



AGENDA

Long Beach City Council Meeting
Regular City Council November 3, 2014 at 7:00 p.m.
Long Beach City Hall - Council Chambers
115 Bolstad Avenue West

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 - A

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, October 20, 2014 Regular City Council meeting.
- Payment Approval List for Warrant Registers 54727 - 54774 & 77038 – 77089 for \$160,691.00

BUSINESS

- **NONE**

ORAL REPORTS

- **City Council Mayor City Administrator Department Heads**

CORRESPONDENCE AND WRITTEN REPORTS – TAB – B

- **Correspondence – Lodging and Sales Tax**
- **Correspondence – Use of a Hearings Examiner for Land Use Decision-Making**
- **Correspondence – What if L&C rode cruiser bikes? (Try this trail)**
- **Business License – None**

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.
November 17, 2014 – 7:00 pm- City Council Meeting
December 1, 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

LONG BEACH CITY COUNCIL MEETING

OCTOBER 20, 2014

CALL TO ORDER; PLEDGE OF ALLEGIANCE; ROLL CALL

Mayor Pro Tem Linhart called the meeting to order at 7:00 p.m. and asked for the Pledge of Allegiance and roll call.

ROLL CALL

David Glasson, Finance Director, called roll with Mayor Pro Tem Linhart, C. Perez, C. Hanson, and C. Phillips present. Mayor Andrew and C. Murry were absent.

CONSENT AGENDA

Minutes, October 6, 2014 Regular City Council meeting

Payment Approval List for Warrant Registers 54674-54726 & 76958-77037 for \$227,180.23

C. Phillips made the motion to approve the consent agenda with C. Perez seconding the motion. 4 Ayes 0 Nays 0 Abstain 1 Absent (C. Murry), motion passed.

BUSINESS

No Business.

ORAL REPORTS

C. Phillips, C. Hanson, C. Linhart, David Glasson, Finance Director and LBVFD Chief, Gayle Borchard, Community Development Director, and Flint Wright, Police Chief, presented reports.

David Compton presented Chief Wright with a plaque for the Long Beach Police Department in appreciation of their service to the community.

CORRESPONDENCE AND WRITTEN REPORTS

Correspondence – Business of the Year RSVP

Correspondence – Long Beach Police Report

Correspondence – Thank you note from Peninsula Art Assoc. to Ragan Meyers

Business License – Union Station Products; 402 28th St NW

Business License – The Best Exteriors; Vancouver, WA

Business License – Clarke Landscaping LLC; Seaview, WA

PUBLIC COMMENT

Mike Kutras read a prepared letter.

Veronica Price commented on a public records request.

ADJOURNMENT

Mayor Pro Tem Linhart adjourned the meeting. The meeting was adjourned at 7:18 p.m.

Mayor

ATTEST:

City Clerk



Warrant Register

Check Periods: 2014 - October - 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.

