
CITY OF KIRKLAND

CITY COUNCIL



Joan McBride, Mayor • Doreen Marchione, Deputy Mayor • Dave Asher • Toby Nixon
Bob Sternoff • Penny Sweet • Amy Walen • Kurt Triplett, City Manager

Vision Statement

*Kirkland is an attractive, vibrant and inviting place to live, work and visit.
Our lakefront community is a destination for residents, employees and visitors.
Kirkland is a community with a small-town feel, retaining its sense of history,
while adjusting gracefully to changes in the twenty-first century.*

123 Fifth Avenue • Kirkland, Washington 98033-6189 • 425.587.3000 • www.kirklandwa.gov

AGENDA

KIRKLAND CITY COUNCIL SPECIAL MEETING

City Council Chamber

Wednesday, November 7, 2012

6:00 p.m. – Study Session – Peter Kirk Room

7:30 p.m. – Special Meeting

COUNCIL AGENDA materials are available on the City of Kirkland website www.kirklandwa.gov. Information regarding specific agenda topics may also be obtained from the City Clerk's Office on the Friday preceding the Council meeting. You are encouraged to call the City Clerk's Office (425-587-3190) or the City Manager's Office (425-587-3001) if you have any questions concerning City Council meetings, City services, or other municipal matters. The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's Office at 425-587-3190. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Council by raising your hand.

1. *CALL TO ORDER*
2. *ROLL CALL*
3. *STUDY SESSION, Peter Kirk Room*
 - a. 2013-2014 Budget
4. *EXECUTIVE SESSION*
 - a. To Discuss Pending Litigation
5. *HONORS AND PROCLAMATIONS*
 - a. American Diabetes Month Proclamation
 - b. Arbor Day Proclamation
6. *COMMUNICATIONS*
 - a. *Announcements*
 - b. *Items from the Audience*
 - c. *Petitions*
7. *SPECIAL PRESENTATIONS*
 - a. Kirkland Performance Center, Executive Director Dan Mayer

EXECUTIVE SESSIONS may be held by the City Council only for the purposes specified in RCW 42.30.110. These include buying and selling real property, certain personnel issues, and litigation. The Council is permitted by law to have a closed meeting to discuss labor negotiations, including strategy discussions.

ITEMS FROM THE AUDIENCE provides an opportunity for members of the public to address the Council on any subject which is not of a quasi-judicial nature or scheduled for a public hearing. (Items which may not be addressed under Items from the Audience are indicated by an asterisk*.) The Council will receive comments on other issues, whether the matter is otherwise on the agenda for the same meeting or not. Speaker's remarks will be limited to three minutes apiece. No more than three speakers may address the Council on any one subject. However, if both proponents and opponents wish to speak, then up to three proponents and up to three opponents of the matter may address the Council.

QUASI-JUDICIAL MATTERS

Public comments are not taken on quasi-judicial matters, where the Council acts in the role of judges. The Council is legally required to decide the issue based solely upon information contained in the public record and obtained at special public hearings before the Council. The public record for quasi-judicial matters is developed from testimony at earlier public hearings held before a Hearing Examiner, the Houghton Community Council, or a city board or commission, as well as from written correspondence submitted within certain legal time frames. There are special guidelines for these public hearings and written submittals.

ORDINANCES are legislative acts or local laws. They are the most permanent and binding form of Council action, and may be changed or repealed only by a subsequent ordinance. Ordinances normally become effective five days after the ordinance is published in the City's official newspaper.

RESOLUTIONS are adopted to express the policy of the Council, or to direct certain types of administrative action. A resolution may be changed by adoption of a subsequent resolution.

PUBLIC HEARINGS are held to receive public comment on important matters before the Council. You are welcome to offer your comments after being recognized by the Mayor. After all persons have spoken, the hearing is closed to public comment and the Council proceeds with its deliberation and decision making.

- 8. *CONSENT CALENDAR*
 - a. *Approval of Minutes:*
 - (1) October 9, 2012 Special Meeting
 - (2) October 16, 2012
 - (3) October 25, 2012 Special Meeting
 - b. *Audit of Accounts:*
 - Payroll* \$
 - Bills* \$
 - c. *General Correspondence*
 - (1) Letter of Support of the Eastside Transportation Partnership's 2013 Legislative Agenda
 - (2) Letter of Support of King County Drug Take-Back Program
 - d. *Claims*
 - e. *Award of Bids*
 - f. *Acceptance of Public Improvements and Establishing Lien Period*
 - (1) Annual Street Preservation Program Phase I Slurry Seal Project, Blackline, Inc., Spokane, Washington
 - g. *Approval of Agreements*
 - (1) Ratification of Public Safety Employees Union #519 (PSEU) Collective Bargaining Agreement 2012-2013
 - h. *Other Items of Business*
 - (1) Procurement Activities Report
- 9. *PUBLIC HEARINGS*
 - a. Preliminary 2013-2014 Budget
 - b. Ordinance O-4382 and its Summary, Relating to Amendment of the Ordinance O-4299 of the City of Kirkland Relating to Granting Woodinville Water District, a Washington Municipal Corporation, the Right, Privilege, Authority and Franchise to Construct and Maintain, Repair, Replace, Operate Upon, Over, Under, Along and Across the Franchise Area Water and Sewer Facilities for Purposes of Its Water and Sewer Utility Business.
- 10. *UNFINISHED BUSINESS*
 - a. Nonconforming Density Code Amendments

NEW BUSINESS consists of items which have not previously been reviewed by the Council, and which may require discussion and policy direction from the Council.

ITEMS FROM THE AUDIENCE
Unless it is 10:00 p.m. or later, speakers may continue to address the Council during an additional Items from the Audience period; provided, that the total amount of time allotted for the additional Items from the Audience period shall not exceed 15 minutes. A speaker who addressed the Council during the earlier Items from the Audience period may speak again, and on the same subject, however, speakers who have not yet addressed the Council will be given priority. All other limitations as to time, number of speakers, quasi-judicial matters, and public hearings discussed above shall apply.

- b. Marine Watercraft Noise Update
- c. Medical Marijuana Collective Gardens

11. *NEW BUSINESS*

- a. North Rose Hill Neighborhood Meeting with the City Council
- b. Potala Village Settlement Agreement
- c. Ordinance O-4383 and its Summary, Relating to Transportation and Park Impact Fee Exemptions for Creation or Construction of Low-Income Housing and Amending Kirkland Municipal Code Chapters 27.04 and 27.06.
- d. Ordinance O-4384, Relating to Amending the Kirkland Municipal Code to Enact a New Chapter 7.74 Fair Housing Regulations; Prohibiting the Refusal to Rent a Dwelling Unit Solely on the Basis of a Section 8 Voucher or Certificate Rental Request; and Providing for the Enforcement Thereof by Amending Kirkland Municipal Code Section 1.12.020.

12. *REPORTS*

- a. *City Council*
 - (1) Regional Issues
- b. *City Manager*
 - (1) Calendar Update

13. *ITEMS FROM THE AUDIENCE*

14. *ADJOURNMENT*



CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Tracey Dunlap, Director of Finance and Administration

Date: October 25, 2012

Subject: 2013-2014 BUDGET STUDY SESSION

The November 7 study session will be a continuation of the budget deliberations from the October 25 study session. The list of follow-up items that staff captured from the October 25 discussion is included as Attachment A. Councilmembers should review the list to ensure it does not miss any critical elements the Council wishes to discuss further. Any additional materials requested by the City Council at the October 25 Study Session will be distributed at the meeting.

The budget document is available at:
http://www.kirklandwa.gov/depart/Finance_and_Administration/Budget/Budget_Documents.htm.

Summary of Follow-up Items from October 25, 2012 Council Study Session

ITEMS TO BE DISCUSSED AT COUNCIL MEETING ON NOVEMBER 7, 2012:

- Breakdown of causes of budget increase (Finance)
- Discussion of potential to privately contract some of the services in expenditure reduction category (Finance/HR)
- Where is head tax revenue going (i.e. what does it support)? (Finance)
- Discuss buildable lands inventory process (Planning)
- Options to fund winter shelters by reducing ARCH trust fund contribution or other alternatives (Finance)
- Consider earlier Council Retreat timing

ITEMS REFERRED TO COMMITTEES:

- Finance Committee
 - Evaluate a “glide slope” to a two year sales tax lag
 - Council should look at their budget in advance of the City Manager’s proposed budget.
 - Where is head tax revenue going (i.e. what does it support)? (Finance)

- Public Safety Committee
 - What is the impact of the passage of the marijuana initiative on police and court?
 - Jail –
 - What is the feasibility of a regional jail transport system and should Kirkland take a lead role in initiating a study?
 - Get more market information on jail demand before opening bids.
 - Where is the prevention emphasis for Public Safety? Provide a list of prevention based approaches included in the budget.

- Committee TBD
 - What can we find out about other cities’ total human services spending (i.e. what is equivalent of Kirkland’s \$4.7 million)?
 - Create a policy basis for per capita human services funding level

- Economic Development Committee
 - Events (to be addressed as part of the larger Events review by EDC)
 - Concern about Uncorked and preventing access to the lake
 - Include in study opportunities for synergies and efficiencies through partnerships between event organizers.
 - Events tend to focus on downtown core. Should we expand our view of where events can occur? Need to activate more business districts through events (e.g. Totem Lake).
 - What does Redmond do for funding events?

