



AGENDA

Long Beach City Council Meeting
City Council Workshop February 3rd at 6:00 p.m.
Regular City Council February 3rd at 7:00 p.m.
Long Beach City Hall – Council Chambers
115 Bolstad Avenue West

6:00 PM COUNCIL WORKSHOP

WS 14-01	Tents – TAB - A
WS 14-02	Seasonal Lights – TAB - B
WS 14-03	Marketing Committee – TAB - C

7:00 PM CALL TO ORDER; PLEDGE OF ALLEGIANCE; AND ROLL CALL

Call to order	Mayor Andrew, Council Member Linhart, Council Member Hanson,
And roll call	Council Member Perez, Council Member Murry, and Council Member Phillips

CONSENT AGENDA – TAB - D

All matters, which are listed within the consent section of the agenda, have been distributed to each member of the Long Beach City Council for reading and study. Items listed are considered routine by the Council and will be enacted with one motion unless a Council Member specifically requests it to be removed from the Consent Agenda to be considered separately. Staff recommends approval of the following items:

- Minutes, January 21, 2014 Regular City Council meeting.
- Payment Approval List for Warrant Registers 53826 - 53865 & 75641 – 75704 for \$164,732.16

BUSINESS

- **AB 14-08 – Setting Partial Street Vacation Public Hearing – TAB - E**
- **AB 14-09 – Permission to Provide a Response to HB 2322 and HB 2638 – TAB - F**
- **AB 14-10 – AWC Retro Safety Program– TAB - G**
- **AB 14-11 – Engineering Services Contract – TAB - H**
- **AB 14-12 – American Red Cross Facility Use Agreement – TAB - I**

ORAL REPORTS

- | | | | | |
|---|--------------|-------|--------------------|------------------|
| • | City Council | Mayor | City Administrator | Department Heads |
|---|--------------|-------|--------------------|------------------|

CORRESPONDENCE AND WRITTEN REPORTS – TAB - J

- **Sales and Lodging Tax Reports for January 2014**
- **Summary of Report Decision – Front Setback Variance**
- **Tourism and Events Department – January Report**
- **Koontz: What it said, what it didn't say, and some lessons for us in Washington**
- **Business License – Affiniti, LLC – Out of City Limits**

FUTURE CITY COUNCIL MEETING SCHEDULE

The Regular City Council meetings are held the 1st and 3rd Monday of each month at 7:00 PM and may be preceded by a workshop commencing at 6:00 PM.

February 18, 2014 - 7:00 pm - City Council Meeting

March 3, 2014 – 7:00 pm – City Council Meeting

PUBLIC COMMENT

At this time, the Mayor will call for any comments from the public on any subject whether or not it is on the agenda for any item(s) the public may wish to bring forward and discuss. Preference will be given to those who must travel. **Please limit your comments to five minutes. The City Council does not take any action or make any decisions during public comment.** To request Council action during the Business portion of a Council meeting, contact the City Administrator at least one week in advance of a meeting.

ADJOURNMENT

American with Disabilities Act Notice: The City Council Meeting room is accessible to persons with disabilities. If you need assistance, contact the City Clerk at (360) 642-4421 or advise City Clerk at the meeting.

TAB - A



**CITY COUNCIL
WORKSHOP BILL
WS 14-01**

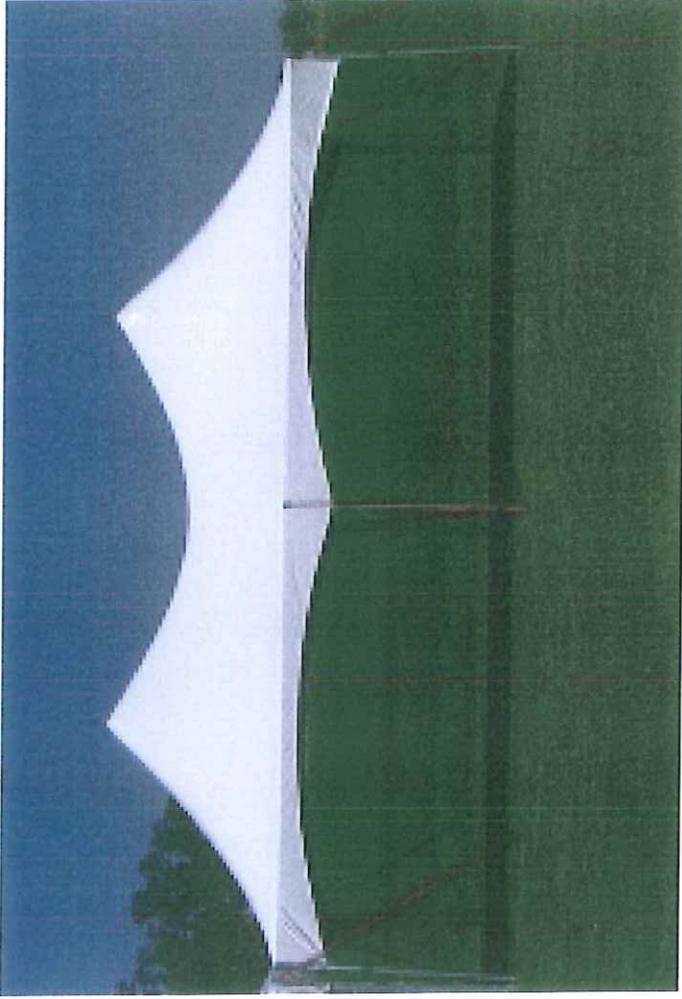
Meeting Date: February 3, 2014

AGENDA ITEM INFORMATION

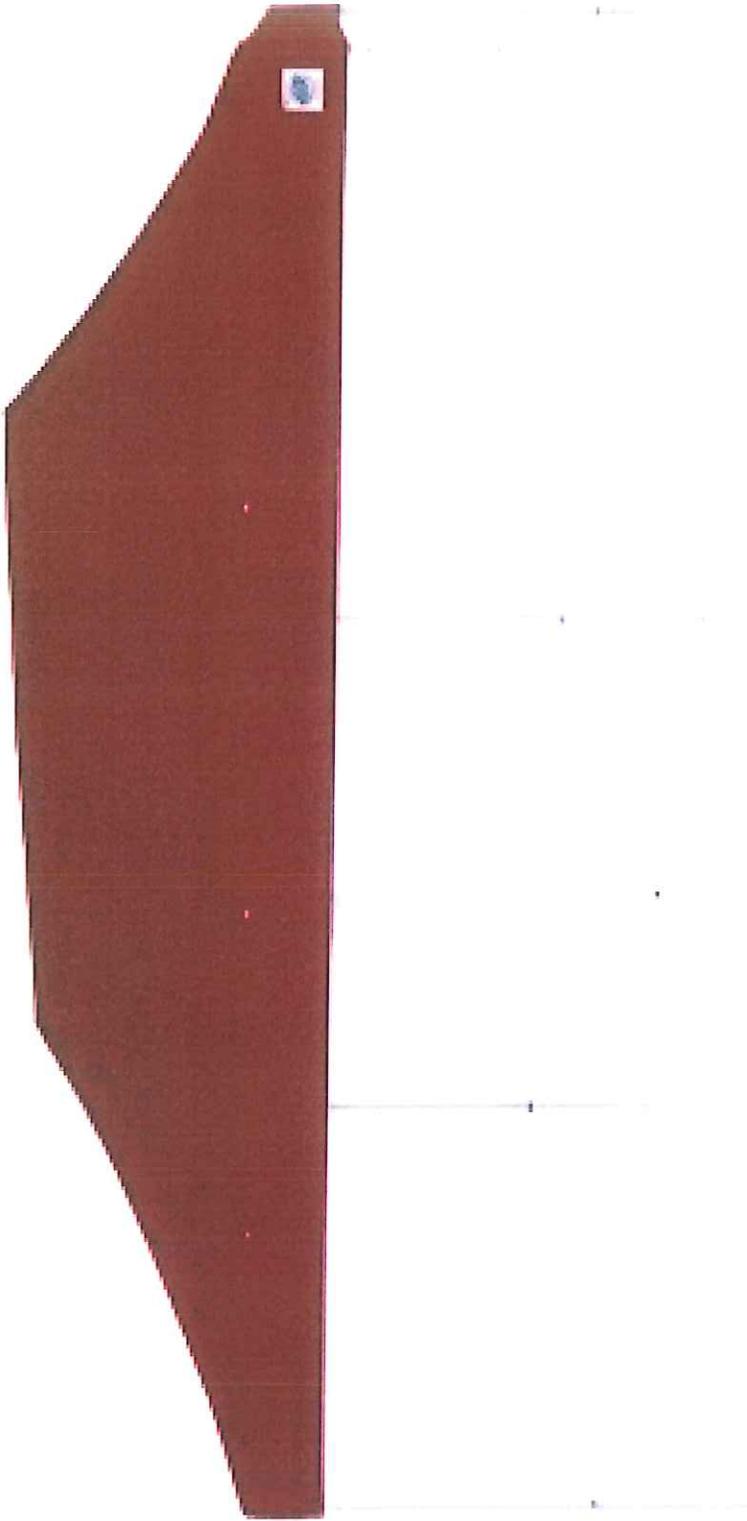
SUBJECT: Tents	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	GB
	Finance Director	
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
	COST: None	Water/Wastewater Supervisor
	Other:	

SUMMARY STATEMENT: The Council and staff were to investigate methods of covering the allowed 200 square feet of outdoor use allotted businesses. This workshop is to explore those possibilities and to discuss language to be added to the zoning code regarding this issue. If Councilors have seen things they like and can bring pictures, that would be useful. Staff has included some possibilities for covers to discuss.







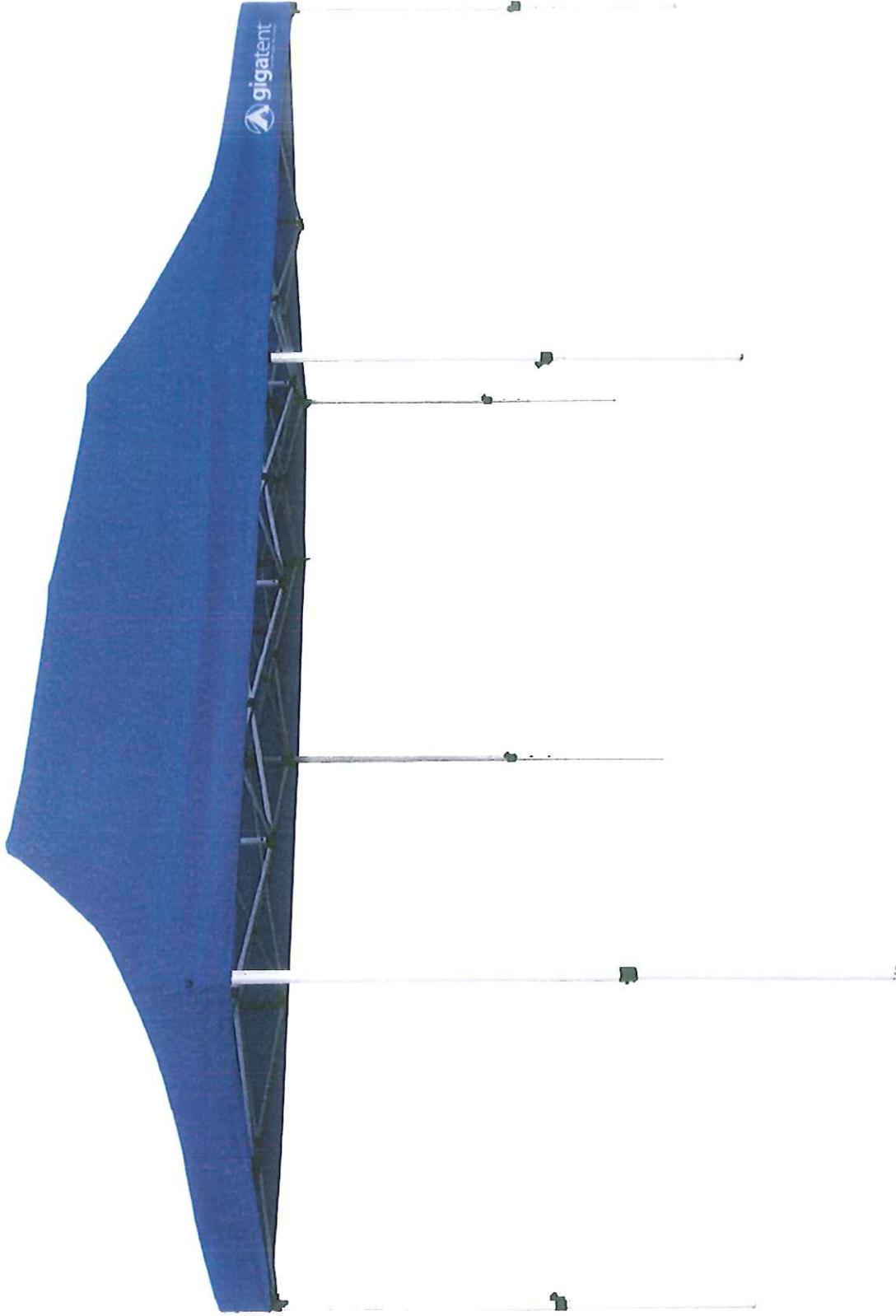




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TAB - B

DiJulio Displays, Inc.

24028 Brier Way, Brier, WA 98036-8449
 Phone 800.321.XMAS (or 9627)
 Local 425.483.2581 / Fax 425.487.3452
 www.dijuliodisplays.com

Invoice/Order

DATE	INVOICE NO.
1/29/2014	7464

BILL TO
City of Long Beach Mike Kitzman PO Box 310 Long Beach WA 98631 360 642 2203 F-4759

SHIP TO
Long Beach City Shop Attn: Mike Kitzman 115 Bolstad Ave W Long Beach WA 98631

P.O. NO.		TERMS	SHIP VIA	SHIP DATE	
		1/2 Down, Balance Net 10	Best Surface		
ITEM	QTY	DESCRIPTION	RATE	AMOUNT	
GB-RMP-14-28	540	Rocky Mountain Pine Garland: (14" diameter, 28 tips/ft) 30 @ 18' each	4.40	2,376.00T	
DC9LS500-12GW	1	500' C-9 Bulk Wire, #18 GW, Intermediate Base C-9 Sockets, 12" Spacing	235.00	235.00T	
Lead	4	10' #18 GW Lead Wire with molded male plug	3.80	15.20T	
DC9LEDCW	500	C-9 LED Lamp, Cool White	1.45	725.00T	
Rope Lights S & H	2	150' Kits: Cool White LED, w/3 connectors, leads, end caps, splices. NOTE: Shipping & handling billed with final invoice	385.00	770.00T	
		SALES TAX (SHIP TO: LONG BEACH-2502)	7.80%	321.45	
Please sign and e-mail or fax back to confirm. DiJulio			Thanks for your business. Chip		Total
					\$4,442.65

- * Claims must be made within 5 days of receipt of goods.
- * Interest charges applicable on overdue accounts.
- * Cancellations subject to sellers consent.

TAB - C

“Long Beach Advisory Marketing Committee”

“Formally Called LTAC”

Members appointed to committee by the Mayor of Long Beach.

Purpose of committee is to research possible marketing ideas for the city of Long Beach. From the information the committee gathers and sent to the council advising them of those findings. The Advisory committee does not manage programs or manage or control funding, these actions are controlled by the council while in public meeting format.