Council Member Council Member Council Member Finance Director

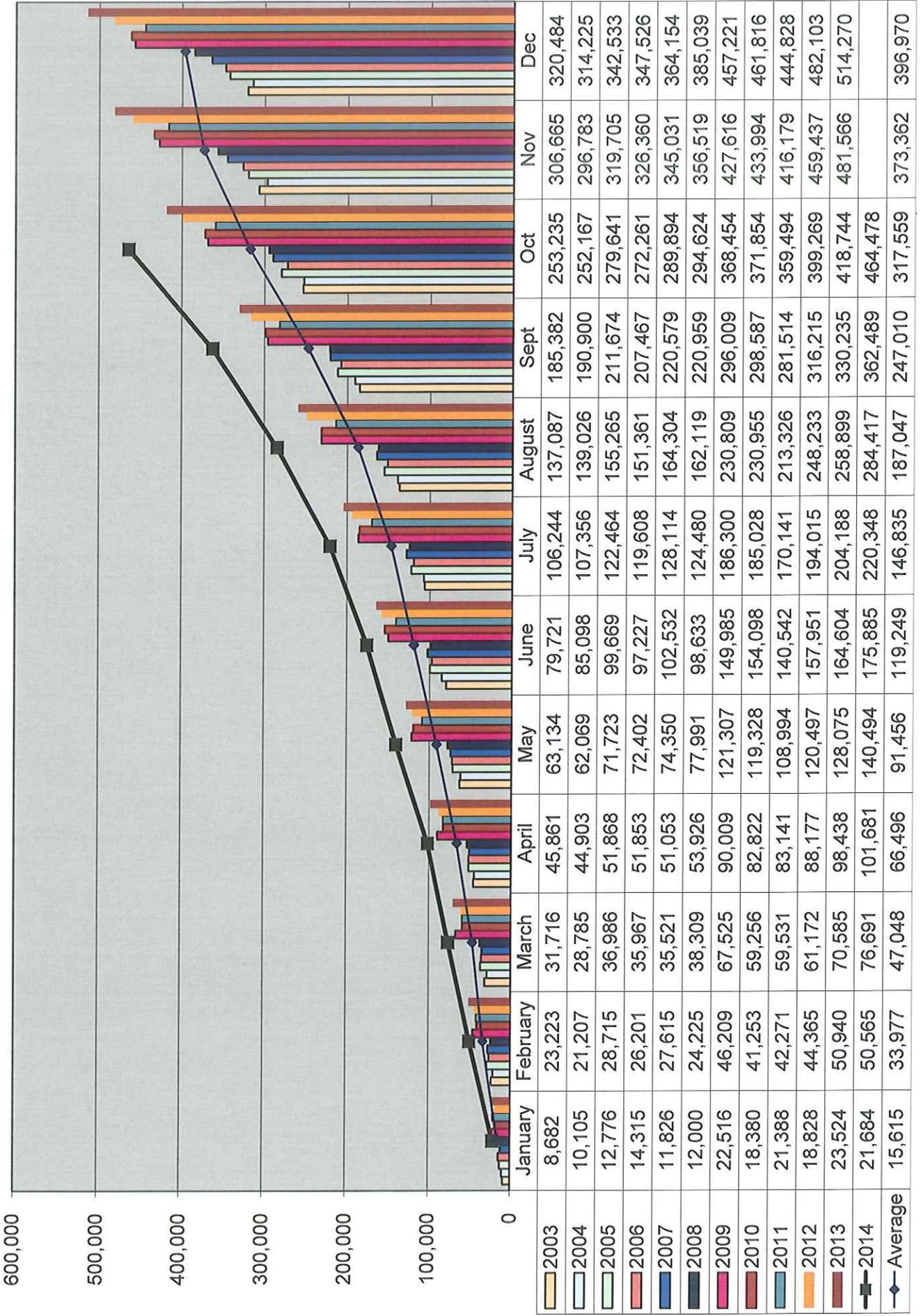
Number	Name	Print Date	Clearing Date	Amount
54727	Bell, Helen S	10/20/2014		\$1,199.39
54728	Binion, Jacob	10/20/2014		\$1,469.74
54729	Bonney, Matthew T	10/20/2014		\$339.88
54730	Booi, Kristopher A	10/20/2014		\$944.44
54731	Borchard, Gayle	10/20/2014		\$1,656.20
54732	Payroll Vendor	10/20/2014		Void
54733	Daulton, Alan T	10/20/2014		\$484.06
54734	Ellyson, Susan R	10/20/2014		\$1,035.19
54735	Fitzgerald, Rick E.	10/20/2014		\$1,480.96
54736	Gilbertson, Bradley K	10/20/2014		\$1,397.56
54737	Glasson, David R.	10/20/2014		\$2,537.19
54738	Goulter, John R.	10/20/2014		\$1,586.26
54739	Gray, Karen	10/20/2014		\$229.66
54740	Huff, Timothy M.	10/20/2014		\$1,495.42
54741	Kirby, Gary E	10/20/2014		\$1,076.74
54742	Kitzman, Michael	10/20/2014		\$2,099.45
54743	Luethe, Paul J	10/20/2014		\$1,371.96
54744	Meling, Casey K	10/20/2014		\$1,679.72
54745	Miles, Eugene S	10/20/2014		\$2,530.30
54746	Mortenson, Tim	10/20/2014		\$2,043.71
54747	Myers, Ragan S.	10/20/2014		\$1,339.82
54748	Nawn, Rodney J.	10/20/2014		\$1,656.47
54749	Ostgaard, Loretta G	10/20/2014		\$1,392.65
54750	Padgett, Timothy J	10/20/2014		\$1,343.86
54751	Parker, Michael T	10/20/2014		\$1,401.70
54752	Ross, Steven J	10/20/2014		\$1,317.87
54753	Russum, Richard	10/20/2014		\$1,243.50
54754	Warner, Ralph D.	10/20/2014		\$1,836.53
54755	Wood, Matthew T	10/20/2014		\$378.26

