] Therefore, rather than "rubber stamp" all requests for reasonable accommodation, a city or county may undertake a formal review of the request and weigh the financial, administrative, and zoning impacts that approving the request would have on the jurisdiction and surrounding community.

6. Can other agency procedures or entitlements resolve the problem? As noted previously, a disabled individual may not pursue reasonable accommodation unless he/she has first sought "traditional" approvals to alleviate barriers to equal use and enjoyment of a dwelling. Thus, where an agency requires an operator to obtain a Conditional Use Permit prior to establishing a sober living facility, the operator must apply for, and be denied, the CUP before he/she may request reasonable accommodation from the CUP requirement. Counsel for the agency may, in such circumstance, advise that the CUP be crafted so as to address the accommodations that the operator otherwise seeks, thus avoiding any FHA issues from arising. Alternatively, counsel may advise the agency to consider reasonable accommodation requests in conjunction with the CUP application, such that requested accommodations can become conditions within the CUP itself. Because these steps require the facility to submit information for agency evaluation, and culminating in a public hearing, employing such procedures may help identify "legitimate" sober living operators. Additionally, such procedures will create a record that will be useful in future proceedings involving the facility.

How an agency responds to a sober living facility often depends, in large part, on the politics of the community. Certain municipalities are known for their "progressive" stance toward accommodating individuals recovering from drug or alcohol addiction. Other municipalities may disfavor such facilities, and may seek to exclude all but the most exclusive sober living facilities from their jurisdictions. When facing those in the latter category, practitioners representing sober living operators, residents in sober living programs, or advocates for sober living facilities would be well served to answer the following:

1. Has verification of disabilities been provided? For FHA protections to apply, true disabilities must be established. Sober living advocates should be prepared to provide proof that residents at a sober living site have been diagnosed with an alcohol or drug addiction, are undergoing treatment for such addiction, or to provide such other evidence to substantiate residents' disabled status. When representing an organization asserting FHA protection on others' behalf, counsel may consider soliciting residents' consent to provide records of medical evaluation or treatment to substantiate disability status. However, counsel should be aware of privacy concerns and the laws governing privacy of health information, including the Federal Health Insurance Portability and Accountability Act (HIPAA).[101] Providing such evidence may go far to "legitimize" the facility and differentiate it from "illegitimate" sites disfavored by cities and counties.

2. Has a *nexus* between the disability and the accommodation been articulated? Courts have recognized that mutually-supportive group living arrangements may be an important accommodation for individuals with alcohol or drug addictions.[102] In order to demonstrate the importance of a sober living environment in recovery, sober living advocates should be prepared to produce evidence demonstrating the connection sober living arrangements have with treating residents' disabilities. Based on well-established precedent applying the FHA, if this showing is established, restrictions on operation may be difficult for a city or county to justify, and the legitimacy of the facility may be enhanced in the eyes of public officials charged with reviewing the site.

3. Is there evidence of *disparate impact* in application or enforcement? There is legal authority to support FHA claims where a city or county enforces its police or zoning powers in a manner that bans or unfairly discriminates against sober living facilities.[103] Thus, sober living advocates should consider whether local zoning and regulatory codes establish unacceptable barriers to the operation of sober living facilities, and whether the jurisdiction has a history of excluding sober living facilities from operating. If such disparate treatment is evident, sober living advocates may be able to persuade the local agency that further exclusions will violate the FHA. Additionally, to the extent that a sober living site causes impacts which are no different than other normal residences in the area, prohibiting the site from operating may be problematic. "Legitimate" sober living sites should fall within this category and enjoy a relatively strong position in negotiating with cities and counties over their operations.

4. Does zoning improperly define "family" when restricting residency? In the context of land use regulation, case law prohibits

government agencies from limiting the definition of a "family" to those related by blood, marriage or adoption.[104] Rather, courts have held that the concept of "family" must be broadly construed to include numerous types of "non-traditional" living arrangements, including group living among individuals who are not related.[105] While not necessarily an FHA concern, such authorities empower sober living operators by enabling them to assert that residents of sober living homes are just as much a "family" as are a husband, wife, and children. Jurisdictions which exclude such living arrangements from the definition of a "family," or which prohibit such arrangements in single family zones where traditional families are otherwise welcome, may be subject to legal challenge. Sober living advocates who can demonstrate that residents, even though unrelated, act as a cooperative "family unit," may be significantly advantaged when facing such challenges by local agencies.

5. Is due consideration given to requests for *reasonable accommodation*? A local agency is required to grant disabled individuals ***reasonable accommodation*** from agency restrictions when necessary for equal use or enjoyment of a dwelling.[106] Where local zoning or regulatory restrictions prohibit group living arrangements, sober living advocates should request reasonable accommodation from such restrictions. Because reasonable accommodation must be granted unless it causes undue financial or administrative burdens to the agency or fundamentally alters an agency's zoning provisions, sober living advocates start with an advantage when presenting reasonable accommodation requests to cities and counties. However, prudent advocates should be prepared to substantiate the requests by demonstrating that the facility will not be burdensome to the agency. For example, submitting evidence as to the facility's internal policies and procedures which are intended to minimize impacts and smoothly integrate the facility into the surrounding neighborhood may go far in any request for reasonable accommodation. Additionally, providing such evidence will demonstrate the "legitimacy" of the site and distinguish it from "illegitimate" facilities which may be problematic for the agency. In short, the FHA provides a number of options which can be helpful in ensuring that communities remain protected without infringing on individuals' rights to fair housing. Practitioners representing local agencies may undertake a number of steps when faced with FHA scenarios which may help to screen "legitimate" facilities from those which use the FHA to mask their motives. Conversely, those representing sober living operators, residents, and advocates should not take the FHA for granted, but should be aware that its provisions must be properly utilized to protect legitimate sober living facilities.

VI. CONCLUSION-QUESTIONSTHAT REMAIN UNANSWERED

While cases have done much to flush out the application of the FHA in the context of sober living regulation, much remains unanswered. For example, while cities and counties may seek to strictly apply the FHA in order to limit the establishment of sober living facilities, courts have not addressed whether doing so violates those agencies' housing requirements, including obligations to maintain adequate affordable housing and to meet regional housing needs allocations.[107]

Perhaps more importantly, however, no cases have addressed whether the FHA applies to "specialized" residential sites, such as locations which exclusively house parolees or probationers, locations which house sex offenders, or locations commonly known as "reentry facilities," which serve as transitional housing for those recently released from prison who are seeking to transition into "normal" life. Such facilities have been increasing over the past several years, and may increase dramatically in the near future, given the Governor's plans to reduce prison overcrowding and federal court-ordered reductions in prison populations.

Thus, while precedent construing the FHA and its application to sober living facilities is helpful to public agency counsel and sober living advocates, the future promises to pose even more questions about the FHA's requirements, and the scope of its protections.

* Matthew M. Gorman is a partner of Alvarez-Glasman & Colvin practicing in the fields of municipal law, land use, real estate law.

Anthony Marinaccio is an Associate Attorney at Alvarez-Glasman & Colvin specializing in real estate and landlord-tenant law.

Christopher Cardinale is a J.D. candidate currently enrolled at Pepperdine Law School.

ENDNOTES

1. The federal Fair Housing Act is codified at 42 U.S.C. § 3601, *et seq.* California's State law counterpart, the California Fair Employment and Housing Act, is codified at Gov't Code § 12900, *et seq.* This article focuses on the requirements of the federal Act, although the California Act is interpreted according to federal law precedent.
2. *Oxford House v. Township of Cherry Hill* (N.J. 1992) 799 F.Supp. 450, 453.
3. http://www.oxfordhouse.org/userfiles/file/oxford_house_history.php.
4. *Tsombanidis v. West Haven Fire Dept.* (2d Dist. 2003) 352 F.3d 565, 570.
5. See fn. 24, *ante.*
6. Health & Safety Code § 1500, *et seq.*
7. Health & Safety Code § 11834.01, *et seq.*
8. *See, e.g.*, Health & Safety Code § 11834.01(a) (alcohol or drug abuse recovery or treatment facilities licensed by the Department of Alcohol and Drug Programs are defined as: "any premises, place, or building that provides 24-hour residential non-medical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug recovery treatment or detoxification services.").
9. Cal. Op. Atty. Gen. 07-601.
10. Cal. Govt. § 12926.
11. 42 U.S.C. § 3602(h).
12. *Oxford House v. Township of Cherry Hill*, (D.N.J. 1992) 799 F.Supp. 450, 459 ("Congress contemplated alcoholism and drug addiction as being among the kinds of "impairments" covered under this definition.").
13. *Id.*
14. See, *Oxford House v. Township of Cherry Hill*, 799 F.Supp. 450, 459 (D.N.J. 1992).
15. 24 CFR § 100.201(a)(2).
16. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1219.
17. *Regional Economic Community Action Program v. City of Middletown* (2d Dist. 2001) 294 F.3d 35, 46.
18. *Id.*
19. *Id.* at 47.
20. 42 U.S.C. § 3602(h).
21. *Fowler v. Borough of Westville* (N.J. 2000) 97 F.Supp.2d 602, 609.
22. *Id.*
23. City of Newport Beach Ordinance No.'s 2007-8, 2008-05.
24. Claims were brought pursuant to the FHA, the Americans with Disabilities Act, the Rehabilitation Act of 1974 (29 U.S.C. § 794 et seq.), 42 U.S.C. § 1983, California Fair Employment & Housing Act, the California Alcohol & Drug Program (Health & Safety Code § 11834 et seq.), California Civil Code § 52.1, and federal and state causes of action for inverse condemnation.
25. Settlement agreement available at www.newportbeachca.gov.
26. *See, e.g.*, Brianna Bailey, *Daily Pilot*, "Civic Center Costs Mulled" (Oct. 27, 2009) (describing City of Newport Beach City Council hearing approving continued operation of Pacific Shores Recovery, a sober living facility which underwent City review, and noting additional sober living operators which either have lawsuits against the City or are pursuing administrative review pursuant to the City regulatory provisions).

27. 42 U.S.C. § 3604(a) (emphasis added).
28. 42 U.S.C. § 36502(b).
29. *Mills Music, Inc. v. Snyder* (1985) 468 U.S. 153, 164.
30. *Lakeside Resort Enterprises v. Board of Supervisors of Palmyra* (3d Cir. 2006) 455 F.3d 154, 158.
31. *Id.* at 159.
32. *Schwarz v. City of Treasure Island* (11th Cir. 2008) 544 F.3d 1201, 1214.
33. *Johnson v. Dixon* (D.D.C. 1991) 786 F.Supp. 1, 4.
34. *Schwarz v. City of Treasure Island*, 544 F.3d at 1214-1215.
35. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1219.
36. *Oxford House v. Town of Babylon* (E.D.N.Y. 1993) 819 F.Supp. 1179, 1182.
37. *Id.*
38. *Id.* at 1185.
39. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1220.
40. *Tsombanidis v. West Haven Fire Dept.* (2d Dist. 2003) 352 F.3d 565, 574-75.
41. *Oxford House v. Town of Babylon* (E.D.N.Y. 1993) 819 F.Supp. 1179, 1181.
42. *Id.*
43. *Id.*
44. *Oxford House v. Town of Babylon* (E.D.N.Y. 1993) 819 F.Supp. 1179, 1181
45. *Id.* at 1183.
46. *Id.*
47. *Id.*
48. *Oxford House, Inc., v. Town of Babylon*, 819 F.Supp. 1179, 1185 (E.D.N.Y. 1993), citing 42 U.S.C. § 3604(f)(3)(B).
49. 42 U.S.C. § 3602(h).
50. *Behavioral Health Services v. City of Gardena* (C.D. Cal. Feb. 26, 2003) No. CV 01-07183, 2003 WL 21750852.
51. *Township of Cherry Hill*, 799 F.Supp. at 463-66.
52. See, *Township of Cherry Hill*, 799 F.Supp. at 462-63; *Horizon House Developmental Service Inc., v. Town of Upper Southampton*, 804 F. Supp 683, 699-670 (E.D.Pa. 1992); *Stewart B. McKinney Foundation, Inc., v. Town Plan & Zoning Commission of the Town of Fairfield*, 790 F.Supp. 1197, 1221 (D.Conn. 1992).
53. *A.M. v. Albertsons, LLC* (2009) Cal. Ct. of Appeal, First App. Dist., Case No. A122307.
54. *The Corporation of the Episcopal Church of Utah v. West Valley City* (D. Utah 2000) 119 F.Supp.2d 1215, 1221.
55. *Id.*
56. *Id.*
57. *Oxford House, Inc., v. Town of Babylon*, 819 F.Supp. 1179, 1186 (E.D.N.Y. 1993); *Horizon House Developmental Service Inc., v. Town of Upper Southampton* (E.D.Pa. 1992) 804 F. Supp 683, 699.
58. *Sanghvi v. City of Claremont* (9th Cir. 2003) 328 F.3d 532.
59. 42 U.S.C. § 3604(f)(3).
60. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1221.
61. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1221.
62. *Behavioral Health Services v. City of Gardena* (C.D. Cal. February 26, 2003) No. CV 01-07183, 2003 WL 21750852.
63. *Tsombanidis v. West Haven Fire Dept.* (2d Cir. 2003) 352 F.3d 565, 578.
64. In a recent case, for example, a teacher who was retaliated against after advocating for disabled students has standing to sue under the Rehabilitation Act and the ADA. *Barker v. Riverside County Office of Education* (9th Cir. Cal. 2009) 2009 DJDAR 15159.
65. *Smith v. Pacific Properties* (9th Cir. 2004) 358 F.3d 1097,1102.
66. Gov't Code § 12989.1.
67. Gov't Code § 12927(g).
68. *Fair Housing of Marin v. Combs* (9th Cir. 2002) 285 F.3d 899.
69. *Id.* at 905.
70. *Id.*
71. *Smith v. Pacific Properties and Development Corp.* (9th Cir. 2004) 358 F.3d 1097, 1101.
72. *Tsombanidis v. West Haven Fire Dept.* (2d Cir. 2003) 352 F.3d 565, 578.
73. *Oxford House v. City of St. Louis* (8th Cir. 1996) 77 F.3d 249.
74. *Id.* at 253.
75. *Bryant Woods Inn v. Howard County* (4th Cir. 1997) 124 F.3d 597, 601-602.
76. *U.S. v. Village of Palatine* (7th Cir. 1994) 37 F.3d 1230, 1234.
77. Cal. Const. Article XI, § 7.
78. Gov't code 65000, *et seq.*
79. Gov't Code 65850.
80. Gov't Code 65103 (regulation pursuant to general plan designations); Gov't Code 66410, *et seq.* (regulation through implementation of Subdivision Map Act).
81. *Oxford House v. Township of Cherry Hill* (D.N.J. 1992) 799 F.Supp. 450.
82. *Tsombanidis v. West Haven Fire Dept.* (2d Cir. 2003) 352 F.3d 565, 574-75.
83. *Id.* at 578.
84. 42 U.S.C. 3607(b)(1).
85. City of Edmonds v. Oxford House. (1995) 514 U.S. 725, 728.
86. *Id.*
87. *Id.*
88. *Turning Point, Inc., v. City of Caldwell* (1996) 74 F.3d 941.
89. *Id.* at 943.
90. *Id.*
91. *Id.* at 944.
92. *Id.*
93. *Gibson v. County of Riverside* (2002) 181 F.Supp.2d 1057, 1072.
94. *Id.* at 1075.
95. *Id.* at 1075, 1076.
96. *City of Edmonds v. Oxford House, Inc.* (1995) 514 U.S. 725, 731.
97. *Schwarz v. City of Treasure Island* (11th Cir. 2008) 544 F.3d 1201.
98. *Ewing v. City Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579, 1593.
99. *Behavioral Health Services v. City of Gardena*, No. CV 01-07183, 2003 WL 21750852, 10 (C.D. Cal. February 26, 2003).
100. *Oxford House v. Township of Cherry Hill* (D. N.J. 1992) 799 F.Supp. 450, 462; *Behavioral Health Services v. City of Gardena* (C.D. Cal. February 26, 2003) No. CV 01-07183, 2003 WL 21750852, 10.
101. 45 CFR §§ 160, 162, 164; Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
102. *Oxford House v. Township of Cherry Hill* (D. N.J. 1992) 799 F.Supp. 450, 460.
103. *Oxford House v. Town of Babylon* (E.D.N.Y. 1993) 819 F.Supp. 1179, 1182-1185.
104. *City of Santa Barbara v. Adamson* (1980) 27 Cal. 3d 123, 132-33; *City of Chula Vista v. Pagard* (1981) 115 Cal.App.3d 785, 795; *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 687-88.
105. *Id.*
106. *Tsombanidis v. West Haven Fire Dept.* (2d Cir. 2003) 352 F.3d 565, 578.
107. California Housing Development Law, Gov't Code § 65913, *et seq.*; California Housing Element Law, Gov't Code § 65580, *et seq.*