POTENTIAL CITY COUNCIL RETREAT ITEMS

- How do we better understand the community's perceptions about human services importance and performance? (As part of overall discussion of refining how we use the quadrant tool)
- In-depth discussion of performance management program service package

OTHER DISCUSSION ITEMS:

- More education/information to the public about what we're doing and how we're doing



CITY OF KIRKLAND

City Manager's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3001

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Marie Stake, Communications Program Manager

Date: October 30, 2012

Subject: American Diabetes Month Proclamation

RECOMMENDATION:

Council authorizes the Mayor to sign the American Diabetes Month Proclamation.

BACKGROUND DISCUSSION:

The American Diabetes Association seeks to raise awareness of the ever-growing disease of diabetes. As part of its campaign, it seeks local communities to proclaim November as American Diabetes Month. This year's campaign – "A Day in the Life of Diabetes" - hopes to tell personal stories of those who live with the disease through Facebook. To encourage individuals to share photos, CVS Pharmacy will donate \$1 to the American Diabetes Association for every photo uploaded, up to \$25,000. To learn more, go to www.CVS.com/diabetes.

The American Diabetes Association encourages local communities to help stop the disease by seeking help if you have the disease, choosing healthy lifestyles to reduce the risk of diabetes, and supporting the Association through volunteering and donations. For more information, visit www.diabetes.org.

PROCLAMATION RECIPIENT:

Paige Rinnert, Teen Leadership Council Vice President, American Diabetes Association will be present to receive the proclamation.



A PROCLAMATION OF THE CITY OF KIRKLAND

Proclaiming November 2012 as American Diabetes Month in Kirkland, Washington

WHEREAS, the vision of the American Diabetes Association is a life free of diabetes and all of its burdens and its mission is to raise awareness of this ever-growing disease; and

WHEREAS, in the United States, nearly 26 million people, including nearly 500,000 diagnosed cases in Washington State, have diabetes, a serious disease with potentially life-threatening complications such as heart disease, stroke, blindness, kidney disease and amputation; and

WHEREAS, an additional 79 million people in the United States are at risk of developing Type 2 diabetes and recent estimates project that as many as one in three American adults will have diabetes in 2050 if current trends continue; and

WHEREAS, the American Diabetes Association is responsible for one of largest national movements to Stop Diabetes® and encourages everyone to take small steps to change their diet, increase physical activity, and maintain a healthy weight; and

WHEREAS, this year's campaign expresses "A Day in the Life of Diabetes" through social media where those who have diabetes can share their personal story of living with the disease;

NOW, THEREFORE, I, Joan McBride, Mayor of Kirkland, do hereby proclaim November as American Diabetes Month in Kirkland, Washington and encourage residents to support the mission of the American Diabetes Association and to commit to healthy and active living to reduce the risk of diabetes.

Signed this 7th day of November, 2012

Joan McBride, Mayor

**CITY OF KIRKLAND****Planning and Community Development Department**
123 Fifth Avenue, Kirkland, WA 98033
425.587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Deb Powers, Urban Forester

Date: October 25, 2012

Subject: 2012 Kirkland Arbor Day Proclamation

RECOMMENDATION

Approve attached proclamation.

BACKGROUND DISCUSSION

Attached is the proclamation declaring **Saturday, November 10, 2012** as Arbor Day in the City of Kirkland. The event is being hosted by the Green Kirkland Partnership as part of the Forterra Pearl Jam Project. Last year, Pearl Jam partnered with Forterra to mitigate 7,000 metric tons of carbon emitted during their 2009 world tour. From 9am to noon, participants and volunteers will join in planting native trees and shrubs in areas of Crestwoods Park. Once the restoration is done, Arbor Day will be celebrated with a ceremonial tree planting and pizza celebration while listening to Pearl Jam music. The City Council and all interested parties are invited to join in on this event.

Typically Arbor Day is observed in April; however since 2001, Kirkland has celebrated Arbor Day in the fall to take advantage of the increased rainfall and to coincide with a forest restoration project. Many months in advance of the event, volunteers, Washington Conservation Corps, and Kirkland Parks Maintenance removed invasive plants and prepared areas for the planting event. The event brings together many different groups of volunteers – all working together to restore Kirkland's urban forest and increase its canopy.

This proclamation, along with the Arbor Day celebration, will fulfill one of the four standards required for Kirkland to maintain its Tree City USA status for the Year 2012. To qualify as a Tree City USA community, a town or city must meet four standards established by The Arbor Day Foundation and the National Association of State Foresters. This designation requires annual renewal in order to show that the City has met all four standards:

1. A tree board or department
2. A tree care ordinance
3. A community forestry program with an annual budget of at least \$2 per capita
4. An Arbor Day proclamation and observance.

These standards were established to ensure that every qualifying community would have a viable tree management plan and program. By meeting these standards in 2012, Kirkland will have maintained its status as a Tree City USA for 11 consecutive years. By exceeding these standards, Kirkland is one of a limited number of cities in the State of Washington that has received two Growth Awards from the Arbor Day Foundation in 2007 and 2010.

Richard Emery from the Washington Community Forestry Council will receive the proclamation. The Forestry Council was established under RCW 76.15 to advise the Washington State Department of Natural Resources (DNR) in carrying out the Washington State Urban and Community Forestry Program.

cc: Sharon Rodman
Paul Stewart



A PROCLAMATION OF THE CITY OF KIRKLAND

Designating November 10, 2012 as Kirkland Arbor Day

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting and celebrating of trees called Arbor Day; and

WHEREAS, Washington, the "Evergreen State," has celebrated Arbor Day since 1917; and

WHEREAS, trees produce oxygen, clean the air, provide wildlife habitat, minimize the adverse impacts of urbanization, thus reducing the costs for stormwater management and improving the overall quality of life; and

WHEREAS, trees in Kirkland provide recreational benefit, enhance the economic vitality of business areas, can be enjoyed by citizens and visitors and beautify our community making Kirkland the place to be; and

WHEREAS, by celebrating Arbor Day with a forest restoration planting, Kirkland meets the National Arbor Day Foundation's Tree City USA criteria yet also promotes stewardship and provides healthy natural areas for people and wildlife to benefit for generations to come; and

WHEREAS, Kirkland received its 10th consecutive Tree City USA award from the National Arbor Day Foundation in 2011; and

WHEREAS, Kirkland Arbor Day is an event with the Green Kirkland Partnership as part of the Forterra Pearl Jam Project to plant native trees in Crestwoods Park on Saturday, November 10, 2012, in honor of the City of Kirkland's commitment to urban forestry and natural areas restoration;

NOW THEREFORE, I, Joan McBride, Mayor of Kirkland, do hereby proclaim November 10, 2012 as Kirkland Arbor Day and urge all citizens to celebrate Arbor Day by planting a tree, to support the City's efforts to care for our trees and woodlands, and to support our community forestry program.

Signed this 7th day of November, 2012

Joan McBride, Mayor



CITY OF KIRKLAND
Department of Parks & Community Services
505 Market Street, Suite A, Kirkland, WA 98033 425.587.3300
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager
From: Jennifer Schroder, Director
Date: October 12, 2011
Subject: KIRKLAND PERFORMANCE CENTER PRESENTATION

RECOMMENDATION:

That the City Council receives a presentation on the Kirkland Performance Center (KPC) operations by Executive Director Dan Mayer.

BACKGROUND DISCUSSION:

Attached is the KPC Annual Report from Day Mayer, which provides an over view of the 2011-2012 season, upcoming 2012-2013 season, and 2011 financial summary.

In 2008, the City renewed the 10 year lease with Kirkland Performance Center (KPC) for operations of the performance center. The City contributes to the operations of the KPC in several ways:

- As the landlord of the facility, the City has certain obligations with respect to the structural components of the facility. These obligations are primarily limited to maintaining the roof, the exterior walls, the foundation, the facility's HVAC system and elevator, as well as the testing and repair of the theater's fire suppression system.
- The City covers the costs related to annual property insurance.
- The City returns to KPC all funds derived from the admission tax collected from KPC ticket sales. This was granted for the first 10 year lease with KPC. Additionally, this was granted for the first five years of the second ten year lease agreement signed in 2008. This stipulation will expire at the end of 2012 unless extended by Council. The tax rate is 5% on top of ticket sales.
- The City allocates one time funds each year to assist in program operations of KPC. These funds assist the KPC operating budget and ability to program the facility. The City has contributed one time funds of \$50,000 for the years 2004-2009 and in 2010

due to difficult economic conditions; this amount was reduced to \$34,000. For 2011-2012 Council approved the same level of \$34,000 per year. This allocation is considered Outside Agency Support. KPC applies for these funds every year. The City Manager's preliminary 2013-2014 budget proposes to maintain funding of the KPC at \$34,000 each year with one time revenues.

- The City provides the lease to KPC rent free. In the initial lease, the consideration of value of Kirkland Performance Center's contributions to the development of the performing arts, to maintain and operate the building was value enough to waive any rent requirement. This was extended to the second ten year lease. This is similar to the lease the City currently has with the Bellevue YMCA to operate the KTUB, and Youth Eastside Services in operating services out of the Forbes House at Juanita Beach. The City has historically recognized the leveraged value of the leasing city facilities for minimal or no cost, in exchange for services to Kirkland citizens. In the case of the KPC, not only does it provide a venue for performing arts for citizens, it has a regional draw, impacting the economics of downtown restaurants and businesses.

Attachments:

Attachment A: KPC Annual Report

Attachment B: List of Board of Directors

Attachment C: 2011 Financial Summary



September 20, 2012

Mayor Joan McBride and the Kirkland City Council
City of Kirkland
123 Fifth Ave.
Kirkland, WA 98033

Dear Mayor McBride and City Council Members:

On behalf of myself as Executive Director and the Board of Directors, thank you for the opportunity to present Kirkland Performance Center's annual update.

