Marysville City Council Meeting

June 24, 2013 **7:00 p.m.** **City Hall**

Call to Order

Invocation

Pledge of Allegiance

Roll Call

Approval of Agenda

Committee Reports

Presentations

A. Officer Swearing-in

B. Employee Services Awards

C. Employee of the Month Award

D. SnoCAT Presentation

E. Cedarcrest Golf Course Presentation

Audience Participation

Approval of Minutes *(Written Comment Only Accepted from Audience.)*

1. Approval of the May 28, 2013 City Council Meeting Minutes.

2. Approval of the June 3, 2013 City Council Work Session Minutes.

Consent

3. Approval of the June 5, 2013 Claims in the Amount of $971,663.95; Paid by Check Number's 84987 through 85113 with Check Number's 84771 and 84857 Voided.

4. Approval of the June 5, 2013 Payroll in the Amount of $1,130,455.63; Paid by Check Number's 26630 through 26696.

Review Bids

Public Hearings

New Business

Marysville City Council Meeting

June 24, 2013 7:00 p.m. City Hall

5. Consider Final Plat Approval for Willow Springs ZA05-123399SD Located at 3115 79th Avenue NE.

6. Consider Approving the Master Usage Agreement with Department of Enterprise Services (DES).

7. Consider the Interlocal Agreement for Signal Maintenance with Snohomish County Providing Six Years of As Needed Services.

8. Consider the Employment Agreement for Golf Shop Supervisor.

9. Consider Adopting the Proposed Job Description for the Planning Assistant Position and Place on the "N-4" Non-Represented, Non-Management Classification Grid.

10. Consider Adding the Cross Connection Specialist Position Back onto the City's Organizational Chart and Refilling the Position in 2013.

11. Consider Approving a Resolution Declaring a Surplus Vehicle and Equipment to be Surplus and Authorize the Sale or Disposal.

12. Consider Agreement between City of Marysville and Seattle Goodwill Industries Summer 2013 Aerospace Program.

13. Consider approval of the Planning Commission recommendation, and adoption of an ordinance prohibiting the establishment of medical cannabis collective gardens and dispensaries, and repealing Ordinance 2889.

Legal

Mayor's Business

Staff Business

Call on Councilmembers

Executive Session

A. Litigation

B. Personnel

C. Real Estate

Adjourn

Special Accommodations: The City of Marysville strives to provide accessible meetings for people with disabilities. Please contact the City Clerk's office at (360) 363-8000 or

Marysville City Council Meeting

June 24, 2013 **7:00 p.m.** **City Hall**

1-800-833-6384 (Voice Relay), 1-800-833-6388 (TDD Relay) two days prior to the meeting date if any special accommodations are needed for this meeting.

Index #1

Call to Order/Pledge of Allegiance/Roll Call	7:00 p.m.
Committee Reports	
Presentations	
Officer Swearing-In - Officer Scott Richey	Presented
Employee Services Awards: Joseph Finley, Computer Support Tech I, Information Services – 5 Years; Jacki Goldman, Administrative Secretary, Police Sergeants and Detectives – 25 Years (not present); Ken Tyacke, Lead Worker I, Public Works Streets Division – 25 Years (not present)	Presented
Proclamation: Healthy Community Challenge Day	Presented
Approval of Minutes	
Approval of the May 6, 2013, City Council Work Session Minutes.	Approved
Consent Agenda	
Approval of the May 8, 2013 Claims in the Amount of $962,914.92; Paid by Check Number's 84420 through 84562 with Check Number's 83432, 84182, and 84188 Voided.	Approved
Approval of the May 15, 2013 Claims in the Amount of $371,726.40; Paid by Check Number's 84563 through 84715 with Check Number's 77796 and 80326 Voided.	Approved
Review Bids	
Public Hearing	
New Business	
Add the Roy Robinson Subaru Agreement to tonight's agenda under New Business item 7.	Approved
Add the MOU with the Tulalip Tribes to tonight's agenda under New Business as item 8.	Approved
Interlocal Agreement with Snohomish County and the City of Marysville for Utility Relocation and Construction Associated with the for 67th Avenue NE/132nd Street NE Sight Distance Improvement Project in the Amount of $45,173.75 with a Management Reserve of $4,826.25 for a Total of $50,000.	Approved
Interlocal Agreement with the Snohomish Regional Drug and Gang Task Force.	Approved
Staff Recommends the City Council Authorize the Mayor to Approve the 2013 Strawberry Festival Permit Proposal as Required by the Master Permit Agreement Currently with the **City**. Approval Includes the Marysville Kiwanis Club Beer And Wine Garden Event as a Strawberry Festival Sponsored Event Subject to Receipt of Specific Liability Insurance Coverage Required by the City.	Approved
Roy Robinson Subaru Agreement	Approved
Memorandum of Understanding with Tulalip Tribes	Approved
Legal	
Mayor's Business	
Staff Business	
Call on Councilmembers	
Adjournment	8:04 p.m.

DRAFT

COUNCIL MINUTES

Regular Meeting
May 28, 2013

Call to Order / Pledge of Allegiance

Mayor Nehring called the meeting to order at 7:00 p.m. and led those present in the Pledge of Allegiance. Doug Sharp from the Seventh Day Adventist church gave the invocation.

Roll Call

Chief Administrative Officer Hirashima gave the roll call. The following staff and councilmembers were in attendance.

Mayor:	Jon Nehring
Council:	Steve Muller, Kamille Norton, Jeff Seibert, Michael Stevens, Rob Toyer, Jeff Vaughan, and Donna Wright
Absent:	None
Also Present:	Chief Administrative Officer Gloria Hirashima, Finance Director Sandy Langdon, Police Chief Rick Smith, City Attorney Grant Weed, Public Works Superintendent Doug Byde, Parks and Recreation Director Jim Ballew, IS Manager Worth Manager, Police Commander Wendy Wade, and Recording Secretary Laurie Hugdahl.

Committee Reports

Councilmember Stevens reported on the May 15 Marysville Fire District Board of Directors meeting where the Board received reports on the fire district's participation on the Washington Care and Survival Report. This is a study that monitors how well the fire district is doing in the community with public safety resources in preventing cardiac arrests and negative outcomes from a cardiac arrest. The Marysville Fire District is doing well as compared to the national average and within Snohomish County. The fire district is finishing up a part-time recruit class which will be ending tomorrow. This is partly due to an effort to mitigate some of the impacts from the Affordable Health Care reform and balancing part-time versus full-time firefighter requirements as it relates to health care. The fire district has not been rated by the Servings and Ratings Bureau for a couple years. Due to significant improvements to the water system that the City of

Marysville has implemented in that time, the fire district expects they will be able to achieve a lower rating which will impact the insurance premiums. This would mainly impact commercial property insurance premiums.

Councilmember Wright reported on the Public Safety Committee Meeting held on May 22. Members of the police department will be participating in the Law Enforcement Torch Run for Special Olympics on May 30 and 31. There will be a memorial for former Marysville Police Chief John Faulkner on Thursday at 1 p.m. followed by a reception at the Ken Baxter Community Center at 3 p.m. The department has hired a new lateral officer from Monroe, Scott Richey, and an offer has been made to another lateral officer from another city. There will still be a couple vacancies after that. There will be a mid-year review in June or July to deal with overtime issues. There is also a focus on the downtown area. The police are working on the vision, mission, and values within the department. Morale is good and all areas are very busy.

Presentations

A. Officer Swearing-In.

Commander Wendy Wade introduced Officer Scott Richey who was then sworn in by Mayor Nehring.

B. Employee Services Awards.

- Joseph Finley, Computer Support Tech I, Information Services – 5 Years
- Jacki Goldman, Administrative Secretary, Police Sergeants and Detectives – 25 Years (not present)
- Ken Tyacke, Lead Worker I, Public Works Streets Division – 25 Years (not present)

C. Proclamation: Healthy Community Challenge Day.

Mayor Nehring read the proclamation recognizing June 1 as Healthy Community Challenge Day and encouraging all citizens to celebrate by participating in the event to be held at Allen Creek Elementary School in support of healthy living in Marysville.

Audience Participation - None

Approval of Minutes

1. Approval of the May 6, 2013, City Council Work Session Minutes.

Motion made by Councilmember Vaughan, seconded by Councilmember Toyer, to approve the May 6, 2013, City Council Work Session Minutes. **Motion** passed unanimously (7-0).

Consent

2. Approval of the May 8, 2013 Claims in the Amount of $962,914.92; Paid by Check Number's 84420 through 84562 with Check Number's 83432, 84182, and 84188 Voided.

3. Approval of the May 15, 2013 Claims in the Amount of $371,726.40; Paid by Check Number's 84563 through 84715 with Check Number's 77796 and 80326 Voided.

Motion made by Councilmember Wright, seconded by Councilmember Stevens, to approve Consent Agenda items 2 and 3. **Motion** passed unanimously (7-0).

Review Bids

Public Hearings

New Business

Mayor Nehring noted that the City Attorney had developed an agreement with Roy Robinson which was available tonight. Councilmember Toyer requested more time to review this item. Councilmember Seibert concurred. City Attorney Grant Weed commented on the timing of this. He explained that it took some time to prepare this agreement and to make sure Roy Robinson and his attorney were comfortable with this. They didn't know until today if it would be signed. He offered to brief the Council on the Sewer Extension Agreement if they desired.

Motion made by Councilmember Wright, seconded by Councilmember Muller, to add the Roy Robinson Subaru Agreement to tonight's agenda under New Business item 7. **Motion** passed (6-1) with Councilmember Toyer voting against the motion.

Motion made by Councilmember Muller, seconded by Councilmember Stevens, to add the MOU with the Tulalip Tribes to tonight's agenda under New Business as item 8. **Motion** passed unanimously (7-0).

4. Interlocal Agreement with Snohomish County and the City of Marysville for Utility Relocation and Construction Associated with the for 67th Avenue NE/132nd Street NE Sight Distance Improvement Project in the Amount of $45,173.75 with a Management Reserve of $4,826.25 for a Total of $50,000.

Public Works Superintendent Doug Byde explained that this fall, Snohomish County will lower 67th Avenue from 132nd to Hilltop Road by two feet. The City has a 14-inch water main coming from Wade Road that is three feet deep so it will be lowered another two feet at the same time. The Interlocal Agreement with Snohomish County will allow their contractor to do the work. This will expedite the process and keep the road closures to a minimum.

Motion made by Councilmember Vaughan, seconded by Councilmember Seibert, to authorize the Mayor to sign the Interlocal Agreement with Snohomish County and the City of Marysville for Utility Relocation and Construction Associated with the 67th Avenue NE/132nd Street NE Sight Distance Improvement Project in the Amount of $45,173.75 with a Management Reserve of $4,826.25 for a Total of $50,000. **Motion** passed unanimously (7-0).

5. Interlocal Agreement with the Snohomish Regional Drug and Gang Task Force.

Chief Smith stated that this is a renewal of the Interlocal Agreement. The only thing different on it is that it incorporates the 3% increase annually.

Motion made by Councilmember Muller, seconded by Councilmember Seibert, to authorize the Mayor to sign the Interlocal Agreement with the Snohomish Regional Drug and Gang Task Force. **Motion** passed unanimously (7-0).

6. Staff Recommends the City Council Authorize the Mayor to Approve the 2013 Strawberry Festival Permit Proposal as Required by the Master Permit Agreement Currently with the City. Approval Includes the Marysville Kiwanis Club Beer And Wine Garden Event as a Strawberry Festival Sponsored Event Subject to Receipt of Specific Liability Insurance Coverage Required by the City.

Parks and Recreation Director Ballew stated that MaryFest Inc has submitted a proposal for the Strawberry Festival. This is the second year they have requested the Kiwanis Club Beer and Wine Garden Event.

Motion made by Councilmember Wright, seconded by Councilmember Stevens, to authorize the Mayor to approve the 2013 Strawberry Festival Permit Proposal as Required by the Master Permit Agreement Currently with the City. Approval Includes the Marysville Kiwanis Club Beer And Wine Garden Event as a Strawberry Festival Sponsored Event Subject to Receipt of Specific Liability Insurance Coverage Required by the City. **Motion** passed unanimously (7-0).

7. Roy Robinson Subaru Agreement

City Attorney Grant Weed gave an overview of the agreement for the benefit of the Council. He explained that the agreement is actually with Bjorg WA Properties, LLC who is developing the property.

Councilmember Toyer asked City Attorney Weed if he feels comfortable with this whole process. City Attorney Weed replied that he is comfortable with it.

Councilmember Muller asked for confirmation that the City would not be held liable for any capital expenditures. City Attorney Weed stated that they have endeavored to have full disclosure about the fact that the utilities in this area would ultimately come under the authority of the Tulalip Tribes. He believes it is clear in the agreement that Marysville is not intending to be the utilities purveyor in the long haul.

Motion made by Councilmember Seibert, seconded by Councilmember Muller, to authorize the Mayor to sign the Sewer Utility Extension Agreement.

Councilmember Seibert and Councilmember Toyer both requested that documents be delivered to Council earlier than the night of the meeting in the future.

Motion passed unanimously (7-0).

8. Memorandum of Understanding with Tulalip Tribes

CAO Hirashima reviewed this item. She noted that the City staff and Tulalip staff have met to go over a draft agreement. She is comfortable that this will move forward, hopefully this year. She commented that no insurmountable issues were raised at the meeting.

Councilmember Muller asked if there are geographical bounds to this MOU. CAO Hirashima said it only relates to the Tribes' gas station and the Subaru site. However, the overall agreement for the water and sale does identify a geographic area and specific lines that will be conveyed. The intention is to convey all of the lines the City owns west of I-5. Any other requests for connections prior to the sale would have to come before the Council.

Motion made by Councilmember Muller, seconded by Councilmember Seibert, to approve the Utilities by MOU with the Tulalip Tribes. **Motion** passed unanimously (7-0).

Legal

Mayor's Business

Mayor Nehring:

- He and Councilmember Stevens went to Olympia to attend the bill signing which was a very memorable and satisfying event. He expressed appreciation for all the work by Council and staff on this issue.
- He and others attended the Boys and Girls Club Auction which was a great event.
- He attended a reception for the new publisher for *The Herald*, Josh O'Connor who was very interested in talking about the news coverage in Marysville. *The Herald* really wants to focus on the local community reporting.
- Economic Alliance Snohomish County had a board meeting where they reviewed the 2013 Business Plan. Big items are the Transportation Package, Washington State University and education funding in general for this area, and the Boeing 777X.
- Snohomish County Tomorrow met last week and reviewed the Urban Development Application Review Process. A new citizen representative was

elected, but there were three great applicants. There is now an alternative dispute resolution program in place.
- He attended the grand opening of Nomz Restaurant on State Avenue.
- American Legion Post 178 put on a fantastic, very moving and extremely well-attended Memorial Day event yesterday.

Staff Business

Jim Ballew:
- Healthy Communities Challenge Day will be held this weekend from 10 to 2 at Allen Creek Elementary School.
- On Friday morning the Police Department and Parks Department will be featured at the Chamber Breakfast.

Chief Smith:
- Thanks to Worth Norton, Joseph Finley, and the IS Department for making the Marysville Police Department look outstanding based on the work they have done. There are only two entities in the state of Washington who have gone through this process. This is a big credit to Worth and the IS department.
- There will be a memorial service for retired Chief John Faulkner on Thursday at 1:00 with a reception at 3:00 at the community center.
- Police have been very busy in the community. He reviewed some of the events that have transpired recently highlighting the value of the police dogs.

Doug Byde stated that Public Works will be doing structural digouts this week on 51st between Grove and 80th. There will be long delays, and sign boards are out that indicate this will be happening.

Worth Norton had no further comments.

Sandy Langdon:
- Thanks to Worth Norton for attending the meetings and being available to help with the tablets.
- The Auditors' Entrance Meeting will be this Friday.
- The City Wellness Committee will have a booth at the Challenge Day with a new Minute-to-Win-It event.

Grant Weed:
- In 2008 the State Supreme Court issued a decision on *Lane v. Seattle* regarding charging costs of fire flow and hydrants for the water utilities. The legislature recently adopted HSB 1512 which allows greater flexibility for cities to bring those charges back within the utility customer base. Staff will be looking at this bill to see if there is a potential to change the charges back to the way it used to be. He may be coming back to Council with some choices regarding this in the future.
- There is no need for an executive session tonight, but there will be a number of items at the June 3 Work Session.

Gloria Hirashima announced that the City received a Brownfield grant for $200,000 from the EPA for the waterfront cleanup. Shawn Smith from Community Development worked on that grant.

Call on Councilmembers

Kamille Norton congratulated the Police Department on their new hire of Officer Richey. She welcomed the Boy Scouts to the meeting tonight.

Steve Muller commented that the Boys and Girls Club Auction was a great event. He went on a tour of the facility and was very impressed.

Rob Toyer had no comments.

Michael Stevens:

- Thanks to Grant Weed and his office, the Mayor, Gloria and everyone involved in Bill 5105. It was a great event to participate in.
- He requested that the fire annexation issue come to the Council in the near future for discussion.

Jeff Seibert:

- He reported on the Finance Committee meeting
- He commended the work that the police dogs have done lately. The community is getting a good return on their investment.

Donna Wright stated that the Memorial Day ceremony was very nice. The attendance was double what it has been in the past. The music was presented by the high school band and the echo taps. The Jr. ROTC did a great job with their presentation.

Jeff Vaughan had no comments.

Executive Session

A. Litigation

B. Personnel

C. Real Estate

Adjournment

Seeing no further business Mayor Nehring adjourned the meeting at 8:04 p.m.

Approved this _____ day of _____, 2013.

_____
Mayor
Jon Nehring

_____
April O'Brien
Deputy City Clerk

Index #2

DRAFT

COUNCIL MINUTES

Work Session
June 3, 2013

Call to Order / Pledge of Allegiance

Mayor Nehring called the meeting to order at 7:00 p.m. and led those present in the Pledge of Allegiance.

Roll Call

Chief Administrative Officer Hirashima gave the roll call. The following staff and councilmembers were in attendance.

Mayor:	Jon Nehring
Council:	Steve Muller, Kamille Norton, Jeff Seibert, Michael Stevens, Rob Toyer, Jeff Vaughan, and Donna Wright
Absent:	None
Also Present:	Chief Administrative Officer Gloria Hirashima, Finance Director Sandy Langdon, City Attorney Grant Weed, Public Works Director Kevin Nielsen, Planning Manager Chris Holland, Associate Planner Angela Gemmer, Parks and Recreation Director Jim Ballew, and Recording Secretary Laurie Hugdahl.

Mayor Nehring commented that upon examining Council practices, it was determined that the Council should begin approving the agenda at meetings as a standard matter of practice. City Attorney Grant Weed further explained that any changes to the agenda should also be reflected at the beginning of the meeting.

Motion made by Councilmember Muller, seconded by Councilmember Stevens, to approve the agenda. **Motion** passed unanimously (7-0).

Committee Reports - None

Presentations - None

Audience Participation - None

Approval of Minutes *(Written Comment Only Accepted from Audience.)*

1. Approval of the May 13, 2013, City Council Meeting Minutes.

Consent

2. Approval of the May 22, 2013, Claims in the Amount of $496,780.36; Paid by Check Number's 84716 through 84858 with Check Number's 76307, 83786, 84427, and 84515 Voided.

3. Approval of the May 29, 2013, Claims in the Amount $314,755.36; Paid by Check Number's 84859 through 84986 with No Check Number's Voided.

4. Approval of the May 20, 2013, Payroll in the Amount of $1,207,067.25; Paid by Check Number's 26569 through 26629**.**

Review Bids

5. Contract Award - Decant Facility Retrofit Contract.

Director Nielsen explained that this is a grant thorough DOE. Bids were opened last Thursday, and SRV construction was the apparent low bidder in the amount of $873,357.94.

Public Hearings

Action Items

6. **Resolution** of Support for Legislative Action on a 2013 Transportation Investment Package.

Motion made by Councilmember Vaughan, seconded by Councilmember Seibert, to waive the normal work session rules in order to address this item. **Motion** passed unanimously (7-0).

Motion made by Councilmember Muller, seconded by Councilmember Seibert, to approve Resolution 2344. **Motion** passed unanimously (7-0).

New Business

7a) Planning Commission Recommendation relating to Multi Family and Commercial Design and Open Space Amenity Standards.

7b) Consider Approval of an Ordinance Affirming the Planning Commission's Recommendation.

Associate Planner Angela Gemmer reviewed the proposed changes to the Multi Family and Commercial Design and Open Space Amenity Standards.

8a) Hearing Examiner Recommendation on the Trivett Rezone located at 8021 State Avenue.

8b) Consider Approval of an Ordinance to rezone the eastern portion of 8021 State Avenue to General Commercial, amending the official zoning map of the City.

Associate Planner Angela Gemmer reviewed this item. The property is predominantly zoned General Commercial. The eastern portion is zoned R-6.5, but the prospective purchaser would like the entire property to be zoned General Commercial in order to enable future commercial utilization of the entire site. This is consistent with the rezone criteria, and the Hearing Examiner has recommended approval.

Councilmember Muller concurred that this rezone makes sense. Councilmember Stevens asked if there are any other parcels with a similar situation. Associate Planner Gemmer replied that there are a few.

Councilmember Seibert asked about the property behind Circle K. Associate Planner Gemmer thought that it was a legal grandfathered-in use in a residential zone. Councilmember Seibert recommended cleaning up the zoning for the other lots in that area. CAO Hirashima indicated they could take a look at that and talk to the owners to see if rezoning would be appropriate.

9a) Hearing Examiner Recommendation –Lakewood Station Binding Site Plan and Rezone located north of 172nd Street NE (SR 531), west of 27th Avenue NE.

9b) Consider Approval of an Ordinance Affirming the Hearing Examiner Recommendation to Rezone approximately 3.6 additional acres from General Commercial to Mixed Use.

Planning Manager Holland stated that Smokey Point Commercial LLC submitted a binding site plan and concurrent rezone for about 39 acres to construct 170-290,000 SF of commercial space and 350 multi-family units. The zoning change is to allow more mixed use zoning on the west side of 25th and a little bit less on the east side of 25th. The Hearing Examiner has approved the binding site plan, and made a recommendation for approving the concurrent rezone. Also, staff will be coming back with a request for vacation of 25th once the final design of the road is complete and they have approval from DOT to have access onto 531.

Councilmember Seibert asked for an update on the situation with the intersection at 25th. Planning Manager Holland stated that the City has contracted with Gibson Traffic Consulting to do a corridor plan for that whole road. Based on the preliminary analysis, it looks like there will potentially be a roundabout on the west property line of this project and also down at 19th.

Councilmember Seibert asked if they were proposing to move the intersection further to the west. Planning Manager Holland confirmed this. He explained that DOT's spacing standard between 27th and any other signalized intersection is .5 mile, or .25 mile with a variance process. 25th as it presently sits couldn't meet the .25 mile standard.

Director Nielsen added that they had analyzed both traffic signals and roundabouts at that location, but roundabouts had a better level of service. Also, the queuing at 25th from 27th would have backed up into the intersection so it needed to be moved even if WSDOT would have allowed it.

10. Planning Commission Recommendation – Marysville Capital Facilities Plan 2013-2018

CAO Hirashima explained that this is the Planning Commission's recommendation on the Capital Facilities Plan that spans a 6-year period identifying potential projects for the City.

11. Consideration of Special Event Permit for the Marysville Downtown Merchants Association to Conduct a car show "Rodz on 3rd" on July 13, 2013, Including the Street Closure of 3rd Street between State Avenue and Quinn Avenue.

CAO Hirashima explained that this is the annual car show which is organized by the Downtown Merchants. It will include a street closure of 3rd Street between State and Quinn. There were no comments or questions.

12. Consideration of Firework Stand Permit Applications.

CAO Hirashima stated that there are eight applications from TNT and one from Western Fireworks for a total of nine.

13. Consideration of Contract Renewal with J.K. Eastbury Salvage Metals and Auto Wrecking for Scrap Metal Disposal/Recycling Services.

Director Nielsen stated that this is the annual renewal for scrap metal.

14. Consideration of Maintenance Agreement between Aclara Technologies LLC and the City of Marysville.

Director Nielsen explained that Grant Weed has negotiated with Aclara as it relates to our risk and liability, and he feels that this service agreement really needs to be put into place. The current cellular service is going away and the City needs to implement a new protocol to keep things up and running. City Attorney Grant Weed summarized some of the things that he is concerned about. He has pointed out the issues to staff who has tried to promote change in the agreement that this vendor uses, but the vendor has been very reluctant to do so. Director Nielsen pointed out that the City is very reliant on this vendor because they have several million dollars of their equipment already

installed. Grant Weed stated that the essence of the legal concern is that the agreement is very heavily one-sided in favor of the vendor, and it significantly limits the liability of the vendor for any mistakes that they make. This could be a disadvantage to the City if there is a major problem that causes disruptions or issues with customers. There is a severe limit to any damages that this vendor would be liable for, even for their own negligence. Director Nielsen noted that this agreement has been three years in process due to staff trying to negotiate with the vendors. CAO Hirashima added that she has heard from staff that this is very important to act on.

Councilmember Vaughan asked about the terms of termination if the City wants to get out of the contract. City Attorney Weed indicated that it was 30 days. Director Nielsen noted that they are looking at other vendors for the future. Councilmember Vaughan asked if this is typical of software licensing. City Attorney Weed affirmed that it is.

15. Consider the Truck Route Modification to Remove the Truck Route designation for 2nd Street.

Director Nielsen discussed the need for removing the truck route for 2nd Street. Staff has received a lot of complaints about this particular route. Local trucks would still be allowed; the change is mainly geared at pass-through trucks that are having a lot of impact on the roadways.

Councilmember Seibert referred to the discussion at Public Works Committee and said he thought the understanding from the discussion was that they would make everyone go up on the onramp and come back off. Director Nielsen commented that staff's recommendation was part of the existing truck route, but the Council could remove it if they want to. There appeared to be consensus to make that amendment.

16. Consider Naming City Park Located at 9028 67th Avenue NE.

Parks Director Ballew stated that the Park Board made three name recommendations for the Council to consider. Councilmember Seibert noted that the grant was written by a former council member who put a lot of work into it. He suggested naming the park after her. He also asked about calling it Doleshel Park instead of Doleshel Tree Farm to shorten up the name. Director Ballew indicated that the Council could decide what they wanted, but he offered to contact the Doleshel family to get their opinion. He noted that naming the park after the former council member had been considered, but the other three names were the ones that were recommended by the Park Board.

Legal

Mayor's Business

17. Salary Commission Appointment; Don Culbertson.

Mayor Nehring:

- He said he attended a very nice retirement party for Dr. Nyland and Gail Miller last Thursday night at Hibulb Cultural Center. He congratulated them both as they retire and noted that they would be missed.
- The Healthy Communities Challenge Day was a great event last weekend.
- He attended the second annual Juan Mendoza Memorial Mile last Friday night at Getchell High School. It was well attended and significant money was raised for scholarships.
- He commended Police Chief Smith and the Police Department who emceed and ran the memorial service for former Chief Faulkner at Schaefer Shipman. The family really appreciated their assistance with that.
- He will be attending his son's graduation next Monday night so Council President Vaughan will be chairing the meeting.
- He will also be unable to attend the Strawberry Festival Dinner due to graduation events. He asked if Council President Vaughan or another council member could attend in his place.

Staff Business

Sandy Langdon:

- She had a good time at Challenge Day on Saturday. The weather was perfect and everyone seemed to have a great time.
- The Entrance Conference with the auditors was held on Friday.
- They are working on a bond issue for the 156th overpass and also refunding water/sewer for a substantial savings on that.

Kevin Nielsen reported that staff is busily mowing throughout the City and paving 51st.

Jim Ballew:

- On Friday there was a great opportunity to make a presentation to the Chamber about the City's Parks programs this year. Mark Thomas did a great job identifying the Business Watch program for the Police Department. Parks showed a site plan proposal for the spray park and as a result they had two businesses contact them to see if they could be a part of it.
- Challenge Day on Saturday was wonderful. 1037 kids signed up for Get Moving. This means 1 in 11 kids in the Marysville School District signed up for the program. Staff did a great job putting on the event.

Grant Weed stated the need for an Executive Session to discuss four matters concerning pending litigation and one matter concerning real property acquisition, expected to last 15 minutes with no action.

Gloria Hirashima announced that the City received notification from the US Housing and Urban Development about the CDBG Funds for 2013. The City will be getting $323,711, which is more than they got last year.

Call on Councilmembers

Rob Toyer had a great time at the Healthy Communities Challenge Day.

Michael Stevens was in Chelan for a Washington State Fire Commissioners Conference with Councilmember Wright. One of the more interesting topics was the discussion of the potential impacts of I-502 on the public sector and also the impacts of the Affordable Care Act.

Steve Muller stated that the retirement ceremony was a very nice event. Those two individuals will be missed greatly.

Donna Wright:

- The Police Department gave a great presentation on the Business Watch at the Chamber meeting. It will be a benefit to the business community to get that underway. Jim Ballew did a great job presenting on Parks and Recreation department.
- She was in Chelan at the Washington State Fire Commissioners event over the weekend where there were some interesting topics that were discussed which may be of some interest to the City.

Kamille Norton commented that the Healthy Communities Challenge Day was a great event. It is exciting that so many kids signed up.

Jeff Seibert:

- He asked about trees coming down on the west side of 51st and asked if that means they will be widening that shoulder. Director Nielsen affirmed that they would.
- He commented on the dirt and air in the system when there was major work done on 51st last week. He asked if there were any mechanisms for customers to get a rebate on their bill. He said he had to let his water run for a half an hour to get it clear. Director Nielsen stated that he hadn't been aware of the issue, but indicated he would look into this and follow up.

Jeff Vaughan had no comments.

Council recessed from 8:00 to 8:05 before reconvening for the WCIA presentation.

18. Council Training: Washington City Insurance Authority (WCIA) – Council Do's and Don'ts.

Executive Director Lew Leigh from WCIA gave a presentation to the Council regarding Council Do's and Don'ts.

Council recessed and went into Executive Session at 9:05 to discuss four matters concerning pending litigation and one matter concerning real property acquisition, expected to last 15 minutes with no action required. Executive Session was extended 10 additional minutes to 9:35pm.

Council reconvened into regular session at 9:35 p.m.

Executive Session

A. Litigation - 4 items, RCW 42.30.110(1)(i)

B. Personnel

C. Real Estate - 1 item, RCW 42.30.110(1)(b)

Adjournment

Seeing no further business Mayor Nehring adjourned the meeting at 9:36 p.m.

Approved this _____ day of _____, 2013.

_____	_____
Mayor	April O'Brien
Jon Nehring	Deputy City Clerk

Index #3

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 24, 2013

AGENDA ITEM: Claims	AGENDA SECTION:	
PREPARED BY: Sandy Langdon, Finance Director	AGENDA NUMBER:	
ATTACHMENTS: Claims Listings	APPROVED BY:	
	MAYOR	CAO
BUDGET CODE:	AMOUNT:	

Please see attached.

RECOMMENDED ACTION: The Finance and Executive Departments recommend City Council approve the **June 5, 2013** claims in the amount of **$971,663.95** paid by **Check No.'s 84987 through 85113 with Check No.'s 84771 & 84857 voided.**
COUNCIL ACTION:

BLANKET CERTIFICATION

CLAIMS

FOR

PERIOD-6

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 **CLAIMS** IN THE AMOUNT OF **$971,663.95 PAID BY CHECK NO.'S 84987 THROUGH 85113 WITH CHECK NO.'S 84771 & 84857 VOIDED** ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF MARYSVILLE, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND TO CERTIFY SAID CLAIMS.

_____

AUDITING OFFICER DATE

_____

MAYOR DATE

WE, THE UNDERSIGNED COUNCIL MEMBERS OF MARYSVILLE, WASHINGTON DO HEREBY APPROVE FOR PAYMENT THE ABOVE MENTIONED **CLAIMS** ON THIS **5th DAY OF JUNE 2013.**

_____ _____

COUNCIL MEMBER COUNCIL MEMBER

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COUNCIL MEMBER COUNCIL MEMBER

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COUNCIL MEMBER

CITY OF MARYSVILLE
INVOICE LIST
FOR INVOICES FROM 5/30/2013 TO 6/5/2013

CHK #	VENDOR	ITEM DESCRIPTION	ACCOUNT DESCRIPTION	ITEM AMOUNT
84987	ADVANTAGE BUILDING S	JANITORIAL SERVICE	COMMUNITY CENTER	150.00
84988	ALLRED, CODY	JURY DUTY	COURTS	12.26
84989	ANDES LAND SURVEY	SURVEY PROPERTY-SOPER HILL RD	SEWER CAPITAL PROJECTS	1,083.00
84990	APSCO, INC.	IMPELLER	SEWER LIFT STATION	2,696.02
84991	ARAMARK UNIFORM	UNIFORM SERVICE	EQUIPMENT RENTAL	19.98
84992	ARLINGTON POWER	TRIMMERS (2)	GENERAL SERVICES - OVERH	738.37
84993	BAINBRIDGE ASSOCIATE	FLODAR SENSOR, FLOSTATION, CAB	SEWER CAPITAL PROJECTS	13,579.24
84994	BICKFORD FORD	BLOWER MOTOR AND RESISTOR	EQUIPMENT RENTAL	73.71
	BICKFORD FORD	BRAKE PADS AND BRAKE ROTORS	ER&R	169.35
84995	BLUMENTHAL UNIFORMS	UNIFORM-GRADY	DETENTION & CORRECTION	14.12
84996	BOYDEN ROBINETT & AS	UB 651449106000 5920 105TH PL	WATER/SEWER OPERATION	117.59
84997	BRICKMAN, MATHEW	JURY DUTY	COURTS	20.17
84998	BROWN, DAVID & JENNI	UB 791020000003 5815 64TH AVE	WATER/SEWER OPERATION	109.43
84999	BRYANT, ALAN	WITNESS FEES	MUNICIPAL COURTS	12.26
85000	BRYANT, TAMMY		MUNICIPAL COURTS	12.26
85001	BUELL, JAMES	JURY DUTY	COURTS	13.39
85002	BUELL, JOHN	REIMBURSE MEAL	UTIL ADMIN	14.00
85003	CANAM FABRICATIONS	REPAIR WATER TANKS (2)	EQUIPMENT RENTAL	814.50
85004	CEMEX	ASPHALT	ROADWAY MAINTENANCE	138.28
85005	CLEAVER, NICOLE M	JURY DUTY	COURTS	16.78
85006	COMMERCIAL FIRE	FIRE EXTINGUISHER SERVICE/TAG	ER&R	79.26
85007	COOP SUPPLY	POTTING SOIL AND FERRULES	PARK & RECREATION FAC	97.01
85008	CORRECTIONS, DEPT OF	INMATE MEALS	DETENTION & CORRECTION	2,778.60
85009	CRISTI, CRISITIA	JURY DUTY	COURTS	15.65
85010	CRYSTAL SPRINGS	WATER/COOLER RENTAL	WASTE WATER TREATMENT F	115.27
85011	DB SECURE SHRED	MONTHLY SHREDDING SERVICE	CITY CLERK	7.46
	DB SECURE SHRED		FINANCE-GENL	7.46
	DB SECURE SHRED		UTILITY BILLING	7.47
	DB SECURE SHRED		PROBATION	16.79
	DB SECURE SHRED		MUNICIPAL COURTS	50.38
85012	DEAVER ELECTRIC	WELL PUMP WIRING	MAINTENANCE	543.00
85013	DELBROCK, ROBERT	JURY DUTY	COURTS	10.57
85014	DELUNA, ROSA	REIMBURSE MILEAGE	MUNICIPAL COURTS	36.74
85015	DEPALMA, ARLINE	INSTRUCTOR SERVICES	COMMUNITY CENTER	273.60
85016	DONALDSON, BRENDA	REIMBURSE POSTAGE	ENGR-GENL	427.35
85017	DOPPS, MARIA C.	INTERPRETER SERVICE	COURTS	104.56
85018	DUNLAP INDUSTRIAL	SAW BLADES	MAINT OF GENL PLANT	40.95
85019	E&E LUMBER	DRAIN OUT	PARK & RECREATION FAC	4.25
	E&E LUMBER	CAR WASH SOAP	PARK & RECREATION FAC	4.56
	E&E LUMBER	KNEELING PAD AND CHAIN OIL	PARK & RECREATION FAC	9.02
	E&E LUMBER	GASKET AND CLEANER	PARK & RECREATION FAC	11.99
	E&E LUMBER	LONG NOSE PLIERS	PARK & RECREATION FAC	25.52
	E&E LUMBER	WOOD AND FASTENERS	PARK & RECREATION FAC	30.95
	E&E LUMBER	PRIMER, BLADE AND DRILL BIT	PARK & RECREATION FAC	34.39
	E&E LUMBER	ROPE, PLIERS AND FASTENERS	ROADSIDE VEGETATION	36.71
	E&E LUMBER	GRIP N GRAB (2)	PARK & RECREATION FAC	48.94
	E&E LUMBER	WIRE, CONNECTOR AND CABLE CUTT	PARK & RECREATION FAC	70.52
	E&E LUMBER	SAFETY GLASSES AND SAFETY EAR	PARK & RECREATION FAC	104.20
	E&E LUMBER	FLEX HOSE, BAGS, SEALANT AND K	ER&R	458.53
85020	ECOLOGY, DEPT. OF	DAM CONSTRUCTION PERMIT FEES	SURFACE WATER CAPITAL PF	6,497.00
85021	EDGE ANALYTICAL	LAB ANALYSIS	WATER QUAL TREATMENT	10.00
	EDGE ANALYTICAL		WATER QUAL TREATMENT	10.00
	EDGE ANALYTICAL		WATER QUAL TREATMENT	10.00
	EDGE ANALYTICAL		WATER QUAL TREATMENT	10.00
	EDGE ANALYTICAL		WATER QUAL TREATMENT	10.00
	EDGE ANALYTICAL		WATER QUAL TREATMENT	20.00
	EDGE ANALYTICAL		WATER QUAL TREATMENT	180.00
	EDGE ANALYTICAL		WATER QUAL TREATMENT	180.00
85022	EDWARDS, MICHELLE	UB 530430000000 3800 177TH PL	WATER/SEWER OPERATION	14.15
85023	EMERSON, CYNTHIA E	WITNESS FEES	MUNICIPAL COURTS	12.26
85024	EVERETT TIRE & AUTO	TIRES (10)	ER&R	1,074.37

CITY OF MARYSVILLE
INVOICE LIST
FOR INVOICES FROM 5/30/2013 TO 6/5/2013

CHK #	VENDOR	ITEM DESCRIPTION	ACCOUNT DESCRIPTION	ITEM AMOUNT
85025	EVERETT UTILITIES	WATER/FILTRATION SERVICE	SOURCE OF SUPPLY	107,342.87
85026	EVERETT, CITY OF	LAB ANALYSIS	WATER QUAL TREATMENT	16.20
	EVERETT, CITY OF		WASTE WATER TREATMENT F	1,538.10
85027	EYER, MATTHEW	REIMBURSE MILEAGE	STORM DRAINAGE	117.52
85028	FERREL, WAYNE	JURY DUTY	COURTS	15.65
85029	FERRELLGAS	PROPANE	ROADWAY MAINTENANCE	38.49
	FERRELLGAS		SOLID WASTE OPERATIONS	38.49
	FERRELLGAS		TRAFFIC CONTROL DEVICES	38.50
	FERRELLGAS		WATER SERVICE INSTALL	38.50
85030	FLOOD, KATHERINE	JURY DUTY	COURTS	16.78
85031	GAY, SHAWN	UB 454230000001 14128 54TH DR	WATER/SEWER OPERATION	300.00
85032	GC SYSTEMS INC	REBUILD KITS	WATER DIST MAINS	206.64
85033	GENERAL CHEMICAL	ALUMINUM SULFATE	WASTE WATER TREATMENT F	4,388.63
	GENERAL CHEMICAL		WASTE WATER TREATMENT F	4,404.50
85034	GIBBS, CHRIS	JURY DUTY	COURTS	13.95
85035	GLASSETT, TRUDY	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
85036	GLOBALSTAR INC.	SAT PHONE	POLICE PATROL	49.83
85037	GOVCONNECTION INC	OFFICE SUPPLIES	COMPUTER SERVICES	192.98
	GOVCONNECTION INC	PRINTER AND MEMORY REPLACEMENT	IS REPLACEMENT ACCOUNTS	720.45
85038	HASLER, INC	POSTAGE	MUNICIPAL COURTS	46.20
	HASLER, INC		PERSONNEL ADMINISTRATIOI	90.95
	HASLER, INC		LEGAL-GENL	135.03
	HASLER, INC		PARK & RECREATION FAC	212.49
	HASLER, INC		UTIL ADMIN	311.28
	HASLER, INC		UTILITY BILLING	384.58
	HASLER, INC		EXECUTIVE ADMIN	478.44
	HASLER, INC		FINANCE-GENL	639.47
	HASLER, INC		COMMUNITY DEVELOPMENT-	810.95
	HASLER, INC		POLICE ADMINISTRATION	890.61
85039	HD FOWLER COMPANY	HARDWARE	WATER DIST MAINS	16.51
	HD FOWLER COMPANY	SAFETY FENCING	STORM DRAINAGE	60.64
	HD FOWLER COMPANY	HYDRANT WRENCHES	WATER CROSS CNTL	77.93
	HD FOWLER COMPANY	BALL VALVE	WATER DIST MAINS	142.41
	HD FOWLER COMPANY	JOINT ADAPTERS AND COUPLINGS	WATER/SEWER OPERATION	173.81
	HD FOWLER COMPANY	COUPLINGS, CORSTOP AND METER S	WATER/SEWER OPERATION	296.55
	HD FOWLER COMPANY	METER SETTER	WATER/SEWER OPERATION	325.18
	HD FOWLER COMPANY		WATER/SEWER OPERATION	325.18
	HD FOWLER COMPANY		WATER/SEWER OPERATION	325.18
	HD FOWLER COMPANY	ELBOWS, GLUE AND SEWER SADDLES	STORM DRAINAGE	341.31
	HD FOWLER COMPANY	SETTER YOKES	WATER/SEWER OPERATION	549.72
	HD FOWLER COMPANY	HOSE ADAPTERS AND BRASS HARDWA	WATER CROSS CNTL	1,325.96
	HD FOWLER COMPANY	PIPE, GASKETS, ELLS, ADAPTER A	STORM DRAINAGE	4,086.60
85040	HD SUPPLY WATERWORKS	SLEEVES AND SEAL GASKETS	WATER SUPPLY MAINS	3,347.46
85041	HELENA CHEMICAL CO	FERTILIZERS	MAINTENANCE	448.77
85042	HERTZ EQUIPMENT RENT	EXCAVATOR RENTAL	PROTECTIVE INSPECTIONS	1,246.74
85043	HIESTER, LINDA	JURY DUTY	COURTS	10.84
85044	HODGINS, WENDY		COURTS	12.82
85045	HOLMES, BRUCE		COURTS	11.69
85046	HORNUNG, CHRIS	REIMBURSE 2013 MCA CONF MEALS	PROBATION	410.03
85047	HYLARIDES, LETTIE	INTERPRETER SERVICE	COURTS	112.50
	HYLARIDES, LETTIE		COURTS	112.50
85048	KUGLER, LAWRENCE	JURY DUTY	COURTS	16.78
85049	LAKESIDE INDUSTRIES	ASPHALT	ROADWAY MAINTENANCE	583.64
85050	LANGUAGE EXCHANGE	INTERPRETER SERVICE	COURTS	180.00
	LANGUAGE EXCHANGE		COURTS	654.00
85051	LASTING IMPRESSIONS	JACKET EMBROIDERY	ER&R	39.10
85052	LEE, SHARON	JURY DUTY	COURTS	29.21
85053	LICENSING, DEPT OF	ENGLE, LANCE (RENEWAL)	GENERAL FUND	18.00
	LICENSING, DEPT OF	GREGG, ROB (ORIGINAL)	GENERAL FUND	18.00
	LICENSING, DEPT OF	PAGLIA, STEPHANIE (ORIGINAL)	GENERAL FUND	18.00
85054	LICENSING, DEPT OF	PAWNS PLUS-GUN DEALERS LICENSE	GENERAL FUND	125.00