Their research could be bringing ideas to a development level for proposals that might be of interest to the Long Beach city council. Their research should have budgetary concerns that may be given to them by City Staff, which represents the concerns that may present themselves before taking to the council. A council-person is also appointed as a liaison from the council, to help keep the council updated at regular council meetings.

The committee may find several different marketing ideas that might fit into the funding by the council. These may be presented from Vendor's that have an invested interest in seeing the city use their proposals. The Marketing Committee has no authority to promise or engage in contracting or promising a direction to a vendor or developing a contraction agreement on behalf of the city.

Before a project is sent to the council for consideration, the committee should have the pros and cons researched to the best available science at their disposal. The committee does not oversee funding of lodging tax revenue, or if a vendor is providing the service that the city agreed to verbally with the vendor.

This responsibility is the cities and the council who oversees the annual budget as a council in regular session, or as announced at special pupil meeting properly publicized.

Marketing Committee Members Advisory Board as appointed by the Mayor of Long Beach.

*Sherry Hash, Events and festival representative. Chairs or co-chairs and event

*Brady Turner, Owner-Operator of a motel unit in Long Beach City limits more than 26 units

*Sue Ellison, Sm. Unit Motel representative

**Craig Smith, Chairman of Marketing Committee; Represents members of the Long Beach Merchants Assoc.

* Visitor's Bureau member and Long Beach business owner.

Long Beach City Staff;

Gene Miles (City Administrator).

Helps to advise committee on city business practices, and oversees reports on budgeting issues.

Ragan Myers "Long Beach Festival and Events Coordinator", Summer fest management. Attends Marketing meetings to help committee with ideas for development to city council. Package Travel director for city of Long Beach.

Councilmen Mark Perez; Appointed by Mayor to council-liaison for Marketing Advisory Committee.

Vendors used by the city over the years, but not exclusive, or exempt for bidding by like entities.

Long Beach Visitors Center Executive Director Andy Day

Beach Dog Internet provider and social media marketing specialist

Carol Zahorsky; Print Advertising consultant

Long Beach Marketing Committee

Our Mission:

“The City of Long Beach Long Beach Marketing Committee” serves as an advisory committee to the City Mayor and City Council of Long Beach for the promotion of the City of Long Beach to travelers and to create a climate of success for businesses within the City limits.

↓ Long Beach

Membership

- One member from the City Council, to serve as the Chairperson and non-voting member.
- ✓ ● One member from the hotel, motel, condominium owners (more than 25 units) appointed for a term commencing in an odd year.
- One member from the other rental owners, bed and breakfast, RV parks and condominiums (24 units or less) appointed for a term commencing in an even year.
- ✓ ● One member from the Visitor's Bureau's board of directors, appointed for a term commencing in an even year.
- ✓ ● One member from one of the ongoing festivals or activities currently funded with revenues from lodging tax, appointed for a term commencing in an odd year.
- ✓ ● One voting member from the Merchants Association.
- The City will provide staffing to the Long Beach Marketing Committee, under the direction of the Mayor and City Administrator.
- The City Administrator will attend Long Beach Marketing Committee meetings to advise the Committee on legalities, as well as staffing obligations.

The Mayor shall appoint members in writing and include a notice of the term of membership. Membership shall run on a calendar year basis, for a term of (2) years.

Two

The Mayor may replace [↑] members prior to the expiration of their term [?] if the Mayor deems it appropriate.

Duties

- Develop Specific recommendations for the use of funds, to include a detailed breakdown of all expenditures proposed as part of the budget adoption process. *(Due by September 15 of each year)*
- Determine anticipated benefits from the use of the funds, to include an explanation of the methods to determine the effectiveness of the uses.
- Evaluate the ^{outcome of funded programs & the} benefits derived from the use of funds, ^{if needed} and make recommendations for changes ^{Programs} based on the evaluation.
- *?* Review activities of users of funds, to include consultants, to make sure the use is consistent with the mission statement. *& appropriate city ordinance & state statute (RCWs)*

Reporting

The Committee shall present to the City Council an annual Budget Request report with the following information: *(Sept 15 annually)*

- Specific recommendations for the use of funds, to include a detailed breakdown of all expenditures proposed for the City Budget process.
- *defining* Anticipated benefits from the use of the funds, to include an explanation *???* of the methods used to determine the effectiveness of the uses. The fundamental question to answer is "why are we spending these dollars for this item, what is our expected gain, and how will we know if we achieved success or not?"
- The City Staff ~~to the committee shall~~ ^{will} prepare ^{Agendas &} minutes for each meeting and provide them to the City Council as part of the City Council packet when approved by the Committee.
- The Committee shall include in the monthly minutes an accounting of all expenditures and benefits derived since the last meeting.

Meetings and Voting

- The Committee shall meet on a monthly basis, and more frequently if needed.
- All meetings shall be open to the public. *All Washington open meeting rules apply to Comm. mtgs.*
- A quorum of three voting members is required to conduct a meeting.

TAB - D

**LONG BEACH CITY COUNCIL MEETING
JANUARY 21, 2014**

CALL TO ORDER

Mayor Andrew called the meeting to order and asked for the Pledge of the Allegiance.

ROLL CALL

Gene Miles, City Administrator, called roll with C. Linhart, C. Hanson, C. Perez, C. Murry, C. Phillips and Mayor Andrew present.

CONSENT AGENDA

Minutes, January 6, 2014 Regular City Council meeting

Payment Approval List for Warrant Registers 53778-53825 & 72548-75640 for \$418,391.78

C. Linhart made the motion to approve the consent agenda with C. Hanson seconding the motion. 5 Ayes 0 Nays, motion passed.

Mark Hottowe, Superintendent, Ocean Beach School District, spoke on the upcoming 3 school levies.

BUSINESS

AB 14-04 Senior Citizen Low Income Discount Rates

Gene Miles, City Administrator, presented the annual update to the household income and discount rates for water, sewer and storm drain. **C. Linhart made the motion to approve with C. Phillips seconding the motion. 5 Ayes 0 Nays, motion passed.**

AB 14-05 Change for the Good

Mayor Andrew recognized 3 businesses for making Long Beach a better place.

Pacific Integrated Martial Arts

Paw Prints in the Sand

Crew House Gallery and Queen LaDeDa-Ilwaco

AB 14-06 Repairs to Police Station

David Glasson, Finance Director, stated the insurance company has paid the city \$15,995.66 to repair the damage done by a vehicle to the police station. The low bid from the small works roster is \$15,738.80 by SAW Construction. **C. Phillips made the motion to award SAW Construction the repair bid with C. Linhart seconding the motion. 5 Ayes 0 Nays, motion passed.**

AB 14-07 Resolution 2014-02-Amending Resolution No. 2008-2 Personnel Policies and Benefits

Gene Miles, City Administrator, presented the agenda bill. **C. Linhart made the motion to approve the resolution with C. Hanson seconding the motion. 5 Ayes 0 Nays, motion passed.**

ORAL REPORTS

C. Hanson, C. Perez, C. Linhart, C. Phillips, Mayor Andrew, Gene Miles, City Administrator, Gayle Borchard, Community Development Director and Ragan Myers, Economic Development Coordinator presented reports.

CORRESPONDENCE AND WRITTEN REPORTS

Business License – Beach Time on 5th; 309 5th Street NW
Business License – Baker & Son Construction; 205 Bolstad Ave W
Business License – Installed Building Products LLC; Portland, OR
Business License – Michael Clarence Mitchell; 205 Bolstad Ave W
Business License – Rago’s Oceanfront Retreat; 319 5th Street NW
Business License – Lacie Marie Dewitt; 115 Pacific Ave SW #3

PUBLIC COMMENT

Mary Ink commented on an apartment building located on 6th St NE

ADJOURNMENT

C. Linhart made the motion to adjourn at 7:49 p.m. with C. Phillips seconding the motion. 5 Ayes 0 Nays, motion passed.

Mayor

ATTEST:

City Clerk



Warrant Register

Check Periods: 2014 - January - Second

I, THE UNDERSIGNED DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE CLAIM IS A JUST, DUE AND UNPAID OBLIGATION AGAINST THE CITY OF LONG BEACH, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIM.

Number	Name	Print Date	Clearing Date	Amount
53826	Bell, Helen S	1/17/2014		\$1,008.22
53827	Binion, Jacob	1/17/2014		\$1,627.42
53828	Bledsoe, Linda	1/17/2014		\$890.44
53829	Bonney, Matthew T	1/17/2014		\$1,044.10
53830	Booi, Kristopher A	1/17/2014		\$712.88
53831	Borchard, Gayle	1/17/2014		\$1,966.42
53832	Cutting, Jeffrey G.	1/17/2014		\$2,067.63
53833	Fitzgerald, Rick E.	1/17/2014		\$1,400.80
53834	Gilbertson, Bradley K	1/17/2014		\$1,351.50
53835	Glasson, David R.	1/17/2014		\$2,492.98
53836	Goulter, John R.	1/17/2014		\$1,500.81
53837	Gray, Karen	1/17/2014		\$830.80
53838	Huff, Timothy M.	1/17/2014		\$1,553.48
53839	Kirby, Gary E	1/17/2014		\$749.52
53840	Kitzman, Michael	1/17/2014		\$2,099.61
53841	Lueche, Paul J	1/17/2014		\$1,397.10
53842	Meling, Casey K	1/17/2014		\$1,734.01
53843	Miles, Eugene S	1/17/2014		\$2,530.43
53844	Mortenson, Tim	1/17/2014		\$2,289.57
53845	Myers, Ragan S.	1/17/2014		\$1,370.40
53846	Nawn, Rodney J.	1/17/2014		\$1,358.64
53847	Ostgaard, Loretta G	1/17/2014		\$1,393.57
53848	Padgett, Timothy J	1/17/2014		\$1,531.46
53849	Parker, Michael T	1/17/2014		\$1,836.12
53850	Ross, Steven J	1/17/2014		\$1,486.13
53851	Russum, Richard	1/17/2014		\$1,564.59
53852	Scott, Mark G	1/17/2014		\$1,088.86
53853	Warner, Ralph D.	1/17/2014		\$1,980.85
53854	Wright, Flint R	1/17/2014		\$2,368.07

Number	Name	Print Date	Clearing Date	Amount
53855	Zuern, Donald D.	1/17/2014		\$2,028.84
53856	AFLAC	1/17/2014		\$271.70
53857	Association of WA Cities	1/17/2014		Void
53858	City of Long Beach - Fica	1/17/2014		\$10,262.52
53859	City of Long Beach - FWH	1/17/2014		\$8,701.71
53860	Dept of Labor & Industries	1/17/2014		\$1,841.26
53861	Dept of Retirement Systems	1/17/2014		\$9,395.79
53862	Dept of Retirement Systems Def Comp	1/17/2014		\$1,033.00
53863	Massmutual Retirement Services	1/17/2014		\$275.00
53864	Teamsters Local #58	1/17/2014		\$174.50
53865	Association of WA Cities	1/30/2014		\$15,971.74
75641	Meling, Casey	1/17/2014		\$284.00
75642	At&t Mobility	1/21/2014		\$53.93
75643	Department of Licensing	1/21/2014		\$18.00
75644	Miles, Gene	1/21/2014		\$242.43
75645	Aiken, James	1/22/2014		\$35.49
75646	Bardonski, Cory	1/22/2014		\$59.15
75647	Bonney, Matt	1/22/2014		\$11.83
75648	Jewell, Kyle	1/22/2014		\$23.66
75649	Johnston, Lionel	1/22/2014		\$11.83
75650	Lopez, Daniel	1/22/2014		\$118.29
75651	Oman, Steve	1/22/2014		\$23.66
75652	Phillips, John	1/22/2014		\$11.83
75653	Subway	1/22/2014		\$37.73
75654	SUNSET AUTO PARTS, INC	1/22/2014		\$508.22
75655	Williams, David	1/22/2014		\$106.46
75656	Yasunaka, Derek	1/22/2014		\$70.98
75657	Zuern, Donald	1/22/2014		\$11.83
75658	Borchard, Gayle	1/24/2014		\$136.65
75659	Myers, Ragan	1/24/2014		\$267.12
75660	Ostgaard, Loretta	1/24/2014		\$128.80
75661	City of Long Beach	1/27/2014		\$150.00
75662	Pacific County Auditor	1/27/2014		\$72.00
75663	Department of Licensing	1/28/2014		\$18.00
75664	Employment Security Dept	1/29/2014		\$2,787.04
75665	A-1 Redi Mix	1/31/2014		\$281.63
75666	Active Enterprises, Inc.	1/31/2014		\$539.70
75667	Arts Auto Parts Inc.	1/31/2014		\$143.22
75668	Backflow Management Inc	1/31/2014		\$1,503.75
75669	Barco Municipal Products	1/31/2014		\$1,793.47
75670	Beach Batteries	1/31/2014		\$21.96
75671	Blumenthal Uniforms	1/31/2014		\$126.06
75672	Board For Volunteer Firefighters	1/31/2014		\$252.00
75673	Bonney, Matt	1/31/2014		\$16.35
75674	Campiche Studios	1/31/2014		\$194.04
75675	Chinook Observer	1/31/2014		\$206.55

Number	Name	Print Date	Clearing Date	Amount
75676	City of Long Beach	1/31/2014		\$1,197.56
75677	Cottage Bakery	1/31/2014		\$17.85
75678	CRUISE MASTER PRISMS	1/31/2014		\$55.30
75679	Department of Health	1/31/2014		\$2,783.30
75680	Department of Licensing	1/31/2014		\$18.00
75681	Dept of Ecology	1/31/2014		\$14,974.09
75682	Dooley Enterprises Inc.	1/31/2014		\$2,067.00
75683	Ford Electric	1/31/2014		\$411.23
75684	Galls, LLC	1/31/2014		\$633.54
75685	H. D. FOWLER	1/31/2014		\$2,594.63
75686	L.E.I.R.A.	1/31/2014		\$50.00
75687	LEEDWAY, LLC	1/31/2014		\$455.78
75688	Long Beach Lions Club	1/31/2014		\$475.00
75689	Measure-Tech, Inc.	1/31/2014		\$694.60
75690	Pacific County Sheriff's	1/31/2014		\$11,740.25
75691	Peninsula Visitors Bureau	1/31/2014		\$2,500.00
75692	Penoyar, William	1/31/2014		\$2,000.00
75693	Public Utility District 2	1/31/2014		\$13,127.34
75694	Quill Corporation	1/31/2014		\$131.49
75695	STAPLES ADVANTAGE	1/31/2014		\$828.51
75696	State Auditor's Office	1/31/2014		\$668.80
75697	TMG Services, Inc.	1/31/2014		\$157.37
75698	Universal Blower Pac, Inc	1/31/2014		\$522.53
75699	Unum Life Insurance	1/31/2014		\$45.60
75700	Usa Blue Book	1/31/2014		\$639.31
75701	Verizon Wireless	1/31/2014		\$137.26
75702	Visa	1/31/2014		\$171.77
75703	Zee Medical Service Co.	1/31/2014		\$62.96
75704	Zuern, Donald	1/31/2014		\$120.96
	Total		Check	\$164,732.16
	Grand Total			\$164,732.16

TAB - E



**CITY COUNCIL
AGENDA BILL
AB 14-08**

Meeting Date: February 3, 2014

AGENDA ITEM INFORMATION

SUBJECT: Resolution 2014-01 - Set Public Hearing for Partial Vacation of the Right-of- Way of 9th Street NE (Cases No. VAC 2014-01 and VAC 2014-02)	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	GB
	Finance Director	
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
COST: N/A	Water/Wastewater Supervisor	
	Other:	

SUMMARY STATEMENT: Property owner Mary K. Ramage owns two adjacent parcels at the northwest corner of Washington Avenue North and 9th Street NE (see attached). Ms. Ramage is trying to correct for an encroachment on the north side of her property by adding footage to the south side of her property.