KPC fills a necessary function in the Eastside's community ecosystem. Not just for the presentation of the arts — a critical role, to be sure — but as a gathering place, and a home for shared experiences. More works of the performing arts are available for in-home experience than ever, yet convening to experience the live presentation of a work of art brings an incandescence to the community that can't be appreciated off a television or computer monitor.

We now routinely break a "cardinal rule" of performing arts centers: we add new artists after our Season Brochure has been printed and mailed. We are thereby able to take advantage of artists touring on shorter lead times and present more well-known artists for more reasonable fees. For example, in December 2012 we presented Timothy B. Schmit (known for his work with the Eagles) on mere seven weeks notice (our shortest lead-time ever) to a sold-out crowd. This is a dynamic model that will make us more responsive to market trends and enable us to present a wider and better known range of artists to local audiences. It also proves our marketing dexterity and the strength of our social media network; short lead-times are only possible with quick and effective online promotions. KPC's approach to programming and outreach ensures our expanded calendar responsively presents programming specifically relevant to Kirkland audiences, while maintaining a strong, independent artistic identity.

KPC is now in the second year of its Strategic Plan, which was enacted in 2012. This document was the result of many months of planning by KPC staff and board, and guides all aspects of operations.

Retrospective on our 2011-2012 Season

During the 2011-2012 Season Kirkland Performance Center hosted 38 Presented Artist performances, brought to KPC from across the country and around the world.

Highlights of the 2011-2012 Season included:

- The Manhattan Short Film Festival, a global event happening in 250 cities simultaneously
- World-beat superstar Jesse Cook
- Romantic piano sensation Jim Brickman
- Science comedian and children's entertainer Doktor Kaboom!
- The Northwest Premiere of *The Rambler* by famed dance company Joe Goode Performance Group from San Francisco
- Jazz bassist and soundtrack composer Kyle Eastwood

Our Upcoming 2012 - 2013 Season

The 2012-2013 Season begins on September 21st with a performance by folk music royalty Ben Taylor. As ever, our season's programming strikes a perfect balance of well-known favorites, emerging talent and the best of all-ages programming.

The upcoming 2012 – 2013 Season features many highlights, including:

- Violin virtuoso Amadeus Leopold, formerly Hahn-Bin
- Legendary composer and pianist Philip Glass, with local cora player Foday Musa Suso
- Science comedian and children's entertainer Doktor Kaboom!
- Grammy-nominated American male vocal band quartet The Four Freshmen

Partnerships with Local Arts Organizations

KPC was founded with a mission to provide a home for other Eastside and regional arts organizations. We have also continued to maintain strong relationships with the local and regional arts community by providing a high quality venue and professional support services, allowing a dozen producing partner companies to present their work in our theatre. Partners appearing over the past year include:

- Seattle International Film Festival (SIFF)
- Keith Highlanders Pipe Band
- Kirkland-based Studio East's StoryBook Theater
- Seattle Repertory Jazz Orchestra
- Jim French's Imagination Theatre
- Lyric Light Opera
- Master Chorus Eastside
- Washington Wind Symphony

In February 2012, KPC presented the renowned Bay Area dance company Joe Goode Performance Group and brought their dancers into several local community centers for hands-on workshops. Two of their dancers are certified instructors in *Dance for Parkinson's*, a national entity that uses movement as physical and mental therapy, and so KPC brought them to the local *Dance for Parkinson's* cohort at the Peter Kirk Community Center. This served the dual function of connecting

local residents to out-of-town artists in impactful ways and facilitating an exchange of knowledge between this Bay Area group and local instructors.

Ongoing efforts such as Namasté Kirkland, an outreach initiative serving our South Asian community, is just one element of a broader effort to build partnerships with local communities, and serves as a template for our efforts to connect with individuals in communities across ethnic, religious and linguistic lines, such as Russian-speakers, Persian immigrants, and Muslims.

KPC's organic, holistic approach to programming and outreach ensures has ensured our expanded calendar will responsively present programming specifically relevant to Eastside audiences, while maintaining a strong, independent artistic identity. KPC has pro-actively engaged the Eastside's growing diverse populations for years.

In addition, corporate renters such as Kenworth Trucking Company and Microsoft rent our auditorium for meetings and project demonstrations, benefiting tremendously from the state of the art facility. KPC is a crucial part of the artistic and economic life of our Eastside community.

Education Programs

Spotlight, KPC's signature education initiative, displays the wonder of art and creativity to thousands of children annually (More than 3,500 K-12 students in 2011-12 alone). With public schools cutting arts programs, demand for KPC programming has grown dramatically.

- We've had three School Matinees featuring Seattle Shakespeare's *Romeo and Juliet*, Doktor Kaboom!, and Samite (Ugandan flutist using music as a healing agent). These artists brought a varied and unique perspective to students of all ages (K-12). One teacher was so moved, she wrote, "*Samite's presentation spawned one of the finest discussions I have had the privilege to encounter in my teaching career...*"
- Evan Flory-Barnes, a local bassist and composer from Seattle, held an In-School Residency at Kamiakin Jr High. His program talked about what it means to be an empowered and creative person in the 21st Century. He also shared his core philosophy of "living your creativity" and following one's passion.

Spotlight leverages KPC's Presented Artists to impact our community through educational programs, curricular support for teachers, and innovative outreach strategies to underserved populations. KPC is the only organization in Kirkland and even East King County connecting community members with national touring artists. Spotlight programs include:

- In-School Residencies;
- Daytime matinees at KPC;
- Performing opportunities for students with national touring artists;
- Master classes for adults; and
- Cultural outreach to diverse communities through specific performances.

Recent programs include Galumph, a dance/acrobatic troupe, Seattle Shakespeare's *Romeo & Juliet*, Book-It Theatre's *The Lorax and the Sneetches and Other Stories* bringing Dr. Seuss to life and Foothills Brass presenting *Time Machine*.

Exposure to performing arts provides education that cannot be replicated in class or daily life. Spotlight brings world-class productions to eager and welcoming Kirkland audiences, including thousands of children.

Kirkland schools served include Lake Washington High School, BEST High School, Peter Kirk Elementary, Totem Preschool, Carl Sandburg Elementary, Lakeview Elementary, Eastside Preparatory School, Environmental & Adventure School, Northstar Junior High, Holy Family Parish School, and Kamiakin Jr. High. As always, students enrolled in the free or reduced lunch programs were not charged admission.

Lake Washington School District superintendent Dr. Traci Pierce is actively involved in helping KPC shape our programs. In addition to her ongoing informal guidance, Dr. Pierce and her staff put together a year-by-year content summary for all grades to help us select live performances that best complement local curricula. We are excited to leverage this significant partnership as we develop our 2012-2013 Season of school programming.

We look forward to teacher trainings and assembly shows throughout the school year. Public school teachers will be able to accrue professional development programs “clock hours” for their participation in selected KPC concerts and special programs. We have also established a School Bus Fund to provide complimentary transportation to school matinees for students and classes with financial need.

Financial Report

Audited financial statements for FY2011 are currently being finalized and should be available for distribution within the next few weeks.

A modest operating deficit for 2011 reflected our continued investment in expanding and developing programs like Spotlight. Our income continues to be diversified, with an increasing percentage coming from earned sources like facility rentals that can be more stable than ticket sales and donations. Several renters have deposits down on multi-day rentals throughout FY2012 which gives us a reasonable expectation to grow this revenue stream almost 40% from \$167,000 in 2010 to over \$230,000 in FY2012.

At Dec 31, 2011, we realized a significant decrease in accounts payable. We look forward to beginning to retire our line of credit debt by FY2013, freeing it back up to serve as initially intended – to augment working capital during season of low liquidity. Additionally, we are looking hard at fixed assets, depreciation, and capital expenditures, as our building approaches its 15th anniversary in 2013.

2012 marks the first full fiscal year in which KPC is delivering on its new strategic plan. Key to this plan is to “build financial strength.” So far this year, KPC has retired \$20,000 of its line of credit debt, increased individual annual fund giving by 12%, and broken single day ticket sales records – twice! Most recently, our Fee Free Friday promotion sold nearly \$12,000 of tickets to KPC’s Presented Artist Season in one-day. Two shows have sold out, several more are expected to, and

new shows are continuing to be added, which will help us meet our goal to increase earned and unearned income by 7%. Finally, our Spotlight education program has already (as of Jun 30) grown 101% from last year – bringing high quality arts experiences to more Kirkland residents, especially students, than ever before. With a stronger financial foundation, we are better and better able to serve as the creative heart of the Kirkland community.

Board

KPC is proud of its growing and diverse Board of Directors. Led by Board President Kristin Olson, this group of 26 community leaders oversees the financial, fundraising and operational activities of KPC. Our board includes representatives from Boeing, Wells Fargo Investments and Evergreen Health Care, among other business, as well as artists and public-minded community members working ceaselessly to advance the cause of arts on the Eastside.

The board-led Special Event Committee has worked tirelessly planning our upcoming Affair for the Arts Gala and Auction on Saturday, October 20th at the Hyatt Regency Bellevue.

A roster of Board Members is attached.

City Support / Conclusion

KPC's 15th Anniversary is looming in 2013, and the partnership and operational support that the City of Kirkland has steadfastly provided to Kirkland Performance Center since our inception has been a major factor in our strength and longevity.

Donated income remains a challenge for our organization, and the City of Kirkland's operational support is more important now than it has ever been.