Tab C

STAFF REPORT

To: Mayor Schiller
From: Todd Baun, Director of Public Works
Date: April 7, 2017
Re: Current Non-Agenda Activity

Mark Reed Update

Great Rivers BHO invited Paul Morrison and I to participate in a meeting on March 27th, at 1pm, to walk through the Mark Reed facility with the Telecare, the architects selected to do the design/build, and Summit Pacific. It was an initial walk through for the architects, as well as some Q&A with the folks from Summit Pacific about specifics of the facility.

Building and Planning Staff Report

To: Mayor and City Council
From: Paul Morrison
Date: April 1st, 2017
Re: March, Building and Planning Department activities.

New Permit Activities for March 2017

420 South 1st Street	New SFR	Total Fee $ 10,561.70
638 South Main Street	Replace sheathing on roof	Total Fee $ 291.50
218 East Pine Street	Replace sheathing on roof	Total Fee $ 225.50
420 South 1st Street	New driveway approach	Total Fee $ 95.00
471 East Mommsen Road	Install ductless heat pump	Total Fee $ 87.70
509 South 2nd Street	Install ductless heat pump	Total Fee $ 87.70
Building Department Related Revenues	Total fees charged for March $ 11,349.10	Total fees collected for March $ 5,663.53

Permit Activity Totals

New Homes Permitted for 2017 1	All Permits Issued for 2017 18	Total Fees Charged for 2017 $ 14,492.30
New Homes Permitted for 2016 24	All Permits Issued for 2016 170	Total Fees Charged for 2016 $ 249,258.60
New Homes Permitted for 2015 2	All Permits Issued for 2015 52	Total Fees Charged for 2015 $ 52,499.28
New Homes Permitted for 2014 3	All Permits Issued for 2014 89	Total Fees Charged for 2014 $ 59,695.93
New Homes Permitted for 2013 3	All Permits Issued for 2013 79	Total Fees Charged for 2013 $ 69,743.57
New Homes Permitted for 2012 6	All Permits Issued for 2012 97	Total Fees Charged for 2012 $ 123,164.28
New Homes Permitted for 2011 1	All Permits Issued for 2011 37	Total Fees Charged for 2011 $ 24,803.65

Building and Planning Staff Report

Nuisances for the Month of March
427 South Main Street
- Storing recreational vehicle on city ROW
- Storing unused non running vehicle on property

225 West Simpson Avenue
- Lemay's garbage service

509 West Simpson Avenue
- Hole was dug along sidewalk

Notice of Abatement Issued for the Month of March
None

Notice of Infractions Issued for the Month of March
None

Criminal Citations Issued for the Month of March
None

Resolved Municipal Code Violations for the Month of March
119 East Cedar Street (Pile of debris in the yard)
225 West Simpson Avenue (Lemay's garbage service)

There are several properties that have contacted me and I am currently working with them to comply. There are several that have yet to contact me or comply.

STAFF REPORT

To: Mayor Schiller
From: Paul Nott, Light & Power
Date: April 7, 2017
Re: March Report

	Monthly Statistics;	YTD Totals;
New Services;	**9**	**16**
System Outages;	**1**	**7**
Pole Replacements;	**2**	**3**
Maintenance Work Orders;	**1**	**11**
Billable Work Orders;	**9**	**16**

The month of March consisted of 9 new service connections, 1 outage, and line maintenance.

We had 9 new service connections this month due to the increase in residential construction in our service area.

The outage was a result of a transformer failure.

We continue to proceed with line maintenance throughout our service area.

This month we will be starting the fire hall addition. Primarily, City staff will get the concrete work done and then construction will hopefully be completed by volunteers from the fire department and local citizens.

Once the weather breaks we will be back on the cut over along with our normal customer service work as well.

Feel free to contact us with any questions or concerns…

City of McCleary
Cash Handling

Effective Date:

Table of Contents

Section 1. Purpose

Strong internal controls for cash collection are necessary to prevent mishandling of city funds and are designed to safeguard and protect employees from inappropriate charges of mishandling funds by defining their responsibilities in the cash handling process. The City cash handling policy requires that departments receiving cash be approved by the Finance Department and be designated as cash collection points. A cash collection point is defined as a department that handles cash on a regular basis.

"Cash" is defined as coin, currency, checks, and credit and debit card transactions.

Required procedures for cash collection include the following:

1. Accounting for cash as is it received.
2. Adequate separation of duties which includes cash collecting, depositing and reconciling.
3. Proper pre-numbered receipts given for any cash received by BIAS.
4. Approval of voided cash receipts by BIAS.
5. Deposit of cash over $1,000 promptly into an authorized City account.
6. Reconciliation of validated deposit forms to supporting cash register receipts.
7. Approval by the Finance Department of any changes in cash handling procedures.
8. Proper safeguarding of cash.

The use of non-city checking or other bank accounts by City personnel for depositing City cash is prohibited. The Finance Department will conduct periodic reviews of cash handling procedures.

Section 2. Who Should Know About This Policy

Any official or administrator with responsibilities for managing City cash receipts and those employees who are entrusted with the receipt, deposit and reconciliation of cash for City related activities.

Section 3. Procedure

Establishing Cash Collection Points

The Finance Department must authorize all cash collection points. The main cash collection point will be City Hall. Additional departments (i.e. Police Department, off site events such as the annual Cleanup Day) may require status as a cash collection point if city funds are collected. Prior to authorization, the department must make the request to the Clerk-Treasurer that includes:

1. Reason(s) why cash collection point is needed.

2. A list of those positions involved with the cash collection point, a description of their duties and how segregation of duties will be maintained.

3. A description of the reconciliation process, including frequency of reconciliation.

4. A description of the process for safeguarding cash until it is deposited.

The request will be reviewed, and if appropriate, approved by the Clerk-Treasurer.

Procedures for Cash Collection Points

The following list of procedures is required for the operation of cash collection points:

1. All cash received must be recorded through an individual cash drawer and entered in BIAS. The customer is presented a numbered receipt issued and printed from BIAS.

2. Cash collection must maintain a clear separation of duties. An individual should not have complete responsibility for more than one of the cash handling components: collecting, depositing and reconciling without a secondary signature.

3. The funds received must be reconciled between the cash drawer and the BIAS Software system at the end of the day. Each cashier has their own cash drawer. Cash must be reconciled separately from checks/credit cards by comparing actual cash received to the cash total entered in BIAS. BIAS separates cash from checks and cards.

4. All checks, cash and credit card receipts must be protected by using a cash register or safe until they are deposited. A secure area for processing and safeguarding funds received is to be provided and restricted to authorized personnel.

5. Checks must be made payable to the City of McCleary and must be endorsed promptly with a restrictive endorsement stamp payable to the City.

6. Checks or credit card transactions will not be cashed or written for more than the amount of purchase with the intention of receiving cash back. Any check written for more than what is owed will be added to the account as a credit balance.

Receipts of more than $1,000.00 in the cash drawers must be deposited on a daily basis.

All funds must be deposited intact, and secured in a plastic security bank deposit bag.

Refunds or expenditures must be paid through the appropriate budget with a City generated check through accounts payable.

The Clerk-Treasurer will reconcile the monthly bank accounts by using BIAS reconciliation software and the City monthly bank statements.

Section 4. Instructions

Cash received in person

1. A receipt must be issued for each payment received. Receipts must include the date, mode of payment (cash, check or credit card), and the person issuing the receipt.

2. All checks must be endorsed immediately with a restrictive endorsement stamp payable to The City.

3. Only authorized cashiers are allowed to access a cash drawer.

4. Cash must be kept in a locked cash drawer or safe until it is deposited.

Cash received Through the Mail and Drop Box

1. The mail must be opened as soon as possible and all checks must be endorsed with a restrictive endorsement stamp. All receipts of coin or currency received by mail or picked up in the payment drop boxes must be logged and verified by two people.

Balancing of Cash Receipts

1. All funds collected must be balanced daily, by mode of payment, by comparing the total of the cash, checks and credit cards to the totals entered in BIAS receipting system, including the totals of the money received by mail or drop box.

2. Over/short amounts must be recorded on the daily balance sheet and investigated and resolved to the extent possible. Two people will independently verify the amounts and reconcile the deposit. See Procedures for Cash Register Out of Balance Conditions.

Preparation of Deposits

1. Checks must be made payable to The City of McCleary. A calculator tape of the individual cash drawer checks should be included with the checks bundled together. A tape of all drawer bundles will be added to the final deposit.

2. Cash and coin must be recorded on the deposit slip in the appropriate space.

3. All daily transactions are balanced to the individual cash drawers and a report is printed from BIAS per drawer. A second employee verifies and signs the balanced drawer total.

4. Two employees prepare and sign the daily cash reconciliation and prepare deposit.

5. The utility payments/treasurer receipts deposit must be delivered to the bank on a daily basis if over $1,000.

6. Plastic security bank deposit bags are available at the Finance Department for use when depositing in the Night Drop Box.

Reconciliation of Cash Collected

1. The Clerk-Treasurer reconciles the bank accounts to the bank statements each month. A Treasurer's Report is printed, showing balanced accounts and provided to the Council for signature.

Section 5. Exceptions

The Finance Department must approve exceptions to these procedures. For example, in cases where there is not enough staff available to maintain complete separation of duties, an alternate process to safeguard City funds must be established and approved by the Finance Department.

Section 6. Record Retention

All cash receipts and related documents must be maintained in accordance with Record Retention schedules. Cash drawer reconciliations, deposit deposits, credit card receipts, copies of manual cash receipts, etc. should be kept for six years.

Section 7. Procedures for Cash Register Out of Balance Conditions

Utility Clerk or other employee verify out of balance condition:

1. Re-check all figures on a reconciliation sheet.

2. Verify Daily Reconciliation to the checks and cash from the cash drawer.

3. Check the adding tape used for the cash drawer checks for any errors.

4. Re-count money, making sure that no bills or checks are stuck under the cash drawer, all denominations are together, and no bills are commingled in the wrong slot (i.e. $10 bill in the $1 slot, etc).

Check the office area (trash cans, behind the counter, the floor area around the register, under the cash register) to see if a check or cash was dropped or misplaced.

Check with the other employees if they had any over/under rings, unusual transactions, or issues with BIAS that could have resulted in the discrepancy.

If the shortage still has not been reconciled by the Utility Clerk or other employee, the Clerk-Treasurer will:

1. Follow steps 1 to 4 above.

2. Record and report the discrepancy. For overages or shortages of $25.00 or more, you must notify the Mayor.

3. Shortages or overages must be officially documented and recorded the day of the occurrence in the departmental accounting records.

City of McCleary
Utility Billing

Effective Date:

Table of Contents

Section 1. Utility Billing

The City of McCleary reads the power and water meters between the 13th and the 16th of each month. This reading will be for consumption from the 16th to the 15th of the prior month. This bill is processed and mailed out at the end of each month. Payment is due on the 15th of each month. A penalty of 5% shall be assessed against all past due amounts on the next business day after the due date.

