



# McCleary City Council Agenda

January 27th, 2016- 7:00 PM

Workshop 6:30 PM- Mark Daniels- Watershed Group- Shoreline Management Plan

Flag Salute

Roll Call: \_\_\_ Pos. 1- Orffer, \_\_\_ Pos. 2- Vessey, \_\_\_ Pos. 3- Peterson, \_\_\_ Pos. 4- Blankenship, \_\_\_ Pos. 5- Ator

Public Hearings

Public Comment

Executive Session

<b>Minutes</b>	<b>Tab A</b> Approval	Introduction	<b>X</b>	Action	<b>X</b>
<b>Mayor Comments</b>					

<b>Staff Reports</b>	<b>Tab B</b> Dan Glenn				
	<b>Tab C</b> Todd Baun				

<b>Old Business</b>	<b>Tab D</b> Electric Rate Study Proposals	Introduction		Action	<b>X</b>
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<b>New Business</b>	<b>Tab E</b> Marijuana Hearing Examiner Report	Introduction	<b>X</b>	Action	<b>X</b>
	FOP Contract	Introduction	<b>X</b>	Action	<b>X</b>

<b>Ordinances</b>	<b>Tab F</b> Development Agreement	Introduction	<b>X</b>	Action	
	<b>Tab G</b> Civil Service Modification	Introduction	<b>X</b>	Action	

<b>Resolutions</b>	<b>Tab H</b> Permissive Use Update	Introduction	<b>X</b>	Action	
<b>Approval of Vouchers</b>		Introduction	<b>X</b>	Action	<b>X</b>

Mayor Council Comments

Public Comments

Executive Session

Adjournment or Recess Meeting

Please turn off Cell Phones- Thank you

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

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

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

**CITY OF MCCLEARY**  
**Regular City Council Meeting**  
**Wednesday, January 13, 2016**

ROLL CALL AND FLAG SALUTE	Councilmember's Orffer, Vessey, Peterson, Blankenship and Ator were in attendance.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, George Crumb, Paul Nott and Dan Glenn.
PUBLIC HEARING	None.
PUBLIC COMMENT	<p>Laurie Mansmith and her husband own rentals in McCleary and three out of four of their renters are on fixed incomes. She stated other areas are lower in cost for utilities and she wants the city to consider turning the power over to the PUD. She said with holes in the streets and flooding around town, it makes her wonder where the money is going.</p> <p>Jill VanWormer is upset because she is trying to renovate a house that she is not living in and she still pays \$350 a month for utilities, which she is only using a small portion of the time. She said it's preventing people from moving to McCleary.</p> <p>Mayor Schiller responded by saying the Council is getting ready to do a utility rate study of the light and power. Also, the infrastructure cost is high and we have a low amount of rate payers, causing the individual rate payer to pay more than larger communities.</p> <p>Todd Baun said the City rates are tied to bonds and loans that were used to make required improvements to the treatment plant and the well system. The improvements were needed to keep the utilities operating.</p>
EXECUTIVE SESSION	Mayor Pro Tem Schiller called for an executive session at 7:14 pm to discuss collective bargaining for 20 minutes or less. The executive session ended at 7:34 pm. No action was taken.
MINUTES APPROVED	<b>It was moved by Councilmember Peterson, seconded by Councilmember Vessey to approve the December 9, 2015 minutes. Motion Carried 5-0.</b>
CITY ATTORNEY REPORT	Dan Glenn provided a written report for the Council and is available, if they have any questions.
MAYOR'S COMMENTS	Mayor Schiller had a meeting with Dru Garson from Greater Grays Harbor Inc. last Friday and was told that the steel mill plant is still being considered. They are looking for another investor after one backed out. They are still intending on moving forward with the plant as soon as some of the issues are worked out. GGHI is also working with the University of Washington to get a few student interns to come to the harbor to help out small cities with research projects while working toward obtaining their MPA. They are going to provide 200 hours to the City of McCleary to help write a strategic plan and mission statement.
DIRECTOR OF PUBLIC WORKS REPORT	Todd Baun provided a written report for the Council and is available, if they have any questions.
GENERAL PACIFIC PURCHASE ORDER	Todd presented a purchase order for three street lights that need to be replaced and will now match the other lights in town. The lights are located by the new clinic. The city will pay for one of the lights and then receive a reimbursement for two of them by the clinic directly. <b>It was moved by Councilmember Ator, seconded by Councilmember Peterson to authorize a purchase order in the amount of \$12,630.77 to General Pacific for street lighting improvements. Motion Carried 5-0.</b>
SHORELINE MANAGEMENT PLAN	Todd discussed the shoreline management plan and how we need to set up a public meeting to discuss the plan. Todd will set up a work session before the next council meeting at 6:30 pm.
CITY COUNCIL TOUR OF THE CITY FACILITIES	Todd Baun would like to take the Council around town on a "field trip" to see the city facilities and work sites. He believes it will help them to understand what functions the city provides and how the infrastructure works. He would like to set up two groups for an afternoon. Todd will provide some dates to the Council.