Pursuant to **11-6C-2** and **RCW 35.79.10**, when an adequate vacation petition is received, Council shall by resolution set a date when the petition will be heard and decided upon. The hearing may be no more than sixty (60) days nor less than twenty (20) days after the date of such resolution passage. Resolution 2013-01 does this.

Please note that on January 30, 2014, Dan Hickey, representing the property owner due west of Ms. Ramage's property, Kathy Maxson petitioned the City for a partial vacation as well. That is Case No. 2014-02, herein included.

RECOMMENDED ACTION: Pass Resolution 2014-01.

RESOLUTION 2014-01

A RESOLUTION OF THE CITY OF LONG BEACH, WASHINGTON SETTING THE TIME AND PLACE FOR A PUBLIC HEARING FOR CONSIDERING A PARTIAL STREET VACATION OF 9TH STREET NORTHEAST

WHEREAS, Mary Kay Ramage and Kathleen Maxson have filed petitions for the partial vacation of 9th Street Northeast; and,

WHEREAS, RCW 35.79 requires passage of a resolution setting the time and place for a public hearing to consider vacation of a public street and the posting of public notices, such public hearing to be scheduled not less than twenty (20) nor more than sixty (60) days from passage of said resolution;

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE LONG BEACH CITY COUNCIL that a public hearing shall be held in the Council Chambers at Long Beach City Hall for the purpose of considering the partial street vacation of approximately 200 feet by 12.5 feet from Washington Avenue North westerly along the north side of 9th Street Northeast. Said hearing shall be held on March 3, 2014 at 7:00 PM or shortly thereafter in the Long Beach City Council chambers.

The required notice shall be placed at 9th Street Northeast on the subject property, Long Beach City Hall, the United States Post Office in Long Beach, and the Long Beach Police Department.

Passed this 3rd day of February 2014.

Ayes _____ Nays _____

Robert E. Andrew, Mayor

Attest:

David Glasson, Clerk

**City of Long Beach
Notice of Public Hearing
To Consider Partial Vacation of 9th Street Northeast**

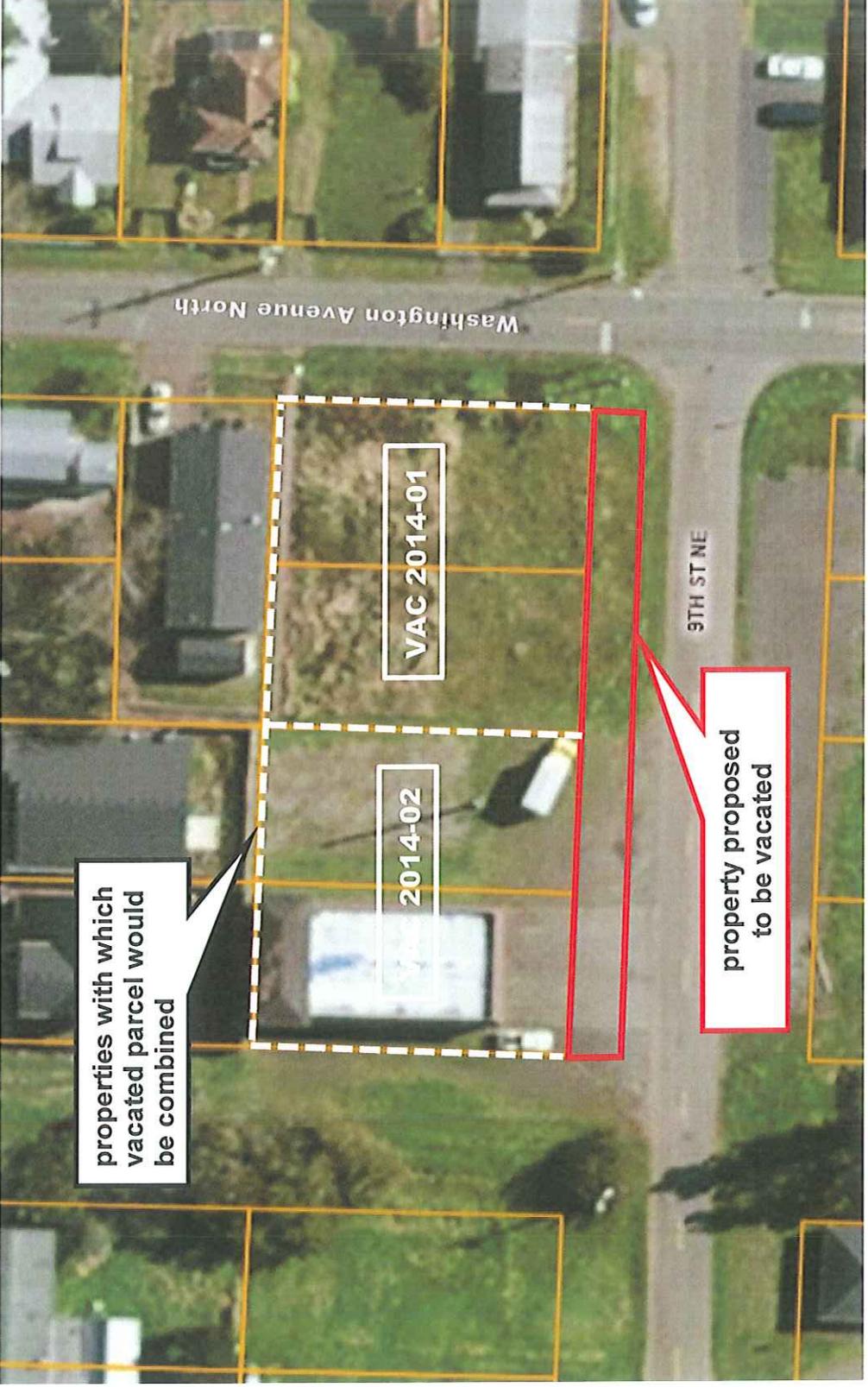
VACATION OF A PORTION OF 9TH STREET NORTHEAST; CASES NO. VAC 2014-01 and VAC 2014-02. Notice is hereby given that Mary Kay Ramage and Kathleen Maxson filed petitions with the City of Long Beach on January 29 and 3, 2014, respectively, requesting the City vacate a portion of the right-of-way of 9th Street Northeast. The petition seeks vacation of the northern 12.5 feet of 9th Street Northeast from the west side of Washington Avenue North 200 feet westerly, encompassing an area of approximately 2,500 square feet in the R1 – Single Family Residential zone. **The subject property is located directly adjacent to and South of Block 33, Lots 1 through 4, Plat of Long Beach Tinker’s Third North Addition), NW ¼ of the NW ¼ of Section 16, Township 10 North, Range 11 West, Willamette Meridian, Pacific County, Washington.**

The Long Beach City Council passed Resolution 2014-01 fixing the time, date, and location of a Public Hearing on these petitions as **7:00 pm or soon thereafter on Monday, March 3, 2014 in the City Council Chambers at Long Beach City Hall, 115 Bolstad Street West, Long Beach WA 98631.**

Any person interested in this request may speak for or against the request at the public hearing or submit written comments prior to the public hearing. **Written comments should be addressed to: Gayle Borchard, Community Development Director, P.O. Box 310, Long Beach, WA 98631. Written comments must be received by the end of the public hearing.**

The Meeting Room is ADA accessible. For those planning to attend who have special accessibility requirements, please contact the City of Long Beach by phone, 360.642.4421 or at the address below at least ten (10) days in advance.

Responsible Official:	Gayle Borchard
Position/Title:	Director, Community Development
Phone:	(360) 642-4421
Address:	P.O. Box 310 Long Beach, WA 98631
Notice Date:	February 4, 2014



Cases No. VAC 2014-01 and VAC 2014-02; Location Map
Mary Kay Ramage; Dan Hickey for Kathleen Maxson
Partially vacate 9th Street NE; combine with properties to north

Gayle Borchard

From: Long Beach Realty <LGBCHRTY@willapabay.org>
Sent: Wednesday, January 29, 2014 1:35 PM
To: planner@longbeachwa.gov
Subject: Vacate 12.5 feet of Blk 33, long beach, lots 3 & 4

To the City of Long Beach

I am asking the City of Long Beach to Vacate 12.5 Feet of 9th NE, & give to Blk 33, Long Beach, Lots 3 & 4, to Mary Kay Ramage.

This is for Building the two houses that I have building permits for.

This is due to the 6.5 foot encroachment of the North neighbor on my property. I need this additional footage for the footprints of the houses. They Survey of said property has been completed.

Thank you,
Mary Kay Ramage
360 749 0345

Gayle Borchard

From: Dan Hickey <djhickey1@gmail.com>
Sent: Thursday, January 30, 2014 2:01 PM
To: planner@longbeachwa.gov
Subject: Vacate portion of 9th St N

Yes Gail, please place a request for the Maxson property also on the agenda. Thank you...Dan

TAB - F



**CITY COUNCIL
AGENDA BILL
AB 14-09**

Meeting Date: February 3, 2014

AGENDA ITEM INFORMATION

SUBJECT: Permission to Provide a Response on Behalf of the City Regarding HB 2322 and HB 2638	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	GB
	Finance Director	
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
COST: N/A	Water/Wastewater Supervisor	
	Other:	

SUMMARY STATEMENT: Recently, two house bills have been put forth that would severely erode the City's ability to make land use decisions regarding marijuana-related land uses, HB 2322 and HB 2638. Staff has provided materials previously, but attaches both bills again and a draft response for completeness of the agenda item. It is unclear whether or not either or both of these bills will survive, but staff would like to understand the Council's position on these bills and also to have Council permission to provide a City response to lawmakers should either or both of these bills gain traction.

RECOMMENDED ACTION: *Discuss matter with staff and give permission for staff to provide a City response.*

HOUSE BILL 2322

State of Washington

63rd Legislature

2014 Regular Session

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

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

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

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

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

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

*strongly
opposed*

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

*why? has nothing to do w/
liquor*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

--- END ---

HOUSE BILL 2638

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Wylie and Pollet

Read first time 01/23/14. Referred to Committee on Government
Accountability & Oversight.

1 AN ACT Relating to the establishment of state preemption of laws
2 and ordinances of local governments regarding provisions of the
3 controlled substances act, chapter 69.50 RCW; and amending RCW
4 69.50.608.

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

6 **Sec. 1.** RCW 69.50.608 and 1989 c 271 s 601 are each amended to
7 read as follows:

8 (1) The state of Washington fully occupies and preempts the entire
9 field of the regulation of controlled substances under this chapter and
10 setting penalties for violations of the controlled substances act.
11 This preemption also includes, but is not limited to, statutory
12 provisions pertaining to licensing, marketing, taxation, production,
13 processing, and retail sale of marijuana.

14 (2) Cities, towns, and counties or other municipalities may enact
15 only those laws and ordinances relating to controlled substances that
16 are consistent with this chapter. Such local ordinances shall have the
17 same penalties, rules, and requirements as provided for by state law.
18 Local laws and ordinances that are inconsistent with the requirements
19 of state law, or that in any way have the effect of interfering with *

1 the development, implementation, or maintenance of a state regulated
2 market regarding the production, processing, possession, or use of
3 legal marijuana, shall not be enacted and are preempted and
4 (~~repealed~~) unenforceable, regardless of the nature of the code,
5 charter, or home rule status of the city, town, county, or
6 municipality.

--- END ---

House Bills 2322 and 2638

The City of Long Beach strongly opposes both of these bills. They attempt to establish special exceptions to regulating a specific type of land use, leaving the local government no say in what is appropriate within its own jurisdiction. This is a very slippery slope. The City's specific objections are:

Intent of I-502. The people of Washington spoke via I-502. The initiative did not address the issue of State preemption of local government authority. You must question whether the initiative would have passed at all if citizens - even those supporting the initiative - believed local officials could not address their issues and concerns about the location of marijuana-based land uses. I-502 should be implemented as the voters of Washington intended - it is simply wrong to "sneak in" preemption after the fact.

Penalties. HB 2322 proposes penalties for "offending" cities (the "offense" being exercise of a city's constitutionally-granted authority to exercise land-use controls) that cut a city off from liquor funds. Marijuana land uses and I-502 have nothing to do with liquor taxes, and: there is no nexus between this penalty and the "offense". If the State of Washington wishes to punish a city or county by cutting it off from marijuana-related revenue, the State should write the law that way, and do the bookkeeping that way. There is no justification for cutting a city or county off from liquor revenue due to a marijuana-related land use decision. And again, the people of the State of Washington did not include this when voting for I-502.

Litigation costs. Under HB 2322 a city could be sued for exercising its land use authority and would be required to pay all costs, no matter the outcome. This is not only patently unfair, it is a misuse of taxpayer money.

Lack of need. These two proposed laws beg the question: why marijuana - why not liquor stores, or gas stations, or even public land uses? Aren't they special? There is nothing so unique or special about marijuana-related land uses that it warrants this onerous preemption. The language of HB 2322 and HB 2638 does not identify such a distinction regarding these particular land uses; the bills don't even try to make a distinction. Neither law describes why they are necessary. That is because they are not necessary.

In summary, HB 2322 and HB 2638 are unconstitutional, set a very dangerous precedent, fly in the face of the will of Washington voters, and are a bald attempt to jam through onerous and bad law after-the-fact. Land use

has historically been and should remain a local decision. Please let those of us who work in our jurisdictions lend our experience and knowledge of local conditions and our citizens' wishes to decisions about what is best for our communities.

Thank you for your time.

Sincerely,

Robert E. Andrew

Mayor, Long Beach

TAB - G



**CITY COUNCIL
AGENDA BILL
AB 14-10**

Meeting Date: February 3, 2014

AGENDA ITEM INFORMATION		
SUBJECT: Association of Washington Cities Retro Program	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	
	Finance Director	DG
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
	Water/Wastewater Supervisor	
COST: \$2,500 initially	Other:	
<p>SUMMARY STATEMENT: City Staff met with representatives of the Association of Washington Cities on Monday, January 27th and discussed the Retro program. This program works in conjunction with other cities and the Department of Labor and Industries to help prevent work related injuries and reduce the overall cost to cities for Works comp payments. The Retro program has a history of refunding money and providing training to member cities.</p>		
<p>RECOMMENDED ACTION: Approve and authorize the Mayor to sign.</p>		



1076 Franklin Street SE | Olympia, WA 98501-1346 | 1.800.562.8981

awcnet.org

City of Long Beach

Retro Analysis for 2013



Association of Washington Cities

Workers' Compensation Retrospective Rating Program

AWC's Retro program helps cities, towns and qualified non-city entities to lower their overall workers' compensation premiums through improved claims experience and retro premium refunds from the state L&I fund.

It's all about service

In April 2013, AWC's Retro program took administration in-house. We work with you to reduce the frequency and severity of workplace injuries, and we help you get your injured employees back to work quickly.

- Complete management of all L&I claims
- On site loss control and risk management consultation
- Assistance with safety programs and incident review
- Online access to all materials relating to your individual city/town L&I claims
- Free regional trainings and Certified Safety Coordinator Program
- Management of return to work or light duty programs
- Potential premium refund management and distribution

Building on success

Members in AWC's Workers' Comp Retro Program have seen positive results with their retro premium refunds from the state. We are building on this success by continuing to focus on injury prevention, claims management, and annual member training.

Cost savings

Sometimes, having someone help you is just what you need. In just six months, the Retro team has helped AWC Retro members receive over \$181,000 in refunds from L&I's Stay at Work program. And we're just getting started!