CITY OF MARYSVILLE
INVOICE LIST
FOR INVOICES FROM 5/30/2013 TO 6/5/2013

CHK #	VENDOR	ITEM DESCRIPTION	ACCOUNT DESCRIPTION	ITEM AMOUNT
85055	LOWES HIW INC	HAMMER	WATER QUAL TREATMENT	20.61
	LOWES HIW INC	4 X 36 G/S (30)	PARK & RECREATION FAC	60.60
85056	LYLE, DIRK	JURY DUTY	COURTS	11.69
85057	MAILFINANCE	POSTAGE LEASE PAYMENT	CITY CLERK	22.93
	MAILFINANCE		EXECUTIVE ADMIN	22.93
	MAILFINANCE		FINANCE-GENL	22.93
	MAILFINANCE		PERSONNEL ADMINISTRATIOI	22.93
	MAILFINANCE		UTILITY BILLING	22.93
	MAILFINANCE		LEGAL - PROSECUTION	22.93
	MAILFINANCE		COMMUNITY DEVELOPMENT-	22.93
	MAILFINANCE		ENGR-GENL	22.93
	MAILFINANCE		UTIL ADMIN	22.93
	MAILFINANCE		POLICE INVESTIGATION	22.93
	MAILFINANCE		POLICE PATROL	22.94
	MAILFINANCE		OFFICE OPERATIONS	22.94
	MAILFINANCE		DETENTION & CORRECTION	22.94
	MAILFINANCE		POLICE ADMINISTRATION	22.94
85058	MANTEK	DRUM FUNNEL	ROADWAY MAINTENANCE	110.71
	MANTEK	SAFETY CANS	ROADWAY MAINTENANCE	125.48
85059	MARCHETTI, KIMBERLY	JURY DUTY	COURTS	11.69
85060	MARTIN, KATHERINE		COURTS	10.57
85061	MARYSVILLE FIRE DIST	FIRE CONTROL/EMERGENCY AID SER	FIRE-EMS	186,507.35
	MARYSVILLE FIRE DIST		FIRE-GENL	559,522.05
85062	MARYSVILLE PRINTING	NOTICE OF CASE FORMS AND PROBA	PROBATION	97.08
	MARYSVILLE PRINTING	PO BOOKS	SEWER LIFT STATION	269.74
	MARYSVILLE PRINTING	NOTICE OF CASE FORMS AND PROBA	MUNICIPAL COURTS	677.70
85063	MCKINNEY, AMY	JURY DUTY	COURTS	11.13
85064	MEB MANUFACTURING CO	REBUILD AERATOR SHAFT ASSEMBLY	WASTE WATER TREATMENT F	710.19
85065	MEGAPATH CORPORATION	INTERNET SERVICES	COMPUTER SERVICES	263.83
85066	MICRO DATA	CITATIONS	POLICE PATROL	443.58
85067	MUELLER, JANICE	JURY DUTY	COURTS	11.13
85068	NELSON PETROLEUM	RED TAC GREASE	ER&R	146.05
85069	NEUMAN, CHRIS	JURY DUTY	COURTS	16.35
85070	NEXTEL	ACCT #130961290	WATER FILTRATION PLANT	60.36
	NEXTEL		SEWER LIFT STATION	60.36
85071	NISTOR, CARMENT	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
85072	OFFICE DEPOT	OFFICE SUPPLIES	MUNICIPAL COURTS	15.83
	OFFICE DEPOT		PROBATION	58.01
	OFFICE DEPOT		COMMUNITY DEVELOPMENT-	71.81
	OFFICE DEPOT		PERSONNEL ADMINISTRATIOI	83.41
	OFFICE DEPOT		MUNICIPAL COURTS	174.05
	OFFICE DEPOT		DETENTION & CORRECTION	190.90
	OFFICE DEPOT		MUNICIPAL COURTS	207.99
	OFFICE DEPOT		POLICE PATROL	214.00
	OFFICE DEPOT		MUNICIPAL COURTS	231.63
	OFFICE DEPOT		COMMUNITY DEVELOPMENT-	275.85
85073	PACIFIC POWER PROD.	WHEEL ASSEMBLY, FOAM AND AXLE	MAINTENANCE	377.10
85074	PARTS STORE, THE	FUEL FILTER AND SPARK PLUGS	EQUIPMENT RENTAL	18.46
	PARTS STORE, THE	OIL AND AIR FILTERS	ER&R	33.45
	PARTS STORE, THE	FUEL FILTERS	ER&R	40.10
	PARTS STORE, THE	OIL FILTERS AND MOTOR OIL	ER&R	77.31
	PARTS STORE, THE	OIL FILTERS, LENS, CAR WASH AN	ER&R	112.42
	PARTS STORE, THE	CLEANER, WIPER BLADES AND OIL	ER&R	167.81
	PARTS STORE, THE	OIL AND AIR FILTERS, SOLENOID	ER&R	235.67
85075	PEACE OF MIND	MINUTE TAKING SERVICE	COMMUNITY DEVELOPMENT-	93.00
	PEACE OF MIND		CITY CLERK	192.20
	PEACE OF MIND		CITY CLERK	207.70
85076	PETROCARD SYSTEMS	FUEL CONSUMED	EQUIPMENT RENTAL	53.47
	PETROCARD SYSTEMS		STORM DRAINAGE	110.32
	PETROCARD SYSTEMS		FACILITY MAINTENANCE	276.37
	PETROCARD SYSTEMS		COMMUNITY DEVELOPMENT-	536.66

CITY OF MARYSVILLE
INVOICE LIST
FOR INVOICES FROM 5/30/2013 TO 6/5/2013

CHK #	VENDOR	ITEM DESCRIPTION	ACCOUNT DESCRIPTION	ITEM AMOUNT
85076	PETROCARD SYSTEMS	FUEL CONSUMED	PARK & RECREATION FAC	1,674.95
	PETROCARD SYSTEMS		GENERAL SERVICES - OVERH	2,456.38
	PETROCARD SYSTEMS		SOLID WASTE OPERATIONS	4,271.60
	PETROCARD SYSTEMS		MAINT OF EQUIPMENT	4,868.49
	PETROCARD SYSTEMS		POLICE PATROL	8,302.77
85077	PETTY CASH- POLICE	KEYS, JAIL SUPPLIES AND TRAINI	GENERAL FUND	-1.09
	PETTY CASH- POLICE		POLICE PATROL	5.19
	PETTY CASH- POLICE		POLICE PATROL	13.03
	PETTY CASH- POLICE		DETENTION & CORRECTION	26.46
	PETTY CASH- POLICE		POLICE ADMINISTRATION	33.58
	PETTY CASH- POLICE		POLICE TRAINING-FIREARMS	41.62
85078	PLATT	OCT BOX AND MED CLR	SOURCE OF SUPPLY	36.66
85079	PSSP - PUGET SOUND	SECURITY SERVICES	PROBATION	753.38
	PSSP - PUGET SOUND		MUNICIPAL COURTS	2,260.12
85080	PUD	ACCT #2021-7786-1	PUMPING PLANT	29.50
	PUD	ACCT #2049-3331-1	PUMPING PLANT	30.39
	PUD	ACCT #2013-8099-5	PUMPING PLANT	39.71
	PUD	ACCT #2034-3089-7	STREET LIGHTING	83.32
	PUD	ACCT #2023-6819-7	PUMPING PLANT	172.47
85081	PUGET SOUND SECURITY	CUSTODY VAN SUPPLIES	DETENTION & CORRECTION	191.23
85082	RADUNZ, KAREN	JURY DUTY	COURTS	13.39
85083	RECREATION & PARK	TRAINING-BALLEW, J	PARK & RECREATION FAC	69.00
85084	RILEY, AUSTIN	JURY DUTY	COURTS	13.39
85085	ROBBINS, TAMARA	INSTRUCTOR SERVICES	COMMUNITY CENTER	108.00
85086	ROBERTS, KATIE	REFUND CLASS FEES	PARKS-RECREATION	85.00
85087	ROBINETT, JOHN	REFUND METER FEES	WATER-UTILITIES/ENVIRONM	500.00
85088	RUSDEN, JOHN	PROTEM SERVICE	MUNICIPAL COURTS	185.00
	RUSDEN, JOHN		MUNICIPAL COURTS	370.00
85089	SALDANA, LIZETH	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
85090	SANCHEZ, ROSARIO		GENERAL FUND	100.00
85091	SANTOYO, PATRICIA		GENERAL FUND	100.00
85092	SENTINEL OFFENDER SE	EHM-APRIL 2013	DETENTION & CORRECTION	991.65
85093	SERVICELINK FNF	UB 131051900000 10519 48TH DR	WATER/SEWER OPERATION	97.05
85094	SIX ROBBLEES INC	LED TAIL LIGHT WIRING PIGTAILS	ER&R	10.43
85095	SMOKEY POINT PLANT	RUSSIAN LAUREL TREES	STORM DRAINAGE	193.80
85096	SNYDER ROOFING	GUTTER REPAIR	PUBLIC SAFETY BLDG.	7,337.02
85097	SOLIS, ZULEMA	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
85098	SOUND POWER	BAR OIL	PARK & RECREATION FAC	132.38
	SOUND POWER	SYNTHETIC OIL	PARK & RECREATION FAC	174.59
85099	SOUND SAFETY	BOOTS-HERVACK, J	GENERAL SERVICES - OVERH	75.00
	SOUND SAFETY	SHIRTS AND SCREENPRINTING	ER&R	278.56
85100	SUMMIT LAW GROUP, LL	PROFESSIONAL SERVICES	PERSONNEL ADMINISTRATIOI	4,761.22
85101	SWICK-LAFAVE, JULIE	REIMBURSE JAIL SUPPLY PURCHASE	DETENTION & CORRECTION	361.89
85102	TRAFFIC SAFETY SUPPL	YELLOW FLAGS AND BRACKETS	TRANSPORTATION MANAGEM	416.21
85103	UNITED STATES OF AME	UB 763100000000 6605 65TH DR N	WATER/SEWER OPERATION	223.51
85104	US MOWER	CHECK VALVE AND ORING	EQUIPMENT RENTAL	111.43
85105	VANWINKLE, ROY^	UB 961210100000 1106 ALDER AVE	WATER/SEWER OPERATION	26.06
85106	VERIZON/FRONTIER	AMR LINES	METER READING	438.56
85107	VERIZON/FRONTIER	LONG DISTANCE CHARGES	CRIME PREVENTION	0.01
	VERIZON/FRONTIER		LEGAL-GENL	0.01
	VERIZON/FRONTIER		SOLID WASTE CUSTOMER EX	0.01
	VERIZON/FRONTIER		FACILITY MAINTENANCE	0.02
	VERIZON/FRONTIER		ANIMAL CONTROL	0.49
	VERIZON/FRONTIER		YOUTH SERVICES	0.56
	VERIZON/FRONTIER		RECREATION SERVICES	0.59
	VERIZON/FRONTIER		CITY CLERK	0.78
	VERIZON/FRONTIER		PURCHASING/CENTRAL STOF	1.61
	VERIZON/FRONTIER		COMPUTER SERVICES	2.77
	VERIZON/FRONTIER		STORM DRAINAGE	2.90
	VERIZON/FRONTIER		COMMUNITY CENTER	3.06
	VERIZON/FRONTIER		GENERAL SERVICES - OVERH	3.12

CITY OF MARYSVILLE
INVOICE LIST
FOR INVOICES FROM 5/30/2013 TO 6/5/2013

CHK #	VENDOR	ITEM DESCRIPTION	ACCOUNT DESCRIPTION	ITEM AMOUNT
85107	VERIZON/FRONTIER	LONG DISTANCE CHARGES	GOLF ADMINISTRATION	3.19
	VERIZON/FRONTIER		POLICE ADMINISTRATION	3.84
	VERIZON/FRONTIER		PERSONNEL ADMINISTRATIOI	3.93
	VERIZON/FRONTIER		EQUIPMENT RENTAL	3.96
	VERIZON/FRONTIER		LEGAL - PROSECUTION	5.64
	VERIZON/FRONTIER		UTILITY BILLING	6.25
	VERIZON/FRONTIER		UTIL ADMIN	6.68
	VERIZON/FRONTIER		EXECUTIVE ADMIN	7.02
	VERIZON/FRONTIER		DETENTION & CORRECTION	9.38
	VERIZON/FRONTIER		WASTE WATER TREATMENT F	9.74
	VERIZON/FRONTIER		MUNICIPAL COURTS	10.41
	VERIZON/FRONTIER		PARK & RECREATION FAC	11.33
	VERIZON/FRONTIER		OFFICE OPERATIONS	11.49
	VERIZON/FRONTIER		FINANCE-GENL	13.17
	VERIZON/FRONTIER		ENGR-GENL	13.71
	VERIZON/FRONTIER		POLICE INVESTIGATION	14.81
	VERIZON/FRONTIER		POLICE PATROL	17.46
	VERIZON/FRONTIER		COMMUNITY DEVELOPMENT-	33.22
85108	VERIZON/FRONTIER	ACCT #36065173190324995	TRAFFIC CONTROL DEVICES	50.52
	VERIZON/FRONTIER	PHONE CHARGES	ENGR-GENL	53.36
	VERIZON/FRONTIER		POLICE ADMINISTRATION	53.36
	VERIZON/FRONTIER		POLICE PATROL	53.36
	VERIZON/FRONTIER		ADMIN FACILITIES	53.36
	VERIZON/FRONTIER		COMMUNICATION CENTER	53.36
	VERIZON/FRONTIER		LIBRARY-GENL	53.36
	VERIZON/FRONTIER		GENERAL SERVICES - OVERH	53.36
	VERIZON/FRONTIER	ACCT #36065771080927115	STREET LIGHTING	54.22
	VERIZON/FRONTIER	ACCT #36065943981121075	PUBLIC SAFETY BLDG.	105.78
	VERIZON/FRONTIER	PHONE CHARGES	COMMUNITY DEVELOPMENT-	106.71
	VERIZON/FRONTIER		DETENTION & CORRECTION	106.71
	VERIZON/FRONTIER		OFFICE OPERATIONS	106.71
	VERIZON/FRONTIER		COMMUNITY CENTER	106.71
	VERIZON/FRONTIER		GOLF ADMINISTRATION	106.71
	VERIZON/FRONTIER		GOLF ADMINISTRATION	106.71
	VERIZON/FRONTIER	ACCT #36065340280125085	ADMIN FACILITIES	108.44
	VERIZON/FRONTIER	PHONE CHARGES	UTILITY BILLING	160.07
	VERIZON/FRONTIER		WASTE WATER TREATMENT F	213.42
	VERIZON/FRONTIER		PARK & RECREATION FAC	266.75
	VERIZON/FRONTIER		UTIL ADMIN	348.27
85109	WILBUR-ELLIS	HIGHLAND SEED	MAINTENANCE	217.20
85110	WILLARD, DORI	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
85111	WINDEMERE RELOCATION	UB 763280000002 6421 65TH PL N	WATER/SEWER OPERATION	144.19
85112	YUN, KYUNG & CHONG	UB 680361110001 4817 106TH ST	WATER/SEWER OPERATION	45.34
85113	ZEE MEDICAL SERVICE	FIRST AID SUPPLIES	PARK & RECREATION FAC	273.09

WARRANT TOTAL: **971,894.29**

REASON FOR VOIDS:

INITIATOR ERROR
WRONG VENDOR
CHECK LOST/DAMAGED IN MAIL
UNCLAIMED PROPERTY

CHECK # 84771	**INITIATOR ERROR**	**(185.00)**
CHECK # 84857	**INITIATOR ERROR**	**(45.34)**

971,663.95

Index #4

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 24, 2013

AGENDA ITEM: Payroll	AGENDA SECTION:	
PREPARED BY: Sandy Langdon, Finance Director	AGENDA NUMBER:	
ATTACHMENTS: Blanket Certification	APPROVED BY:	
	MAYOR	CAO
BUDGET CODE:	AMOUNT:	

RECOMMENDED ACTION: The Finance and Executive Departments recommend City Council approve the June 5, 2013 payroll in the amount $1,130,455.63 Check No.'s 26630 through 26696.
COUNCIL ACTION:

Index #5

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 24, 2013

<table>
<tr><td>AGENDA ITEM:
Final plat approval for Willow Springs ZA05-123399SD located at 3115 79th Avenue NE.</td><td colspan="2">AGENDA SECTION:
New business</td></tr>
<tr><td>PREPARED BY:
Angela Gemmer, Associate Planner</td><td colspan="2">APPROVED BY:</td></tr>
<tr><td rowspan="2">ATTACHMENTS:
1. Sno. Co. Hearing Examiner's Decision dated 8/14/08
2. Vicinity map
3. Legal description
4. Final plat checklist
5. Final plat map</td><td colspan="2"></td></tr>
<tr><td>MAYOR</td><td>CAO</td></tr>
<tr><td>BUDGET CODE:</td><td colspan="2">AMOUNT:</td></tr>
</table>

DESCRIPTION:
The Snohomish County Hearing Examiner granted preliminary subdivision approval for a 13-lot subdivision known as "Willow Springs" on August 14, 2008. This plat was annexed into the City on December 1, 2006 and is located along the east side of 79th Avenue NE along 32nd Street NE with an original site address of 3115 79th Avenue NE. The applicant has met all plat conditions of approval.

RECOMMENDED ACTION: Staff recommends that the City Council approve and authorize the Mayor to sign the final plat of Willow Springs.
COUNCIL ACTION:

Snohomish County

Hearing Examiner's Office
Email: Hearing.Examiner@co.snohomish.wa.us

Barbara Dykes
Hearing Examiner

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

(425) 388-3538
FAX (425) 388-3201

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

AUG 19 2008

DATE OF DECISION: August 14, 2008

PLAT/PROJECT NAME: ***Willow Springs***

APPLICANT/
LANDOWNER: Robert Nehring, RBN Investments, LLC
3216 Wetmore Avenue, Ste. 202
Everett, WA 98201

FILE NO.: 05-123399 SD

TYPE OF REQUEST: **PRELIMINARY SUBDIVISION APPROVAL USING LOT SIZE AVERAGING**

DECISION (SUMMARY): **Preliminary Subdivision Approval GRANTED** for a 13-Lot Subdivision subject to Preconditions and Conditions

BASIC INFORMATION

GENERAL LOCATION: The subject property is located at 3115 79th Avenue N.E., Everett
Section 2, Township 29 North, Range 5 East, W.M., Snohomish County, WA

ACREAGE: 3.84 acres

NUMBER OF LOTS: 13

AVERAGE LOT SIZE: 11,410 square feet

MINIMUM LOT SIZE: 4,296 square feet

DENSITY: 6.7 du/ac

ZONING: R-9600.

GMACP
GPP Designation: Urban Low Density Residential (4-6 du/acre)

UTILITIES:
Water: Snohomish County PUD No. 1
Sewer: City of Marysville

SCHOOL DISTRICT: Lake Stevens School District No. 4

FIRE DISTRICT: Fire District No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services (PDS):	Approve with Conditions
Department of Public Works (DPW):	Approve with Conditions

INTRODUCTION

The applicant filed a Master Permit Application on July 17, 2006. (Exhibit 1A3) A second Master Permit Application was filed on September 6, 2007. (Exhibit 1A2). Finally, a Revised Master Permit Application was filed on March 18, 2008. (Exhibit 1A1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the County Code. (Exhibits 6A, 6B and 6C).

A SEPA determination of nonsignificance (DNS) was issued on April 15, 2008. (Exhibit 5B). No appeal was filed.

The Examiner held an open record hearing on June 12, 2008, the 130th day of the 120-day decision-making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The Examiner stated that although she did not perform a specific site visit prior to the open record hearing, she is familiar with the site due to the fact that she resides in the vicinity.

PUBLIC HEARING

The public hearing commenced on June 12, 2008 at 10:00 a.m.

1. Representing PDS was Elbert Esparza, Senior Planner, Dwayne Overholser, Drainage Engineer and Elizabeth Larsen, Biologist.

2. Representing the Applicant was Robert Nehring, RBN Investments, LLC.

3. No other parties or members of the public were in attendance.

NOTE: For a complete record, an electronic recording of this hearing is available through the Office of the Hearing Examiner.

FINDINGS OF FACT

Based on all of the evidence in the record, the following findings of fact are entered:

1. The master list of Exhibits and Witnesses are the record in this file, as well as the testimony of witnesses received at the open record hearing. The entire record was considered by the Examiner and is hereby incorporated by reference, as if set forth in full herein. No additional Exhibits were entered during the open record hearing.

2. Summary of the Proposal: The Applicant is requesting a 13-lot subdivision of approximately 3.84 acres utilizing lot size averaging including a modification to allow a private road (Tract 996). An existing home (to be removed), a Type 5 stream and one Category 3 wetland are located on site. A Category 3 wetland is located off site about 30 feet from the north property line.

3. Site description: The project contains approximately 3.84 acres of which 1.57 acres are streams (Type 5), a wetland (Category 3) and associated buffer. The site is currently developed with one single-family home and garage. The east portion of the site is encumbered by 150 feet of easements, the easterly easement is held by Puget Sound Energy and the west remaining 50-feet contains an easement for a gas utility. The vegetation on the site is residential landscaping and lawn located at the southwest corner of the site. The remainder portion of the site is forested land with evergreen and deciduous trees with ferns and shrubs under the canopy. Wetland areas with alder, vine maple and blackberry are located in the eastern region of the site and under the power lines and gas easements. The County's records reveal that the site has Tokul gravelly loam soils that have a hydrologic classification of Type "C". The average slopes on the site are approximately 10 percent to 15 percent.

4. Adjacent zoning and uses: The area is predominately zoned R-9600 and consists of many newer subdivisions and single-family homes located on different sized lots.

5. Neighborhood Concerns: No public letters of concern were received.

6. Park Impacts: The proposal is within Park District No. 302 and is subject to Chapter 30.66A SCC, which requires payment of $48.82 per each new single-family residential unit. The applicant has proposed to pay applicable park impact fees. Such payment is acceptable mitigation for parks and recreation impacts in accordance with County policies.

7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

   A. Road System Capacity (SCC 30.66B.310) The density calculations on the TDM Plan indicate that the density for this development is 3.4 dwelling units per acre. The development does not qualify for TDM credit. The impact fee for this proposal is based on the new average daily trips (ADT) generated by 13 new homes, which is 9.57 ADT/home. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 114.84 new ADT and has a road system capacity impact fee of $27,791.28, based on $242.00 per ADT. This impact fee must be paid proportionately prior to issuance of each building permit.

   B. Concurrency (SCC 30.66B.120) The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the DPW has made a preliminary determination that the development is concurrent as of August 31, 2006. A record of developer obligations documenting the concurrency determination will be prepared by the DPW in accordance with the provisions of SCC 30.66B.070. The expiration date of the concurrency determination will be six years from August 31, 2006. Pursuant to SCC 30.66B.130(4), the development has been deemed concurrent because it is located in TSA A which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 9.00 a.m. peak-hour trips and 12.12 p.m. peak-hour trips which is below the threshold of 50 peak-hour trips, which would require the development to be evaluated under SCC 30.66B.035.

C. Inadequate Road Condition (IRC) (SCC 30.66B.210) The subject proposal will not impact any inadequate road condition locations identified at this time within TSA A.with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Ch. 30.66B SCC.

D. Frontage Improvements (SCC 30.66B.410) The subject property frontage is located along 79th Ave. NE. Urban standard frontage improvements are required consisting of 18 feet of pavement from the centerline of right-of-way, vertical curb, 5-foot planter strip and 5-foot sidewalk. The Applicant proposes to construct a 6-foot sidewalk to meet the City of Marysville's design standards in accordance to the provisions of the County/City of Marysville Interlocal Agreement, and to match the improvements adjacent to the north. The construction of frontage improvements is required prior to recording the subdivision unless bonding of improvements is allowed, in which case construction is required prior to any occupancy of the development.

E. Access and Circulation (SCC 30.66B.420) Access is proposed from a new private cul-de-sac road off of 79th Avenue NE adjacent to the north property line. Lots 1 through 7 would take access from the cul-de-sac road, Lots 8 through 10 will take access directly from 79th Avenue, and Lots 11 through 13 will have access via a stub road (labeled private Tract 996) adjacent to the south property line. Direct access to 79th Avenue via individual driveways is acceptable to the County since it is not classified as an arterial road, and adjacent developments have been approved with similar accesses.

SCC 30.41A.210(3) requires that all subdivision roads shall be dedicated public roads designed and constructed in conformance to EDDS (except Planned Residential Developments). A Design Standard Modification per SCC30.41A.215 was included with the application to request approval of the private cul-de-sac road, and the private drive Tract 996. PDS does not object to the approval of the private roads in this development because the two roads are short dead end roads serving very few homes, and cannot be extended in the future because of development adjacent to the east. PDS staff has determined that the minimum centerline offset spacing between the proposed cul-de-sac road and the public road to the north in Willow Park (32nd Place NE) meets minimum EDDS requirements for separation. Spacing between the two proposed roads in the development meet requirements as well. There are no issues with road grade, vertical or horizontal curve, or with sight distance. The plans show a right-of-way width of 41 feet for the private cul-de-sac road, because a sidewalk and planter are not proposed on the north side. There will be no homes fronting the north side of the cul-de-sac road.

A deviation request (Exhibit #7A2) was submitted requesting approval of that design, to meet the City of Marysville's design standards. The request was approved on condition that comments are received from the City indicating agreement with the proposed design; which is a 24-foot pavement width, vertical curbs, and a 6-foot sidewalk (no planter) in a 40-foot right-of-way. A memo dated December 10, 2007 was received from John Cowling, Engineering Services Manager for the City of Marysville indicating that the City's design standards for the private cul-de-sac road (Road A) are 40-foot right-of-way, two 12-foot lanes, and 6-foot sidewalks, which is shown on the plans for Road A. However; the City requires a minimum easement radius of 50 feet for the cul-de-sac, not 48 feet as shown on the plans. In addition, the City requires that an adequate curb return radius be provided on the north side of Road A at 79th Avenue NE; and since the improvements on 79th Avenue have been completed by the development adjacent to the

north, that must be shown on the plans. The curb return from Road A must tie into the existing sidewalk on 79th Avenue at an acceptable radius. The plat (Exhibit #2B) has been revised to show a 50-foot cul-de-sac easement radius and a 25-foot radius curb return at the intersection of Road A and 79th Avenue, which is acceptable to PDS. The Applicant's proposal to eliminate the planter around the cul-de-sac bulb is acceptable to the DPW and PDS, and no EDDS deviation is required for that change.

F. Dedication of Right-of-Way (SCC 30.66B.510 and 30.66B.520) The development abuts 79th Ave. NE, which is designated as a non-arterial on the County's Arterial Circulation Map. A 30-foot right-of-way presently exists on the development's side of the right-of-way, and therefore, no additional right-of-way is required.

G. State Highway Impacts (SCC 30.66B.710) This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997. Impacts to state highways were originally calculated to be 124.41 ADT x $36.00/ADT = $4,478.76. However, the Applicant's traffic study showed no impacts to the State Highways. WSDOT sent a letter to the County dated July 20, 2006 (Exhibit #8B) in which they indicated agreement with the Applicant's analysis and, therefore, no traffic mitigation was requested from the Applicant.

H. Other Streets and Roads [SCC 30.66B.720] Based on interlocal agreements, the County shall impose mitigation to other city road system for direct impacts caused by developments. The current development proposal causes direct impacts to road systems of the Cities of Marysville and Arlington. The Applicant's initial mitigation offers to those cities have been revised because the number of lots has decreased from 14 to 13 lots.

(a) Impacts to the City of Marysville's road system are calculated as follows:
12.12 pht x 80% (sub area location) x $3,175.00 = $30,784.80

(b) Impacts to the City of Arlington's road system is calculated as follows:
12.12 pht x 20% x $3,355 = $8,132.52

PDS is recommending that payment of these amounts be imposed as a condition of preliminary plat approval.

I. Transportation Demand Management (TDM) [SCC 30.66B.630]

A TDM Plan was submitted with the initial application, but it did not meet the requirements of SCC 30.66B.640(3)(e), which requires an overall density of at least four dwelling units per gross acre. The applicant opted to submit an offer to pay the TDM fee instead of revising their plans to meet the TDM Plan requirements, which PDS finds acceptable.

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to five percent of the 12.12 new PM peak hour trips x $1,500.00, which equals $909.00. A written offer (Exhibit #8A1) for payment of this TDM obligation has been received from the Applicant.

8. Pedestrian Facilities [RCW 58.17.110]

In order to approve the subdivision, the Applicant is required to provide safe walking conditions for pedestrians and in particular, school children, who may reside in the subject development. Comments dated August 11, 2006 (Exhibit #8C6) have been received from the Lake Stevens School District indicating that all grade levels of public school children will be provided with bus

service to school and that the bus stop would be located at the entrance of the plat road with 79th Avenue NE. With the provision of sidewalks in the interior of the development and along the frontage with 79th Avenue NE, PDS has determined that safe walking conditions will be in place prior to occupancy of the subdivision.

9. Mitigation for Impacts to Schools [Chapter 30.66C SCC] Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Lake Stevens School District No. 4, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the one existing lot.

10. Drainage and grading.

Drainage. The project contains approximately 3.84 acres of which 1.57 acres are streams (Type 5), a wetland (Category 3) and associated buffer. The proposal is to establish a 13 lot short plat and construct 12 new single-family homes, approximately 280 lineal feet access road with associated utilities and private road located at the south to access detention facility and Lots 12 & 13, approximately 240 lineal feet. The access roads to the site will be from 79th Ave. NE. The proposal also includes frontage improvements on 79th Ave. NE. The site is currently developed with one single-family home and garage. All existing structures are proposed to be removed.

One detention vault is proposed to meet the detention requirements conforming to the Snohomish County standards, which has been sized to include a 30% factor of safety. The discharge and outflows from the vault will be directed into an existing storm facility along 79th Ave. NE., flow south approximately 100' until the storm water from 79th Ave. and discharge into the Type 5 stream that flows from the site. Lots 12 and 13's roof and footing drains will discharge into a level spreader trench outside of the wetland buffer. The Type 5 stream flows under the private access road; UDC Chapter 30.63A.200 (3)(C) states, "...Bridges or bottomless arch culverts shall be installed instead of culverts at stream crossings..." PDS has granted permission for the use of over size culverts with fill of gravel for approximately 1/3 of the culvert.

The undeveloped and developed runoff for this project was calculated for the 2, 10 and 100 year design storms using the Santa Barbara Unit Hydrograph method. The Stream Bank Erosion Control detention release standard as defined by the Washington State Department of Ecology (DOE) in the "1992 Stormwater Design Manual for the Puget Sound Basin" was utilized to size the detention facilities. The undeveloped flows for the 2, 10 and 100 year storms correspond to values of 0.08, 0.25 and 0.53 cfs. The developed flows from the site, prior to storm detention, correspond to values of 0.61, 1.12 and 1.78 cfs. The developed flows from the site, after storm detention, correspond to values of for 0.04, 0.25 and 0.53 cfs.

Water quality for Basin "A" will be addressed via a stormfilter manufactured by Stormwater Management, Inc. upstream of the detention vault. Water quality for Basin "B" will be addressed by a storm filter manufactured by Stormwater Management, Inc upstream of the detention vault.

The development proposes in excess of 5,000 square feet of new impervious surface which meets the definition of major development activity per SCC 30.63, and therefore a full drainage plan and report is required. No downstream flooding was reported by the Surface Water Management division of DPW. Based on the preliminary findings made by the staff of PDS's

Engineering Section relating to drainage and grading, this project will meet the requirements of the UDC Chapters 30.63A and 30.63B.

Grading. Proposed grading is in excess of 100 cubic yards which triggers the need for a grading permit and SWPP Plan per SCC 30.63B and Rule 3044. Specifically, the applicant is proposing to cut approximately 6,200 cubic yards and fill 6,200 cubic yards. The Preliminary Grading and TESC Plan (Exhibit #2B) tried to provide building pads for each lot. The Targeted Drainage Plan shows a proposed 6 foot rock wall on the south side of buildings 2, and 3. PDS may require the applicant to provide a geotechnical engineer design at the time of construction plan review.

11. Critical Areas Regulations (Chapter 30.62 SCC)

A. Fish and Wildlife Habitat Conservation Areas and Wetlands. A PDS Biological Technician conducted a wetland verification on September 7, 2005 (Calkins L88 Wetland Verification 05-123399PA). According to PDS, a Type 5 stream and one Category 3 wetland were accurately flagged in the field. A Category 3 wetland exists off-site about 30 feet from the north property line. According to the Critical Area Study and Wetland Mitigation Plan for Willow Springs prepared by Wetland Resources (revised December 19, 2007) (Exhibit #3E), the wetland is dominated by emergent species including creeping buttercup and reed canary grass with areas of Himalayan blackberry. Although portions of the wetland buffer contain trees, a majority of the buffer is dominated by Himalayan blackberry.

The Applicant is proposing a 13-lot subdivision. An existing wetland buffer will be reduced to a minimum of between 2 and 10 feet in certain areas for Lots 2, 3, 4, 5, and 12. The Type 5 stream and its buffer will be impacted in order to access Lots 12 and 13. The remaining critical areas and buffer will be designated NGPA/E and enhanced with native trees and shrubs. A total of 10,835 square feet of existing emergent wetland and 8,817 square feet of existing scrub-shrub wetland buffer will be enhanced. In addition, 710 square feet of additional wetland buffer will be provided and enhanced.

The Applicant is proposing Innovative Development Design under SCC 30.62.370; therefore, a Critical Areas Study and Wetland Mitigation Plan was prepared by Wetland Resources (revised December 19, 2007) (Exhibit #3E) and submitted for review as required per SCC 30.62.340. A mitigation plan is required under SCC 30.62.345 to address the loss of area or functional value of wetlands, streams, and buffers.

The Applicant is proposing to mitigate for proposed impacts to wetlands, streams, and buffers using Innovative Development Design (SCC 30.62.370). Under SCC 30.62.370(1)(b) the applicant is required to demonstrate that the innovative design proposal will achieve a net improvement in the functions and values of the streams and wetlands and their buffers over that existing on the subject property and that which is achievable using the provisions of SCC 30.62.310, 30.62.320, 30.62.345, and 30.62.350. A discussion of how the project meets the requirements of Innovative Development Design has been provided on Page 7 of the Critical Areas Study and Wetland Mitigation Plan (revised December 19, 2007) (Exhibit #3E).

According to the mitigation plan, the proposal will result in the loss of 4,322 square feet of wetland buffer. The portion of the buffer which will be reduced is dominated by Himalayan blackberry, a non-native and invasive species. Mitigation for the buffer impact includes enhancing 8,718 square feet of existing wetland buffer with native trees and shrubs.

PDS staff reviewed the proposed mitigation based on a formalized administrative rule which was approved by the director of PDS in June of 1998. This administrative rule states that by utilizing a set of prescribed replacement ratios, it will be assumed that all functions and values will be replaced and thus will be assumed to comply with SCC 30.62.345(1)(c). The replacement ratios are always expressed as replacement area to impact area with emergent conditions requiring a replacement ratio of 1:1, scrub-shrub at 1.5:1, forest at 2:1 and bogs at 3:1. The administrative rule has also been utilized by staff in the same manner for buffers because the assessment for vegetative habitat is comparable. Based on this rule, a scrub-shrub habitat, such as the one provided by the Himalayan blackberry dominated wetland buffer, could be mitigated by providing a mitigation ratio of 1.5(buffer enhancement):1(buffer impact). The mitigation plan proposes a 2(buffer enhancement):1(buffer impact) mitigation ratio and will improve the habitat over what is existing on the site by proposing to install conifer trees and provide a variety of native shrubs.

Although direct impacts to the on-site wetland are not proposed, the reduction of the wetland buffer to less than 25 feet in some areas will cause an indirect impact to the wetland. These indirect impacts are required to be addressed as "wetland designated as buffer" or "paper fill". The Critical Areas Study and Wetland Mitigation Plan (Exhibit #3E) has addressed the proposed "paper fill" on page 6 paragraph 4. According to the mitigation plan, the development proposal will create a total of 2,965 square feet of "wetland designated as buffer". Mitigation for the "paper fill" includes enhancing 10,835 square feet of the on-site wetland which will provide a 3.7(wetland enhancement):1(paper fill) mitigation ratio.

The Type 5 stream and its buffer will be crossed in order to access Lots 12 and 13. According to the Critical Areas Study and Wetland Mitigation Plan (Exhibit #3E) (revised December 19, 2007), a total of 705 square feet of stream buffer will be impacted. This buffer is dominated by Himalayan blackberry. Mitigation for the buffer impact includes adding 710 square feet of buffer to the existing wetland, adjacent to Lot 2. This additional buffer will be enhanced with trees and shrubs.

Pursuant to SCC 30.62.370(1)(b) the Hearing Examiner finds that the Applicant has demonstrated that the innovative design proposal will achieve a net improvement in the functions and values of the streams and wetlands and their buffers over that existing on the subject property, and that the plan is achievable using the provisions of SCC 30.62.310, 30.62.320, 30.62.345, and 30.62.350. Based on the Critical Areas Study and Wetland Mitigation Plan, prepared by Wetland Resources (revised December 19, 2007), the enhanced buffer will improve the existing functions and values of the required 25-foot standard wetland buffer, which is currently dominated by Himalayan blackberry. Also, by enhancing the wetland, the Applicant will improve the existing functions and values of the wetland which is currently dominated by emergent species. All approved critical areas and buffers will be designated NGPA/E per SCC 30.62.320. The mitigation plan has exceeded the mitigation ratios set forth under the administrative rule addressing compliance with SCC 30.62.345(1)(c), as it applies to buffers.

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application is complete and in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas.

B. Geologically Hazardous Areas:

(1) Landslide Hazards (SCC 30.62.210 SCC) The Geotechnical Engineer found some areas of the site's slopes are slightly steeper than 15% and contain relatively permeable sediment overlying relatively impermeable sediment. They found no evidence of groundwater seeps or springs on the site's slopes, additionally, the weathered till soils overlying the dense tills are relatively thin and in a medium dense, generally consolidated condition. Based on these factors, and the inherently high shear strength exhibited by the site soils, PDS agrees with the Applicant's engineer's opinion that site characteristics do not meet Snohomish County criteria for landslide hazard area.

(2) Erosion Hazards (SCC 30.62.200) The Geotechnical Engineer has reviewed the *Soil Survey of Snohomish County Area, Washington* by the Soil Conservation Service (SCS) to determine the erosion hazard of the on-site soils. The site's surface soils were classified using the SCS classification system as Tokul loam, 10% to 15% slopes (Unit 73). The erosion hazard for Unit 73 is listed as being slight to moderate.

(3) Seismic Hazards (SCC 30.62.220) The Geotechnical Engineer evaluated the potential of ground rupture at the site resulting from a severe seismic event. Review of the Quaternary Fault and Fold Database of the United States (USGS Earthquake Hazards Program) has identified the presence of a southeast-northwest trending Quaternary fault located approximately ten miles west of the project site. Due to the absence of surficial indications of rupture in the vicinity of the site, and the distance from the site of the nearest mapped fault, it is the Geotechnical Engineer opinion the potential of ground rupture at the site resulting from a severe seismic event is low.

The Geotechnical Engineer's opinion is based on subsurface explorations and the Soil Profile in accordance with Table 1615.1.1 of the 2003 International Building Code (IBC), which is Soil Class C. Additional seismic considerations include liquefaction potential and amplification of ground motions by soft soil deposits. The liquefaction potential is highest for loose sand with a high groundwater table. The underlying dense till, drift and outwash soils are considered to have a low potential for liquefaction and amplification of ground motion.

12. Fire Code (Chapter 30.53A SCC) The Uniform Fire Code (now known as the International Fire Code or "IFC"), was modified by the adoption of Amended Ordinance 07-087 on September 5, 2007, effective September 21, 2007. This application was complete as of March 26, 2007 and is therefore subject to that version of Chapter 30.53A SCC in effect prior to September 21, 2007.

The roads shown on the preliminary plat map (Exhibit #2B) meet the minimum requirements of Chapter 30.53A and the UFC for width and slope and turn around radii for the cul-de-sac shown at the end of Road A. Fire hydrants are required per SCC 30.53A.300. The location and spacing of the hydrants will be determined at the construction plan phase and are not required to be shown on the face of the preliminary plat.

The required fire flow for the fire hydrants is 1000 gpm at 20 psi for a two (2) hour duration and will be verified after construction and prior to the final plat recording. In the event the required fire flow cannot be provided, a condition will be added to the plat that requires the new dwellings in the plat to be provided with NFPA 13-D fire suppression systems. Per Section 901.4.4 of the

Uniform Fire Code, the new dwellings shall be provided with approved address numbers placed in a position that is plainly legible and visible from the street or road fronting the property. The numbers shall contrast with their background.

13. Consistency with the GMA Comprehensive Plan (GMACP) The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation "covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones. The 13-lot subdivision is consistent with the density provisions of Snohomish County's GMACP, and GMA-based zoning regulations under Subtitle 30.2 SCC.

14. Utilities

A. Water - Water service to the subdivision will be provided by Snohomish County PUD No 1. (Exhibit 8C5)

B. Sewer - The City of Marysville has stated that adequate capacity exists to serve the proposed subdivision through its sewer utility. (Exhibit 8A2)

C. Electricity – The Snohomish County PUD No. 1 has stated that there is adequate electrical capacity to serve the proposed subdivision. (Exhibit 8C2)

15. Zoning (Chapter 30.2 SCC). This project meets zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements.

Lot Size Averaging (LSA) The proposal has been evaluated for compliance with the LSA provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. Lot coverage for this proposed subdivision is a maximum of 35%. The LSA calculation is as follows:

Area in Lots 76,751 square feet + Critical Areas and Buffers 59,050 square feet + Open Space (9,526 square feet = 145,327 square feet ÷ 13 of lots proposed = 11,020 square feet

The minimum zoning requirement is 9,600 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. PDS has concluded that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

16. State Environmental Policy Act Determination (Chapter 30.61 SCC). SEPA analysis was performed for this subdivision project and a DNS was issued on April 15, 2008. (Exhibit 5B) No appeal of the DNS was filed.

17. Subdivision Code (Chapter 30.41A SCC). The proposed plat, as conditioned, meets the general requirements of SCC 30.41A.100 with respect to providing for the public health, safety and general welfare. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned and modified, the plat will meet all SCC 30.41A.210 design standards for roads.

The plat has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

The proposed plat conforms to all applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetlands, and buffer areas. The single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying County requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water and electricity will be provided by Snohomish Public Utility District No. 1 (Exhibits # 8C2 & 8C5), and sewer will be provided by the City of Marysville (Exhibit # 8A2).

18. Plats – Subdivisions – Dedications (Chapter 58.17 RCW) The County does not require the dedication of any land for right-of-way purposes or other public uses as a result of impacts from the proposed subdivision. However, the City of Marysville has requested that Tract 996 be dedicated to the City of Marysville as a condition of plat approval for future use as a pedestrian/multi-purpose trail. (Exhibit 8A2) The record shows that the Applicant has refused to comply with the City's request because of the conditions of a purchase and sale agreement which require the Tract to remain in private ownership. The PDS Staff Report does not address this issue, nor was it discussed as an issue at the public hearing. No other information was provided by the City of Marysville to justify the request or show that such a dedication is required pursuant to an interlocal agreement with the County. Accordingly, the Hearing Examiner is unable to determine whether such a request is legally justified based on the record and therefore does not find that sufficient evidence exists to grant the City's request.

19. Any Finding of Fact in this Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The proposal is consistent with the GMACP, GMA-based County Codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

2. Adequate public services exist to serve the proposed subdivision.

3. The subdivision application, with the recommended conditions, makes adequate provisions for the public health, safety and general welfare.

4. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

The request for a **13-LOT SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS:**

CONDITIONS

A. The preliminary plat received by PDS on March 18, 2008 (Exhibit #2B) shall be the approved plat configuration.

B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the County:

i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.

ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the County.

iii. A final mitigation plan based on the Critical Areas Study and Wetland Mitigation Plan, prepared by Wetland Resources (revised December 19, 2007) shall be submitted for review and approval during the construction review phase of this project.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

i. "The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens School District No. 4 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 1 existing parcel. Lot 1 shall receive credit."

ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit or double the amount for a duplex:

- $2,137.79 per lot for mitigation of impacts on County roads paid to the County,
- $69.92 per lot for transportation demand management paid to the County for TSA A,
- $2,368.06 per lot for mitigation of impacts on Marysville streets paid to the City.
- $625.58 per lot for mitigation of impacts on Arlington streets paid to the City.

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid.

iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

iv. "The dwelling units within this development are subject to park impact fees in the amount of $48.82 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

D. Prior to recording of the final plat:

i. Urban standard frontage improvements shall be constructed along the property's frontage with 79th Avenue NE unless bonding of improvements is allowed, in which case construction is required prior to any occupancy of the development.

ii. The following additional restrictions and/or items shall be indicated on the face of the final plat:

All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made);

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

iii. The final mitigation plan shall be completely implemented (additional buffer, wetland and buffer enhancement).

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the County are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

Order issued this 14th day of August, 2008.

Mary Burke, Admin Asst
for Millie M. Judge, Hearing Examiner, Pro Tem

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) within 10 days of the date of this decision (which is on or before **August 25, 2008**. There is no fee for filing a petition for reconsideration.

Note: "The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing." [SCC 30.72.065]

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

(a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
(b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
(c) The Hearing Examiner committed an error of law;
(d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
(e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
(f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record within 14 days of the date of this decision. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on

appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **August 28, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars ($500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

(a) The decision exceeded the Hearing Examiner's jurisdiction;
(b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
(c) The Hearing Examiner committed an error of law; or
(d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

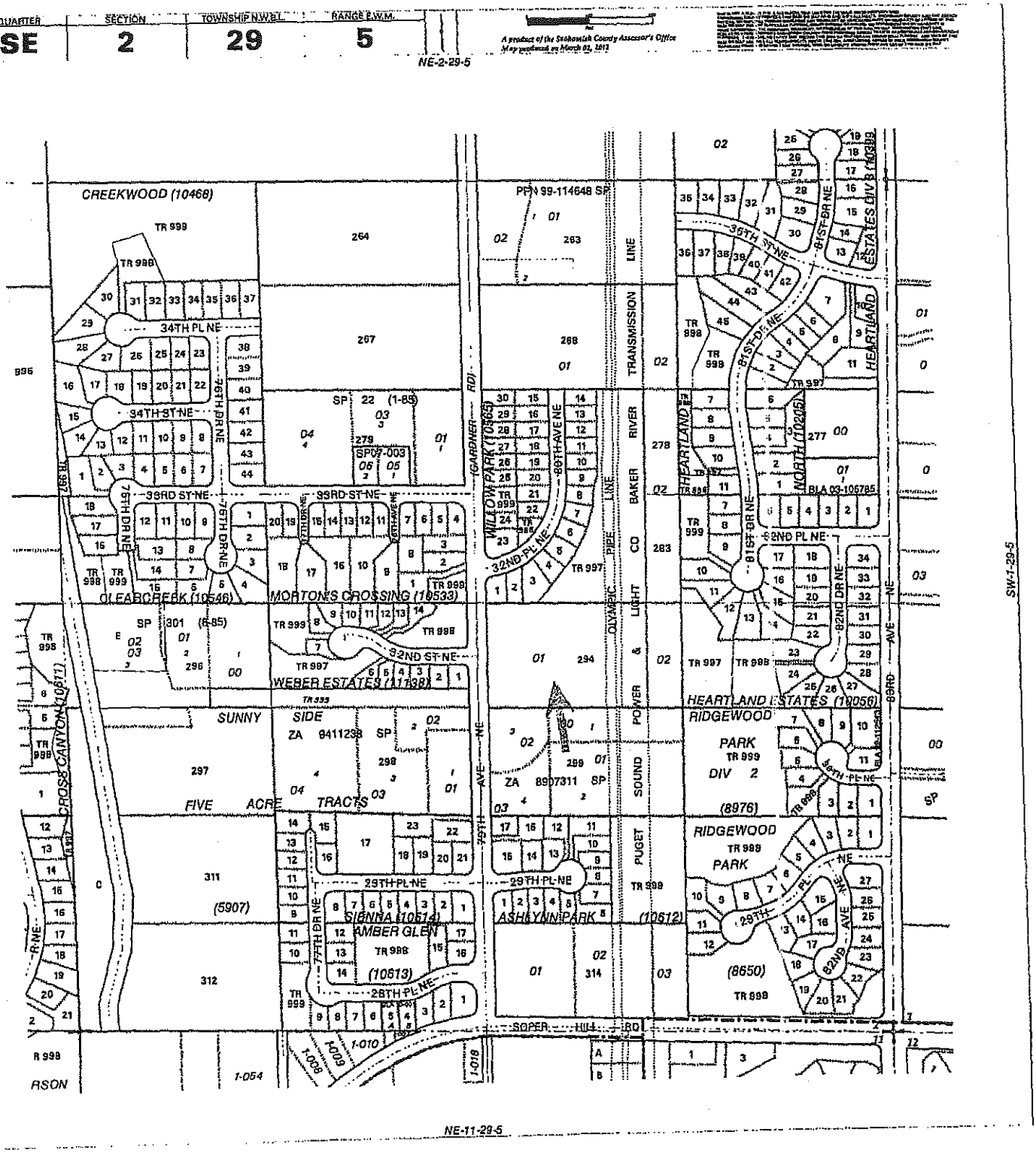
Staff Distribution:

Department of Planning and Development Services: Elbert Esparza

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

QUARTER	SECTION	TOWNSHIP N.W.B.L.	RANGE E.W.M.
SE	2	29	5

A product of the Snohomish County Assessor's Office
Map generated on March 02, 2012



This sketch is for the purpose of showing the approximate general location of the premises without actual survey and Chicago Title assumes no liability in connection with the same.