Number	Name	Print Date	Clearing Date	Amount
54763	Wright, Flint R	10/20/2014		\$2,367.99
54764	Zuern, Donald D.	10/20/2014		\$2,032.67
54765	Cutting, Jeffrey G.	10/17/2014		\$1,920.57
54766	AFLAC	10/20/2014		\$209.88
54767	Association of WA Cities	10/20/2014		\$19,121.94
54768	City of Long Beach - Fica	10/20/2014		\$9,760.88
54769	City of Long Beach - FWH	10/20/2014		\$7,880.67
54770	Dept of Labor & Industries	10/20/2014		\$2,059.18
54771	Dept of Retirement Systems	10/20/2014		\$1,225.00
54772	Dept of Retirement Systems Def Comp	10/20/2014		\$375.00
54773	Massmutual Retirement Services	10/20/2014		\$182.00
54774	Teamsters Local #58	10/20/2014		\$30.00
77038	Department of Licensing - Notary Public Program	10/20/2014		
77039	PACIFIC POWER PRODUCTS	10/20/2014		\$2,357.98
77040	Wright, Flint	10/22/2014		\$89.00
77041	Holiday Inn Express	10/22/2014		\$116.96
77042	Mulinix, Damian	10/22/2014		\$93.18
77043	Active Enterprises, Inc.	10/23/2014		\$48.12
77044	Association of Washington Cities	10/23/2014		\$2,412.08
77045	Naselle Rock & Asphalt	10/23/2014		\$3,880.00
77046	Pacific County Auditor	10/23/2014		\$32.00
77047	A-1 Redi Mix	10/20/2014		\$745.44
77048	Ace Towing	10/20/2014		\$220.99
77049	AlSCO-American Linen Div.	10/20/2014		\$270.91
77050	American Planning Assoc.	10/20/2014		\$306.00
77051	Arts Auto Parts Inc.	10/20/2014		\$382.14
77052	At&t Mobility	10/20/2014		\$58.86
77053	Backflow Management Inc	10/20/2014		\$1,589.20
77054	Berkadia Commercial Mortgage	10/20/2014		\$5,743.00
77055	Blue Crab Graphics	10/20/2014		\$119.12
77056	Borchard, Gayle	10/20/2014		\$27.98
77057	C & H Distributors, LLC	10/20/2014		\$763.33
77058	Century Manufacturing	10/20/2014		\$1,116.32
77059	City of Long Beach	10/20/2014		\$1,170.00
77060	Department of Health	10/20/2014		\$1,836.00
77061	Dept of Labor & Industries	10/20/2014		\$629.86
77062	Dijulio Displays	10/20/2014		\$7,574.16
77063	Emergency Medical Products, Inc	10/20/2014		\$979.25
77064	Englund Marine Supply	10/20/2014		\$41.23
77065	Ford Electric	10/20/2014		\$747.84
77066	Global Environmental Products	10/20/2014		\$197.82
77067	Goelz, Doug	10/20/2014		\$3,500.00
77068	GRAINGER	10/20/2014		\$45.28
77069	Industrial Diesel Power	10/20/2014		\$286.75
77070	Lawson Products, Inc.	10/20/2014		\$399.37