A yellow shut off notice will be sent with all past due billing statements. The yellow shut off notice will include the past due amount and the due date to avoid shut off. The past due amount must be paid before 10:00 am on the second Monday of the following month. If it is not paid, a $20.00 service fee will be applied. A door tag will be hung on the second Tuesday of the month, notifying the customer of the past due amount, plus the 20.00 service fee. The past due amount plus the $20.00 service fee must be paid before 10:00 am on the second Wednesday of the month to avoid a disconnection of utilities.

There will be an after hour turn on fee assessed of $50.00 after 4:00 pm and on weekends.

A customer moving in or out will receive a prorated billing. A prorated final billing is due on the last day of the month it was processed.

Section 2. Change of Occupancy

All new customers must fill out an application for utilities and provide a copy of their Driver's License or other State issued current picture I.D. The customer of record that requested service is responsible for all charges on the account until the City has been officially notified of any changes. A Utility Shut off form or an email is required to make a change of occupancy or a turn on/off of service. The Utility Billing department must be notified when services are no longer required or billing will continue until notification has been received.

Section 3. Home Owners

If you rent your property, you are responsible for having the water/power turned on and off when there is a change in renters. Failure to notify the City that the water/power is to be turned off when a change occurs will result in additional charges.

A previous tenant's outstanding bill must be paid in-full before a new tenant can put the utilities into their name.
If a tenant is past due, the landlord will automatically receive a copy of the yellow shut off notice.
A landlord can choose whether or not to receive a copy of the tenant's monthly billing statement.

Any outstanding utility bill that is unpaid by a tenant will be the responsibility of the landlord to pay.

The City does not collect deposits for utilities. It is the responsibility of the landlord to collect

8.16.010 Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this chapter.

Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies

Unless the context requires otherwise, the following mean:

A. "Abate" means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the enforcement officer determines is necessary in the interest of the general health, safety and welfare of the community.

B. "APPROVED" means, approved by the public works director, enforcement officer or designated person.

C. "CONDEMN" means, to adjudge unfit for occupancy or use.

D. "EXTERIOR PROPERTY" means, the open space on the premises and on adjoining property under the control of owners or operators of such premises.

E. "EXTERMINATION" means, the control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, and trapping or by any other approved pest elimination methods.

F. "Fire hazard" means anything or act which increases or may cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing or extinguishing fire or any thing or act which may obstruct, delay, hinder or interfere with the operations of the fire department or the egress of occupants in the event of fire.

G. "IMMINENT DANGER" means, a condition which could cause serious or life-threatening injury or death at any time.

H. "INFESTATION" means the presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.

H. "INOPERABLE MOTOR VEHICLE" means, a vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power, including but not limited to automobile, trailer, truck, or other such vehicle, or any vehicle hulk, motorcycles, snowmobiles or other motorized recreational vehicles.

I. "LET FOR OCCUPANCY OR LET" means, to permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

J. "MMC" means, McCleary Municipal Code.

K. "OCCUPANT" means, any individual living or sleeping in a building, or having possession of a space within a building and/or any person who has charge, care or control of a structure or premises and/or a person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

L. "STRICT LIABILITY OFFENSE" means, an offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

M. "STRUCTURE" means, that which is built or constructed or a portion thereof.

H. "Junk" includes, all motor vehicles not currently licensed, old or unusual motorized or nonmotorized vehicle or vehicle parts, abandoned automobiles, old machinery, old machinery parts, old appliances, or parts thereof, old iron or other metal, glass, paper, lumber, wood, or other waste or discarded material.

I. "Person" means a natural person, firm, partnership, association or corporation, whether he is acting for himself or as representative or agent of another.

~~B. "Person in charge of property" means an agent, lessee, contract purchaser or other person having possession or control of property or the supervision of any construction project.~~

J. "OWNER" means, any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

K. "Person responsible" means:

1. ~~The owner;~~

1. **The owner, as defined in subsection J of this section;**

~~2. The person in charge of property, as defined in subsection B of this section;~~

~~3. The person who caused to come into or continue in existence a nuisance as defined in the ordinance codified in this chapter or another ordinance of this city.~~

2. The owner and/or occupant who caused to come into or continue in existence a violation in the ordinance codified in this chapter or another ordinance of this city.

L. "Public place" means a building, public street, alley or right-of-way, place or accommodation, whether publicly or privately owned, open and available to the general public.

~~E. "Premises" means and includes property, landscaping, plantings, trees, bushes, fences, buildings, fixtures and exterior storage of personal property, equipment, supplies and vehicles.~~

M. "Premises" means and includes property, landscaping, plantings, trees, bushes, fences, buildings, fixtures and exterior storage of personal property, equipment, supplies and vehicles, including any structures thereon.

~~F. "Officer," "enforcement officer," or "designated person": the officer or designated person for the purpose of the ordinance codified in this chapter shall mean either the public works director or police chief, as may be applicable under the circumstances and subject to the provisions of RCW 35A.12.100.~~

N. "Officer," "enforcement officer," or "designated person": the Public Works Director, Police Chief or his/her designee, is charged with the administration and enforcement of this code.

~~O. "Nuisance": unless the context of the use of the term in a particular section or the specific language of this code otherwise provides or requires, for purposes of this code a "nuisance" or a "public nuisance" consists in an occupation, use of property, a thing, unlawfully doing an act, or omitting to perform a duty, which occupation, use, thing, act or omission:~~

~~1. Unreasonably annoys, injures or endangers the comfort, repose, health or safety of the public or others; or~~

~~2. Unreasonably offends decency; or~~

~~3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage or use, any lake, stream, canal or basin, or any public park, square, street, alley or highway; or~~

~~4. In any way renders other persons unreasonably insecure in life or the use of property; or~~

~~5. Unreasonably obstructs the free use of property so as to essentially interfere with the comfortable enjoyment of life and property.~~

(Ord. 616 § 1, 1995)

8.16.015 Administration.

The enforcement officer charged with the enforcement of this code, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The enforcement officer or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the department of property maintenance inspection, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

The enforcement officer shall enforce the provisions of this code and shall have authority as necessary in the interest of public health, safety and general welfare, to adopt and promulgate rules and procedures; to interpret and implement the provisions of this code; to secure the intent thereof; and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire performance requirements specifically provided for in this code, or of violating accepted engineering methods involving public safety.

The enforcement officer shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

The enforcement officer shall issue all necessary notices or orders to ensure compliance with this code and shall keep records of all notices or orders specified in the provisions of this code.

8.16.017 Public nuisance defined.

Every act unlawfully done and every omission to perform a duty, which act or omission:

A. Annoys, injures or endangers the safety, health, comfort or repose of the citizens of the city;

B. Unlawfully interferes with, distracts, or tends to obstruct or renders dangerous for passage, a public park, street, alley, highway or other public area; or

C. In any way renders any citizens of the city insecure in life or use of property, shall constitute a public nuisance.

8.16.020 Public nuisance declared.

Each of the following conditions, unless otherwise permitted by law, is declared to constitute a public nuisance, and whenever the enforcement officer determines that any of these conditions exist upon any premises or structure, the enforcement officer may require or provide for the abatement thereof pursuant to this chapter.

Every successive owner of property who neglects to abate any continuing nuisance upon or in the use of such property caused by a former owner, is liable therefor in the same manner as the owner who created it.

The construction, maintaining, using, placing, depositing, causing, allowing, leaving or permitting to be or remain in or upon any private or public lot, building, structure, or premises, on, in or upon any street, avenue, alley, park, parkway, or other public or private place in the city, any one or more of the following places, conditions, things or acts to the prejudice, danger or annoyance of others:

1. Accumulations of manure, rubbish or other solid waste: provided that, a compost pile so covered or concealed as not to affect the health, safety or value of adjacent property shall not be so deemed.

2. All structures and exterior property shall be kept free from insect and rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved

processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation. The owner of any structure shall be responsible for extermination in the public or shared areas of the property. The occupant shall be responsible for the continued rodent and pest-free condition of the premises.

3. All limbs or trees overhanging a public sidewalk which are less than nine feet above the surface of said sidewalk or overhanging a city street which are less than fourteen feet above the surface of said street.

4. Any violation of the McCleary Municipal Code.

5. Causing or allowing garbage, waste, refuse, litter, debris, or other offensive materials, to be collected or deposited, or to remain in any place in the city, to the annoyance of any person, unless otherwise permitted by law.

6. Premises or residences:

   a. Which are in such a state of decay as to cause an offensive odor, or

   b. Which are in an unsanitary condition, or

   c. Which create or constitute an unreasonable risk of fire or public safety hazard for adjoining property owners, whether public or private.

7. All premises and exterior property shall be maintained free from weeds or plant growth in excess of 18 inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses. If the occupant and/or owner fails or neglects to destroy and remove noxious weeds and rubbish, after notice as issued, the city may go upon or authorize and direct the proper offices to go upon the premises, cut and remove therefrom, noxious weeds and rubbish, the jurisdiction shall institute appropriate action against the owner of the premises or structure for the recovery of such costs.

8. Ponds or pools of stagnant water: except those areas of wetlands as designated by city, federal or state laws, rules or regulations;

9. Privies, vaults, cesspools, sumps, pits, or like places which are not securely protected from flies and rats or which are foul or malodorous;

10. All unused, abandoned or discarded refrigerators, ice boxes, or like containers which are left in any place exposed or accessible to children; or any water closet, bathtub, or other appliance;

11. All places not properly fenced which are used or maintained as junkyards or dumping grounds, or for the wrecking, disassembling, repair or rebuilding of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which said places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others.

~~12. Deposit, keep or leave or to permit to be deposited, kept or left in any place accessible to children, or in any place viewable from a public street or alley, any abandoned, unused, unlicensed, nonrunning or discarded automobile, trailer, truck, or other such vehicle, or any vehicle hulk or any part thereof. For the purposes of this subsection, "abandoned, unused, nonrunning" refers to a vehicle which is not movable under its own power and which has been in a stationary position for more than fourteen days.~~

13. **Except as provided for in other regulations, no inoperable motor vehicle shall be deposited, keep or leave or to permit to be deposited, kept or left in any place accessible to children, or in any place viewable from a public street or alley, inoperative, abandoned, unused, non-running or discarded inoperable motor vehicle, or other such vehicle, or any vehicle hulk or any part thereof, shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, damaged to the extent it prevents normal operation, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth, or disassembling, repair or rebuilding of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind or of any of the parts thereof.**

Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

~~This section shall not apply to junk kept in a duly licensed junkyard, automobile wrecking yard, automobile sales lot or automobile repair shop.~~

~~The term "junk" as used in this section includes all motor vehicles not currently licensed, old or unusual motorized or nonmotorized vehicle or vehicle parts, abandoned automobiles, old machinery, old machinery parts, old appliances, or parts thereof, old iron or other metal, glass, paper, lumber, wood, or other waste or discarded material;~~

14. This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children;

15. The depositing or burning of or causing to be deposited or burned in any street, alley, sidewalk, park, parkway, or other public place which is open to travel, any hay, straw, grass, grass clippings, papers, wood, boards, boxes, leaves, manure, or other rubbish or material except by permission of the fire marshal;

16. The existence of any dead, diseased, infested or dying tree that may constitute a danger to property or persons. No tree on property which abuts upon a street or public sidewalk shall interfere with street or sidewalk traffic;

17. All shrubs, bushes, trees or vegetation which have grown and are in such a condition, whether as the result of size, flammability or state of decay, constitute a fire hazard;

18. Any tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire, pipe, metal articles, plaster, and all other trash or abandoned material, unless the same is kept in covered bins or metal receptacles approved by the director of public works and further except for recyclables kept in approved containers;

19. Any trash, litter, rags, accumulations of empty barrels, boxes, crates, packing cases, mattresses, bedding accessories, packing hay, straw, or other packing material, scrap iron, tin, pipe, and other metal not neatly piled;

20. Lumber, roofing or siding materials, logs, or pilings not so stacked, piled or arranged as to be free from being dangerous to or/and accessible to children;

21. Any of the following not properly secured from access by the public: provided that the building official shall have concurrent jurisdiction in relation to any covered structures:

    a. Any unsightly or dangerous building, billboard, or other structure, or

    b. Any abandoned or partially destroyed building or structure, or

    c. Any building or structure commenced and left unfinished for a period of more than six months from the date of the issuance of any applicable building permit.

22. Repair upon the public streets, alleys or other public property of the city, of any automobile, truck, or other motor vehicle or any other device required to possess a license issued by the Department of Motor Vehicle/Licenses of this state or the state of its registration except for emergency repairs not to exceed forty-eight hours in any seven-day period and only so long as it is so located as to not constitute a hazard or unreasonable interference to pedestrian or motor veicle travel.

23. Any putrid, unsound or unwholesome bones, meat, hides, skins, skeletons, or other whole or part of any dead animal, fish or fowl, butcher's trimmings and offal, or any waste, vegetable or animal matter, in any quantity, garbage, human excreta, or other offensive substance, provided nothing contained in this chapter shall prevent the temporary retention of waste in receptacles in the manner approved by the director of public works of the city or the local disposal company.

24. Except to the extent allowed by the lawful terms of a permit issued by the governmental authority having jurisdiction thereof, burning or disposal of refuse, sawdust, or other material in such a manner to cause or permit ashes, sawdust, soot or cinders to be cast upon the streets or alleys of the city, or to cause or permit dense smoke, noxious fumes, ashes, soot or gases arising from such burning to become annoying or injurious to the health, comfort or repose of the general public.