CHEHALIS TRIBAL JAIL CONTRACT	Chief Crumb contacted the tribe to set up a visitation so the officers can see the facility and review how they process prisoners. <b>It was moved by Councilmember Ator, seconded by Councilmember Orffer to adopt the Chehalis Tribal Jail Service Agreement. Motion Carried 5-0.</b>
3RD STREET WATER LINE CONTACT AND SCOPE	Todd Baun is asking the Council to consider authorizing Skillings Connolly to provide final design, construction documents and construction administration to replace the existing asbestos cement waterline on the west side of 3rd Street from Main Street to Oak Street and to approve a time extension for completion. <b>It was moved by Councilmember Vessey, seconded by Councilmember Peterson to authorize the Mayor to sign a contract with Skillings Connolly to provide final design, construction documents and construction administration for the 3rd Street water line replacement, not to exceed \$45,661.00 and to authorize a time extension. Motion Carried 5-0.</b>
FINANCE COMMITTEE MEETING DATES	Todd Baun set a schedule for the Finance Committee to meet. The first meeting is scheduled for January 29th at 3:00 pm. The future dates will be confirmed as the Council has time to review their schedules.
GHCOG REPRESENTATIVE APPOINTMENT	Each year, the Grays Harbor Council of Governments asks the City to appoint a representative to attend meetings on behalf of the City. Chris Vessey has experience working with them and is happy to be the representative for the City of McCleary. Todd or Mayor Schiller can fill in as the alternate, when needed. <b>It was moved by Councilmember Orffer, seconded by Councilmember Peterson to appoint Chris Vessey as the City representative for the Grays Harbor Council of Governments. Motion Carried 5-0.</b>
PERMISSIVE USE PERMIT - VESSEY	Chris Vessey requested a renewal of his permissive use permit at 604 W. Ash Street in McCleary. His previous permit allowed him to maintain the City's right of way (ROW) around his house. For many years, he has maintained the ROW and kept it in great condition. <b>It was moved by Councilmember Orffer, seconded by Councilmember Peterson to authorize the Permissive Use Permit for Chris Vessey at 604 W. Ash Street, with no annual monetary amount and no expiration date to the permit. Motion Carried 4-0 with Councilmember Vessey abstaining.</b>
CITY MISSION, VISION & GOALS	Mayor Schiller wants the Council to begin discussing what is the vision for the future of McCleary. We need to come up with a strategic plan for growth and to create a mission and vision for our future. He wants to include the community so they can offer their ideas and suggestions. This will be a focus of the Council as we move forward this year.
ELECTRICAL RATE STUDY PROPOSALS	Todd Baun has scheduled meetings with two companies that are proposing rate studies for the City. Councilmember Ator is interested in also having a rate study on all the other utilities (water, sewer and electrical) to help in our true vision. Tabled until after the presentations.
STORMWATER RATE FOR 2016	Tabled until the Finance Committee reviews the study.
CIVIL SERVICE COMMISSION	Mayor Schiller wants to re-establish the Civil Service Commission. The last time there was any activity with the commissioners was in 2013. He would like to have the Council consider appointing new commissioners at the next meeting. Staff will add the vacancy information to the city website.
E-911 BOARD	Mayor Schiller appointed Todd Baun as the City representative to attend the board meetings and bring back updates and changes to the Council.
APPROVAL OF VOUCHERS	Accounts Payable vouchers/checks approved were 40474 - 40522 including EFT's in the amount of \$168,525.95 and 40524 - 40593 including EFT's in the amount of \$56,198.06.  Payroll checks approved were 40316 - 40398 including EFT's in the amount of \$147,644.44 and 40447 - 40592 including EFT's in the amount of \$226,690.19.  <b>It was moved by Councilmember Ator, seconded by Councilmember Peterson to approve the vouchers. Motion Carried 5-0.</b>
EXECUTIVE SESSION	None.
PUBLIC COMMENT	Chris Vessey will be gone at the next meeting, and possibly the one after, and asked to be excused from both meetings.

MEETING ADJOURNED

**It was moved by Councilmember Ator, seconded by Councilmember Peterson to adjourn the meeting at 8:25 pm. The next meeting will be Wednesday, January 27, 2016 at 7:00 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: January 21, 2016  
RE: LEGAL ACTIVITIES as of JANUARY 27, 2016

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. **CIVIL SERVICE COMMISSION MEMBERSHIP ORDINANCE**: Last meeting the Mayor mentioned the intention to appoint new members to the Civil Service Commission. As you are aware, the Commission has jurisdiction over the initial management of the development of lists from which potential employees of the Police Department are chosen, as well as the appeal, if any, from a disciplinary action taken involving a serving officer. When I took a look at the existing section of the Municipal Code, I was surprised to note the membership of the Commission was set at five, rather than the "normal" level of three. I noted that surprise to the Mayor and indicated I would review the matter.