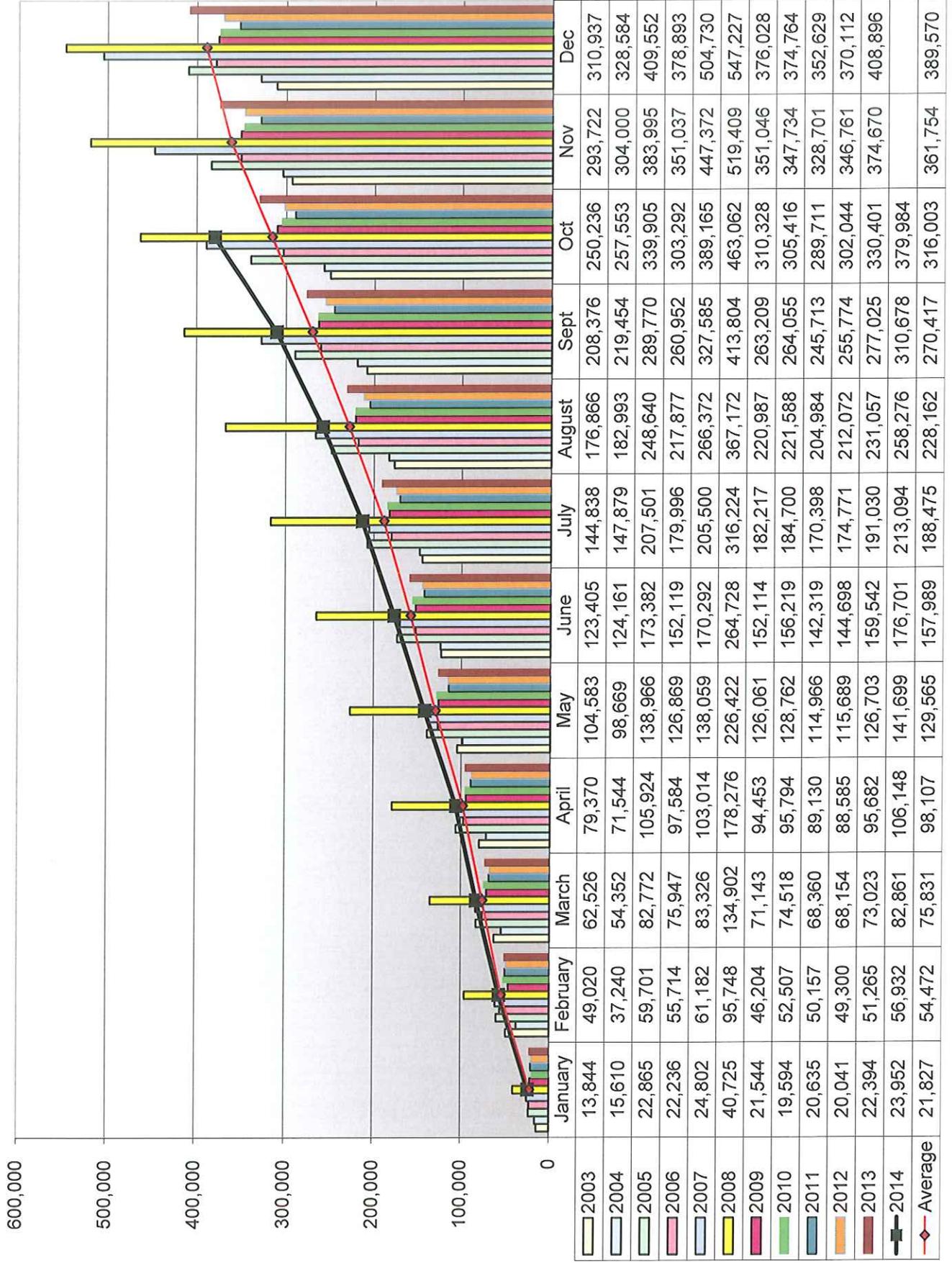
Number	Name	Print Date	Clearing Date	Amount
77071	North Central Labs.	10/20/2014		\$244.77
77072	Pacific County Fire District #1	10/20/2014		\$475.00
77073	Pacific County Sheriff's	10/20/2014		\$1,295.00
77074	Pacific Public Safety & Communications	10/20/2014		\$103.92
77075	Penoyar, William	10/20/2014		\$1,000.00
77076	Planter Box	10/20/2014		\$454.75
77077	Pollardwater	10/20/2014		\$285.74
77078	Public Utility District 2	10/20/2014		\$44.46
77079	Sirennet.com	10/20/2014		\$165.19
77080	South Pacific County Technical	10/20/2014		\$12,000.00
77081	Standard Insurance Co.	10/20/2014		\$1,828.92
77082	STAPLES ADVANTAGE	10/20/2014		\$211.45
77083	Sterling Codifiers, Inc	10/20/2014		\$113.00
77084	Traffic Safety Supply Co.	10/20/2014		\$557.34
77085	Unum Life Insurance	10/20/2014		\$45.60
77086	Verizon Wireless	10/20/2014		\$137.25
77087	Visa	10/20/2014		\$116.61
77088	Wadsworth Electric	10/20/2014		\$1,199.78
77089	Public Utility District 2	10/20/2014		\$8,003.10
	Total		Check	\$160,691.00
	Grand Total			\$160,691.00

TAB - B

Lodging Tax Collections



Sales Tax Collections



Rec'd 10/21/14 from
WCIA - Lisa Kington

JOHN L. McCORMACK
MARK R. BUCKLIN
STEVEN L. THORSRUD
MICHAEL C. WALTER
ANDREW G. COOLEY
STEWART A. ESTES
JAYNE L. FREEMAN
STEPHANIE E. CROLL
RICHARD B. JOLLEY



KEATING, BUCKLIN & McCORMACK

ATTORNEYS AT LAW

Seattle, Washington 98104-3175

Phone: 206.623.8861

Fax: 206.223.9423

www.kbmlawyers.com

mwalter@kbmlawyers.com

BRENDA L. BANNON
MARY ANN MCCONAUGHY
SHANNON M. RAGONESI
KIMBERLY J. WALDBAUM
JEREMY W. CULUMBER
ADAM L. ROSENBERG
AMANDA G. BUTLER
BRIAN C. AUGENTHALER

ROBERT C. KEATING (1915-2001)

August 15, 2014

Heather D. Kintzley
City Attorney
City of Richland
975 George Washington Way
Richland, WA 99352-3548

RE: Use of a Hearing Examiner for Land Use Decision-Making

Dear Ms. Kintzley:

It is my understanding that in a recent land use audit of all member cities conducted by Washington Cities Insurance Authority ("WCIA"), the use of a hearing examiner for land use decision-making came up, and that the City of Richland may be considering adoption of a hearing examiner system for land use decision-making. In this regard, WCIA suggested I write regarding my opinions and experiences on the use of a hearing examiner for land use decision-making. Accordingly, I am providing this letter to you, which you are encouraged to forward to the City Manager, Mayor, City Council and staff, providing my strong recommendation for the use of a hearing examiner for land use decision-making.