Governed by cities

Seven employees from member cities comprise AWC's Retro Advisory Committee. They provide input on the operations of the program. The AWC Board of Directors Executive Committee is the final decision making body for the Retro program.

Member training

Ensuring your workplace is as safe as it can be is essential. AWC's Retro program gives members the training they need to get and keep things safe. Our Retro Safety Academy is offered throughout the year, and it's free for members. Upcoming dates include:

- **October 23, Marysville**
October 24, Olympia
Management's role in safety, How accidents happen, Safety audit & hazard assessment
- **November 13, Marysville**
November 14, Olympia
Leading safety discussions, Accident investigation, Preparing for a DOSH inspection
- **December 11, Marysville**
December 12, Olympia
Office ergonomics & safety, Leverage your lift, Safety committees

Working for you

AWC Retro staff provides members with the very best in safety training, loss control, and claims management. Find out how we can help you save on your L&I costs and potentially qualify for premium refunds.



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awcnet.org/retro



Workers Compensation Retrospective Rating Program

Governance

The AWC Board Executive Committee serves as the governing authority for AWC's Workers Compensation Retrospective Rating Program. The Board of Directors develop policies, operating procedures and member underwriting requirements. The Retro Advisory Committee is comprised of seven members from Retro member employers. The committee provides guidance and recommendations to program staff and the Executive Committee in developing policies & operating procedures and setting member standards.

Board of Directors

President

Craig George
Mayor, Dayton

Secretary

Francis Benjamin
Councilmember, Pullman

Past President

Nancy McLaughlin
Councilmember, Spokane

Vice President

Joe Marine
Mayor, Mukilteo

Immediate Past President

Don Gerend
Mayor, Sammamish

Advisory Committee

Chair & Position 6

Karen Sires
Human Resources Manager,
Pullman

Position 3

David Rodenbach
Finance Director, Gig Harbor

Position 5

Cheryl Grant
Finance Director, Chelan

Position 1

Anh Hoang
Human Resources Director, SeaTac

Position 4

Mitch Wasserman
City Administrator, Clyde Hill

Position 7

Terry Walsh
Executive Director of Employee &
Community Relations, Kennewick

Position 2

Kristie Guy
Human Resources Director,
Marysville



Association of Washington Cities

Workers' Compensation Retrospective Rating Program

Members

- | | | | |
|-------------------|-------------------------------------|-------------------|------------------|
| Airway Heights | DuPont | Mill Creek | Shelton |
| Anacortes | Duvall | Milton | Shoreline |
| Bainbridge Island | Federal Way | Morton | Snohomish |
| Battle Ground | Fife | Moses Lake | Snoqualmie |
| Blaine | Forks | Mountlake Terrace | South Bend |
| Bonney Lake | Friday Harbor | Mount Vernon | Stanwood |
| Brewster | Gig Harbor | Mukilteo | Steilacoom |
| Brier | Goldendale | Napavine | Sumas |
| Buckley | Grand Coulee | North Bend | Sumner |
| Burlington | Grandview | Oak Harbor | Sunnyside |
| Camas | Granger | Ocean Shores | Toledo |
| Cashmere | Hoquiam | Odessa | Toppenish |
| Chelan | Issaquah | Okanogan | Tukwila |
| Clarkston | Kalama | Omak | Tumwater |
| Clyde Hill | Kenmore | Othello | University Place |
| Concrete | Kennewick | Pasco | Washougal |
| Coulee City | Lacey | Port Orchard | Wenatchee |
| Coulee Dam | Lakewood | Port Townsend | Westport |
| Coupeville | Leavenworth | Pullman | West Richland |
| Covington | Marysville | Quincy | White Salmon |
| Creston | Medina | Raymond | Wilbur |
| Dayton | Mercer Island | Ridgefield | Winlock |
| Des Moines | Metropolitan Park District - Tacoma | Roslyn | Woodland |
| | | Sammamish | Woodway |
| | | SeaTac | Yelm |
| | | Selah | Zillah |
| | | Sequim | |



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Experience modification factor impact

The	Is affected by the following
Calendar year:	three-year claims window:
2013	7/1/08 - 6/30/11
2014	7/1/09 - 6/30/12
2015	7/1/10 - 6/30/13
2016	7/1/11 - 6/30/14
2017	7/1/11 - 6/30/14



Note: The calculation is a comparison of your claims costs and work-hours to others reporting in the same risk class. Within the State of Washington, over a three-year rolling widow. The primary components in the calculation are work-hours and claims cost so an increase or decrease in either will impact your factor.

The calculation is performed on June 1st of each year with the factor applying to the upcoming calendar year, i.e. the claims costs used in the calculation for the 2014 experience factor were the total incurred claim costs as of June 1, 2013. Therefore, after the calculation date of June 1, 2013 any claim with a date of injury prior to 7/1/10 no longer has an impact on your premium.



AWC Retro Safety Academy

The AWC Workers' Comp Retro Program offers courses for safety and non-safety professionals who wish to increase their safety knowledge and effectiveness in developing and administering safety programs.

Management's role in safety

A safety program can succeed only with the support and involvement of management. Why is this important and how can it help an organization achieve its safety goals?

How accidents happen

A discussion of how people get hurt including relation between close calls & injuries, managing behavior, and how 'system traps' contribute to injury.

Safety audit & hazard assessment

Every employer needs to periodically review the safety program and workplace to insure the program is in place and effective in practice. This presentation reviews what to look for in a safety audit, assessments of task hazards, and personal protective equipment.

Office ergonomics & safety

Office can be deceiving regarding safety issues. We will review general office hazards and the ergonomics of computer use, desks, and chairs.

Leverage your lift

Issues related to ergonomics related to lifting & handling of materials, people, & tools, is the leading contributor to workplace injuries. We will review risk factors leading to injury and discuss controls to reduce those risks.

Leading safety discussions

An effective safety program includes 'buy in' and support of all involved. Safety coordinators and supervisors are key to involving co-workers in developing and implementing the effective safety program. We will review how to lead that discussion to get that involvement.

Accident investigation

Learning from close calls and accidents can help us prevent future accidents. We will review how to conduct an investigation, how to develop corrective actions, and the difference between root cause and root solution to prevention.

Safety committees

Safety committees are the primary opportunity for employee involvement in the city safety program. A Committee can be just 'another committee' or it can be an 'effective committee'.

Return to Work

The best thing we can do to lower the cost of injury is to not have that injury. The next best thing we can do is control the cost of that injury and bring the injured worker back to the job in a productive capacity.

Chemical hazard communication & industrial hygiene

City employees often use herbicides, cements, paints, solvents, and are involved in operations such as welding, painting, and water treatment that expose them to industrial hygiene issues involving chemicals and hazardous elements. Learn how to evaluate and control these exposures.

Preparing for a DOSH inspection

Many Cities have receive compliance inspections, citations, & fines from DOSH. How do you prepare for your future inspection and how do you conduct yourself during the inspection? What can you do to follow up?

Hearing conservation

Noise exposure is very common on City worksites. Workers' Compensation claims are often submitted several years after employment ends. We will review how hearing loss happens, how to evaluate noise exposure, and prepare a plan of action.



**APPLICATION FOR GROUP MEMBERSHIP
 AND AUTHORIZATION FOR RELEASE OF INSURANCE DATA**

Mail to association: Association of Washington Cities Workers' Compensation Rating Program 1076 Franklin St SE Olympia, WA 98501-1346
Employer City of Long Beach

Retro ID	122
UBI	252 000 463
Account ID	037,113-00
Application Deadline	December 15, 2013
Coverage Year Beginning	January 1, 2014

If you have more than one L&I industrial insurance account you **must** enroll all sub accounts that are of a similar business nature. You may elect to enroll all dissimilar businesses.

If you want to enroll dissimilar businesses, please check the sub account box. →

If you have questions about this requirement please contact the business association listed above or L&I at (360) 902-4851.

As a member of the sponsoring organization listed above, this employer applies for enrollment in the retrospective rating group sponsored by the organization. L&I will notify the sponsoring organization of acceptance or denial of your application to participate in the group. It is the responsibility of the sponsoring organization to notify you of this acceptance or denial. As a pre-requisite of enrollment each of your industrial insurance accounts must be in good standing at the time of enrollment or you will not be allowed to participate in retrospective rating.

By signing this application, the employer named above agrees with all of the following conditions:

- L&I will automatically re-enroll the employer as a member of the group in future coverage periods provided the employer's industrial insurance account is in good standing at the time of re-enrollment. If the employer does not want to participate in future coverage periods the employer or sponsoring organization must notify L&I in writing prior to the beginning of the respective coverage period.
- The employer authorizes L&I to furnish the sponsoring organization or their designee with data and information obtained from the employer's industrial insurance account(s).
- The sponsoring organization will represent the employer in all matters applicable to retrospective rating participation and the employer's industrial insurance account(s).
- The employer agrees to comply with L&I rules, regulations and laws and is bound by the terms of the agreement between the sponsoring organization and L&I.
- The employer will cooperate with L&I claims management activities and will participate in the sponsoring organization's claims management and workplace safety initiatives.
- All retrospective rating adjustments that may be earned by the employer will be given to the sponsoring organization. L&I is not involved in the distribution of a group refund to the individual group members except in the case of defunct group.

These conditions are in effect immediately and will remain in effect through the term of any agreement between the sponsoring organization and L&I.

NOTE: L&I disclaims any interest in any other contract you may enter into with the sponsoring organization as their pre-requisite of your participation in the retrospective rating group that they sponsor, and L&I neither approves or disapproves of any language or provision contained in these other contracts.

RETURN this application directly to the above organization.

DO NOT send this application directly to L&I.

Signature of an owner, partner or corporate officer of the employer named above is required to participate in this retrospective rating group.

Type or print name	Title	
Date	Owner, partner, corporate officer	Signature

Index: APM



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awcnet.org

**AWC Workers' Compensation Group Retro Program
Participation agreement and group enrollment application
Government, utilities & related services**

As a member in good standing with the Association of Washington Cities

Member name

L&I account number

Enrolls by this agreement as a participating member in the Group Retrospective Rating Agreement between the Association of Washington Cities (AWC) and the Washington State Department of Labor and Industries (L & I). This membership is subject to approval by L&I after submittal of the required "Application for group membership and authorization for release of insurance data" (L&I retro application form).

1. Goals of the program:

- A. Reduce the frequency and severity of industrial injuries;
- B. Reduce members' experience factors;
- C. Offer members an opportunity to qualify for refunds on Standard Premium paid to the Department of Labor & Industries.

2. Administration & management of the program:

AWC is responsible for the day-to-day operation of the Program and may contract with a third party administrator to fulfill some of its responsibilities, which include:

- A. Assisting program participants in reducing the frequency and severity of industrial injuries;
- B. Educating program participants in the most appropriate ways to control costs;
- C. Providing claims management services;
- D. Providing program information and training materials;
- E. Administering State Fund claims for members enrolled in the Program.
- F. Providing loss control and risk management services.

3. Governance of AWC Retro Program

- A. The AWC Board Executive Committee is the governing authority for the AWC Workers' Compensation Retrospective Rating Program. A committee composed of representatives of seven member cities/towns advises the Board Executive Committee and AWC Retro staff on operational issues including contract terms, distribution of refunds, program enhancements, conditions for continued participation and other issues. This committee meets at least once per year.

4. Member agrees to:

- A. Remain a member of the AWC Retro Program through the initial plan year and all subsequent related adjustments.
- B. During the contract term, maintain an individual account for workers' compensation insurance in good standing with the Department of Labor & Industries;
- C. Comply with all applicable laws, rules and regulations set forth by L&I;

- D. Participate in safety and loss control programs available as an AWC Retro Program member, including striving to have at least one field employee completes training to become a Certified Safety Coordinator;
- E. Demonstrate a commitment to maintaining a safe workplace and utilizing return-to-work strategies to reduce claims costs;
- F. Maintain membership in the Association of Washington Cities through the final retro year adjustment;
- G. Pay a Service Fee of six and one half percent (6.5%) of total Industrial Insurance Premium, billed annually in January, for each plan year of participation;
- H. Non-payment of service fees as agreed will result in forfeiture of any refund that may otherwise be due.

5. Refunds/Adjustments:

- A. A refund distribution and retention policy guides the determination of the amount of refunds returned to members and the amount held in reserves, for each plan year in which L & I refunds are received. Members whose total incurred losses do not exceed their standard premiums will be eligible for a refund up to the amount of service fees paid for the plan year, as well as additional performance-based refunds. Members whose total incurred losses exceed their standard premiums will be eligible for a refund of up to half the amount of their service fee. Program participants also acknowledge that refunds are based on a number of factors, such as premium size, claim costs, and related factors and are not guaranteed.
- B. If a group assessment develops for any plan year, those members that caused the assessment will be assessed first, up to a maximum liability of fifteen percent (15%) of the participating member's Standard Premium. If necessary to cover the assessment, the remaining members shall pay the balance on the basis of their individual percentage of the total group premium. Penalties become due and payable within 30 days of notification of the amount. If a member does NOT re-enroll in the program, any refund will be held until the final adjustment of that Retro year.

6. Annual plan choice/Re-enrollment:

- A. For the 2011 Plan Year, the program has chosen a premium-based plan type, with a maximum loss ratio of 88.90%, a minimum loss ratio of 0%, and a \$500,000 single loss limit. Prior to the beginning of each subsequent plan year, members will be notified of the plan type, minimum and maximum loss ratios, and single loss limit chosen for the following year. State law requires program members to notify L & I and AWC in writing if they do not intend to participate in the Retro program for the next plan year. That notification must be received 30 days prior to the beginning of the next plan year. If a member decides not to continue participation for the upcoming year, they are still required to maintain membership in AWC until the final adjustment for their last year of participation.
- B. Because the potential for refunds and assessments extends over several years as claims mature, members agree to cooperate with the AWC Retro Program, its third party administrators and other agents until such time as the third and final adjustment order of any Retro Year is final and binding as provided for by WAC 296-17-90453. Cooperation will include, at a minimum, access to claims data and assistance in managing claims. All claim-related communication between the member and L & I, the Board of Industrial Insurance Appeals, and/or the Washington State Department of Retirement Systems must include AWC and/or its third party administrator. At no time may a member represent itself in an appeal, protest, or hearing without the notification to the AWC Retro Program and its third party administrator.

7. Indemnification/Liability:

Each party shall indemnify and hold harmless the other and its directors, officers, employees, agents, parents, subsidiaries, successors and assigns from and against any and all liabilities, claims, suits, actions, demands, settlements, losses, judgments, costs, damages, and expenses (including reasonable attorney's fees) arising out of or resulting from, in whole or part, the acts or omissions of the indemnifying party, its employees, agents or contractors and the indemnifying party's affiliated companies and their employees, agents or contractors.

Authorized by:

(Printed name)

(Title)

(Signature)

(Address/Street)

(City/Town applicant)

(Date)

(Form revised 4-22-11)

TAB - H



**CITY COUNCIL
AGENDA BILL
AB 14-11**

Meeting Date: February 3, 2014

AGENDA ITEM INFORMATION

SUBJECT: Engineering Services Contract	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	
	Finance Director	DG
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
COST: N/A	Water/Wastewater Supervisor	
	Other:	

SUMMARY STATEMENT: A standard contract with Curran-McLeod setting ongoing rates for services as needed.

RECOMMENDED ACTION: Approve and authorize the Mayor to sign.