PLAT CERTIFICATE

SCHEDULE A

(Continued) Order No.: 5756718C

LEGAL DESCRIPTION

TRACT 294, SUNNYSIDE FIVE ACRE TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 19, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;
EXCEPT THAT PORTION LYING EAST OF PUGET SOUND POWER & LIGHT CO'S EAST RIGHT-OF-WAY LINE AS RECORDED UNDER AUDITOR'S FILE NUMBER 34374), IN SNOHOMISH COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

FINAL PLAT INTERNAL ROUTING CHECKLIST

Community Development Department • 80 Columbia Avenue • Marysville, WA 98270
(360) 363-8100 • (360) 651-5099 FAX • Office Hours: Monday - Friday 7:30 AM - 4:00 PM

Plat Name:	Willow Springs	File	ZA05-123995D

Item	Department	Initials	Date
1. Plat Map- Checked & Approved	Land Dev.	SAS	6/7/13
	Planning	ADG	6/5/13
2. Letter of Segregation to Assessor	Planning	ADG	5/29/13
3. Water System/Sewer System			
Letter of Acceptance	Const. Insp.	N/A	
Asbuilts – Including Digital Files	Const. Insp.	N/A	
Bill(s) of Sale	Const. Insp.	N/A	
Maintenance and Warranty Funding	Const. Insp.	N/A	
4. Road/Storm Sewer			
Letter of Acceptance	Const. Insp.	SAS	6/6/13
Asbuilts – Including Digital Files	Const. Insp.	SAS	6/6/13
Bill(s) of Sale	Const. Insp.	SAS	6/6/13
Maintenance and Warranty Funding	Const. Insp.	SAS	6/6/13
5. Performance Bond – Submitted/Approved			
(If Required - Road and Storm Drain Only)	Const. Insp.	N/A	
6. Inspection Fees - Calculated and Paid	Const. Insp.	SAS	6/6/13
7. Final Plat Fee - Calculated and Paid	Planning	ADG	4/26/13
8. TIP Fees: Not required until building permit is issued.	Planning	ADG	
9. Parks Mitigation Fees: Not required until building permit is issued.	Planning	ADG	
10. School District Mitigation Fees: Not required until building permit is issued.	Planning	ADG	
11. Signage and Striping Installed	Const. Insp.	SAS	6/7/13

12. Final Grading and TESC Inspection	Const. Insp.	SAS	6/6/13
13. Satisfied Hearing Examiner's Conditions of Approval	Planning	ADG	6/5/13
14. Utility/Recovery/Main Fees	Land Dev.	SAS	6/6/13
Plat Approved for Recording:			
Community Development Director:			
Date:			
City Engineer:			
Date:			
Note: The final plat will not be scheduled before the City Council until this checklist is complete.			

DEDICATION

KNOW ALL PERSONS BY THESE PRESENTS THAT NATURAL 9 HOLDINGS, LLC, THE UNDERSIGNED OWNERS, IN FEE SIMPLE OF THE LAND HEREBY PLATTED DECLARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS, AVENUES, PLACES AND SEWER EASEMENTS OR WHATEVER PUBLIC PROPERTY THERE IS SHOWN ON THE PLAT, EXCEPT PRIVATE ROAD TRACT 996, AND THE USE FOR ANY AND ALL PUBLIC PURPOSES NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC HIGHWAY PURPOSES. ALSO, THE RIGHT TO MAKE NECESSARY SLOPES FOR CUTS AND FILLS UPON LOTS, BLOCKS, TRACTS, ETC., SHOWN ON THIS PLAT IN THE REASONABLE ORIGINAL GRADING OF ALL THE STREETS, AVENUES, PLACES, ETC., SHOWN HEREON. ALSO, THE RIGHT TO DRAIN ALL STREETS OVER AND ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER THE STREET OR STREETS ARE GRADED. ALSO, ALL CLAIMS FOR DAMAGE AGAINST ANY GOVERNMENTAL AUTHORITY ARE WAIVED WHICH MAY BE OCCASIONED TO THE ADJACENT LAND BY THE ESTABLISHMENT, CONSTRUCTION, DRAINAGE, AND MAINTENANCE OF SAID ROADS.

FOLLOWING ORIGINAL REASONABLE GRADING OF ROADS AND WAYS HEREON, NO DRAINAGE WATERS ON ANY LOT OR LOTS SHALL BE DIVERTED OR BLOCKED FROM THEIR NATURAL COURSE SO AS TO DISCHARGE UPON ANY PUBLIC ROAD RIGHTS-OF-WAY TO HAMPER PROPER ROAD DRAINAGE. THE OWNER OF ANY LOT OR LOTS, PRIOR TO MAKING AN ALTERATION IN THE DRAINAGE SYSTEM AFTER THE RECORDING OF THE PLAT, MUST MAKE APPLICATION TO AND RECEIVE APPROVAL FROM THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS FOR SAID ALTERATION. ANY ENCLOSING OF DRAINAGE WATERS IN CULVERTS OR DRAINS OR REROUTING THEREOF ACROSS ANY LOT AS MAY BE UNDERTAKEN BY OR FOR THE OWNER OF ANY LOT SHALL BE DONE BY AND AT THE EXPENSE OF SUCH OWNER AFTER ACQUIRING A CULVERT PERMIT FROM THE DEPARTMENT OF PUBLIC WORKS, IF REQUIRED, AND SUBJECT TO ANY OTHER EXISTING PERMITTING REQUIREMENTS THEREFORE.

THAT SAID DEDICATION TO THE PUBLIC SHALL BE IN NO WAY CONSTRUED TO PERMIT A RIGHT OF DIRECT ACCESS TO 79TH AVE. NE FROM LOT 7, NOR SHALL THE CITY OF MARYSVILLE OR ANY OTHER LOCAL GOVERNMENTAL AGENCY EVER BE REQUIRED TO GRANT A PERMIT TO BUILD OR CONSTRUCT AN ACCESS OF APPROACH TO SAID STREET FROM SAID LOT.

TRACT 998 IS FOR STORMWATER DETENTION AND IS HEREBY CONVEYED TO THE CITY OF MARYSVILLE UPON RECORDING OF THIS PLAT.

TRACTS 990, 991, 992, 993, 994, 995, 996, 997, AND 999 ARE HEREBY GRANTED AND CONVEYED TOGETHER WITH ALL MAINTENANCE OBLIGATIONS TO THE WILLOW SPRINGS HOMEOWNERS ASSOCIATION. USE OF SAID TRACTS IS RESTRICTED TO THAT SPECIFIED IN THE APPROVED FINAL PLAT. THE HOA SHALL REMAIN IN EXISTENCE UNLESS AND UNTIL ALL LOTS WITHIN THIS SUBDIVISION HAVE ASSUMED COMMON OWNERSHIP OF SAID TRACTS. IN THE EVENT THE HOA SHOULD BE DISSOLVED, THEN EACH LOT SHALL HAVE AN EQUAL AND UNDIVIDED OWNERSHIP INTEREST IN THE TRACTS PREVIOUSLY OWNED BY THE HOA AS WELL AS RESPONSIBILITY FOR MAINTAINING THE TRACTS. THESE TRACTS SHALL REMAIN AN APPURTENANCE TO AND INSEPARABLE FROM EACH LOT. THIS COVENANT SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF THE HOA, THE OWNERS OF ALL LOTS WITHIN THE SUBDIVISION AND ALL OTHERS HAVING AN INTEREST IN THE TRACTS OR LOTS.

IN WITNESS WHEREOF, WE SET OUR HANDS AND SEALS THIS _____ DAY OF _____, 2013.

NATURAL 9 HOLDINGS, LLC

BY: _____
TIM KAINTZ, MEMBER

ACKNOWLEDGMENTS

STATE OF WASHINGTON }
} ss
COUNTY OF SNOHOMISH }

THIS IS TO CERTIFY THAT ON THIS ____ DAY OF _____, 2013, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC, PERSONALLY APPEARED TIM KAINTZ, TO ME KNOWN TO BE THE PERSON WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN MENTIONED. WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

_____
NOTARY SIGNATURE

_____ DATED: _____
(PRINT NAME)
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT _____
MY APPOINTMENT EXPIRES: _____

EASEMENTS, RESTRICTIONS AND COVENANTS

(1) NO FURTHER SUBDIVISION OF ANY LOT WITHOUT RESUBMITTING FOR FORMAL PLAT PROCEDURE.

(2) THE SALE OR LEASE OF LESS THAN A WHOLE LOT IN ANY SUBDIVISION PLATTED AND FILED UNDER TITLE 22 OF THE MARYSVILLE MUNICIPAL CODE IS EXPRESSLY PROHIBITED EXCEPT IN COMPLIANCE WITH TITLE 22 OF THE MARYSVILLE MUNICIPAL CODE.

(3) ALL LANDSCAPED AREAS IN PUBLIC RIGHTS-OF-WAY SHALL BE MAINTAINED BY THE OWNER(S) OR THEIR SUCCESSOR(S) AND MUST BE REDUCED OR ELIMINATED AT THE REQUEST OF THE CITY OF MARYSVILLE IF DEEMED NECESSARY FOR OR DETRIMENTAL TO CITY ROAD PURPOSES;

(4) THE LOCATION AND HEIGHT OF ALL FENCES AND OTHER OBSTRUCTIONS WITHIN AN EASEMENT AS DEDICATED ON THIS PLAT SHALL BE SUBJECT TO THE APPROVAL OF THE DIRECTOR OF PUBLIC WORKS OR HIS DESIGNEE.

(5) GARAGES SHALL BE SET BACK A MINIMUM OF 18 FEET FROM THE FRONT PROPERTY LINE.

(6) DUPLEXES WILL NOT BE PERMITTED ON ANY LOT OF THIS SUBDIVISION.

(7) YOUR REAL PROPERTY IS WITHIN, ADJACENT TO, OR WITHIN 1,300 FEET OF DESIGNATED FARMLAND; THEREFORE, YOU MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL ACTIVITIES, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, FUMES, DUST, SMOKE, THE OPERATION OF MACHINERY OF ANY KIND (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE, THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL OR ORGANIC FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES, HOURS OF OPERATION, AND OTHER AGRICULTURAL ACTIVITIES.

SNOHOMISH COUNTY HAS ADOPTED AGRICULTURAL LANDS REGULATIONS (CHAPTER 30.32B SCC) WHICH MAY AFFECT YOU AND YOUR LAND. YOU MAY OBTAIN A COPY OF CHAPTER 30.32 SCC FROM SNOHOMISH COUNTY.

A PROVISION OF CHAPTER 30.33 SCC PROVIDES THAT "AGRICULTURAL ACTIVITIES CONDUCTED ON DESIGNATED FARMLANDS IN COMPLIANCE WITH ACCEPTABLE AGRICULTURE PRACTICES AND ESTABLISHED PRIOR TO SURROUNDING NON-AGRICULTURAL ACTIVITIES ARE PRESUMED TO BE REASONABLE AND SHALL NOT BE FOUND TO CONSTITUTE A NUISANCE UNLESS THE ACTIVITIES HAVE A SUBSTANTIAL ADVERSE EFFECT ON THE PUBLIC HEALTH AND SAFETY.

THIS DISCLOSURE APPLIES TO THE REAL PROPERTY WHICH IS SUBJECT TO A DEVELOPMENT OR BUILDING PERMIT AS OF THE DATE OF THE DEVELOPMENT OR BUILDING PERMIT APPROVAL OR, IN THE CASE OF REAL PROPERTY TRANSFERS, THE DISCLOSURE APPLIES TO THE SUBJECT PROPERTY AS OF THE DATE OF THE TRANSFER. THIS DISCLOSURE MAY BE APPLICABLE THEREAFTER IF AREAS DESIGNATED FARMLAND ARE CHANGED FROM THE FARMLAND DESIGNATION.

NOTHING IN CHAPTER 30.32B SCC SHALL AFFECT OR IMPAIR ANY RIGHT TO SUE FOR DAMAGES.

(8) THERE SHALL BE NO DIGGING, GRADING, BUILDING OR FENCEING ALLOWED WITHIN GAS EASEMENT.

EASEMENTS, RESTRICTIONS AND COVENANTS (CONTINUED)

(9) TRACT 998 IS A PRIVATE ROAD. THE COST OF CONSTRUCTION AND MAINTAINING TRACT 998 SHALL BE THE OBLIGATION OF ALL OF THE OWNERS AND THE OBLIGATION TO MAINTAIN SHALL BE CONCURRENTLY THE OBLIGATION OF ANY CORPORATION IN WHICH TITLE OF TRACT 998 MAY BE HELD. IN THE EVENT THAT THE OWNERS OF ANY LOTS SERVED BY TRACT 998 OF THIS PLAT SHALL PETITION MARYSVILLE CITY COUNCIL TO INCLUDE TRACT 998 IN THE PUBLIC ROAD SYSTEM, THE PETITIONERS SHALL BE OBLIGATED TO BRING THE SAME TO CITY ROAD STANDARDS APPLICABLE AT THE TIME OF PETITION IN ALL RESPECTS, INCLUDING DEDICATION OF RIGHTS-OF-WAY, PRIOR TO ACCEPTANCE BY THE CITY.

(10) SUBJECT TO THE "DECLARATION OF PROTECTIVE COVENANTS" RECORDED UNDER AFN _____

SCHOOL IMPACT MITIGATION FEES

THE LOTS WITHIN THIS SUBDIVISION WILL BE SUBJECT TO SCHOOL IMPACT MITIGATION FEES FOR THE LAKE STEVENS SCHOOL DISTRICT NO. 4 TO BE DETERMINED BY THE CERTIFIED AMOUNT WITHIN THE BASE FEE SCHEDULE IN EFFECT AT THE TIME OF BUILDING PERMIT APPLICATION, AND TO BE COLLECTED PRIOR TO BUILDING PERMIT ISSUANCE, IN ACCORDANCE WITH THE PROVISIONS OF SCC 30.66C.010. CREDIT SHALL BE GIVEN FOR 1 EXISTING PARCEL. LOT 1 SHALL RECEIVE CREDIT.

TRAFFIC MITIGATION FEES

PAYMENT IN THE AMOUNT OF $2,137.79 PER LOT FOR MITIGATION OF IMPACTS ON SNOHOMISH COUNTY ROADS, SHALL BE PAID TO THE CITY OF MARYSVILLE PRIOR TO BUILDING PERMIT ISSUANCE.

PAYMENT IN THE AMOUNT OF $88.92 PER LOT FOR TRANSPORTATION DEMAND MANAGEMENT PAID TO THE CITY OF MARYSVILLE FOR TSA A PRIOR TO BUILDING PERMIT ISSUANCE.

PAYMENT IN THE AMOUNT OF $3,368.06 PER LOT FOR MITIGATION OF IMPACTS ON CITY OF MARYSVILLE ROADS, SHALL BE PAID TO THE CITY OF MARYSVILLE PRIOR TO BUILDING PERMIT ISSUANCE.

PAYMENT IN THE AMOUNT OF $825.58 PER LOT FOR MITIGATION OF IMPACTS ON ARLINGTON ROADS, SHALL BE PAID TO THE CITY OF ARLINGTON PRIOR TO BUILDING PERMIT ISSUANCE. PROOF OF PAYMENT SHALL BE PROVIDED TO THE CITY OF MARYSVILLE.

PARKS AND RECREATION IMPACT FEES

THE DWELLING UNITS WITHIN THIS DEVELOPMENT ARE SUBJECT TO PARK IMPACT FEES IN THE AMOUNT OF $48.82 PER NEWLY APPROVED DWELLING UNIT PURSUANT TO CHAPTER 30.66A. PAYMENT OF THESE MITIGATION FEES IS REQUIRED PRIOR TO BUILDING PERMIT ISSUANCE; PROVIDED THAT THE BUILDING PERMIT HAS BEEN ISSUED WITHIN FIVE YEARS AFTER THE APPLICATION IS DEEMED COMPLETE. AFTER FIVE YEARS, PARK IMPACT FEES SHALL BE BASED UPON THE RATE IN EFFECT AT THE TIME OF BUILDING PERMIT ISSUANCE.

OPEN SPACE PROTECTION

ALL OPEN SPACE SHALL BE PROTECTED AS OPEN SPACE IN PERPETUITY, INCLUDING TRACTS 990-995, 997 & 999. USE OF THE OPEN SPACE TRACTS WITHIN THIS SUBDIVISION IS RESTRICTED TO THOSE USES APPROVED FOR THE SUBDIVISION, TO INCLUDE ANY OPEN PLAY AREAS, SPORT COURTS, TOT LOTS, TRAILS, DRAINAGE FACILITIES, PICNIC TABLES, BENCHES, AND REQUIRED LANDSCAPE IMPROVEMENTS AS SHOWN ON THE APPROVED SITE PLAN AND THE APPROVED LANDSCAPE PLAN. COVENANTS, CONDITIONS AND RESTRICTION AS RECORDED WITH THE PLAT, AS MAY BE AMENDED IN THE FUTURE, SHALL INCLUDE PROVISIONS FOR THE CONTINUING PRESERVATION AND MAINTENANCE OF THE USES, FACILITIES AND LANDSCAPING WITHIN THE OPEN SPACE AS APPROVED AND CONSTRUCTED.

NATIVE GROWTH PROTECTION AREA

ALL NATIVE GROWTH PROTECTION AREAS SHALL BE LEFT PERMANENTLY UNDISTURBED IN A SUBSTANTIALLY NATURAL STATE, INCLUDING TRACT 999. NO CLEARING, GRADING, FILLING, BUILDING CONSTRUCTION OR PLACEMENT, OR ROAD CONSTRUCTION OF ANY KIND SHALL OCCUR, EXCEPT REMOVAL OF HAZARDOUS TREES. THE ACTIVITIES AS SET FORTH IN SCC 30.91N.010 ARE ALLOWED WHEN APPROVED BY THE COUNTY.

ALL NGPA AND OPEN SPACE TRACTS SHOWN HEREON ARE TO REMAIN IN THE OWNERSHIP OF THE HOME OWNERS ASSOCIATION FOR THIS PLAT.

PUBLIC TRAIL EASEMENT

A PUBLIC TRAIL EASEMENT WITHIN TRACTS 997 AND 999 IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF MARYSVILLE FOR CONSTRUCTION AND OPERATION OF PUBLIC TRAIL FACILITIES. THE CITY OF MARYSVILLE IS HEREBY RESPONSIBLE FOR THE MAINTENANCE OF THE PUBLIC TRAIL FACILITIES WITHIN SAID EASEMENT. THE LOCATION OF SAID EASEMENT IS OVER THOSE PORTIONS OF TRACTS 997 AND 999 WHICH ARE ENCUMBERED BY EXISTING UTILITY EASEMENT, SPECIFICALLY THE EAST 10 FEET OF THE GAS EASEMENT RECORDED UNDER RECORDING NUMBER 1682699 AND THE WEST 20 FEET OF THE PSPL POWER EASEMENT RECORDED UNDER RECORDING NUMBER 343740.

UTILITY EASEMENTS

A UTILITY EASEMENT, TOGETHER WITH INGRESS, EGRESS AND MAINTENANCE RIGHTS FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, OPERATING AND MAINTAINING THE SANITARY SEWER SYSTEM AND ASSOCIATED APPURTENANCES IS HEREBY GRANTED TO THE CITY OF MARYSVILLE, OVER, UNDER, ACROSS AND THROUGH THAT PORTION OF LOTS 1 THROUGH 13, AS SHOWN TOGETHER WITH TRACTS 990, 991, 992, 993, 994, 995, 996, 997, 998, AND 999 IN THEIR ENTIRETY.

A UTILITY EASEMENT, TOGETHER WITH INGRESS, EGRESS AND MAINTENANCE RIGHTS FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, OPERATING AND MAINTAINING THE WATER SYSTEMS AND ASSOCIATED APPURTENANCES IS HEREBY GRANTED TO SNOHOMISH COUNTY PUD, ITS SUCCESSORS AND ASSIGNS, OVER, UNDER, ACROSS AND THROUGH THAT PORTION OF LOTS 1 THROUGH 13, AS SHOWN TOGETHER WITH TRACTS 990, 991, 992, 993, 994, 995, 996, 997, 998, AND 999 IN THEIR ENTIRETY.

A UTILITY EASEMENT, TOGETHER WITH INGRESS, EGRESS AND MAINTENANCE RIGHTS FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, OPERATING AND MAINTAINING THE STORMWATER SYSTEMS AND ASSOCIATED APPURTENANCES IS HEREBY GRANTED TO THE CITY OF MARYSVILLE, OVER, UNDER, ACROSS AND THROUGH THAT PORTION OF LOTS 1 THROUGH 13, AS SHOWN TOGETHER WITH TRACTS 990, 991, 992, 993, 994, 995, 996, 997, 998, AND 999 IN THEIR ENTIRETY.

10 FOOT FRONTAGE UTILITY EASEMENT

AN EASEMENT SHALL BE RESERVED FOR AND GRANTED TO ALL UTILITIES SERVING THE SUBJECT PLAT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, UNDER AND UPON THE EXTERIOR (10) FEET PARALLEL WITH AND ADJOINING THE STREET FRONTAGE OF ALL LOTS IN WHICH TO INSTALL, LAY, CONSTRUCT, RENEW, OPERATE AND MAINTAIN UNDERGROUND CONDUITS, CABLES, PIPE AND WIRES WITH NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVING THIS SUBDIVISION AND OTHER PROPERTY WITH ELECTRIC, TELEPHONE, AND UTILITY SERVICE, TOGETHER WITH THE RIGHT TO ENTER UPON THE LOTS AT ALL TIMES FOR THE PURPOSE HEREIN STATED. DRAINAGE EASEMENTS DESIGNATED ON THE PLAT ARE HEREBY RESERVED FOR AND GRANTED TO THE CITY OF MARYSVILLE, EXCEPT THOSE DESIGNATED ON THE PLAT AS PRIVATE EASEMENTS, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS AND THE RIGHT TO EXCAVATE, CONSTRUCT, OPERATE, MAINTAIN, REPAIR AND/OR REBUILD AN ENCLOSED OR OPEN-CHANNEL STORM WATER CONVEYANCE SYSTEM AND/OR OTHER DRAINAGE FACILITIES, UNDER, UPON OR THROUGH THE DRAINAGE EASEMENT.

SEWER EASEMENTS

SANITARY SEWER EASEMENTS DESIGNATED ON THE PLAT ARE FOR SEWER MAIN LINES ONLY, SIDE SEWER MAINTENANCE IS THE RESPONSIBILITY OF THE INDIVIDUAL HOMEOWNER SERVED BY THE SIDE SEWER.

SUBJECT TO:

1. SUBJECT TO A PUGET SOUND POWER AND LIGHT COMPANY, AND CORPORATION EASEMENT PER RECORDING NO. 343740.

2. SUBJECT TO AN EASEMENT TO OLYMPIC PIPE LINE COMPANY PER RECORDING NO. 1682699.

3. SUBJECT TO CITY OF MARYSVILLE RECOVERY CONTRACT NO. 233 PER RECORDING NO. 200105300299.

4. SUBJECT TO CITY OF MARYSVILLE RECOVERY CONTRACT NO. 251 PER RECORDING NO. 200304240256.

5. SUBJECT TO CITY OF MARYSVILLE RECOVERY CONTRACT NO. 253 PER RECORDING NO. 200304240268.

6. SUBJECT TO CITY OF MARYSVILLE RECOVERY CONTRACT NO. 272 PER RECORDING NO.200702010096.

LEGAL DESCRIPTION

TRACT 294, SUNNY SIDE 5 ACRE TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 19, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;
EXCEPT THAT PORTION LYING EAST OF PUGET SOUND POWER AND LIGHT CO'S EAST RIGHT-OF-WAY LINE AS RECORDED UNDER AUDITOR'S FILE NUMBERS 343740 IN SNOHOMISH COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

CITY OF MARYSVILLE APPROVALS

EXAMINED AND FOUND TO BE IN CONFORMITY WITH APPLICABLE ZONING AND OTHER LAND USE CONTROLS.

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2013.

_____ _____
MAYOR, CITY OF MARYSVILLE ATTEST: CITY CLERK/ DEPUTY

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2013.

_____
CITY ENGINEER, CITY OF MARYSVILLE

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2013.

_____
COMMUNITY DEVELOPMENT DIRECTOR, CITY OF MARYSVILLE

AUDITOR'S CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF PACIFIC COAST SURVEYS, INC. THIS _____ DAY OF _____, 2013, AT _____ MINUTES PAST _____ M, AND RECORDED IN VOLUME _____ OF PLATS, PAGES _____, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

_____
AUDITOR, SNOHOMISH COUNTY

BY: _____
DEPUTY COUNTY AUDITOR

TREASURER'S CERTIFICATE

I HEREBY CERTIFY THAT ALL STATE AND COUNTY TAXES HERETOFORE LEVIED AGAINST THE PROPERTY DESCRIBED HEREIN, ACCORDING TO THE BOOKS AND RECORDS OF MY OFFICE, HAVE BEEN FULLY PAID AND DISCHARGED, INCLUDING _____ TAXES.

_____
TREASURER, SNOHOMISH COUNTY

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF TIM KAINTZ IN MAY, 2013.

I HEREBY CERTIFY THAT THE PLAT OF WILLOW SPRINGS IS BASED UPON AN ACTUAL SURVEY AND SUBDIVISION OF SECTION 2, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M. AS REQUIRED BY THE STATE STATUTES; THAT THE DISTANCES, COURSES AND ANGLES ARE SHOWN HEREON CORRECTLY; THAT THE MONUMENTS ARE SET AND THE LOT AND BLOCK CORNERS ARE STAKED CORRECTLY ON THE GROUND, THAT I FULLY COMPLIED WITH THE PROVISIONS OF THE STATE AND LOCAL STATUTES AND REGULATIONS GOVERNING PLATTING.

DARREN J. RIDDLE
STATE OF WASHINGTON
37536
REGISTERED
PROFESSIONAL LAND SURVEYOR

_____
DARREN J. RIDDLE
PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 37536

_____
DATE

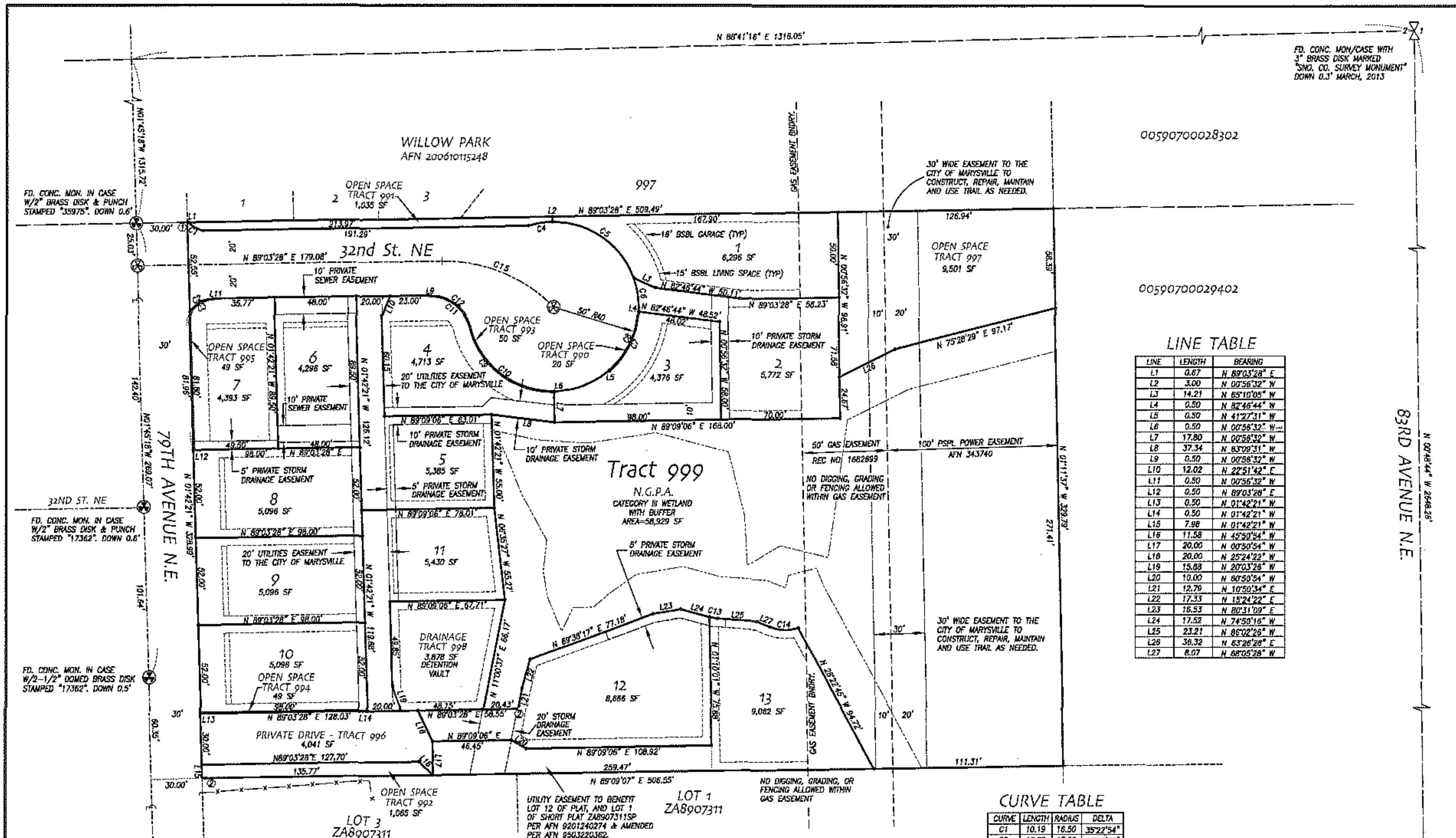
A.F. NO. _____

SHEET 1 of 2

Pacific Coast Surveys, Inc.
LAND SURVEYING & MAPPING
P.O. BOX 13619
MILL CREEK, WA 98082
PH. 425.508.4951 FAX 425.357.3577
www.PCSurveys.net

PLAT OF:
WILLOW SPRINGS
PFN: 05-123399SD
CITY OF MARYSVILLE, SNOHOMISH COUNTY, WA
SE 1/4 & SE/4, SW 1/4, SEC.2, T.29N., R.5E., W.M.

DRAWN BY	DATE	DRAWING FILE NAME	SCALE	JOB NO.
MAH	6.06.13	13621FPM.DWG	1" = 40'	13-621



LINE TABLE

LINE	LENGTH	BEARING
L1	0.67	N 89°03'28" E
L2	3.00	N 00°56'32" W
L3	14.21	N 65°10'05" W
L4	0.50	N 82°46'44" W
L5	0.50	N 41°27'31" W
L6	0.50	N 00°56'32" W
L7	17.80	N 00°56'32" W
L8	37.34	N 83°09'31" W
L9	0.50	N 00°56'32" W
L10	12.02	N 22°51'42" E
L11	0.50	N 00°56'32" W
L12	0.50	N 89°03'28" E
L13	0.50	N 01°42'21" W
L14	0.50	N 01°42'21" W
L15	7.98	N 01°42'21" W
L16	11.58	N 45°50'54" W
L17	20.00	N 00°50'54" W
L18	20.00	N 25°24'22" W
L19	15.88	N 20°03'26" W
L20	10.00	N 60°50'54" W
L21	12.79	N 10°50'34" E
L22	17.33	N 15°24'22" E
L23	16.53	N 80°31'09" E
L24	17.52	N 74°50'16" W
L25	23.21	N 86°02'26" W
L26	36.32	N 63°26'28" E
L27	8.07	N 68°05'28" W

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA
C1	10.19	16.50	35°22'54"
C2	16.68	17.00	56°12'12"
C3	16.03	16.50	55°40'00"
C4	14.19	50.00	16°15'37"
C5	61.94	50.00	70°58'55"
C6	20.17	50.00	23°07'07"
C7	39.96	50.50	45°20'33"
C8	75.06	50.00	86°00'57"
C9	67.68	50.50	76°47'01"
C10	67.01	50.00	76°46'58"
C11	32.88	24.50	76°53'57"
C12	33.55	25.00	76°53'57"
C13	4.89	25.00	11°12'10"
C14	17.06	25.00	39°06'32"
C15	72.98	90.00	46°27'28"

EQUIPMENT & PROCEDURES

METHOD OF SURVEY:
SURVEY PERFORMED BY FIELD TRAVERSE

INSTRUMENTATION:
LEICA TCRA 1205 ROBOTIC ELECTRONIC TOTAL STATION

PRECISION:
MEETS OR EXCEEDS STATE STANDARDS WAC 332-130-090

BASIS OF BEARING:
THE MONUMENTED CENTERLINE LINE OF 79TH AVENUE N.E. AS THE BEARING OF NORTH 01°42'21" WEST.

LEGEND

- SET 1/2" X 24" REBAR W/CAP STAMPED "L.S. 37536"
- FOUND REBAR/CAP AS NOTED
- SET CONC. MON/CASE STAMPED "PCS - 37536"
- RIGHT OF WAY CENTERLINE
- OFFSET IN FEET TO SET CORNER

SCALE: 1" = 40'
0 40 80

A.F. NO. ____________

SHEET 2 of 2

DARREN J. RIDDLE — STATE OF WASHINGTON — 37536 — REGISTERED PROFESSIONAL LAND SURVEYOR

Pacific Coast Surveys, Inc.
LAND SURVEYING & MAPPING
P.O. BOX 13619
MILL CREEK, WA 98082
PH. 425.508.4951 FAX 425.357.3577
www.PCSurveys.net

PLAT OF:
WILLOW SPRINGS
PFN: 05-123399SD
CITY OF MARYSVILLE, SNOHOMISH COUNTY, WA
SE 1/4 & SE/4, SW 1/4, SEC.2, T.29N., R.5E., W.M.

DRAWN BY	DATE	DRAWING FILE NAME	SCALE	JOB NO.
MAH	6.06.13	13621FPM.DWG	1" = 40'	13-621

Index #6

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 6/24/13

AGENDA ITEM: WA DES Master Contract Usage Agreement	
PREPARED BY: Cheryl Niclai, Administrative Services Manager **DEPARTMENT:** Public Works	**DIRECTOR APPROVAL:**
ATTACHMENTS: Master Contract Usage Agreement Exhibit A: Contract/Procurement Services Rates	
BUDGET CODE: N/A	**AMOUNT:** $0.00

SUMMARY:

The City of Marysville currently participates in an Intergovernmental Cooperative Purchasing Agreement with the State of Washington that allows the City to access contracts which the Office of State Procurement has bid. By using State contracts, the City is able to take advantage of bulk pricing and save time bidding and managing our own contracts.

The City extended the current Cooperative Purchasing Agreement to July 1, 2013 when the State announced they were in the process of adopting a single vendor management fee model for all contracting activity and would do six month extensions in the meantime.

The State introduced the Master Contracts Usage Agreement (MCUA) on May 30, 2013. The new model offers the same services as previous contracts and eliminates the annual membership fee. Instead of charging users of the contract, they have implemented a vendor paid management fee be assessed on all contracts (see Attachment A).

If passed, the Agreement will become effective on date of execution. It will continue in full force and effect until 30 (thirty) days following receipt of written notice from either party cancelling the Agreement.

RECOMMENDED ACTION:
Staff recommends Council authorize the Mayor to sign the Master Contract Usage Agreement.

Agreement Number: _____

DES Use Only

MASTER CONTRACT USAGE AGREEMENT

This Master Contract Usage Agreement (the "Agreement") is made pursuant to Chapter 39.34 of the Revised Code of Washington, and other applicable laws, by and between the state of Washington (the "State"), acting by and through the Department of Enterprise Services ("DES"), an agency of the State, and City of Marysville, *Entity Name*, a state agency, or local or federal agency or entity, or public benefit nonprofit corporation, or any tribe located in the State ("Buyer").

1. Purpose: The purpose of the Agreement is to establish the terms and conditions for when Buyer purchases or acquires goods and services for its direct use under contracts entered into by DES that permit such use ("Master Contracts").

2. Duration: This Agreement will become effective on date of execution, and will continue in full force and effect until thirty (30) days following receipt of written notice from either party cancelling this Agreement.

3. Agreement Contact Information: Contact person to whom contract documents and related communications are to be mailed or faxed.

Organization Name:	City of Marysville		
Tax Identification Number:	91-6001459		
Unified Business Identifier *Required for Non-Profit:*	34-000-001		
Contact Name:	Cheryl Niclai		
Title:	Administrative Services Manager		
Address:	80 Columbia Avenue		
City:	Marysville	State: WA	Zip: 98270
Phone Number:	360-363-8123		
Email Address:	CNiclai@marysvillewa.gov		

4. Cancellation of Agreement: This agreement can be terminated by either party upon 30 days written notice provided to DES at:

   Email to: mcua@des.wa.gov OR Mail to: WA Dept of Enterprise Services
   MCUA, Attn: Kris Gorgas
   P.O. Box 41409
   Olympia, WA 98504-1409

5. Financial Responsibility: Buyer will deal directly with the Master Contract contractor, supplier, or service supplier ("Contractor") for any purchases Buyer makes pursuant to this Agreement and under a Master Contract. DES does not accept any responsibility, financial or otherwise, for any purchase Buyer makes under a Master Contract.

Agreement Number: _____

DES Use Only

6. Compliance with Other Laws: Each of the parties will comply with all applicable federal, state, and local laws and regulations governing its own purchases.

7. Master Contract Audits: Buyer agrees to cooperate with DES, the Office of the State Auditor, federal officials, or any third party authorized by law, rule, regulation or contract, in any audit conducted by such party related to any Master Contract(s) that Buyer has made purchases from pursuant to this Agreement, including providing records related to any purchase from a Master Contract. In addition, Buyer agrees to provide, upon request from DES, documentation to confirm its eligibility to use Master Contracts.

8. Dispute Resolution: If there are any disputes between Buyer and a Contractor, Buyer agrees to (a) provide DES written notice of the nature of the dispute; and (b) unless otherwise provided in the Master Contract or as set forth below, work in good faith with the Contractor to resolve the dispute without the involvement of DES. DES may, upon request, review and assist in the resolution of a dispute, and if DES chooses to do so, the Buyer will cooperate with DES in that resolution process.

   In its sole discretion, DES may, but is not obligated to, upon written notice to Buyer, resolve disputes with a Contractor on behalf of Buyer and all other state, local, and federal agencies, local governments, and public benefit nonprofit corporations with similar or related disputes with such Contractor.

9. No Separate Entity: No separate legal or administrative entity is intended to be created by, or for the administration of, this Agreement.

10. Hold Harmless: Each party agrees to defend, indemnify, and hold the other party harmless from any claim arising from such party's sole negligent, reckless, or willful misconduct.

11. Entire Agreement: This Agreement sets forth the entire agreement between the parties, and supersedes any other prior written agreements between the parties, with respect to the subject matter hereof.

IN WITNESS WHEREOF the parties having read this Agreement, agree to it in each and every particular, and have executed it below.

APPROVED	**APPROVED**
WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES	City of Marysville
Entity Name	Entity Name
Signature	Signature
Roselyn Marcus, Assistant Director	Jon Nehring, Mayor
Name/Title	Name/Title
Date	Date

Attachment A

Contract/Procurement Services Rates

	Current biennium	13-15 Biennium
Services included	• Establish, maintain, and ensure performance of master contracts (formerly performed by General Administration (GA), Department of Information Services (DIS), and Department of Personnel (DOP)) • Provide procurement consultation (formerly provided by DIS and GA) • Provide procurement oversight (formerly provided by the Office of Financial Management (OFM)	
How costs Are recovered	• **Purchasing Administration Fee (PAF)** - Either 0.75% or 1.5% of the agency's spending on certain master contracts in the odd-numbered year of the last biennium.	To simplify the cost recovery method for these various services, DES is implementing a **vendor-paid management (or administrative) fee be assessed on all contracts managed by the Contracts and Legal Division.** The initial rate will be set at .74% —and **would cover the DES services listed above and, some $1.9 million in OMWBE costs.**
	• **Master Contract Management Fee** - The vendor is charged a fee based on the usage (in dollars) of a contract. Rate varies based on the contract from 0.5% to 3%.	
	• **Co-op Fee** (Not paid by state agencies) - "Club" fee for local governments and non-profits based on the organization's annual expenditures. This fee allows these customers to have access to master contracts. Fees range from $200 to $5,000 annually.	
	• **Purchase Authority** – Master Contracts and Consulting (MCC) charged a fee to review and grant an agency the authority to conduct procurements.	
	• **IT Brokering and Procurement Consultation** - 1% of sales on purchases made using this service.	
	• **IT Master Contracts** - Rate ranges from 0.5% or 2% and is paid by the vendors based on the agencies' spend from IT master contracts.	
	• **Tier II Contract Fee** for Janitorial Services- Each work contract resulting from the Tier II Request for Quotation (RFQ) was subject to a Bid Processing Fee of $410.	
	• **Contract oversight** – Previously a general-funded activity. In FY 13 costs were allocated to agencies.	
	• **Portion of the Personnel Services Charge** - Percent of classified staff salaries	

Index #7

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 6/24/2013

AGENDA ITEM: Snohomish County Signal Maintenance ILA	
PREPARED BY: Ryan Morrison, Engineering Technician **DEPARTMENT:** Engineering	**DIRECTOR APPROVAL:**
ATTACHMENTS: Interlocal Agreement	
BUDGET CODE:	**AMOUNT:**

SUMMARY:

The City has previously maintained an Interlocal Agreement (ILA) with Snohomish County to provide as needed services, as determined by the City, related to traffic signal and street light maintenance, engineering and construction within City limits.

The previous six year ILA with the County expired on March 9, 2013. This renewal would be for a six year period starting from the date of approval.

RECOMMENDED ACTION:
Staff recommends that Council authorize the Mayor to execute the Interlocal Agreement for Signal Maintenance with Snohomish County providing 6 years of as needed services.

INTERLOCAL AGREEMENT

Between

SNOHOMISH COUNTY and THE CITY OF MARYSVILLE

THIS INTERLOCAL AGREEMENT, hereinafter referred to as "Agreement" is made and entered into by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "County" and the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter referred to as "City" for the purpose of the County providing the City, on an as needed basis as determined by the City, maintenance, engineering and construction services related to traffic signals and street lights.

WHEREAS, the City's geographical boundaries lie within the County; and

WHEREAS, the City possesses the power, legal authority and responsibility to maintain, design and construct traffic signals and street lights within its boundaries; and

WHEREAS, the County, through the Snohomish County Department of Public Works, provides services related to traffic signal and street light maintenance, engineering and construction, within unincorporated portions of Snohomish County and also possesses the ability to provide those services into the geographical area of the City; and

WHEREAS, this Agreement will superceded and replace that interlocal agreement for traffic signal and street light maintenance between the City and the County that was approved and became effective on March 9, 2007 and expired on March 9, 2013; and

WHEREAS, the City desires to enter into this Agreement with the County whereby the County, on an as needed basis as determined by the City, will perform services related to traffic signal and street light maintenance, engineering and construction, within the boundaries of the City; and

WHEREAS, the County is agreeable to rendering such services on the terms and conditions contained in the following Agreement; and

WHEREAS, such Agreement is entered into under the Interlocal Cooperation Act, Chapter 39.34 RCW, RCW 36.75.207 and RCW 35.77.020-.040;

NOW, THEREFORE, IT IS AGREED as follows:

1. Scope of Agreement

A. The County agrees to perform for the City, on an as needed basis as determined by the City, any and all services specified below, subject to the availability of sufficient personnel, equipment and materials to perform the requested work without unduly disrupting the normal operation and functions of the County.

B. For the purpose of this Agreement the term "signal maintenance" shall mean maintenance on traffic signals, rapid flashing beacons, pedestrian crossing traffic signals, radar speed signs, flashing crosswalk and school signs.

C. For the purpose of this Agreement, "signal maintenance services", "street light maintenance services", "engineering services", and "construction services" shall be those activities as described in Exhibit A, attached and incorporated by reference into this Agreement, that have been or could be performed by the City and that are not subject to mandatory competitive bidding, as determined by the City in accordance with State statute.

D. For the purpose of this Agreement, work performed under a work order pursuant to Section 3 of this Agreement shall be engineering services and/or construction services, as described in Exhibit A, or any work that is related to but beyond those services identified in Exhibit A, that have been or could be performed by the City and that are not subject to mandatory competitive bidding, as determined by the City in accordance with State statute.

C. The County Traffic Engineer and the City Traffic Engineer, acting as the administrators of this Agreement, are authorized to act on behalf of the County and City respectively, and shall develop working procedures associated with any of the activities comprising Services. No separate legal or administrative entity is created under this Agreement.

G. Nothing herein contained shall be construed as in any way divesting the City of any of its powers with respect to the supervision, management, and control of streets within its boundaries.

H. By entering into this Agreement, the parties intend to have the County provide Services to the City, on an as needed basis as determined by the City. The County does not intend to assume, nor does the City expect the County to gain, any greater responsibility and/or liability than it would normally have imposed upon it by law for the performance of traffic signal and street light maintenance services generally for the citizens of unincorporated Snohomish County.