Thanks for all you have done for our theatre and organization, and we look forward to many years ahead of a successful partnership with the City of Kirkland.

Sincerely,



Daniel Y. Mayer
Executive Director

enclosures

KIRKLAND PERFORMANCE CENTER 2012 Board of Directors

Officers

President

Kristin Olson

Shareholder, O'Shea Barnard Martin & Olson PS

Past President

Lauret Ballsun

President, LBC Pharmaceutical Professionals, LLC

President Elect

Bill Schultheis

Investment Counselor, Soundmark Wealth Management

Vice President

Kathe Fowler

Community Leader

Treasurer

Mike Nelson

Community Leader

Secretary

Mike Ward

Vice President, Intellectual Property Licensing, Intellectual Ventures

Officers At-Large

Dodi Briscoe

Career Coach, UW Foster School of Business

Doreen Marchione

Councilmember, City of Kirkland

Susan Raunig

Community Leader

Santos Contreras

Owner, Contreras & Associates

Members

David Alskog

Partner, Livengood, Fitzgerald & Alskog

Matthew C. Bueser

Director – 737 Program Business Operations, The Boeing Company

Jeff Cole

Director of Corporate Real Estate, Parkplace

Kathy Feek

Art Consultant, Evergreen Hospital

David Feller

*Senior Vice President, Investments
Wells Fargo Advisors, LLC*

Kevin Harrang

Director, Business Development MetaJure, Inc.

Kevin M. Hughes

Government Relations, Hughes and Associates

Srivani Jade

Musician

Ben Lee

Senior Project Manager, The Boeing Company

David Mangone

Partner, WattsMedia

Kathy Mantz

Municipal Relations, Waste Management

Tim Mushen

President, Clocktower Media

Lee Oskar

President, Lee Oskar Productions

Joyce Paul

Artistic Director, Arpan

Beth M. Strosky

Attorney

Kay Taylor

VP Marketing & Communications, Evergreen Healthcare

Cindy Zech

Physical Therapist & President, PEP, Inc.

Kirkland Performance Center YTD 2011 Financial Summary (Jan 1 - Dec 31, 2011)

P&L - Budget vs. Actual	Actual	Budget	\$ Variance	% Variance
Income				
Earned Income				
Rentals & Partners	210,987	177,500	33,487	119%
Ticket Sales	363,192	414,000	(50,808)	88%
Other	79,391	57,000	22,391	139%
Total Earned Income	653,570	648,500	5,070	101%
Contributed Income				
Individual	230,723	235,000	(4,277)	98%
Corporate	50,201	72,000	(21,799)	70%
Foundation	43,196	40,000	3,196	108%
Government	105,273	97,658	7,615	108%
Events	175,091	185,000	(9,909)	95%
In-Kind	12,000	24,000	(12,000)	50%
Total Contributed Income	616,484	653,658	(37,174)	94%
Total Income	1,270,054	1,302,158	(32,104)	98%
Expense				
Personnel	616,168	603,434	12,734	102%
Administration	123,107	99,591	23,516	124%
Marketing	122,357	132,214	(9,857)	93%
Presenting	247,970	299,609	(51,639)	83%
Theater (non-presenting)	105,494	96,000	9,494	110%
Fundraising	70,655	63,300	7,355	112%
Total Expense	1,285,751	1,294,148	(8,397)	99%
Net Operating Income (NOI)	(15,697)	8,010	(23,707)	

Balance Sheet	Dec 31, 2010	Dec 31, 2011	\$ Change	% Change
ASSETS				
Current Assets				
Cash	80,263	79,708	(555)	-1%
Accounts Receivable, net	105,349	111,609	6,260	6%
Advances & Prepays	38,361	42,728	4,367	11%
Operating Reserve	136,004	35,151	(100,853)	-74%
Total Current Assets	359,977	269,196	(90,781)	-25%
Endowment	711,977	704,039	(7,938)	-1%
Fixed Assets, net	2,092,066	1,948,953	(143,113)	-7%
TOTAL ASSETS	3,164,020	2,922,188	(241,832)	-8%
LIABILITIES & NET ASSETS				
LIABILITIES				
Accounts Payable	123,899	35,354	(88,545)	-71%
Other Current Liabilities	43,921	38,579	(5,342)	-12%
Deferred Revenue	105,513	99,515	(5,998)	-6%
Line of Credit	94,184	100,000	5,816	6%
TOTAL LIABILITIES	367,517	273,448	(94,069)	-26%
NET ASSETS	2,796,503	2,648,740	(147,763)	-5%
TOTAL LIABILITIES & NET ASSETS	3,164,020	2,922,188	(241,832)	-8%



KIRKLAND CITY COUNCIL SPECIAL MEETING MINUTES
October 9, 2012

1. Call to Order

2. ROLL CALL:

Members Present: Councilmember Dave Asher, Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Toby Nixon, Councilmember Penny Sweet, and Councilmember Amy Walen.

Members Absent: Councilmember Bob Sternoff.

Councilmember Sternoff was absent/excused.

Also present were Kirkland City Manager Kurt Triplett, Redmond Mayor John Marchione and Redmond Councilmembers (President) Pat Vache, (Vice President) Hank Margeson, Kimberly Allen, David Carson, Tom Flynn, Hank Myers and John Stilin.

3. Joint Study Session

Councils received presentations from Kirkland Parks and Community Services Jennifer Schroeder and Redmond Economic Development Manager Erika Vandenbrande.

4. Adjournment

The October 9, 2012 Special Meeting of the Kirkland City Council was adjourned at 8:30 p.m.

City Clerk

Mayor



KIRKLAND CITY COUNCIL REGULAR MEETING MINUTES
October 16, 2012

1. CALL TO ORDER

2. ROLL CALL

ROLL CALL:

Members Present: Councilmember Dave Asher, Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Toby Nixon, Councilmember Bob Sternoff, Councilmember Penny Sweet, and Councilmember Amy Walen.

Members Absent: None.

3. STUDY SESSION

a. Draft Urban Forest Strategic Management Plan

Joining Councilmembers for this discussion were City Manager Kurt Triplett, Planning and Community Development Deputy Director Paul Stewart, Urban Forester Deb Powers, and Forterra Program Manager Jeff Aken. Urban Forest Strategic Management Plan interdepartmental team members from the Parks and Community Services Department (Jason Filan and Sharon Rodman) and Public Works Department (Jenny Gaus and Mark Padgett) were acknowledged for their contributions to the Plan.

4. EXECUTIVE SESSION

a. To Discuss Potential Litigation

Mayor McBride announced at 6:46 p.m. that Council was entering into executive session to discuss potential litigation and that Council would return to its regular meeting at 7:30 p.m. City Attorney Robin Jenkinson was also in attendance.

5. HONORS AND PROCLAMATIONS

The latest KirklandWorks video production on Kirkland Parks was screened for the Council.

a. 2012 Washington District 9 Junior Softball World Series Host Team Proclamation

Coaches and players accepted the proclamation from Mayor McBride and Councilmember Sweet. The 2012 Washington District 9 Junior Software World Series Host Team is made up of the following players: Alex Hanger, Brynn Radke, Gianna Paribello, Hannah Walker, Juliana Lynch, Kara Phillips, Katie Adams, Katie Erickson, Kristina Warford, Lisa Nelson, Natalie Vetto, Tatum Kawabata, and Tori

Bivens as well as General Manager Nolan Radke and Coaches Phil Phillips and Tim Nelson.

6. COMMUNICATIONS

- a. Announcements
- b. Items from the Audience

Brenda Kern
Jill Keeney
Anna Rising
Karen Levenson
Atis Freimanis
Laura Loomis
John Chadwick
Karina O'Malley
Steve Roberts
James Tolbert

- c. Petitions

7. SPECIAL PRESENTATIONS

- a. Audit Debrief and Government Finance Officers Association (GFOA) Certificate of Achievement for Financial Reporting

Finance Committee Chair Councilmember Walen provided a recap of the audit exit conference held on September 25, 2012 with the State Auditor's Office. Councilmember Walen then presented the Government Finance Officers Association (GFOA) Certificate of Achievement for Financial Reporting for the City's 2010 Comprehensive Annual Financial Report to the Director of Finance and Administration, Tracey Dunlap, Accounting Manager Teresa Levine, Accountant Nancy Otterholt and Accounting Support Associate IV Lori Bennett and Senior Accounting Associate Cheryl Patterson. Deputy Director Michael Olson and Accountant Carol Wade were also recognized.

- b. Neighborhood Food Drive Results

Kirkland Alliance of Neighborhoods Coordinator Norm Storme and Hopelink Kirkland Center Manager Teresa Andrade reported on the results of the fifth annual community food drive. Between September 15 and 29, \$1,995 and 14,050 pounds of food were collected.

8. CONSENT CALENDAR

- a. Approval of Minutes: October 2, 2012

- b. Audit of Accounts:
Payroll \$2,525,350.25
Bills \$1,106,200.18
run #1135 checks #538016 - 538040
run #1136 checks #538043 - 538181
run #1137 check #538207
- c. General Correspondence
- d. Claims

A claim submitted by Josiah Prater was acknowledged.
- e. Award of Bids
- f. Acceptance of Public Improvements and Establishing Lien Period
- g. Approval of Agreements
- h. Other Items of Business

(1) Report on Procurement Activities

Motion to Approve the Consent Calendar.

Moved by Councilmember Penny Sweet, seconded by Councilmember Bob Sternoff

Vote: Motion carried 7-0

Yes: Councilmember Dave Asher, Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Toby Nixon, Councilmember Bob Sternoff, Councilmember Penny Sweet, and Councilmember Amy Walen.