CITY OF LONG BEACH

ENGINEERING SERVICES CONTRACT

THIS AGREEMENT entered into this date _____, by and between the CITY OF LONG BEACH, a municipal corporation existing by and under the laws of the State of Washington, herein referred to as "CITY", and CURRAN-McLEOD, INC., whose address is 6655 S.W. Hampton, Suite 210, Portland, Oregon 97223, hereinafter referred to as "ENGINEER".

1. **SERVICES.** The ENGINEER agrees to act as the City's Engineer of Record in providing Engineering services on an as-needed basis; the scope of services is at the discretion of the City, but may include:
 - Review plans, specifications, and engineer's estimates of private development to determine Compliance with the City's adopted codes, specifications, practices, Master Plans, Facilities Plans and current development strategies.
 - Conduct field inspections to determine and report the status of compliance with approved plans and specifications.
 - Review changed site conditions, recommendation of payment, change orders and credits resulting from private development that impacts the City.
 - Assist the City as may be needed in the administration of the City's development codes.
 - Prepare plans, specifications and engineer's estimates for public works improvements in compliance with City requirements and regulatory agency requirements.
 - Prepare Master Plans, plan updates, system development change Methodology and/or updates.
 - Assist the City in securing funding through available grant/loan programs.

This contract permits but does not require the City to direct all engineering services to the Engineer of record.

2. **COMPENSATION.** The CITY will pay for ENGINEERING services according to the following:
 - Standard Hourly Rate Schedule, Attached as Exhibit "A", is subject to revision annually. Revisions, if any, will be submitted to the CITY for review and approval.

- A negotiated budget specific to a defined scope of work. Estimates or engineering cost and budgets shall be provided upon request of the owner and prepared without cost.

There shall be no change in these payment terms without a signed amendment to this agreement.

3. **INDEPENDENT ENGINEER RELATIONSHIP.** The ENGINEER, is an independent contractor and is not an employee, servant, agent, partner, or joint venturer of the CITY. The CITY shall determine the work to be done by the ENGINEER but the ENGINEER shall determine the means by which it accomplishes the work specified by the CITY. The CITY is not responsible for withholding, and shall not withhold FICA or taxes of any kind from any payments which it owes the ENGINEER.

Neither the ENGINEER nor its employees shall be entitled to receive any benefits which employees of the CITY are entitled to receive and shall not be entitled to workers compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pensions, profit sharing or Social Security on account of their work for the CITY.

4. **BUSINESS OF ENGINEER.** The ENGINEER is engaged in the business of providing the services described in Paragraph 1 above. Upon request, ENGINEER shall provide copies of documents verifying the ENGINEER's business entity status, tax identification numbers and occupational licenses.
5. **RISK, RELEASE AND INDEMNITY.** The ENGINEER agrees to indemnify, and save harmless the CITY, its officers, Councilors and employees from and against all claims and actions, and all reasonable expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the negligent acts, errors or omissions of the ENGINEER or the ENGINEER's employees. The ENGINEER shall indemnify the CITY for the defense costs and damages incurred by the CITY to the extent of the ENGINEER's negligence, as determined by a court of law or by proportional out of court settlement.
6. **COMPREHENSIVE GENERAL AND AUTOMOBILE LIABILITY INSURANCE.** The ENGINEER must maintain comprehensive general (including contractual liability) and automobile liability insurance in the amount of not less than \$500,000 combined single limit per occurrence / \$1,000,000 general annual aggregate for personal injury and property damage for the protection of the CITY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to ENGINEER'S or any of ENGINEER'S subcontractor's performance of this Contract.
7. **PROFESSIONAL LIABILITY INSURANCE.** The ENGINEER must maintain professional liability insurance in an amount of not less than \$500,000 per claim. Such insurance shall include limited contractual liability coverage and shall provide for thirty days prior written notice to the CITY in event of cancellation. The ENGINEER shall endeavor to use good faith in order to

maintain in force such coverage for not less than three (3) years following completion of the Project. The CITY, at its option, may require a complete copy of the above policy and evidence of required coverage.

8. **NO ASSIGNMENT.** The ENGINEER may not assign any of its rights or duties under this agreement without the prior written consent of the CITY.
9. **PAYMENT.** The CITY shall remit to the ENGINEER within 30 days after receipt and approval of the ENGINEER'S invoice for services rendered.
10. **NOTICES.** All notices given or so sent hereunder shall be sent by United States mail, postage prepaid, addressed to the respective party at the address set forth on the signature page hereof, or to such other addresses that the parties shall designate in writing from time to time.
11. **TERMINATION OF PRIOR AGREEMENTS.** This agreement cancels and terminates, as of its effective date, all prior agreements between the parties covering Engineer of Record services whether written or oral or partly written or partly oral.
12. **GOVERNING LAW.** This agreement shall be governed and construed in accordance with Washington law.
13. **SIGNATURES.** Both the CITY and the ENGINEER agree to the above and have executed this agreement on the dates shown above.

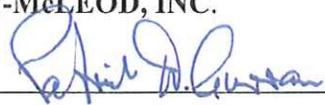
CITY OF LONG BEACH

Signature: _____

Name/Title: _____

Date: _____

CURRAN-McLEOD, INC.

Signature:  _____

Name/Title: Patrick D. Curran, P.E., President

Date: 1/24/14

STANDARD HOURLY RATES

Effective January 1, 2013

Senior Principal Engineer	\$ 124.00
Principal Engineer/Manager	114.00
Project Engineer/Project Manager	104.00
Design Engineer	104.00
Design Technician	72.00
Graphics Technician	56.00
Word Processing	50.00
Resident Project Representative	65.00

REIMBURSABLE EXPENSES

Reproduction expenses are at cost.

Auto expenses reimbursed at 50.5¢ per mile.

Meals and Lodging at cost.

TAB - I



**CITY COUNCIL
AGENDA BILL
AB 14-12**

Meeting Date: February 3, 2014

AGENDA ITEM INFORMATION

SUBJECT: Facility Use Agreement with American Red Cross	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	
	Finance Director	DG
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
COST: N/A	Water/Wastewater Supervisor	
	Other:	

SUMMARY STATEMENT: This is an agreement that would allow the American Red Cross to store an emergency supply trailer on city property adjacent to the water plant. This agreement also allows them access to the site as needed. Red Cross trailers typically include items needed in times of emergency, such as blankets and cots. This location is ideal in that it has an elevation greater than any predicted tsunami.

RECOMMENDED ACTION: Approve and authorize the Mayor to sign.

**American Red Cross
Facility Use Agreement**

DR #: Not Applicable Facility Name: City of Long Beach WA., Water Treatment Plant

Parties and Premises

Owner:

Legal name: City of Long Beach, WA

24-Hour Point of Contact:

Name and title: Gene Miles, Administrator

Work phone: 360-642-4421 Cell phone/pager: _____

Address for Legal Notices:

P O Box 310

Long Beach, WA 98631

Red Cross:

Legal name: The American National Red Cross, a corporation under the laws of the United States

24-Hour Point of Contact:

Name and title: American Red Cross SW Washington Chapter

Work phone: 360 693 5821 Cell phone/pager: _____

Address for Legal Notices:

3114 E. 4th Plain Blvd., Vancouver, WA 98661

with copies to:

The American National Red Cross, Office of the General Counsel,
2025 E Street, NW, Washington DC 20006

and

The American National Red Cross, Disaster Operations,
2025 E Street NW, Washington, DC 20006.

Building Address:

5415 67th Place

Description of Premises:

Long Beach Water Treatment Plant Facility

Terms and Conditions

1. Use of Premises. Owner agrees to allow the Red Cross to use and occupy, on a temporary basis, the Premises described above (the "Premises") in the Building identified above (the "Building") to conduct emergency, disaster-related activities. The Premises may be used for any of the following purposes (both parties must initial all that apply):

	Owner initials	Red Cross initials
Operations center	N/A	N/A
Client service center	N/A	N/A
Volunteer intake center	N/A	N/A
Storage of supplies	N/A	N/A
Parking of vehicles	<u> T.T. </u>	<u> T.T. </u>

No sheltering or lodging of clients or disaster victims is permitted, except as the parties may agree in a separate written agreement.

2. Term. The term of this agreement begins on the date of the last signature below and ends 30 days after written notice by either party.

3. Fee. Both parties must initial the applicable statement below:

- a. Owner agrees not to charge any fee in recognition of the services provided by the Red Cross to the community. Owner initials: _____ Red Cross initials: T.T.
- b. Red Cross agrees to pay \$_0.00 per day/week/month (circle one) for the right to use and occupy the Premises. Owner initials: _____ Red Cross initials: T.T.

4. Conduct of the Red Cross. Red Cross agrees to keep the Premises in good condition and promptly repair all damage to the Premises or the Building resulting from the operations of the Red Cross or reimburse Owner for the costs of repairing such damage in accordance with paragraph 6 below. The Red Cross agrees not to disrupt, adversely affect or interfere with other occupants of the Building.

5. Condition of Premises and Building. Owner makes no warranty or representation about the Premises or the Building. The Red Cross accepts the same "AS IS." Owner is under no obligation to prepare or repair the Premises or the Building for the Red Cross. The parties will jointly conduct a pre-occupancy survey of the Premises before it is turned over to the Red Cross. They will use the Facility/Shelter Opening/Closing Form, to record any existing damage or conditions. The Red Cross will exercise reasonable care while using the Premises and will make no modifications to the Premises without the Owner's express written approval.

6. Reimbursement: The Red Cross will reimburse the Owner for the following:

- a. *Damage to the Premises or other property of Owner, reasonable wear and tear excepted, resulting from the operations of the Red Cross. Reimbursement for damage will be based on replacement at actual cash value. The Red Cross will select from among bids from at least three reputable contractors. The Red Cross is not responsible for storm damage or other damage caused by the disaster.*
- b. *Reasonable, actual, out-of-pocket operational costs, including the costs of the utilities indicated below, to the extent that such costs would not have been incurred but for the Red Cross's use of the Premises (both parties must initial all utilities to be reimbursed by the Red Cross):*

	Owner initials	Red Cross initials
Water	N/A	<u> T.T. </u>
Gas	N/A	<u> T.T. </u>
Electricity	N/A	<u> T.T. </u>
Waste Disposal	N/A	<u> T.T. </u>

The Owner will submit any request for reimbursement to the Red Cross within 60 days after the occupancy of the Red Cross ends. Any request for reimbursement must be accompanied by supporting invoices.

7. Insurance. The Red Cross shall carry insurance coverage in the amounts of at least \$1,000,000 per occurrence for Commercial General Liability and Automobile Liability. The Red Cross shall also carry Workers' Compensation coverage with statutory limits for the jurisdiction in which the premises are located and \$1,000,000 in Employers' Liability.

8. Indemnification. Red Cross shall defend, hold harmless, and indemnify Owner against any legal liability, including reasonable attorney fees, in respect to bodily injury, death and property damage arising from the negligence of the Red Cross during the use of the Premises.

9. Owner's Right to Revoke for Cause. Upon reasonable prior written notice to the Red Cross, Owner may revoke the permission represented by this Agreement if Red Cross (a) fails to pay any fee or payment required hereunder or (b) breaches any other obligation hereunder and such breach continues after written notice from Owner describing same. If the permission license is so revoked, Red Cross shall vacate the Premises in a neat and orderly manner. Owner shall have all rights and remedies available to it under applicable law.

10. Casualty or Condemnation Affecting Premises. Notwithstanding anything in this Agreement to the contrary, in the event that damage or casualty to all or a part of the Premises, this Agreement shall terminate and Red Cross shall have no right to restoration of the Premises or to receive any compensation whatsoever.

11. Legal Notice. Notice shall be deemed to have been duly given three (3) business days after having been mailed by certified or registered mail, return receipt requested, to the party's address for Legal Notice set forth at the beginning of the Agreement, or upon receipt if delivered by hand or recognized overnight delivery service. Either party may change its address for the purpose of Legal Notice hereunder by providing the other party with notice of the new address.

12. Governing Law and Binding Effect. This Agreement shall be governed by and construed under the laws of the state in which the Building is located. This Agreement shall be binding on the parties and their respective, successors, transferees and assigns.

City of Long Beach
Owner (legal name)

By (signature)

Robert Andrew
Name (printed)

Mayor
Title

Date

THE AMERICAN NATIONAL RED CROSS
(legal name)

By (signature)