I. The County is acting as an independent contractor so that control of personnel, standards of performance, discipline, and all other aspects of performance shall be governed entirely by the County.

2. Performance of Services

A. For the purpose of performing Services under this Agreement, the County shall furnish and supply all necessary labor, supervision, machinery, equipment, materials, and supplies except to the extent labor, supervision, machinery, equipment, and/or materials are supplied by the City as agreed to by the County in writing. In addition, the County will perform material sampling and equipment testing. Both parties agree that they and their officers and agents shall cooperate in the carrying out of said functions and that the County shall have full authority, possession and necessary control of the work with the full assistance when necessary from the police of the City.

B. For the purpose of facilitating the performance of the Services under this Agreement, it is hereby agreed that the City, upon reasonable request in writing by the County or its duly authorized representative, will allow the temporary closing to traffic of all streets, or portions thereof, necessary to be closed before any work is commenced thereon. The City will be responsible for furnishing the materials and labor needed to temporarily close a street or streets while maintenance is being performed.

C. The Services provided by the County under this Agreement shall be pursued with care and diligence to County standards. The County will make efforts to accommodate pertinent schedules of the City. The County shall notify in writing the City of any hardship or other inability to perform under this Agreement, including postponement of requested work due to priority given the normal workload of County personnel.

3. Work Order Requests

Requests for construction and/or engineering services and other work not specifically set out in Exhibit A shall be processed through work order requests.

A. If the City desires that the County perform data collection or any work on its signal and street lighting system beyond the Services identified in Exhibit A, then the City shall direct a work order request to the County Public Works' Transportation and Environmental Services Director, on forms provided by the County. These work order requests shall adequately describe the work to be performed and indicate a desired completion date. The County may require the City to prepare a road plan and profile or sketches to adequately describe the scope, intent and detail of the work.

B. The County shall respond to such work order request in writing. If the County's response is in the affirmative, the County shall include an estimate of time and costs to complete the work. Charges shall be in accordance with Section 4 of this Agreement.

C. Upon receipt of the County's estimate, the City may either issue a written notice to proceed which authorizes the County to perform the requested work or a written notice rejecting the County's estimate. The issuance of a notice to proceed shall constitute a representation by the City that the schedule of charges and basis of payment are acceptable and sufficient funds are appropriated to cover the cost of the requested work. The issuance of a rejection by the City shall relieve the County of all obligations to perform any work identified in the work order request. If no written notice to proceed is received by the County from the City within twenty-one (21) days from the mailing date of the County's estimate, then the County will treat the estimate as if it had been rejected.

D. The scope of requested work may be amended in writing at any time with the consent of both parties.

E. It may be necessary for the County to use consultants from the County on-call list to complete the duties described in this section.

4. Basis of Payment

A. Unless otherwise hereinafter provided, the City shall pay to the County Treasurer, for Services within the scope of this Agreement, the entire cost to the County of performing such work, including; salaries wages, and benefits of all employees engaged therein; all supervision over such employees while so employed; cost of clerical work and travel expenses, including mileage of employees; prorated departmental overhead; office supplies; materials; all other costs and incidental expenses; and depreciation on machinery and equipment.

In computing the cost of the use of machinery and equipment, the full cost to the County of rental machinery and equipment and any operator furnished therewith, and the County equipment rental rate on County-owned machinery and equipment shall be included.

B. The County shall be reimbursed in full by the City for Services provided by the County in accordance with the estimated labor rates, material and equipment costs set forth in Exhibit B incorporated herein or as otherwise incurred in connection with approved work order requests. The estimated labor rates and material costs set forth in Exhibit B are as of the effective date of this Agreement. Labor rates and material and equipment costs may be adjusted annually to reflect the County's current labor

and material charges. The County shall document all costs for labor, materials and equipment with its billing to the City. The County agrees that only those costs directly allocable to a project under accepted accounting procedures will be charged to the project.

C. For the purpose of fixing the compensation to be paid by the City to the County for the services rendered, it is hereby agreed that there shall be included in each billing, to cover administrative costs, an amount not to exceed the County administrative rate. This rate is currently set at 15% of the total labor cost to the County of performing all services to the City during billing period under this Agreement. This rate may be adjusted annually to reflect changes in actual administrative costs.

D. The City agrees to make payment on billings submitted by the County within thirty (30) days following receipt by the City of said billing.

5. Records

A. The County shall maintain accurate time and accounting records related to work under this Agreement in the same manner as prescribed for normal County road projects. Such records as to any project shall be available for inspection in the County Department of Public Works for a period of three (3) years following final payment of billings for such project.

B. The County shall keep a reasonable itemized and detailed work or job record covering the cost of all services performed including salaries, wages and other compensation for labor, supervision and planning; the rental value of all County-owned machinery and equipment; rental paid for all rented machinery and equipment together with the costs of an operator thereof and furnished with said machinery or equipment; the cost of all machinery and supplies furnished by the County; reasonable handling charges; and all additional items of expense incidental to the performance of such functions or service. The City shall have the right to inspect, review and copy such records at all times with reasonable notice to the County.

C. The County shall provide to the City at the close of each calendar month a summary billing covering all services performed during said month.

6. Facilities to be Provided by the City

The City grants to the County permission to enter City rights-of-way for the purposes of operating and maintaining the traffic signal system and associated lighting systems. All electrical power billings for the operation of the traffic signals and street lighting systems will be paid by the City.

7. Indemnification/Hold Harmless

A. The County shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the County, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this Agreement. In the event that any such suit based upon such a claim, action, loss, or damages is brought against the City, the County shall defend the same at its sole cost and expense; provided that the City reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment in said suit be rendered against the City, and its officers, agents, and employees, or any of them, or jointly against the City and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

B. The City shall indemnify and hold harmless the County and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the City, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damages is brought against the County, the City shall defend the same at its sole cost and expense; provided that the County reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the County, and its officers, agents, and employees, or any of them, or jointly against the County and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same.

C. In executing this agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, policies, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, policy, rule or regulation is at issue, the City shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the **CITY**, the County, or both, the City shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

D. The foregoing indemnity is specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees.

The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

E. Should a court of competent jurisdiction determine this Agreement is subject to the provisions of RCW 4.24.115, then each party shall protect, defend, indemnify, and hold harmless the other, their officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from the Indemnifying party's officers, employees, agents, and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.

8. Insurance

Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and /or injuries to persons arising out of its activities associated with this AGREEMENT as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self insurance shall not limit the liability of the indemnifying part to the indemnified party(s).

9. Effective Date, Duration, and Renewal

A. This Agreement and any amendment shall take effect upon execution by the parties and posting of the Agreement or amendment on the County's website pursuant to RCW 39.34.040.

B. This Agreement shall remain in effect for a term of six (6) years, unless otherwise renewed as provided in Section 9.C, amended as provided in Section 10 or terminated as provided in Section 17, PROVIDED, that the County's obligations after December 31st of the year in which this Agreement is approved and becomes effective, are contingent upon local legislative appropriation of necessary funds in accordance with applicable laws and the Snohomish County Charter.

C. This Agreement may be renewed administratively by the Agreement administrators for no more than two (2) additional terms of six (6) years each if, at or prior to its termination date, the Agreement administrators agree in writing to such renewals.

10. Amendments

This Agreement may be amended only upon written of the parties and executed in the same manner as provided by law for the execution of this Agreement, PROVIDED,

HOWEVER, that amendments to the following may be approved administratively through written agreement of the Agreement administrators without the requirement to be executed in the same manner as provided by law for the execution of this Agreement:

- The County's administrative rate identified in Section 5.D;
- The estimated labor rates and material and equipment costs identified in Exhibit B; and
- The renewal of the Agreement pursuant to Section 9.C.

11. Legal Requirements

Each party shall comply with all applicable federal, state, and local laws, rules and regulations in performing this Agreement.

12. Governing Law and Venue

The laws of the state of Washington shall apply to the construction and enforcement of this Agreement. Any action at law, suit in equity, or judicial proceedings to enforce this Agreement or any provision included in this Agreement shall be in the Superior Court of Snohomish County, Everett, Washington.

13. Data Collection

A. The County and City agree to the mutual exchange of their historical, current and future Traffic Data as it exists and/or becomes available through their regular routine programs and/or projects.

B. For the convenience of the County, City and the general public, the County may post some or all of the Traffic Data provided by the City on the County website along with the standard disclaimer.

C. Any request for Traffic Data other than historical, scheduled collections or signal related information (unless otherwise agreed upon) shall be processed through a request, per Section 3 of this Agreement.

14. Severability

Should any clause, phrase, sentence, or paragraph of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

15. Administrators for Agreement. The persons responsible for administering this Agreement are:

SNOHOMISH COUNTY	CITY OF MARYSVILLE
Snohomish County Traffic Engineer Snohomish County DPW 3000 Rockefeller Avenue M/S 607 Everett, Washington 98201	City Traffic Engineer City of Marysville 80 Columbia Avenue Marysville, Washington 98270

16. Written Notices

All notices, including Service Order Requests and Service Order Reponses, required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email). Notices delivered in person or by United States mail shall be delivered to the persons, or their designee, at the addresses set forth in Section 15 of this Agreement.

Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the persons, or their designee, at the addresses set forth in Section 15 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

17. Termination

A. Either party may terminate this Agreement at any time, with or without cause, upon not less than thirty (30) days written notice to the other party.

B. This Agreement is contingent upon governmental funding and local legislative appropriations. In the event that funding from any source is withdrawn, reduced, limited, or not appropriated after the effective date of this Agreement and prior to normal completion, this Agreement may be terminated by the County immediately upon notice to the City.

C. Upon termination of this Agreement as provided in this section, the County shall be paid by the City for work performed prior to the effective date of termination. No payment shall be made by the City for any expense incurred or work done following the effective date of termination unless authorized in writing by the City.

IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the date indicated below.

SNOHOMISH COUNTY

By:_____
County Executive

DATE:_____

Approved as to form only:

_____
Deputy Prosecuting Attorney

DATE:_____

CITY OF MARYSVILLE

By:_____
Mayor

DATE:_____

Approved as to form only:

_____
City Attorney

DATE:_____

EXHIBIT A

TRAFFIC SIGNAL MAINTENANCE SERVICES

Traffic Signal Maintenance Services covered by this Agreement consist of the following services for those traffic signals that the City is responsible for maintaining and that have been or could be performed by the City and that are not subject to mandatory competitive bidding, as determined by the City in accordance with State statute.

Maintenance - This is an activity that includes inspection of the traffic signal cabinet/controller/program; a visual inspection of the display system; and a check of pedestrian push buttons, emergency pre-emption, and detection systems. Furthermore, appropriate records will be maintained in the controller cabinet and in the office file located in the Snohomish County Traffic Operations Office.

Re-lamp – Traffic signal indicators will be replaced as needed. It is estimated that approximately four hours per intersection will be spent on this activity. This is typically a two person operation which includes an assistant to the Signal Technician for traffic control purposes.

On-Call Emergency Response - This service provides 24 hour emergency response for traffic signal malfunctions. There is a minimum of three hours of labor per on-call emergency response. This estimate of three hours of labor per on-call emergency response does not include additional materials, equipment charges, or labor costs associated with extraordinary circumstances such as weather-related problems, knock-downs, and acts of God that may result in significant equipment damage or destruction.

Materials – The County shall provide all supplies and materials for normal maintenance unless the supplies and materials are either a special order or are not in the County's inventory. This does not include replacement of major components of a traffic signal or additional materials, equipment charges, or labor costs associated with extraordinary circumstances such as weather-related problems, knock-downs, and acts of God that may result in significant equipment damage or destruction. Any costs incurred by the County in providing such supplies and materials shall be reimbursed by the City according to the terms of Section 4 of the Agreement.

STREET LIGHT MAINTENANCE SERVICES

Street Light Maintenance Services covered by this Agreement consist of the following services for those street lights that are associated with or are on the same power source as County maintained traffic signals, except where the City has specifically requested additional services and that have been or could be performed by the City and that are not subject to mandatory competitive bidding, as determined by the City in accordance with State statute.

Maintenance – Re-lamping activity includes the replacement of the lamps.

Electrical Repair – The County will provide rewiring and other electrical work done to damaged street lighting. City personnel will perform all other work associated with repairing damaged street lights.

Materials – The County shall provide all supplies and materials for normal maintenance unless the supplies and materials are either a special order or are not in the County's inventory. This does not include replacement of major components of a street light or additional materials, equipment charges, or labor costs associated with extraordinary circumstances such as weather-related problems, knock-downs, and acts of God that may result in significant equipment damage or destruction. Any costs incurred by the County in providing such supplies and materials shall be reimbursed by the City according to the terms of Section 4 of the Agreement.

On-Call Emergency Response - This service provides 24 hour emergency response for street light malfunctions. There is a minimum of three hours of labor per on-call emergency response. This estimate of three hours of labor per on-call emergency response does not include additional materials, equipment charges, or labor costs associated with extraordinary circumstances such as weather-related problems, knock-downs, and acts of God that may result in significant equipment damage or destruction.

ENGINEERING AND CONSTRUCTION SERVICES

Engineering and construction Services covered by this Agreement consist of the following services for those City maintained traffic signals and those street lights that are associated with or are on the same power source as County maintained traffic signals, except where the City has specifically requested additional services and that have been or could be performed by the City and that are not subject to mandatory competitive bidding, as determined by the City in accordance with State statute..

Engineering – This activity provides for the analysis and design of modifications of the existing or new traffic signal and illumination systems for improved operation and safety. It also provides for engineering plan review and technical support services, as well as construction inspection services, for new traffic signal and illumination systems constructed by the City.

Construction - This activity provides for the construction of either new traffic signal or illumination systems as requested by the City. Construction shall not be done without written authorization by the City.

EXHIBIT B

ESTIMATED LABOR, MATERIALS AND EQUIPEMENT COSTS

The cost for labor, materials and equipment associated with the Services identified in the Agreement are estimated as of the effective date of this Agreement. The estimated labor rates and materials and equipment costs for Services may be adjusted annually to reflect the County's current labor, material and equipment charges. The estimated costs below do not include the cost of work performed by County personnel in response to work orders issued upon request by the City. The estimated costs below include the current County administration rate of 15% which may be administratively adjusted annually as identified in Section 4.C of this Agreement. The County will bill on an actual time and materials basis. All Labor rates are on a per person basis and may vary depending on the classification employees

ESTIMATED TRAFFIC SIGNAL SERVICE COSTS

Item	Hourly Rate / Cost
Routine Maintenance and Relamping During Normal Business Hours	$ 65
On-Call Emergency Maintenance / Overtime	$100
Materials	Calculated on a per job basis
Equipment	Calculated on a per job basis

ESTIMATED STREET LIGHT SERVICE COSTS

Item	Hourly Rate / Cost
Routine Maintenance and Damage Repair During Normal Business Hours	$ 65
On-Call Emergency Maintenance / Overtime	$100
Materials	Calculated on a per job basis
Equipment	Calculated on a per job basis

ENGINEERING AND CONSTRUCTION SERVICES COSTS

Labor, material and equipment costs for engineering and construction Services shall be determined based on the amount of labor, materials and equipment estimated to be needed for each job.

Index #8

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 6/24/2013

AGENDA ITEM: Employment Agreement for Golf Shop Supervisor- Mike Reynolds	
PREPARED BY: Jim Ballew DEPARTMENT: Parks and Recreation	DIRECTOR APPROVAL:
ATTACHMENTS: Golf Shop Supervisor Employment Agreement	
BUDGET CODE:	AMOUNT:

SUMMARY:

Mike Reynolds is recommended to fill the Golf Shop Supervisor position vacated by Michael Davis. The Golf Shop Supervisor supports the Head Golf Course Professional as Supervisor in his absence is performs the duties and functions specified within the written job description in Exhibit A. The attached Employment Agreement initiates a Term beginning July 1, 2013 and continues until June 30, 2014. It may be automatically renewed for successive one-year terms at the City's sole discretion.

RECOMMENDED ACTION: Staff recommends the City Council authorize the Mayor to sign the Employment Agreement for Golf Shop Supervisor with Mike Reynolds with an effective date of July 1, 2013.

CITY OF MARYSVILLE
EMPLOYMENT AGREEMENT
FOR GOLF SHOP SUPERVISOR

This agreement, made and entered into this 1st day of July, 2013, by and between the CITY OF MARYSVILLE, State of Washington, a municipal corporation, hereinafter called "City," and MIKE REYNOLDS, hereinafter called "Employee";

WITNESETH:

WHEREAS, the City owns and operates Cedarcrest Municipal Golf Course; and

WHEREAS, the City desires to employ the services of Mike Reynolds as the Golf Shop Supervisor (heretofore known as the “Employee”) and

WHEREAS, Mike Reynolds desires to accept employment as the Golf Shop Supervisor on the terms and conditions provided below,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. **Duties**. The City hereby agrees to employ Mike Reynolds as Golf Shop Supervisor at Cedarcrest Municipal Golf Course, to perform the functions and duties specified in the written job description which is attached and incorporated as Exhibit A, and to perform such other legally permissible and proper duties and functions as the City shall from time to time assign. The Golf Shop Supervisor shall comply with all statutes, ordinances, personnel policies or requirements of the municipal, state and federal authorities now in force or which may hereafter be in force pertaining to his duties and the use of the premises. He shall not cause or permit any public nuisance on the premises.

2. **Reporting Relationship**. The immediate supervisor of the Employee shall be the Golf Course Professional. Also provided, the Employee shall also be responsible to the Director of Parks and Recreation.

3. **Term**. The term of this Employment Agreement shall commence on July 1, 2013 and continue until June 30, 2014. It may be automatically renewed for successive one-year term’s thereafter, at the City's sole discretion. The employee’s employment shall be considered “at will”. Either party shall have the right to terminate this agreement without cause on 15 days Advance written notice.

4. **Base Wage**. The City agrees to pay the Employee a base hourly wage of $14.00 for services rendered during the first year of this contract. The Employee's salary thereafter shall be annually reviewed by the City Council and fixed by the duly adopted Budget Ordinance. Salary increases will be based on performance. Said salary shall be payable in installments at the same intervals as apply to other employees of the City.

a. **Withholding.** The City shall withhold and pay all applicable taxes and insurance prior to payment of Employee's salary and additional compensation.

5. **Hours of Work**. The Employee shall be on duty and perform the specified services For the City on a full time basis. The Golf Shop Supervisor is expected to be onsite at Cedarcrest Golf Course during busy weekend periods and high play times. The Employee shall be FLSA non-exempt and shall have all rights to overtime pay or "compensatory time off."

6. **Fringe** Benefits. Employee shall be entitled to no benefits regularly available to other City management employees pursuant to ordinance or policy.

7. **Bond.** If available, and at the City's cost, bond coverage shall be subscribed to and maintained by the City through Washington City Insurance Authority in an amount not less than $10,000.00.

8. **Review of Performance**. The performance of the Golf Shop Supervisor under this contract shall be subject to periodic review by the Director of Parks and Recreation and Head Golf Professional.

9. **Litigation.** If litigation is commenced by either party to interpret or enforce provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements.

10. **Entire Agreement.** This agreement, with the attachments incorporated herein by reference, constitutes the entire agreement between the parties and there are no verbal agreements, nor will there be any verbal agreements, which modify or amend this agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and Year first above written.

DATED_____, 2013.

THE CITY OF MARYSVILLE

By:_____
JON NEHRING, MAYOR

GOLF SHOP SUPERVISOR

By:_____
EMPLOYEE

EXHIBIT A

Golf Shop Supervisor / Contractor Description

Title:	**Golf Shop Supervisor**
Division:	**Parks and Recreation**
Location:	**Cedarcrest Golf Course**
Reports To:	**Head Golf Course Professional – Director of Parks and Recreation**
Revised:	**April 3, 2012**

SUMMARY

This Golf Shop Supervisor provides assistance in the Pro Shop and related golf course operations; and is responsible for daily play supervision, security of funds, merchandise and equipment sales. This position is responsible for operation of the golf shop and related golf course operations in the absence of the Head Golf Course Professional.

JOB LOCATION and EQUIPMENT UTILIZED

Work is performed in an office and outdoor environment, subject to noise and frequent interruptions and adverse weather conditions. Equipment utilized includes standard office equipment and personal computer with associated software and peripherals. Work may be on evenings, weekends, or holidays as scheduled.

ESSENTIAL DUTIES AND RESPONSIBILITES includes the following:

Other duties may be assigned.

1. Assist in the daily operation of the pro shop; assist the Pro-Shop staff with special events, tournaments and marshalling golf course play.
2. Maintain good public relations and assure a friendly, cordial atmosphere is maintained at all times while serving the public. Advertise and promote the golf course.
3. Enforce and interpret of all USGA rules and regulations and local regulations of the City; monitor course play and conduct of players.
4. Collect and deposit all fees; maintain adequate income and participation records on a daily basis.
5. Coordinate with maintenance section regarding daily course operation in relation to inclement weather, scheduled repairs, and amount of play, etc. Assist in cart fleet management.
6. Maintain pro shop inventory and ensure overall cleanliness and appearance on an hourly basis.
7. Work with vendors and other organizations to promote sales, assists with display and trunk shows, open houses, and other merchandising opportunities.
8. Coordinate with vendors and sales reps to review products, write season orders, and take advantage of discounts and special offers.

9. Attend PGA merchandise events to comparative shop; meet with golf clubs, tournament organizations and local businesses to promote merchandise sales.
10. Monitor course play and conduct of players; keep play moving and report any slow play or other factors reducing normal playing time and/or conditions.
11. Perform physical inventory, order and receive merchandise, maintain inventory price list and track ordering information.
12. Assist in the development of an annual buying strategy for merchandise colors and styles.

REQUIRED KNOWLEDGE SKILLS and ABILITIES

To perform in this position successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

- Knowledge of golf including management of operations and rules of play.
- Ability to establish and maintain cooperative and effective working relationships with others.
- Ability to communicate effectively both orally and in writing.
- Knowledge of retail management, merchandising and inventory.
- Ability to work a flexible schedule.
- Ability to maintain detailed records and write articles for publication.
- Ability to work effectively in a noisy environment with frequent interruptions.
- Knowledge of cash register operations, credit card processing.
- Operate IBM-compatible personal computer, including word processing, spreadsheet, and related software applications.
- Ability to repair golf clubs and grips.

EDUCATION and/or EXPERIENCE

- High School Diploma or GED required.
- One (1) year retail, cash handling or office experience, or an equivalent combination of related education and experience required.
- Requires a valid Washington State Driver's License.

LANGUAGE SKILLS

Ability to read and comprehend simple instructions, short correspondence, and memos. Ability to write simple correspondence. Ability to effectively present information one-on-one and small group situations to customers, clients, and other employees of the organization.

MATHEMATICAL SKILLS

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percentages. Must be able to proficiently operate a ten key calculator with efficiency.

REASONING ABILLITY

Ability to interpret a variety of instructions furnished in written, oral, or schedule form.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this position. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this position, the employee is frequently required to sit and talk or hear; use hands to find, handle, or feel objects, or controls. The employee is frequently required to stand for extended period of time; walk over uneven surfaces; reach with hands and arms; and stoop, kneel, crouch, or crawl. The employee must frequently lift and/or move up to 30 pounds or more. Specific vision abilities required by this job include close vision, distance vision, peripheral vision, depth perception, and the ability to adjust focus.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this position. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

This position description does not constitute an employment agreement between the employer and employee, and is only a summary of specific duties delineated during orientation or through on-the-job performance. This summary position description is subject to change as the need of the City and requirements of the position change.

Index #9

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 6/24/2013

AGENDA ITEM: Classification & Compensation Analysis for Planning Assistant	
PREPARED BY: Kristie Guy	**DIRECTOR APPROVAL:**
DEPARTMENT: Human Resources	
ATTACHMENTS: Classification & Compensation Analysis, Planning Assistant Job Description	
BUDGET CODE:	**AMOUNT:**

SUMMARY:

Human Resource was asked to do a classification and compensation analysis for a new Planning Assistant position in Community Development to support the Community Development Block Grant Program (CDBG). This project included creating a job description, evaluating placement in the city's pay grid, and surveying comparable positions at comparable jurisdictions.

The City of Maryville's population growth, over 50,000, has made it eligible as an entitlement community for the federal CDBG program which provides communities with resources to address a wide range of unique community development needs. The Planning Assistant is a new position which will provide administrative and technical support activities and requirements of this federally compliant program.

Based on the findings, the proposed job description accurately captures the responsibilities assigned to the position and the knowledge, skills and abilities required to perform them. Additionally, placing the position on the non-represented, non-management classification grid at range N-4 reflects its market value and preserves internal equity among the city's non-represented, non-management positions.

The Planning Assistant position will be a full-time, benefited position that is tied to the City receiving CDBG funds.

RECOMMENDED ACTION:

Staff recommends that Council authorized the Mayor to:

1. Adopt the proposed job description for Planning Assistant, which captures the responsibilities assigned to the positions and the knowledge, skills, and abilities required to perform it.
2. Place this position at range "N-4" on the non-represented, non-management classification grid; this placement reflects its market value and preserves internal equity among the city's non-represented, non-management positions.

CLASSIFICATION AND COMPENSATION ANALYSIS OF PLANNING ASSISTANT

MARCH 2013

I. Background

Human Resources was asked to conduct a classification and compensation analysis regarding a new position within the planning division of the Community Development Department. The City of Marysville's population growth, over 50,000, has made it eligible as an entitlement community for the federal Community Development Block Grant Program (CDBG) which provides communities with resources to address a wide range of unique community development needs. The Planning Assistant is a new position which will provide administrative and technical support for activities and requirements of this federally compliant program.

II. Job Classification Analysis

PLANNING ASSISTANT JOB RESPONSIBILITIES

This position performs professional planning work including administrative and technical support of Community Development Block Grant program; land use, planning and environmental research to support department goals.

The work performed by this class requires incumbents to apply professional knowledge and expertise as well as established guidelines and alternatives to make non-routine judgments and recommendations to management regarding complex issues; incumbents operate independently and select appropriate methods to accomplish project assignments.

This is the entry level in the land use planning job series. Positions in this class perform the more routine land use planning and development activities. This class differs from the Associate and Senior Planner class in that the work of the entry level class is more closely reviewed and supervised, and assignments are less complex and narrower in scope.

[A proposed job description is included]

III. COMPENSATION ANALYSIS

The focus of the compensation analysis is to evaluate placement of these positions within the City's classification and compensation grid. The goal is to assign a compensation level that accurately reflects the responsibilities and accountabilities of the position and the skills, knowledge, and abilities required to perform the job while preserving the internal equity of the City's classification and compensation system by compensating the position fairly relative to other City job classifications. It is also appropriate to look at external market comparables (since the City's compensation philosophy is generally a market-value approach) to ensure that qualified candidates will be attracted to the position.

PLANNING ASSISTANT

External comparisons:

To measure external equity, we looked at the cities of Lakewood, Bellingham, Burien, Renton and Shoreline. All these cities have similar entry level positions that perform more routine duties which are more closely reviewed and supervised than other classifications in their planning series.

The City of Lakewood's Assistant Planner and the City of Bellingham's Planner I positions require knowledge and skills acquired through completion of a bachelor's degree in planning or a combination of education and some prior planning experience. These positions perform duties primarily focused on providing information and assistance to the public as well as the review of building permit and land use applications. Both the City of Lakewood's Assistant Planner and the City of Bellingham's Planer I positions are bargaining unit positions. The monthly salary range for the City of Lakewood Assistant Planner is $3,926 - $4,080. The monthly salary range for the City of Bellingham Planner I is $4,022 - $4,803.

The City of Burien Assistant Planner provides primary day-to-day customer contact and public information through the permit counter and by phone and email contact. However, this position is the most closely aligned to the City of Marysville Planning Assistant. Both positions require a bachelor's degree, provide support to other planners and department staff, perform technical and administrative tasks, and require the ability to operate specialized software applications that support the planning function including data analysis, mapping and project tracking. The City of Burien Assistant Planner is a non-represented position and the monthly salary range is $4288 - $5211.

The City of Renton Planning Assistant I and the City of Shoreline's Assistant Planner perform entry level planning duties but do not serve as a point of contact at a customer service counter. Both positions respond to customer inquiries, conduct research, provide support to other planners, maintain records and prepare written reports. In addition, the City of Shoreline's Assistant Planner creates and analyzes databases, evaluates statistical information, and prepares reports and recommendations based on this information. This position also participates in the development of the Comprehensive Plan. Both positions require a bachelor's degree and a minimum of one year of general planning experience. Additionally, graduate level courses in planning are desirable for the City of Shoreline Assistant Planner. The monthly salary range for the City of Renton Planning Assistant I is $4467 - $5439. The monthly salary range for the City of Shoreline Assistant Planner is $4600 - $5597. Both positions are non-represented positions.

Internal comparisons:

To gauge internal equity, we looked at the responsibilities and the knowledge, skills, and abilities required by other positions within the City of Marysville. Currently Program Specialists in the Planning Department collect fees for building permits and land use applications, check for completeness of land use and permit applications, and provides staff support in preparing mailing and notifications of public meetings and hearings. This is a bargaining unit position which requires one year of experience performing a variety of the essential duties. Possession of ICBO certification as a permit technician is desirable but not required. This classification does not require college level coursework in a planning related field. The monthly salary range for Program Specialists is $3685 - $4679.

The City of Marysville Associate Planner classification, N7, performs professional planning work including land use and environmental reviews; comprehensive land use planning; and staff assistance at public hearings and meetings. Assignments are wider in scope than those performed by the Planning Assistant. Associate Planners operate independently and select appropriate methods to accomplish project assignments. This position requires a Bachelor's degree, a minimum of one year of related experience, and knowledge of land use planning processes, research design and methods, and analysis techniques. The Associate Planner is a non-represented position and the monthly salary range is $4501 - $6031.

As a comparison, the City of Marysville Computer Support Technician I classification, N3, is another entry level position in the computer support job series in the Information Services Division. Similar to a Planning Assistant, the incumbent operates independently but supervision and guidance are readily available. This classification does not require a bachelor's degree, however, an associate's degree is desirable as well as two years experience supporting users on PC software, and Microsoft coursework certification. This is a non-represented position and the monthly salary range is $3703 - $4962.

IV. RECOMMENDATIONS

3. Adopt the proposed job description for Planning Assistant, which captures the responsibilities, knowledge, skills, and abilities required to perform the duties of this position.
4. Place the Planning Assistant position at range N4 on the Non-represented grid with a monthly salary range of $3889 - $5209. This placement reflects the external market value and preserves internal equity among the City's positions.

City of Marysville
Job Description

Job Title:	**Planning Assistant**
Department/Division:	Community Development Department
Reports To:	division manager
FLSA Status	non-exempt
Union Status:	non-union
Approval/Revision Date:	February 2013

POSITION SUMMARY:
Performs professional planning work including administrative and technical support of Community Development Block Grant program; land use, planning and environmental research to support department programs.
The work performed by this class requires incumbents to apply professional knowledge and expertise as well as established guidelines and alternatives to make non-routine judgments and recommendations to management regarding complex issues; incumbents operate independently and select appropriate methods to accomplish project assignments.

DISTINGUISHING CHARACTERISTICS OF THE JOB CLASS:
This is the entry level in the land use planning job series. Positions in this class perform the more routine land use planning and development activities. This class differs from the Associate and Senior Planner class in that the work of the entry level class is more closely reviewed and supervised, and assignments are less complex and narrower in scope.

ESSENTIAL DUTIES AND RESPONSIBILITIES:
Other duties may be assigned as needed.

1. Provides administrative and technical support of Community Development Block Grant (CDBG) program. Read, review and understand federal and local regulations and guidelines pertaining to CDBG programs. Provide support in preparing forms, checklists, and reports that support a federally compliant program.
2. Communicate with non-profit organizations, public agencies and federal program staff to monitor and enforce CDBG program regulations and guidelines.
3. Respond to inquiries regarding the Comprehensive Plan, Zoning, Subdivision and Land Use Codes at the counter, over the phone, in writing, and at formal and informal meetings.
4. Research and prepare background data and draft correspondence and reports to supervisor and others, as requested, on both current and long-range planning projects.
5. Analyze and compile background information for land use recommendations.
6. Establish and maintain databases, application files and tracking systems.
7. Perform special studies, reports and projects.

KNOWLEDGE, SKILLS AND ABILITIES:
To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Knowledge of:
- Financial management, administrative skills for grant program oversight.
- Land use planning processes, research design and methods, and analysis techniques.
- Policies, procedures, and operations of the city's land use planning and development function.

Ability to:

- Provide technical and policy expertise to department management, including preparing analyses, reports and maps.
- Read and interpret plans and maps, including zoning maps, site plans, topographic maps, and soils maps.
- Plan and organize work to meet required deadlines with a minimum amount of supervision.
- Communicate complex ideas orally and in writing to a variety of audiences in a clear, effective and professional manner.
- Ability to meet work independently and exercise good judgment.
- Administer zoning, subdivision, and planning codes.
- Prepare and deliver presentations to a variety of audiences, including community groups, citizen advisory committees, and the planning commission.
- Operate a computer for word processing, data analysis, mapping and project tracking.
- Operate specialized software applications, including grant tracking that support the CDBG program, land use planning and development function.
- Establish and maintain effective working relationships with a variety of people, including citizen groups, citizen advisory committees, the general public, interest groups, and the planning commission, when dealing with potentially sensitive land use issues.
- Maintain confidentiality of business records and other information.

QUALIFICATIONS:

A combination of the experience, education, and training listed below which provides an equivalent background to perform the work of this position.

Experience:

Internship or experience in planning or research related to land use is desired.

Education and Training:

Bachelor's degree in urban planning, environmental planning, geography, public administration or related field is required.

Licenses or Certificates:

- Must possess, or have the ability to possess within six months of hire date, a Washington State Driver's License.

PHYSICAL DEMANDS / WORKING CONDITIONS:

The physical demands and characteristics of the work environment described here are representative of those occurring in the performance of the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the essential functions of this job, the employee is frequently required to stand; walk; sit; use hands to finger, handle, or feel objects, tools, or controls; and talk or hear. The employee is occasionally required to reach with hands and arms and stoop, kneel, crouch, or crawl. The employee must occasionally lift and/or move up to 20 pounds. Specific vision abilities required by this job include close vision, distance vision, peripheral vision, depth perception, and the ability to adjust focus. While performing the duties of this job, the employee is occasionally exposed to toxic or caustic chemicals, i.e. copier toner.

This position works in an office, and the noise level in the work environment is usually low to moderate.

This position works a regular schedule, however, incumbents may be required to work some evening hours to attend public meetings.

This position description generally describes the principle functions of the position and the level of knowledge and skills typically required. It does not constitute an employment agreement between the employer and employee, and it is subject to change as the needs of the employer and the requirements of the job change.

Index #10

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 6/24/2013

AGENDA ITEM: Refilling of the Cross Connection Specialist Position within Public Works	
PREPARED BY: Doug Byde, Public Works Superintendent DEPARTMENT: Public Works	DIRECTOR APPROVAL:
ATTACHMENTS: NA	
BUDGET CODE: 40140880.511000	AMOUNT: $0.00

SUMMARY:

The Cross Connection Specialist position within the Water Quality Division of Public Works was vacated in March 2010 upon retirement of the existing employee within the position. At that time it was determined that the position would not be refilled until a later date and it was removed from the City's organizational chart.

Funding for the position has remained intact within the 401 line item budget, and we would like to refill the vacancy as soon as possible in 2013. There will be no monetary impact to the city in approving this request.

RECOMMENDED ACTION: Staff recommends that Council Authorize the Mayor to approve adding the Cross Connection Specialist position back onto the City's organizational chart and refilling of the position in 2013.

Index #11

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 6/24/2013

AGENDA ITEM: Surplus Vehicles and Equipment	
PREPARED BY: Doug Byde, Public Works Superintendent DEPARTMENT: Public Works	DIRECTOR APPROVAL:
ATTACHMENTS: Resolution declaring certain items to be surplus.	
BUDGET CODE: 501186365.359000 (Fleet Replacement Fund)	AMOUNT: TBD

SUMMARY:

Fleet Services is requesting to surplus two (2) Radar Trailers, one (1) retired police car, and three (3) Freezers from our police department.

The three door freezer will be donated to Sarvey Wildlife Rescue, as organized by Sergeant Nelson of our police department. The other two upright freezers will be offered to non-profit organizations or recycled as necessary.

The two radar trailers and one police car will be auctioned off at the next available opportunity, and proceeds from the sales will be placed in the fleet services replacement fund.

RECOMMENDED ACTION:

Staff recommends that Council Authorize the Mayor to sign Resolution No. _____, declaring items of personal property to be surplus and authorizing the sale or disposal thereof.

CITY OF MARYSVILLE
Marysville, Washington

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF MARYSVILLE DECLARING CERTAIN ITEMS OF PERSONAL PROPERTY TO BE SURPLUS AND AUTHORIZING THE SALE OR DISPOSAL THEREOF.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON AS FOLLOWS:

The items of personal property listed below are hereby declared to be surplus and are of no further public use or necessity.

Asset #	Year	Description	Serial #	Quantity
949	1996	SMART Radar Trailer	VIN # 1K9B20811TK118381	1
F001	2003	B&W Radar Trailer	VIN # 1B9BR10153H659010	
P107	2003	Ford Crown Victoria	VIN # 2FAHP71W93X194629	
NA	NA	TMC 3 Door Upright Freezer Model T-72F	KAJB-010E-CAV	1
NA	NA	General Electric Freezer Model CA-12-DNB	618873	1
NA	NA	Frigidaire Freezer Model FFU2065FW4	WB75053434	1

The City is hereby authorized to sell or dispose of the above referenced items in a manner, which in the discretion of the Fleet and Facilities Manager nets the greatest amount to the City.

PASSED by the City Council and APPROVED by the Mayor this _____ day of

_____ 2013.

CITY OF MARYSVILLE

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____

City Attorney

Index #12

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 24, 2013

AGENDA ITEM: Agreement between City of Marysville and Seattle Goodwill Industries for the Youth Aerospace Program.	
PREPARED BY: Jim Ballew **DEPARTMENT:** Parks and Recreation	**DIRECTOR APPROVAL:**
ATTACHMENTS: Agreement	
BUDGET CODE:	**AMOUNT:** $0.00

SUMMARY:

Seattle Goodwill Industries is hosting an extension program providing services in Snohomish County to provide youth exposure to high demand and high growth careers in the Aerospace Industry. The program has five areas to support each youth in starting his or her career in the aerospace industry.

High School Success, College Readiness, Career Readiness, Environmental Stewardship and Life Skills. The program intends to serve 20 in-school youth from July8, 2013 through August 30, 2013 by utilizing and performing various City of Marysville Park Volunteer Activities.

The attached Agreement identifies the Scope of Work and provisions agreed upon by both Seattle goodwill and the City of Marysville in support of this opportunity for both the city and students within the program.

RECOMMENDED ACTION:
Staff recommends the City Council authorize the Mayor to sign the Agreement between the City of Marysville and Seattle Goodwill Industries for the Youth Aerospace Program to begin July8, 2013 through August 30, 2013

Agreement between
City of Marysville
and
Seattle Goodwill Industries
Summer 2013

This agreement made and entered into, effective July 1, 2013, by and between the CITY OF MARYSVILLE, State of Washington, a municipal corporation, hereinafter called "City" and SEATTLE GOODWILL INDUSTRIES, a Washington Nonprofit Corporation and Charity, hereinafter called "Goodwill".

WITNESSETH:

WHEREAS, the City desires to contract with Goodwill to provide volunteer opportunities in Marysville Parks;

WHEREAS, Goodwill is expanding its youth program to provide services in Snohomish County. Seattle Goodwill program will be sector-based and provide youth with exposure to high demand and high growth careers in the Aerospace Industry. The program has five main areas to support each youth in starting his or her career in the aerospace industry:

1. High School Success
2. College Readiness
3. Career Readiness
4. Environmental Stewardship
5. Life Skills

Goodwill's Youth Aerospace Program intends to serve approximately 20 in-school youth from July 8, 2013 through August 30, 2013 by utilizing and preforming various City of Marysville Park volunteer activities.

NOW, THEREFORE, in consideration of the terms, mutual covenants, conditions, and performance of scope of work contained herein, the parties agree as follows:

1. DURATION

This agreement shall cover the period between July 1, 2013 and August 30, 2013.

2. CONSIDERATION

There shall be no transfer of funds associated with this Agreement. Goodwill and its students are allowed to participate in and utilize City park volunteer opportunities that benefit the Goodwill program and the City receives the benefit of the volunteer work performed by the program participants.

3. SCOPE OF WORK

The Parties contracts and agree to perform functions and duties outlined in **Exhibit A.**

4. INDEPENDENT CONTRACTOR/VOLUNTEER/PERMISSION & WAIVER

A. This Agreement is not intended in any fashion to create the relationship of employer-employee with respect to the City and Goodwill or Goodwill program participants. The City of Marysville shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, including but not limited to the payment or withholding of social security or other tax that may arise as an incident of this contract. Neither Goodwill nor any person participating in the Good will program, employed by or working at the direction of the Goodwill is to be considered at any time an employee of the City.

B. Neither party to this Agreement is the agent of the other by contract or otherwise.

C. Volunteers of City of Marysville.

The City of Marysville will treat Goodwill program participants as City of Maryville Volunteers and report them as such on the City Labor and Industries Volunteer rosters and reporting.

D. Each Goodwill participant will be required to provide to the City of Marysville a signed Waiver and Release as set forth in **Exhibit B** prior to participation in any Marysville park or volunteer activities.

E. Prior to each day's activities Goodwill will provide a completed City of Marysville Parks and Recreation "Volunteer Roster" - **Exhibit C** - listing the participants for the day and attach a signed copy of the Marysville Waiver and Release **(Exhibit B)** for each daily participant.

5. PERFORMANCE.

The City reserves the right to inspect and review the work of the Goodwill participants to assure a quality performance.

6. REPRESENTATIONS.

Goodwill represents and warrants that its staff has the requisite training, skill and experience necessary to provide the services described herein, and is appropriately accredited and licensed by all applicable agencies and governmental entities.

7. CANCELLATIONS.

If Goodwill needs to cancel a class or project please call four hours prior to the start time. In the event the City / Parks Department needs to cancel a class or program, the City/ Parks Department

will contact Goodwill as soon as possible. It is the responsibility of Goodwill to contact all participants if the class or project is cancelled.

8. INDEMNIFICATION.

Goodwill agrees to indemnify, defend, and save the City harmless from and against any and all claims, demands, actions, debts, and liability for loss of or damage to property and for injury to or death of animals or persons arising out of or in connection with any negligent or otherwise tortuous acts or omissions of Goodwill, its agents, representatives, employees or program participants. Goodwill maintains any personal property on City premises at its own risk and releases the City to the full extent of the law from all claims resulting from Goodwill and its agents, representatives, employees or program participant's loss or damage to either person or property that may be occasioned by or through the acts or omissions of other persons occupying or using the premises/facilities. The City shall not be liable to Goodwill for loss of business. These indemnifications shall survive the termination of this Agreement.

9. INSURANCE.

A. Goodwill shall procure and maintain during performance of work the following insurance coverage's with the specified limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident. Such insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate. The City of Marysville shall be an Additional Insured on a Primary Basis for the General Liability coverage without limitation. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Goodwill's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation. Coverage as required by the Industrial Insurance laws of the State of Washington.

B. Prior to commencement of any program participation or volunteer work under this Agreement Goodwill shall provide a certificate of insurance that provides a Additional Insured Endorsement to the City of Marysville. Failure of Goodwill to comply with the requirements regarding insurance shall be considered a material breach of this agreement and cause for termination of the Contract and of all obligations there under.

C. Approval of the insurance by the City shall not relieve or decrease the liability of Goodwill for any damages arising from Goodwill's performance of this agreement. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Goodwill's responsibility for payment of damages resulting from operations under this Contract. The coverage provided by the General Liability and any Automobile Liability maintained by Goodwill is primary to any insurance maintained by the City of Marysville. The inclusion of more than one insured under this policy shall not affect the rights of any insured as respects to any claims, suit or judgment made or brought by or for any other insured or by or for any employee of any other insured. This policy shall protect each insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one insured been named. Failure to comply with provisions contained herein shall not waive the responsibility of Goodwill to provide the required protection.

D. Notice of Cancellation. In the event that Goodwill receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, Goodwill shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

10. INTERPRETATION/LEGAL RELATIONS/LITIGATION.

A. Goodwill shall comply with all federal, state and local laws and ordinances applicable to program facilitated under this agreement.

B. This Agreement shall be governed by the Laws of the State of Washington. Venue for any action shall be in Snohomish County Superior Court. If litigation is commenced by either party to enforce provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements.

11. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

12. SEVERABILITY

A. f a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

13. WAIVER

Any waiver by Goodwill or the City or the breach of any provision of this Contract by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

14. TERMINATION/NOTICE

This Agreement may be terminated by either party without cause upon giving not less than 5 calendar days written notice by to the other party by hand delivery or by regular mail to the contact person identified herein:

NOTICES TO THE CITY SHALL BE SENT TO THE FOLLOWING ADDRESS:

CITY OF MARYSVILLE
Director of Parks and Recreation
1049 State Ave
MARYSVILLE, WA 98270

Contact person for program activities for the City of Marysville Parks & Recreation is:

Name: Mike Robinson
Address: 6915 Armar Road
City, ST, Zip: Marysville, WA 98270
Phone: 360-363-8400
Fax: 360-651-5089
Email: mrobinson@marysvillewa.gov

NOTICES TO GOODWILL SHALL BE SENT TO THE FOLLOWING ADDRESS:

Name: Rosanna Stephens
Address: 700 Dearborn Place South
City, ST, Zip: Seattle, WA 98144
Phone: 206-860-5755
Fax:
Email: rosanna.stephens@seattlegoodwill.org

15. AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT

The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this _____ day of _____, 2013.

CITY OF MARYSVILLE

By_____
Jon Nehring, Mayor

SEATTLE GOODWILL INDUSTRIES

By _____
Ken Colling, President & CEO

Approved as to form:

By _____
Grant K. Weed, City Attorney

Exhibit A
Scope of Work.

In addition to the other provisions of the Agreement:

Goodwill:

1. Goodwill is responsible for all transportation to and from City sites.

2. Goodwill is responsible for program participants (youth) at all times.

3. Goodwill will provide on-site at least two (2) Qualified Adult / Goodwill Staff (a Youth Program Coordinator and a Youth Program Assistant) to manage and supervise the program and no more than twenty (20) program participants (youth) at all times.