As I explain in this letter, I believe the use of a land use hearing examiner to make final quasi-judicial decisions on land use permits (as well as for deciding administrative appeals) is invaluable and should be utilized to the fullest extent by the City of Richland. It is the trend of most local governments to use a land use hearing examiner to adjudicate quasi-judicial and administrative land use permitting.

By way of background, I am a partner and director at Keating, Bucklin & McCormack, Inc., P.S., a law firm emphasizing representation of local government in a wide variety of municipal matters, civil lawsuits and administrative and other legal claims. For over 25 years, my practice has emphasized a broad range of municipal, land use, regulatory, environmental, civil rights and tort-related issues in defense of government entities, elected officials and their employees. I represent cities, special purpose districts and other government entities in land use, permitting, environmental matters, civil rights and other claims, and have written numerous

articles on land use law, municipal and local government legislation and regulation, permitting and environmental issues, as well as risk management on various topics of interest to local government and land use agencies. As part of my practice, I also provide municipal, land use, environmental and risk management training to elected officials and government agencies throughout the State. A significant part of my practice involves defending land use claims arising out of quasi-judicial land use decisions, made by citizen and elected bodies as well as professional hearing examiners.¹ A copy of my professional resume is attached. You can also get more information on my law firm and my land use practice through our website at www.kbmlawyers.com.

I provide the foregoing summary of my background as context for my strong, unqualified, recommendation to all cities, towns and local government entities in the use of a hearing examiner to adjudicate quasi-judicial land use matters. Being "in the trenches," as it were defending land use decisions – and frequently land use mistakes – by local government has given me first-hand experience in seeing the procedural, timeliness and significant liability risk differences in land use decisions made by planning commissions, boards of adjustment and city councils versus those decisions made by professional hearing examiners. This first-hand experience in defending literally thousands of these decisions over the past 25 years has made one thing crystal clear: there is no substitute for local government's use of a professional hearing examiner in deciding quasi-judicial land use matters. For this reason, I write to encourage the City of Richland – as I do with all of the local government entities I work with or speak to – to take full advantage of a professional land use hearing examiner.

General Authority of Hearing Examiners

I recommend to cities I work for to utilize, to the fullest extent possible, a hearing examiner to (1) make final decisions on all quasi-judicial land use permits and decisions, and (2) to act as the administrative appeal body for review of routine administrative/ministerial permits (such as right-of-way permits, clearing and grading permits, tree cutting permits, building permits, etc.) and of administrative/code interpretations. The adoption of a hearing examiner position is expressly authorized in RCW 35A.63.170. A hearing examiner may hear:

- (a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;
- (b) Appeals of administrative decisions or determinations; and
- (c) Appeals of administrative decisions or determinations pursuant to RCW ch. 43.21C.

¹ I am not a hearing examiner, and do not derive any income as a hearing examiner.

RCW 35A.63.170(1)(a)-(c).² These are identical to the duties a board of adjustment would otherwise perform. *Compare* RCW 35A.63.110(1)-(4). The City must explain the nature and scope of the hearing examiner's duties if the position is created. *See* RCW 35A.63.170.

The Legislature has also authorized local government to establish the procedures to be followed by the hearing examiner.

(2) Each city or county legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:

- (a) The decision may be given the effect of a recommendation to the legislative body;
- (b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or
- (c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.

RCW 35A.63.170(2).

Thus, as an alternative to using a planning commission or city council to decide quasi-judicial land use applications and permits, the council has express statutory authority³ to adopt a hearing examiner system and vest in a hearing examiner with broad authority to conduct open record hearings on and decide applications for virtually all types of permits and land use approvals, including such things as site plans, full and short plats, conditional or special use permits, variances, reasonable use exemptions and waivers, shoreline permits, "or any other class of applications for or pertaining to development of land or land use." A hearing examiner can also be vested with authority to hear appeals of administrative or quasi-judicial permit decisions as well as appeals of determinations under SEPA. Hearing examiners also have other authorities set forth in RCW 35.63.130 and RCW 35A.63.170.