25. The existence of any vines, plants growing into or over any street, sidewalk, public hydrant, pole or electrolier, or the existence of any shrub, vine or plant, growing on, around, or in front of any hydrant, stand pipe, sprinkler system connection, or any other appliance or facility provided for fire protection purposes in such a way as to obscure the view thereof or impair the access thereto, or obstruct or interfere with the proper diffusion from the light from any street lamp, or obstruct the vision of vehicle or pedestrian traffic.

26. Any poisonous or harmful substance which is reasonably accessible to persons or to animals;

27. The existence of any fence or other structure or thing on private property abutting or fronting upon any public street, sidewalk or place which is in a sagging, leaning, fallen, decayed, or other dilapidated or unsafe condition;

28. Poultry which creates a nuisance;

29. To dispose of animals within the city;

30. All trees, hedges, billboards, fences, or other obstructions which prevent persons from having a clear view of traffic approaching an intersection from cross streets in sufficient time to bring a motor vehicle driven at a reasonable speed to a full stop before the intersection is reached;

31. All explosives, inflammable liquids, and other dangerous substances stored in any manner or in any amount other than that provided by ordinance;

~~32. Maintaining within or allowing to be maintained, procuring or keeping within the city any dangerous animal. For purposes of this chapter, a dangerous animal shall mean any animal, other than the common household cat or dog or native bee, that is capable of killing or seriously injuring a human being, whether such injury be inflicted by the utilization of venom, constriction, claw, bite, or otherwise: provided that, this provision shall not apply so long as the animal is located within a facility such as a zoo or wildlife refuge owned and operated by a governmental agency or a nonprofit entity recognized as such under the laws of the state of Washington and the Internal Revenue Code of the United States of America or within a properly licensed veterinary hospital where such animal is confined temporarily for treatment;~~

33. For any person to obstruct or encroach upon public highways, streets, private ways, alleys and ways open to the public, including cemeteries, or to unlawfully obstruct or impede the flow of municipal transit vehicles, as defined in RCW 46.04.355, as now existing or hereafter amended or succeeded, or passenger traffic, or to otherwise interfere with the provision or use of public transportation services, or obstruct or impede a municipal transit driver, operator, employee or supervisor in the performance of that individual's duties;

34. For any person to erect, continue or use any building or other structure or place for the exercise of any trade, activity, employment or manufacture, which, by occasioning obnoxious, hazardous or toxic exhausts or emissions, offensive smells, or otherwise, is offensive or dangerous to the health of individuals or the public;

35. For any person to cause or allow the obstruction of or impeding, without legal authority, of the passage or flow of any stream, canal or body of water;

36. Any place wherein intoxicating liquors or controlled substances are kept for unlawful use, sale or distribution.

(Ord. 625 § 1, 1996: Ord. 616 § 3, 1995)

8.16.021 Wrecked, dismantled or inoperative vehicles – prohibited activity.

A. No person may park, store or abandon a wrecked, dismantled or inoperative vehicle, or part thereof on private property, except where the following conditions apply:

1. A vehicle or vehicle part is completely enclosed within a building in a lawful manner where it is not visible from the street or from other public or private property; or

2. A vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed auto repair business or licensed vehicle dealer and is fenced as required by state law.

8.16.022 Notice required.

A. Whenever a vehicle has been determined to be a wrecked, dismantled or inoperative vehicle or as an abandoned vehicle, the last registered vehicle owner of record and the land owner of record where the vehicle is located shall each be given notice by certified mail that a hearing may be requested before the hearing examiner. If no hearing is requested within ten days from the certified date of receipt of the notice, the vehicle shall be removed by the city.

B. If a request for hearing is received within ten days, a notice giving the time, location and date of the hearing on the question of abatement and removal of the vehicle or vehicles shall be mailed by certified or registered mail, with five-day return receipt requested, to the land owner as shown on the last equalized assessment roll and to the last registered and legal owner of record of each vehicle unless the vehicle identification numbers are not available to determine ownership.

8.16.023 Determination of responsibility.

A. The owner of the land on which the vehicle is located may appear in person at the hearing or present a written sworn statement in time for consideration at the hearing. The owner may deny responsibility for the presence of the vehicle on the land stating the reason for such denial. If it is determined by the hearing examiner that the vehicle was placed on the land without consent of the land owner and that the land owner has not subsequently acquiesced in its presence, then costs of administration or removal of the vehicle shall not be assessed against the property upon which the vehicle is located nor otherwise be collected from the land owner.

B. Nothing in this chapter shall relieve the landowner of any civil penalties which may accrue from any code violation related to the improper placement, parking or storage of vehicles or parts thereof to which the landowner has consented or acquiesced.

C. In addition to determination of responsibility as provided for in paragraph A, the hearing examiner shall receive and examine evidence on other relevant matters, including whether a public nuisance as defined in this chapter exists. The decision of the hearing examiner shall be final.

8.16.024 Abatement and removal authorized.

The city may remove any abandoned, wrecked, dismantled or inoperative vehicle, automobile hulk or part thereof, after complying with the notice requirements of MMC 8.16.023. The proceeds of any such a disposition shall be used to defray the costs of abatement and removal of any such a vehicle, including costs of administration and enforcement.

8.16.025 Costs of abatement and removal.

A. The costs of abatement and removal of any such vehicle or remnant part, including costs of administration and enforcement, shall be collected from the last registered vehicle owner if the identity of such owner can be determined, unless such owner in the transfer of ownership thereof has complied with RCW 46.12.101.

B. If the vehicle owner cannot be established, the costs of abatement and enforcement shall be collected from the land owner on which the vehicle or remnant part is located, unless the landowner has shown in as described in MMC 8.16.022, that the vehicle or remnant part was placed on such property without the landowner's consent or acquiescence.

C. Costs of administration for the removal and disposal of vehicles or remnant parts may be recovered according to the lien and personal obligation provisions as provided in this chapter.

~~**8.16.030 Prohibited conduct.**~~

8.16.030 Prohibited.

It is unlawful for any responsible person or owner to create, permit, maintain, suffer, carry on or allow upon any premises any of the acts or things declared by the ordinance codified in this chapter to be a public nuisance.

Every successive owner of property who neglects to abate any continuing nuisance upon or in the use of such property caused by a former owner, is liable therefor in the same manner as the owner who created it.

The owner of the premises shall maintain the structures, premises and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this code. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

It shall be unlawful for the owner of any dwelling unit or structure who has received a notice and order or upon whom a notice and order has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the notice and

order has been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice and order issued by the enforcement officer and shall furnish to the enforcement officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice and order and fully accepting the responsibility without condition for making the corrections or repairs required by such notice and order.

It is unlawful for any person to enter any unoccupied building and commit a nuisance therein.

(Ord. 616 § 4, 1995)

~~**8.16.040 Enforcement - Notice.**~~

~~1. The enforcement officer, upon receiving a written complaint from any neighbor, person, citizen or other source, or becoming aware that a nuisance may exist, shall investigate the complaint or information with all reasonable dispatch.~~

~~2. The enforcement officer, upon finding any condition in violation of the ordinance codified in this chapter, shall cause any owner or other responsible person to be notified in writing of the existence of the public nuisance, including posting of a notice on the premises where the nuisance exists, directing the owner and occupant of the property to abate the condition within ten calendar days after notice or other reasonable period. If not personally served, the written notice shall be mailed to the last known address of the owner or other responsible person, with copies being transmitted by first class post and certified mail.~~

~~a. At the time of posting, if in the determination by the enforcement officer said property appears abandoned, a copy of such notice shall be forwarded by certified mail to the legal owner or designated guardian, postage paid, and if known or disclosed from official public records of the tax assessor's office, to the holder of any other legal interest in the building or land created by contract, deed of trust, mortgage or deed.~~

~~1. The notice shall be substantially in the following form:~~

~~-~~

~~NOTICE TO ABATE UNSAFE OR UNLAWFUL CONDITION~~

~~(Name and address of person notified)~~

~~As owner, agent, lessees, or other person occupying or having charge or control of the building, lot, or premises _____ you are hereby notified that the undersigned, pursuant to Ordinance Number/Code Section _____ of the City of McCleary has determined that there exists upon or adjoining said premises the following condition contrary to the provisions of subsection _____ of Ordinance Number/Code Section _____.~~

~~You are hereby notified to abate or correct said condition to the satisfaction of the undersigned within ten (10) days of the date of this notice. If you do not abate, correct or appeal such condition within ten (10) days, the City may without further notice to you abate the condition at your expense.~~

~~Dated:_____.~~

~~By~~

~~(Name of Enforcement Officer)~~

~~(Ord. 616 § 5, 1995)~~

8.16.040 Enforcement--Notice.

1. **The enforcement officer having knowledge of any public nuisance shall cause any property owner and occupants to be notified in writing of the existence of a public nuisance on the premises and shall order the owner and occupants to abate the violation within a reasonable period of time. The notice shall be served either personally or by first class and certified mail with return receipt requested.**

2. **If the condition is not corrected and the violation continues following the time frame indicated in 8.16.040 (1), the enforcement officer shall be authorized to issue and serve a notice of infraction to the owners or persons in control of the subject property,**

3. **If the condition is not corrected and the violation continues following the notice of infraction or infractions, posting of a notice on the premises where the nuisance exists, directing the owner or occupants in charge of the property to abate the condition within the time given. If not personally served, the written notice shall be mailed at the address of record at the Grays Harbor County assessor's office, or at the discretion of the enforcement officer to such other person in control of the subject property owner or other responsible person, transmitted by first class post and certified mail.**

4. The notice shall be substantially in the following form:

NOTICE TO ABATE UNSAFE OR UNLAWFUL CONDITION

(Name and address of person notified)

As owner, agent, lessees, or other person occupying or having charge or control of the building, lot, or premises _____ you are hereby notified that the undersigned, pursuant to Ordinance Number/Code Section _____ of the City of McCleary has determined that there exists upon or adjoining said premises the following condition contrary to the provisions of subsection _____ of Ordinance Number/Code Section _____.

You are hereby notified to abate or correct said condition to the satisfaction of the undersigned within ten (10) days of the date of this notice. If you do not abate, correct or appeal such condition within ten (10) days, the City may without further notice to you abate the condition at your expense.

Dated:_____.

By

(Name of Enforcement Officer)

8.16.045 Appeal.

Within the time allowed after posting and mailing of such notice, as provided in Section 8.16.040 of this chapter, the person responsible shall remove the nuisance or within the same ten-day time period show that no nuisance exists unless an appeal/protest is taken as provided in this section.

A. An owner or person responsible protesting that no nuisance exists shall file with the public works director a written statement which shall specify the basis for so protesting within the ten-day period allowed for removal pursuant to Section 8.16.040 of this chapter. The statement shall set out with reasonable specificity the factual matters which are the basis of the protest.

B. The statement shall be referred to the mayor for administrative review. In undertaking such a review, the mayor may consider such materials as are within the file, including those submitted by the party protesting the decision. The mayor may also undertake a personal view of the site or condition at issue. If determined necessary and appropriate by the mayor, an informal conference may be held at which the protestor and all other interested parties and persons may present such factual and legal information as is determined relevant by the mayor. Following such administrative review, the mayor shall thereupon determine whether or not a nuisance in fact exists, and the determination shall be entered in the official records of the city. An administrative review shall be required only in those instances where a written statement has been filed as provided within this section.

C. If the administrative review determines that a nuisance does in fact exist, the person responsible shall, within the time specified after the administrative determination, abate the nuisance.

If more than one person is a person responsible, they shall be jointly and severally liable for abating the nuisance, and for the costs incurred by the city in abating the nuisance.

If, within the time allowed, the nuisance has not been abated by the person or persons responsible, the city may cause the nuisance to be abated.

(Ord. 616 § 6, 1995)

~~**8.16.050 Nuisance by animals.**~~

~~It is declared to be a nuisance and unlawful for any owner, keeper or walker of any dog or cat to permit his or her dog or cat to discharge such animal's excreta upon any public or private property, other than the property of the owner of any dog or cat, within the city if such owner, keeper or walker does not immediately thereafter remove and clean up such animal's excreta from the public or private property.~~

(Ord. 308 § 6, 1973)

~~**8.16.080 Defacing public or private property.**~~

8.16.050 Defacing public or private property.

No person shall mar, injure, destroy or deface, or aid in injuring, destroying or defacing in the city, any public or private property, or cause to be posted or stuck, any handbill or placard upon any public or

private building, or upon any fence or other property within the city without the permission from the owner or occupant first obtained; or mar, injure, destroy or deface or cause to be marred, destroyed, injured or defaced any bridge, fence, tree, street sign, awning, lamppost, electric light post, or apparatus or any other property, not belonging to the person so offending, whether public or private.

(Ord. 308 § 10, 1973)

~~**8.16.090 Unattended machinery.**~~

~~It is a nuisance and unlawful for any person, firm or corporation to permit any construction, compaction, earth-grading or farm machinery which is self-propelled and moves upon the surface of the earth, and which is owned or controlled by him to stand for any period of time unattended without locking the ignition system or otherwise rendering said machinery inoperable so as to prevent any person unauthorized by the owner or individual in control thereof from starting said machinery.~~

8.16.060 Unsafe equipment, machinery

It is a nuisance and unlawful for any person, firm or corporation to permit any construction, compaction, earth-grading or farm machinery which is self-propelled and moves upon the surface of the earth, and which is owned or controlled by him to stand for any period of time unattended without locking the ignition system or otherwise rendering said machinery inoperable so as to prevent any person unauthorized by the owner or individual in control thereof from starting said machinery.

Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or property or safety of the public or occupants of the premises or structure.

(Ord. 308 § 11, 1973)

~~**8.16.100 Unoccupied buildings to be closed.**~~

~~Every agent or owner of any unoccupied building in the city shall keep the same securely closed at all times against persons who may enter and commit a nuisance therein.~~

~~(Ord. 308 § 12, 1973)~~

~~**8.16.110 Nuisance in unoccupied building.**~~

~~It is unlawful for any person to enter any unoccupied building and commit a nuisance therein.~~

8.16.70 Unsafe, unlawful, unfit structure.

A. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to

protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

B. A structure is unfit for human occupancy whenever the enforcement officer finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary, heating, drinking or other essential equipment, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

C. An unlawful structure is one found in whole or in part to be occupied by more persons, or was erected, altered or occupied contrary to the McCleary Municipal Code.