Since then, I went back into my records and have found that the change occurred in 2000 as a result of the recommendation of the then serving Commissioners. I can not find the specific reason/s for the Commissioners' recommendation, but it resulted in my drafting of the ordinance and the Council's adoption of the change.

As background, as indicated above, RCW 41.12 provides for a three member commission. However, the chapter anticipates that cities may make modifications in the general outline, so long as the result "generally accomplishes" the goals of the chapter. The specific language is as follows:

**RCW 41.12.010 Application of chapter.**

The provisions of this chapter shall have no application to cities and towns which at the present time have provided for civil service in the police department or which shall subsequently provide for civil service in the police department by local charter or other regulations which said local charter or regulations **substantially accomplish the purpose of this chapter**, nor to cities having a police force of not more than two persons including the chief of police.

That provision indicating "substantially accomplish" allowed the change. However, the draft ordinance would revert to the original three person level. All other factors, including qualification requirements, service times, etc., would remain the same.

2. **PERMISSIVE USE PERMITS**: As I believe I mentioned at the last meeting, in 2010 I had prepared and provided a draft update resolution in relation to the processing of this type of application. For whatever reason, I can find no indication that it was acted upon. Thus, I have updated it to reflect some additional "wisdom" gained from more recent experience arising from a situation through which Montesano went.

I would ask that you review the draft and also consider at least two other possible elements. They are as follows:

A. When the area is a right of way with property on the opposite side, do you wish to limit the amount of right of way which may be granted to an applicant to one-half of that width?

B. Do you wish to require notice of the application to be given to the abutting property owners?

3. **ZONING TEXT AMENDMENT REPORT**: The matter of allowing production and processing of cannabis in the industrial zone was referred to Mr. Aaland for purposes of holding the open public record hearing of the matter. That has been held. Pursuant to your direction, Mr. Aaland as submitted a written report with recommendations. In addition to the matter initially referred to him for hearing, the recommendations include other possible text amendments basically related to zoning matters relating to cannabis production, one of which arose from a request of the only citizen who appears to have testified at the hearing.

He phrased the additional potential issues for your review as follows:

1. Whether to include in the local ordinance a reduction in the buffer requirements from 1,000 feet for all uses except elementary and secondary schools and playgrounds (which requires that such distance reduction will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health);
2. Whether to require license applicants to provide individual notice of their application to any of the following that are located within 1,000 feet: elementary or secondary schools, recreation centers or facilities, child care centers, churches, agencies that operate public parks, transit centers, or libraries, and arcades admitting minors; and
3. Whether to also allow these uses in commercial zones as requested at the public hearing.

To aid in your review of his Report, I have attached at the end of this report the relevant section of the 2015 statutory amendment as to "spacing" of these type of activities in relation to schools, playgrounds, etc., and the City's authority to adjust that limitation as to certain of the covered activities. The information is found in Section 8, subsections [a] and [b].

At this stage, the next step is that the Council will need to set the matter on for hearing and consideration. You may either decide to have another "open record" hearing at which testimony can be taken or a "closed record" hearing at which the record considered is limited to Mr. Aaland's report and the audio tape of the public hearing he held. (I am certain Mr. Aaland has made that tape available to Ms. Collins so that all of you may listen to the relatively brief hearing.) After that hearing, you will then give me direction as to whether you wish to move forward with amending the text. If so, then the direction I will need is whether to limit the amendatory text amendment ordinance to the initial issue presented or to include some or all of the additional matters upon which he made recommendations.

4. **PUBLIC SAFETY SALES TAX PROPOSAL:** I bring the following discussion to your attention in recognition of the financial review which will be undertaken in terms of funding the City's Police Department for 2016.

It is my understanding that for some months the Commissioners and the Mayors' Conference have been discussing the

possibility of seeking to impose additional sale tax to collect funds which may be used only for funding criminal justice a/k/a police and jail services. The situation apparently involves a discussion of two possible alternatives. They are similar in nature to the tax which funds the Communication Center's operations. Given Mayor Schiller's recent assumption of the position, I am uncertain as to the extent he has received information on this series of discussions. Hopefully, what follows will be helpful to all.

The situation apparently has involved a discussion of two possible alternatives. They are similar in nature to the tax which funds the Communication Center's operations.

A. One would seek to impose a one/tenth of one percent sales tax (RCW 82.14.130). Any revenue which would be generated under a tax imposed under .130 would be allocated with an initial ten percent to the County with the remaining 90% being allocated based upon population. Imposition is by action of the County Commission and such action is subject to repeal by referendum. It is my understanding that this alternative has not been the subject of a great deal of discussion.

B. The second would seek to utilize the authority to impose a sale tax with the choice to be between the one-tenth of one percent up to three-tenths of one percent. (RCW 82.14.450) As indicated, this is apparently the primary alternative being discussed. Theoretically a city could submit a proposal for the imposition of this sales tax, but apparently more frequently it is done by the county which is the alternative being discussed. Unlike the .130 approach, it must be submitted to a vote of the citizens and approved by no less than a majority of those voting. The attraction to the County might be the allocation method, 60% must go to the County with the remaining 40% allocated among the cities based upon population.