² The scope of authority of hearing examiners is best described in the case of *Chausee v. Snohomish County Council*, 38 Wn. App. 630, 689 P.2d 1084 (1984). In that case, the court described hearing examiners as "creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication." *Id.*, at 38 Wn. App. 636.

³ In any case, the city council must specifically adopt a hearing examiner system and through an ordinance or code amendment vest the hearing examiner with authority to hear and decide the specific types of land use applications or permits, or other administrative decisions, that he or she can make.

There are only two instances in which the State Legislature has mandated that legislative bodies (city councils) make decisions on land use permits and approvals: (1) decisions on final plats (subdivisions) (see, RCW 58.17.100); and (2) area-wide/general applicability zoning decisions/rezones. (RCW 35.63.130(1), RCW 35.63.130(2)(c), RCW 36.70.870(2)(c), and RCW 36.70.970(1). Aside from these two limited instances, hearing examiners can hear and decide virtually all other land use permits, approvals or appeals, as long as the city code expressly authorizes an examiner to hear those matters.

The Advantages of Using a Hearing Examiner for Land Use Decision-Making

The following are some of the many advantages and benefits to using a hearing examiner for quasi-judicial land use decision-making and administrative appeals of permit decisions:

- Avoids political influence or pressure (which is forbidden in quasi-judicial decision-making);
- They are professional, specially trained individuals;
- They have experience with many different jurisdictions and regulations and can carry that experience and knowledge over to your jurisdiction, helping to improve your land use code and process;
- They are technically adept, and have knowledge of physical land development and technical feasibility of land development and permitting;
- A hearing examiner is more cost effective (reduces appeals and judicial challenges);
- Allows for a more efficient process (faster decisions, fewer mistakes and far fewer appeals);
- Substantial reduction in judicial (court) reversal of decisions;
- Substantial reduction in potential damages claims against the city (I can attest to this, and most municipal attorneys and land use professionals would agree);
- Eliminates the risk of lawsuits and legal claims against citizen-decision makers – like Planning Commission and City Council members – personally;
- Instills public confidence in the decision-making process;
- Helps ensure constitutional protection of due process of law and equal protection;
- Helps ensure predictability and consistency in the process and decision-making;
- Hearing examiners are skilled in understanding, interpreting and applying nuances of your municipal code, state and federal laws, and general legal principles;

- Use of a hearing examiner helps satisfy State law requirements for streamlining the regulatory process and administrative review and appeals (1995 Regulatory Reform Act, RCW Chapter 36.70B);
- Use of a hearing examiner segregates and clearly delineates quasi-judicial decision making functions from legislative (law-making) and long-term planning functions (which are the functions of planning commissions and city councils);
- Provides the opportunity for feedback and correction of code ambiguities and conflicts;
- Use of a hearing examiner frees up city council and planning commission time for other, important planning, goal setting and law-making functions; and,
- Provides good customer service.

The following is a quote from a state Supreme Court justice endorsing Pierce County's rationale for creating a hearing examiner position:

A. The need to separate the County's land use regulatory function from its land use planning function;

B. The need to ensure and expand the principles of fairness and due process in public hearings; and

C. The need to provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making processes for land use matters; it is the purpose of this chapter to provide an administrative land use regulatory system which will best satisfy these needs.

* * *

[A] land use hearing examiner system will be very beneficial to all concerned or involved with land use decisions, and said system will (1) provide a more efficient and effective land use decision procedure; (2) provide the Planning Commission more time to devote towards studying and recommending land use policy changes to the Board; (3) provide an experienced expert to hear and decide land use cases based upon policy adopted by the Board; and (4) provide the Board of County Commissioners more time to spend on other County concerns by relieving them from hearing land use cases, except any appeals ... [.]

Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 51, 873 P.2d 498 (1994) (Madsen, J., dissenting) (citing Pierce County Resolution 20489 (1978)) (emphasis added).

Risks and Pitfalls in Not Using a Hearing Examiner for Land Use Decision-Making

Based on the broad authority of hearing examiners to adjudicate a wide range of land use permits, decisions and appeals, the significant reduction in land use lawsuit liability exposure by using a hearing examiner, and my experience defending both planning commission/city council/board of adjustment land use decisions versus those made by hearing examiners, there is, in my experience and opinion, no good reason to not use a hearing examiner for land use decision-making.