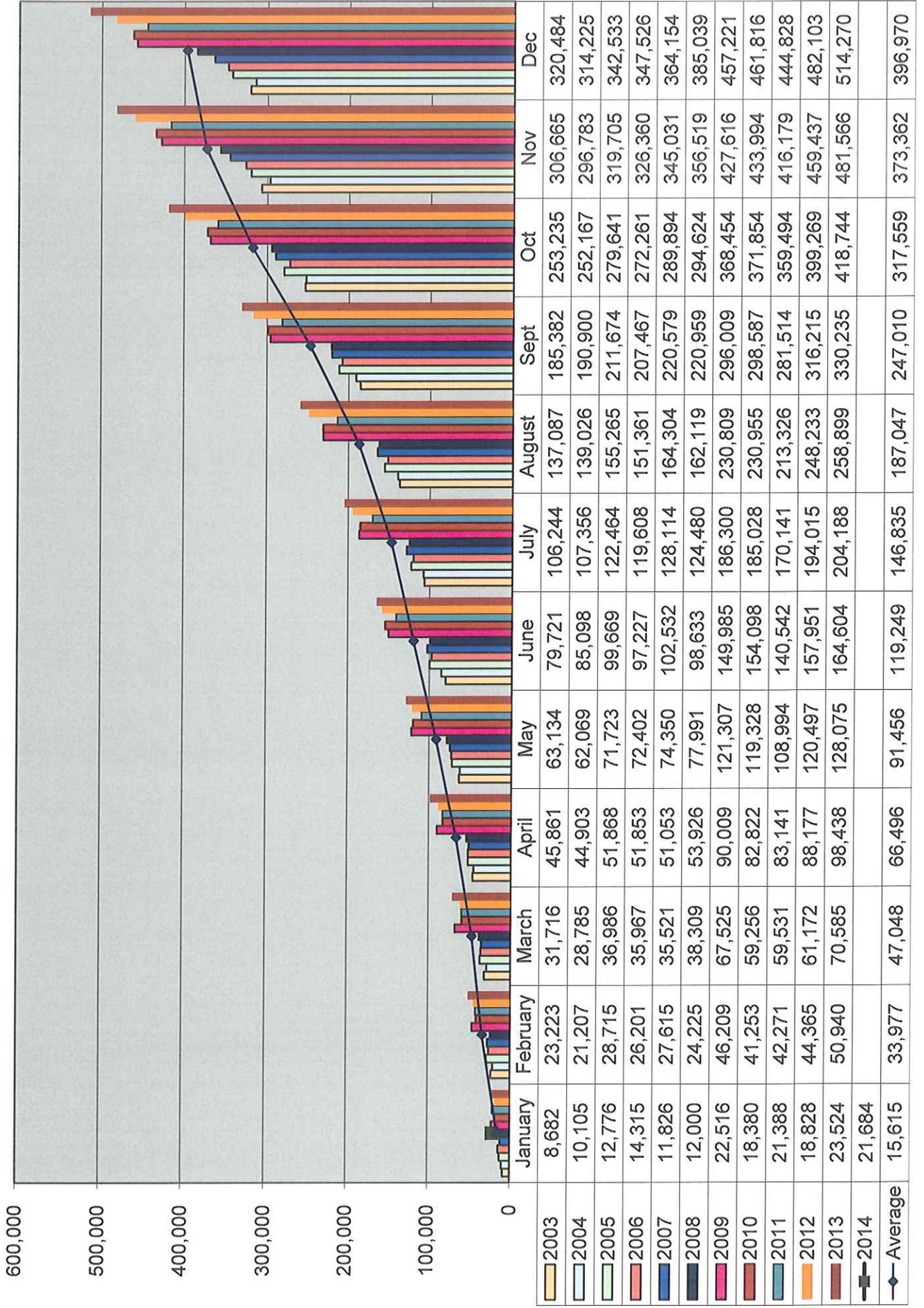
Tod Thayer
Name (printed)
Tod Thayer

Tod Thayer Executive Director
Title
SW Washington Chapter Executive

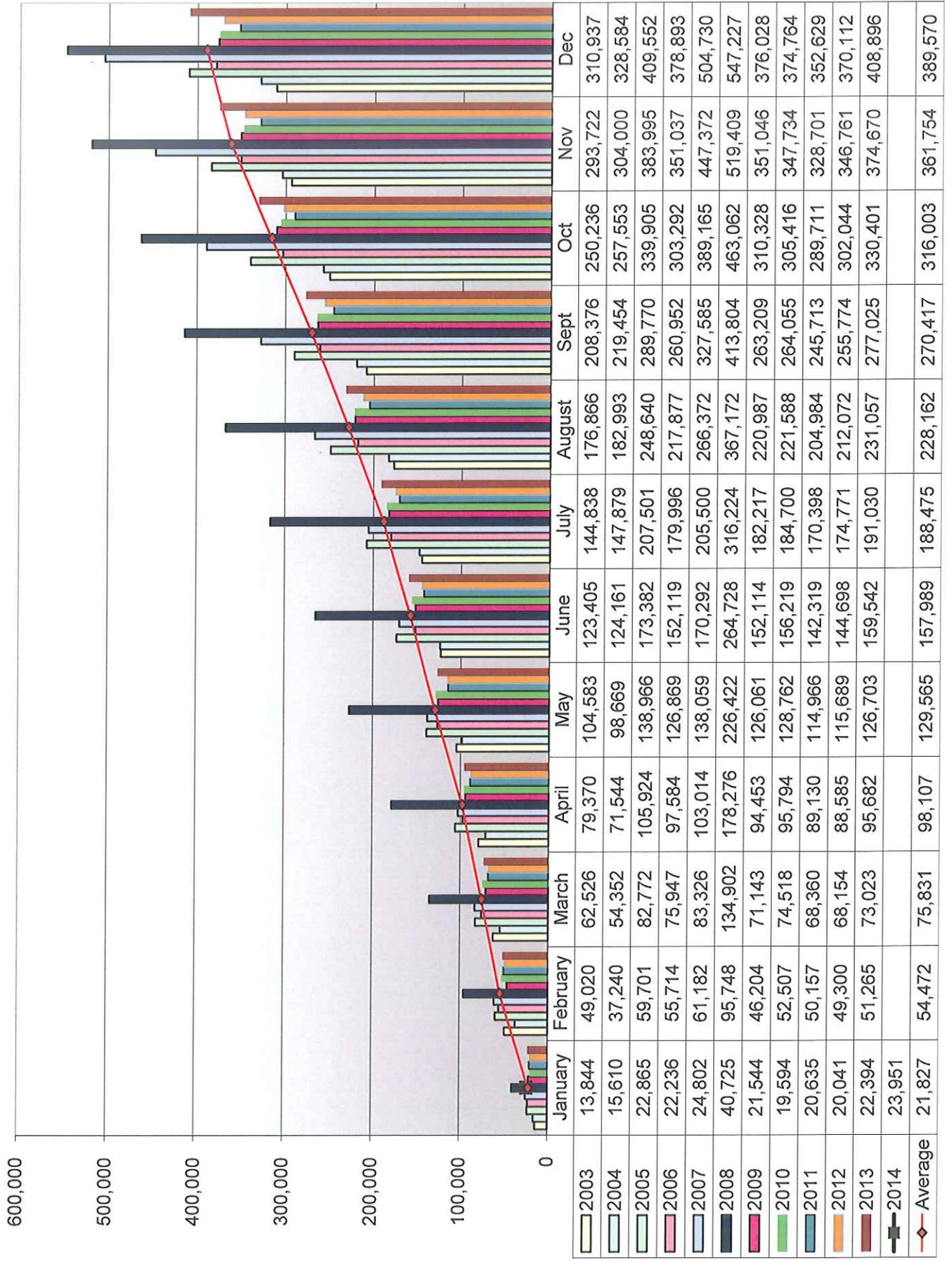
1-30-14
Date

TAB - J

Lodging Tax Collections



Sales Tax Collections



City of Long Beach
Summary of Report of Decision

On January 28, 2014, the Hearings Examiner for the City of Long Beach, Washington did issue a report of decision for the following application:

Project: Case No. V 2013-02, Todd Ebersole and Judith Wyss of Portland, Oregon, a Title 12 Variance from the strict application of the R1R – Single Family Residential zoning district front setback standard to allow replacement of an existing garage in-kind and in its historic location, while maintaining the separation standard between the garage and the existing home and correcting an existing side yard setback encroachment.

Decision: Approved per the findings and conditions in the Report of Decision.

The complete Report of Decision for the above-referenced project is available for review at Long Beach City Hall, 115 Bolstad Avenue West, Long Beach Washington.

Chinook Observer: Please publish either February 5 or February 12, 2014

City of Long Beach
Department of Community Development

Memo

To: Applicants, Parties of Record
From: Gayle Borchard
CC: file
Date: January 30, 2014
Re: Case No. V 2013-02; Hearing Examiner's Decision



Enclosed please find the City of Long Beach Hearing Examiner's Report of Decision regarding the subject application. You are receiving this decision because you are either an applicant or a party of record for this matter.

Please be aware the appeal period for this decision is not yet complete, and the decision is not final until that appeal period has run its course. Applicants should keep this decision for their records; once the appeal period is complete, this decision constitutes either the approval ("the permit") or a key element of the denial of your proposal.

Should you have questions regarding this decision, please contact me via telephone -- 360/642-4421 -- or email -- planner@longbeachwa.gov.

BEFORE THE HEARING EXAMINER FOR THE CITY OF LONG BEACH

In the Matter of the Application of)
Variance for Setback Standards)
found at 909 Ocean Beach)
Boulevard North in the R1-Single)
Family Residential Zone.)

FILE NO: V 2013-2

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION

DECISION

The Variance Application is **APPROVED**, subject to condition.

INTRODUCTION

The application of **Todd Ebersole and Judith Wyss** to allow a variance to come on for hearing before Jan LeM. Hedges, Hearing Examiner, on January 24th at 3:03 p.m. . **Gayle Borchard**, presented the Department of Community Development Staff Report

The Hearing Examiner explained the hearing procedure, after which City staff made an opening presentation concerning the Variance Application.

Testifying under oath was:

Gayle Borchard, Community Development Director

Todd Ebersole, Applicant

The following exhibits were offered and admitted:

EXHIBIT	DESCRIPTION	SUBMITTED BY	DATE ADMITTED	COMMENTS
1	Application for Development Approval	Larry & Ann Reeves	12/09/2013	Complete
2	Determination of Completeness	City of Long Beach	12/18/2013	Complete
3	Staff Report	City of Long Beach	01/21/2014	Complete
4	Public Hearing Notice	City of Long Beach	12/18/2013	Complete
5	Scheduled Public Hearing Held	City of Long Beach	01/24/2014	Complete

The hearing adjourned at 3:16 p.m.

From the foregoing, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Applicant(s), seek approval of a variance to the strict application of the front setback requirement for property located in the Single Family Residential Restricted (R1R) zoning district. This is necessary in order to proceed with replacement of an existing old garage. This is needed due to land and structure configurations cannot be moved back to complete out of the setback area, and for historic reasons should be located approximately in its' current location and not relocated to an entirely different area of the property. The variance is necessary to allow residential development of a residentially zoned property within the urbanized City of Long Beach and its associated Urban Growth Area
2. The parcel is located in **Tinker's North Addition to Long Beach, Block 30, Lot 3**, and Assessor's Parcel No. 73011030003.
3. The proposed site is located in **R1 – Single Family Residential Restricted zone**.
4. The Comprehensive Plan Map designation for this property is **Single Family Residential**.
5. The **State Environmental Policy Act** Responsible Official has determined the proposed activity is exempt.
6. **Public** street(s), water, utilities and other **CITY** services are available to serve the site.
7. This Variance application was **timely submitted**, was received and met the CITY completeness requirements as required in CITY Ordinance 15.08.070 B. and RCW 36.70.B.070.
8. Any Conclusion of Law deemed to be a Finding of Fact is adopted as such. From these Findings of Fact, the Examiner makes the following:

CONCLUSIONS OF LAW

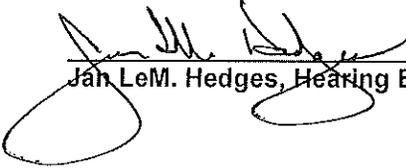
1. The Hearings Examiner has jurisdiction over the persons and the subject matter of the proceeding.
2. The standards and guidelines of the CITY **Comprehensive Plan** and have been met.
3. This proposed development is exempt from **SEPA** review.
4. The applicant has sought the appropriate variance application.
5. The requirements of the CITY **Ordinance 814, Section 11** have been met for the **R1 – Single Family Residential Restricted zone** granting of a Variance.
6. The public interest will not suffer any detrimental effect and is in the best interest of the applicants to resolve this matter.
7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The application of, **Todd Ebersole and Judith Wyss** is **APPROVED**, subject to the following conditions:

1. Site and building design shall undergo design review by the City.
2. The reduced setback area shall not be used for parking cars, and shall be kept clear for pedestrians and non-motorized transportation.
3. No other Title 12 variances shall be granted this property.
4. Development of the proposed replacement building shall comply with all City codes, regulations, and requirements, excepting that covered by this variance.

Done this 28th, day of January, 2014


Jan LeM. Hedges, Hearing Examiner

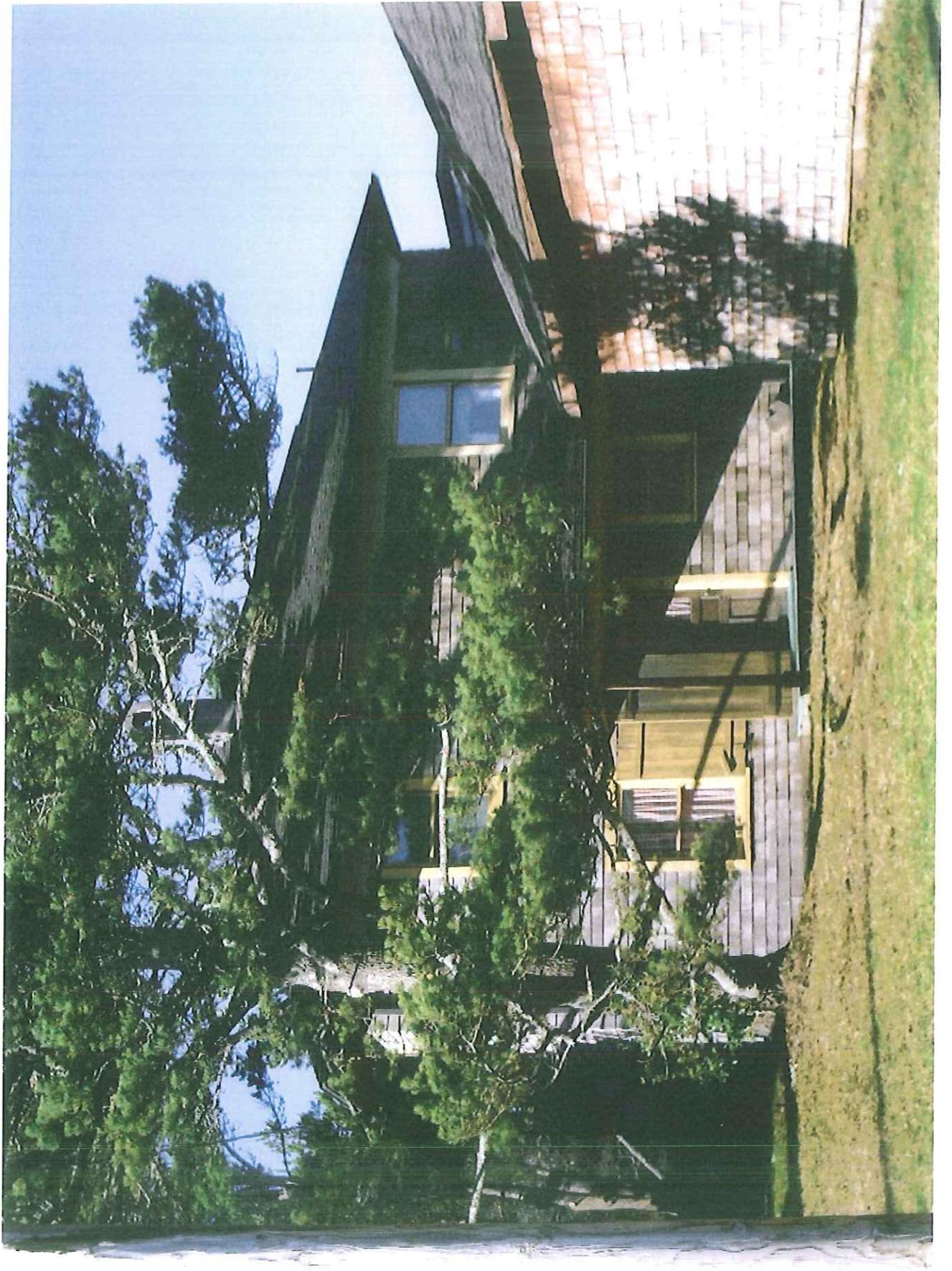
NOTICE OF RIGHT TO APPEAL

RIGHT TO APPEAL –TIME LIMIT

Any person aggrieved by the decision of the hearing examiner shall have the right to appeal the decision to the City Council. The appeal shall be in writing and delivered to City Hall within ten calendar days of the hearing examiners decision. The appeal must contain a statement identifying the decision being appealed, the name and address of the appellant and the appellants standing, the specific reason(s) why the appellant asserts the decision is in error and the desired outcome or changes to the decision. Upon filing an appeal, the appellant must pay a fee of \$400.00. No new evidence will be accepted by the City Council. The appeal is limited to the record presented to the hearing examiner. [Ordinance No 656, Section 4]

TRANSCRIPT OF HEARING – PAYMENT OF COST

An appeal of the Hearing Examiner's decision requires the preparation of a transcript of the hearing before the Hearing Examiner. Therefore, a payment of ten dollars (\$10.00) for each hearing tape must accompany the request for appeal. The appeal fee is \$400.00. All costs are payable to the City of Long Beach, Washington.



Tourism & Events Department

Mayor & Council Report

January, 2014

The Tourism & Events Department has been working hard this month on the following projects, programs, and attending meetings, etc. to represent the City of Long Beach, WA. I apologize ahead of time for the length of this report, however with all the projects being managed, I felt it important for you to know the scope of work being completed out of this office. Thank you in advance and please feel free to ask any questions you may have. I encourage any and all of you to attend one of the upcoming Hospitality 101 Trainings and Fam Tour!