4. Goodwill will provide any and all clothing and tools, including protective gear, needed by the participants (youth) to participate in the service learning experience provided by City.

5. Prior to each day's activities Goodwill will provide a completed packet to the City Staff on-site - including the City of Marysville Parks and Recreation "Volunteer Roster" - **Exhibit C** - listing the participants for the day and an attach a signed copy of the Marysville Waiver and Release **(Exhibit B)** for each daily participant. Participants (youth) will not be allowed to participate without these documents.

6. Goodwill will accompany the participants (youth) at all times while at the work site and will be available to City staff to discuss and help address any issues related to the participants (youth). Goodwill will be responsible for all supervision and any and all disciplinary issues that arise among the participants (youth) at City sites. Goodwill will immediately respond to and remove if necessary, if requested by City staff, any participant (youth) who is involved in an emergency, dangerous or disciplinary issue.

City:

1. City is responsible for providing service learning/volunteer opportunities in Marysville Parks. The service learning/volunteer portion of the summer program will be from 9 a.m. – 12 p.m., Monday-Thursday – a total of 12 hours per week from July 8, 2013 to August 30, 2013. A STEM (Science, Technology, Engineering, Math) related project and/or a GIS (Geographic Information System) mapping project will be incorporated in the experience for participants (youth).

2. City will assist Goodwill staff in training the participants (youth) in the park-based environmental components necessary to complete the service learning/volunteer projects and assist with supervision of the project-related work, including trail work, tool safety, native plant species, evasive plant identification, restoration, monitoring, graffiti eradication and environmental stewardship skills.

3. City will discuss participant (youth) participation in the service learning/volunteer projects with the Goodwill staff on-site on a daily basis so that stipends can be calculated accordingly for satisfactory participation by participants (youth).

4. City will also provide Goodwill with data on the work the participants (youth) complete in the parks (short narrative, list of sites, trail feet, square feet cleared, etc.), as well as the specific job and environmental skills the participants (youth) have learned. The summary data will be provided in a short report within one month of the completion of the summer portion of the program.

5. The City will report any disciplinary or emergency situation or incident immediately to the on -site Qualified Adult / Goodwill Staff.

6. The City is authorized to take immediate and emergency action should a dangerous or emergency or disciplinary situation arise during the City service learning/volunteer projects and may direct the immediate removal of a program (youth) participant, Qualified Adult/Goodwill Staff, or all program participants.

The City retains and does not waive any of its lawful authority related to City parks and facilities.

Exhibit B
City of Marysville
and Seattle Goodwill Industries
Summer 2013
Parental/Legal Guardian Assumption of Risk, Waiver and Release

I (we) am/are the parent(s) or legal guardian of _____ (Child's Name) who desires to be a participant in the Seattle Goodwill Youth Aerospace Program activities located in the City of Marysville including volunteer service and work projects in the City parks between July 1, 2013 and August 30, 2013.

It is important to me (us) that this child be allowed to participate in this program. I (we) understand there are special dangers and risks inherent in this participation of this program, including but not limited to, the risk of serious physical injury, death or other harmful consequences which may arise directly or indirectly from the child's participation in the above-described program. Being fully informed as to these risks and in consideration of the City allowing my child to participate in this sponsored program and/or use of City's facilities I (we), on behalf of myself (ourselves) and on behalf of the above-named participant child, assume all risk of injury, damage and harm to the child which may arise from the child's participation in the activities associated with the day camp program or use of City's facilities. I (we) further agree, individually and on behalf of the above-named child, to release and hold harmless the City of Marysville, its officials, employees, volunteers and agents and agree to waive any right of recovery that I(we) may have to bring a claim or lawsuit for damages against them for any personal injury, death or other harmful consequences occurring to the above-named child or me arising out of the Child's voluntary participation in this program. I (we) grant my (our) full and voluntary consent for the above-named child to participate in the Seattle Goodwill program described above.

_____

Parent(s) / Legal Guardian Printed Name(s)

_____

Parent(s) / Legal Guardian Signature(s)

_____

Date

_____(____)_____

Parent(s) / Legal Guardian Address Phone

_____(____)_____

Child Participant Address Phone

Exhibit C
City of Marysville Parks & Recreation "Volunteer Roster."

City of Marysville Parks & Recreation "Volunteer Roster"

For and in consideration of the opportunity offered to the below sited individuals to participate as a volunteer for the City of Marysville; I as evidenced by signature below, do herby hold harmless, release and waive all claims I may have against the City of Marysville, its elected officials and appointed officers, employees, agents, or contracted instructors, and any other person(s) involved in the below named activity/activities for any and all injuries, losses or damages suffered by me or my minor child as a result of our participation in any volunteer activities. I accept full responsibility for the cost of treatment for any injury, losses or damages suffered.

Project Name and Address:_____ Date(s) of Volunteer Effort::_____

Brief Outline of Volunteer Work: _____

PRINT all information except signature. Your signature acknowledges having read, understood and agreed to the above statement.

NAME	SIGNATURE (relationship)	ADDRESS, CITY, STATE, ZIP	PHONE	EMAIL ADDRESS

Signature of Group Leader/Instructor_____ Daytime Phone and EMAIL Address_____

Index #13

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 24, 2013

<table>
<tr><td>AGENDA ITEM:
Planning Commission Recommendation Relating to an Ordinance Prohibiting the Establishment of Medical Cannabis Collective gardens and Medical Cannabis Dispensaries and Repealing the Moratorium Established by Ordinance 2889</td><td colspan="2">AGENDA SECTION:
New Business</td></tr>
<tr><td>PREPARED BY:
Gloria Hirashima, Chief Administrative Officer</td><td colspan="2">DIRECTOR APPROVAL:</td></tr>
<tr><td rowspan="2">ATTACHMENTS:
1. Draft Ordinance.
2. Staff memorandum dated 5/9/13
3. Planning Commission minutes dated 5/14/13
4. Court decisions relating to Medical Cannabis
5. Information on city of Kent ordinance
6. Ordinance 2867
7. Ordinance 2882
8. Ordinance 2889
9. Planning Commission minutes dated 6/11/13 will be provided in packet update, when available.</td><td colspan="2"></td></tr>
<tr><td>MAYOR</td><td>CAO</td></tr>
<tr><td>BUDGET CODE:</td><td colspan="2">AMOUNT:
$</td></tr>
</table>

DESCRIPTION:

The Planning Commission is recommending approval of an ordinance amending Marysville Municipal Code (MMC) Sections 22A.020.040; 22A.020.140; 22C.020.060; and 22C.020.070 (68). The ordinance will prohibit the establishment of medical cannabis collective gardens and dispensaries and repeal the existing moratorium on said facilities which expires on July 5, 2013.

The Planning Commission (PC) held a public hearing on the proposed regulations on June 11, 2013. The PC considered the information, took testimony and recommended approval of the proposed ordinance.

RECOMMENDED ACTION: **Recommend approval of the Planning Commission recommendation, and adoption of an ordinance prohibiting the establishment of medical cannabis collective gardens and dispensaries, and repealing Ordinance 2889.**
COUNCIL ACTION:

CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON AMENDING MARYSVILLE MUNICIPAL CODE (MMC) SECTIONS 22A.020.040; 22A.020.140; 22C.020.060; AND 22C.020.070(68) PROHIBITING THE ESTABLISHMENT OF MEDICAL CANNABIS COLLECTIVE GARDENS AND MEDICAL CANNABIS DISPENSARIES; REPEALING THE MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES AND COLLECTIVE GARDENS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998 and now codified as chapter 69.51A RCW, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana (cannabis); and

WHEREAS, in 2011, the Washington State Legislature passed a bill (E2SSB 5073) to legalize the licensing of medical marijuana or cannabis dispensaries, production facilities, and processing facilities; and

WHEREAS, on April 29, 2011, Governor Gregoire vetoed portions of E2SSB 5073 that would have provided the legal basis for legalizing and licensing medical marijuana or cannabis dispensaries, processing facilities and production facilities; and

WHEREAS, E2SSB 5073, as approved, further authorized cities to adopt and enforce zoning requirements regarding production and processing of medical cannabis; and

WHEREAS, Cannabis remains a controlled substance under the Controlled Substances Act, 21 U.S.C. Ch. 13 and the U.S. Department of Justice and United States Attorneys in the State of Washington have continued to maintain that cannabis (marijuana) is illegal to posess, distribute, dispense or manufacture under federal law; and

WHEREAS, MMC 22A.010.040(3) provides that all land uses and development authorized by Title 22 MMC shall comply with all other regulations and or requirements of Title 22 as well as any other applicable local, State or Federal law; and

WHEREAS, the City Council adopted Ordinance 2867, a six month moratorium and interim regulation prohibiting the establishment of medical cannabis dispensaries collective gardens and the licensing and permitting thereof on July 19, 2011. The City Council adopted Ordinance 2882, extending the moratorium established in Ordinance 2867 for an additional six (6) months from the date of expiration of Ordinance 2867. The City Council adopted Ordinance 2899, extending the moratorium an additional 12 months from the date of expiration of Ordinance 2882, providing adequate time for staff and Planning Commission to study and make a recommendation on the matter. Ordinance 2899 is set to expire on July 5, 2013.

WHEREAS, the City Council finds and determines that such amendments authorized herein are not intended to regulate the individual use of cannabis for medical purposes by qualifying patients and designated providers as authorized pursuant to Chapter 69.51 RCW; and

WHEREAS, the City Council seeks to identify what changes in Title 22 MMC are necessary and or appropriate to clearly ban or prohibit collective gardens as that term is described in Engrossed Second Substitute Senate Bill 5073 approved by Governor Christine Gregoire on April 29, 2011; and

WHEREAS, as part of the process for the adoption of zoning regulations, the land use impacts of collective gardens must be identified; and

WHEREAS, many jurisdictions around the country that have approved medical marijuana uses have experienced numerous land use impacts, such as:

- Conversion of residential uses into marijuana cultivation and processing facilities, removing valuable housing stock in a community;
- Degrading neighborhood aesthetics due to shuttered up homes, offensive odors, increased night-time traffic, parking issues, loitering from potential purchasers looking to buy from a collective member;
- Environmental damages from chemicals being discharged into surrounding and off-site soil and storm and sanitary sewer systems;
- Serious risk of fire hazard due to overload service connections used to operate grow lights and fans;
- Improper ventilation leading to high levels of moisture and mold;
- Illegal structural modifications; and
- Criminal issues such as home invasions, burglaries of medical marijuana facilities, theft and property damage; and

WHEREAS, the Planning Commission discussed the above-referenced amendment during public meetings held on May 14, 2013; and

WHEREAS, after providing notice to the public as required by law, on June 11, 2013, the Marysville Planning Commission held a Public Hearing on proposed amendments to the City's development regulations; and

WHEREAS, on June 11, 2013, the Marysville Planning Commission made a Recommendation to the City Council recommending the adoption of the proposed amendments to the City's development regulations; and

WHEREAS, at a public meeting on June 24, 2013, the Marysville City Council reviewed and considered the Marysville Planning Commission's Recommendation and proposed amendments to the City's development regulations; and

WHEREAS, the City of Marysville has submitted the proposed development regulation revisions to the Washington State Department of Commerce on April 15, 2013, seeking expedited review under RCW 36.70A.160(3)(b) in compliance with the procedural requirement under RCW 36.70A.106; and

WHEREAS, the amendments to the development regulations are exempt from State Environmental Policy Act review under WAC 197-11-800(19);

WHEREAS, the City Council has considered both the direct and incidental land use, law enforcement and public safety impacts of collective gardens, cannabis dispensaries, and is aware of the issues and impacts encountered in other cities that allow cannabis collective gardens and/or dispensaries; and

WHEREAS, the Marysville City Council has determined that Medical Cannabis Collective Gardens "marijuana", is in conflict with current Federal law which recognizes marijuana as a controlled substance; and

WHEREAS, the Marysville City Council has determined and the intent and purpose of this Ordinance is that Medical Cannibus Collective Gardens and Medical Cannabis Dispensaries shall not be permitted in the City of Marysville.

THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. MMC 22A.020.040 is hereby amended by amending Section "C" definitions to add the following definition:

> "Cannabis" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this definition, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

Section 2. MMC 22A.020.140 is hereby amended by amending Section "M" definitions to add the following definitions:

> "Medical marijuana (Cannabis) dispensary" or "dispensary" means any facility or location where medical marijuana is grown, made available to and/or distributed by or to two or more of the following: a primary caregiver, a qualified patient, or a person with an identification card.
>
> "Medical marijuana (Cannabis) collective gardens" or "collective garden" means a garden where qualifying patients engage in the production, processing, and delivery of cannabis for medical use as set forth in chapter 69.51A RCW and subject to the limitations therein and in this ordinance."
>
> "Miscellaneous Health" Establishments primarily engaged in providing health and allied services, including but not limited to physical and occupational therapists; blood banks; blood donor stations; medical photography and art; osteoporosis centers; kidney dialysis centers; sperm banks; etc.

Section 3. MMC Section 22C.020.060 table entitled 'Permitted uses' Commercial, Industrial, Recreation and Public Institution Zones is hereby amended to add a Miscellaneous Health land use category as follows:

Specific Land Use	NB	CB	GC	DC	MU	BP	LI	GI	REC	P/I
Health Services:										
Medical/dental clinic	P	P	P	P	P					P
Hospital		P	P	P	C					C
Miscellaneous Health	P(68)	P (68)	P(68)	P(68)	P(68)					P(68)

Section 4. MMC Section 22C.020.070 entitled "Permitted uses – Development conditions" is hereby amended to add a new footnote 68 which shall read as follows:
(68) Excepting "marijuana (cannabis) dispensaries" and "marijuana (cannabis) collective gardens" as those terms are defined or described in this code and/or under state law, such facilities and/or uses are prohibited in all zoning districts of the City of Marysville.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or work of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

PASSED by the City Council and APPROVED by the Mayor this _____ day of

_____, 2013.

CITY OF MARYSVILLE

By: _____
JON NEHRING, MAYOR

Attest:

By: _____
SANDY LANGDON, CITY CLERK

Approved as to form:

By: _____
GRANT K. WEED, CITY ATTORNEY

Date of Publication: _____

Effective Date: _____

COMMUNITY DEVELOPMENT DEPARTMENT
80 Columbia Avenue • Marysville, WA 98270
(360) 363-8100 • (360) 651-5099 FAX

MEMORANDUM

DATE: **May 9, 2013**

TO: **Planning Commission**

FROM: **Cheryl Dungan, Senior Planner**

RE: **Medical Cannabis Draft Regulations**

INTRODUCTION

Initiative Measure No. 692, approved by the voters of Washington State in November, 1998 and now codified as chapter 69.51A RCW, created an affirmative defense for 'qualifying patients' to the charge of possession of marijuana (cannabis). The proposed amendments do not intend to regulate the individual use of cannabis for medical reasons by qualifying patients and designated providers as authorized pursuant to Chapter 69.51 RCW.

In April 2011, the state legislature passed E2SSB 5073, which allows "medical cannabis collective gardens in Washington State. Furthermore, the bill allows local jurisdictions to zone, license, and regulate medical cannabis grown in collective gardens.

On July 19, 2011, the City Council passed Ordinance 2867, establishing a six month moratorium and interim regulations prohibiting the establishment of medical cannabis dispensaries collective gardens and the licensing and permitting thereof. Ordinance 2882, which was effective on 12/25/2011 extended the six month moratorium to July 5, 2012, the Council then adopted Ordinance 2899 extending the moratorium an additional 12 months providing adequate time for staff to study and make a recommendation on the matter. Ordinance 2899 is set to expire on July 5, 2013.

State law is currently in conflict with Federal law regarding the issue. Cannabis remains a controlled substance under the Controlled Substances Act, 21 U.S.C. Ch 13 and the U.S. Department of Justice and United States Attorneys in the State of Washington have continued to maintain that cannabis (marijuana) is illegal to possess, distribute, dispense or manufacture under Federal law.

MMC 22A.010.040(3) provides that all land uses and development authorized by Title 22 MMC shall comply with all other regulations and or requirements of Title 22 as well as any other applicable local, State, or Federal law.

To date, the City's code does not address the issue. To protect the City from person(s) who may seek to take advantage of any ambiguity or uncertainty in the City's code, regulations are recommended below that clearly prohibit collective gardens and medical cannabis dispensaries. Additionally, many jurisdictions around the country that have approved medical marijuana uses have experienced numerous land use impacts, such as:

- Conversion of residential uses into marijuana cultivation and processing facilities, removing valuable housing stock in a community;
- Degrading neighborhood aesthetics due to shuttered up homes, offensive odors, increased night-time traffic, parking issues, loitering from potential purchases looking to buy from a collective member;
- Environmental damages from chemicals being discharged into surrounding and off-site soil and storm and sanitary sewer systems;
- Serious risk of fire hazard due to overload service connections used to operate grow lights and fans;
- Improper ventilation leading to a high level of moisture and mold;
- Illegal structural modifications; and
- Criminal issues such as home invasions, burglaries of medical marijuana facilities, theft and property damage.

PROPOSED CODE AMENDMENTS

MMC 22A.020.040 is hereby amended by amending Section "C" definitions to add the following definition:

"Cannabis" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this definition, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

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"Medical marijuana (Cannabis) dispensary" or "dispensary" means any facility or location where medical marijuana is grown, made available to and/or distributed by or to two or more of the following: a primary caregiver, a qualified patient, or a person with an identification card.

"Medical marijuana (Cannabis) collective gardens" or "collective garden" means a garden where qualifying patients engage in the production, processing, and delivery of cannabis for medical use as set forth in chapter 69.51A RCW and subject to the limitations therein and in this ordinance."

"Miscellaneous Health" Establishments primarily engaged in providing health and allied services, including but not limited to physical and occupational therapists; blood banks; blood donor stations; medical photography and art; osteoporosis centers; kidney dialysis centers; sperm banks; etc.

MMC Section 22C.020.060 table entitled 'Permitted uses' Commercial, Industrial, Recreation and Public Institution Zones is hereby amended to add a Miscellaneous Health land use category as follows:

Specific Land Use	NB	CB	GC	DC	MU	BP	LI	GI	REC	P/I
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Medical/dental clinic	P	P	P	P	P					P
Hospital		P	P	P	C					C
Miscellaneous Health	P(68)	P (68)	P(68)	P(68)	P(68)					P(68)

MMC Section 22C.020.070 entitled "Permitted uses – Development conditions" is hereby amended to add a new footnote 68 which shall read as follows:
(68) Excepting "marijuana (cannabis) dispensaries" and "marijuana (cannabis) collective gardens" as those terms are defined or described in this code and/or under state law, such facilities and/or uses are prohibited in all zoning districts of the City of Marysville.

Attached for Planning Commission consideration are two recent court decisions upholding a City's right to use traditional land use regulations and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana.

Staff recommends the Planning Commission set a public hearing date to consider the proposed code amendments for June 10th, 2013.

Exhibit 3

DRAFT

PLANNING COMMISSION MINUTES

May 14, 2013 **7:00 p.m.** **City Hall**

CALL TO ORDER

Chair Leifer called the May 14, 2013 meeting to order at 7:02 p.m. noting no one present in the audience.

Marysville

Chairman:	Steve Leifer
Commissioners:	Roger Hoen, Jerry Andes, Kelly Richards, Kay Smith, Steven Lebo, Marvetta Toler
Staff:	Senior Planner Cheryl Dungan
Absent:	None

APPROVAL OF MINUTES: April 23, 2013

Motion made by Commissioner Kay Smith, seconded by Commissioner Richards, to approve the minutes as presented. **Motion** passed (6-0) with Commissioner Toler abstaining.

AUDIENCE PARTICIPATION

NEW BUSINESS

Wireless Communication Facility Prohibition in the Downtown Master Plan

Senior Planner Cheryl Dungan explained that in 2009 the City adopted the Downtown Master Plan in order to establish guidelines to help development and redevelopment to promote the City's goal of revitalizing the downtown. Currently, cell towers up to 140 feet tall are allowed in the Downtown Planning Area. It is staff's recommendation to the Planning Commission that wireless communication facilities be prohibited in the downtown planning area for aesthetic purposes. Senior Planner Dungan explained that the City recently contracted with a consultant for the downtown waterfront plan who had

stressed the importance of the nice vista. Allowing cell towers in that area could interfere with those valuable views.

Commissioner Andes asked if there are any towers in that area currently. Senior Planner Dungan replied that there are not, but there has been some interest recently.

Commissioner Hoen asked if anyone has ever tried to force the cell phone providers to share towers. Senior Planner Dungan explained that the City's code requires that they look at co-locating towers first.

Chair Leifer wondered if this could be revisited in the future if it becomes necessary to have cell towers in that area. Senior Planner Dungan replied that the code could be revisited in the future if necessary.

Motion made by Commissioner Toler, seconded by Commissioner Smith, to approve the staff's recommendation to forward the proposed code amendments prohibiting Wireless Communication Facilities in the Downtown Area Master Plan. **Motion** passed unanimously (7-0).

Draft Medical Cannabis Collective Regulations – Workshop

Senior Planner Dungan stated that this only pertains to medical marijuana regulations. She discussed the current regulations and explained that the City wants to create a new designation for accessory medical uses which would prohibit the medical cannabis dispensaries and collective gardens and limit medical marijuana to one patient, one provider.

Chair Leifer expressed some concern about the fact that the proposed regulations are not in compliance with federal law. Senior Planner Dungan explained that this has gone through the City Attorney's office, and there have been a couple of test cases in the courts. So far the courts are upholding the cities' ability to have police power and to choose whether or not to allow medical marijuana collective gardens and dispensaries in their cities. Chair Leifer wondered about implications of going contrary to the federal laws. Senior Planner Dungan concurred that that was a consideration. She noted that the police are in full support of the proposed regulations.

Commissioner Hoen commented that the state will probably be developing new rules for marijuana sale and use. He noted that those new rules could potentially be in conflict with these regulations and wondered if it might make sense to wait. Senior Planner Dungan explained that the City has already extended this for two years and is about at the point where it could be opening itself up to some liability for putting off adopting regulations. She discussed some differences between medical marijuana and retail and noted that there are significant differences between those regulations. She acknowledged that the City will be discussing the retail aspect after the state finalizes its regulations. Commissioner Toler commented that Colorado has had a lot of issues with robberies and dangerous situations surrounding their dispensaries. Senior Planner Dungan concurred that cities that have adopted these regulations have seen an

increase in crime and other issues related to marijuana. Staff is recommending a public hearing be set for June 11 so it can get to the Council before the end of June and before the expiration of the latest moratorium on July 5.

Chair Leifer requested legal advice on this as it would be contrary to federal law. Senior Planner Dungan explained that Grant Weed's office has reviewed this and supports it. She reiterated that the courts are giving cities the right to choose. She further explained that staff, the City Attorney, and the Police Department are all in full support of this and would like to see it move forward.

Commissioner Hoen asked about staff's expectations for public attendance at the hearing. Senior Planner Dungan was not sure, but she noted that the police would probably attend. She said she wasn't expecting a huge crowd. She thought that perhaps they would move on to other cities that are more lenient in this regard.

Commissioner Hoen commented that from what he has heard it sounds like legalized marijuana will be more expensive than illegal marijuana.

Motion made by Commissioner Richards, seconded by Commissioner Toler, to set a public hearing for June 11 to consider the proposed code amendments regarding marijuana. **Motion** passed unanimously (7-0).

COMMENTS FROM COMMISSIONERS

CITY COUNCIL AGENDA ITEMS AND MINUTES

ADJOURNMENT

Motion made by Commissioner Lebo, seconded by Commissioner Richards, to adjourn at 7:29 p.m. **Motion** passed unanimously.

NEXT MARYSVILLE MEETING:

June 11, 2013

_____

Laurie Hugdahl, Recording Secretary

Filed 5/6/13

IN THE SUPREME COURT OF CALIFORNIA

CITY OF RIVERSIDE, Plaintiff and Respondent, v. INLAND EMPIRE PATIENTS HEALTH AND WELLNESS CENTER, INC., et al., Defendants and Appellants.	S198638 Ct.App. 4/2 E052400 Riverside County Super. Ct. No. RIC10009872

The issue in this case is whether California's medical marijuana statutes preempt a local ban on facilities that distribute medical marijuana. We conclude they do not.

Both federal and California laws generally prohibit the use, possession, cultivation, transportation, and furnishing of marijuana. However, California statutes, the Compassionate Use Act of 1996 (CUA; Health & Saf. Code, § 11362.5,[1] added by initiative, Prop. 15, as approved by voters, Gen. Elec. (Nov. 5, 1996)) and the more recent Medical Marijuana Program (MMP; § 11362.7 et seq., added by Stats. 2003, ch. 875, § 2, pp. 6422, 6424), have removed certain state law obstacles from the ability of qualified patients to obtain and use marijuana for legitimate medical purposes. Among other things, these statutes exempt the "collective[ ] or cooperative[ ] cultiva[tion]" of medical

1 All unlabeled statutory references are to the Health and Safety Code.

marijuana by qualified patients and their designated caregivers from prosecution or abatement under specified state criminal and nuisance laws that would otherwise prohibit those activities. (§ 11362.775.)

The California Constitution recognizes the authority of cities and counties to make and enforce, within their borders, "all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) This inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders, and preemption by state law is not lightly presumed.

In the exercise of its inherent land use power, the City of Riverside (City) has declared, by zoning ordinances, that a "[m]edical marijuana dispensary" — "[a] facility where marijuana is made available for medical purposes in accordance with" the CUA (Riverside Municipal Code (RMC), § 19.910.140)[2] — is a prohibited use of land within the city and may be abated as a public nuisance. (RMC, §§ 1.01.110E, 6.15.020Q, 19.150.020 & table 19.150.020 A.) The City's ordinance also bans, and declares a nuisance, any use that is prohibited by federal or state law. (RMC, §§ 1.01.110E, 6.15.020Q, 9.150.020.)

Invoking these provisions, the City brought a nuisance action against a facility operated by defendants. The trial court issued a preliminary injunction against the distribution of marijuana from the facility. The Court of Appeal affirmed the injunctive order. Challenging the injunction, defendants urge, as they did below, that the City's total ban on facilities that cultivate and distribute medical marijuana in compliance with the CUA and the MMP is invalid.

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[2] The RMC can be examined at <http://www.riversideca.gov/municode> (as of May 6, 2013).

Defendants insist the local ban is in conflict with, and thus preempted by, those state statutes.

As we will explain, we disagree. We have consistently maintained that the CUA and the MMP are but incremental steps toward freer access to medical marijuana, and the scope of these statutes is limited and circumscribed. They merely declare that the conduct they describe cannot lead to arrest or conviction, or be abated as a nuisance, as violations of enumerated provisions of the Health and Safety Code. Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders. We must therefore reject defendants' preemption argument, and must affirm the judgment of the Court of Appeal.

LEGAL AND FACTUAL BACKGROUND

A. Medical marijuana laws.

The federal Controlled Substances Act (CSA; 21 U.S.C. § 801 et seq.) prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana. (*Id.*, §§ 812(c) (Schedule I, par. (c)(10)), 841(a), 844(a).) The CSA finds that marijuana is a drug with "no currently accepted medical use in treatment in the United States" (*id.*, § 812(b)(1)(B)), and there is no medical necessity exception to prosecution and conviction under the federal act (*United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 490).

California statutes similarly specify that, except as authorized by law, the possession (§ 11357), cultivation, harvesting, or processing (§ 11358), possession for sale (§ 11359), and transportation, administration, or furnishing (§ 11360) of marijuana are state criminal violations. State law further punishes one who

maintains a place for the purpose of unlawfully selling, using, or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing, certain controlled substances. (§§ 11366, 11366.5.) The so-called "drug den" abatement law additionally provides that every place used to unlawfully sell, serve, store, keep, manufacture, or give away certain controlled substances is a nuisance that shall be enjoined, abated, and prevented, and for which damages may be recovered. (§ 11570.) In each instance, the controlled substances in question include marijuana. (See §§ 11007, 11054, subd. (d)(13).)

However, California's voters and legislators have adopted limited exceptions to the sanctions of this state's criminal and nuisance laws in cases where marijuana is possessed, cultivated, distributed, and transported for medical purposes. In 1996, the electorate enacted the CUA. This initiative statute provides that the state law proscriptions against possession and cultivation of marijuana (§§ 11357, 11358) shall not apply to a patient, or the patient's designated primary caregiver, who possesses or cultivates marijuana for the patient's personal medical purposes upon the written or oral recommendation or approval of a physician. (§ 11362.5, subd. (d).)

In 2004, the Legislature adopted the MMP. One purpose of this statute was to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." (Stats. 2003, ch. 875, § 1, subd. (b)(3), pp. 6422, 6423.) Accordingly, the MMP provides, among other things, that "[q]ualified patients . . . and the designated primary caregivers of qualified patients . . ., who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under [s]ection 11357 [possession], 11358 [cultivation, harvesting, and processing], 11359 [possession for sale], 11360 [transportation, sale, furnishing, or administration],

11366 [maintenance of place for purpose of unlawful sale, use, or furnishing], 11366.5 [making place available for purpose of unlawful manufacture, storage, or distribution], or 11570 [place used for unlawful sale, serving, storage, manufacture, or furnishing as statutory nuisance]." (§ 11362.775.)

The CUA and the MMP have no effect on the federal enforceability of the CSA in California. The CSA's prohibitions on the possession, distribution, or manufacture of marijuana remain fully enforceable in this jurisdiction. (*Gonzalez v. Raich* (2005) 545 U.S. 1.)

B. Riverside's ordinances.

As noted above, the Riverside ordinances at issue declare as a "prohibited use" within any city zoning classification (1) a "[m]edical marijuana dispensary" — defined as "[a] facility where marijuana is made available in accordance with" the CUA — and (2) any use prohibited by state or federal law. (RMC, §§ 19.150.020 & table 19.150.020 A, 19.910.140.) The RMC further provides that any condition caused or permitted to exist in violation of the ordinance is a public nuisance which may be abated by the city. (*Id.*, §§ 1.01.110E, 6.15.020Q.)

C. The instant litigation.

Since 2009, defendant Inland Empire Patients Health and Wellness Center, Inc. (Inland Empire), has operated a medical marijuana distribution facility in Riverside. Defendants Meneleo Carlos and Filomena Carlos (the Carloses) are the owners and lessors of the Riverside property on which Inland Empire's facility is located. Their mortgage on the property is financed by defendant East West Bancorp, Inc. (Bancorp). Defendant Lanny Swerdlow is the lessee of the property, and defendant Angel City West, Inc. (Angel), provides the property with management services. Swerdlow is also a registered nurse and the manager of an immediately adjacent medical clinic doing business as THCF Health and Wellness Center (THCF). Though THCF has no direct legal link to Inland Empire, the two

facilities are closely associated, and THCF provides referrals to Inland Empire upon patient request. Defendant William Joseph Sump II is a board member of Inland Empire and the general manager of Inland Empire's Riverside facility.

In January 2009, the planning division of Riverside's Community Development Department notified Swerdlow by letter that the definition of "medical marijuana dispensary" in Riverside's zoning ordinances "is an all-encompassing definition, referring to all three types of medical marijuana facilities, a dispensary, a collective and a cooperative," and that, as a consequence, "all three facilities are banned in the City of Riverside." In May 2010, the City filed a complaint against the Carloses, Bancorp, Swerdlow, Angel, THCF, Sump, and various Doe defendants for injunctive relief to abate a public nuisance. Inland Empire was later substituted by name for one of the Doe defendants. The complaint alleged that defendants were operating a "medical marijuana distribution facility" in violation of the zoning provisions of the RMC.[3]

Thereafter, the City moved for a preliminary injunction against operation of Inland Empire's facility.[4] After a hearing, the trial court granted the preliminary

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[3] The complaint asserted that defendants' facility was being operated within the city's business and manufacturing park zone, and that a "medical marijuana distribution facility" was a prohibited use within that zone. But the RMC in fact makes a "[m]edical marijuana dispensary" — the broadly defined phrase used in the ordinance — a prohibited use in *every* zone within the city (see RMC provisions cited above), and Riverside has never denied that such a facility is banned everywhere within the city.

[4] In its briefs, Inland Empire describes itself as "a not for profit California Mutual Benefit Corporation established for the sole purpose of forming an association of qualified individuals who collectively cultivate medical marijuana and redistribute [it] to each other." No party disputes this description. Moreover, all parties further appear to assume that Inland Empire distributed medical marijuana from an established business address. But the record contains few details about Inland Empire's actual operations. The only real clues appear in

(Footnote continued on next page.)

injunction, prohibiting the defendants and all persons associated with them, during the pendency of the action, from using, or allowing use of, the subject property to conduct "any activities or operations related to the distribution of marijuana."

The trial court found the case was controlled by *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 (*Kruse*), which held that cities may abate, as nuisances, uses in violation of their zoning and licensing regulations, and that

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(Footnote continued from previous page.)

declarations supporting and in opposition to the motion for preliminary injunction. In support of the motion, Riverside Police Officer Darren Woolley declared as follows: He visited the THCF clinic at 647 North Main Street, suite 1B, in Riverside, where he received a medical marijuana authorization. Thereafter, THCF's receptionist provided him with a list of "collective storefronts" in Riverside County. Inland Empire headed the list, and its address was stated as 647 North Main Street, suite 2A, in Riverside. Woolley asked if he was already at that address. The receptionist directed him to a location "right across the lot" and said he could "purchase [his] medicine" there. Woolley walked to suite 2A, presented his authorization, passed through security, and was directed to a room "with a large counter displaying marijuana food and drink products." He was introduced to a "runner" who said she would keep track of his selections and take them to the checkout area where he would pay for and receive his purchases. He was then "led to the rear of the [facility] that was separated into small stalls. Each of these stalls was manned by a different seller of marijuana products." Woolley purchased $40 worth of marijuana from one seller and $25 worth of hashish from another. He also bought an $8 marijuana brownie. On another occasion, he attended the "Farmer's Market" at Inland Empire, when "individual growers sell their product." On this latter day, Woolley purchased marijuana from two separate vendors.

In opposition to the motion, defendant Swerdlow insisted that THCF and Inland Empire were not connected. However, Swerdlow's declaration did not dispute Inland Empire's basic method of operation, as observed by Woolley. Indeed, Swerdlow stated that Inland Empire chose its location, coincidentally adjacent to THCF, "because of its low cost, large size, central location with plenty of parking and [because] it was located in an Industrial Warehouse zone and was not near any schools, churches, etc. . . ."

neither the CUA nor the MMP preempts local zoning and licensing regulation of facilities that furnish, distribute, or make available medical marijuana — including, in *Kruse* itself, a moratorium on all such facilities within city boundaries. Moreover, though the court insisted it was not holding that federal prohibitions on the possession, distribution, or cultivation of marijuana preempted state medical marijuana laws, it nonetheless concluded that Riverside "[could] use its . . . zoning regulations to prohibit the activity [of dispensing medical marijuana] especially given the conflict between state and federal laws."

The Court of Appeal affirmed the order. The appellate court agreed with defendants that the City could not assert *federal* preemption of *state* law as authority for its total ban on medical marijuana dispensing facilities. However, the court rejected defendants' argument that Riverside's zoning prohibition of such facilities was preempted by state law, the CUA and the MMP. In the Court of Appeal's view, Riverside's provisions do not duplicate or contradict the state statutes concerning medical marijuana, nor do they invade a field expressly or impliedly occupied by those laws.

We granted review. We now conclude the Court of Appeal's judgment must be affirmed.

DISCUSSION[5]

A. Principles of preemption.

As indicated above, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) "Land use regulation in California historically has been a function of local government under the grant of police power contained in article XI, section 7. . . . 'We have recognized that a city's or county's power to control its own land use decisions derives from this inherent police power, not from the delegation of authority by the state.' " (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1151 (*Big Creek Lumber Co.*), fn. omitted.) Consistent with this principle, "when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Id.*, at p. 1149; see *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 93.)

However, local legislation that conflicts with state law is void. (E.g., *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 (*Sherwin-Williams Co.*).) " 'A conflict exists if the local legislation " 'duplicates,

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[5] An amicus curiae brief on behalf of defendants has been submitted by Americans For Safe Access. Amicus curiae briefs on behalf of the City have been submitted by (1) the League of California Cities and the California State Association of Counties (League of California Cities et al.), (2) the California State Sheriffs' Association, the California Police Chiefs Association, and the California Peace Officers' Association (California State Sheriffs' Association et al.), and (3) the City of Los Angeles.

contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' " ' [Citations.]" (*Ibid.*)

"Local legislation is 'duplicative' of general law when it is coextensive therewith. [Citation.]

"Similarly, local legislation is 'contradictory' to general law when it is inimical thereto. [Citation.]

"Finally, local legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area [citation], or when it has impliedly done so in light of one of the following indicia of intent: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality. [Citations.]" (*Sherwin-Williams Co., supra,* 4 Cal.4th 893, 897-898; see *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 860-861 (*Great Western Shows*); *California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 188.)

The "contradictory and inimical" form of preemption does not apply unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands. (*Big Creek Lumber, supra,* 38 Cal.4th 1139, 1161; *Great Western Shows, supra,* 27 Cal.4th 853, 866; *Sherwin-Williams Co., supra,* 4 Cal.4th 893, 902.) Thus, no inimical conflict will be found where it is reasonably possible to comply with both the state and local laws.

In addition, "[w]e have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.' " (*Big Creek Lumber Co., supra*, 38 Cal.4th 1139, 1149, quoting *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707.) " 'The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption.' " (*Big Creek Lumber Co., supra*, at p. 1149, quoting *Gluck v. City of Los Angeles* (1979) 93 Cal.App.3d 121, 133.)

B. The CUA and the MMP do not preempt Riverside's ban.

When they adopted the CUA in 1996, the voters declared their intent "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes" upon a physician's recommendation (§ 11362.5, subd. (b)(1)(A)), "[t]o ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction" (*id.*, subd. (b)(1)(B)), and "[t]o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need" of the substance (*id.*, subd. (b)(1)(C)).

But the operative steps the electorate took toward these goals were modest. In its substantive provisions, the CUA simply declares that (1) no physician may be punished or denied any right or privilege under state law for recommending medical marijuana to a patient (§ 11362.5, subd. (c)), and (2) two specific state statutes prohibiting the possession and cultivation of marijuana, sections 11357 and 11358 respectively, "shall not apply" to a patient, or the patient's designated primary caregiver, who possesses or cultivates marijuana for the patient's personal

medical use upon a physician's recommendation or approval (§ 11362.5, subd. (d)).

When it later adopted the MMP, the Legislature declared this statute was intended, among other things, to "[c]larify the scope of the application of the [CUA] and facilitate the prompt identification of qualified [medical marijuana] patients and their designated primary caregivers" in order to protect them from unnecessary arrest and prosecution for marijuana offenses, to "[p]romote uniform and consistent application of the [CUA] among the counties within the state," and to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects" (Stats. 2003, ch. 875, § 1, subd. (b), pp. 6422, 6423).

Again, however, the steps the MMP took in pursuit of these objectives were limited and specific. The MMP established a program for issuance of medical marijuana identification cards to those qualified patients and designated primary caregivers who wish to carry them, and required responsible county agencies to cooperate in this program. (§§ 11362.71, subds. (a)-(d), 11362.715, 11362.72, 11362.735, 11362.74, 11362.745, 11362.755.) It provided that the holder of an identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana, within the amounts specified by the statute, except upon reasonable cause to believe the card is false or invalid or the holder is in violation of statute. (§ 11362.71, subd. (e); see § 11362.77, subd. (a).)

The MMP further specified that certain persons, including (1) a qualified patient, or the holder of a valid identification card, who possesses or transports marijuana for personal medical use, or (2) a designated primary caregiver who transports, processes, administers, delivers, or gives away, in amounts no greater than those specified by statute, marijuana for medical purposes to or for a qualified patient or valid cardholder "shall not be subject, on that sole basis, to criminal

liability" under section 11357 (possession of marijuana), 11358 (cultivation of marijuana), 11359 (possession of marijuana for sale), 11360 (sale, transportation, importation, or furnishing of marijuana), 11366 (maintaining place for purpose of unlawfully selling, furnishing, or using controlled substance), 11366.5 (knowingly providing place for purpose of unlawfully manufacturing, storing, or distributing controlled substance), or 11570 (place used for unlawful selling, furnishing, storing, or manufacturing of controlled substance as nuisance). (§ 11362.765, subd. (a).)

Finally, as indicated above, the MMP declared that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of [such persons], who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not *solely on the basis of that fact* be subject to *state criminal sanctions* under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570." (§ 11362.775, italics added.) However, an amendment adopted in 2010 declares that no medical marijuana "cooperative, collective, dispensary, operator, establishment, or provider," other than a licensed residential or elder medical care facility, that is "authorized by law" to possess, cultivate, or distribute medical marijuana, and that "has a storefront or mobile retail outlet which ordinarily requires a local business license," shall be located within 600 feet of a school. (§ 11362.768, subds. (a)-(e), as added by Stats. 2010, ch. 603, § 1.)

Our decisions have stressed the narrow reach of these statutes. Thus, in *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920 (*Ross*), a telecommunications company discharged an employee from his supervisory position after an employer-mandated drug test disclosed the presence of tetrahydrocannabinol, a chemical found in marijuana. The employee sued, urging that his termination for this reason violated both the state's Fair Employment and

Housing Act (FEHA) and public policy. The employee's complaint alleged that he ingested medical marijuana, as a qualified patient under the CUA, to alleviate his chronic back pain, but was nonetheless able to perform his duties satisfactorily. Hence, the complaint asserted, the employer was obliged, under the FEHA, to accommodate his disability by accepting his use of medical marijuana. The trial court sustained the employer's demurrer without leave to amend and dismissed the action.

The Court of Appeal affirmed, and we upheld the Court of Appeal's judgment. We noted that neither the CUA's findings and declarations, nor its substantive provisions, mention employment rights, except in their protection of physicians who recommend medical marijuana to patients.

The employee urged that such rights were implied in the voters' declaration of their intent in the CUA "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes." (§ 11362.5, subd. (b)(1)(A).) We rejected this notion. As we observed, "[p]laintiff would read [this declaration] as if it created a broad right to use marijuana without hindrance or inconvenience, enforceable against private parties such as employers." (*Ross*, *supra*, 42 Cal.4th 920, 928.) On the contrary, we stated, "the only 'right' to obtain and use marijuana created by the [CUA] is the right of 'a patient, or . . . a patient's primary caregiver, [to] possess[] or cultivate[] marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician' without thereby becoming subject to punishment under sections 11357 and 11358 of the Health and Safety Code. [Citation.]" (*Ross*, *supra*, at p. 929.)

In reaching this conclusion, we emphasized the CUA's "modest objectives" (*Ross*, *supra*, 42 Cal.4th 920, 930), pointing out that the initiative's proponents had "consistently described the proposed measure to the voters as motivated" only "by the desire to create a narrow exception to the criminal law" for medical

marijuana possession and use under the circumstances specified. (*Id.*, at p. 929.) We endorsed the observation that " 'the proponents' ballot arguments reveal a delicate tightrope walk designed to induce voter approval, which we would upset were we to stretch the proposition's limited immunity to cover that which its language does not.' " (*Id.*, at p. 930, quoting *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1152.)

In *People v. Mentch* (2008) 45 Cal.4th 274 (*Mentch*), a defendant charged with cultivation and possession for sale of marijuana sought to raise the defense, among others, that he was immune from conviction as a "primary caregiver" protected by the CUA. Two witnesses testified they had medical marijuana recommendations and obtained their marijuana from the defendant, paying him in cash for their supplies. The defendant testified that he himself had a medical marijuana recommendation; had studied how to grow marijuana; had thereafter opened a "caregiving and consultancy business" to give people safe access to medical marijuana; and supplied medical marijuana to five patients. The defendant also stated that he took " 'a couple' " of patients to medical appointments "on a 'sporadic' basis," and that he provided shelter to one patient during a brief part of the time he was selling her marijuana. (*Mentch*, at p. 280.)

Finding insufficient evidence on the point, the trial court declined to provide a "primary caregiver" instruction, and the defendant was convicted as charged. The Court of Appeal reversed the convictions. The appellate court concluded that evidence the defendant grew medical marijuana for qualified patients, counseled them on how to grow and use medical marijuana, and occasionally took them to medical appointments was sufficient to warrant a "primary caregiver" instruction. (*Mentch*, *supra*, 45 Cal.4th 274, 281-282.)

We reversed the Court of Appeal. We first examined the CUA's definition of a "primary caregiver" as "the individual designated by [a qualified medical

marijuana patient] who has *consistently* assumed responsibility for the *housing, health, or safety* of that person." (§ 11362.5, subd. (e), italics added.) This language, we reasoned, "impl[ied]" an ongoing "caretaking relationship directed at the core survival needs of a seriously ill patient, not just one single pharmaceutical need." (*Mentch, supra*, 45 Cal.4th 274, 286.) Further, we observed, the ballot arguments for Proposition 215, which became the CUA, suggested that a patient would be primarily responsible for noncommercially supplying his or her own medical marijuana, but that a "primary caregiver" should be allowed to act for a seriously or terminally afflicted patient who was too ill or bedridden to do so. Accordingly, we held that a person cannot establish "primary caregiver" status simply by showing he or she was chosen and used by a qualified patient to assist the patient in obtaining and ingesting medical marijuana. Instead, we concluded, a "primary caregiver" must prove, at a minimum, that he or she consistently provided care in such areas as housing, health, and safety, independent of any help with medical marijuana, and undertook such general caregiving duties before assuming responsibility for assisting with medical marijuana.

Alternatively, the defendant urged that the MMP, specifically section 11362.765, provides a defense against charges of cultivation and possession for sale to those who assist patients and primary caregivers in administering, or learning how to cultivate or administer, medical marijuana. By failing to so advise his jury, the defendant insisted, the trial court breached its sua sponte duty to instruct on any affirmative defense supported by the evidence.

We responded that the defendant's reading of the MMP was too broad. We explained that while the MMP "does convey additional immunities against cultivation and possession for sale charges to specific groups of people, it does so only for specific actions; it does not provide globally that the specified groups of people may never be charged with cultivation or possession for sale. That is, the

immunities conveyed by section 11362.765 have three defining characteristics: (1) they each apply only to a specific group of people; (2) they each apply only to a specific range of conduct; and (3) they each apply only against a specific set of laws." (*Mentch, supra*, 45 Cal.4th 274, 290.)