9. PUBLIC HEARINGS

- a. Ordinance O-4379 and its Summary, Imposing and Extending a Moratorium Within Neighborhood Business (BN) Zones on the Acceptance of Applications for the Review and/or Issuance of Development Permits for Any New Development, Addition or Alteration as Such Terms are Defined in this Ordinance.

Mayor McBride explained the parameters and opened the public hearing. Director of Planning and Community Development Eric Shields reviewed the issues pertaining to the proposed ordinance. Testimony was provided by Dion Godfrey. No further testimony was offered and the Mayor closed the hearing.

Motion to approve Ordinance O-4379 and its Summary, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND IMPOSING AND EXTENDING A MORATORIUM WITHIN NEIGHBORHOOD BUSINESS (BN) ZONES ON THE ACCEPTANCE OF APPLICATIONS FOR THE REVIEW AND/OR ISSUANCE OF DEVELOPMENT PERMITS FOR ANY NEW

DEVELOPMENT, ADDITION OR ALTERATION AS SUCH TERMS ARE DEFINED IN THIS ORDINANCE."

Moved by Councilmember Toby Nixon, seconded by Councilmember Bob Sternoff
Vote: Motion carried 7-0

Yes: Councilmember Dave Asher, Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Toby Nixon, Councilmember Bob Sternoff, Councilmember Penny Sweet, and Councilmember Amy Walen.

10. UNFINISHED BUSINESS

a. Commercial Codes and Plans - City Council Direction

Planning Supervisor Jeremy McMahan received Council direction on the Planning Commission recommendations to amendments to the Kirkland Comprehensive Code, Kirkland Zoning Code and the Kirkland Municipal Code. The Council indicated a majority support for the following major issues: support of neighborhood business density limited to 36 units per acre; reduced front yard setbacks in the BN and MSC 2 zones; restrictions for upper story office use in the Moss Bay BN zone. Council also indicated its preference for the alternative Residential Market definition proposed by staff instead of that proposed by the Planning Commission.

Council adjourned for a short break.

b. Amended 2012-2014 Planning Work Program

Motion to Approve the amended 2012-2014 Planning Work Program.

Moved by Councilmember Dave Asher, seconded by Deputy Mayor Doreen Marchione

Vote: Motion carried 7-0

Yes: Councilmember Dave Asher, Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Toby Nixon, Councilmember Bob Sternoff, Councilmember Penny Sweet, and Councilmember Amy Walen.

c. Ordinance O-4380 and its Summary, Relating to Solid Waste Collection Rates and Amending Section 16.12.030 of the Kirkland Municipal Code.

Motion to Approve Ordinance O-4380 and its Summary, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SOLID WASTE COLLECTION RATES AND AMENDING SECTION 16.12.030 OF THE KIRKLAND MUNICIPAL CODE."

Moved by Councilmember Amy Walen, seconded by Councilmember Penny Sweet
Vote: Motion carried 6-1

Yes: Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Toby Nixon, Councilmember Bob Sternoff, Councilmember Penny Sweet, and Councilmember Amy Walen.

No: Councilmember Dave Asher.

Council requested a staff report related to the issuance of a credit to Waste Management customers for one week of garbage service to offset the loss of service during the driver's strike.

11. NEW BUSINESS

- a. Ordinance O-4381 and its Summary, Relating to Zoning, Planning and Land Use, Adopting a New "Residential Suites" Use Category, and Adopting Regulations Governing Residential Suites Uses.

Planning Commission Chair Mike Miller presented the Planning Commission recommendation to adopt the amendments to the Kirkland Zoning Code.

Motion to Approve Ordinance O-4381 and its Summary, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE, ADOPTING A NEW "RESIDENTIAL SUITES" USE CATEGORY, AND ADOPTING REGULATIONS GOVERNING RESIDENTIAL SUITES USES" as amended.

Moved by Councilmember Penny Sweet, seconded by Deputy Mayor Doreen Marchione

Vote: Motion carried 6-1

Yes: Councilmember Dave Asher, Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Toby Nixon, Councilmember Bob Sternoff, and Councilmember Penny Sweet.

No: Councilmember Amy Walen.

Motion to Amend Ordinance O-4381 and its Summary, Relating to Zoning, Planning and Land Use, Adopting a New "Residential Suites" Use Category, and Adopting Regulations Governing Residential Suites Uses to add the green building mandate.

Moved by Deputy Mayor Doreen Marchione, seconded by Councilmember Dave Asher

Vote: Motion carried 5-2

Yes: Councilmember Dave Asher, Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Penny Sweet, and Councilmember Amy Walen.

No: Councilmember Toby Nixon, and Councilmember Bob Sternoff.

- b. Human Services Funding Recommendations for 2013-2014

Human Services Advisory Committee Chair Santiago Ramos and Co-Chair Karen Turner presented the committee's recommendations for grant funding for the 2013-2014 biennium and responded to council questions. The Council directed the City Manager to return with options during the budget process.

12. REPORTS

- a. City Council

(1) Regional Issues

Councilmembers shared information regarding a recent Puget Sound Regional Council Growth Management Policy Board meeting; Kirkland Interfaith Transitions in Housing Dinner; Suburban Cities Association Public Issues Committee; Cascade Water Alliance Public Affairs Committee meeting; Emergency Management Advisory Committee meeting; Tourism Development Committee meeting; Public Safety Committee meeting; Eastside Transportation Partnership meeting; Councilmember Asher requested and received support to send a letter to Representative Clibborn, who sits on the House Transportation Committee, regarding financial assistance for the Northup Way Corridor Improvements; Councilmember Marchione requested and received support for the proposed Council committee structure changes; requested staff to prepare discussion points regarding campaign finance for the Council to review.

b. City Manager

(1) Calendar Update

13. ITEMS FROM THE AUDIENCE

14. ADJOURNMENT

The Kirkland City Council meeting of October 16, 2012 was adjourned at 10:47 p.m.

City Clerk

Mayor



KIRKLAND CITY COUNCIL SPECIAL MEETING MINUTES
October 25, 2012

1. CALL TO ORDER
2. ROLL CALL

ROLL CALL:

Members Present: Councilmember Dave Asher, Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Toby Nixon, Councilmember Bob Sternoff, Councilmember Penny Sweet, and Councilmember Amy Walen.

Members Absent: None.

3. Resolution R-4939, Authorizing the City Manager to Provide a Billing Credit Equivalent to the Cost of One Week of Garbage, Recycling and Compostables Collection Services to the Customers of Waste Management of Washington, Inc.

Motion to Approve Resolution R-4939, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO PROVIDE A BILLING CREDIT EQUIVALENT TO THE COST OF ONE WEEK OF GARBAGE, RECYCLING AND COMPOSTABLES COLLECTION SERVICES TO THE CUSTOMERS OF WASTE MANAGEMENT OF WASHINGTON, INC."

Moved by Councilmember Dave Asher, seconded by Councilmember Amy Walen

Vote: Motion carried 7-0

Yes: Councilmember Dave Asher, Deputy Mayor Doreen Marchione, Mayor Joan McBride, Councilmember Toby Nixon, Councilmember Bob Sternoff, Councilmember Penny Sweet, and Councilmember Amy Walen.

4. 2013 - 2014 Budget

An overview of the proposed 2013-2014 budget, which links the budget to the implementation of Council's goals and reflects the 2012 City Work Program and the 2012 Citizen Survey, was presented and discussed. Prior to the 2013-2014 proposed budget discussion City Manager Kurt Triplett acknowledged the work of the Financial Planning staff: Financial Planning Manager Sri Krishnan, Senior Financial Analyst Neil Kruse, Budget Analysts Tammy Whipple and Karen Terrell, Accounting Associate Chris Lynch and Administrative Assistant Jessica Clem, as well as Assistant City Manager Marilynne Beard, the Financial Steering Committee, and Finance and Administration Director Tracey Dunlap. Ms. Dunlap thanked Department Directors, Finance and Administration Deputy Director Michael Olson and Accountants Nancy Otterholt and Carol Wade for their contributions as well as City Manager's Office Management Analyst Christian Knight for the budget document cover art.

Council recessed for a short break at 4:33 p.m.

Council recessed for a dinner break at 5:18 p.m.

5. ADJOURNMENT

The October 25, 2012 Special Meeting of the Kirkland City Council was adjourned at 7:30 p.m.

City Clerk

Mayor



CITY OF KIRKLAND
City Manager's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager
From: Lorrie McKay, Intergovernmental Relations Manager
Date: October 30, 2012
Subject: LETTER OF SUPPORT OF THE EASTSIDE TRANSPORTATION PARTNERSHIP'S DRAFT 2013 LEGISLATIVE AGENDA

RECOMMENDATION:

It is recommended that the City Council authorize the Mayor to sign a letter in support of the Eastside Transportation Partnership's (ETP) draft legislative agenda for 2013 (Attachment A).

BACKGROUND DISCUSSION:

Our transportation system is the backbone of Washington's economy. It provides the vital connections that link our homes to our work places and carry products to market.

At its October 16, 2012 meeting, Councilmember Asher outlined the three points on the draft 2013 legislative agenda of the Eastside Transportation Partnership and recommended the City send a letter to ETP in support. Council then directed staff to bring back a draft letter for approval (Attachment B).

Transportation investments in key Eastside corridors are critical for a healthy economy. ETP is a collaborative effort among 20 King County cities, transportation agencies, and the private sector. ETP is committed to implementing high priority transportation projects, including roads and transit necessary for the mobility, safety and economic vitality of East King County, the Puget Sound region, and the State of Washington.