- ❖ Working with Oregon National Guard for a performance 4th of July weekend at Veterans Stage, SummerFest.
- ❖ Air Force Band of the Golden West, California coming March 8th for a one day free concert at the Long Beach Elk's Lodge, 3pm! The Travis Brass Band will stay two nights in Long Beach and then perform at the Raymond Theatre on their way to Seattle on Sunday. I was able to assist the Raymond Elks lodge get this group.
- ❖ January 14th, 2014 Tsunami Preparedness Workshop – ALL Lodging Properties in Pacific Co. and all First Responder entities from City of Long Beach up to Washington State Patrol. Held at the Long Beach Elk's Lodge, letter attached. Letters have been sent out to all Lodging facilities, downtown Long Beach Businesses and those businesses that would assist during a Natural Disaster. All coordination was handled, and thank you letter went into the Chinook Observer for all suppliers. 52 people participated and 19 businesses were represented! This was a great event. I was able to keep 10 Tsunami Preparedness Kits for the hoteliers that were unable to attend. Also, we will be hosting another Tsunami Class in October that may be offered for individuals and businesses.
- ❖ January 22nd, 29th, or February 5th, 2014 Hospitality Training for ALL Lodging properties and peninsula business owners. This event will be held at the Long Beach Train Depot from 9am – 3pm and will include a light lunch and FAM tour!! So far the first tour is almost full. We are taking the first 25 participants so that we can all be on the trolley at the same time. Letters have went out to everyone with a city of Long Beach business license. The letter was further sent to the Long Beach Peninsula Visitors Bureau, Ocean Park Area Chamber, and the Ilwaco Merchants. Letter is attached We have completed 2 of the 3 classes with great feedback and excitement! 19 people participated on the 22nd, 17 people participated on the 29th and at this time there is a waiting list for the 5th. We are currently looking at hosting 2 more this winter. Thursday March 6th and Tuesday March 25th in hopes of being able to get more people through the program. WorkSource Long Beach has been sending people to us as part of their job search credit (6 hours).

- ❖ The Merchants outreach letter goes to everyone with a City of Long Beach Business License and helps to get feedback from them to use during advertising, networking, and promoting Long Beach!! The info can also be shared with the different membership driven organizations. This letter consist of several questions and room for feedback. Letter is attached. We have received 1/3 of the letters back, addresses are not current, 1/3 not returned at all, and the 1/3 that was returned had positive feedback overall. Would like to see the mailing addresses for our businesses updated more often in hopes of saving postage and getting a better return.
- ❖ Lodging in the Loop is a monthly get together of Long Beach Lodging properties. This meeting is held at a local lodging property and gives managers, owners, etc. the opportunity to compare notes, brainstorm in house events and activities to draw guest to Long Beach, discuss sponsorship and partnership opportunities and gathers information that can be shared with other organizations and the marketing committee. Roughly 5 lodging properties currently participate. Minutes and Schedule attached. We have been working with these properties to bring events to the facility and heads in beds in their rooms.
- ❖ Super 8 will be hosting A Collection of Authors Event March 8th, 2014 at Super 8. 12 Local and Regional issues will be selling their publications from noon – 4:00 pm and then from 4:00 – 5:00 pm will be a VIP Washington Wine and Cheese Reception, also incorporating local wines and cheeses. There will be a ribbon cutting for the new Super 8 Library. The Visitors Bureau is also pushing this event for us.
- ❖ National Tour Association – Travel Exchange; We have been fine tuning 3 new itineraries, updating the website and Facebook page, researching and contacting potential Tour Operators to discuss speed dating appointment scheduling. We have also partnered with the VB and have purchased 2 ads in Courier and are also putting our sales sheet into each of the operator's notebooks at NTA. Flight and Lodging accommodations have been made. We currently have 35 scheduled appointments, I am scheduled to volunteer in the Washington booth, as well as taking a 2 hour class during the convention to better my selling abilities to Tour Operators. I will be leaving February 12th and returning from TRAVEL EXCHANGE on February 21st. I am in charge of the Props for our Washington State Photo Booth and will be sending my Share your Washington Photo Board as well to LA.
- ❖ Monthly participating in Conference calls for the Washington Package Travel NTA Delegation. I am on the Social Media committee and assisting with set up of the Washington State Booth at convention.
- ❖ I was awarded a Movers and Shakers award from Group Today magazine, thanks Gene and they are doing an article on why we do best with Package Travel as well as a picture to go with the January issue! Perfectly positioned before convention! I have also had someone else in the industry nominate me for the Women in Travel recognition. Fingers crossed!! This has been the best way to get media coverage.

- ❖ GO West: Andi and I have been working on the FAM tour that our international visitors will participate in prior to arriving in Tacoma for the Convention. The FAM tour is called, "Waterways of Washington". We are currently updating the sales sheet, building contracts for the FAM tour with our local suppliers, and researching the top operators or contacts we would like to see at Convention. Andi will be making appointments to meet with the Media and Reservation/Booking agencies and I will be meeting with Tour Operators. As of now, we have 50% of our appointments requested. Lodging is solidified. We are waiting to get the CD's returned to us, sales sheets are at the printers, and Andi and I are ready to showcase the best the peninsula has to offer!
- ❖ FAM Tour, "Waterways of Washington". Go West has 23 people registered for this pre-convention Fam Tour. We are hosting for 2 nights individuals from Germany, China, United Kingdom, and their staff supporter from Washington State. We look forward to showing them what we have for visitors and getting more international visitors to our area.
- ❖ Attended the Washington Tourism Alliance: Tourism Summit on January 29th in Olympia Washington at the Capital. Andi Day, Carol Zahorsky, and I were there on behalf of the peninsula. We were able to get some great information regarding the 2013 Tourism status and the forward motion of the WTA.
- ❖ SummerFest: a few band have called and I have organized a few of the special event activities, i.e. Kite decorating and Beach Safety buckets. I have also solidified The Air Force Band of the Golden West's Travis Brass Band. They will perform a special event for us on Saturday March 8th, 2014 at the Elk's Lodge. We have also solidified the 234th Army Band ONGMB of State of Oregon for 5 July 2014 on Veteran's Stage in downtown Long Beach! In addition to the National Guard Band on the 5th, we will also have a bagpipe band to open for the Guard! Will be a great day in Long Beach on the 5th of July.
- ❖ Participated in several festival and event planning meeting for the following, SummerFest, SandSations, The Columbia Pacific Farmers Market, Loyalty Days, Shoeboxes of Joy, and a couple more for the Long Beach Merchants partnership.
- ❖ Columbia Pacific Farmers Market – Katie has participated in a webinar for Market Managers and is currently attending the Washington State Farmers Market Managers Conference in Vancouver Washington at the Heathman Lodge. We are always looking for new vendors, working on recruitment, and looking at events and entertainment for the season.
- ❖ Participate in a monthly one hour radio show in Longview. The DJ is a member of one of the bands that performs for us during SummerFest. Last July Dave asked me if I would be a monthly guest to talk about everything arts/entertainment on the peninsula. I have gladly participated and gives us the opportunity to reach those along I-5. The radio show is through Bi-Coastal Media and airs every Thursday. It is called Entertainment on the River. 2 other radio interviews have been done this month as well. Talk of Our Town hosted by Donna Quinn talked about all the programs we are implementing in 2014. Collin MacDonald from Ohana Media Group!

- ❖ Attended the Washington Rural Pathways to Prosperity meeting in Olympic sponsored by WSU and several other agencies. There were several of us representing the peninsula. The project that our group took away from this session, was to create a better connection between the Latino population and the general public. We plan on working on this project in March. More to come...This will be a partnership between the VB, City of Ilwaco, City of Long Beach, and the Grays Harbor College, Ilwaco extension. We are hoping to be able to do some form of outreach to the Latino/Latina population in Pacific County/Long Beach Peninsula!
- ❖ Attended and participated in a meeting with the Long Beach Merchants Board and Gayle to help develop a Mission, Vision, and Core Values for the Merchants Association. This was a great meeting and I see POSITIVE partnerships between the Tourism & Events Department and LBMA.
- ❖ Attended the following Festival or Event planning meetings this month: SandSations, 2 Clam Festival Meetings, 2 Loyalty Days Meetings, Rose Festival Meeting, and met with 3 different Daughters of the American Revolution chapters and invited them back for Loyalty Days.
- ❖ Tile Project at Long Beach Elementary School for the Stage. We are working with Karen Brownlee to create a patriotic tile stage front for Veterans Stage. We are looking to have this finished by Loyalty Days. This will be a multiple year project with 5th graders at Long Beach. Each year the 5th graders will create a tile to be added to the stage front. Will keep you posted on this project!
- ❖ Distribution of 2014 brochures to Long Beach businesses. Distributed the Birder, Clamming, Crab Feed, Hypnotist, Merchants Appreciation, Peninsula Poverty Response, Windless Kite Festival, etc. also took Tsunami stuff to 4 local businesses.
- ❖ Social Media with Long Beach Package Travel and SummerFest Facebook pages. I try to spend 1-2 hours daily on social media and getting the word out about "what's happening"!
- ❖ Continuing to rent out the Train Depot for meetings, small events, and workshops. We have created a check in/out sheet for Keys in hopes of cutting down on loss.
- ❖ Attended the Ocean Park Area Chamber meeting, The Visitors Bureau Board Meeting, Long Beach Merchants Meeting and Board Meeting, and the Long Beach Marketing Meeting this month. I was able to introduce myself to the new EDC Director, Paul Philpot and met the new Deputy for Pacific County Emergency Management Scott McDougall

Needless to say, we have been very busy planning, organizing, and implementing all of the items listed above!!

Thank you in advance.

Ragan Myers

Tourism & Events Coordinator

City of Long Beach, WA.

Section Report *from page 1*

dan v. Rumsfeld decision. It was an excellent event, and I am glad that many of you were able to attend.

We are also actively working with the law schools to schedule attorney and law school student social mixers in February for Seattle University and the University of Washington, and in March for the *March Madness* social mixer for Gonzaga University. Please try to attend these terrific events. I believe you will find that they are beneficial for both attorneys and students. It is a goal of the section to support law students and young lawyers interested in land use and environmental law by promoting their interaction with lawyers practicing in those fields. We also hope to coordinate with local bar associations to have mini-CLE programs as part of the socials.

In January or February you will receive information about a CLE presented by the Land Use & Environmental Mediation Committee (LUEMC). The LUEMC is a joint standing committee of the WSBA ADR and ELUL Sections. Please see <http://wsba-adr.org/group/land-use-environmental-mediation-committee> for more information.

Finally, we are planning the 2014 Mid-Year Meeting and Seminar at Suncadia Resort. We are returning to having the CLE over three days, starting around noon on Thursday, May 1, continuing for half-day the morning of May 2, and ending with presentations the morning of Saturday, May 3. Our co-chairs, Jennifer Stacy (King County Prosecutor's Office) and Greg Hixson (Short, Cressman & Burgess, PLLC, Seattle) have begun developing an excellent CLE program. Please look on the ELUL Section website for these and other upcoming events.

I want to thank you again for your support, and I want to thank the Executive Committee and the Editorial Board for a huge commitment of time and work.

Interim Editor's Message *from page 1*

to the Newsletter burdensome. The Executive Committee and Editorial Board agreed that there should be no barriers to accessing the Newsletter, which is a tremendous resource for Section members and the legal community in general.

As always, member feedback on Newsletter access, content and format is appreciated. Please contact me or any of the Editorial Board members with your suggestions.

Have a safe, happy and peaceful holiday season.

Koontz: What It Said, What It Didn't Say, and Some Lessons for Us in Washington

By Roger Wynne,
Seattle City Attorney's Office



In the swirl of higher-profile decisions issued by the U.S. Supreme Court at the end of its 2012-2013 term, most Court watchers took little note of *Koontz v. St. Johns River Water Mgmt. Dist.*, ___ U.S. ___, 133 S. Ct. 2586 (2013). Government and land use lawyers paid attention, though, for good reason. *Koontz* altered part of the takings landscape many thought settled. This article outlines that seemingly settled territory, explains how *Koontz* changed it, identifies key questions *Koontz* left unanswered, and offers some post-*Koontz* lessons for attorneys in Washington.

A. The seemingly limited reach of the "nexus" and "rough proportionality" tests before *Koontz*

The "unconstitutional conditions doctrine" is a fancy label for a simple concept: government may not punish people for exercising a constitutional right, or pressure them into giving up that right. A decision cited frequently for the doctrine—even though the phrase does not appear in the text—involved a claim by a professor that a public college refused to extend his contract because he criticized the school publicly. The Supreme Court reasoned:

[The government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which (it) could not command directly." Such interference with constitutional rights is impermissible.

Perry v. Sindermann, 408 U.S. 593, 597, 92 S. Ct. 2694 (1972) (citation omitted).

The Court applied this doctrine to takings a quarter century ago. Again, the concept is simple. If the government wants, for example, to run a public trail through your property, it generally may do so only if it pays for an easement because the U.S. and Washington Constitutions hold that private property may not be taken for public use without just compensation. U.S. Const. Amend. 5; Wash. Const. art. 1, § 16. But what if you apply for a develop-

ment permit and the government, as a condition of the permit, requires you to deed the trail easement without compensation? Or as some would put it, what if the government "exacts" your property from you through a permit condition?

Two milestone decisions imposed limits on this exaction power. In 1987, *Nollan v. California Coastal Commission* held a "nexus" must link a legitimate state interest and the condition exacted. 483 U.S. 825, 837, 107 S. Ct. 3141 (1987). Then in 1994, *Dolan v. City of Tigard* ruled a nexus is not enough; the government must also show the exaction is "roughly proportional" to the state interest. 512 U.S. 374, 391, 114 S. Ct. 2309. "No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Id.*

After introducing the nexus and proportionality tests, the Court showed little interest in extending them beyond two key facts of *Nollan* and *Dolan*. First, the Court seemed unlikely to apply nexus and proportionality where the government denied a permit. In 1999, the Court said *Dolan* "was not designed to address, and is not readily applicable to, the much different questions arising where... the landowner's challenge is based...on denial of development." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 703, 119 S. Ct. 1624 (1999). The next year the Court declined to review a *Nollan/Dolan* challenge to a permit denial. See *Lambert v. City and County of San Francisco*, 529 U.S. 1045, 120 S. Ct. 1549 (2000) (Scalia, J., dissenting).

Second, the Court appeared to reject invoking *Nollan* and *Dolan* where a land use permit is conditioned on the payment of money, rather than the dedication of an interest in land. The Court noted "we have not extended the rough-proportionality test of *Dolan* beyond the special context of exactions—land-use decisions conditioning approval of development on the dedication of property to public use." *City of Monterey*, 526 U.S. at 702. More recently, in resolving a different issue, the Court characterized *Nollan* and *Dolan* as premised on—and seemingly limited to—a permit condition working a physical invasion of real property. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 539, 546-47, 125 S. Ct. 2074 (2005).

Although the Court did not expressly limit *Nollan* and *Dolan* to dedications, lower courts generally—although not uniformly—shied away from extending the doctrine on their own. See, e.g., *McClung v. City of Sumner*, 548 F.3d 1219, 1228 (9th Cir. 2008) ("A monetary exaction differs from a land exaction—'[u]nlike real or personal property, money is fungible.'"); *Clajon Prod. Corp. v. Petera*, 70 F.3d 1566, 1578 (10th Cir. 1995) (the *Nollan/Dolan* tests "are limited to the context of development exactions where there is a physical taking or its equivalent"); *City of Olympia v. Drebeck*, 156 Wn.2d 289,

302, 126 P.3d 802 (2006) ("neither the United States Supreme Court nor this court has determined that the tests applied in *Nollan* and *Dolan* to evaluate land exactions must be extended to the consideration of fees"). But see, e.g., *Town of Flower Mound v. Stafford Estates Ltd. Partnership*, 135 S.W.3d 620, 640 (Tex. 2004) ("we see no important distinction between a dedication of property to the public and a requirement that property already owned by the public be improved"); *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 911 P.2d 429, 444 (1996) ("we reject the proposition that *Nollan* and *Dolan* are entirely without application to monetary exactions").