Aberdeen Chief of Police Torgerson has circulated a document which would project that, if approved, a tax under .450 at 1/10 of 1% would provide McCleary \$13,659.00, 2/10 of 1% \$27,718.00, and 3/10 of 1% \$40,977.00. His figures are extrapolated from the amount received by the Communication Center from its 1/10 of 1% tax. Of course, it is recognized that a lot must happen before any of these funds would be available.

For your information I have attached two pages out of a MRSC publication which I believe will be useful through its provision of a bit more detail.

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



## Funds Distributed under RCW 82.14.330 – Population, Violent Crime, and Special Programs

Sixteen percent of these funds is distributed on the basis of population, with each city getting a minimum of \$1,000 a year.<sup>204</sup> Twenty percent is distributed, again on the basis of population, to those cities that have had an average violent crime rate in the last three years that is 150 percent of the statewide average for those three years.<sup>205</sup> These funds are subject to the same spending restrictions as those under RCW 82.14.320, with the exception that they may not be spent on publications and public educational efforts dealing with runaway or at-risk youth.<sup>206</sup> (See the discussion in the previous section.)

Fifty-four percent goes to cities on a per capita basis to be spent on innovative law enforcement strategies, such as: alternative sentencing and crime prevention programs like community policing; domestic violence reduction programs; and/or programs for at-risk children or child abuse victim response programs.<sup>207</sup>

The final 10 percent of the funds is distributed on a per capita basis to cities that contract with another governmental agency for the majority of their law enforcement services. A city must notify the Department of Community, Trade and Economic Development of its contract by November 30 for the upcoming calendar year.<sup>208</sup>

## Optional Sales Taxes<sup>209</sup>

### ► 0.1 Percent Sales Tax Under RCW 82.14.340

County commissioners or councils may vote to levy a county-wide 0.1 percent sales tax for criminal justice purposes.<sup>210</sup> The tax is subject to the same referendum provisions as the second half percent sales tax.<sup>211</sup> Ten percent of the funds collected are distributed to the county, with the remainder allocated to the cities and the county on the basis of population.<sup>212</sup>

For example, assume that the collections from this tax are \$1 million. The county gets ten percent (\$100,000) off the top, leaving \$900,000 to be shared among the county and cities. If your city has

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<sup>204</sup>RCW 82.14.330(1)(b).

<sup>205</sup>RCW 82.14.330(1)(a).

<sup>206</sup>RCW 82.14.330(1).

<sup>207</sup>RCW 82.14.330(2)(b).

<sup>208</sup>RCW 82.14.330(2)(a).

<sup>209</sup>Sales tax rate changes must be made at least 75 days before beginning of a quarter. See discussion on page 19.

<sup>210</sup>At the time this publication was written, 32 counties are levying this tax.

<sup>211</sup>See footnote 48 for the referendum procedure.

<sup>212</sup>Note that there is an additional 0.1 percent sales tax that all counties, other than King County, may levy for juvenile detention facilities and jails. RCW 82.14.350. This tax must be voted on and passed by a simple majority. Permitted expenditures include design, construction, and maintenance of these facilities. This tax is not shared with cities.

a population of 10,000 and the total population (incorporated and unincorporated) in the county is 80,000, your city's share will be  $10,000/80,000 = 12.5$  percent of \$900,000, or \$112,500. The statute states that the funds distributed have to be used "exclusively for criminal justice purposes" and cannot be "used to replace or supplant existing funding." Since the year that establishes the base for any measure of supplanting is calendar year 1989, it is unlikely that any city needs to be concerned about supplanting now.

The legislature has defined "criminal justice purposes" in this statute to be:

activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates.

### ► 0.3 Percent Sales Tax Under RCW 82.14.450

A county legislative body may submit a ballot proposal to a county-wide vote for a sales tax increase of up to 0.3 percent. Sales of motor vehicles or the lease of motor vehicles for up to the first 36 months are exempt from the tax. The proposal must be approved by a majority of the voters at a primary or general election.

The text of the ballot measure must state the purposes for which the funds will be used. At least one-third of the money must be spent for "criminal justice purposes, fire protection purposes, or both" with no restrictions on type of use for the remaining two-thirds.<sup>213</sup> "Criminal justice purposes" is defined as:

activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates.

Funds from this tax may not supplant existing funds used for these purposes except as follows: 1) up to 100 percent may be used to supplant existing funding in calendar year 2010; 2) up to 80 percent may be used to supplant existing funding in 2011; 3) up to 60 percent in 2012; 4) up to 40 percent in 2013; and 5) up to 20 percent may be used to supplant existing funding in 2014.<sup>214</sup>

Sixty percent of the funds are distributed to the county, with the cities in the county getting the remaining 40 percent on a per capita basis. The cities must spend the portions they receive in accordance with the uses stated in the ballot measure.

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<sup>213</sup>RCW 82.14.450(4) as amended by ch. 551, Laws of 2009.