D. When a structure or equipment is found by the enforcement officer to be unsafe, or when a structure is found unfit for human occupancy, or when a structure is found be unlawful, such structure shall be condemned pursuant to the provisions 8.16.175.

8.16.80 Structures, buildings and premises.

A. The owner of the premises shall maintain the structures, premises and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this code. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

1. Every agent or owner of any unoccupied building in the city shall keep the same securely closed at all times against persons who may enter and commit a nuisance therein.

2. All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

3. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

4. All fences shall be constructed with materials which was designed for its purpose.

5. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm).

6. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

7. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

8. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant and/or owner shall keep that part of the exterior property which such occupant and/or owner occupies or controls in a clean and sanitary condition.

9. No person shall damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.

10. All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

11. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition.

12. Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

13. All overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

14. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted.

15. Every bedroom occupied by one person shall contain at least 70 square feet (6.5 m^2) of floor area, and every bedroom occupied by more than one person shall contain at least 50 square feet (4.6 m^2) of floor area for each occupant thereof.

16. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

17. All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

18. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight.

19. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion.

20. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

21. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

22. Private swimming pools, hot tubs and spas, containing water more than 24 inches (610 mm) in depth shall be completely surrounded by a fence or barrier. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 54 inches (1372 mm) above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches (152 mm) from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

23. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

24. Where it is found that a plumbing system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, inadequate venting, cross connection, back siphonage, improper installation, deterioration or damage or for similar reasons, the enforcement officer shall require the defects to be corrected to eliminate the hazard.

25. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

26. Dwellings shall be provided with permanently installed, safe, functioning heating facilities and an approved power or fuel supply system capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms. Cooking appliances shall not be used to provide space heating.

27. **All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.**

B. When the enforcement officer finds a violation to exist, the enforcement officer will follow the provisions set forth in MMC 8.16.040 unless otherwise deemed as provided in MMC 8.16.70.

8.16.121 Plainly or clearly audible--Interpretation concerning noise violations.

For purposes of Sections 8.16.121 through 8.16.125 and Sections 8.16.130 through 8.16.160, inclusive:

A. "Plainly audible" and "clearly audible" shall mean the same thing.

B. To be violative of the provisions of Sections 8.16.130 through 8.16.160, the sound, noise or use must be plainly audible and be of such nature as to be capable of unreasonably disturbing the peace, comfort and repose of a person occupying a structure.

(Ord. 553 § 6, 1990)

8.16.122 Excessive noise--Declaration of policy.

A. It is the policy of the city to minimize the exposure of citizens to the physiological and psychological dangers of excessive noise and to protect, promote and preserve the health, safety and welfare of the general public. It is the express intent of the city council to control the level of noise in a manner which promotes commerce, the use, value and enjoyment of property, sleep and repose, and the quality of the environment. The city council recognizes the position of the guarantees of freedom of speech in our society. If those guarantees are to be truly effective, it is necessary that each citizen tolerate unwelcome speech and ideas; without that, the guarantees of free speech cannot serve their critical roles of fostering the exchange of ideas. The city council, however, recognizes that any right may be abused, than an individual's right is limited by the impacts of its utilization upon those in our society who are affected by that utilization and that balancing must be effectuated. In effectuating this balancing, the city recognizes the vital role involved with the right to privacy, the right to be let alone, in an increasingly noisy and intrusive world. Nowhere is that right more significant than in the privacy of one's home.

B. Sound is a principal medium of communication. By its nature and as a result of massive technological changes within the last few years, it has become an even more potentially intrusive medium to those who do not wish to hear the specific noise or message. The purpose of this chapter is to protect to the greatest extent possible both the right of free speech and the right to privacy within the home. Its purpose is to guarantee ample channels of communication for all ideas, whether welcome or unwelcome by recipients, yet also secure the home as a refuge from noise which unreasonably disturbs the peace and repose of its inhabitants.

(Ord. 553 §§ 1, 10 (part), 1990)

8.16.123 Excessive noise--Finding of special conditions.

The police department and the city council have been apprised of numerous citizen complaints regarding specialized noise occurrences, particularly in summer months, such as the playing of amplified music, in automobiles and otherwise, and the running of motorcycles, all at such volume and duration as to unreasonably disturb and interfere with the peace, comfort and repose of others. Such noises constitute a public disturbance. These noise occurrences adversely affect the public health and welfare, the value of property and the quality of environment, and constitute special conditions within the city which make necessary any and all differences between this chapter and regulations adopted by the Department of Ecology.

(Ord. 553 §§ 2, 10 (part), 1990)

8.16.124 Public disturbance noises designated.

It is unlawful for any person wilfully to cause, or any person in possession of property wilfully to allow to originate from the property, any sound which:

A. Is caused by the operation of a motor vehicle, including by way of example and not by way of limitation, automobile, truck, motorcycle and all-terrain vehicle, upon property other than a public highway, and which is so loud as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;

B. Is plainly audible within any dwelling unit which is not the source of the sound and which is located within a residential zone established pursuant to the zoning ordinance, Title 17 of the McCleary Municipal Code, is of such loudness, frequency or duration as to unreasonably disturb the peace, comfort and repose of owners or possessors of such dwelling units within such dwelling units, and which emanates from any device designed for sound production or reproduction, such as, but not limited to, radios, televisions, musical instruments, phonographs and loudspeakers. However, between the hours of seven a.m. and ten p.m., sound which is plainly audible within such dwelling unit for less than a total of five minutes in any one-hour period or less than one minute at any one time shall not be deemed to unreasonably disturb a person's peace, comfort and repose for purposes of this subsection;

C. Is plainly audible within any structure which is not the source of the sound and which is located within the city, other than in a residential zone established pursuant to the zoning ordinance, Title 17 of this code, if of such loudness, frequency or duration as to unreasonably disturb the peace, comfort and repose of owners or possessors of such dwelling units within such dwelling units, and which emanates from any device designed for sound production or reproduction, such as, but not limited to, radios, televisions, musical instruments, phonographs and loudspeakers. However, between the hours of seven a.m. and ten p.m., sound which is plainly audible within such dwelling unit for less than a total of five minutes in any one-hour period or less than one minute at any one time shall not be deemed to unreasonably disturb a person's peace, comfort and repose for purposes of this subsection. "Sound which is plainly audible" means sound such as, but not limited to, understandable spoken speech or comprehensible musical rhythms;

D. Sound produced by the audio system installed in a motor vehicle which is plainly audible more than fifty feet from the vehicle when the windows and doors of the vehicle are closed or one hundred feet if either are open, unless such sound is generated by a system in compliance with the following:

1. Is produced by a speaker system externally mounted,

2. Is related to the advertising or promotion of a social or political event, cause, issue or candidtate, or promoting a particular business enterprise,

3. Occurs between the hours of eight a.m. and eight p.m., and

4. Possesses the permit required by Section 8.16.160 of this code.

(Ord. 553 §§ 3, 10 (part), 1990)

8.16.125 Exemptions from Sections 8.16.121 through 8.16.124.

In addition to those exemptions contianed in Section 8.16.150, the following sounds are exempt from the provisions of this chapter:

A. Sounds created by fire alarms;

B. Sounds created by emergency equipment and emergency work necessary in the interests of law enforcement or of the health, safety or welfare of the community;

C. Sounds created by off-highway vehicles while being used in officially designated off-road vehicle parks; and

D. Sounds created by warning devices not operated continuously for more than thirty minutes per incident.

(Ord. 553 §§ 4, 10 (part), 1990)

8.16.130 Unnecessary noises designated.

The following intentional acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter:

A. The sounding of any horn or signaling device on any automobile, motorcycle, transit vehicle or other vehicle on any public street or public place of the city, except as a necessary warning of danger to person or property; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time;

B. The use of any automobile, motorcycle, transit vehicle, or other vehicle, or engine, either stationary or moving, or any instrument, device or thing so out of repair, so loaded, or in such manner as to create loud and unnecessary grating, squealing, grinding, rattling or other noise;

C. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of eleven p.m. and seven a.m. or at any time and place so as to disturb the quiet, comfort and repose of any person in any hospital, rest home, sanitarium, dwelling, hotel, motel or other type of residence;

D. The keeping in any building or upon any premises, of any bird, animal or fowl which by frequent or long continued noise shall disturb the comfort and repose of any person in the vicinity;

E. The sounding of any whistle, siren or bell, receiving its power from whatever source, except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper city authorities;

F. To discharge into the open air the exhaust of any steam engine, stationary internal combustion engine or motor vehicle, except through a muffler or other device which will effectively reduce loud or explosive noises therefrom;

G. The erection, including excavation, demolition, alteration or repair of any building, in a residential, apartment, hotel or business district other than between the hours of seven a.m. and seven p.m. on weekdays, except in case of urgent necessity in the interest of public safety and convenience, after obtaining a permit from the public works superintendent;

H. The creation of any unreasonable or excessive noise near any school, institute of learning, church or court, while the same are in session, or near any hospital, or other institution reserved for the sick, feeble or aged, provided signs are displayed in such vicinities indicating such institution is nearby;

I. The creation of loud and excessive noises in connection with loading or unloading any vehicle, or the opening or destruction of bales, boxes and containers;

J. The use, operation, or permitting to be used, played or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to unreasonably disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of fifty feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section;

K. The use of hand or power tools, blowers or machinery which results in unreasonably loud and disturbing noises and is clearly audible at a distance of fifty feet from the structure in or on which such tools or machinery are operated.

(Ord. 553 § 5 (part), 1990; Ord. 308 § 15, 1973)

8.16.140 Repetition of unnecessary noises.

It is unlawful for any person to permit any of the acts referred to in Section 8.16.130 to repeatedly take place upon property under his dominion and control.

(Ord. 308 § 16, 1973)

8.16.150 Exceptions from prohibition.

None of the terms or prohibitions hereof shall apply or be enforced against:

A. Any vehicle of the city while engaged in necessary public business;

B. Excavations or repairs of bridges, streets or highways by or on behalf of the city, the county, or the state during the night seasons when the public welfare and convenience render it impossible to perform such work during the day;

C. The reasonable use of amplifiers or loudspeakers in the course of public addresses at reasonable times and reasonable hours.

(Ord. 308 § 17, 1973)

8.16.160 Use of loudspeakers.

No person shall use any loudspeaker, amplifier or other similar device which shall project sound above a normal level beyond the property lines of the premises upon which it is being used without first obtaining a permit from the office of the police so to do; in issuing a permit, the office of the police shall impose such restrictions on time, area, and volume as are necessary to preserve the public peace and safety.

(Ord. 308 § 18, 1973)

~~**8.16.170 Keeping of animals.**~~

~~A. Any person, firm or corporation is prohibited from keeping or sheltering animals in such a manner that a condition resulting from same shall constitute a nuisance.~~

~~B. In populous districts, stable manure must be kept in a covered watertight pit or chamber and shall be removed at least once a week during the period from April 1st to October 1st and, during the other months, at intervals sufficiently frequent to maintain a sanitary condition satisfactory to the health officer.~~

~~C. Manure shall not be allowed to accumulate in any place where it can prejudicially affect any source of drinking water.~~

~~(Ord. 308 § 19, 1973)~~

8.16.170 Property on City Right of Way

A. The abutting property owner is required to maintain all property outside the lot lines and property lines and inside the curblines or the traveled portion of the public streets, alleys or sidewalks.

B. All property left on the public right-of-way as a result of an eviction or a forcible entry and detainer or unlawful detainer action shall be deemed abandoned and is hereby declared a public nuisance.

C. Any items which remain on the public right-of-way of any street, alley or sidewalk for a period of forty-eight hours , including but not limited to any personal or household items, furniture, appliances, machinery, equipment, building materials, or other items shall be deemed abandoned and to constitute a public nuisance subject to removal by the city with or without notice.

D. The costs of abatement may be assessed against the abutting real estate from which the nuisance was abated for collection in the manner provided in the provisions in this chapter.

8.16.175 Closing of structures, buildings, equipment, premises.

A. Whenever the enforcement officer has condemned a structure or equipment, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person and/or persons responsible for the structure and/or equipment in accordance with MMC 8.16.185. If the notice pertains to equipment, it shall also be placed on the condemned equipment.

B. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, any occupied structure, building or equipment shall be vacated as ordered by the enforcement officer. Any person who shall occupy the premises or operate the equipment, any owner or any person responsible for the premises who shall let anyone occupy the premises or operate the equipment, the premises or equipment, that person shall be and/or shall also be responsible and will be liable for any penalties provided in this chapter.

C. The enforcement officer is authorized to enter the structure and/or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures.

1. If entry is refused or not obtained, the enforcement officer is authorized pursuant to 8.16.190.

D. The enforcement officer is authorized to post, as provided in MMC 8.16.185, on the premises and order the structure closed up so as not to be a public nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the enforcement officer shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any means provided in this chapter.

E. Notwithstanding other provisions of this code, the enforcement officer shall order the necessary work to be done, including the boarding up of openings and/or the fencing of premises, to render such structure/premise temporarily safe.

F. The enforcement officer shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

8.16.180 Demolition or repair

A. The enforcement officer shall order, as provided in MMC 8.16.182, the owner of any premises upon which is located any structure, which in the enforcement officer judgment finds any of the following;

1. Is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or

2. If such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or

3. Where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

B. If the owner of a premises fails to comply with a demolition order, as provided in MMC 8.16.182, the enforcement officer shall cause the structure to be repaired or demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such repair or demolition and removal shall be charged against the real estate upon which the structure is located, the legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises.

C. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials, at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

8.16.182 Notice to Demolish

A. The issuance of an order to demolish the structure and enforcement action pursuant to this chapter.

B. Posting of a notice on the premises where the structure exists, directing the owner or occupants in charge of the property to Demolish the structures within the time given. The written notice shall be, if not personally served, mailed at the address of record at the Grays Harbor County assessor's office, or at the discretion of the enforcement officer to such other

person in control of the subject property owner or other responsible person, transmitted by first class post and certified mail.

C. The order shall be as follows;

Notice to Demolish
Unlawful and/or Unsafe Structure

Name of Owner
Or Current Resident
Address

As owner, agent, lessees, or other person occupying or having charge or control of the building, lot, or premises located at, Address, you are hereby notified that the undersigned, pursuant to Ordinance Number. The City of McCleary has determined that there exists upon said premises the following conditions contrary to the provisions of Ordinance Number.

You are hereby notified to Demolish the structure by Time on Date

Enforcement Officer
Of The
City of McCleary
Date

~~8.16.180 Noxious weeds and rubbish--Abatement cost if done by city.~~

~~The city, by and through the city council, may, if the person, firm or corporation maintaining the nuisance, fails or neglects to destroy and remove noxious weeds and rubbish, after notice as herein provided, go upon or authorize and direct the proper offices to go upon the premises, cut and remove therefrom, noxious weeds and rubbish, and the costs and expenses thereof shall be charged to and taxed against the property, and recovered as a part of the taxes by special assessment, or may be recovered in a civil action.~~

~~(Ord. 308 § 20, 1973)~~

8.16.185 Notice to Vacate

A. The issuance of an order prohibiting occupancy of the premises, requiring its immediate vacation and enforcement action pursuant to this chapter.

B. Posting of a notice on the premises where the violation exists, directing the owner or occupants in charge of the property to Vacate the violation within the time given. The written notice shall be, if not personally served, mailed at the address of record at the Grays Harbor County assessor's office, or at the discretion of the enforcement officer to such other person

in control of the subject property owner or other responsible person, transmitted by first class post and certified mail.

C. The order shall be as follows;

Notice to Vacate
Unlawful Condition

Name of Owner
Or Current Resident
Address

As owner, agent, lessees, or other person occupying or having charge or control of the building, lot, or premises located at, Address, you are hereby notified that the undersigned, pursuant to Ordinance Number. The City of McCleary has determined that there exists upon said premises the following conditions contrary to the provisions of Ordinance Number.

You are hereby notified to Vacate by Time on Date

Enforcement Officer
Of The
City of McCleary
Date

8.16.190 Right of entry

A. In the event the enforcement officer has been denied, refused and/or not obtained entry to any structure, dwelling unit, building, property/premises, and the enforcement officer having reason to examine the structure, dwelling unit, building, or property/premises pursuant to a violation in the MMC, apply for a warrant for the structure, dwelling unit, building, property, and/or premises.

B. Before a warrant is issued by the judge, the enforcement officer must set forth by affidavit under oath the ordinance or ordinances upon which he is proceeding, and state the circumstances upon which he is seeking the warrant.

C. If the judge finds that the enforcement officer is proceeding according to the provisions in the MMC, he shall issue a warrant for the search of the structure, dwelling unit, building, or property/premises.

D. If a warrant is issued, the enforcement officer shall make a return to the court of issuance. The enforcement officer's return shall consist of;

1. An affidavit stating the time of issuance;

2. The time the structure, dwelling unit, building, or property/premises was searched;

3. The mode of service;

I. Either by serving a copy of the warrant upon the owner of the premises, occupant or other person having charge of said premises;

II. And posting notice of the warrant upon the property.

~~**8.16.190 Liability for abatement.**~~

~~Every successive owner of property who neglects to abate any continuing nuisance upon or in the use of such property caused by a former owner, is liable therefor in the same manner as the owner who created it.~~

(Ord. 308 § 21, 1973)

~~**8.16.200 Nuisances prohibited.**~~

~~It is unlawful for any person to erect, contrive, cause, continue, or maintain a nuisance as herein defined or prohibited.~~

~~(Ord. 308 § 22, 1973)~~

~~**8.16.205 Abatement by city.**~~

~~In all cases where the city has determined to proceed with abatement, the city shall acquire jurisdiction to abate the condition at the person's expense as provided in this chapter. Upon the abatement of the condition or any portion thereof by the city, all the expenses thereof shall constitute a civil debt owing to the city jointly and severally by such persons who have been given notice as provided in this chapter. The debt shall be collectible in the same manner as any other civil debt owing to the city. To the extent allowed by law, whether statute, ordinance, rule or regulation, including, but not limited to, the provisions of the Building Code, Fire Code, or Uniform Code relating to the abatement of abandoned or dangerous buildings, it shall become a lien against the property and may be collected in such manner as may be allowed by law.~~

8.16.200 Abatement by city.

A. In all cases where the city has determined to proceed with abatement, the city shall acquire jurisdiction to abate the condition at the person's expense as provided in this chapter. Upon the abatement of the condition or any portion thereof by the city, all the expenses thereof shall constitute a civil debt owing to the city jointly and severally by such persons who have been given notice as provided in this chapter. The debt shall be collectible in the same manner as any other civil debt owing to the city. It shall become a lien against the property and may be collected in such manner as provided in this chapter.

B. The enforcement officer shall order the necessary work to be done, including the boarding up of openings and/or the fencing of premises, to render such structure/premise temporarily safe and shall cause such other action to be taken as the enforcement officer deems necessary to abate such nuisance.

C. For the purposes of this code, the enforcement officer shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

D. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as indicated in the following schedule;

1. Re-inspection fees may be assessed if work is incomplete, corrections not completed or the allotted time is depleted. All City of McCleary fees shall be established by the City of McCleary Development fee schedule. Fees will be assessed at the hourly charge in minimum fifteen (15) minute increments.

E. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises or structure for the recovery of such costs pursuant to this chapter.

(Ord. 616 § 7, 1995)

~~**8.16.210 Abatement by owner or other responsible person.**~~

~~If and when an owner or other responsible person shall undertake to abate any condition described in the ordinance codified in this chapter, whether by order of the enforcement officer or otherwise, all necessary and legal conditions pertinent to the abatement may be imposed by the enforcement officer. It is unlawful for the owner or other responsible person to fail to comply with such conditions. Nothing in the ordinance codified in this chapter shall relieve any owner or other responsible person of the obligation of obtaining any required permit to do any work incidental to the abatement.~~

~~(Ord. 616 § 8, 1995)~~

8.16.210 Liability and abatement by owner or other responsible person.

If and when an owner or other responsible person shall undertake to abate any condition described in the ordinance codified in this chapter, whether by order of the enforcement officer or otherwise, all necessary and legal conditions pertinent to the abatement may be imposed by the enforcement officer. It is unlawful for the owner or other responsible person to fail to comply with such conditions. Nothing in the ordinance codified in this chapter shall relieve any owner or other responsible person of the obligation of obtaining any required permit to do any work incidental to the abatement.

~~**8.16.215 Immediate danger--Summary abatement.**~~

~~Whenever any condition on or use of property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or a significant portion thereof, the enforcement officer shall have the authority to summarily and without notice abate the same to the extent and subject to the provisions of applicable law, including by way of representation, RCW 35A.12.100, as now existing, amended or succeeded. The expenses of such abatement shall become a civil debt against the owner or other responsible party and be collected as provided in Section 8.16.205 of this chapter.~~

~~(Ord. 616 § 9, 1995)~~

8.16.215 Immediate danger.

A. Whenever any condition on or use of property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or a significant portion thereof, the enforcement officer shall have the authority to summarily and without notice abate the same to the extent and subject to the provisions of applicable law, including through an available public agency or by contract or arrangement with private persons. The expenses of such abatement shall become a civil debt against the owner or other responsible party and be collected as provided in this chapter.

B. Whenever, in the opinion of the enforcement officer, there is imminent danger due to an unsafe condition, the enforcement officer shall order the necessary work to be done, including the boarding up of openings and/or the fencing of premises, to render such structure/premise temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the enforcement officer deems necessary to meet such emergency.

C. The enforcement officer, upon approval from the public works director, shall have the authority to authorize disconnection of utility service to the building or structure in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without approval. The enforcement officer shall notify the serving utility and whenever possible, the owner and occupant of the building or structure of the decision prior to taking action. If not notified prior to disconnection the owner or occupant of the building or structure shall be notified in writing as soon as practical thereafter.

~~8.16.220 Abatement moneys.~~

~~All moneys collected for abatement purposes, as provided in this chapter, shall be separately stated and itemized by the clerk of the police court in his report to the city clerk-treasurer and shall be credited by~~

~~the city clerk-treasurer to the department or division of the city government which shall be actually employed in the abatement of the nuisance.~~

~~(Ord. 308 § 24, 1973)~~

8.16.220 Abatement moneys.

A. The governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials, at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

B. All moneys collected for abatement purposes, as provided in this chapter, shall be separately stated and itemized by the enforcement officer in his report and shall be credited by the city clerk-treasurer to the department or division of the city government which shall be actually employed in the abatement by the city.

~~**8.16.230 Violation--Penalty.**~~

~~A. Any person violating any of the provisions of the ordinance codified in this chapter shall be subject to the following penalty or punishments:~~

~~1. In the event of a first violation within any six-month period, be issued a notice of infraction and, upon a finding of committed, be subject to a penalty of up to two hundred fifty dollars.~~

~~2. In the event of a second violation within any six-month period, be issued a notice of infraction and, upon a finding of committed, be subject to a penalty of up to five hundred dollars, one hundred fifty dollars of which may be neither suspended nor deferred.~~

~~3. In the event of a third and subsequent violation within any six-month period, be subject to issuance of a criminal citation, and upon conviction, be guilty of a misdemeanor and, subject to punishment by a fine not to exceed one thousand dollars, two hundred fifty dollars of which shall be neither suspended nor deferred, by imprisonment in jail not to exceed ninety days, or by both such fine and imprisonment.~~

~~B. In addition to any other penalty, fine or imprisonment which may be imposed, the court may direct the correction or elimination of the nuisance and in the event the party fails to timely correct, order such correction to be carried out and require the party to pay the costs related to such correction or elimination. In the event that summary abatement has been carried out pursuant to the authority in Section 8.16.215 of this chapter, the costs incurred by the city in so acting may be imposed.~~

~~(Ord. 616 § 10, 1995~~

8.16.230 Violation--Penalty.

A. Any person violating any of the provisions of the ordinance codified in this chapter shall be subject to the following penalty or punishments:

1. In the event of a first violation within any twelve-month period, be issued a notice of infraction and, upon a finding of committed, be subject to a penalty of up to two hundred fifty dollars.

2. In the event of a second violation within any twelve-month period, be issued a notice of infraction and, upon a finding of committed, be subject to a penalty of up to five hundred dollars, one hundred fifty dollars of which may be neither suspended nor deferred.

3. In the event of a third and subsequent violation within any twelve-month period, be subject to issuance of a criminal citation, and upon conviction, be guilty of a misdemeanor and, subject to punishment by a fine not to exceed one thousand dollars, two hundred fifty dollars of which shall be neither suspended nor deferred, by imprisonment in jail not to exceed ninety days, or by both such fine and imprisonment. Each day that a violation exists may constitute a separate violation of this chapter.

B. In addition to any other penalty, fine, or imprisonment which may be imposed, the court may direct the correction or abatement of the nuisance and in the event that the party continues to fail to timely correct, order such correction or abatement be performed by the city using any lawful means. The city may enter unsecured property and may remove, correct or abate the nuisance which is subject to abatement. If the person does not consent to entry, the city may seek judicial process from the court, as it deems necessary, to effect the removal, correction or abatement of the nuisance. The costs, including incidental expenses of correcting the violation, may be billed to the owners, persons or occupants in control of the subject property, and if the owners, persons or occupants in control fail to remit payment in a timely manner, the city may file a lien for the cost of any abatement proceedings and all other related and incidental costs against the real property upon which any of the work of the abatement was performed. A notice of the city's lien, specifying the expenses incurred in abating the nuisance and giving the legal description of the premises sought to be charged, shall be filed with the county auditor within ninety days from the date of the abatement and the same may at any time thereafter be collected in the manner for foreclosure of mechanic's or labor liens under the laws of the state of Washington. In addition to a lien, the debt shall be collectible in the same manner as any other civil debt owing to the city, and the city may pursue collection of the costs of any abatement proceedings under this chapter by any other lawful means, including but not limited to a collection agency. Any person sent a bill or notice of the costs due for an abatement of a nuisance may request a hearing before the court to determine if the costs should be assessed, reduced, or waived. A request for hearing shall be made in writing and filed with the court no later than seven days from the date of mailing of the bill or notice of costs due for the abatement. Each request for a hearing shall contain the

address and telephone number of the person requesting the hearing, and shall set out the basis for the appeal. Failure to request a hearing within seven days from the mailing of the bill or notice of costs due for the abatement shall be a waiver of the right to contest the validity of the costs incurred in the abatement of the violation.

8.16.235 Injunction as alternative relief.

As an alternative, or in addition to abatement and criminal proceedings the city may, at its option, institute civil proceedings as appropriate to enjoin the nuisance.

8.16.240 Severance.

The provisions of this chapter are declared to be severable and if any section, sentence, clause or phrase of this chapter shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this chapter, and they shall remain in effect, it being the legislative intent that this chapter shall stand notwithstanding the invalidity of any part.

Tab H

STAFF REPORT

To: Mayor Schiller
From: Todd Baun., Director of Public Works
Date: April 7, 2017
Re: WWTP Solids Update

Since the discussion at Council at the Feb. 22nd meeting, we have been working extremely hard on finding a solution for our issue at the Waste Water Treatment Plant. Kevin and Jon have changed a process and taken advice from G&O and Dept. of Ecology and have gotten good test results. We ran the fecal test in the first week of March and came in at 43,700 and we needed to be under 2,000,000. We have ran 2 more tests since then and have gotten fecal counts between 150,000 and 350,000. All these test are a good results and will be completing a final test to get our solids to become certified as a class "B" solid that can be land applied.