The few reasons offered *against* the use of a hearing examiner (and, by implication for retention of elected official or citizen body land use decision-making) are neither justified nor legally supportable. One such claim is that use of a hearing examiner system is too costly, or the jurisdiction can't afford to use a hearing examiner. My first response to this claim is that local governments can't afford *not* to use a hearing examiner for land use decision-making. Please refer to the many advantages discussed above. Second, in my experience the costs of using a hearing examiner are minimal, and, in many cases, can be passed on to permit applicants or land use appellants, either directly or included as part of carefully crafted permit or administrative fees associated with land use permits or appeals heard by hearing examiners. Additionally, many jurisdictions share in the cost of a hearing examiner or pay into a "pool" to use a hearing examiner who essentially "rides the circuit" between several geographically close jurisdictions. If the potential cost of using a hearing examiner is of concern to the City of Richland, I urge you to talk to other jurisdictions – including Pasco and Kennewick, your neighbors – to learn about how they handle costs and their experiences.

A second reason sometimes offered against the use of a hearing examiner is the lack of representative control over constituent demands for land use policy-making. Regarding this claimed loss of "citizen control" over the land use permitting process, this is actually a key reason that a hearing examiner *should* be used. Land use planning and policy decisions are made by the elected officials (city or town councils) through comprehensive planning and comprehensive plan updates, long range strategic planning, area-wide zoning and development regulations, and adoption of other area-wide development criteria. As noted above, land use planning should be reserved to and used by both planning commissions and city or town councils.

However, that is not the case with site- or property-specific land use permits or land use actions. Property- or site-specific land use approvals and decision-making should not be done based on citizen comment, policy criteria, planning criteria or constituent desires. Such permitting and decision-making decisions – whether at the administrative or quasi-judicial level – should be entirely, 100% free of citizen control and politics. For this reason, use of a

professional hearing examiner to make decisions on such site-specific or permit-specific land use applications is the best, safest and most appropriate method of decision-making.

In short, planning commissions and city councils, should not be involved in making final decisions on quasi-judicial land use permits; nor should they hear appeals of permit decisions or code interpretations. Rather, such decisions should be delegated to a professional hearing examiner. As State law makes clear, planning commissions and city councils have far more important tasks to do with their limited time: responding to their citizen constituencies; crafting, reviewing and amending comprehensive plans; crafting, reviewing, amending and updating zoning ordinances; crafting and updating shoreline plans; doing long range land use planning; doing utility and infrastructure planning; budgeting; contracting; completing ongoing and time-sensitive planning and regulatory obligations; and handling the many day-to-day affairs of local government.

A third reason sometimes given to not use a hearing examiner is that the local jurisdiction wants to be independent, retain its autonomy, and not be "pressured" to use one just because other jurisdictions do. Yet, neither the State nor any other jurisdiction can dictate the use of a hearing examiner. But it is noteworthy – and significant – that (a) the overwhelming majority of cities, towns, counties and other land use permitting jurisdictions use hearing examiners for land use decision-making, (b) virtually all land use and government attorneys agree on the use of hearing examiners, and (c) virtually all planning professionals agree that the use of a hearing examiner for land use decision making is not only good risk management, it is more efficient, more cost effective, instills public confidence in the process, avoids arbitrary and capricious decision-making, and limits improper political influence.

Fourth, I have heard one hearing examiner opponent claim "there is no evidence that supports such a proposition [that decisions made by a hearing examiner will hold up better in court]." Even a cursory review of trial court filings and appellate court decisions will readily confirm that not only are there far fewer judicial challenges to land use decisions made by hearing examiners, those few legal challenges that are made to examiner decisions are far more frequently upheld by the appellate courts than are decisions made by elected officials or citizen groups or bodies.

Indeed, the most egregious land use decisions in this State and in the federal courts arise from elected official or citizen-body decision-making on land use permits and applications – not hearing examiner decisions. For a sampling of such decisions, see: *Mission Springs v. City of Spokane*, 134 Wn.2d 947, 954 P.2d 250 (1998) (a good case to review; Supreme Court chastises the Spokane City Council for arbitrarily denying a grading permit for a contentious development project, and imposes sanctions and attorney fees on individual council members; numerous other bad land use decisions arising from city council or planning commission actions – but no hearing examiner case – referenced); *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 935 P.2d 555 (1997); *Hayes v. City of Seattle*, 131 Wn.2d 706, 934 P.2d 1179 (1997); *Robinson v. City of Seattle*, 119 Wn.2d 34, 830 P.2d 318 (1992); *West Main Assoc., Inc. v. City of Bellevue*, 106 Wn.2d 47, 720

Heather D. Kintzley
August 15, 2014
Page 8

P.2d 782 (1986); *Pleas v. City of Seattle*, 112 Wn.2d 794, 744 P.2d 1158 (1989); *King v. City of Seattle*, 84 Wn.2d 239, 525 P.2d 228 (1974); *Bateson v. Geisse*, 857 F.2d 1300 (9th Cir. 1988); *Westmark v. City of Burien*, 140 Wn. App. 540, 166 P.3d 813 (2007); *Saben v. Skagit County*, 136 Wn. App. 869, 152 P.3d 1034 (2006); *Cox v. City of Lynnwood*, 72 Wn. App. 1, 863 P.2d 578 (1993); *Anderson v. City of Issaquah*, 70 Wn. App.64, 851 P.2 744 (1993).