Moreover, we noted, section 11362.765 declares only that the specified groups of people engaged in the specified conduct shall not "on that sole basis" be subject to criminal liability under the specified laws. Hence, we determined, section 11362.765, subdivision (b)(3), which grants immunity from certain state marijuana laws to one who "provides assistance to a qualified patient or . . . primary caregiver, in administering medical marijuana to the . . . patient or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the . . . patient," affords the specified criminal immunities *only* for providing the described forms of assistance. This subdivision, we said, "does not mean [the defendant] could not be charged with cultivation or possession for sale on *any* basis . . . . " (*Mentch, supra*, 45 Cal.4th 274, 292, original italics.) On the contrary, "to the extent he went beyond the immunized range of conduct, i.e., administration, advice, and counseling, he would, once again, subject himself to the full force of the criminal law." (*Ibid.*) Because it was undisputed that the defendant "did much more than administer, advise, and counsel," we said, the MMP afforded him no defense, and no instruction was required. (*Mentch*, at p. 292.)

Similarly, the MMP provision at issue here, section 11362.775, provides only that when particular described persons engage in particular described conduct, they enjoy, with respect to that conduct, a limited immunity *from specified state marijuana laws*. As previously noted, section 11362.775 simply declares that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification

cards, who associate . . . in order collectively or cooperatively to cultivate marijuana for medical purposes shall not *solely on the basis of that fact* be subject to *state* criminal sanctions" for the possession, furnishing, sale, cultivation, transportation, or possession for sale of marijuana, or for providing or maintaining a place for the manufacture, processing, storage, or distribution of marijuana. (Italics added; see *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 785 (*Urziceanu*).)

Recognizing the limited reach of the CUA and the MMP, Court of Appeal decisions have consistently held that these statutes, by exempting certain medical marijuana activities — including the collective cultivation and distribution of medical marijuana under specified circumstances — from the sanctions otherwise imposed by particular state antimarijuana laws, do not preempt local land use regulation of medical marijuana collectives, cooperatives, and dispensaries, even when such regulation amounts to a total ban on such facilities within a local jurisdiction's borders.

Thus, in *Kruse*, *supra*, 177 Cal.App.4th 1153, the defendant's application for a business license to operate a medical marijuana dispensary was denied by Claremont's city manager in September 2006. The grounds cited were that such a facility was not a permitted use under Claremont's land use and development code. The denial letter advised the defendant he could appeal to the city council, and could also seek an amendment to the code. He did not seek such an amendment, and he began operating his facility on the day his permit was denied. Meanwhile, he filed an administrative appeal. Therein he urged that a code amendment was unnecessary because state law (i.e., the CUA and the MMP) rendered " '[a] medical marijuana caregivers collective . . . a legal but not conforming business anywhere in the state where it is not regulated.' " (*Kruse*,

supra, at p. 1160.) He further alleged that, before beginning operations, he had given the city notice and opportunity to adopt such regulations if it chose.

In late September 2006, while the administrative appeal was pending, the city adopted a 45-day moratorium on the issuance of any permit, variance, license, or other entitlement for operation of a medical marijuana dispensary within its boundaries. The city manager promptly advised the defendant that adoption of the moratorium rendered his appeal moot. Thereafter, the city extended the moratorium several times, ultimately for a period ending on September 10, 2008.

Defendant continued to operate his facility. After he ignored two cease and desist orders, he was cited, tried, convicted, and fined for operating without a business license in violation of city ordinances. Thereafter, he continued to operate despite the issuance of yet another cease and desist order and a succession of administrative citations. Accordingly, in January 2007, the city sued for injunctive relief to abate a public nuisance. The trial court issued a temporary restraining order, a preliminary injunction, and ultimately, in May 2008, a permanent injunction. Among its other conclusions of law, the court determined that the CUA did not preempt the city's moratorium on medical marijuana dispensaries, "because 'there is nothing in the text or history of the [CUA] that suggests that the voters intended to mandate that municipalities allow [such facilities] to operate within their city limits.' " (*Kruse*, *supra*, 177 Cal.App.4th 1153, 1162.)

On appeal, the defendant urged, inter alia, that the CUA and the MMP preempted the city's moratorium on medical marijuana dispensaries and precluded the city from denying permission to operate such a facility. The Court of Appeal rejected this and the defendant's other claims and affirmed the judgment.

On the issue of preemption, the appellate court first found no *express* conflict between the state medical marijuana statutes and the city's action. By

their terms, the Court of Appeal observed, the CUA and the MMP do no more than exempt specific groups and specific conduct from liability under particular criminal statutes.

Second, the Court of Appeal concluded, there was no *implied* preemption under either state statute. The court reasoned as follows: Neither provision addresses, much less covers, the areas of zoning, land use planning, and business licensing. The city's moratorium ordinance was not "inimical" to the state statutes, in that it did not conflict with those laws by requiring what they forbid or prohibiting what they require. Nor does the CUA or the MMP impose a comprehensive regulatory scheme "demonstrating that the availability of medical marijuana is a matter of 'statewide concern,' thereby preempting local zoning and business licensing laws." (*Kruse*, *supra*, 177 Cal.App.4th 1153, 1175.) In particular, the CUA's statement of intent " '[t]o ensure that seriously ill Californians have the right of access to obtain and use marijuana for medical purposes' " (*Kruse*, at p. 1175) does not demonstrate a matter of preemptive statewide concern, for that declaration by the voters "[did] not create 'a broad right to use marijuana without hindrance or inconvenience' [citation], or to dispense marijuana without regard to local zoning and business licensing laws" (*ibid.*). Additionally, there is no partial state coverage of medical marijuana in terms indicating clearly that a paramount state concern will not tolerate further or additional local action. Indeed, the CUA expressly states that it does not preclude legislation prohibiting conduct that endangers others, and the MMP explicitly provides that it does not prevent a local jurisdiction from adopting and enforcing laws that are consistent with its provisions.

In sum, the Court of Appeal concluded, "[n]either the CUA nor the MMP compels the establishment of local regulations to accommodate medical marijuana dispensaries. The [c]ity's enforcement of its licensing and zoning laws and its

temporary moratorium on medical marijuana dispensaries do not conflict with the CUA or the MMP." (*Kruse*, *supra*, 177 Cal.App.4th 1153, 1176.)

Though it did not involve a complete moratorium or ban, the Court of Appeal in *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861 (*Hill*) similarly concluded that the CUA and the MMP do not preempt a local jurisdiction from applying its zoning and business licensing powers to regulate medical marijuana dispensaries. In particular, the *Hill* court observed, the "collective cultivation" provision of the MMP, section 11362.775, "does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose." (*Hill*, *supra*, at p. 869.)

The county ordinance at issue in *Hill* placed various restrictions on the establishment and operation of medical marijuana dispensaries: it provided that such a facility could operate in a C-1 zone, but it required the operator to obtain a conditional use permit and a business license, and it prohibited the location of a dispensary within 1,000 feet of a school, playground, park, public library, place of worship, childcare facility, or youth facility.[6] County ordinances declared generally that any use of property in violation of zoning laws was a public nuisance. (*Hill*, *supra*, 192 Cal.App.4th 861, 864-865.)

The county brought a nuisance action alleging that the defendants were violating the ordinance by operating a medical marijuana dispensary in an unincorporated area of the county without obtaining a business license, a conditional use permit, and a zoning variance to allow operation within 1,000 feet

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6 The Court of Appeal took judicial notice that in December 2010, while the *Hill* appeal was pending, the county's board of supervisors had enacted a complete ban on medical marijuana dispensaries. (*Hill*, *supra*, 192 Cal.App.4th 861, 866, fn. 4.) The court indicated that the validity of the 2010 ordinance was not at issue, and would not be addressed, in the pending appeal. (*Ibid.*)

of a public library. The defendants did not deny they were operating next to a public library without the required authorizations. Instead, they urged that the ordinance's requirements were unconstitutional and preempted by state law. The trial court disagreed. It issued a temporary restraining order and a preliminary injunction against operation of the defendants' facility without the necessary permits. (*Hill*, *supra*, 192 Cal.App.4th 861, 865.)

The defendants appealed, and the Court of Appeal affirmed. The appellate court rejected the defendants' claims that the county's regulations were inconsistent with the MMP, and thus preempted. The defendants acknowledged that section 11362.83 as then in effect (added by Stats. 2003, ch. 875, § 2, pp. 6424, 6434; former section 11362.83) expressly authorized "a city or other local governing body [to] adopt[ ] and enforc[e] laws consistent with" the MMP. However, the defendants insisted this provision only permitted local restrictions that were " 'the same as' " those imposed by the MMP. (*Hill*, *supra*, 192 Cal.App.4th 861, 867.) The Court of Appeal disagreed, indicating that former section 11362.83 showed the Legislature "expected and intended that local governments adopt additional ordinances." (*Hill*, *supra*, at p. 868.) The defendants also conceded that section 11362.768, then recently adopted to impose a minimum 600-foot distance between a medical marijuana facility and a school (*id.*, subd. (b), added by Stats. 2010, ch. 603, § 1), explicitly permits a local jurisdiction to "adopt[ ] ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider" (*id.*, subd. (f)). Nonetheless, the defendants insisted, the 600-foot limit established by subdivision (b), added by Stats. 2010, ch. 603, § 1) impliedly preempted a local jurisdiction from imposing greater distance restrictions. The Court of Appeal dismissed this argument, noting the plain words of subdivision (f).

Finally, the Court of Appeal found no merit in the defendants' contention that because section 11362.775 affords qualified collective cultivation projects a limited immunity from nuisance prosecution under the state's "drug den" abatement law, section 11570, the county was precluded from applying its own nuisance laws to enjoin operation of a medical marijuana dispensary in violation of its zoning ordinance. Noting that the immunity provided by section 11362.775 only applies where the state-law nuisance prosecution is premised "solely on the basis" of the collective activities described in that section, the Court of Appeal concluded that the MMP "does not prevent the [c]ounty from applying its nuisance laws to [medical marijuana dispensaries] that do not comply with its valid ordinances." (*Hill*, *supra*, 192 Cal.App.4th 861, 868.)

We now agree, for the reasons expressed below, that the CUA and the MMP do not expressly or impliedly preempt Riverside's zoning provisions declaring a medical marijuana dispensary, as therein defined, to be a prohibited use, and a public nuisance, anywhere within the city limits. We set forth our conclusions in detail.

1. No express preemption.

As indicated above, the plain language of the CUA and the MMP is limited in scope. It grants specified persons and groups, when engaged in specified conduct, immunity from prosecution under specified state criminal and nuisance laws pertaining to marijuana. (*Mentch*, *supra*, 45 Cal.4th 274, 290; *Kruse*, *supra*, 177 Cal.App.4th 1153, 1175.) The CUA makes no mention of medical marijuana cooperatives, collectives, or dispensaries. It merely provides that state laws against the possession and cultivation of marijuana shall not apply to a qualified patient, or the patient's designated primary caregiver, who possesses or cultivates marijuana for the patient's personal medical use upon a physician's recommendation. (§ 11362.5, subd. (d).)

Though the CUA broadly states an aim to "ensure" a "right" of seriously ill persons to "obtain and use" medical marijuana as recommended by a physician (§ 11362.5, subd. (b)(1)(A)), the initiative statute's actual objectives, as presented to the voters, were "modest" (*Ross*, *supra*, 42 Cal.4th 920, 928), and its substantive provisions created no "broad right to use [medical] marijuana without hindrance or inconvenience" (*id.*, at p. 928; see *Kruse*, *supra*, 177 Cal.App.4th 1153, 1163-1164; *Urziceanu*, *supra*, 132 Cal.App.4th 747, 773 [CUA created no constitutional right to obtain medical marijuana]). There is no basis to conclude that the CUA expressly preempts local ordinances prohibiting, as a nuisance, the use of property to cooperatively or collectively cultivate and distribute medical marijuana.

The MMP, unlike the CUA, does address, among other things, the collective or cooperative cultivation and distribution of medical marijuana. But the MMP is framed in similarly narrow and modest terms. As pertinent here, it specifies only that qualified patients, identification card holders, and their designated primary caregivers are exempt from prosecution and conviction under enumerated state antimarijuana laws "solely" on the ground that such persons are engaged in the cooperative or collective cultivation, transportation, and distribution of medical marijuana among themselves. (§ 11362.775.)

The MMP's language no more creates a "broad right" of access to medical marijuana "without hindrance or inconvenience" (*Ross*, *supra*, 42 Cal.4th 920, 928) than do the words of the CUA. No provision of the MMP explicitly guarantees the availability of locations where such activities may occur, restricts the broad authority traditionally possessed by local jurisdictions to regulate zoning and land use planning within their borders, or requires local zoning and licensing laws to accommodate the cooperative or collective cultivation and distribution of

medical marijuana.[7] Hence, there is no ground to conclude that Riverside's ordinance is expressly preempted by the MMP.[8]

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[7] The MMP imposes only two obligations on local governments. It specifies the duties of a county health department or other designated county agency with respect to the establishment and implementation of the voluntary medical marijuana identification card program. (§§ 11362.72, 11362.74.) And it prohibits a local law enforcement agency or officer from refusing to accept an identification card as protection against *arrest* for the possession, transportation, delivery, or cultivation of specified amounts of medical marijuana, except upon "reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently." (§ 11362.78; see § 11362.71, subd. (e).)

[8] The City claims sections 11362.768, as added in 2010, and 11362.83, as amended in 2011, *expressly authorize* total local bans on medical marijuana facilities. Section 11362.768 specifies that a "medical marijuana cooperative, collective[, or] dispensary" with "a storefront or mobile retail outlet which ordinarily requires a local business license" may not be located within 600 feet of a school (*id.*, subds. (b), (e)), but further provides that "[n]othing in this *section* shall prohibit a city [or] county . . . from adopting ordinances or policies that further restrict the location *or establishment* of" such a facility (*id.*, subd. (f), italics added; see also *id.*, subd. (g)). Section 11362.83 now declares that nothing in the MMP shall prevent a city or other local governing body from "[a]dopting local ordinances that regulate the location, operation, *or establishment* of a medical marijuana cooperative or collective" (*id.*, subd. (a), italics added) or from "[t]he civil and criminal enforcement" of such ordinances (*id.*, subd. (b)). The City urges that by granting local jurisdictions express authority to regulate the very "establishment" of such facilities, the MMP plainly sanctions ordinances that preclude such "establishment" within local boundaries. Our review of the language and legislative history of these provisions does not persuade us the Legislature necessarily intended them to provide affirmative authority for total bans. But we need not resolve the point. Local authority to regulate land use for the public welfare is an inherent *preexisting* power, recognized by the California Constitution, and limited only to the extent exercised "in conflict with general laws." (Cal. Const., art. XI, § 7.) As we otherwise conclude herein, the CUA and the MMP, by their substantive terms, grant limited exemptions from certain *state* criminal and nuisance laws, but they do not expressly or impliedly *restrict* the

(Footnote continued on next page.)

2. No implied preemption.

The considerations discussed above also largely preclude any determination that the CUA or the MMP *impliedly* preempts Riverside's effort to "de-zone" facilities that dispense medical marijuana. At the outset, there is no duplication between the state laws, on the one hand, and Riverside's ordinance, on the other, in that the two schemes are coextensive. The CUA and the MMP "decriminalize," for state purposes, specified activities pertaining to medical marijuana, and also provide that the *state's* antidrug nuisance statute cannot be used to abate or enjoin these activities. On the other hand, the Riverside ordinance finds, for local purposes, that the use of property for certain of those activities *does* constitutes a *local* nuisance.

Nor do we find an "inimical" contradiction or conflict between the state and local laws, in the sense that it is impossible simultaneously to comply with both. Neither the CUA nor the MMP *requires* the cooperative or collective cultivation and distribution of medical marijuana that Riverside's ordinance deems a prohibited use of property within the city's boundaries. Conversely, Riverside's ordinance requires no conduct that is forbidden by the state statutes. Persons who refrain from operating medical marijuana facilities in Riverside are in compliance with both the local and state enactments. (Compare, e.g., *Great Western Shows*, *supra*, 27 Cal.4th 853, 866 [ordinance banning sale of firearms or ammunition on county property was not "inimical" to state statutes contemplating lawful existence

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(Footnote continued from previous page.)

authority of local jurisdictions to decide whether local land may be used to operate medical marijuana facilities.

of gun shows; ordinance did not require what state law forbade or prohibit what state law demanded].)

Further, there appears no attempt by the Legislature to fully occupy the field of medical marijuana regulation as a matter of statewide concern, or to partially occupy this field under circumstances indicating that further local regulation will not be tolerated. On the contrary, as discussed in detail above, the CUA and the MMP take limited steps toward recognizing marijuana as a medicine by exempting particular medical marijuana activities from state laws that would otherwise prohibit them. In furtherance of their provisions, these statutes require local agencies to do certain things, and prohibit them from doing certain others. But the statutory terms describe no comprehensive scheme or system for authorizing, controlling, or regulating the processing and distribution of marijuana for medical purposes, such that no room remains for local action.

The presumption against preemption is additionally supported by the existence of significant local interests that may vary from jurisdiction to jurisdiction. Amici curiae League of California Cities et al. point out that "California's 482 cities and 58 counties are diverse in size, population, and use." As these amici curiae observe, while several California cities and counties allow medical marijuana facilities, it may not be reasonable to expect every community to do so.

For example, these amici curiae point out, "[s]ome communities are predominantly residential and do not have sufficient commercial or industrial space to accommodate" facilities that distribute medical marijuana. Moreover, these facilities deal in a substance which, except for legitimate medical use by a qualified patient under a physician's authorization, is illegal under both federal and state law to possess, use, furnish, or cultivate, yet is widely desired, bought, sold, cultivated, and employed as a recreational drug. Thus, facilities that dispense

medical marijuana may pose a danger of increased crime, congestion, blight, and drug abuse,[9] and the extent of this danger may vary widely from community to community.

Thus, while some counties and cities might consider themselves well suited to accommodating medical marijuana dispensaries, conditions in other communities might lead to the reasonable decision that such facilities within their borders, even if carefully sited, well managed, and closely monitored, would present unacceptable local risks and burdens. (See, e.g., *Great Western Shows*, *supra*, 27 Cal.4th 853, 866-867 [noting, in support of holding that state gun show regulations did not occupy field, so as to preclude Los Angeles County's complete ban of gun shows on county property, that firearms issues likely require different treatment in urban, as opposed to rural, areas].) Under these circumstances, we

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[9] For example, when considering the 2011 amendment to section 11362.83, as proposed by Assembly Bill No. 1300 (2011-2012 Reg. Sess.), the Senate Committee on Public Safety noted the bill author's assertions about the "controversial picture of dispensaries," as revealed in "[a] scan of headlines." As reported by the committee, the bill author recounted that some dispensaries "have been caught selling marijuana to people not authorized to possess it, many intentionally operate in the shadows without any business licensure or under falsified documentation, and some have been the scene of violent robberies and murder." (Sen. Com. on Public Safety, Analysis of Assem. Bill No. 1300 (2011-2012 Reg. Sess.), as amended June 1, 2011, pp. E-F.) Courts of Appeal dealing with local regulation of medical marijuana dispensaries have cited similar concerns. (See, e.g., *Hill*, *supra*, 192 Cal.App.4th 861, 871 [because of evidence that the " 'cash only' " nature of most medical marijuana dispensary operations presents a disproportionate target for robberies and burglaries, and that such facilities affect neighborhood quality of life by attracting loitering and marijuana smoking on or near the premises, they are not similarly situated to pharmacies for public health purposes and need not be treated equally]; *Kruse*, *supra*, 177 Cal.App.4th 1153, 1161 [noting local findings of a correlation between medical marijuana dispensaries and increased crime].)

cannot lightly assume the voters or the Legislature intended to impose a "one size fits all" policy, whereby each and every one of California's diverse counties and cities must allow the use of local land for such purposes.[10]

O'Connell v. City of Stockton (2007) 41 Cal.4th 1061 (*O'Connell*), on which defendants rely, is readily distinguishable. There, a state law, the Uniform Controlled Substances Act (UCSA), established a comprehensive scheme for the treatment of such substances, specifying offenses and corresponding penalties in detail. Included among the sanctions provided by the UCSA was a defined program for forfeiture of particular categories of property, including vehicles, used to commit drug crimes. Under this system, vehicles were subject to forfeiture if they had been employed to facilitate the *manufacture*, *possession*, or *possession for sale* of *specified felony-level* amounts, as *explicitly* set forth, of *particular* controlled substances. Vehicle forfeiture under the UCSA required *proof beyond reasonable doubt* that the subject property had been so used. Provisions of the UCSA stated that law enforcement, not revenue, was the principal aim of forfeiture, that forfeiture had potentially harsh consequences for property owners, and that law enforcement officials should protect innocent owners' interests by providing adequate notice and due process in forfeiture proceedings.

The City of Stockton adopted an ordinance providing for *local* forfeiture of vehicles used simply to *acquire or attempt to acquire any amount of any controlled substance*, even if the offense at issue was a low-grade misdemeanor warranting only a $100 fine and no jail time, and was not eligible for forfeiture

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10 Nor, under these circumstances, can we find implied preemption on grounds that a local ban on medical marijuana facilities would so impede the ability of transient citizens to obtain access to medical marijuana as to outweigh the possible benefit to the locality imposing the ban.

under the UCSA. Stockton's ordinance permitted forfeiture upon proof by a *preponderance of evidence* that the vehicle had been used for the described purpose. Forfeited vehicles were to be sold at auction, with net proceeds payable to local law enforcement and prosecutorial agencies.

Under these circumstances, the *O'Connell* majority concluded, "[t]he comprehensive nature of the UCSA in defining drug crimes and specifying penalties (including forfeiture) is so thorough and detailed as to manifest the Legislature's intent to preclude local regulation. The UCSA accordingly occupies the field of penalizing crimes involving controlled substances, thus impliedly preempting the City's forfeiture ordinance" calling for forfeiture of vehicles involved in the acquisition or attempted acquisition of drugs regulated under the UCSA. (*O'Connell*, *supra*, 41 Cal.4th 1061, 1071.) The majority explained that "the Legislature's comprehensive enactment of penalties for crimes involving controlled substances, but exclusion from that scheme of any provision for vehicle forfeiture for simple possessory drug offenses, manifests a clear intent to reserve that severe penalty for very serious drug crimes involving the manufacture, sale, or possession for sale of specified amounts of certain controlled substances." (*Id.*, at p. 1072.)

As indicated above, there is no similar evidence in this case of the Legislature's intent to preclude local regulation of facilities that dispense medical marijuana. The CUA and the MMP create no all-encompassing scheme for the control and regulation of marijuana for medicinal use. These statutes, both carefully worded, do no more than exempt certain conduct by certain persons from

certain state criminal and nuisance laws against the possession, cultivation, transportation, distribution, manufacture, and storage of marijuana.[11]

The gravamen of defendants' argument throughout is that the MMP "authorizes" the existence of facilities for the collective or cooperative cultivation and distribution of medical marijuana, and that a local ordinance prohibiting such facilities thus cannot be tolerated. But defendants' reliance on such decisions as *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277 (*Cohen*) and *City of Torrance v. Transitional Living Centers for Los Angeles, Inc.* (1982) 30 Cal.3d 16 (*City of Torrance*) for this proposition is misplaced.

Cohen, addressing a local ordinance that closely regulated escort services, stated that "[i]f the ordinance . . . attempted to prohibit conduct proscribed or permitted by state law, either explicitly or implicitly, it would be preempted." (*Cohen, supra*, 40 Cal.3d 277, 293.) However, *Cohen* made clear there is no preemption where state law expressly or implicitly allows local regulation. (*Id.*, at

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11 Defendants also cite *Northern Cal. Psychiatric Society v. City of Berkeley* (1986) 178 Cal.App.3d 90, which struck down, as preempted by state law, a local ordinance banning the administration of electroconvulsive, or electric shock, therapy (ECT) within the city. The Court of Appeal found that, after expressly considering the benefits, risks, and invasive nature of ECT, a therapy recognized by the medical and psychiatric communities as useful in certain cases, the Legislature had indicated its intent that the right of every psychiatric patient to choose or refuse this therapy be " 'fully recognized and protected' " (*id.*, at p. 105), and had "enacted detailed legislation extensively regulating the administration of ECT, and requiring, among other things, stringent safeguards designated to insure that psychiatric patients have the right to refuse ECT." (*Id.*, at p. 99.) Under these circumstances, the Court of Appeal concluded that the state had occupied the field, thus precluding a locality from prohibiting the availability of ECT within its borders. By contrast, the MMP simply removes otherwise applicable state sanctions from certain medical marijuana activities, and exhibits no similar intent to occupy the field of medical marijuana regulation.

pp. 294-295.) As indicated, the MMP implicitly permits local regulation of medical marijuana facilities.

Similarly, in *City of Torrance*, *supra*, 30 Cal.3d 16, a state statute promoting the local community care of mental patients *specifically provided* that local zoning rules or use permit denials could not be used to exclude psychiatric care facilities from areas in which hospitals or nursing homes were otherwise allowed. By contrast, the MMP imposes no similar limits, express or implicit, on local zoning and permit rules.

More fundamentally, we have made clear that a state law does not "authorize" activities, to the exclusion of local bans, simply by exempting those activities from otherwise applicable state prohibitions. Thus, as discussed in *Nordyke v. King* (2002) 27 Cal.4th 875 (*Nordyke*), a state statute, Penal Code section 171b, made it a crime to possess firearms in any state or local public building, but exempted a person who, for the purpose of sale or trade, brought an otherwise lawfully possessed firearm into a gun show conducted in compliance with state law. Under an Alameda County ordinance, it was a misdemeanor to bring any firearm onto county property. The ordinance specified certain exceptions, but these did not include gun shows. Hence, a principal effect of the ordinance was to forbid the presence of firearms at gun shows on county property, thus making such shows impractical.

Gun show promoters challenged the ordinance, arguing, inter alia, that Penal Code section 171b prohibited the outlawing of guns at gun shows on public property, and thus preempted the ordinance's contrary provisions. We disagreed. As we explained, section 171b "merely exempts gun shows from the *state* criminal prohibition on possessing guns in public buildings, thereby permitting local government entities to authorize such shows. It does not *mandate* that local

government entities permit such a use . . . ." (*Nordyke*, *supra*, 27 Cal.4th 875, 884, first italics added.)

Similarly here, the MMP merely exempts the cooperative or collective cultivation and distribution of medical marijuana by and to qualified patients and their designated caregivers from prohibitions that would otherwise apply under state law. The state statute does not thereby *mandate* that local governments authorize, allow, or accommodate the existence of such facilities.

Defendants emphasize that among the stated purposes of the MMP, as originally enacted, are to "[p]romote uniform and consistent application of the [CUA] among the counties of the state" and to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects" (Stats. 2003, ch. 875, § 1, subd. (b), pp. 6422, 6423). Hence, they insist, the encouragement of medical marijuana dispensaries, under section 11362.775, is a matter of statewide concern, requiring the uniform allowance of such facilities throughout California, and leaving no room for their exclusion by individual local jurisdictions.

We disagree. As previously indicated, though the Legislature stated it intended the MMP to "promote" uniform application of the CUA and to "enhance" access to medical marijuana through collective cultivation, the MMP itself adopts but limited means of addressing these ideals. Aside from requiring local cooperation in the voluntary medical marijuana patient identification card program, the MMP's substantive provisions simply remove specified state-law sanctions from certain marijuana activities, including the cooperative or collective cultivation of medical marijuana by qualified patients and their designated caregivers. (*Mentch*, *supra*, 45 Cal.4th 274, 290.) The MMP has never expressed or implied any actual limitation on local land use or police power regulation of facilities used for the cultivation and distribution of marijuana. We cannot employ

the Legislature's expansive declaration of aims to stretch the MMP's effect beyond a reasonable construction of its substantive provisions.

Defendants acknowledge that the MMP expressly recognizes local authority to "regulate" medical marijuana facilities (§§ 11362.768, subds. (f), (g), 11362.83), but they rely heavily on a passage from our decision in *Great Western Shows*, *supra*, 27 Cal.4th 853, for their claim that local governments, even if granted regulatory authority, may not wholly exclude activities that are sanctioned or encouraged by state law. On close examination, however, the premise set forth in *Great Western Shows* is not applicable here.

In *Great Western Shows*, we described several federal decisions under the federal Resource Conservation and Recovery Act (RCRA), including *Blue Circle Cement, Inc. v. Board of County Comm'rs* (10th Cir. 1994) 27 F.3d 1499 (*Blue Circle Cement*), as "stand[ing] broadly for the proposition that when a statute or statutory scheme seeks to promote a certain activity and, at the same time, permits more stringent local regulation of that activity, local regulation cannot be used to completely ban the activity or otherwise frustrate the statute's purpose." (*Great Western Shows*, 27 Cal.4th 853, 868.)

But there are important distinctions between the RCRA and the California statutes at issue in this case. As explained in *Blue Circle Cement*, the RCRA "is the comprehensive federal hazardous waste management statute governing the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment." (*Blue Circle Cement*, *supra*, 27 F.3d 1499, 1505.) The federal statute aims "to assist states and localities in the development of improved solid waste management techniques to facilitate resource recovery and conservation." (*Ibid.*) It "enlists the states and municipalities to participate in a 'cooperative effort' with the federal government to develop waste management practices that facilitate the recovery of 'valuable

materials and energy from solid waste.' " (*Id.*, at p. 1506.) Under these circumstances, the court in *Blue Circle Cement*, like other federal courts, concluded that a complete local ban on the processing, recycling, and disposal of industrial waste, imposed without consideration of specific and legitimate local health and safety concerns, would frustrate the RCRA's overarching purpose to encourage state and local cooperation in furtherance of the efficient treatment, use, and disposal of such material. (*Blue Circle Cement,* 27 F.3d 1499, 1506-1509, & cases cited.)

The MMP, by contrast, creates no comprehensive scheme for the protection or promotion of facilities that dispense medical marijuana. The sole effect of the statute's substantive terms is to exempt specified medical marijuana activities from enumerated state criminal and nuisance statutes. Those provisions do not mandate that local jurisdictions permit such activities. (See *Nordyke*, *supra*, 27 Cal.4th 875, 883-884.) Local decisions to prohibit them do not frustrate the MMP's operation. Accordingly, we are not persuaded that the premise of *Blue Circle Cement*, *supra*, 27 F.3d 1499, as paraphrased in *Great Western Shows*, *supra*, 27 Cal.4th 853, is applicable here. [12]

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[12] Defendants also cite *Big Creek Lumber Co.*, *supra*, 38 Cal.4th 1139, in support of their assertion that local regulation of an activity sanctioned and encouraged by state law cannot include a total ban. But this decision, too, is distinguishable. In *Big Creek Lumber Co.*, the plaintiffs argued that a county ordinance specifying the zones where timber harvesting could occur was preempted by comprehensive state forestry statutes enacted to encourage the sound and prudent exploitation of timber resources. The principal statute at issue, the Forest Practices Act (FPA), forbade counties from " 'regulat[ing] the conduct of timber operations.' " (*Big Creek Lumber Co.*, *supra*, at p. 1147.) Among other things, we found no "inimical" state-local conflict, because it was not impossible for timber operators to comply simultaneously with both the state and county enactments. We also concluded, in essence, that by limiting the locations within the county where timber harvesting was permitted, the ordinance did not

(Footnote continued on next page.)

Finally, defendants urge that by exempting the collective or cooperative cultivation of medical marijuana by qualified patients and their designated caregivers from treatment as a nuisance under the *state's* drug abatement laws (§ 11362.775; see § 11570 et seq.), the MMP bars local jurisdictions from adopting and enforcing ordinances that treat these very same activities as nuisances subject to abatement. But for the reasons set forth at length above, we disagree. Nuisance law is not defined exclusively by what the *state* makes subject to, or exempt from, its own nuisance statutes. Unless exercised in clear conflict with general law, a city's or county's inherent, constitutionally recognized power to determine the appropriate use of land within its borders (Cal. Const., art. XI, § 7) allows it to define nuisances for local purposes, and to seek abatement of such nuisances. (See *Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 255-256.)

(Footnote continued from previous page.)

impermissibly "regulate" the "conduct" of such operations. (*Id.*, at p. 1157.) Addressing the plaintiffs' "overriding concern" that unless preempted, counties could use locational zoning to entirely prohibit timber harvesting (*id.*, at p. 1160), we simply observed that "[t]he ordinance before us does not have that effect, nor does it appear that any county has attempted such a result." (*Id.*, at pp. 1160-1161.)

Here, as we have noted, the MMP is a limited measure, not a comprehensive scheme for the regulation and encouragement of medical marijuana facilities. As in *Big Creek Lumber Co.*, the local ordinance at issue here does not stand in "inimical" conflict with state statutes by making simultaneous compliance impossible. And unlike the FPA at issue in *Big Creek Lumber Co.*, the MMP includes provisions *recognizing* the regulatory authority of local jurisdictions. For these reasons, nothing we said in *Big Creek Lumber Co.* persuades us that Riverside's ordinance is preempted.

No such conflict exists here. In section 11362.775, the MMP merely removes *state law* criminal and nuisance sanctions from the conduct described therein. By this means, the MMP has signaled that the *state* declines to regard the described acts as nuisances or criminal violations, and that the *state's* enforcement mechanisms will thus not be available against these acts. Accordingly, localities in California are left free to accommodate such conduct, if they choose, free of state interference. As we have explained, however, the MMP's limited provisions neither expressly or impliedly restrict or preempt the authority of individual local jurisdictions to choose otherwise for local reasons, and to prohibit collective or cooperative medical marijuana activities within their own borders. A local jurisdiction may do so by declaring such conduct on local land to be a nuisance, and by providing means for its abatement.[13]

We thus conclude that neither the CUA nor the MMP expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by

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13 As defendants note, the court in *Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734 suggested that, "at first glance," it seemed "incongruous" and "odd" to conclude the CUA and the MMP, which exempt specified medical marijuana activities from *state* criminal and nuisance laws, might leave local jurisdictions free to use nuisance abatement procedures to prohibit the same activities. (*Id.*, at p. 754.) However, this issue was not presented or decided in *Qualified Patients Assn.* There the court conceded the answer "remain[ed] to be determined" and was "by no means clear cut or easily resolved on first impressions." (*Ibid.*) After careful review, and for the reasons expressed at length herein, we are not persuaded by the tentative view expressed in *Qualified Patients Assn.*

nuisance actions. Accordingly, we reject defendants' challenge to Riverside's MMD ordinances.[14]

As we have noted, the CUA and the MMP are careful and limited forays into the subject of medical marijuana, aimed at striking a delicate balance in an area that remains controversial, and involves sensitivity in federal-state relations. We must take these laws as we find them, and their purposes and provisions are modest. They remove state-level criminal and civil sanctions from specified medical marijuana activities, but they do not establish a comprehensive state system of legalized medical marijuana; or grant a "right" of convenient access to marijuana for medicinal use; or override the zoning, licensing, and police powers of local jurisdictions; or mandate local accommodation of medical marijuana cooperatives, collectives, or dispensaries.

Of course, nothing prevents future efforts by the Legislature, or by the People, to adopt a different approach. In the meantime, however, we must conclude that Riverside's ordinances are not preempted by state law.

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14 Our analysis makes it unnecessary to address the City's argument that, were the CUA and the MMP construed to require local jurisdictions to accommodate medical marijuana facilities, it would be preempted by the federal CSA. Nor need we confront the related argument of amici curiae California State Sheriffs' Association et al. that a state law, Government Code section 37100, *forbids* a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would "conflict with the . . . laws of . . . the United States," i.e., the CSA.

The judgment of the Court of Appeal is affirmed.

BAXTER, J.

WE CONCUR:

CANTIL-SAKAUYE, C.J.
KENNARD, J.
WERDEGAR, J.
CHIN, J.
CORRIGAN, J.
LIU, J.

CONCURRING OPINION BY LIU, J.

I join the court's opinion and write separately to clarify the proper test for state preemption of local law.

As the court says, "[L]ocal legislation that conflicts with state law is void. [Citation.] ' "A conflict exists if the local legislation ' "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." ' " [Citations.]' " (Maj. opn., *ante*, at pp. 9–10.)

The court further states: "The 'contradictory and inimical' form of preemption does not apply unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands. [Citations.] Thus, no inimical conflict will be found where it is reasonably possible to comply with both the state and local laws." (Maj. opn., *ante*, at p. 10.)

The first sentence of the above statement should not be misunderstood to improperly limit the scope of the preemption inquiry. As the court's opinion makes clear elsewhere, state law may preempt local law when local law prohibits not only what a state statute "demands" but also what the statute permits or authorizes. (See maj. opn., *ante*, at pp. 31–32, 34–35, discussing *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 293 (*Cohen*); *Great Western Shows v. County of Los Angeles* (2002) 27 Cal.4th 853, 867–868 (*Great Western Shows*).

In a similar vein, the second sentence of the above statement — "no inimical conflict will be found where it is reasonably possible to comply with both

the state and local laws" (maj. opn., *ante*, at p. 10) — also should not be misunderstood. If state law authorizes or promotes, but does not require or demand, a certain activity, and if local law prohibits the activity, then an entity or individual can comply with both state and local law by not engaging in the activity. But that obviously does not resolve the preemption question. To take an example from federal law, the Federal Arbitration Act (FAA) promotes arbitration, and a state law prohibiting arbitration of employment disputes would be preempted. (See *AT&T Mobility LLC v. Concepcion* (2011) 563 U. S. __ [131 S.Ct. 1740, 1747].) Such preemption obtains even though an employer can comply with both the FAA, which does not *require* employers to enter into arbitration agreements, and the state law simply by choosing not to arbitrate employment disputes.

Accordingly, in federal preemption law, we find a more complete statement of conflict preemption: " 'We have found implied conflict pre-emption where it is "impossible for a private party to comply with both state and federal requirements" [citation], *or* where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." ' " (*Sprietsma v. Mercury Maine* (2002) 537 U.S. 51, 64–65, italics added.) This more complete statement no doubt applies to California law. Local law that prohibits an activity that state law intends to promote is preempted, even though it is possible for a private party to comply with both state and local law by refraining from that activity. (See *Great Western Shows*, *supra*, 27 Cal.4th at pp. 867–868; *Cohen*, *supra*, 40 Cal.3d at p. 293.)

I do not understand today's opinion to hold otherwise. In this case, defendants argue that the Medical Marijuana Program (MMP) authorizes and intends to promote what the City of Riverside prohibits: the operation of medical marijuana dispensaries. If such legislative authorization were clear, then the

ordinance in question might well be preempted. But I agree with my colleagues that although the MMP provides medical marijuana cooperatives and collectives with a limited exemption from state criminal liability, "state law does not 'authorize' activities, to the exclusion of local plans, simply by exempting those activities from otherwise applicable state prohibitions." (Maj. opn., *ante*, at p. 32.) As the court's opinion makes clear, notwithstanding some language in the MMP regarding the promotion of medical marijuana cooperatives and collectives, "the MMP itself adopts but limited means of addressing these ideals. Aside from requiring local cooperation in the voluntary medical marijuana patient identification card program, the MMP's substantive provisions simply remove specified state-law sanctions from certain marijuana activities, including the cooperative or collective cultivation of medical marijuana by qualified patients and their designated caregivers. [Citation.] The MMP has never expressed or implied any actual limitation on local land use or police power regulation of facilities used for the cultivation and distribution of marijuana." (Maj. opn., *ante*, at p. 33.)

Because state law does not clearly authorize or intend to promote the operation of medical marijuana dispensaries, I agree that the City of Riverside's prohibition on such dispensaries is not preempted.

LIU, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc.

Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 200 Cal.App.4th 885
Rehearing Granted

Opinion No. S198638
Date Filed: May 6, 2013

Court: Superior
County: Riverside
Judge: John D. Molloy

Counsel:

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199 Cal.App.4th 1070
Court of Appeal, Second District, Division 3, California.

Ryan PACK et al., Petitioners,
v.
The SUPERIOR COURT of Los Angeles County, Respondent;
City of Long Beach, Real Party in Interest.
No. B228781.(Los Angeles County Super. Ct. Nos. NC055010/NC055053).Oct. 4, 2011.

Synopsis

Background: Medical marijuana collective members brought action against city for declaratory and injunctive relief challenging ordinance prohibiting "cultivation, possession, distribution, exchange or giving away" of medical marijuana except pursuant to a permit. The Superior Court, Los Angeles County, No. NC055010/NC055053, Patrick T. Madden, J., denied preliminary injunction. Members petitioned for writ of mandate.

Holdings: The Court of Appeal, Croskey, J., held that:
1 ordinance requiring medical marijuana to be analyzed by independent laboratories was preempted by Controlled Substances Act (CSA), and
2 ordinance requiring permits for medical marijuana collectives was preempted by CSA.

Petition granted.

West Headnotes (32)

1 **Controlled Substances**
⇦Medical Necessity

Federal prohibition against the possession and distribution of marijuana does not include an exception for medical marijuana. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 202, 401(a)(1), 21 U.S.C.A. §§ 812, 841(a)(1); Controlled Substances Act, § 404, 21 U.S.C.A. § 844.

2 **Controlled Substances**
⇦Preemption
States
⇦Product Safety; Food and Drug Laws

Compassionate Use Act (CUA) is not preempted by the Controlled Substances Act (CSA). Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903; West's Ann.Cal.Health & Safety Code § 11362.5(d).

3 **Controlled Substances**
⇦Medical Necessity

A person who supplies marijuana to a qualified patient is not an immune "primary caregiver" under the Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA) unless the person consistently provided caregiving, independent of assistance in taking marijuana at or before the time the person assumed responsibility for assisting the patient with medical marijuana. West's Ann.Cal.Health & Safety Code §§ 11362.5(e), 11362.7(d).

4 **Controlled Substances**
⇦Medical Necessity

While the Compassionate Use Act (CUA) provides a defense at trial for those medical marijuana patients and their caregivers charged with the illegal possession or cultivation of marijuana, it provides for no immunity from arrest. West's Ann.Cal.Health & Safety Code § 11362.5.

5 **Controlled Substances**
⇦Medical Necessity

Medical Marijuana Program Act (MMPA) provisions limiting patients' and caregivers' possession of dried marijuana and marijuana plants establishes a "safe harbor" from arrest and prosecution for the possession of no more than the statutory amounts. West's Ann.Cal.Health & Safety Code § 11362.77(a), (f).

199 Cal.App.4th 1070, 11 Cal. Daily Op. Serv. 12,643, 2011 Daily Journal D.A.R. 15,028

6 **Mandamus**
⇐Scope of Inquiry and Powers of Court

Court of Appeal would not address medical marijuana collective members' argument that city ordinance prohibiting "cultivation, possession, distribution, exchange or giving away" of medical marijuana except pursuant to a permit was preempted by state law, in members' petition for writ of mandate challenging trial court's denial of declaratory and injunctive relief against city's closure of their dispensary, where members did not make the preemption allegation in their complaint, the city represented that the ordinance did not apply to prohibit personal cultivation and possession, and there was no evidence that it had been so applied. West's Ann.Cal.Health & Safety Code §§ 11362.5, 11362.775.

7 **Controlled Substances**
⇐Medical Necessity

City ordinance prohibiting membership in more than one medical marijuana collective "fully permitted in accordance with this Chapter" did not prohibit members from joining a new collective after theirs was shut down due to noncompliance with the ordinance.

8 **Evidence**
⇐Nature and Scope in General

In reviewing denial of preliminary injunction challenging city ordinance requiring permits for medical marijuana collectives, Court of Appeal would take judicial notice of the fact that a search using an Internet search engine revealed that several medical marijuana dispensaries were apparently operating in the city, although their websites did not specifically indicate whether they were permitted.

9 **Municipal Corporations**
⇐Local Legislation

Charter city's ordinances relating to matters which are purely municipal affairs prevail over state laws on the same subject.

10 **Equity**
⇐He Who Comes Into Equity Must Come with Clean Hands

Medical marijuana collective members were not barred by the doctrine of unclean hands from arguing that the federal Controlled Substances Act (CSA) preempted city ordinance requiring permits for medical marijuana collectives, even if the members sought the ruling in order to continue to violate the federal CSA, since members' hands were not unclean under California law, and precluding challenges by parties who intended to violate the federal CSA would mean that no one would ever have standing to raise the preemption argument. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

11 **States**
⇐Preemption in General

Supremacy Clause establishes a constitutional choice-of-law rule, makes federal law paramount, and vests Congress with the power to preempt state law. U.S.C.A. Const. Art. 6, cl. 2.

12 **States**
⇐State Police Power

There is a presumption against federal preemption in those areas traditionally regulated by the states. U.S.C.A. Const. Art. 6, cl. 2.

13 **States**
⇐State Police Power

Regulation of medical practices and state criminal sanctions for drug possession are historically matters of state police power, for purposes of the presumption against federal preemption in areas traditionally regulated by the states. U.S.C.A. Const. Art. 6, cl. 2.

14 **States**

⇐State Police Power

A local government's land use regulation is an area over which local governments traditionally have control, for purposes of the presumption against federal preemption in areas traditionally regulated by the states. U.S.C.A. Const. Art. 6, cl. 2.

15 **States**
⇐Preemption in General

There are four species of federal preemption of state law: express, conflict, obstacle, and field; express preemption arises when Congress defines explicitly the extent to which its enactments preempt state law, conflict preemption will be found when simultaneous compliance with both state and federal directives is impossible, obstacle preemption arises when under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, and field preemption applies where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation. U.S.C.A. Const. Art. 6, cl. 2.

16 **States**
⇐Congressional Intent

Where a statute contains an express pre-emption clause, the court's task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent. U.S.C.A. Const. Art. 6, cl. 2.

17 **Controlled Substances**
⇐Preemption
States
⇐Product Safety; Food and Drug Laws

Federal Controlled Substances Act (CSA) preempts conflicting laws under both conflict and obstacle preemption. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

18 **States**
⇐Conflicting or Conforming Laws or Regulations

Conflict or "impossibility" preemption is a demanding defense, requiring establishing that it is impossible to comply with the requirements of both laws. U.S.C.A. Const. Art. 6, cl. 2.