Gray and Osborne has begun to review different options to give us a long term solution to our solid fecal count issues. This is needed because the process that we are performing now is providing more reliably to pass testing but the treatment plant has more difficulty operating and that could possibly lead to possibility of violating discharge permit requirements. A wastewater discharge permit is issued by the Department of Ecology, and is required for disposal of waste material into "waters of the state," which include rivers, lakes, streams, and all underground waters and aquifers.

Action Requested:

None at this time. This is just an update.

INVESTING IN WASHINGTON'S ECONOMIC FUTURE

Community Economic Revitalization Board

1011 Plum St SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-3151

March 23, 2017

Todd Braun
Director of Public Works
City of McCleary
100 S. 3rd Street
McCleary, WA 98557

Dear Mr. Braun:

Congratulations! The Community Economic Revitalization Board (CERB) has awarded funding to your planning project. Enclosed is a list of pre-contract conditions which must be satisfied no later than **July 27, 2017,** in order to execute a final contract with CERB.

Once the conditions have been met, a final contract will be developed by CERB prior to disbursement of funds. Please note that no project costs incurred prior to the Initial Offer of Financial Aid date will be reimbursed by CERB. After contract execution, a signed copy will be forwarded for the City of McCleary's records. The execution date of the final contract will be based on the date of the CERB Chair's final signature. A sample of the contract document is enclosed for your records.

I will be your primary contact during this contracting process. If you have any questions, please don't hesitate to contact me at 360.725.3151 or Janea.Eddy@commerce.wa.gov.

Sincerely,

Janéa Eddy
CERB Program Director & Tribal Liaison

Enclosures:

- Initial Offer of Financial Aid (IOFA)
- Planning study minimum requirements
- Sample Contract

Attachment A

CERB Pre-Contract Requirements

Initial Offer of Financial Aid

If you wish to accept CERB's offer, please sign and **return <u>two</u> original copies of the enclosed Initial Offer of Financial Aid by April 24, 2017**. A copy of the executed Initial Offer will be forwarded for the Port's records.

If the terms and conditions of this offer are <u>not</u> acceptable, you may request in writing that CERB reconsider, amend or modify its offer.

Pre-Contract Requirements

Please complete the conditions below and submit the appropriate documentation to CERB.

If all conditions are not completed by **July 27, 2017,** you have the option to request an extension from the Board. If the Board does not approve an extension of the initial offer, the offer will expire. Please see the enclosed policy on extension requests for details.

1. Finalized scope of work.
2. Evidence that consultant services have been selected to complete the study
3. Evidence that the $16,667 cash match is in place, from the following or alternate sources:
    a. City of McCleary $16,667 cash

Please note that CERB requires feasibility studies/planning documents to be completed within 24 months of the executed contract date.

Project Number: A2017-072
Contract Number: S17-790A0-116

Washington State
Community Economic Revitalization Board

Initial Offer of Financial Aid

City of McCleary
Federal Tax Number: 91-6001456
Offer Date: March 16, 2017

The Community Economic Revitalization Board (CERB) is authorized by chapter 43.160 RCW to provide funds to political subdivisions to assist in financing the cost of certain public facilities. This Initial Offer of Financial Aid is contingent upon the availability of CERB funds. CERB hereby offers to make funds available to the **City of McCleary**, hereafter referred to as the "Contractor," in order to aid in financing the cost of, **the McCleary Comprehensive Plan,** as described in the application (hereafter collectively referred to as the "Project").

Funds provided shall be in the form of a **grant** in the maximum principal amount of **$50,000**, which must have a local **cash** match in the amount of at least **$16,667**. Local cash match amounts and sources are identified as:

$16,667	City of McCleary	Cash

This offer is subject to completion of pre-contract conditions, as described in Attachment A.

A final contract shall be developed by CERB prior to disbursement of funds. No project costs incurred prior to date of this offer will be reimbursed by CERB. In the event a final contract is not executed, no CERB funds will be disbursed.

If accepted, this Initial Offer of Financial Aid must be signed and returned to CERB by **April 24, 2017**.

ACCEPTANCE

FOR CERB

_____

David Rhoden, Chair
Community Economic Revitalization Board

Date: _____

FOR THE CONTRACTOR

_____

Name: _____

Title: _____

Date: _____

Planning Study Minimum Requirements (MUST be completed during the study)

The planning study must contain the following **minimum requirements**:

a. A product market analysis linked to economic development.

b. A market strategy containing action elements linked to timelines.

c. Identification of targeted industries.

d. Identification of the group responsible for implementing the marketing strategy. Describe the group's capacity to complete the responsibility.

e. The site's appropriateness by addressing, at minimum, appropriate zoning, affect to the state or local transportation system, environmental restrictions, cultural resource review, and the site's overall adequacy to support the anticipated development upon project completion.

f. A location analysis of other adequately served vacant industrial land.

g. Total funding for the public facilities improvements is secured or will be secured within a given time frame.

h. An analysis of how the project will assist local economic diversification efforts.

i. Indicate the specific issues that will be addressed.

j. List one or more economic outcomes that you expect from the proposed CERB project.

k. Describe the specific, quantifiable measures of the outcome(s) that will indicate success. Describe in measurable terms what you expect to be able to show as progress toward the outcome for each year before the whole outcome has been achieved.

l. Describe what data you will collect to determine whether the outcome is being achieved.

m. Describe the data collection procedure including when data will be collected, from whom and by whom.

n. The estimated median hourly wage of the jobs created when development occurs.

o. <u>If the project is determined to be feasible, the following information must be provided within the final report</u>:

1. Total estimated jobs created (in FTEs).
2. Describe benefits offered to employees.
3. Describe the median hourly wage of the new jobs in relation to the median hourly county wage.
4. The county three-year unemployment rate in relation to the state rate.
5. County population change in the last five years.
6. The estimated jobs created represent what percentage of the county's labor force.
7. The estimated jobs created represent what percentage of the county's unemployed workers.
8. Estimated new annual state and local revenue generated by the private business.
9. Estimated private investment generated by project.

SUPPLEMENTAL AGREEMENT No. 7	ORGANIZATION AND ADDRESS **Skillings Connolly, Inc.** **PO Box 5080** **Lacey, WA 98509-5080**
AGREEMENT NUMBER **14044**	
PROJECT NUMBER	PHONE **(360) 491-3399**
PROJECT TITLE **Third Street Improvements**	NEW MAXIMUM AMOUNT PAYABLE **$423,255.00**
DESCRIPTION OF WORK **Right of Way Phase**	

The Local Agency of **City of McCleary** desires to supplement the agreement entered into with **Skillings Connolly, Inc.** executed on **June 26, 2014** and identified as Agreement No. **14044**. All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

SECTION 1, SCOPE OF WORK, is hereby changed to read:

See Exhibit A, and by this reference is made part of this agreement

SECTION IV, TIME FOR BEGINNING AND COMPLETION, remains unchanged at **December 31, 2017.**

SECTION V, PAYMENT, shall be amended as follows:

Original Agreement	**$329,914.00**
Supplement No. 1 – Time Extension Only	--
Supplement No. 2 – Time Extension Only	--
Supplement No. 3 – Add Jeffrey B. Glander to Contract	7,000.00
Supplement No. 4 – Time Extension Only	--
Supplement No. 5 – Time Extension Only	--
Supplement No. 6 – Real Estate Kickoff Meeting	3,000.00
Supplement No. 7 – Move $1,093.48 from Design Budget to Right of Way Phase Budget	(1,093.48)
Total Design Budget	**$338,820.52**
Supplement No. 7 --Right of Way Phase	**$83,341.00**
Plus $1093.48 from Design	1,093.48
Total Right of Way Phase	**84,434.48**
New Maximum Amount Payable	**$423,255.00**

If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to this office for final action.

Signed this _____ day of _____, 2017.

By: **Skillings Connolly, Inc**

Principal

By: **City of McCleary**

Signing Authority

EXHIBIT A
SCOPE OF WORK
SUPPLEMENTAL AGREEMENT NO. 7

CITY OF MCCLEARY
THIRD STREET IMPROVEMENTS
April 3, 2017

Introduction
The following scope of work delineates tasks to be performed as part of the agreement between Skillings Connolly, Inc. (Firm) and City of McCleary (City).

After completing the PS&E for the Third Street Improvements, it was determined that Temporary Construction Easements (TCE) and Fee Acquisition is required. The WSDOT LAG manual Chapter 25 lays out the required process to follow to acquire TCEs and Right of Way. TCEs are required from these Parcels; 6180513010, 618051323008, 618051323007, 060600400901, 060500401001, 060600401200, 060600401301, 060500500200, 060500500300, 060600900100 and fee acquisition from Parcel 060500500100.

The TCEs are needed to maintain property owner access to Third Street after improvements. The TCEs will be used to reconstruct driveways to the new driveway cuts. The fee acquisition will be used to acquire the portion of existing W. Oak Street that was built off right of way in the past and additional area to construct the NW curb return.

Tasks 290 and 300 will be part of the PE Phase and Tasks 310 to 330 will be part of the R/W Phase.

Task 290 – Right of Way Plans

Right of Way plans are required to determine the amount of right of way needed

Assumptions:
- The Firm will utilize Grays Harbor County online document research for legal descriptions in determining the boundary.
- There is sufficient existing survey control to efficiently establish the lot boundaries. If there is a deficiency in control the Client will be notified before proceeding with the additional work. An Extra Work Authorization will be presented to the Client for signature to cover the additional work.
- Monuments will not be set for this scope of services.
- Washington Coordinate System of 1983, WAC 332-130-060 and WAC 332-130-070 define the use of the datum, tag and epoch date to be reported. When reference has been made to State Plane Coordinates, the scale, elevation and combined factors shall be stated for the survey lines used in computing ground distances and areas.
- Drawings shall be prepared using Electronic Engineering Data Standards.
- Legal description will be written as part of Task 310

Tasks:
1. Research public and private survey records for information necessary for right of way determination.
2. Prepare Right of Way Plan in Washington State Department of Transportation format.

Deliverables:
- **Right of Way Plan containing the following elements:**
  - Highway facilities with standard access control delineated.

- Public road network.
- Proposed city street connections including individual private approaches
- Location and identity of subdivisions.
- Corporate limits and boundaries.
- Rivers, streams, and major landmarks.
- Pedestrian and bicycle trails or paths.
- Beginning and end of plan.
- Legend and scale bar.
- Publicly-owned utilities.
- Title block.
- Points of public access.
- Appropriate traffic movement notes on plan sheets.
- Plan length on first page of Vicinity Map
- Directional arrows on all roadways and ramps.
- Number of lanes indicated on all roadways.

- **Survey Report containing the following elements:**
  - Horizontal and vertical datums identified.
  - Horizontal and vertical control points identified.
  - Control network points identified with a sketch.
  - Sketches and/or photos of control points.
  - State Plane Coordinates (SPC) to Project Datum worksheets.
  - List of Records of Survey/Land Corner Records, RR maps, and other reference material.
  - List of WSDOT Right of Way Plans.
  - List of deeds and other property rights documents.
  - Sketches and/or photos of alignment monuments.
  - Monuments identified as potential disturbance to project.
  - Summary of all General Land Office (GLO) monuments held or rejected, with supporting evidence.
  - Sketches of conflicting information supporting decisions.
  - Summaries of key determinations critical to resolution of alignments.
  - Basis of Bearings monuments identified.
  - Basis of Stationing identified.

Task 300 – Project Funding Estimate

The Project Funding Estimate (PFE) will be used to estimate the right of way cost for the project. The PFE will follow the WSDOT LAG manual chapter 25.41.

Assumptions:

- City will provide title reports for listed parcels
- Tierra Right of Way will complete the PFE
- One appraisal will be needed
- Duncan & Associates will prepare the PFE as a Subconsultant to Tierra

Tasks:

1. Review PFE and provide comments to Tierra
2. Coordinate with WSDOT to ensure PFE is acceptable
3. Submit PFE to the Client

Deliverables:

- PFE

Task 310 – Right of Way Acquisition

The work associated with this task involves the valuation and acquisition of property rights needed for the project.

Assumptions:

- Right of way plans and documents will be submitted to WSDOT Local Programs for approval.
- Tierra Right of Way will provide the negotiation services required by this task.
- If Tierra Right of Way does not reach a successful agreement with the owner(s), the documents will be referred to the City. The City will then decide on the next step with any unsuccessful negotiations.
- Direct expenses associated with limited liability guarantees, title reports, title insurance, escrow fees, other closing costs and payments to property owners will be the responsibility of the City.

Tasks:

1. Valuation/Negotiation Services
   - Provide TCE valuation and negotiation services using procedures in accordance with the Washington State Department of Transportation (WSDOT) *Right-of-Way Manual* and *Local Agency Guidelines*
   - Coordinate with the WSDOT Local Agency Coordinator to ensure the Administrative Offer Summaries, R/W Plans, legal descriptions, negotiation files and title reports meet WSDOT's approval prior to making the offer to purchase the temporary construction permits.
   - Address any engineering issues and offer technical support (drawings & exhibits) for the appraiser and right-of-way agent during owner meetings.
   - Coordinate with a local title/escrow company to close the necessary transactions.
   - Negotiation/acquisition of temporary construction permits.
   - Complete a file review with the WSDOT Local Agency Coordinator on each individual parcel file (or as specified by said coordinator) to ensure compliance thus allowing them to process the project for certification.
   - Prepare a commitment file documenting the work required on each parcel.
2. Complete legal descriptions for Up to 11 parcels

Deliverables:

- Pending landowner endorsement/closing; closed temporary construction permits files will be delivered to the City.
- Legal Descriptions
- Documents necessary for right-of-way certification by WSDOT.
- A right-of-way commitment file.