Finally, I have also heard the comment that “hearing examiners tend to favor development interests more than local citizen bodies such as planning commissions.” There is no evidence to support this; in fact, it is contrary to my experience and the decisions of hearing examiners in the communities I do work for.

Conclusion and Summary

In summary, I urge the City of Richland to consider modifying its land use code to eliminate Planning Commission, Board of Adjustment or City Council for hearing and deciding final land use decisions (but not comprehensive or long range planning or area-wide regulations) and, instead, use a hearing examiner to make final land use decisions and administrative appeal decisions for the City.

I hope the foregoing is of benefit to the City of Richland as it looks to updating its land use code and decision-making process. If I can be of any assistance to the City or answer other questions regarding the use of a hearing examiner, do not hesitate to call or write.

Very truly yours,

Sent unsigned to avoid delay

Michael C. Walter

MCW/ch

cc: Bill King, Deputy City Manager and
Community Development Services Director
Cathleen Koch, Administrative Services Director
Ms. Ann Bennett, Executive Director
Washington Cities Insurance Authority
Ms. Tanya Crites, Risk Management,
Washington Cities Insurance Authority

The Seattle Times

Winner of Nine Pulitzer Prizes

Outdoors

Originally published Wednesday, October 22, 2014 at 6:02 PM

What if Lewis and Clark rode cruiser bikes? (Try this trail)

The dune-hugging Discovery Trail is one of Long Beach Peninsula's best-kept secrets.

By Brian J. Cantwell

Seattle Times Outdoors editor



LONG BEACH, Pacific County — Recipe for a fun morning at the beach:

Stay at Long Beach's Adrift Hotel, get up early, grab one of the first-come, first-served beach-cruiser bikes from the lobby (free), and ask for a breakfast basket to go (\$18 for two).

Or just bring your own bike and pick up something from a local bakery.

Then head for the dune-hugging Discovery Trail, one of the Long Beach Peninsula's best-kept secrets.

Completed five years ago, the wide, smoothly asphalted trail winds and dips through grassy dunes just off the beach.

Trail users see occasional surf views as well as public art and interpretive panels commemorating the Lewis and Clark expedition, which finished its westward voyage on this stretch of beach in 1805.

It seems like a secret because the path isn't visible from most of the beach or nearby properties, which is much of its charm. Once you're roller-coastering through shore pines and spearmint-hued dune grass, it feels as if you have the peninsula all to yourself.

And in the fall, you very well might be the only one on the trail other than the occasional deer.

While there are just enough ups and downs to make you grin, the Discovery Trail is pretty flat and easy for the 6.25 miles between the northern terminus at Clark's Tree, where the trail connects to 26th Street and the Breakers resort, and Beard's Hollow, near scenic North Head.

The "tree" is a 20-foot tall bronze replica of a real tree on which Capt. William Clark carved his name and the date he was there: Nov. 19, 1805. ("By land from the U. States.") Plan a trip now and you can be there on the same day of the year.

Pick up a Discovery Trail map at the visitor center as you arrive at the coast, where Highway 101 meets 103, or look for aerial-view maps posted wherever the trail crosses a beach-approach road. There are numerous park benches for rest stops along the way, or follow one of many sandy paths to the beach and sit on a log while you eat your breakfast.

Cycling from town, it's a fairly quick morning jaunt to Beard's Hollow, with a remote beach worth exploring. The trail heads inland here through alder woods, past a rock the size of a large house and skirting lily-padded ponds with lots of twittering birds. There's a vault toilet at a parking lot just off Highway 100. From here, ambitious cyclists can follow the road farther into Cape Disappointment State Park.

If you're hiking, you can continue another 1.3 miles on the trail (including a gravel portion), but Beard's

Hollow is a good turnaround spot for cyclists. The paved trail leading into the town of Ilwaco has precipitous drops that can be dangerous for anybody but experienced mountain bikers, especially when wet leaves cover the path. Take the word of (bruised) experience: Coaster brakes and balloon tires aren't up to the task.

But as you breeze along back to town, channel Capt. Clark and think how happy he'd have been in 1805 on a beach-cruiser bike.

Bike rentals: Try Skookum Surf Co., open most weekends October-April, in Seaview; 360-301-2233 or skookumsurf.com.



Want unlimited access to seattletimes.com? Subscribe now!