As a general legislative principal, the Kirkland City Council has consistently supported long-term sustainability efforts related to the City's transportation goals. Staff concur that the draft ETP 2013 Legislative Statement is consistent in this regard.

If the support letter is approved, staff will add the ETP agenda to the "Support" section of the City of Kirkland's 2013 Legislative Agenda.

Attachments: A. Draft ETP 2013 Legislative Statement
B. Draft City of Kirkland Letter of Support



ETP 2013 Legislative Statement

Transportation investments in key Eastside corridors are critical for a healthy economy. The Eastside Transportation Partnership (ETP) is a collaborative effort among 20 King County cities, transportation agencies, and the private sector. ETP is committed to implementing high priority transportation projects, including roads and transit necessary for the mobility, safety and economic vitality of East King County, the Puget Sound region, and the State of Washington.

We urge the 2013 State Legislature to:

- 1. Develop and fund a transportation package through an increase in the state gas tax and/or other revenue sources to pay for critical safety, maintenance and mobility improvements identified for I-405, I-90, SR 522 and SR 520 east of I-405.**
- 2. Increase funding options for local transportation needs; while maintaining funding for programs that support mobility, economic vitality and maintenance of the existing transportation system.**
- 3. Continue to evaluate tolling as a tool to help manage and finance specific projects in key corridors. Additionally, continue to monitor for impacts on other roadways as a result of SR 520 tolling and consider appropriate mitigation where necessary.**

ETP appreciates the magnitude of the State Legislature's task and looks forward to a productive and collaborative partnership throughout the 2013 session.

10/15/12

D R A F T

November 7, 2012

Honorable Kimberly Allen, Chair
Eastside Transportation Partnership
C/O Wes Edwards
King Street Center
201 S Jackson St., Rm. 814
Seattle, WA 98104-3856

RE: City of Kirkland's Support of ETP's Draft 2013 Legislative Statement

Dear Chair Allen,

As a participating member city of the Eastside Transportation Partnership, the Kirkland City Council agrees that transportation investments in key Eastside corridors are critical for a healthy economy.

Further, the Kirkland City Council supports the October 12 Draft 2013 Legislative Statement of the Eastside Transportation Partnership urging the 2013 State Legislature to:

1. Develop and fund a transportation package through an increase in the state gas tax and/or other revenue sources to pay for critical safety, maintenance and mobility improvements identified for I-405, I-90, SR 522 and SR 520 east of I-405.
2. Increase funding options for local transportation needs; while maintaining funding for programs that support mobility, economic vitality and maintenance of the existing transportation system.
3. Continue to evaluate tolling as a tool to help manage and finance specific projects in key corridors. Additionally, continue to monitor for impacts on other roadways as a result of SR 520 tolling and consider appropriate mitigation where necessary.

Should you have any questions, please don't hesitate to contact Lorrie McKay, Intergovernmental Relations Manager at 206-587-3009.

Respectfully,
Kirkland City Council

By Joan McBride, Mayor

cc via email: Kirkland City Council Members

**CITY OF KIRKLAND****Department of Public Works**

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: John MacGillivray, Solid Waste Programs Lead
Ray Steiger, P.E., Public Works Director

Date: October 25, 2012

Subject: Letter of Support of King County Drug Take-Back Program

RECOMMENDATION

It is recommended that the City Council authorize the Mayor to sign a letter in support of establishing a pharmaceutical manufacturer-financed drug take-back program in King County.

BACKGROUND

At its October 16, 2012 meeting, Councilmember Walen indicated that the Suburban Cities Association was soliciting letters of support for its proposed public policy position in support of a King County drug take-back program.

Included as attachments to this memorandum are the proposed Suburban Cities Association public policy position; an informational letter from Mr. Joe McDermott, Chair of the King County Board of Health, explaining the status of the proposed King County take-back program; and a May 17, 2012 staff report to the King County Board of Health concerning the safe disposal of unused medications.

The Kirkland City Council has been consistent in its support of establishing of a secure medicine return program in the State of Washington. Backing of a drug take-back program was on the City Council's adopted 2009 Legislative Agenda and on its "support" agenda in 2011 and 2012. Additionally, the City Council has extended its support in two letters and one resolution since 2009:

- Letter of Support for Secure Medicine Return Bill ([February 3, 2009 Meeting Materials](#))
- Letter of Support for Safe Drug Disposal Act of 2009 ([July 20, 2010 Meeting Materials](#))
- Resolution in Support of a Pharmaceutical Drug Take-Back in the State of Washington ([December 12, 2012 Meeting Materials](#))

For the past several years, the Kirkland Police Department has participated in the DEA-sponsored National Pharmaceutical Drug Take-Back Day.

Please direct any questions regarding this letter and legislation to John MacGillivray, Solid Waste Programs Lead at extension 3804 or email at jmacgillivray@kirklandwa.gov.

DRAFT

November 8, 2012

Ms. Deanna Dawson
Executive Director
Suburban Cities Association
6300 Southcenter Blvd., Suite 206
Tukwila, WA 98188

Mr. Joe McDermott
Board of Health Chair
401 Fifth Avenue, Suite 1300
Seattle, WA 98104

RE: City of Kirkland Support for a King County Drug Take-Back Program

Dear Ms. Dawson and Mr. McDermott,

The Kirkland City Council would like to express its support of the Suburban Cities Association's proposed public policy position which supports the establishment of "...a King County product stewardship program that provides a safe and effective means of disposal of pharmaceutical products."

The Kirkland City Council also encourages the King County Board of Health to establish a convenient, safe, and secure medicine return program in King County to reduce the public safety and environmental impacts of unwanted medicines through a pharmaceutical manufacturer-funded take-back program that covers the costs of collection, transportation, and safe disposal, and does not rely upon local government funding.

If you have any questions concerning this letter, please don't hesitate to contact John MacGillivray, Solid Waste Programs Lead at (425) 587-3804 or jmacgillivray@kirklandwa.gov.

Sincerely,
Kirkland City Council

By Joan McBride, Mayor



October 10, 2012
SCA PIC Meeting

Item 5:

Board of Health Medicine Take Back in King County

Action Item

SCA Staff Contact

Doreen Booth, SCA Policy Analyst, office: 206-433-7147, cell: 425-275-7323

doreen@suburbancities.org.

Board of Health Members:

Ava Frisinger, Mayor of Issaquah; Suzette Cooke, Mayor of Kent; David Baker, Mayor of Kenmore (alternate).

Recommended Action:

To consider adoption of the following public policy position at the October 2012 PIC Meeting:

The Suburban Cities Association supports a King County product stewardship program that provides a safe and effective means of disposal of pharmaceutical products.

Background:

In September, Mayor Baker, Kenmore, made a presentation to the PIC members on current efforts to consider a King County pharmaceutical take back program.

SCA took a position on this issue on July 14, 2010:

SCA supports a product stewardship program that provides a safe and effective means of disposal of pharmaceutical products.

The proposed position adds the words “a King County” to show support for a King County program as there is no statewide pharmaceutical product stewardship program.

The existing July 14, 2010 position is proposed to remain in place to support a future program at the statewide level

Joe McDermott
Board of Health Chair

**401 Fifth Avenue
Suite 1300
Seattle, Washington
98104**

Members:

David Baker
Sally Clark
Richard Conlin
Suzette Cooke
Benjamin Danielson, MD
Reagan Dunn
Ava Frisinger
Bruce Harrell
Kathy Lambert
Nick Licata
Frankie Manning, RN
Bud Nicola, MD
Julia Patterson

Public Health Director:

David Fleming, MD

Administrator:

Maria Wood

October 1, 2012

RE: Secure Medicine Return in King County

Dear Stakeholder,

On May 17, 2012 the Board of Health heard a briefing about safe disposal of unused and expired medicines as part of its ongoing interest in protecting the health and safety of King County. The briefing was at the request of a board member and provided the latest information about the limited number of medicine take-back programs in the County, as well as the perspectives of several community members and stakeholders. As a follow up, I convened a subcommittee to further study this issue. Subcommittee members include myself, Board Member Conlin, Board Member Baker, Board Member Nicola and Director and Health Officer of Public Health David Fleming.

Misuse and preventable poisonings from household medicines are the fastest growing cause of addiction and overdose deaths in our communities:

- More people die from prescription medicines than from all illegal drugs combined;
- Most abusers of prescription drugs get the pills from a friend or relative's medicine cabinet;
- Prescription medicines are the drug of choice among 12 and 13-year olds;
- Preventable poisonings from medicines have also been rising rapidly, especially among kids and seniors; and
- 32% of child poisoning deaths in Washington were caused by someone else's prescription medication and 26% were caused by over-the-counter medications.

This is why the Board of Health is exploring ways to protect public health by reducing the amount of unused medicines in people's homes and ensuring convenient and safe options for disposal of unused medicines. Convenient, secure medicine take-back programs allow residents to safely remove leftover and expired medicines from their medicine cabinets, reducing risks in the home and reducing the supply of dangerous drugs in the community. Proper disposal of waste medicines also prevents those drugs from contributing to pharmaceutical pollution in our waterways, and to trace amounts of these chemicals that are detected in some drinking water supplies.