19 **Controlled Substances**
⇐Preemption
Municipal Corporations
⇐Political Status and Relations

City ordinance requiring permits for medical marijuana collectives was not subject to conflict preemption by the federal Controlled Substances Act (CSA), since a person could comply with both simply by not being involved in the cultivation or possession of medical marijuana at all. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

20 **Controlled Substances**
⇐Preemption
Municipal Corporations
⇐Political Status and Relations

City ordinance requiring that permitted medical marijuana collectives have samples of their marijuana analyzed by an independent laboratory to ensure that it was free from pesticides and contaminants was subject to conflict preemption by the federal Controlled Substances Act (CSA), since delivering the marijuana for testing would violate the CSA. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

21 **States**
⇐Conflicting or Conforming Laws or Regulations

If a federal act's operation would be frustrated and its provisions refused their natural effect by the operation of a state or local law, the latter

must yield pursuant to obstacle preemption. U.S.C.A. Const. Art. 6, cl. 2.

22 **Controlled Substances**
⇐Statutes and Other Regulations

Main objectives of the federal Controlled Substances Act (CSA) are combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances, with a particular concern of preventing the diversion of drugs from legitimate to illicit channels. 21 U.S.C.A. § 801.

23 **Controlled Substances**
⇐Preemption
Municipal Corporations
⇐Political Status and Relations

City ordinance requiring permits for medical marijuana collectives was subject to obstacle preemption by the federal Controlled Substances Act (CSA), where the ordinance purported to authorize the collectives, city charged substantial application and renewal fees, city randomly chose qualified applicants to receive permits, and it was the possession of the permit itself, rather than any particular conduct, which exempted a collective from violation proceedings. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

See Annot., Preemption of State Regulation of Controlled Substances by Federal Controlled Substances Act (2010) 60 A.L.R.6th 175; Cal. Jur., 3d, Criminal Law: Crimes Against Administration of Justice and Public Order, § 39; 2 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 63; 2 Witkin & Epstein, Cal. Criminal Law (2011 supp.) Crimes Against Public Peace and Welfare, § 70B.

24 **Criminal Law**
⇐Nature of Crime in General

There is a distinction, in law, between not making an activity unlawful and making the activity lawful.

25 **States**
⇐Conflicting or Conforming Laws or Regulations

When an act is prohibited by federal law, but neither prohibited nor authorized by state law, there is no obstacle preemption. U.S.C.A. Const. Art. 6, cl. 2.

26 **States**
⇐Conflicting or Conforming Laws or Regulations

A law which authorizes individuals to engage in conduct that a federal act forbids stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, and is therefore preempted. U.S.C.A. Const. Art. 6, cl. 2.

27 **Controlled Substances**
⇐Preemption

Court of Appeal would place "some weight" on the position of the United States Attorney General, in determining whether city ordinance requiring permits for medical marijuana collectives was subject to obstacle preemption by the federal Controlled Substances Act (CSA). Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

28 **Controlled Substances**
⇐Preemption
States
⇐Product Safety; Food and Drug Laws

State and local laws which license the large-scale cultivation and manufacture of marijuana stand as an obstacle to federal enforcement efforts, as would support obstacle preemption by the federal Controlled Substances Act (CSA). Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

29 **Controlled Substances**
⇐Preemption
Municipal Corporations
⇐Political Status and Relations

City ordinance prohibiting medical marijuana collectives from providing medical marijuana to their members between the hours of 8:00 p.m. and 10:00 a.m. was not preempted by the federal Controlled Substances Act (CSA), since it did not permit or authorize activity prohibited by the CSA. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

30 **Controlled Substances**
⇐Preemption
Municipal Corporations
⇐Political Status and Relations

City ordinance prohibiting a person under the age of 18 from being on the premises of a medical marijuana collective unless that person is a qualified patient accompanied by his or her physician, parent or guardian was not preempted by the federal Controlled Substances Act (CSA), since it did not permit or authorize activity prohibited by the CSA. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

31 **Controlled Substances**
⇐Preemption
Municipal Corporations
⇐Political Status and Relations

City ordinance prohibiting medical marijuana collectives from permitting the consumption of alcohol on the property or in its parking area was not preempted by the federal Controlled Substances Act (CSA), since it did not permit or authorize activity prohibited by the CSA. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

32 **Controlled Substances**
⇐Preemption
Municipal Corporations
⇐Political Status and Relations

City ordinance's restrictions against medical marijuana collectives located in an exclusive residential zone, or within a 1,500 foot radius of a high school or 1,000 foot radius of a kindergarten, elementary, middle, or junior high school, if imposed strictly as a limitation on the operation of medical marijuana collectives in the city, would not be federally preempted by the Controlled Substances Act (CSA). Comprehensive Drug Abuse Prevention and Control Act of 1970, § 708, 21 U.S.C.A. § 903.

West Codenotes

Recognized as Unconstitutional
West's Ann.Cal.Health & Safety Code § 11362.77(a), (f).

ORIGINAL PROCEEDINGS in mandate. Patrick T. Madden, Judge. Petition granted and remanded with directions.

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Opinion

199 Cal.App.4th 1070, 11 Cal. Daily Op. Serv. 12,643, 2011 Daily Journal D.A.R. 15,028

CROSKEY, J.

*1 Federal law prohibits the possession and distribution of marijuana (21 U.S.C. §§ 812, 841(a)(1), 844); there is no exception for medical marijuana. (*United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 490, 121 S.Ct. 1711, 149 L.Ed.2d 722.) Although California criminalizes the possession and cultivation of marijuana generally (Health & Saf.Code, §§ 11357, 11358), it has decriminalized the possession and cultivation of medical marijuana, when done pursuant to a physician's recommendation. (Health & Saf.Code, § 11362.5, subd. (d).) Further, California law decriminalizes the collective or cooperative cultivation of medical marijuana. (Health & Saf.Code, § 11362.775.) Case law has concluded that California's statutes are not preempted by federal law, as they seek only to decriminalize certain conduct for the purposes of state law. (*Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734, 757, 115 Cal.Rptr.3d 89.)

In this case, we are concerned with a city ordinance which goes beyond simple decriminalization. The City of Long Beach (City) has enacted a comprehensive regulatory scheme by which medical marijuana collectives within the City are governed. The City charges application fees (Long Beach Mun.Code, ch. 5.87, § 5.87.030), holds a lottery, and issues a limited number of permits. Permitted collectives, which must then pay an annual fee, are highly regulated, and subject to numerous restrictions on their operation (Long Beach Mun.Code, ch. 5.87, § 5.87.040). The question presented by this case is whether the City's ordinance, which permits and regulates medical marijuana collectives rather than merely decriminalizing specific acts, is preempted by federal law. In this case of first impression, we conclude that, to the extent it permits collectives, it is.

STATUTORY AND REGULATORY BACKGROUND

Before addressing the specific factual and procedural background of this case, we first discuss the contradictory federal and state statutory schemes which govern medical marijuana. This case concerns the interplay between the federal Controlled Substances Act (CSA), and the state Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA).

1. *The Federal CSA*

"Enacted in 1970 with the main objectives of combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances, the CSA creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act's five schedules." (*Gonzales v. Oregon* (2006) 546 U.S. 243, 250, 126 S.Ct. 904, 163 L.Ed.2d 748.) Enactment of the federal CSA was part of President Nixon's "war on drugs." (*Gonzales v. Raich* (2005) 545 U.S. 1, 10, 125 S.Ct. 2195, 162 L.Ed.2d 1.) "Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels." (*Id.* at pp. 12–13.)

The federal CSA includes marijuana on schedule I, the schedule of controlled substances which are subject to the most restrictions. (21 U.S.C. § 812.) Drugs on other schedules may be dispensed and prescribed for medical use; drugs on schedule I may not. (*United States v. Oakland Cannabis Buyers' Cooperative, supra,* 532 U.S. at p. 491.) The inclusion of marijuana on schedule I reflects a government determination that "marijuana has 'no currently accepted medical use' at all." (*Ibid.*) Therefore, the federal CSA makes it illegal to manufacture, distribute, or possess marijuana. (21 U.S.C. §§ 841, 844.) It is also illegal, under the federal CSA, to maintain any place for the purpose of manufacturing, distributing, or using any controlled substance. (21 U.S.C. § 856(a)(1).) The only exception to these prohibitions is the possession and use of marijuana in federally-approved research projects. (*United States v. Oakland Cannabis Buyers' Cooperative, supra,* 532 U.S. at pp. 489–490.)

*2 The federal CSA contains a provision setting forth the extent to which it preempts other laws. It provides: "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together." (21 U.S.C. § 903.) The precise scope of this provision is a matter of dispute in this case.

2. *The CUA*

While the federal government, by classifying marijuana as a schedule I drug, has concluded that marijuana has no currently accepted medical use, there is substantial debate on the issue. (See *Conant v. Walters* (9th Cir.2002) 309 F.3d 629, 640–643 (conc. opn. of Kozinski, J.).) In 1996, California voters concluded that marijuana does have valid medical uses, and sought to decriminalize the medical use of marijuana by approving, by initiative measure, the CUA.

The CUA added section 11362.5 to the Health and Safety Code. Its purposes include: (1) "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief"; (2) "[t]o ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction"; and (3) "[t]o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (Health & Saf.Code, § 11362.5, subds. (b)(1)(A), (b)(1)(B) & (b)(1)(C).)

2 To achieve these ends, the CUA provides, "Section 11357, relating to the possession of marijuana,2 and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver,3 who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." (Health & Saf.Code, § 11362.5, subd. (d).) As noted above, this statute, which simply decriminalizes for the purposes of state law certain conduct related to medical marijuana, is not preempted by the CSA. (*Qualified Patients Assn. v. City of Anaheim, supra,* 187 Cal.App.4th at p. 757, 115 Cal.Rptr.3d 89.)

3. The MMPA

The MMPA was enacted by the Legislature in 2003. The purposes of the MMPA include: (1) to "[p]romote uniform and consistent application of the [CUA] among the counties within the state" and (2) to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." (Stats.2003, ch. 875 (S.B.420), § 1, subds. (b)(2) & (b)(3).) The MMPA contains several provisions intended to meet these purposes.

*3 3 First, the MMPA expands the immunities provided by the CUA. While the CUA decriminalizes the cultivation and possession of medical marijuana by patients and their primary caregivers,4 the MMPA extends that decriminalization to possession for sale, transportation, sale, maintaining a place for sale or use, and other offenses. Cultivation or distribution for profit, however, is still prohibited. (Health & Saf.Code, § 11362.765.)

4 Second, while the CUA provides a defense *at trial* for those medical marijuana patients and their caregivers charged with the illegal possession or cultivation of marijuana, it provides for no immunity from *arrest.* (*People v. Mower* (2001) 28 Cal.4th 457, 469, 122 Cal.Rptr.2d 326, 49 P.3d 1067.) The MMPA provides that immunity by means of a voluntary identification card system. Individuals with physician recommendations for marijuana, and their designated primary caregivers, may obtain identification cards identifying them as such .5 Under the MMPA, no person in possession of a valid identification card shall be subject to arrest for enumerated marijuana offenses. However, a person need not have an identification card to claim the protections from the criminal laws provided by the CUA. (Health & Saf.Code, § 11362.71.)

5 Third, the MMPA set limits on the amount of medical marijuana which may be possessed. Health & Safety Code section 11362.77 provides that, unless a doctor specifically recommends more6 (Health & Saf.Code, § 11362.77, subd. (b)), a qualified patient or primary caregiver "may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient."7 (Health & Saf.Code, § 11362.77, subd. (a).) This provision establishes a "safe harbor" from arrest and prosecution for the possession of no more than these set amounts.8 (Health & Saf.Code, § 11362.77, subd. (f).)

Fourth, the MMPA decriminalizes the collective or cooperative cultivation of marijuana, providing that qualified patients and their primary caregivers "who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under [the same provisions identifying conduct otherwise decriminalized under the MMPA]." (Health & Saf.Code, § 11362.775.)

Two other provisions of the MMPA are relevant to our analysis. First, the MMPA provides for local regulation, stating, "Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article."9 (Health & Saf.Code, § 11362.83.) This has been interpreted to permit cities and counties to impose greater restrictions on medical marijuana collectives than those imposed by the MMPA. (*County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 867–868, 121 Cal.Rptr.3d 722.)

*4 Second, in 2010, the Legislature amended the MMPA to impose restrictions on the location of medical marijuana collectives. Health & Safety Code section

11362.768, subdivision (b), provides that no "medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school." Subdivision (c) restricts the operation of subdivision (b) to only those providers that have a "storefront or mobile retail outlet which ordinarily requires a business license."10 In other words, private collectives are immune from this requirement. The section goes on to provide, "Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." (Health & Saf.Code, section 11362.768, subd. (f).) Moreover, the subdivision provides that it shall not preempt local ordinances adopted prior to January 1, 2011 that regulate the locations or establishments of medical marijuana cooperatives, collectives, dispensaries, operators, establishments, or providers. (Health & Saf.Code, section 11362.768, subd. (g).)

In 2008, the Attorney General issued Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (Guidelines). (<http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf> [as of Oct. 3, 2011].) The Guidelines addressed several issues pertaining to medical marijuana, including taxation,11 federal preemption,12 and arrest under federal law.13 The Guidelines also discussed collectives, cooperatives, and dispensaries, indicating that they should acquire medical marijuana only from their members, and distribute it only among their members. (Guidelines, *supra*, at p. 10.) The Guidelines added the following, regarding dispensaries: "Although medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives.14 [Citation.] It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines [above] are likely operating outside the protections of [the CUA] and the MMP[A], and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver—and then offering marijuana in exchange for cash 'donations'—are likely unlawful." (Guidelines, *supra*, at p. 11.)

FACTUAL AND PROCEDURAL BACKGROUND

1. *The City's Ordinance*

*5 In 2010, the City adopted an ordinance (Long Beach Ordinance No. 10-0007) intended to comprehensively regulate medical marijuana collectives within the City. The ordinance defines a collective as an association of four or more qualified patients and their primary caregivers who associate at a location within the City to collectively or cooperatively cultivate medical marijuana. (Long Beach Mun.Code, ch. 5.87, § 5.87.015, subd. J.)

The City's ordinance not only restricts the location of medical marijuana collectives (Long Beach Mun.Code, ch. 5.87, § 5.87.040, subds. A, B, & C), but also regulates their operation by means of a permit system (Long Beach Mun.Code, ch. 5.87, § 5.87.020). The City requires all collectives which seek to operate in the City, including those that were in operation at the time the ordinance was adopted,15 to submit applications and a non-refundable application fee. (Long Beach Mun.Code, ch. 5.87, § 5.87.030.) The City has set this fee at $14,742. The qualified applicants then participate in a lottery for a limited number of permits.16 (Ex. 3, att.D, p. 2.) Only those medical marijuana collectives which have been issued Medical Marijuana Collective Permits may operate in the City. (Long Beach Mun.Code, ch. 5.87, § 5.87.020.)

In order to obtain a permit, a collective must demonstrate its compliance, and assure its continued compliance, with certain requirements. (Long Beach Mun.Code, ch. 5.87, § 5.87.040.) These include the installation of sound insulation (*id.* at subd. G), odor absorbing ventilation (*id.* at subd. H), closed-circuit television monitoring17 (*id.* at subd. I), and centrally-monitored fire and burglar alarm systems (*id.* at subd. J). Collectives must also agree that representative samples of the medical marijuana they distribute will have been analyzed by an independent laboratory to ensure that it is free of pesticides and contaminants. (*Id.* at subd. T.)

Once a permit has been issued, an "Annual Regulatory Permit Fee" is also imposed, based on the size of the collective. That fee is $10,000 for a collective with between 4 and 500 members, and increases with the size of the collective.

6 7 The permitted collective system is the exclusive means of collective cultivation of medical marijuana in Long Beach.18 The ordinance provides that it is "unlawful for any person to cause, permit or engage in the cultivation, possession, distribution, exchange or giving away of marijuana for medical or non medical purposes except as provided in this Chapter, and pursuant to any

and all other applicable local and state law."[19] (Long Beach Mun.Code, ch. 5.87, § 5.87.090, subd. A.) The ordinance further provides that no person shall be a member of more than one collective "fully permitted in accordance with this Chapter."[20] (*Id.* at subd. N.) Violations of the ordinance are misdemeanors, as well as enjoinable nuisances per se. (Long Beach Mun.Code, ch. 5.87, § 5.87.100.)

*6 The City set a timeline for its initial permit lottery. Applications were to be accepted between June 1 and June 18, 2010; the City was to review the applications for compliance from June 21 through September 16, 2010; the lottery would be held on September 20, 2010; and site inspections, public notice and a hearing process would occur between September 21, 2010 and December 15, 2010. However, the City indicated that any collective that did not comply with the ordinance must cease operations by August 29, 2010.

2. *Plaintiffs' Complaint and Request for Preliminary Injunction*

Plaintiffs Ryan Pack and Anthony Gayle were members of medical marijuana collectives that were directed to cease operations by August 29, 2010, for non-compliance with the ordinance. On August 30, 2010, plaintiffs filed the instant action seeking declaratory relief that the ordinance is invalid as it is preempted by federal law. On September 14, 2010, plaintiffs filed a request for a preliminary injunction. By this time, the City had shut down the collectives of which plaintiffs were members. However, as the lottery had not yet been held, no collectives had been issued permits in accordance with the ordinance. The plaintiffs thus argued that they would be irreparably harmed by the continued enforcement of the ordinance, as there was *no collective* they could legally join in order to obtain their necessary medical marijuana. As to the probability of success, plaintiffs argued that the City's ordinance went beyond decriminalization and instead *permitted* conduct prohibited by the federal CSA, and thus was preempted.

3. *The City's Opposition to the Preliminary Injunction Request*

On September 24, 2010, the City opposed the request for preliminary injunction, arguing that the ordinance was not preempted because it did not affect those responsible for enforcing the federal CSA. The City also raised an unclean hands argument, briefly suggesting that plaintiffs could not complain of any harm because their collectives "opened up for business" in an "unpermitted illegal manner."

4. *The Trial Court's Denial of the Request for Preliminary Injunction*

After a hearing, the trial court denied the request for a preliminary injunction. Its order issued on November 2, 2010. The court ultimately declined to address the federal preemption argument, on the basis of unclean hands. The court rejected the unclean hands argument raised by the City; however, it concluded that plaintiffs could not be heard to argue that the City ordinance was preempted due to a conflict with federal law (the CSA), when plaintiffs sought this ruling so that they could continue to violate the very same federal law. The court stated, "It is hardly equitable for [p]laintiffs to ask the court to enforce a federal law that they themselves are indisputably violating."[21]

5. *The Plaintiffs' Petition for Writ of Mandate*

On November 15, 2010, plaintiffs filed the instant petition for writ of mandate, challenging the trial court's denial of a preliminary injunction. We issued an order to show cause, seeking briefing on the federal preemption issue. We invited amicus briefing from various entities on both sides of the issue, including other cities considering or enacting medical marijuana collective ordinances, the U.S. Attorneys for California districts, the ACLU, and organizations advocating the legalization of marijuana. We received amicus briefing from: (1) the City of Los Angeles; (2) the California State Association of Counties and League of California Cities; and (3) the ACLU, ACLU of Northern California, ACLU of Southern California, ACLU of San Diego and Imperial Counties, Drug Policy Alliance, and Americans for Safe Access. Although the U.S. Attorneys declined to file amicus briefs, we have taken judicial notice of letters and memoranda which illuminate the federal government's position regarding the enforcement of the CSA with respect to medical marijuana collectives.

6. *The Progress of the Lottery and Permitting System*

*7 8 As briefing proceeded in this case, the City's permit lottery was conducted. According to a representation in the City's respondent's brief, the City received 43 applications, and the lottery resulted in 32 applications moving forward in the permit process. By the time briefing was closed, plaintiffs acknowledged that the permit process had resulted in a permit being issued for at least one collective, Herbal Solutions.[22]

ISSUE PRESENTED

The sole issue presented by this writ proceeding23 is whether the City's ordinance is preempted by the federal CSA. We conclude that it is, in part, and therefore grant the plaintiffs' petition.

DISCUSSION

1. *Standard of Review*

"Two interrelated factors bear on the issuance of a preliminary injunction-[t]he likelihood of the plaintiff's success on the merits at trial and the balance of harm to the parties in issuing or denying injunctive relief." (*County of Los Angeles v. Hill, supra,* 192 Cal.App.4th at p. 866, 121 Cal.Rptr.3d 722.) It is clear, in this case, that if the City's ordinance is invalid as a matter of law, plaintiffs had a 100% probability of prevailing, and a preliminary injunction therefore should have been entered.

9 10 Whether an ordinance is valid is a question of law. (*Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 305, 121 Cal.Rptr.3d 172.) Whether a local ordinance is preempted by federal law is a question of law on undisputed facts.24 (*Ibid.*) We therefore review the issue de novo.25 (*Ibid.*)

2. *Law of Preemption*

11 "The supremacy clause of the United States Constitution establishes a constitutional choice-of-law rule, makes federal law paramount, and vests Congress with the power to preempt state law." (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935, 63 Cal.Rptr.3d 50, 162 P.3d 569.)

12 13 14 "There is a presumption against federal preemption in those areas traditionally regulated by the states." (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc., supra,* 41 Cal.4th at p. 938, 63 Cal.Rptr.3d 50, 162 P.3d 569.) Regulation of medical practices and state criminal sanctions for drug possession are historically matters of state police power. (*Qualified Patients Assn. v. City of Anaheim, supra,* 187 Cal.App.4th at p. 757, 115 Cal.Rptr.3d 89.) More importantly, a local government's land use regulation is an area over which local governments traditionally have control. (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1169, 100 Cal.Rptr.3d 1.) Thus, we assume the presumption against federal preemption applies in this instance. Therefore, " '[w]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.' [Citations.]" (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc., supra,* 41 Cal.4th at p. 938, 63 Cal.Rptr.3d 50, 162 P.3d 569.)

15 "There are four species of federal preemption: express, conflict, obstacle, and field." (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc., supra,* 41 Cal.4th at p. 935, 63 Cal.Rptr.3d 50, 162 P.3d 569.) "First, express preemption arises when Congress 'define[s] explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent, [citation], and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.' [Citations.] Second, conflict preemption will be found when simultaneous compliance with both state and federal directives is impossible. [Citations.] Third, obstacle preemption arises when " 'under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " [Citations.] Finally, field preemption, i.e., 'Congress' intent to pre-empt all state law in a particular area,' applies 'where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation.' [Citation.]" (*Id.* at p. 936, 63 Cal.Rptr.3d 50, 162 P.3d 569.)

*8 16 "Where a statute 'contains an express pre-emption clause, our "task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." ' [Citation.]" (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc., supra,* 41 Cal.4th at p. 941, fn. 6, 63 Cal.Rptr.3d 50, 162 P.3d 569.) In this case, we are concerned with the federal CSA, which contains an express preemption clause: "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together." (21 U.S.C. § 903.)

17 It is undisputed that this provision eliminates any possibility of the federal CSA preempting a state statute (or local ordinance) under the principles of field preemption or express preemption (*e.g., Qualified Patients Assn. v. City of Anaheim, supra,* 187 Cal.App.4th at p. 758, 115 Cal.Rptr.3d 89). It is also undisputed that, under this provision, the federal CSA would preempt any

state or local law which fails the test for conflict preemption. (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 823, 81 Cal.Rptr.3d 461.) One California court has concluded that the federal CSA's preemption language bars the consideration of obstacle preemption. (*Id.* at pp. 823–825, 81 Cal.Rptr.3d 461.) Another court, without specifically addressing the conflicting authority, concluded that the federal CSA preempts conflicting laws under both conflict and obstacle preemption. (*Qualified Patients Assn. v. City of Anaheim, supra,* 187 Cal.App.4th at p. 758, 115 Cal.Rptr.3d 89.)

We believe this question was resolved by the United States Supreme Court in *Wyeth v. Levine* (2009) 555 U.S. 555 [129 S.Ct. 1187], a case which was decided after the decision in *County of San Diego v. San Diego NORML, supra,* 165 Cal.App.4th 798, 81 Cal.Rptr.3d 461. In *Wyeth,* the Supreme Court was concerned with the preemptive effect of the Food, Drug, and Cosmetic Act (FDCA). The FDCA provided that "a provision of state law would only be invalidated upon a " 'direct and positive conflict' with the FDCA." (*Wyeth v. Levine, supra,* 555 U.S. at p. —— [129 S.Ct at p. 1196].) Given this language, the Supreme Court considered both conflict and obstacle preemption. (*Id.* at p. —— [555 U.S. at p. ——, 129 S.Ct. at p. 1199].) As there is no distinction between a federal statute which will only preempt those state and local laws which create a "direct and positive conflict" (FDCA) and those which create "a positive conflict ... so that the two cannot consistently stand together" (CSA), we conclude that the same construction applies here, and the federal CSA can preempt state and local laws under both conflict and obstacle preemption.

*9 Indeed, the Supreme Court has cautioned against drawing a practical distinction between these two types of preemption. "This Court, when describing conflict pre-emption, has spoken of pre-empting state law that 'under the circumstances of th[e] particular case ... stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'—whether that 'obstacle' goes by the name of 'conflicting; contrary to; ... repugnance; difference; irreconcilability; inconsistency; violation; curtailment; ... interference,' or the like. [Citations.] The Court has not previously driven a legal wedge—only a terminological one—between 'conflicts' that prevent or frustrate the accomplishment of a federal objective and 'conflicts' that make it 'impossible' for private parties to comply with both state and federal law. Rather, it has said that both forms of conflicting state law are 'nullified' by the Supremacy Clause, [citations], and it has assumed that Congress would not want either kind of conflict. The Court has thus refused to read general 'saving' provisions to tolerate actual conflict *both* in cases involving impossibility, [citation], *and* in 'frustration-of-purpose' cases, [citations]. We see no grounds, then, for attempting to distinguish among types of federal-state conflict for purposes of analyzing whether such a conflict warrants pre-emption in a particular case. That kind of analysis, moreover, would engender legal uncertainty with its inevitable system-wide costs (*e.g.,* conflicts, delay, and expense) as courts tried sensibly to distinguish among varieties of 'conflict' (which often shade, one into the other) when applying this complicated rule to the many federal statutes that contain some form of an express pre-emption provision, a saving provision, or ... both." (*Geier v. American Honda Motor Company, Inc.* (2000) 529 U.S. 861, 873–874, 120 S.Ct. 1913, 146 L.Ed.2d 914.)

Thus, we turn our analysis to the issue of whether the federal CSA preempts the City's ordinance, under either conflict or obstacle preemption.

a. *Conflict Preemption*

18 19 Conflict or "impossibility" preemption "is a demanding defense ." (*Wyeth v. Levine, supra,* 555 U.S. at p. —— [129 S.Ct. at p. 1199].) It requires establishing that it is impossible to comply with the requirements of both laws. (*Ibid.*) At first blush, no impossibility preemption is established by this case. While the federal CSA prohibits manufacture, distribution, and possession of marijuana, the City ordinance does not *require* any such acts. (See *Qualified Patients Assn. v. City of Anaheim, supra,* 187 Cal.App.4th at p. 759, 115 Cal.Rptr.3d 89 [stating that a "claim of positive conflict might gain more traction if the [City] *required* ... individuals to possess, cultivate, transport, possess for sale, or sell medical marijuana in a manner that violated federal law"].) Since a person can comply with both the federal CSA and the City ordinance by simply not being involved in the cultivation or possession of medical marijuana at all, there is no conflict preemption. (Cf. *Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc., supra,* 41 Cal.4th at p. 944, 63 Cal.Rptr.3d 50, 162 P.3d 569 [no conflict preemption because it is not a physical impossibility to simultaneously comply with both a federal law allowing conduct and a state law prohibiting it].)

*10 20 We are, however, troubled by one provision of the City's ordinance, the provision requiring that permitted collectives have samples of their medical marijuana analyzed by an independent laboratory to ensure that it is free from pesticides and contaminants. (Long Beach Mun.Code, ch. 5.87, § 5.87.040, subd. T .) We question how an otherwise permitted collective can comply with this provision without violating the federal CSA's prohibition on distributing marijuana.26 In other words, this provision appears to *require* that certain individuals

violate the federal CSA. In an amicus brief in support of the City, the California State Association of Counties and League of California Cities argue that the only individuals being required to distribute marijuana under this provision are already violating the federal CSA by operating a medical marijuana collective. In other words, these amici argue that this section of the ordinance "does not compel any person who does not desire to possess or distribute marijuana to do so." We find this argument unavailing. That a person desires to possess or distribute marijuana to some degree (by operating a collective) does not necessarily imply that the person is also desirous of committing additional violations of the federal CSA (by delivering the marijuana for testing). The City cannot compel permitted collectives to distribute marijuana for testing any more than it can compel a burglar to commit additional acts of burglary. In this limited respect, conflict preemption applies.[27]

b. Obstacle Preemption

21 Obstacle preemption arises when the challenged law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. (*Qualified Patients Assn. v. City of Anaheim, supra,* 187 Cal.App.4th at p. 760, 115 Cal.Rptr.3d 89.) "As a majority of the current United States Supreme Court has agreed at one time or another, 'pre-emption analysis is not "[a] freewheeling judicial inquiry into whether a state statute is in tension with federal objectives," [citation], but an inquiry into whether the ordinary meanings of state and federal law conflict.' [Citations.]" (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc., supra,* 41 Cal.4th at pp. 939–940, 63 Cal.Rptr.3d 50, 162 P.3d 569.) If the federal act's operation would be frustrated and its provisions refused their natural effect by the operation of the state or local law, the latter must yield. (*Qualified Patients Assn. v. City of Anaheim, supra,* 187 Cal.App.4th at p. 760, 115 Cal.Rptr.3d 89.)

22 The United States Supreme Court has already set forth the purposes of the federal CSA. As discussed above, the main objectives of the federal CSA are "combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances," (*Gonzales v. Oregon, supra,* 546 U.S. at p. 250), with a particular concern of preventing "the diversion of drugs from legitimate to illicit channels." (*Gonzales v. Raich, supra,* 545 U.S. at pp. 12–13.)

*11 23 For this reason, we disagree with our colleagues who, in two other appellate opinions, have implied that medical marijuana laws might not pose an obstacle to the accomplishment of the purposes of the federal CSA because the purpose of the federal CSA is to combat recreational drug use, not regulate a state's medical practices. (*Qualified Patients Assn. v. City of Anaheim, supra,* 187 Cal.App.4th at p. 760, 115 Cal.Rptr.3d 89; *County of San Diego v. San Diego NORML, supra,* 165 Cal.App.4th at p. 826, 81 Cal.Rptr.3d 461.) While this statement of the purpose of the federal CSA is technically accurate,[28] it is inapplicable in the context of medical marijuana. This is because, as far as Congress is concerned, there is no such thing as medical marijuana. Congress has concluded that marijuana has no accepted medical use at all; it would not be on Schedule I otherwise. (*United States v. Oakland Cannabis Buyers' Cooperative, supra,* 532 U.S. at p. 491.) Thus, to Congress, *all* use of marijuana is recreational drug use, the combating of which is admittedly the core purpose of the federal CSA.[29] This case presents the question of whether an ordinance which establishes *a permit scheme* for medical marijuana collectives stands as an obstacle to the accomplishment of this purpose. We conclude that it does.

24 25 There is a distinction, in law, between not making an activity unlawful and making the activity lawful. An activity may be prohibited, neither prohibited nor authorized, or authorized. (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc., supra,* 41 Cal.4th at p. 952, 63 Cal.Rptr.3d 50, 162 P.3d 569.) When an act is prohibited by federal law, but neither prohibited nor authorized by state law, there is no obstacle preemption. The state law does not present an obstacle to Congress's purposes simply by not criminalizing conduct that Congress has criminalized. For this reason, the CUA is not preempted under obstacle preemption.[30] (*City of Garden Grove v. Superior Court, supra,* 157 Cal.App.4th at pp. 384–385, 68 Cal.Rptr.3d 656.) The CUA simply decriminalizes (under state law) the possession and cultivation of medical marijuana (*People v. Mower, supra,* 28 Cal.4th at p. 472, 122 Cal.Rptr.2d 326, 49 P.3d 1067); it does not attempt to authorize the possession and cultivation of the drug (*Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 926, 70 Cal.Rptr.3d 382, 174 P.3d 200).

26 The City's ordinance, however, goes beyond decriminalization into authorization. Upon payment of a fee, and successful participation in a lottery, it provides *permits* to operate medical marijuana collectives. It then imposes an annual fee for their continued operation in the City. In other words, the City determines which collectives are permissible and which collectives are not, and collects fees as a condition of continued operation by the permitted collectives. A law which "authorizes [individuals] to engage in conduct that the federal Act forbids ... 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' " and is therefore preempted. (*Michigan*

Canners and Freezers Association, Inc. v. Agricultural Marketing and Bargaining Board (1984) 467 U.S. 461, 478, 104 S.Ct. 2518, 81 L.Ed.2d 399.)

*12 The same conclusion was reached by the Oregon Supreme Court in *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries* (Or.2010) 348 Or. 159, 230 P.3d 518. Oregon had enacted a medical marijuana statute which both affirmatively authorized the use of medical marijuana and exempted its use from state criminal liability. (*Id.* at p. 525.) The court concluded that the law was preempted by the federal CSA, under obstacle preemption, to the extent that it authorized the use of medical marijuana rather than merely decriminalizing its use under state law. (*Id.* at p. 529–531.) We agree with that analysis.

27 Additionally, we have taken judicial notice of letters which set forth the position of the U.S. Attorney General on the purposes of the CSA and the issue of obstacle preemption. While we do not simply defer to its position, we place "some weight" on it. (See *Geier v. American Honda Motor Company, Inc., supra,* 529 U.S. at p. 883 [placing "some weight" on Department of Transportation's interpretation of its own regulations and whether obstacle preemption would apply].) On February 1, 2011, the U.S. Attorney for the Northern District of California sent a letter to the Oakland City Attorney relating to that city's consideration of a licensing scheme for medical marijuana cultivation and manufacturing. The letter explained, "Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities." (U.S. Attorney Melinda Haag, letter to Oakland City Attorney John A. Russo, February 1, 2011.) It further stated, "The Department is concerned about the Oakland Ordinance's creation of a licensing scheme that permits large-scale industrial marijuana cultivation and manufacturing as it authorizes conduct contrary to federal law and threatens the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances." (*Ibid.*)

28 On June 29, 2011, the Deputy Attorney General issued a memorandum to all United States Attorneys confirming the position taken in this letter and confirming that prosecution of significant traffickers of illegal drugs, including marijuana, "remains a core priority." (Deputy Attorney General James M. Cole, memorandum for all U.S. Attorneys, June 29, 2011.) The memorandum noted that several jurisdictions "have considered or enacted legislation to authorize multiple large-scale, privately-operated industrial marijuana cultivation centers," and noted that these activities are not shielded from federal enforcement action and prosecution. (*Ibid.*) In short, the federal government has adopted the position that state and local laws which license the large-scale cultivation and manufacture of marijuana stand as an obstacle to federal enforcement efforts.31 We agree.

*13 The California State Association of Counties and League of California Cities suggest that, although the City's ordinance is phrased in the language of what it will "permit," it is, in truth, merely an identification of those collectives against which it will not bring violation proceedings, and is therefore akin to the CUA as a limited decriminalization. The ordinance cannot be read in that manner. First and foremost, it is the *possession of the permit itself,* not any particular conduct, which exempts a collective from violation proceedings. That is to say, the ordinance does not indicate that collectives complying with a list of requirements are allowed (or, perhaps, "not disallowed") to operate in the City, which then simply issues permits to identify the collectives in compliance. In this regard, the City's permit scheme is distinguishable from the voluntary identification card scheme set forth in the MMPA. A voluntary identification card identifies the holder as someone California has elected to exempt from California's sanctions for marijuana possession. (*County of San Diego v. San Diego NORML, supra,* 165 Cal.App.4th at pp. 825–826, 81 Cal.Rptr.3d 461.) One not possessing an identification card, but nonetheless meeting the requirements of the CUA, is also immune from those criminal sanctions. The City's permit system, however, provides that collectives with permits may collectively cultivate marijuana within the City *and those without permits may not.* The City's permit is nothing less than an *authorization* to collectively cultivate.

Second, the City charges substantial application and renewal fees, and has chosen to hold a lottery among all qualified collective applicants (who pay the application fee) in order to determine those lucky few who will be granted permits. The City has created a system by which: (1) of all collectives which follow its rules, only those which pay a substantial fee may be considered for a permit; and (2) of all those which follow its rules and pay the substantial fee, only a randomly selected few will be granted the right to operate. The conclusion is inescapable: the City's permits are more than simply an easy way to identify those collectives against whom the City has chosen not to enforce its prohibition against collectives; the permits instead authorize the operation of collectives by those which hold them. As such, the permit provisions, including the substantial application fees and renewal fees, and the lottery system, are federally preempted.

c. *Severability*

Having concluded that the permit provisions of the City's ordinance are federally preempted, we turn to the issue of severability. The City's ordinance provides, "If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter are severable." (Long Beach Mun.Code, ch. 5.87, § 5.87.130.)

*14 29 30 31 This case is before us on a writ petition from the denial of a preliminary injunction. As we have concluded the permit provisions of the City's ordinance are preempted under federal law, the operation of those provisions should have been enjoined. The parties did not brief the issue of which, if any, of the other provisions of the ordinance must also be enjoined, and which can be severed and given independent effect.32 Under the circumstances, we believe it is appropriate for the trial court to consider this issue in the first instance. However, we make the following observations: Several provisions of the City's ordinance simply identify prohibited conduct without regard to the issuance of permits. For example, the ordinance includes provisions (1) prohibiting a medical marijuana collective from providing medical marijuana to its members between the hours of 8:00 p.m. and 10:00 a.m. (Long Beach Mun.Code, ch. 5.87, § 5.87.090 at subd. H); (2) prohibiting a person under the age of 18 from being on the premises of a medical marijuana collective unless that person is a qualified patient accompanied by his or her physician, parent or guardian (*id.* at subd. I); and (3) prohibiting the collective from permitting the consumption of alcohol on the property or in its parking area (*id.* at subd. K). These provisions impose further limitations on medical marijuana collectives beyond those imposed under the MMPA, and do not, in any way, permit or authorize activity prohibited by the federal CSA. As such, they cannot be federally preempted, and appear to be easily severable.

32 Other provisions of the ordinance could be interpreted to simply impose further limitations, although they are found in sections relating to the issuance of permits. For example, in order to obtain a medical marijuana collective permit, an applicant must establish that the property is not located in an exclusive residential zone (Long Beach Mun.Code, ch. 5.87, § 5.87.040, subd. A), and not within a 1,500 foot radius of a high school or 1,000 foot radius of a kindergarten, elementary, middle, or junior high school (*id.* at subd. B). These restrictions, if imposed strictly as a limitation on the operation of medical marijuana collectives in the City, would not be federally preempted. However, the restrictions, as currently phrased, appear to be a part of the preempted permit process. We leave it to the trial court to determine, in the first instance, whether these and other restrictions can be interpreted to stand alone in the absence of the City's permit system, and therefore not conflict with the federal CSA.33 It is also for the trial court to consider whether any provisions of the City's ordinance that are not federally preempted impermissibly conflict with state law, to the extent plaintiffs have appropriately pleaded (or can so plead) the issue.

DISPOSITION

The petition for writ of mandate is granted. The matter is remanded to the trial court for further proceedings consistent with the views expressed in this opinion. The petitioners shall recover their costs in this proceeding.

WE CONCUR: KLEIN, P.J., and ALDRICH, J.

Parallel Citations
2011 WL 4553155 (Cal.App. 2 Dist.), 11 Cal. Daily Op. Serv. 12,643, 2011 Daily Journal D.A.R. 15,028

Footnotes

1 The CSA uses both the spellings, "marihuana" and "marijuana." We use the latter.

2 Health and Safety Code section 11357 prohibits the possession of marijuana, although possession of not more than 28.5 grams is declared to be an infraction, punishable by a fine of not more than $100. (Health & Saf.Code, § 11357, subd. (b).)

3 "Primary caregiver" is defined by the CUA to mean "the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." (Health & Saf.Code, § 11362.5, subd. (e).)

4 Although the MMPA added examples to the definition of "primary caregiver," it retained the restrictive definition set forth in the CUA. (Health & Saf.Code, § 11362.7, subd. (d).) Thus, a person who supplies marijuana to a qualified patient is not an immune primary caregiver under the CUA and MMPA unless the person consistently provided caregiving, *independent of assistance in taking marijuana* at or before the time the person assumed responsibility for assisting the patient with medical marijuana. In short,

a person is not a primary caregiver simply by being designated as such and providing the patient with medical marijuana. (*People v. Hochanadel* (2009) 176 Cal.App.4th 997, 1007, 98 Cal.Rptr.3d 347.)

5 The statutory language provides that the card "identifies a person authorized to engage in the medical use of marijuana." (Health & Saf.Code, § 11362.71, subd. (d)(3).) It would be more appropriate to state that the card "identifies a person whose use of marijuana is decriminalized." As we discussed above, the CUA simply *decriminalized* the medical use of marijuana; it did not *authorize* it.

6 A city or county may also enact a guideline allowing patients to exceed the statutory limitation. (Health & Saf.Code, § 11362.77, subd. (c).)

7 We note that this provision also speaks in the language of permission, rather than decriminalization. The MMPA does not state that the possession of eight ounces of dried marijuana by a qualified patient is immune from arrest and prosecution; rather, it states that a qualified patient "may possess" no more than eight ounces of dried marijuana. The plaintiffs in this case make no argument that the MMPA is preempted by the CSA for this reason.

8 This provision was held to constitute an improper amendment of the CUA to the extent that it burdens a criminal defense under the CUA to a criminal charge of possession or cultivation. (*People v. Kelly* (2010) 47 Cal.4th 1008, 1012, 103 Cal.Rptr.3d 733, 222 P.3d 186.) The Supreme Court did not void the provision in its entirety, however, as it has other purposes, such as its creation of a safe harbor for qualified patients possessing no more than the set amounts. (*Id.* at pp. 1046–1049, 103 Cal.Rptr.3d 733, 222 P.3d 186.)

9 The Legislature has passed, and the Governor has approved, an amendment to this section. The statute amends this section to read as follows: "Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following: (a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective. (b) The civil and criminal enforcement of local ordinances described in subdivision (a). (c) Enacting other laws consistent with this article." (Stats.2011, ch. 196, § 1.) While this new statute clarifies the state's position regarding local regulation of medical marijuana collectives, it has no effect on our federal preemption analysis.

10 The subdivision provides, in full, "This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a business license." Again, the MMPA speaks of collectives "authorized by law to possess, cultivate, or distribute medical marijuana," when, in fact, the operative part of the MMPA simply provides that qualified patients and their caregivers shall not "be subject to state criminal sanctions" under enumerated statutes for their collective medical marijuana activities. (Health & Saf.Code, § 11362.775.)

11 The Guidelines confirm that the Board of Equalization taxes medical marijuana transactions, and requires businesses transacting in medical marijuana to hold a seller's permit. This does not "allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due." (Guidelines, *supra*, at p. 2.)

12 The Guidelines agree that California case authority has concluded that the CUA and MMPA are not preempted by the federal CSA. "Neither [the CUA], nor the MMP[A], conflict with the CSA because, in adopting these laws, California did not 'legalize' medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition." (Guidelines, *supra*, at p. 3.)

13 The Guidelines recommend that state and local law enforcement officers "not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws." (Guidelines, *supra*, at p. 4.)

14 The Guidelines were issued in 2008. When the Legislature amended the MMPA in 2010 to provide that collectives could not be located within 600 feet of a school, the restriction expressly applied to dispensaries as well as collectives and cooperatives. (Health & Saf.Code, § 11362.768, subd. (b).)

15 The ordinance expressly provides that it applies to collectives existing at the time of its enactment. No such collective could continue operation without a permit. (Long Beach Mun.Code, ch. 5.87, § 5.87.080.)

16 There is no provision in the ordinance for a lottery system. To the contrary, the ordinance provides that if the applicant demonstrates compliance with all of the requirements, a permit "shall [be] approve[d] and issue[d]." (Long Beach Mun.Code, ch. 5.87, § 5.87.040.) No argument is made that the lottery system is improper on this basis.

17 "The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of an individual on or adjacent to the Property. The recordings shall be maintained at the Property for a period of not less than thirty

(30) days." (Long Beach Mun.Code, ch. 5.87, § 5.87.040, subd. I.) According to an amicus curiae brief filed by the American Civil Liberties Union (ACLU) and other entities, the ordinance was amended in 2011 to add a requirement that full-time video monitoring of a collective be made accessible to the Long Beach Police Department in real time without a warrant, court order, or other authorization.

18 In plaintiffs' brief in reply to the amicus curiae briefing, plaintiffs suggest that the restrictions imposed by the permit system are so onerous, the only collectives that could conceivably obtain permits are large-scale dispensaries. We do not entirely disagree. One can assume that a small collective of four patients and/or caregivers growing a few dozen marijuana plants would lack the resources to: (1) pay a $14,742 application fee; (2) pay a $10,000 annual fee; (3) install necessary insulation, ventilation, closed-circuit television, fire, and alarm systems; and (4) regularly have its marijuana tested by an independent laboratory. Moreover, the location restrictions, which prohibit any collective in an exclusive residential zone or within 1000 feet of another collective (Long Beach Mun.Code, ch. 5.87, § 5.87.040, subds. A & C) might also be prohibitive for small, private collectives. Nonetheless, plaintiffs' complaint did not challenge the ordinance on this basis. We do note, however, that these provisions of the ordinance make it somewhat more likely that the only collectives permitted in Long Beach will be large dispensaries that require patients to complete a form summarily designating the business owner as their primary caregiver and offer marijuana in exchange for cash "donations"—the precise type of dispensary believed by the Attorney General likely to be in violation of California law.

19 While not alleged in plaintiffs' complaint, it was suggested that this language prohibits the *personal* cultivation of medical marijuana, outside the context of a collective. Indeed, in plaintiffs' petition, they argue that the City's ordinance is preempted by *state* law because of this prohibition. At argument before the trial court, however, the City Attorney represented that the ordinance did not criminalize personal cultivation and possession, and addressed only collective cultivation. As the City has represented that the ordinance does not apply to prohibit personal cultivation and possession, and there is no evidence that it has been so applied, we do not address the argument.

20 Plaintiffs, who were members of collectives shut down due to noncompliance with the ordinance, suggest that, since they can each be a member of only a single collective, they are now foreclosed from obtaining medical marijuana from another collective. This is clearly untrue. Membership is limited to a single *permitted* collective. Since the collectives in which plaintiffs were members were not permitted, they may join another, permitted, collective without violating the terms of the ordinance.