Not that the Court was silent about the relevance of the Takings Clause to the taking of money. For example, government appropriation of property in the form of interest on a bank account or a lien might trigger the Clause's requirement to pay just compensation. See, e.g., *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 163-72, 118 S. Ct. 1925 (1998); *Armstrong v. United States*, 364 U.S. 40, 48-49, 80 S. Ct. 1563 (1960). Still, when deciding when to apply the *Nollan/Dolan* tests, the Court had not wandered beyond the taking of an interest in real property.

B. What *Koontz* said... and declined to say

Koontz altered this legal landscape in two fundamental ways. It held that *Nollan* and *Dolan* review could be triggered by certain permit denials (not merely the issuance of a permit with a condition) or by the taking of money (not just a physical interest in land).

The factual and procedural saga preceding the Court's decision spanned almost two decades. See *Koontz*, 133 S. Ct. at 2591-93. Reduced to its relevant essence, the case stemmed from an application to develop a roughly 15-acre parcel that included wetlands. The applicant proposed to develop four acres and, to comply with a statute requiring the mitigation of wetland loss, deed the government a conservation easement over the remaining 11 acres. According to the Court, the government said it would approve a permit under one of two alternatives: (1) the applicant develop only one acre and deed a conservation easement over the remaining 14; or (2) the applicant adhere to his original proposal of developing four acres and deeding 11, plus hire contractors to improve government wetlands elsewhere. When the government reportedly denied the permit because the applicant refused the alternatives, the applicant sued under a state law. *Id.* at 2593.

1. Permit denial: not a taking, but perhaps an "unconstitutional conditions claim predicated on the Takings Clause"

The government defended itself by stressing it denied the permit. Because it never exacted a condition from the applicant, the government reasoned, the denial could not have implicated the Takings

Clause. The government prevailed on this argument. The Court conceded a permit denial thwarts any actual takings claim: "Where the permit is denied and the condition is never imposed, nothing has been taken.... [T]he Fifth Amendment mandates a particular remedy—just compensation—only for takings." *Id.* at 2597 (emphasis removed). Learning it had not directly violated the Takings Clause was the extent of the good news for the government defendant.

The Court went further. It articulated a new "unconstitutional conditions claim" predicated on the Takings Clause." *Id.* According to Justice Alito's majority opinion, this claim is available where the "denial of a permit is based on an unconstitutionally extortionate demand"—one that would have failed the nexus and proportionality tests of *Nollan* and *Dolan* had it been imposed as a permit condition. Because "the unconstitutional conditions doctrine recognizes that [such a denial] burdens a constitutional right," it must give rise to some claim. *Id.* (emphasis removed). The Court seems unanimous on this point. Although the four-member dissent joined no part of the majority opinion, Justice Kagan's dissenting opinion agreed a claim could be available for a denial. *Id.* at 2603.

The Court provided no assurance such a claim could yield monetary relief. "In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action—whether state or federal—on which the landowner relies." *Id.* at 2597. Because the case was brought under a state statute, the Court remanded the matter to the state court to determine whether that law covers the newly-articulated "unconstitutional conditions claim predicated on the Takings Clause." "[T]he Court has no occasion to discuss what remedies might be available for a *Nollan/Dolan* unconstitutional conditions violation either here or in other cases." *Id.*

We are left to speculate about the availability of remedies for this new claim. Will landowners always be able to assert a claim under 42 U.S.C. § 1983, which provides a remedy for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws," even though "an unconstitutional conditions claim predicated on the Takings Clause" involves no actual deprivation of the right to be compensated for a taking? The Court seems to suggest that a § 1983 remedy is available, given that other "unconstitutional conditions" cases were brought pursuant to that statute and "[a]s in other unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury." *Id.* at 2596. But even if those dots seem easy to connect, *Koontz* declined to connect them.

Here in Washington, will this new claim find redress through Chapter 64.40 RCW, which provides a cause of action "to obtain relief from acts of an agency which are...unlawful, or exceed lawful authority"? RCW 64.40.020(1). Where "act" is defined as a decision "which places requirements, limitations, or conditions upon the use of real property," can a landowner seek redress for a decision that places no express requirement or condition on the use of property? See RCW 64.40.010(6) (emphasis added). Does a denial itself "place limitations" on the use of property within the meaning of this provision? Further litigation will resolve these questions.

The Court also provided no guidance on the key evidentiary question: what constitutes a pre-permit-denial demand sufficient to trigger an "unconstitutional conditions claim predicated on the Takings Clause"? "This Court...has no occasion to consider how concrete and specific a demand must be to give rise to liability" for this claim. The Court remanded this issue too.

Assuming a landowner finds a relevant cause of action and clears the still-murky evidentiary hurdle to prove the government denied a permit because the landowner refused to accede to the government's demand, the central issue for this new claim will be whether the government demanded more than what would have passed muster as a permit condition under *Nollan* and *Dolan*. The Court assured governments they "need only provide a permit applicant with one alternative that satisfies the nexus and rough proportionality standards..." *Id.* at 2599. A government can therefore presumably make as many additional, "extortionate" demands it wants because, "so long as a permitting authority offers the landowner at least one alternative that would satisfy *Nollan* and *Dolan*, the landowner has not been subjected to an unconstitutional condition." *Id.* at 2598.

2. "Monetary exactions" are not immune from *Nollan/Dolan* review

The government defendant in *Koontz* also sought shelter by arguing the subject demand was for the payment of money, not a physical interest in real property, and that *Nollan* and *Dolan* do not apply to an alleged "monetary exaction." *Id.* at 2598-99. The Court rejected that argument, holding 5-4 that "monetary exactions" must also satisfy the *Nollan/Dolan* tests.

The majority reasoned that the government's position would facilitate an end-run around *Nollan* and *Dolan*:

Because the government need only provide a permit applicant with one alternative that satisfies the nexus and rough proportionality standards, a permitting authority wishing to exact an easement could simply give the owner a choice of either surrendering an

easement or making a payment equal to the easement's value. Such so-called "in lieu of" fees are utterly commonplace..., and they are functionally equivalent to other types of land use exactions.

Id. at 2599. For the majority, a government command to relinquish funds linked to a specific parcel of real property triggers a *per se* takings analysis, functionally equivalent to a command for an easement. *Id.* Given the facts of *Koontz*, we can infer there is no difference between a "monetary exaction" in the form of a direct payment of money to the government or, as the demand in *Koontz*, of expending funds to improve government property.

The majority responded to the dissent's concerns with an assurance its holding "does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners." *Id.* at 2601. The majority was unconcerned about distinguishing these exempt financial burdens from the "monetary exactions" subject to *Nollan* and *Dolan* review. Echoing Justice Stewart's famous "I know it when I see it" approach to pornography,¹ the majority admonished fretful critics "that teasing out the difference between taxes and takings is more difficult in theory than in practice" and "we have had little trouble distinguishing between the two." *Id.* at 2601, 2602.

The majority's refusal to say more about the definition of "monetary exactions" leaves us looking down a potentially slippery slope, at the bottom of which is a world where most development regulations are subject to review under *Nollan* and *Dolan*. Consider these questions:

- Do "monetary exactions" include payments/expenditures to the government *only if* made in lieu of a demand for an easement? If there is no express or implied demand for an easement, are *Nollan* and *Dolan* relevant? Limiting *Nollan* and *Dolan* to "in-lieu fees" would be consistent with the facts of *Koontz* and the majority's professed motivation to prevent an end-run around *Nollan* and *Dolan*, but not necessarily with some of the majority's broader sweep of situations where "the government commands the relinquishment of funds linked to a specific, identifiable property interest." *Id.* at 2600. Must that interest be a physical interest in land?
- Do "monetary exactions" result only from applicant-specific permit decisions, but not from applying area-wide, legislative determinations? Such a limitation on the meaning of "monetary exactions" would build upon the reasoning of some federal and state courts when describing the limits of *Nollan* and *Dolan*. See, e.g., *McClung*, 548 F.3d at 1227; *Ehrlich*, 911 P.2d at 443-44; *Home Builders Ass'n of Cent. Ariz. v. City of Scottsdale*, 187 Ariz. 479,

930 P.2d 993, 1000 (Ariz. 1997). As the *Koontz* dissent observed, we have no answer to that question: "Maybe [the *Koontz*] majority accepts that distinction; or then again, maybe not." *Koontz*, 133 S. Ct. at 2608 (Kagan, J. dissenting).

- Do "monetary exactions" mean all payments/expenditures to the government that are not "property taxes, user fees, and similar laws and regulations"? Is the majority's apparent safe harbor for these payments the extent of smooth sailing for local government?
- What about expenditures not made to the government or to benefit public property? If a landowner must expend funds to construct a storm water retention facility or fire escapes, the title to which the landowner retains, has the government "exacted" anything from the landowner within the meaning of *Nollan* and *Dolan*? At some points, the majority speaks in more limited terms, suggesting there must be a transfer "from the landowner to the government." *Id.* at 2600. But elsewhere, the majority seems to embrace any situation where the government uses "land-use permitting to pursue governmental ends," *id.*, even if those ends involve no actual transfer to the government.
- If nothing need be transferred to the government to trigger *Nollan/Dolan* review, what about "expenditures" in the form of a lost opportunity cost? If a permit condition requires a property owner not to develop certain wetlands, but does not demand the expenditure of any money or the conveyance of an easement or any other real property interest to the government, has the government "exacted" anything? What about a five-foot setback? A height limit? After all, some of the majority's reasoning speaks of the apparent evil of "diminishing without justification the value of the property." *Id.*

Finding a principled handhold somewhere along this slippery slope will require additional litigation.

C. So what? Some lessons for us in Washington

Although *Koontz* foreshadows a cloud of more litigation, the silver lining is the opportunity to provide reasonable answers to the questions *Koontz* left open. As we await those opportunities and answers, government and property-rights attorneys should keep at least four points in mind.

First, *Koontz* is not a radical departure for attorneys in Washington, where we have been living with RCW 82.02.020 for decades. Like the nexus and proportionality requirements *Koontz* extended to certain "monetary exactions," Washington



has long required payments in lieu of dedications or for mitigation to be "reasonably necessary as a direct result" of the proposed development. RCW 82.02.020. As *Koontz* shields taxes from *Nollan/Dolan* review, so Washington also exempts Growth Management Act impact fees (which need only be "reasonably related" in type and degree to new development, and may be modified "based on principles of fairness") from the "reasonably necessary as a direct result" requirement. Compare RCW 82.02.020 with RCW 82.02.050(3), .070(5). Property owners will likely argue that GMA impact fees are subject to *Nollan/Dolan* review because they are imposed as a condition on development and so fall outside *Koontz's* apparent safe harbor for "property taxes, user fees, and similar laws and regulations." Governments will likely counter that the fees are shielded because they are authorized by an excise tax statute and Washington courts have already ruled the fees are not subject to the vested rights doctrine because they are not land use controls; they are just another source of revenue to augment tax dollars. See, e.g., *New Castle Investments v. City of LaCenter*, 98 Wn. App. 224, 233-36, 989 P.2d 569 (1999).

Second, subjecting a permit decision to *Nollan* and *Dolan* review does not mean the government will lose. It is only an invitation to debate whether the decision satisfies nexus and proportionality requirements.

Third, because of those requirements, the essential lesson for governments is not new: don't overreach. Especially if tailoring mitigation for a specific project, and where that mitigation might involve a dedication of land to the government, a payment in lieu of that dedication, or the expenditure of money to improve government property, be prepared to demonstrate the nexus between the condition and the public interest behind your regulation, and that the type and magnitude of the condition is roughly proportionate to the proposal's impact on that interest.

Finally, note the rhetoric of "extortion" peppering *Koontz*. Justice Scalia first introduced "extortion" to the mix in his majority opinion in *Nollan*. He used the word only once, quoting a New Hampshire Supreme Court decision to reject an argument that government could exact property whenever it had the authority to ban the proposed development: "In short, unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but 'an out-and-out plan of extortion.'" *Nollan*, 483 U.S. at 837 (quoting *J.E.D. Associates, Inc. v. Atkinson*, 121 N.H. 581, 584, 432 A.2d 12, 14-15 (1981)). By contrast, *Koontz* used the word four times and not just to illustrate what could happen should the government overreach. Rather, *Koontz* started from the premise that government overreaches. *Koontz* extended *Nollan* and *Dolan* to "monetary exactions" expressly because the majority was "[m]indful of the special vulner-

ability of land use permit applicants to extortionate demands for money." *Koontz*, 133 S. Ct. at 2603. That mindfulness was not the product of the facts of *Koontz* (the Court remanded all factual issues) or any other case. As the dissent noted, "No one has presented evidence that in the many States declining to apply heightened scrutiny to permitting fees, local officials routinely short-circuit *Nollan* and *Dolan* to extort the surrender of real property interests having no relation to a development's costs." *Id.* at 2908 (Kagan, J., dissenting). Nevertheless, five members of the Court seem to know in their guts that landowners need protection from government extortion.

"Extortion" is an emotional word. In the wake of *Koontz*, property-rights lawyers will likely cast government decisions as "extortionate." Government lawyers will argue why the label doesn't stick. Part of their task will be to advocate for a principled, limited reach of the phrase "monetary exaction" by answering the key questions *Koontz* left open. But given that *Koontz* starts from the premise that governments extort property owners, another part of government lawyers' task will be to avoid feeding that perception through bad facts—which, the proverb holds, lead to bad law. The best way to do that is to counsel government clients to spot and avoid situations where they might be overreaching.

Roger Wynne is the Director of the Land Use Section of the Seattle City Attorney's Office and an adjunct professor at Seattle University School of Law. His most recent law review article is The Path Out of Washington's Takings Quagmire: The Case for Adopting the Federal Takings Analysis, 86 WASH. L. REV. 125 (2011). The views expressed here are his own, not necessarily the opinions or positions of the City of Seattle or its City Attorney.

1 Conceding his inability to define "hard-core pornography," Justice Stewart admitted: "[P]erhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that." *Jacobellis v. Ohio*, 378 U.S. 184, 197, 84 S. Ct. 1676, 1683 (1964) (Stewart, J., concurring).

LONG BEACH GENERAL BUSINESS

New Application / Final

Business Structure: LLC

UBI Number : 603 361 974 001 0001
Application ID : 2014 020 4761
Application Received Date: 01 20 2014

Legal Entity Name : AFFINITI, LLC

Firm Name : AFFINITI, LLC
Fees : \$125.00
Expiration Date: 01 31 2015

Location Phone/FAX: (512) 334-4100 (512) 334-4099

First Date of Business: 10 18 2013
Mail Addr: STE 150
9208 WATERFORD CENTRE BLVD
AUSTIN TX 78758 7682

Location Address : STE 150
9208 WATERFORD CENTRE BLVD
AUSTIN TX 78758 7682

In City Limits:

Product/Serv Desc: Services
Services PROVIDER OF WIRELESS AREA NETWORKS AND VOICE OVER
IP TELEPHONY TO SCHOOL DISTRICTS.

Operator Comments:

Previous Business License: N

Square Footage: 0
Applying as Non Profit Business: N
501(C) Received: --

Email Address: virginia.bryant@affiniti.com

Additional Business Activities:

Account Status: Pending Approval

Zoning	<i>N/A</i>	<i>SPB</i>	<i>1/24/14</i>	Date
Building				Date
Finance				Date
Comments:				Date

Added
On