The Board of Health expects to have a public hearing on secure medicine return at future regular meeting in the coming months. For details on the public hearing and other updates on this work, please visit our webpage at:

<http://www.kingcounty.gov/healthservices/health/BOH/MedicineTakeback.aspx>

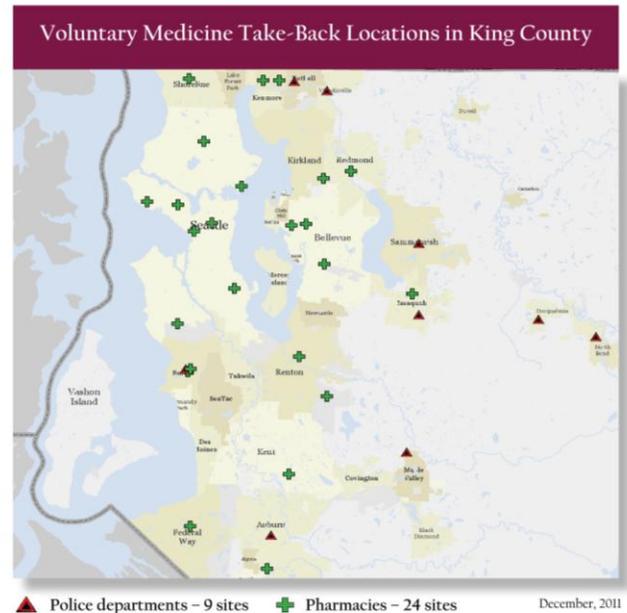
Sincerely,



Joe McDermott
Chair, King County Board of Health
King County Councilmember

Voluntary Medicine Take-Back Programs in King County

Group Health offers medicine take-back at 12 clinical pharmacies (25 locations statewide) and Bartell Drugs is able to offer medicine take-back at 12 of its 43 retail pharmacies. Currently, 9 city police stations maintain ongoing medication collection sites, and 25 law enforcement agencies, including the King County Sheriff and Port of Seattle Police, have participated in semi-annual Drug Enforcement Administration (DEA)-coordinated take-back events since 2010. In King County, the Household Hazardous Waste Phone Line has experienced a 300% increase in resident inquiries since 2009 about where to take-back left-over or expired medicines.



Barriers to Additional Medicine Take-Back Programs & a Comprehensive Take-Back System in King County

1. **Convenience and Access.** The voluntary medicine take-back sites are too limited in number and geographic distribution to meet the needs of the county's residents. There are no ongoing collection sites for narcotics and other controlled substances in the county's largest cities. Access to the existing voluntary take-back sites is particularly limited for county residents with limited mobility or access to transportation, such as seniors or disabled residents.
2. **Financing.** A dedicated and adequate source of funding is a key barrier to providing a comprehensive take-back system. Over-stretched local law enforcement and local government budgets cannot absorb the costs of providing a take-back system, leaving most of our communities without secure and environmentally sound options for disposal of leftover medicines. Existing voluntary programs lack funds for adequate education and promotion to increase effectiveness.
3. **Challenges in Collection of Controlled Substances.** About 11% of prescription drugs dispensed are legally prescribed controlled substances, such as OxyContin, Vicodin, and Ritalin. The U.S. DEA regulations that currently prevent collection of controlled substances by anyone other than law enforcement are being changed to authorize collection of controlled drugs by medicine take-back programs. The draft regulations are anticipated in late 2012. While working on rule-making since fall 2010, the DEA has coordinated semi-annual National Prescription Drug Take-Back Days, which rely on local law enforcement participation and resources. The DEA plans to stop coordinating these take-back days once the new regulations for collection of controlled drugs are finalized.
4. **Lack of an Efficient System.** Without a countywide system, each law enforcement unit, municipality, or pharmacy has developed and implemented their medicine take-back program independently. LHWMP has provided technical assistance and some limited resources, but take-back sites lack coordination and any efficiency of scale for transportation, disposal or program promotion. Anecdotally, community partners and take-back locations report that residents are frustrated when they look for, or hear about, medicine take-back programs, then discover there is no convenient collection site in their neighborhood.



King County

King County Board of Health

Staff Report

Agenda item No: 9
Briefing No: 12-B06

Date: May 17, 2012
Prepared by: Margaret Shield, Jeff Gaisford,
Maria Wood

Subject

Safe Disposal of Unused Medications

Purpose

Provide a report to the Board of Health on the status of efforts to create secure and environmentally sound disposal mechanisms for unwanted medicines from residents of King County.

Summary

The misuse of prescription drugs has emerged as a national epidemic over the last decade. A comprehensive system for safe disposal of unneeded prescription and over-the-counter drugs from residents does not yet exist. A limited number of voluntary take-back programs in King County are collecting large amounts of medicines, and have demonstrated secure protocols, but are not available in enough locations to adequately serve all county residents. Product stewardship programs, where the producer of a product takes primary responsibility for managing a product throughout its lifecycle, are increasingly being implemented in the United States, especially to address toxic and hard-to-handle products.

Background

The misuse of prescription drugs has emerged as a national epidemic over the last decade. Amounts of prescription drugs dispensed have increased overall; in particular, the quantity of prescription painkillers sold to pharmacies, hospitals, and doctors' offices in 2010 has quadrupled since 1999. With the rise in the amount of prescription drugs available has come an increase in the number of drug-related fatalities as well as non-fatal poisonings —nationally and here in King County. Large amounts of prescription and over-the-counter medicines go unused for a variety of reasons. In the 2011 action agenda “Epidemic: Responding to America’s Prescription Drug Abuse Crisis,” federal agencies issued a call for action in four major areas: (1) education of providers and the community, (2) prescription drug monitoring programs, 3) consumer friendly and environmentally-responsible drug disposal, and (4) enforcement to shut down “pill mills” and “doctor shopping.” Efforts are underway in Washington State on many of these

recommendations.¹ However, a comprehensive system for safe disposal of unneeded prescription and over-the-counter drugs from residents does not yet exist in King County or nationally.

A limited number of voluntary take-back programs in King County are collecting large amounts of medicines, and have demonstrated secure protocols, but are not available in enough locations to adequately serve all county residents. Currently in King County, medicine take-back programs are operating at 9 police stations and at 22 pharmacies. Due to the tremendous need for drug take-back, the Drug Enforcement Administration has been offering limited assistance to local law enforcement to provide semi-annual National Pharmaceutical Take-Back one-day events. This federal involvement is short-term until the Drug Enforcement Administration issues new regulations for collection of controlled substances without the involvement of law enforcement. Convenient and permanent drop-off locations and disposal options are needed to help solve the problem, but developing a sustainable financing model is one of the barriers.

Past Board of Health Actions:

The Board of Health has supported the creation of safe medicine take-back programs as part of a comprehensive strategy to reduce the epidemic of overdoses, misuse, and preventable poisonings from medications, and to reduce environmental pollution from waste pharmaceuticals. The Board of Health has received briefings from the LHWMP on the status of medicine take-back initiatives in the past and taken actions to support creation of secure medicine take-back systems.

In May 2009, the Board of Health sent a letter to Congressman Jay Inslee stating support for federal legislation to amend the Controlled Substances Act. Congressman Inslee's work ultimately resulted in the passage of "Secure and Responsible Drug Disposal Act of 2010" which has authorized the DEA to write new regulations for collection of controlled substances by medicine take-back programs.

In April 2010, the BOH approved the Local Hazardous Waste Management Program's Plan Update, which includes support for managing hazardous materials, such as pharmaceuticals, through product stewardship approaches and working to pass extended producer responsibility legislation for pharmaceuticals (Section 6.3).

On April 25, 2011, the King County Council approved a Recognition supporting the second National Prescription Drug Take-back Day, held on April 30, 2011. The Recognition urged "all county residents to take advantage of this opportunity to safely dispose of unused, unneeded, or expired prescription drugs and prevent these easily available and potentially deadly drugs from being diverted or misused."

¹ Education programs for providers and the community and a 2010 Washington law established new rules for practitioners on prescribing and management for chronic pain patients. Prescription drug monitoring is already the law and the program launched in October 2011. Actions to stop "pill mills" and improper prescribing are ongoing.

The King County Comprehensive Solid Waste Management Plan approved in 2001 by the King County Council and suburban cities states support for product stewardship approaches to prevent potential harm from toxic materials.

Analysis

As noted earlier, the misuse of unused prescription drugs has emerged as a national epidemic with the quantity of prescription painkillers sold to pharmacies, hospitals, and doctors' offices quadrupling from 1999 to 2010. With the rise in the amount of prescription drugs available has come an increase in the number of drug-related fatalities as well as non-fatal poisonings — nationally and here in King County. Drug overdoses have surpassed car crashes as the leading cause of accidental deaths in Washington. The majority of overdoses involve prescription opiates.² In 2010, the Medical Examiner reported 209 fatal overdoses, with 130 involving prescription-type opiates and 79 involving prescription sedatives.³

This problem affects children, as well as adults. Child death review data from King County (2008-2010) found that 7 of 10 deaths of children aged 10-17 years were due to a drug or multiple drugs, with 86% involving prescription drugs and 29% involving over-the-counter drugs.⁴ In addition, more than three out of five teens say prescription pain relievers are easy to get from parents' and grandparents' medicine cabinets.⁵

Expired or left-over medicines that accumulate in home medicine cabinets contribute to rapidly increasing rates of poisonings, overdoses, and drug abuse. Public Health-Seattle & King County, the Local Hazardous Waste Management Program, and local agencies throughout the county are encouraging residents to store medicines securely in their homes, and dispose of unused medicines properly when no longer needed.