21 The trial court apparently had before it two cases challenging the City's ordinance. Although it did not consolidate the cases or deem them related, it heard the preliminary injunction issue simultaneously in both cases, and denied the preliminary injunction in both cases in a single order. The other case had raised the issue of whether the ordinance impermissibly conflicted with the CUA and MMPA. The court concluded that it did not, although it noted that the "overall sense of the Ordinance is inconsistent with the purposes of the CUA and MMPA." (Emphasis omitted.)

22 We take judicial notice of the fact that a simple Google search reveals that several other medical marijuana dispensaries are apparently operating in Long Beach, although their websites do not specifically indicate whether they are permitted.

23 We sought briefing from the parties and amici on the issue of whether certain record-keeping requirements imposed by the ordinance violated collective members' Fifth Amendment rights. Given our resolution of the federal preemption issue, we need not reach the Fifth Amendment issue, although it may be considered by the trial court upon remand.

24 That City is a charter city makes no difference to our analysis. As a charter city, City's ordinances relating to matters which are *purely municipal affairs* prevail over state laws on the same subject. (*Home Gardens Sanitary Dist. v. City of Corona* (2002) 96 Cal.App.4th 87, 93, 116 Cal.Rptr.2d 638). The issue, however, is one of conflict with *federal law* on a matter on which the federal government has chosen to act in the national interest. Indeed, the United States Supreme Court has held that the federal CSA applies to marijuana cultivated and used *solely intrastate*, as a proper exercise of Congress's authority under the Commerce Clause. (*Gonzales v. Raich, supra*, 545 U.S. at pp. 29–30.) While City suggests that its ordinance relates to the purely municipal matters of zoning and land use, it is clear that the regulation of medical marijuana is a matter of state and, indeed, national interest, and the ordinance is thus not concerned *solely* with municipal affairs.

25 The trial court in this case did not reach the issue, concluding that plaintiffs were barred by the doctrine of unclean hands from arguing that the federal CSA preempted the City's ordinance because the plaintiffs sought the ruling in order to continue to violate the federal CSA. We disagree. Plaintiffs sought the assistance of the California courts in order to assert their rights to use medical marijuana under the California statutes. As the CUA and MMPA decriminalize medical marijuana use in California, plaintiffs' hands were not unclean under California law. Furthermore, if the only individuals who can challenge medical marijuana ordinances as preempted by federal law are those who have no intention of violating the provisions of federal law, no one would ever have standing to raise the preemption argument.

26 The federal CSA defines "distribution" to include "delivery," (21 U.S.C. § 802(11), which, in turn, includes the "transfer" of a controlled substance (21 U.S.C. § 802(8)).

27 There may also be an issue of whether the ordinance *requires* certain City officials to violate federal law by aiding and abetting (or facilitating (21 U.S.C. § 843(b)) a violation of the federal CSA. For example, the ordinance requires the City's Director of Financial Management to approve and issue a permit if certain facts are demonstrated. (Long Beach Mun.Code, ch. 5.87, § 5.87.040.) In this regard, we note that the Ninth Circuit has held that a physician does not aid and abet the use of marijuana in violation of the federal CSA simply by *recommending* that the patient use marijuana, but the conduct would escalate to aiding and abetting if the physician provided the patient with the means to acquire marijuana with the specific intent that the patient do so. (*Conant v. Walters, supra,* 309 F.3d at pp. 635–636.) We also note that the U.S. Attorneys for the Eastern and Western Districts of Washington took the position, in a letter to the Governor of Washington, that "state employees who conducted activities mandated by the Washington legislative proposals [which would establish a licensing scheme for marijuana growers and dispensaries] would not be immune from liability under the CSA." (U.S. Attorney Jenny A. Durkan and U.S. Attorney Michael C. Ormsby, letter to Governor Christine Gregoire, April 14, 2011.) Although a California court has concluded that law enforcement officials are not violating the federal CSA by returning confiscated medical marijuana pursuant to state law (*City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, 368, 68 Cal.Rptr.3d 656), we are not as certain that the federal courts would take such a narrow view. (See, also, *County of Butte v. Superior Court* (2009) 175 Cal.App.4th 729, 742, 96 Cal.Rptr.3d 421 (dis. opn. of Morrison, J., [stating "[f]ostering the cultivation of marijuana in California, regardless of its intended purpose, violates federal law"].) We are not required to reach the issue.

28 In *Gonzales v. Oregon, supra,* 546 U.S. 243, 126 S.Ct. 904, 163 L.Ed.2d 748, the Supreme Court was concerned with an attempt by the Attorney General, purportedly acting under the federal CSA, to prohibit doctors from prescribing Schedule II drugs for use in physician-assisted suicide, as permitted by Oregon state law. The court concluded that the federal CSA was concerned with regulating medical practice insofar as it barred doctors from using their prescription-writing powers as a means to engage in illicit drug use, but otherwise had no intent to regulate the practice of medicine. (*Id.* at pp. 269–270.)

29 Indeed, in light of the Supreme Court's conclusions that: (1) "[A] medical necessity exception for marijuana is at odds with the terms of the [federal CSA]" (*United States v. Oakland Cannabis Buyers' Cooperative, supra,* 532 U.S. at p. 491); and (2) the federal CSA reaches even purely intrastate cultivation and use of marijuana (*Gonzales v. Raich, supra,* 545 U.S. 9, 30), we see no legal basis for suggesting that the federal CSA's core purposes do not include the control of medical marijuana.

30 *Qualified Patients Assn. v. City of Anaheim, supra,* 187 Cal.App.4th at p. 757, 115 Cal.Rptr.3d 89, concluded that the MMPA also was not preempted by the CSA because it simply decriminalizes for the purposes of state law certain conduct related to medical marijuana. The court, however, was not presented with any argument that any specific sections of the MMPA go beyond decriminalization into authorization. As we noted above (see footnotes 5, 7, and 10, *ante*), the MMPA sometimes speaks in the language of authorization, when it appears to mean only decriminalization. Obviously, any preemption analysis should focus on the purposes and effects of the provisions of the MMPA, not merely the language used. (See *Willis v. Winters* (Or.App.2010) 235 Or.App. 615, 234 P.3d 141, 148 [Oregon's concealed weapon licensing statute is, in effect, merely an exemption from criminal liability], *aff'd* (Or.2011) 350 Or. 299, 253 P.3d 1058.)

31 We again note that the high costs of compliance with the City's ordinance may have the practical effect of allowing *only* large-scale dispensaries, rather than small collectives. (See footnote 18, *ante.*) Yet these large-scale dispensaries are precisely the type of dispensaries the licensing of which the U.S. Attorney General believes stands as an obstacle to the enforcement of the CSA.

32 In their reply brief, petitioners argue that, as the entire ordinance is designed to regulate and permit medical marijuana collectives, the federally preempted provisions cannot be severed from other provisions. The City did not brief the severability issue at all.

33 The ordinance also includes record-keeping provisions as a condition of obtaining a permit. (Long Beach Mun.Code, ch. 5.87, § 5.87.040, subd. S.) Other record-keeping provisions appear unconnected to the permit requirement. (Long Beach Mun.Code, ch. 5.87, § 5.87.060.) Although we requested briefing on the issue of whether the record-keeping provisions violated the Fifth Amendment privilege against self-incrimination, the trial court will first have to determine, as a preliminary matter, whether each of the comprehensive record-keeping provisions can stand in the absence of the permit provisions.

Exhibit 5

KENTREPORTER

PRINTTHIS

Judge upholds Kent's ban on medical marijuana collective gardens

KENT REPORTER, FILE PHOTO
Medical marijuana supporters gather in June before a Kent City Council meeting to protest the city's ban against medical marijuana collective gardens. A King County Superior Court judge upheld that ban on Oct. 5.

By STEVE HUNTER
Kent Reporter Courts, government reporter
OCTOBER 10, 2012 · 10:45 AM

A King County Superior Court judge upheld the city of Kent's ban on medical marijuana collective gardens.

Judge Jay White issued his ruling on a summary judgment motion by the city on Oct. 5 in court at the Norm Maleng Regional Justice Center in Kent.

"We won the entire case," said Deputy City Attorney Pat Fitzpatrick during a phone interview. "I was pleased. We expected that result. But we have to acknowledge it's a complicated matter."

Steve Sarich, a medical marijuana supporter who filed the lawsuit against the city in June in an effort to prohibit the city from enforcing its ban on collective gardens, said he also expected the ruling.

"We were disappointed but not surprised," said Sarich during a phone interview. "And it's not discouraging. We were prepared for whatever judgment came down."

Sarich, one of several plaintiffs on the initial lawsuit filed after the Kent City Council passed in June its ban on medical marijuana collective gardens, said they would appeal within a few days to either the state Court of Appeals or the state Supreme Court.

"In all the case laws we cited they were not won instantly," Sarich said. "They were all won in the Court of Appeals or Supreme Court. We could be in Supreme Court in as quickly as three weeks. We have no intention to let it drop. We're right with the case law."

Sarich argues that the state regulates medical marijuana collectives, and cities cannot enforce federal law over state medical marijuana laws.

The council banned collective gardens because it believes the businesses violate federal law that lists marijuana as an illegal drug under the federal Controlled Substances Act. State law allows medical marijuana use but council members decided the state law remains unclear about distribution of the drug and doesn't want any medical marijuana businesses operating in Kent.

Fitzpatrick said the ruling came down to a zoning issue.

"The judge ruled we have the authority to prohibit collective gardens," Fitzpatrick said. "It's not as much about medical marijuana but the city's right to zone. We have statutory authority to prohibit through zoning."

The judge also ruled that Deryck Tsang, owner of Herbal Choice Caregivers at 19011 West Valley Highway, must close because of the city's ban against collective gardens. Tsang operates the only known medical marijuana collective garden in Kent.

Tsang, who is also a plaintiff in the suit against the city, did not return a phone message for comment about the judge's ruling or his plans for the business. Sarich said he figured Tsang would close the business.

Fitzpatrick said the judge had many issues to look over.

"It's a very complicated case with the legal rules, state and federal law and the Gov. (Chris Gregoire) vetoes that left it a mess," Fitzpatrick said. "It's not an easy case for the judge to make sense of."

The Legislature passed a bill in 2011 to allow medical marijuana dispensaries and collective gardens. But Gregoire vetoed 36 of 58 sections, leaving a confusing legal landscape for cities to navigate.

A couple of medical marijuana businesses opened in Kent after passage of the bill. Evergreen Association of Collective Gardens closed in August on Central Avenue after a letter from the federal Drug Enforcement Administration threatened to shut down the store because it's too close to a school. Evergreen had remained open despite the city's ban against the business.

Contact Kent Reporter Courts, government reporter Steve Hunter at shunter@kentreporter.com or 253-872-6600, ext. 5052.

Find this article at:
http://www.kentreporter.com/news/173533721.html

☐ Check the box to include the list of links referenced in the article.

Exhibit 6

CITY OF MARYSVILLE
MARYSVILLE, WASHINGTON

ORDINANCE NO. 2867

AN INTERIM ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDCIAL MARIJUANA DISPENSARIES, COLLECTIVE GARDENS AND THE LICENSING AND PERMITTING THEREOF; DEFINING "MEDICAL MARIJUANA DISPENSARY"; PROVIDING FOR A PUBLIC HEARING; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING THAT THE MORATORIUM, UNLESS EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION.

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be "construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes"; and

WHEREAS, the Washington State Department of Health opines that it is "not legal to buy or sell" medical marijuana and further opines that "the law [Chapter 69.51.A RCW] does not allow dispensaries", leaving enforcement to local officials; and

WHEREAS, the City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law;

WHEREAS, ESSB 5073 – Chapter 181, Laws of 2011 ("the bill") was adopted with a partial veto of the Governor becomes effective July 22, 2011; and

WHEREAS, Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law; and

WHEREAS, Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

WHEREAS, the City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana as well as the right of patients to designate a "designated provider" who can "provide" rather than sell marijuana to "only one patient at any one time"; and

WHEREAS, the City Council finds that the secondary impacts associated with marijuana dispensaries, and collective gardens include but are not limited to the invasion of the business, burglary and robbery associated with the cash and drugs maintained on the site;

WHEREAS, pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes on the production, processing or dispensing of cannabis or cannabis products; and

WHEREAS, a public hearing will be held on July 11, 2011 before Marysville City Council;

NOW, THEREFORE, the City Council of the City of Marysville, Washington, do ordain as follows:

Section 1. Pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Marysville prohibiting licensing, permitting, establishment, maintenance or continuation of any use consisting of or including the sale, provision and/or dispensing of medical marijuana to more than one person, the establishment of a medical marijuana dispensary or creation of or participation in a "collective garden" as referenced and defined in Section 403 of ESSB 5073 – Chapter 181, Laws of 2011.

Section 2. "Medical marijuana dispensary" is hereby defined as any person, business, corporation, partnership, joint venture, organization, association and/or other entity which: 1) sells, provides and/or otherwise dispenses marijuana to more than one "qualifying patient" in any thirty (30) day period or to any person who does not meet the definition of "qualifying patient" under the terms of Chapter 69.51A RCW , and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association and/ or entity which sells, provides and/or otherwise dispenses marijuana to more than one qualifying patient in any sixty (60) day period should be presumed to be a "medical marijuana dispensary."

Section 3. Medical marijuana dispensaries and collective gardens are hereby designated as prohibited uses in the City of Marysville, in accordance with the provisions of RCW 35A.82.020, no business license, permit, zoning or development approval shall be issued to be a medical marijuana dispensary or collective garden.

Section 4. The City Council hereby directs that a work plan be developed by the Chief Administrative Officer to identify a process for review of medical marijuana dispensaries and collective gardens for potential regulation and inclusion in the Marysville Municipal Code. Said work plan will be presented to the City Council for review before the sunset of this ordinance.

Section 5. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim ordinance shall be transmitted to the Washington State Department of Commerce.

Section 6. Effective Date. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Marysville City Council, this ordinance shall automatically expire six (6) months following its adoption.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

ATTEST/AUTHENTICATED:

By: _____
Sandy Langdon, City Clerk

APPROVED AS TO FORM:

By: _____
Grant K. Weed, City Attorney

Date of Publication: _____

Effective Date: 7/11/14

Medical Cannabis Collective Gardens Work Plan Timeline

Date	Step	Requirement
July 19, 2011	Moratorium effective date	Moratorium effective for six months following passage, until January 7, 2012
December 12, 2011	City Council public meeting to consider work plan, draft regulations and extension of moratorium for six (6) months.	Moratorium extended until July 5, 2012
January 13, 2012	Joint City Council/Planning Commission work session	
No later than April 2, 2012	Notice of intent to amend development regulations sent to Dept. of Commerce	Final adoption no sooner than 60 days after notice; March 20, 2012
No later than April 2, 2012	Notice of Application and SEPA determination	14-day comment/appeal period
April 16, 2012	End of comment/appeal hearing	
No later than May 22, 2012	Planning Commission public hearing on permanent regulations	10 day notice before hearing required
June 2, 2012	60 days after notice sent to Dept. of Commerce	
No later than June 25, 2012	City Council Public Meeting or Public Hearing (if needed) on permanent regulations	10 day notice before hearing required
No later than June 27, 2012	Ordinance published	Usually the Weds after the Monday City Council meeting
July 2, 2012	Effective date of ordinance	5 days after publication
Date Permanent Regulations Required to be Adopted		
July 5, 2012	6 months after moratorium extension adopted	

Exhibit 6

CITY OF MARYSVILLE
MARYSVILLE, WASHINGTON

ORDINANCE NO. 2867

AN INTERIM ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDCIAL MARIJUANA DISPENSARIES, COLLECTIVE GARDENS AND THE LICENSING AND PERMITTING THEREOF; DEFINING "MEDICAL MARIJUANA DISPENSARY"; PROVIDING FOR A PUBLIC HEARING; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING THAT THE MORATORIUM, UNLESS EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION.

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be "construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes"; and

WHEREAS, the Washington State Department of Health opines that it is "not legal to buy or sell" medical marijuana and further opines that "the law [Chapter 69.51.A RCW] does not allow dispensaries", leaving enforcement to local officials; and

WHEREAS, the City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law;

WHEREAS, ESSB 5073 – Chapter 181, Laws of 2011 ("the bill") was adopted with a partial veto of the Governor becomes effective July 22, 2011; and

WHEREAS, Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law; and

WHEREAS, Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

WHEREAS, the City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana as well as the right of patients to designate a "designated provider" who can "provide" rather than sell marijuana to "only one patient at any one time"; and

WHEREAS, the City Council finds that the secondary impacts associated with marijuana dispensaries, and collective gardens include but are not limited to the invasion of the business, burglary and robbery associated with the cash and drugs maintained on the site;

WHEREAS, pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes on the production, processing or dispensing of cannabis or cannabis products; and

WHEREAS, a public hearing will be held on July 11, 2011 before Marysville City Council;

NOW, THEREFORE, the City Council of the City of Marysville, Washington, do ordain as follows:

Section 1. Pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Marysville prohibiting licensing, permitting, establishment, maintenance or continuation of any use consisting of or including the sale, provision and/or dispensing of medical marijuana to more than one person, the establishment of a medical marijuana dispensary or creation of or participation in a "collective garden" as referenced and defined in Section 403 of ESSB 5073 – Chapter 181, Laws of 2011.

Section 2. "Medical marijuana dispensary" is hereby defined as any person, business, corporation, partnership, joint venture, organization, association and/or other entity which: 1) sells, provides and/or otherwise dispenses marijuana to more than one "qualifying patient" in any thirty (30) day period or to any person who does not meet the definition of "qualifying patient" under the terms of Chapter 69.51A RCW , and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association and/ or entity which sells, provides and/or otherwise dispenses marijuana to more than one qualifying patient in any sixty (60) day period should be presumed to be a "medical marijuana dispensary."

Section 3. Medical marijuana dispensaries and collective gardens are hereby designated as prohibited uses in the City of Marysville, in accordance with the provisions of RCW 35A.82.020, no business license, permit, zoning or development approval shall be issued to be a medical marijuana dispensary or collective garden.

Section 4. The City Council hereby directs that a work plan be developed by the Chief Administrative Officer to identify a process for review of medical marijuana dispensaries and collective gardens for potential regulation and inclusion in the Marysville Municipal Code. Said work plan will be presented to the City Council for review before the sunset of this ordinance.

Section 5. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim ordinance shall be transmitted to the Washington State Department of Commerce.

Section 6. Effective Date. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Marysville City Council, this ordinance shall automatically expire six (6) months following its adoption.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

ATTEST/AUTHENTICATED:

By: _____
Sandy ~~Langdon~~, City Clerk - Deputy
APRIL O'BRIEN

APPROVED AS TO FORM:

By: _____
Grant K. Weed, City Attorney

Date of Publication: 7/14/11 - Herald 7/12/11 Globe (on line)

Effective Date: 7/19/11

Exhibit 7

CITY OF MARYSVILLE
MARYSVILLE, WASHINGTON

ORDINANCE NO. 2887

AN INTERIM ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON, ADOPTING AN EXTENSION OF A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, COLLECTIVE GARDENS AND THE LICENSING AND PERMITTING THEREOF; DEFINING "MEDICAL MARIJUANA DISPENSARY"; PROVIDING FOR A PUBLIC HEARING; REFERRING THE MATTER TO THE PLANNING COMMISSION FOR REVIEW; ESTABLISHING AN EFFECTIVE DATE; AMENDING ORDINANCE 2867 AND PROVIDING THAT THE EXTENDED MORATORIUM WILL EXPIRE SIX (6) MONTHS FROM THE DATE OF EXPIRATION OF ORDINANCE 2867.

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be "construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes"; and

WHEREAS, the Washington State Department of Health opines that it is "not legal to buy or sell" medical marijuana and further opines that "the law [Chapter 69.51.A RCW] does not allow dispensaries", leaving enforcement to local officials; and

WHEREAS, the City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law; and

WHEREAS, ESSB 5073 – Chapter 181, Laws of 2011 ("the bill") was adopted with a partial veto of the Governor becomes effective July 22, 2011; and

WHEREAS, Governor Gregoire vetoed 36 of the 58 provisions of ESSB 5073 and this has created considerable uncertainties and ambiguities regarding the meaning and enforcement of the bill; and

WHEREAS, Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law; and

WHEREAS, Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

WHEREAS, the City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana as well as the right of patients to designate a "designated provider" who can "provide" rather than sell marijuana to "only one patient at any one time"; and

WHEREAS, the City Council finds that the secondary impacts associated with marijuana dispensaries and collective gardens include but are not limited to the invasion of the business, burglary and robbery associated with the cash and drugs maintained on the site; and

WHEREAS, pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes on the production, processing or dispensing of cannabis or cannabis products; and

WHEREAS, the City currently has no zoning, licensing, and/or permitting requirements and/or regulations that address the medical marijuana collective gardens; and

WHEREAS, marijuana/cannabis remains a Schedule I drug under the federal Controlled Substances Act ("CSA") and is considered by the federal authorities to be a drug with no medical value, and its manufacture, distribution and/or possession are a violation of federal law; and

WHEREAS, there appears to be a conflict between state and federal law concerning the legal status of marijuana/cannabis and its manufacture, distribution, use and possession; and

WHEREAS, on or about November 30, 2011, Washington State Governor Christine Gregoire and Rhode Island State Governor Lincoln Chaffee petitioned the United States Drug Enforcement Administration (DEA) to reclassify marijuana/cannabis as a Schedule II drug that has therapeutic value and that should be treated as a prescription drug; and

WHEREAS, reclassification of marijuana/cannabis as a Schedule II drug by DEA would allow marijuana/cannabis to be prescribed by physicians with restrictions and dispensed by pharmacies, and would potentially eliminate the current legal and planning dilemma Marysville and other Washington cities and towns are currently struggling with concerning regulation, permitting and licensing issues surrounding medical marijuana/cannabis; and

WHEREAS, a number of initiatives and referendum have been filed with the Washington State Secretary of State that if adopted would change the legal framework concerning medical marijuana once again; and

WHEREAS, it is anticipated that the State Legislature may again revisit the issues surrounding medical marijuana again during the 2012 legislative session; and

WHEREAS, on July 11, 2011, the City Council passed Ordinance No. 2867 that imposed a six (6) month moratorium on the establishment of medical marijuana dispensaries, collective gardens and the licensing and permitting thereof; and

WHEREAS, Ordinance No. 2867 expires on January 7, 2012 (180 days from the adoption of Ordinance No. 2867; and

WHEREAS, given the many complications, uncertainties and impacts that exist and that are described above, additional time is necessary to engage in a meaningful planning process related to the development of regulations that address zoning, licensing and/or permitting of medical marijuana and the impacts thereof; and

WHEREAS, a public hearing was held on December 12, 2011, before Marysville City Council; and

WHEREAS, the City Council finds it is in the best interest of the City of Marysville and its citizens to extend the moratorium regarding the establishment of medical marijuana collective gardens and the licensing and permitting thereof for an additional six (6) month period from the expiration of the moratorium imposed by Ordinance No. 2867 to July 5, 2012;

NOW, THEREFORE, the City Council of the City of Marysville, Washington, do ordain as follows:

Section 1. The above "Whereas" clauses constitute findings of fact in support of the moratorium established by this Ordinance and said findings are fully incorporated into this Ordinance.

Section 2. Pursuant to the provisions of RCW 36.70A.390, the zoning moratorium established by Ordinance 2867 in the City of Marysville that prohibits licensing, permitting, establishment, maintenance or continuation of any use consisting of or including the sale, provision and/or dispensing of medical marijuana to more than one person, the establishment of a medical marijuana dispensary or creation of or participation in a "collective garden" as referenced and defined in Section 403 of ESSB 5073 - Chapter 181, Laws of 2011, is hereby extended for an additional six (6) month period from the date of expiration of Ordinance 2867 and the findings, terms and conditions of Ordinance 2867 and those set forth herein are incorporated herein by this reference, and Ordinance 2867 is hereby amended consistent herewith.

Section 3. "Medical marijuana dispensary" is hereby defined as any person, business, corporation, partnership, joint venture, organization, association and/or other entity which: 1) sells, provides and/or otherwise dispenses marijuana to more than one "qualifying patient" in any thirty (30) day period or to any person who does not meet the definition of "qualifying patient" under the terms of Chapter 69.51A RCW, and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association and/ or entity which sells, provides and/or otherwise dispenses marijuana to more than one qualifying patient in any sixty (60) day period should be presumed to be a "medical marijuana dispensary."

Section 4. Medical marijuana dispensaries and collective gardens are hereby designated as prohibited uses in the City of Marysville, in accordance with the provisions of RCW 35A.82.020, no business license, permit, zoning or development approval shall be issued to be a medical marijuana dispensary or collective garden.

Section 5. This Ordinance shall be referred to the Marysville Planning Commission for its review and recommendation for potential inclusion in the zoning and/or business and tax ordinances of the City of Marysville.

Section 6. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim Ordinance shall be transmitted to the Washington State Department of Commerce.

Section 7. Severability. If any section, clause, and/or phrase of this Ordinance is held invalid by a court of competent jurisdiction, such invalidity and/or unconstitutionality shall not affect the validity and/or constitutionality of any other section, clause and/or phrase of the Ordinance.

Section 8. Effective Date. This Ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Marysville City Council, this Ordinance shall automatically expire on July 5, 2012, which is six (6) months from the expiration date of Ordinance 2867 (January 7, 2012) following its adoption.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

ATTEST/AUTHENTICATED:

By: _____
April O'Brien, Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Grant K. Weed, City Attorney

Date of Publication: 12/21/11

Effective Date: 12/25/11

CITY OF MARYSVILLE
MARYSVILLE, WASHINGTON

ORDINANCE NO. 2899

AN INTERIM ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON, ADOPTING AN EXTENSION OF A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, COLLECTIVE GARDENS AND THE LICENSING AND PERMITTING THEREOF; DEFINING "MEDICAL MARIJUANA DISPENSARY"; REFERRING THE MATTER TO THE PLANNING COMMISSION FOR REVIEW; ESTABLISHING AN EFFECTIVE DATE; AMENDING ORDINANCES NO. 2867 AND 2882; AND PROVIDING THAT THE EXTENDED MORATORIUM WILL EXPIRE ON JULY 5, 2013 -- ONE (1) YEAR FROM THE DATE OF EXPIRATION OF ORDINANCE NO. 2882.

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana/cannabis; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be "construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes"; and

WHEREAS, the Washington State Department of Health opines that it is "not legal to buy or sell" medical marijuana and further opines that "the law [Chapter 69.51.A RCW] does not allow dispensaries", leaving enforcement to local officials; and

WHEREAS, the City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law; and

WHEREAS, ESSB 5073 – Chapter 181, Laws of 2011 ("the bill") was adopted with a partial veto of the Governor becomes effective July 22, 2011; and

WHEREAS, Governor Gregoire vetoed the provisions of ESSB 5073 that would have provided the legal basis for legalizing and licensing medical marijuana dispensaries, processing facilities and production facilities, thereby making these activities illegal; and

WHEREAS, Section 403 (codified at RCW 69.51A.085) of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

WHEREAS, the City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana; and

WHEREAS, the City Council finds that the secondary impacts associated with medical marijuana collective gardens include but are not limited to the invasion of the business, burglary and robbery associated with the cash and drugs maintained on the site; and

WHEREAS, pursuant to Section 1102 of the bill and under their general zoning and police powers, cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes on the production, processing or dispensing of cannabis or cannabis products; and

WHEREAS, the City currently has no zoning, licensing, and/or permitting requirements and/or regulations that address the medical marijuana collective gardens; and

WHEREAS, marijuana/cannabis remains a Schedule I drug under the federal Controlled Substances Act ("CSA") and is considered by the federal authorities to be a drug with no medical value, and its manufacture, distribution and/or possession are a violation of federal law; and

WHEREAS, there appears to be a conflict between state and federal law concerning the legal status of marijuana/cannabis and its manufacture, distribution, use and possession; and

WHEREAS, on or about November 30, 2011, Washington State Governor Christine Gregoire and Rhode Island State Governor Lincoln Chaffee petitioned the United States Drug Enforcement Administration (DEA) to reclassify marijuana/cannabis as a Schedule II drug that has therapeutic value and that should be treated as a prescription drug; and

WHEREAS, this conflict between federal and state law was highlighted by a January 17, 2012 letter to the Clark County Board of Commissioners, Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, stated that anyone "who knowingly carries out the marijuana activities contemplated by Washington state law, as well as anyone facilitates such activities, or conspires to commit such violations, is subject to criminal prosecution as provided in the [Controlled Substances Act]" (underlining added); and

WHEREAS, reclassification of marijuana/cannabis as a Schedule II drug by DEA would allow marijuana/cannabis to be prescribed by physicians with restrictions and dispensed by pharmacies, and would potentially eliminate the current legal and planning dilemma Marysville and other Washington cities and towns are currently struggling with concerning regulation, permitting and licensing issues surrounding medical marijuana/cannabis; and

WHEREAS, a number of initiatives and referendum have been filed with the Washington State Secretary of State that if adopted would change the legal framework concerning medical marijuana once again; and

WHEREAS, the voters will vote on at least one initiative (Initiative 502) that if passed would legalize the production, possession, delivery and distribution of marijuana/cannabis under State law; and

WHEREAS, on July 11, 2011, the City Council passed Ordinance No. 2867 that imposed a six (6) month moratorium on the establishment of medical marijuana dispensaries, collective gardens and the licensing and permitting thereof; and

WHEREAS, on December 12, 2011, the City Council passed Ordinance No. 2882 that extended the moratorium on the establishment of medical marijuana collective gardens and the licensing and permitting thereof by an additional six (6) months to July 5, 2012; and

WHEREAS, given the many complications, uncertainties and impacts that exist and that are described above, additional time is necessary to engage in a meaningful planning process related to the development of regulations that address zoning, licensing and/or permitting of medical marijuana/cannabis collective gardens and the impacts thereof; and

WHEREAS, a work plan ("Work Plan") has been developed to study the many complications, uncertainties and impacts described and to provide for a meaningful planning process to develop regulations that address zoning, licensing and/or permitting of medical marijuana/cannabis collective gardens and the impacts thereof; and

WHEREAS, a copy of the Work Plan is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, a public hearing was held on June 11, 2012, before Marysville City Council regarding an additional one (1) year extension of the moratorium on the establishment of medical marijuana collective gardens and the licensing and permitting thereof; and

WHEREAS, the City Council finds it is in the best interest of the City of Marysville and its citizens to extend the moratorium regarding the establishment of medical marijuana collective gardens and the licensing and permitting thereof for an additional one (1) year period from the expiration of the moratorium imposed by Ordinance No. 2882 to July 5, 2013;

NOW, THEREFORE, the City Council of the City of Marysville, Washington, do ordain as follows:

Section 1. The above "Whereas" clauses constitute findings of fact in support of the moratorium established by this Ordinance and said findings are fully incorporated into this Ordinance.

Section 2. Pursuant to the provisions of RCW 36.70A.390, the zoning moratorium established by Ordinances No. 2867 and No. 2882 in the City of Marysville that prohibits licensing, permitting, establishment, maintenance or continuation of any use consisting of or including the sale, provision and/or dispensing of medical marijuana to more than one person, the establishment, creation of or participation in a "medical marijuana/cannabis collective garden" as referenced and defined in RCW 69.51A.085, is hereby extended for an additional one (1) year period from the date of expiration of Ordinance No. 2882 and the findings, terms and conditions of Ordinances No. 2867 and No. 2882 are incorporated herein by this reference, and Ordinances No. 2867 and No. 2882 are hereby amended consistent herewith.

Section 3. "Medical marijuana dispensary" is hereby defined as any person, business, corporation, partnership, joint venture, organization, association and/or other entity which: 1) sells, provides and/or otherwise dispenses marijuana to more than one "qualifying patient" in any sixty (60) day period or to any person who does not meet the definition of "qualifying patient" under the terms of Chapter 69.51A RCW, and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association and/ or entity which sells, provides and/or otherwise dispenses marijuana to more than one

qualifying patient in any sixty (60) day period should be presumed to be a "medical marijuana dispensary."

Section 4. Medical marijuana dispensaries and collective gardens are hereby designated as prohibited uses in the City of Marysville, in accordance with the provisions of RCW 35A.82.020, no business license, permit, zoning or development approval shall be issued to be a medical marijuana dispensary or medical marijuana/cannabis collective garden.

Section 5. This Ordinance shall be referred to the Marysville Planning Commission for its review and recommendation for potential inclusion in the zoning and/or business and tax ordinances of the City of Marysville.

Section 6. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim Ordinance shall be transmitted to the Washington State Department of Commerce.

Section 7. Severability. If any section, clause, and/or phrase of this Ordinance is held invalid by a court of competent jurisdiction, such invalidity and/or unconstitutionality shall not affect the validity and/or constitutionality of any other section, clause and/or phrase of the Ordinance.

Section 8. Effective Date. This Ordinance shall take effect July 5, 2012. Unless extended by action of the Marysville City Council, this Ordinance shall automatically expire on July 5, 2013, which is one (1) year from the expiration date of Ordinance No. 2882 (July 5, 2012).

PASSED by the City Council and APPROVED by the Mayor this 11th day of June, 2012.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

ATTEST/AUTHENTICATED:

By: _____
April O'Brien, Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Grant K. Weed, City Attorney

Date of Publication: June 13, 2012

Effective Date: July 5, 2012

DRAFT

PLANNING COMMISSION MINUTES

June 11, 2013 **7:00 p.m.** **City Hall**

CALL TO ORDER

Chair Leifer called the June 11, 2013 meeting to order at 7:01 p.m. noting the absence of Marvetta Toler and also that there was no one in the audience.

Chairman:	Steve Leifer
Commissioners:	Roger Hoen, Jerry Andes, Kelly Richards, Kay Smith, Steven Lebo
Staff:	CAO Gloria Hirashima, Police Chief Rick Smith, City Attorney Grant Weed, Chief Information Officer Doug Buell
Absent:	Marvetta Toler

APPROVAL OF MINUTES

May 14, 2013 Meeting Minutes

Motion made by Commissioner Smith, seconded by Commissioner Richards, to approve the May 14, 2013 Meeting Minutes. **Motion** passed unanimously (6-0).

AUDIENCE PARTICIPATION

PUBLIC HEARINGS

Draft Medical Cannabis Collective Regulations

The hearing was called to order at 7:01 p.m.

CAO Hirashima gave some background on the medical cannabis collective regulations. She explained that the City has been operating under a moratorium since 2011. While the Washington State has passed initiatives to legalize marijuana, federal laws still recognize it as illegal, and this has created a dilemma for cities. The City has been in a holding pattern since the original passage of the legislation while they have been

studying approaches regarding how to handle this. The City Attorney and Police Chief have also been involved in this review to find a path that is legally defensible and to gauge where the court is going. The ordinance before the Planning Commission provides for a somewhat permanent solution. It clearly provides for a use matrix and a use called *Miscellaneous Health* with a notation that says "excepting marijuana cannabis dispensaries and marijuana cannabis gardens . . ." The ordinance also provides for definitions for cannabis, medical marijuana cannabis dispensaries, medical marijuana cannabis collective gardens, and a description of miscellaneous health. CAO Hirashima added that the Marysville has also been working with surrounding jurisdictions with the recognition that they are operating within a larger urban area. The cities of Marysville, Arlington, and Lakes Stevens' police and planning departments have met to compare approaches. All of them are trying to take a regional approach of proposing similar laws. The City of Lake Stevens notified her today that their Council passed a very similar ordinance last night which also prohibits these uses.

Police Chief Rick Smith explained that aside from criminal consequences, he has seen the devastating consequences of marijuana on a personal level. He then discussed some of the criminal issues that are associated with the marijuana dispensaries and collective gardens. He acknowledged that this is a difficult issue because he believes there can be legitimate uses for marijuana on the medical side. The state of Washington is still working on the regulations through the Liquor Control Board, but it will be some time before those are put in place. In the meantime, federal law still says that marijuana is a controlled substance. Therefore, the possession, sale, manufacture, and distribution of it is still illegal per federal law even though it was recently passed on a state level.

Chief Smith reviewed how this issue has played out in Washington, Colorado, and California. Colorado is the only other state that has legalized marijuana outside of medical use. He stressed that the industry is laden with criminal activity. From March 2011 until the present time in the state of Washington there were 13 different types of crimes that are associated specifically with medical collective gardens, especially with burglary and armed robbery of the marijuana from the gardens and then reselling it. In the Denver area of Colorado, in 2009 they had 10 dispensary burglaries; in 2010 there were 64; in 2011 there were 100; in 2012 there were 102; and in 2013 there were 22 burglaries in dispensaries in just the first three months of the year.

In the state of Washington, the federal government is now cracking down on medical marijuana and dispensaries. In the Seattle area 11 dispensaries have received shutdown notices because they are not adhering to federal law. In San Francisco, they are shutting down 7 to 10 of the remaining 15 medical marijuana dispensary locations. Chief Smith reviewed crimes associated with dispensaries, grow operations, and/or coops for 2012 to 2013 in the state of Washington which included: arson, multiple homicides, explosives, home invasion robbery, and burglaries. Typically what Colorado has seen is that the THC concentration is much higher with the indoor grow operations. A lot of people are going into Colorado, stealing the marijuana, and taking it to other states because the value is much greater and they can get more money for it. He spoke in support of the ordinance and the way the City of Marysville is trying to approach this issue.

Commissioner Hoen said he was confused about the fact that this is illegal per federal law and the statement that federal law has to be followed or they will be shut down. Chief Smith noted that City Attorney Weed would be able to answer that question in more detail, but stated that the justice department has said that they are going to take a passive approach to the issue over the last several years, which has resulted in the current situation.

City Attorney Grant Weed reviewed the current status of the law at the federal level as well as in the state of Washington. He acknowledged that the law is not completely settled in this matter. It will take some time for this to work its way through the court system. The federal law that applies to it is the Federal Controlled Substances Act (CSA) which identifies five different schedules of drugs. Under the CSA marijuana is classified as a Schedule 1 Drug. This means that the federal government recognizes it as having no accepted medicinal use. It is a criminal offense to use, possess, transport, or manufacture that particular drug. It is also illegal to open, lease, or maintain any place for the purpose of manufacturing, distributing, or using a controlled substance.

Washington State Uniform Controlled Substance Act also makes it illegal to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. Marijuana is listed under the state law as a controlled substance, and that law is still on the books. Since the adoption of Uniform Controlled Substance Act, the Medical Marijuana Initiative was approved by the voters in the state of Washington in 1998. This related just to qualifying patients with terminal or debilitating medical conditions which in the judgment of their physician would benefit from the use of medical marijuana. This didn't make it lawful for everyone, but it gave those persons an affirmative defense against prosecution for a crime of possession and using it if they stayed within certain amounts. In 2011 the legislature adopted ESSSB 5073 which Governor Gregoire partially vetoed. The part that survived the veto allowed local government, including cities, to zone, license, and regulate the use of medical marijuana. Different cities have exercised their power to regulate in different ways. The operation of dispensaries is clearly illegal under the medical marijuana bill passed by the legislature in 2011. That bill's provisions relating to individual cultivation of medical marijuana cannabis in collective gardens was not vetoed, but the authority to regulate through zoning was preserved.

City Attorney Weed explained that there are some cities such as Woodinville and Pasco that have chosen to ban even collective gardens. Additionally, the City of Kent adopted an ordinance banning medical marijuana collective gardens through zoning and nuisance regulations. This is essentially similar to the ordinance that Marysville staff is proposing to the Planning Commission. He went on to explain that Kent's ordinance was challenged in court. In the King County Superior Court it was upheld as being valid and lawful. That decision was appealed, and the State Supreme Court agreed to consider the issue. The Supreme Court is currently deciding whether it is going to hear the appeal or whether it is going to remand it to the State Court of Appeals. The bright side is that out of this ordinance there will ultimately be some law that will decide in the state of Washington whether cities, through an ordinance, have the authority to ban collective

gardens. The same issue has come up in other states. The City of Riverside, California also adopted an ordinance banning collective gardens and dispensaries. The state of California's medical marijuana law is very similar to the one in Washington, and the California State Supreme Court upheld the City of Riverside's ban on collective gardens.

City Attorney Weed explained that I-502 approved by the voters legalizes the use of recreational marijuana with some stipulations. It is a different law than the medical marijuana issue (ESSSB 5073) and the two bills conflict in some respects. The directive in I-502 was to have the Liquor Control Board adopt regulations relating to marijuana by December of 2013. The Liquor Control Board has been in the process of rulemaking, holding public meetings all over the state and getting input from all the different interested parties regarding the recreational marijuana issue. He noted that somewhere down the road cities will have to address that issue separately from the medical marijuana issue. The draft ordinance before the planning commission tonight only applies to medical marijuana.

Referring to Commissioner Hoen's question about why we are dealing with this if it is already illegal under federal law, City Attorney Weed reviewed case law at the federal level that says no state can authorize violations of federal law. Except in specific cases federal law preempts state law and controls state law. There has been a case decided by the United States Supreme Court that says that the Federal Controlled Substances Act supersedes state regulations relating to marijuana even when it is used for medicinal purposes. Nevertheless, 19 states across the country have adopted medical marijuana statutes. In terms of enforcement, in 2009 there was a memo written by the US Department of justice called the Ogden Memo which tried to provide clarification and guidance to federal prosecutors on how they should enforce the CSA. That memo stated that prosecution of individuals with cancer or other serious illnesses will not be given high priority. Businesses that are operating to make a profit and that are operating in a way that puts special interests (like schools and daycares) at risk are a higher priority. In June of 2010 another memo by the Department of Justice sent to United States attorneys clarified that dispensaries and licensed growers could be prosecuted for violating the Federal drug and money laundering laws as well.

As it relates to the state of Washington, the County Commissioners in Clark County wrote asking the federal government whether their enforcement efforts would extend to activities implementing the state's law on medical marijuana. The US Attorney's Office responded by saying, "Anyone who knowingly carries out the marijuana activities contemplated by Washington State law as well as anyone who facilitates such activities or conspires to commit such violations, is subject to criminal prosecution as provided in the Controlled Substances Act. The same conclusion would apply with equal force to the proposed activities of the Board of County Commissioners and county employees." City Attorney Weed summarized that it appears that the City of Marysville has authority to ban collective gardens, but the law could change depending on what happens with the Kent case.

Commissioner Richards questioned if an ordinance was really necessary since it’s already illegal per federal standards. City Attorney Weed stated the need to take some

action regarding the Washington State bill. If the City doesn't address the issue there will be a belief that it's okay to set up a dispensary or collective garden in Marysville. The action being proposed is through zoning, making it clear that the City intends to ban collective gardens and dispensaries. Also, the local police don't have jurisdiction or authority to go out and cite people or shut them down under federal law, but they would have authority under the Marysville Municipal Code.

Commissioner Hoen asked about potential legal defense of planning commissioners on this decision if necessary. City Attorney Weed replied that both a state statute and a Marysville Municipal Code require the City to indemnify its elected and appointed officials for acts that they take within the scope of their responsibilities. This decision is within the scope of the Planning Commission's responsibility.

Commissioner Hoen asked about the problem with rolling the moratorium over. City Attorney Weed discussed the risk related to this. Staff is recommending that the City take some action other than continuing the moratorium. Commissioner Hoen asked about the likeliness of one state's Supreme Court recognizing the decision of another state's Supreme Court. City Attorney Weed noted that state level Supreme Court decisions are not binding on other states, but federal appellate court level decisions are binding on all states. However, the decision in the state of California gives an idea what the highest courts in other states are doing with this issue.

Commissioner Richards asked what would happen if the Washington State Supreme Court or the Court of Appeals comes back and says that Kent's ordinance is not lawful or valid. City Attorney Weed explained that staff would evaluate the court's decision and see what needs to be done to make the ordinance comply with what the court has said. He noted that the City can always bring the ordinance back and amend or repeal it.

Commissioner Lebo referred to page 3 of 4 of the draft ordinance under section 1 which seems to contradict itself regarding the parts of the plants covered under the definition. City Attorney Weed indicated that the verbiage defines it generally then attempts to clarify the definition just for the purposes of this document.

Chair Leifer spoke in support of the ordinance in order to provide the necessary tools of legitimacy to law enforcement personnel.

Grant Weed stated that the hearing had been properly noticed and advertised. He added that throughout the hearing there were no members of the public present to provide comment. Two members of the Marysville police department were present in the audience, but did not provide comment.

The public testimony portion of the public hearing was closed at 7:57 p.m.

Motion made by Commissioner Richards, seconded by Commissioner Lebo, to forward the ordinance as written to Council with a recommendation for approval. **Motion** passed unanimously (6-0).

The hearing was closed at 8:04 p.m. The Planning Commission recessed from 8:04 until 8:07 p.m.

Wireless Communication Facility Prohibition in the Downtown Master Plan

The public hearing was opened at 8:07 p.m.

CAO Hirashima stated that the hearing had been properly noticed and advertised. It was noted that there was no one present in the audience for the hearing. CAO Hirashima reviewed the proposed ordinance and stated that staff is recommending prohibition of wireless communication facilities in the Downtown Master Plan area.

Commissioner Andes asked if this just applied to the poles. CAO Hirashima replied that it did. Her understanding was that attached wireless facilities would still be allowed if they were integrated into the structure. Chair Leifer asked where this was stated in the proposed code. CAO Hirashima said her understanding of the intent of the code was to prohibit just the towers, but acknowledged it was not clear in the proposed code. She stated she was not opposed to wireless communication facilities if they could be disguised on the structure or integrated into the structure itself. After some discussion, CAO Hirashima suggested that this item be continued to the next meeting to allow staff time to research this more and potentially bring back language to differentiate between a tower and an attached wireless communication facility.

Motion made by Commissioner Andes, seconded by Commissioner Richards, to continue the hearing to June 25. **Motion** passed unanimously (6-0).

The hearing was closed at 8:15 p.m. until June 25.

COMMENTS FROM COMMISSIONERS

Commissioner Andes commented on the poor condition of the railroad crossing at 4th Street. CAO Hirashima said that those conditions have been reported to BNSF. She indicated she would check with Director Nielsen regarding the status of that.

ADJOURMENT

Motion made by Commissioner Richards, seconded by Commissioner Andes, to adjourn at 8:19 p.m. **Motion** passed unanimously.

NEXT MEETING

June 25, 2013

_____

Laurie Hugdahl, Recording Secretary