<sup>214</sup>Ch. 551, Laws of 2009. An informal opinion from Deputy Solicitor General James K. Pharris to Ron Zirkle, Yakima County Prosecutor, dated December 2, 2005, states that the base for determining whether existing funds have been supplanted is the 2004 level of spending for a tax first imposed January 1, 2005. One can use this "rule" for taxes imposed on other dates.

## **STAFF REPORT**

To: Mayor Schiller  
From: Todd Baun, Director of Public Works  
Date: January 22, 2016  
Re: Current Non-Agenda Activity

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### **Greater Grays Harbor an UW interns meeting**

Greater Grays Harbor and their interns from University of Washington will be meeting at City Hall on Friday, February 5<sup>th</sup> at 9:00 AM. The main purpose of this meeting is to get advisement and strategies for the City to become a more economic presence in Grays Harbor.

### **City Council Tour Date and Time**

Please let me know what date and time would work for everyone to go on this tour of the City.

## STAFF REPORT

To: Mayor and Council  
From: Todd Baun- Director of Public Works  
Date: January 22nd, 2016  
Re: Electrical Rate Study

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On January 22nd, 2016, the city reviewed presentations and conducted interviews of 2 consulting firms to complete our Electrical Rate Study. Both have offices in the Seattle area. Both the firms are highly qualified and more than capable to perform and complete our Electrical Rate Study. Their presentations and interviews all went well and made it a difficult choice for the reviewers.

The 2 firms that we interviewed were the following:

- FCS Group
- EES Consulting

Based on our scoring criteria for the interviews and presentations, we all agree that FCS Group would be the best fit for us on this Electrical Rate Study.

### **Staff Recommendation:**

Ben Blankenship, Larry Peterson, Lori Ann and I reviewed all of the firm's information and based on our rating criteria, we have come to the conclusion that FCS Group would be the firm to enter into contract negotiations with.

### **Action Requested:**

Please allow the city to move forward with FCS to the next steps of the process. They will be as follows:

The City and FCS will meet to ensure thorough understanding of the scope of work, FCS will then submit a proposal and once the proposal is satisfactory to both parties, we can then get an agreement finalized. The rate study work will then start after the agreement is finalized.

City of McCleary Hearing Examiner  
Report and Recommendation

Application: Proposal to revise the McCleary Municipal Code (MMC) to allow production and processing facilities for marijuana in the Industrial Zone.

Applicant: City of McCleary  
100 S 3rd Street  
McCleary, WA 98557

***Summary of Request:***

This is a proposal addressing the production and processing of marijuana. Specifically, the proposal is to amend the McCleary Municipal Code to allow these businesses within Industrial zones in the city of McCleary.

***Summary of Recommendation:*** Amending the MMC in this way would confirm to state laws and regulations governing marijuana. The Hearing Examiner recommends the City Council consider several points in making this decision.

***Public Hearing:***

A public hearing was conducted at 1:30 pm on Monday, January 4, 2016 at McCleary City Hall. Present for the city were Neil Aaland, Hearing Examiner and Todd Baun, Director of Public Works. The Examiner explained the hearing process and his role in it. He said the City Council has referred this matter to him on December 2 to conduct the required public hearing. The notice was posted as required. The SEPA process has been completed. He also noted that state law was amended last session to allow the city to reduce the buffers to 100 feet except for elementary and secondary schools and playground. The local ordinance can also require the applicant to provide individual notice to each specified use within 1000 feet. There were no letters from the public in the file.

Helen Hamilton asked about the location of industrially zoned property, and also commercially zoned property in the city. She suggests the city consider this use also on property zoned Commercial. She has property zoned commercial that she would consider allowing this use to occur on.

The Examiner noted that the amendments last year to state law also changed the taxing structure and how revenues will be distributed.

Nobody else testified. The hearing was closed at 1:40 pm. Supporting materials provided by the city, including the staff report, are incorporated into this report by reference.