Task 320 – Update PS&E

After the right of way has been acquired the PS&E will need to be updated to reflect any changes.

Assumptions:

- Specifications will be updated once to either 2016 or 2018 standards based on anticipated bid date
- Plan changes are limited to the intersection at W. Oak Street

- City will review and approve Plans
- Plan will be submitted to WSDOT for construction authorization

Tasks:

1. Write up to two special provisions for right of way commitments
2. Update specifications for 2016 or 2018
3. Update the NW corner of W Oak Street and Third Street to extend sidewalk to the PC/PT on W Oak Street
   - Design ADA Compliant ramp and crossing
4. Update NEPA
5. PS&E QA/QC, review with City for approval
6. Submit to WSDOT for Pre-Advertisement review of PS&E and construction funds obligation

Task 330 -- Construction Pre-Award Services

Assumptions:

- Pre-award activities include:
  - Bid assistance – respond to Contractor requests for information (RFI)
  - Prepare contract addenda to incorporate RFI responses (if needed)
  - Bid evaluation - Review bid tabulations, reference checks, and provide award recommendation. Verification of low bidder references
  - Recommendation of award
- There will be not a bid protest. If a bid protest occurs, assistance will be provided as part of a supplemental agreement.

Tasks:

1. Bid assistance will be provided including answering questions (RFI) from contractors and issuance of up to two addendums.
2. Attend bid opening
3. Bid documents - Review Bid Tabulations, reference checks and provide award recommendation
4. Prepare the Award of Contract letter for signature.

Deliverables:

- Up to two addendums if needed
- Bid tabs, reference checks, award recommendation
- Contract Award letter for signature
- Documentation of Debarment review for Contractor

END SCOPE OF WORK

Prepared by: _____ 04/03/2017
Tim Horton, PE

Reviewed by: _____ 04/03/2017
Thomas E. Skillings, PE

EXHIBIT B-1
CONSULTANT COST COMPUATION – MAN-HOURS

PROJECT NAME: 14044 - SUPPLEMENTAL AGREEMENT NO 7 CITY OF MCCLEARY THIRD STREET IMPROVEMENTS RIGHT OF WAY PLANS AND ACQUISITIONS		PRINCIPAL-IN-CHARGE	SENIOR PROJECT MANAGER	PROJECT ENGINEER	SR ENVIRONMENTAL SCIENTIST	PROJECT SCIENTIST	ENGINEER	SURVEY MANAGER	SURVEYOR	TECHNICIAN	PROJECT ADMINISTRATOR
TASK #	**TASK DESCRIPTION**										
290	**RIGHT OF WAY PLANS**										
1	Peer/Principal review	1									
2	Progress Reports / Invoicing										1
3	Review plans & requirements							6			
4	Review title reports & legal descriptions for 11 prop.							8			
5	Calculate property boundaries for 11 properties							1		8	
6	Calculate centerline							1	4		
7	Review & layout for drafting							2			
8	Drafting ROW Plans							2		8	
9	Map check							1	2		
10	Final check							4			
11	Revise draft							1		2	
12	Prints & shipping									2	
13	Review DNR comments							2			
14	Draft DNR Revisions							1		2	
15	Prints & Shipping									2	
300	**Project Funding Estimate**										
1	Review PFE and provide comments to Tierra		2								
2	Coordinate with WSDOT to ensure PFE is acceptable		2								
3	Submit PFE to the Client			1						1	
310	**RIGHT OF WAY ACQUISITIONS**										
1	**Valuation/Negotiation Services**										
1.1	Provide TCE Valuation and negotiation services using procedures in accordance with WSDOT *Right-of-Way Manual and Local Agency Guidelines.*		4								
1.2	Coordinate with WSDOT Local Agency Coordinator to ensure the Administrative Offer Summaries, R/W Plans, legal descriptions, negotiation files and title reports meet WSDOT's approval prior to making the offer to purchase the temporary construction permits.		22								

PROJECT NAME: 14044 - SUPPLEMENTAL AGREEMENT NO 7 CITY OF MCCLEARY THIRD STREET IMPROVEMENTS RIGHT OF WAY PLANS AND ACQUISITIONS		PRINCIPAL-IN-CHARGE	SENIOR PROJECT MANAGER	PROJECT ENGINEER	SR ENVIRONMENTAL SCIENTIST	PROJECT SCIENTIST	ENGINEER	SURVEY MANAGER	SURVEYOR	TECHNICIAN	PROJECT ADMINISTRATOR
TASK #	**TASK DESCRIPTION**										
1.3	Address any engineering issues and offer technical support (drawings and exhibits) for the appraiser and right-of-way agent during owner meetings.		4				20				
1.4	Coordinate with a local title/escrow company to close the necessary transactions.										
1.5	Negotiation/acquisition of temporary construction permits.		8								
1.6	Complete a file review with WSDOT Local Agency Coordinator on each individual parcel file (or as specified by said coordinator) to ensure compliance thus allowing them to process the project for certification.		2								
1.7	Prepare a commitment file documenting the work required on each parcel.			8							
2	**Complete Legal Description for Up to 11 Parcels**										
2	Complete legal descriptions for up to 11 parcels.							12			
320	**UPDATE PS&E**										
1	Write up to two special provisions for right of way commitments.		4	16							
2	Update specifications to 2016 or 2018 standards based on anticipated bid date.			4			24				
3	Update the NW corner of W Oak Street and Third Street to extend sidewalk to the PC/PT on W Oak Street.			2			8			8	
3.1	Design ADA-compliance ramp and crossing.						4			4	
4	PS&E QA/QC, review with City for approval.		6	6							
5	Submit to WSDOT for Pre-Advertisement review of PS&E and construction funds obligation.			4							
6	Update NEPA				1	4					
330	**CONSTRUCTION PRE-AWARD SERVICES**										
1	Bid assistance will be provided including answering questions (RFI) from contractors and issuance of up to two addendums.		4	8							
2	Attend bid opening.		4								
3	Bid documents: Review bid tabulations,		8								4

PROJECT NAME: 14044 - SUPPLEMENTAL AGREEMENT NO 7 CITY OF MCCLEARY THIRD STREET IMPROVEMENTS RIGHT OF WAY PLANS AND ACQUISITIONS		PRINCIPAL-IN-CHARGE	SENIOR PROJECT MANAGER	PROJECT ENGINEER	SR ENVIRONMENTAL SCIENTIST	PROJECT SCIENTIST	ENGINEER	SURVEY MANAGER	SURVEYOR	TECHNICIAN	PROJECT ADMINISTRATOR
TASK #	**TASK DESCRIPTION** reference checks, and provide award recommendation.										
4	Prepare the Award of Contract letter for signature.		2								
	HOURS PER DISCIPLINE	**1**	**72**	**49**	**1**	**4**	**56**	**41**	**6**	**37**	**5**

EXHIBIT B-2
CONSULTANT COST COMPUATION – SUMMARY

NEGOTIATED HOURLY RATE (NHR):

Classification	Man Hours	x	Rate	=	Cost	
PRINCIPAL-IN-CHARGE	1	x	$192.00	=	$192.00	
SENIOR PROJECT MANAGER	72	x	$155.00	=	$11,160.00	
PROJECT ENGINEER	49	x	$134.00	=	$6,566.00	
SR ENVIRONMENTAL SCIENTIST	1	x	$155.00	=	$155.00	
PROJECT SCIENTIST	4	x	$101.00	=	$404.00	
ENGINEER	56	x	$134.00	=	$7,504.00	
SURVEY MANAGER	41	x	$135.00	=	$5,535.00	
SURVEYOR	6	x	$123.00	=	$738.00	
TECHNICIAN	37	x	$92.00	=	$3,404.00	
PROJECT ADMINISTRATOR	5	x	$97.00	=	$485.00	
Total Hours =	272				**Total NHR =**	$36,143.00

REIMBURSABLES:

Mileage	0	x	$0.535	=	$0.00	
Miscellaneous Expenses	$0.00	x	10%	=	$0.00	
					Total Expenses=	$0.00

SUBCONSULTANT COST (See Exhibit G):

Tierra Right of Way	$47,197.63	x	0%	=	$47,197.63	
					Total Subconsultants =	$47,197.63

SUB-TOTAL (NHR + REIMBURSABLES + SUBCONSULTANTS):

					Sub Total =	$83,340.63

MANAGEMENT RESERVE FUND:

SUB TOTAL =	$83,340.63	x	0%	=	**MRF =**	$0.00

GRAND TOTAL

GRAND TOTAL =	**$83,341**

PREPARED BY: Tim Horton, PE **DATE:** April 5, 2017

REVIEWED BY: Thomas E. Skillings, PE **DATE:** April 5, 2017

ORDINANCE NO. _____

AN ORDINANCE RELATING TO ZONING, AMENDING SECTIONS 17.12.010 and 17.36.020 MMC, PROVIDING AN EFFECTIVE DATE AND FOR SEVERABILITY & CORRECTION.

R E C I T A L S:

1. The provisions of the City's Uniform Development Code, as codified in Title 17 of the Municipal Code, govern the land use within the corporate limits.

2. An ambiguity has been found which merits change so as to insure consistency of application with the provisions of state law, as now existing or hereafter amended or succeeded.

3. The Council referred the issues to the Hearing Examiner as authorized by the Municipal Code. The Examiner, after giving of the required public notice, held a public hearing. The Examiner has submitted his Report and Recommendations. Contained within that document were recommendations both as to clarification of the definitional provisions of Section 17.20.010, as well as recommendations as

to appropriate action as to clarifications as to the applicability of the non-conforming use provisions of Chapter 17.36.

4. Upon receipt of the Report and Recommendations, the Council chose to waive any further open record hearings, has adopted the Recommendations, and has chosen to adopt the modifications in definitions and clarify the applicability of the non-conforming utilization provisions of the Code.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION I: Section 17.12.010 and Section I, Ordinance 709, as last amended by Section II, Ordinance 795, shall be amended in the following respects:

Subsection "H": The definition of "hospital" currently existing shall be removed and replaced with the following definition:

"Hospital" means any institution, place, building, or agency which qualifies as fitting within the definition of hospital as set forth in RCW 70.41.020[7], as now existing or hereafter amended.

Subsection "R": The following definition shall be added to that subsection:

"Residential treatment facility" means any facility to which the definition contained within WAC 246-337-005, as now existing of hereafter amended or succeeded, is applicable and is required by state law to have a license issued by the State to operate as such a facility.

SECTION II: Section 17.36.020 MMC is amended to read as follows:

In order not to cause undue economic hardship to owners of property, nonconforming uses and structures shall continue under the following conditions. For purposes of interpretation, "residential building or structure" shall be deemed to include both single family and multi-family buildings or structures.

A. Existing nonconforming structures or uses cannot be enlarged or altered so as to increase their nonconformity; except, however, that owners of nonconforming dwelling units in the C-1 zoning district shall have the right to maintain, improve, or expand their properties;

B. An existing nonconforming structure and its equipment or fixtures may be repaired if the value of the repair does not exceed fifty percent of the assessed value of

the structure as determined by the county assessor for the year in which the work is to be done;

C. An existing nonconforming structure that is destroyed by fire or calamity more than fifty percent of its replacement value, as determined by the building official, may be reconstructed to its original size, shape, configuration, and in conformance with the building code if reconstruction commences within three years of the damage, unless extended by the city council; and

D. If a nonconforming use is discontinued for ***three*** ((~~four~~)) years or more, then that nonconforming use is no longer legal and subsequent uses and structures shall conform to this chapter.

SECTION III: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been

declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION IV: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION V: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS _____ DAY OF _____, 2017, by the City Council of the City of McCleary, and signed in approval therewith this _____ day of _____, 2017.

CITY OF McCLEARY:

_____
BRENT SCHILLER, Mayor

ATTEST:

_____
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

_____
DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON)
: ss.
GRAYS HARBOR COUNTY)

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number _____ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number _____, as it was published, is on file in the appropriate records of the City of McCleary.

_____
WENDY COLLINS

SIGNED AND SWORN to before me this _____ day of _____, 2017, by WENDY COLLINS.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, Residing at:
My appointment expires:

RESOLUTION NO. _____

A RESOLUTION ADOPTING POLICIES IN RELATION TO HANDLING MONIES RECEIVED BY THE CITY AND UTILITY BILLING.

R E C I T A L S:

1. The Clerk-treasurer has reported that, in furtherance of assuring consistent application of procedures in relation to certain operations of her office, she has developed draft policies. One of those policies relates to procedures to be applied in relation to the receipt and depositing of moneys received by the City. The second relates to formalization of the protocols to be utilized in relation to the billing and collection of moneys owing for utility services provided by the City.

2. Copies of both policies have been provided to the Council and Mayor for review.

3. After that review, it is found appropriate and in the Public's interest to adopt these policies in furtherance of the desire to maintain accountability as well as consistency of application.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY, THE MAYOR SIGNING IN AUTHENTICATION THEREOF:

CITY OF McCLEARY
100 s. 3RD
McCLEARY, WASH 98557

SECTION I: Those documents attached to this Resolution as Attachments #1, denominated "Cash Handling" & #2 (Utility Billing), shall be and are hereby adopted as policies of the City to be implemented by the Office of the Clerk-treasurer and the other departments, as to utility services, which are involved in the administration of the covered activities.

SECTION II: The policies attached to this resolution shall take effect immediately upon adoption of this resolution.

PASSED THIS _____ DAY OF _____, 2017, by the City Council of the City of McCleary, and signed in authentication thereof this _____ day of _____, 2017.

CITY OF McCLEARY:

_____
BRENT SCHILLER, Mayor

ATTEST:

_____
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

_____
DANIEL O. GLENN, City Attorney

CITY OF McCLEARY
100 s. 3RD
McCLEARY, WASH 98557