***Findings:***

1. The McCleary Municipal Code (MCC) Chapter 2.30 establishes the office of the Hearing Examiner and assigns certain responsibilities to the Examiner.
2. MCC Chapter 17.40.130 and ordinance #790 establishes the responsibility and authority of the Hearing Examiner to hear and make recommendations on matters assigned to him by the Mayor and the City Council.
3. Section 17.40.130 of the MMC provides a process for amending the text of the MMC.
4. Section 17.40.130 (C) of the MMC provides that the Planning Commission will hold a public hearing to review such amendments and submit a recommendation for approval or denial of the request to the City Council within 60 days of the hearing. That section also provides that, if any applicable law, ordinance, rule, or regulation requires the utilization of different time parameters for the particular submission, those parameters shall be used.
5. The Planning Commission is presently inactive.
6. The Mayor and the City Council have assigned to the Examiner the responsibility of conducting the required public hearing and making a recommendation to the City Council for a proposal to revise the MMC. The proposal is to amend the McCleary Municipal Code to allow the production and processing of marijuana within Industrial zones in the city of McCleary.
7. Notice of the hearing was legally advertised on December 24, 2015 in the Montesano Vidette, and posted in the post office, library, and city hall.
8. Certain business activities related to marijuana are authorized by RCW 69.50.
9. The WSLCB has adopted Washington Administrative Code Chapter 314-55, which describes the application process, qualifications and requirements to obtain and maintain a marijuana license and the reporting requirements for a marijuana licensee.
10. The 2015 legislature amended RCW 69.50.331(8) to provide that the 1,000 foot buffer requirements from certain specified uses may be lowered to 100 feet in a city or county's local ordinance, except the buffers may not be reduced for elementary schools, secondary schools, and playgrounds.
11. The same 2015 legislation also allows cities and counties to adopt an ordinance requiring that license applicants provide individual notice of their application to any of the following that are located within 1,000 feet: elementary or secondary schools, recreation centers or facilities, child care centers, churches, agencies that operate public parks, transit centers, or libraries, and arcades admitting minors.
12. The McCleary Comprehensive Plan contains no obvious policies that relate to medical marijuana and recreational marijuana.
13. The MMC currently prohibits production, processing, or sales of medical marijuana and recreational marijuana within the city.
14. The city has determined that the proposed ordinance is not subject to the requirements of the State Environmental Policy Act (SEPA) as provided by WAC 197-11-800(19). A Determination of Non-Significance was issued on December 21 without a comment period.
15. Testimony at the public hearing suggested the city also consider allowing processing and production on lands zoned commercial.

**Conclusions:**

1. The city presently prohibits the establishment of marijuana processing, production, and retail sales facilities.
2. The city now wishes to consider allowing production and processing in parts of the city zoned for Industrial use as a permitted use.
3. Establishment of those uses as proposed is allowed by state laws and regulations.
4. There are several additional matters that should be considered if the city chooses to amend the MMC regarding marijuana, including reduced buffers, individual notice, and whether to also include commercial zones as well as industrial zones.

**Recommendation:**

*State laws and regulations allow the city to amend the McCleary Municipal Code to allow the production and processing of marijuana in Industrial zones. In making this decision, the City Council should also consider the following:*

1. *Whether to include in the local ordinance a reduction in the buffer requirements from 1,000 feet for all uses except elementary and secondary schools and playgrounds (which requires that such distance reduction will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health);*
2. *Whether to require license applicants to provide individual notice of their application to any of the following that are located within 1,000 feet: elementary or secondary schools, recreation centers or facilities, child care centers, churches, agencies that operate public parks, transit centers, or libraries, and arcades admitting minors; and*
3. *Whether to also allow these uses in commercial zones as requested at the public hearing.*

**Notice to Applicants and Interested Parties**

Under section 2.30.090 of the McCleary Municipal Code, the decision of the examiner shall be final and conclusive, as to any further action or appeal as to those matters in which the examiner's decision is in fact passed on to the mayor and council as a recommendation, on the twenty-first day after the date of the decision. Since this is a recommendation and not a final decision, there is no appeal provided.

This report is the recommendation of the Hearing Examiner to the McCleary City Council. The council may approve, reject or modify this recommendation. Interested parties should contact the Clerk-Treasurer concerning action by the City Council.

Dated this 19<sup>th</sup> day of January, 2016



Neil L. Aaland, AICP, McCleary Hearing Examiner



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE RELATING TO GOVERNMENTAL  
ADMINISTRATION, ADDING A NEW CHAPTER TO  
TITLE 17 OF THE MUNICIPAL CODE, PROVIDING  
FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**R E C I T A L S:**

1. The City is organized under the provisions of RCW Title 35A, the Optional Municipal Code. As a result, it has been granted a broad scope of authority in terms of its operational authority.

2. Discussions have been ongoing in relation to the use of development agreements to provide both the City and the property owner a method to achieve proper land use and to take into consideration the need for predictability in terms of the regulations to be applied during the course of a development.

3. The City is authorized to utilize the development agreement process pursuant to the provisions of RCW 36.70B.170 and wishes to formally exercise that authority.

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

SECTION I: Authorization of Development Agreements:



As provided by the provisions of RCW 36.70B.170, the City may enter into a development agreement with a person, as defined in Section 1.04.010 MMC, as now existing or hereafter amended or succeeded, having ownership or control of real property within its jurisdiction. The City may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement approved by the City shall set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by the City as of the time of approval of the Agreement or, if so provided by the Agreement, in effect at a later date subject to the following exceptions:

A. If applicable federal or state law, rule, or regulation mandate the utilization of other standards, those standards shall apply.

B. In recognition of the City's duties to protect public health and safety, the City reserves the authority to

impose new or different regulations to the extent required by a serious threat to the public health and safety.

SECTION II. Development Agreements - Effect:

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards referenced in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement.

A. A development agreement may not be subject to an amendment to a zoning ordinance, development standard, regulation, a new zoning ordinance, development standard, or regulations adopted after the effective date of the agreement.

B. Any permit or approval issued by the city after the execution of the development agreement and during the agreement's term must be consistent with the development agreement.

SECTION III. Development Agreements - Public

Hearing:

A. Notwithstanding other procedural requirements of this title, the City shall only approve a development agreement by ordinance or resolution after a public

hearing by the City Council or, if it deems appropriate to do so, a hearing before the Hearing Examiner.

1. Notice of the public hearing shall be made by publishing in the local paper, a minimum of six days prior to the hearing, the time, date, and location of the hearing, and a general description of the location and proposal.

2. If the hearing is held by the Hearing Examiner, the Hearing Examiner shall submit a written report to the Council containing findings, conclusions, and recommendations.

a. Upon receipt, the city council shall set a date for a public meeting to review the Hearing Examiner's report not less than fifteen or more than thirty days after receipt of the recommendation, such receipt being deemed to occur at its first regular meeting following tendering of it by the issuer.

b. Unless otherwise required by law or decided by the council, the meeting before the council shall be in the nature of a closed record hearing. The city council shall have the authority to approve, disapprove, or modify the recommendations of the Hearing Examiner as to the provisions of the development agreement under consideration.

B. If the development agreement relates to a project permit application, the provisions of Chapter 36.70C RCW shall apply to the appeal of the decision on the development agreement.

SECTION IV: Development Agreements - Recording & Binding Effect: A development agreement shall be recorded with the real property records of Grays Harbor County. During the term of the development agreement, the agreement is binding on the parties and their successors, including the City, if the City assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement.

SECTION V: Codification:

Sections I through IV of this Ordinance shall constitute a new chapter in Title 17 of the McCleary Municipal Code

SECTION VI: Severability:

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 VII: Effective Date:

This Ordinance shall take effect upon the fifth day following date of publication of this ordinance of a summary thereof.

SECTION VIII: 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 \_\_\_\_\_,  
2015, by the City Council of the City of McCleary, and signed

in approval therewith this \_\_\_\_\_ day of \_\_\_\_\_,  
2015.

CITY OF McCLEARY:

\_\_\_\_\_  
BRENT SCHILLER, Mayor pro tem

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.

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WENDY COLLINS

SIGNED AND SWORN to before me this \_\_\_\_\_ day of

\_\_\_\_\_, 2015, by WENDY COLLINS.

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NOTARY PUBLIC IN AND FOR THE STATE OF

WASHINGTON, Residing at:

My appointment expires:



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE RELATING TO GOVERNMENTAL OPERATION, MODIFYING THE NUMBER OF INDIVIDUALS SERVING UPON THE CIVIL SERVICE COMMISSION, AMENDING SECTION 2.56.020 MMC, PROVIDING FOR AN EFFECTIVE DATE AND SEVERABILITY.

R E C I T A L S:

1. Since 1976, the City has maintained a Civil Service Commission under the authority of RCW 41.12.

2. In 2000, at the recommendation of the then serving members of the Commission, the number of members was increased from three to five as was allowed by the applicable provisions of the law.

3. Since that time, experience has shown that maintaining that membership level is difficult. Thus, the Council finds that it is appropriate to reduce the number of members to the original level of three.

4. Such a reduction will not, in fact, remove any current member since the Commission does not currently have five appointed members, such a reduction is found to be in the best interest of the City and the fulfillment of the duties of the Commission.

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

SECTION I: Section 2.56.020 of the Municipal Code and Section 1, Ordinance 351, as last amended by Section 1, Ordinance 682, are amended to read as follows:

There is established in the city, pursuant to RCW Chapter 41.12, a police civil service commission, which shall be composed of ((five)) three persons appointed by the mayor and subject to confirmation by a vote of the city council.

SECTION II: 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 III: Effective Date:

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

SECTION IV: Interpretation:

The provisions of Section I shall not effect the term of any serving member of the Commission.

SECTION IV: 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 \_\_\_\_\_, 2016, by the City Council of the City of McCleary, and signed in approval therewith this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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 \_\_\_\_\_, 2016, by WENDY COLLINS.

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

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION IN RELATION TO THE GRANTING OF  
AND FEES TO BE CHARGED FOR PERMISSIVE USE  
PERMITS AND REPEALING RESOLUTION 208.**

**R E C I T A L S:**

1. The City has established a program of Permissive Use Permits in relation to allowing use of public rights of way so as to avoid confusion as to property ownership and utilization.

2. It is deemed appropriate to clarify certain terms and conditions.

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

SECTION I: Procedural Matters:

On and after the effective date of this Resolution, the following procedures shall be utilized in terms of a citizen's request to be allowed to utilize City rights of way which are not open to the public for use as streets or alleys.

A. A written application shall be submitted to the Office of the Director of Public Works by the owner of the property seeking use of the City's right of way abutting the Applicant's property. The application shall be upon such form as

may be established by that Office, shall be completed to the reasonable satisfaction of the Director, including the desired utilization of the right of way, the full and correct legal description, including tax parcel number of the Applicant's property for which the beneficial use is being requested, and shall be accompanied by such fees as may be required by the provisions of this resolution.

B. The Director shall undertake a review of the request. In determining whether or not the request will be granted, the Director shall take into consideration such factors as may be deemed reasonably appropriate. These factors shall include, but are not limited to, the nature of the requested use, any uses currently being made of the right of way, the impact upon any neighboring property, and any impact upon the City's utilization of and access to the right of way which is the subject of the request.

C. After such review, the Director shall make the decision as to whether or not to grant the requested permit.

1. If the decision is to grant the permit, the Director may impose such conditions and limitations as may be deemed reasonably necessary and/or appropriate: PROVIDED THAT, no permit shall authorize nor shall any permit holder place or allow to be placed any permanent improvements, whether in the form of fencing, structures, landscaping, or otherwise, upon the right of way subject to the permit without the prior written approval of

the Director: PROVIDED STILL FURTHER THAT, the authorization, if granted, to place any such improvement shall not reduce or modify the permit holder's sole responsibility to remove such improvement/s at the permit holder's sole expense at the time of the termination of the permit.

2. The initial period of use authorized by the permit shall be for the balance of the calendar year in which the permit is granted.

D. In the event that the Applicant is not satisfied with the decision of the Director, the Applicant may appeal the Director's decision to the Mayor.

1. The appeal shall be made within 30 days of the delivery of the Director's decision to the Applicant, shall be in writing, filed with the Office of the Clerk-Treasurer, shall provide such information as may be reasonably available in relation to the matters at issue, and shall be accompanied with a filing fee in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_).

2. The Mayor shall then go forward with a review of the issues presented and issue a decision in writing with a copy being provided to the Applicant. The Mayor's decision shall be final and, to the maximum extent allowed by law, shall not be subject to appeal.

SECTION II: Fees:

The following fees shall be charged in relation to the application for, establishment and/or renewal of Permissive Use Permits:

1. Upon initial application for a Permissive Use Permit, as to each application filed, a fee in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) to be paid at the time of filing.

2. If granted, an initial fee in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), plus such amount as may from time-to-time be required to pay for the filing of the Permissive Use Permit in the Office of the Auditor of the County of Grays Harbor.

3. For each successive calendar year, the following:

a. \$\_\_\_\_\_ per year if paid within thirty (30) days of the mailing of the annual billing.

b. \$\_\_\_\_\_ if paid after second billing is mailed, but sooner than sixty (60) days after the mailing of the annual billing.

c. If not paid within sixty (60) days of the date of the initial notice, the Permissive Use Permit shall be deemed cancelled, notification sent of the cancellation, with such notice including reaffirmation of the permit requirement that any improvement, including vegetation, shall be removed at the sole expense of the holder of the permit: PROVIDED that, in the event the notice is sent and the improvement is not in fact either



removed or the Permit reinstated within a time satisfactory to the City, then the City shall have the right to remove or have removed the improvement and impose the cost of such removal upon the property of the applicant with which the permit is associated and collect the same in the form of a lien as granted for abatement purposes.

d. If reinstated in the period between 60 days following the date of initial notice and \_\_\_\_\_ days, a fee of \$\_\_\_\_.00 for the year.

SECTION III: Effectiveness:

A. Procedures: This Resolution shall take effect and apply to all Permissive Use Permit applications, whether granted prior to its adoption, submitted subsequent to its adoption, or renewed following its adoption.

B. Fees: The fees for annual renewal shall apply as to the renewal of any permits, whether issued prior to or subsequent to the adoption of this resolution.

C. No right of way permissive use permit, whether issued by the City pursuant to the provisions of this resolution or pursuant to other authority, shall create any vested rights in any person or entity as to the use or possession of the right of way covered by the permit.

SECTION IV: Termination:

A. To the extent that any permit is not terminated pursuant to the provisions of Section III.C.3, any right of way

permissive use permit issued by the City pursuant to this Resolution or any other authority shall be subject to termination at any time in the sole discretion of the City. Notice of such termination shall be given by the Director in writing to the holder of the permit and shall state the date of termination which may be no less than \_\_\_\_\_ (\_\_\_\_) days following the date of the mailing of the notice: PROVIDED THAT, the period may be less than the period indicated if the City's finds such lesser period reasonably necessary for the public interest.

B. In the event that the permit holder fails to remove any improvement placed upon the right of way subject to the permit within that time, the provisions of Section III.C.3 shall be applicable.

SECTION V: Resolution Number 208 shall be and is hereby repealed: PROVIDED THAT, any rights granted under that resolution shall not be effected unless, with thirty calendar days after the giving of written notification of any non-compliance, the licensee fails to comply with the provisions of this resolution and PROVIDED FURTHER THAT any application submitted prior to the date of adoption of this resolution and which has not been granted shall be returned to the applicant for resubmission pursuant to the terms of this resolution..

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2016, by the City Council of the City of McCleary, and signed in

authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_,  
2016.

CITY OF McCLEARY:

\_\_\_\_\_  
BRENT SCHILLER, Mayor

ATTEST:

\_\_\_\_\_  
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
DANIEL O. GLENN, City Attorney