Recommendations for proper disposal have changed in recent years with growing concerns about accidental overdoses and poisonings, impacts of pharmaceutical pollution on aquatic species and the detection of trace levels of a wide array of drugs in some municipal drinking water supplies. Trash disposal of medicines is an undesirable disposal option both for security and environmental protection. Because trash cans at the curb are not secure, residents have been given advice on how to disguise medicines in attempt to prevent theft. King County landfills generate millions gallons a year of leachate, which is pumped to sewage treatment facilities not designed to remove complex chemicals prior to discharging effluent into Puget Sound. Contamination of municipal drinking water supplies by low levels of a complex mixture of pharmaceuticals is another growing concern. Medicine take-back programs can securely collect drugs and safely dispose of them by high temperature incineration.

² CADCA's summary: "More People Killed by Drugs Than by Car Accidents in Some States". October 8, 2009. Available online at: <http://www.cadca.org/resources/detail/more-people-killed-drugs-car-accidents-some-states>.

³ Banta-Green, C. et al. (2010). Drug Abuse Trends in the Seattle/King County Area: 2010. Accessed online at: http://adai.washington.edu/pubs/cewg/CEWG_Seattle_June2011.pdf

⁴ Sabel, J. (2004). *Washington State Childhood Injury Report – Poisoning Chapter*. WA DOH. Available online at: http://www.doh.wa.gov/hsqa/emstrauma/injury/pubs/wscir/WSCIR_Poisoning.pdf, accessed 12/4/09.

⁵ Washington State Department of Health. (2008). "Poisoning and drug overdose."

Federal Law Changes to Facilitate Collection of Controlled Substances:

Under the federal Controlled Substances Act, the Drug Enforcement Administration closely regulates the distribution of prescription drugs that are legally prescribed controlled substances, such as OxyContin, Vicodin, and Ritalin. About 11% of prescription drugs dispensed are legally prescribed controlled substances. Drug Enforcement Administration regulations do not allow patients to return unused quantities of controlled substances to the dispensing pharmacy or prescribing doctor. Currently, these controlled drugs can only be legally collected by law enforcement.

This complication in federal law is being remedied. In October 2010, the “Secure and Responsible Drug Disposal Act” was passed to amend Controlled Substances Act to facilitate the collection of controlled drugs by medicine return programs. The law does not mandate creation of medicine take-back programs or provide any funding, but it has authorized the Drug Enforcement Administration to promulgate regulations that will authorize new options for collection of controlled drugs without participation of law enforcement. The draft regulations are anticipated in late summer or early fall of 2012.

Model medicine take-back programs in Washington State:

In Washington, take-back programs operated by law enforcement, pharmacies, and local governments are relatively new. Since 2005, the Local Hazardous Waste Management Program has worked with several local government agencies, non-profits, Group Health and Bartell Drugs to develop a model pharmacy-based medicine return program. They are not comprehensive or widely promoted due to limited funding. However, these voluntary programs have demonstrated the feasibility of secure protocols and confirmed that residents will utilize medicine take-back programs.

This partnership has resulted in Washington State Board of Pharmacy-approved protocols and safe disposal of more than 90,000 pounds of medicines from six counties. In King County, Group Health offers medicine take-back at 11 clinical pharmacies and Bartell Drugs is able to offer medicine take-back at 11 of its 43 retail pharmacies. Currently, in King County, nine city police stations maintain ongoing medication collection sites, and 25 law enforcement agencies, including the King County Sheriff and Port of Seattle Police, have participated in Drug Enforcement Administration-coordinated take back events since 2010. Ongoing medication collection where available is funded by local jurisdictions and is an unsustainable model.

There are a few take-back programs in place or under development in other countries and in the U.S. including Vancouver, British Columbia, the city of San Francisco, and most recently proposed in Alameda County, California. See Attachment 4 for more details.

Financing is the key barrier to providing a comprehensive take-back system within the County. Over-stretched local law enforcement and local government budgets cannot absorb the costs of providing a take-back system, leaving most of our communities without secure and environmentally sound options for disposal of leftover medicines.

Other Industries Dealing with Safe Disposal of Hazardous Waste:

Product stewardship programs, where the producer of a product takes primary responsibility for managing a product throughout its lifecycle, are well-established in other countries including Canada, Europe, and Australia. These programs are increasingly being implemented in the United States, especially to address toxic and hard-to-handle products. Because product manufacturers incorporate the costs of proper disposal or recycling into their business models, the product stewardship model provides sustainable financing for convenient and effective take-back systems. Product stewardship programs may be implemented voluntarily by the product manufacturers, or required through legislation. Other stakeholders, such as suppliers, retailers, waste management businesses, and consumers also have roles in providing effective product stewardship programs. Examples of product stewardship programs implemented in the U.S. include:

1. Rechargeable Batteries - For 17 years, the Rechargeable Battery Recycling Corporation (RBRC), a non-profit trade association voluntarily organized by rechargeable battery manufacturers, has operated the Call2Recycle program to safely collect and recycle rechargeable batteries, which contain a variety of heavy metals that should not be disposed of in solid waste landfills. 70,000 collection sites across North America voluntarily participate in the program, including large retail chains, small independent retailers, other businesses, and local government waste collection sites including municipalities in King County. A battery product stewardship bill was introduced in the last legislative session by the battery industry.
2. Paint - The American Coatings Association (ACA) has been working for a number of years with local governments across the U.S. to develop product stewardship solutions for safe recycling of latex paint and safe disposal of oil-based paint and stains. ACA is now seeking state-level legislation to authorize the system, with oversight by the state agency. The legislation has passed in Oregon, California, and Connecticut and has been introduced in five other states. In Washington, a paint product stewardship bill was considered during the 2012 legislative session and will be re-introduced in 2013 by the ACA and other stakeholders, including local governments. A PaintCare program will relieve financial burdens on local governments, who are currently paying for safe disposal of paint, and will create a new industry for latex paint recycling in our state.
3. Electronic Waste - The largest number of U.S. product stewardship laws, currently in 24 states, require manufacturers of electronic products to operate safe recycling programs. Washington's Electronic Recycling Law, the second in the nation passed in 2006, requires manufacturers of computers, monitors and TVs to provide recycling services free of charge to residents, schools, small businesses, small governments, and charities. For King County, the manufacturer's E-Cycle program has meant that residents do not have to pay a fee to recycle a TV or computer, recycling rates for e-waste have roughly doubled, and illegal dumping of toxic e-waste has been reduced.

Other voluntary and legislated product stewardship programs in the U.S. address products such as auto switches, carpet, cell phones, fluorescent lighting, mercury lighting, mercury thermostats, and agricultural pesticide containers.

Proposed legislation in Washington State:

Legislation to establish a sustainably financed statewide medicine take-back system has been introduced and considered by the Washington State Legislature for the past four sessions. In the 2011/2012 legislature, SB 5234/HB 1370 would have required drug producers selling medicines in Washington State to provide, finance, and promote a safe, convenient program for return and disposal of leftover and expired medicines. Pharmaceutical manufacturers would design the take-back system within parameters defined in the legislation. Collection of medicines would be accomplished through voluntary partnerships with pharmacies, law enforcement offices, hospitals, fire stations, and others authorized to handle collected medicines under state and federal regulations. The bills limit the total annual cost responsibility to all pharmaceutical producers to \$2.5 million, which works out to roughly 2 cents per prescription when compared to more than \$4 billion in annual medicines sales in the state. The legislation was supported by the statewide “Take Back Your Meds” coalition, which includes more than 270 organizations and municipalities, including law enforcement, public health agencies, substance abuse prevention advocates, water quality agencies, local governments, and health and environmental organizations. Support for the secure medicine return legislation was on King County’s state legislative agenda in 2011 and 2012, and the issue has been in the county’s statement of state policy since 2009. Support for the secure medicine return legislation was on the City of Seattle’s state legislative agenda in 2010, 2011, and 2012. While the secure medicine take-back legislation advanced through House and Senate committees, and garnered substantial support, the legislation has not passed due to the opposition of the pharmaceutical industry, including PhRMA, individual pharmaceutical companies, and the Washington Biotechnology & Biomedical Association.

Attachments

1. Medicine Take-back Programs in King County as of May 2012
2. Map of Medicine Take-Back Locations in King County
3. Medicine Take-back Support from Law Enforcement and Local Govts in King County
4. Take Back Programs in Other Jurisdictions



CITY OF KIRKLAND
Department of Finance and Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager
From: Kathi Anderson, City Clerk
Date: October 23, 2012
Subject: CLAIM(S) FOR DAMAGES

RECOMMENDATION

It is recommended that the City Council acknowledge receipt of the following Claim(s) for Damages and refer each claim to the proper department (risk management section) for disposition.

POLICY IMPLICATIONS

This is consistent with City policy and procedure and is in accordance with the requirements of state law (RCW 35.31.040).

BACKGROUND DISCUSSION

The City has received the following Claim(s) for Damages from:

- (1) The Crest Homeowners Association
11319 Ohde Circle
c/o Best Management Company
P.O. Box 282
Kirkland, WA 98083

Amount: \$917.76

Nature of Claim: Claimant states damage resulted from City tree maintenance.

- (2) Timothy A. Davis
12433 105th Avenue NE
Kirkland, WA 98034

Amount: Unspecified Amount

Nature of Claim: Claimant states damage resulted from vehicle impound.

- (3) Pearlina L. Dottin
12601 NE 124th Street
Kirkland, WA 98033

Amount: Unspecified Amount

Nature of Claim: Claimant states damage resulted from road work noise.

Note: Names of claimants are no longer listed on the Agenda since names are listed in the memo



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: David Snider, P.E., Capital Projects Manager
Ray Steiger, P.E., Public Works Director

Date: October 25, 2012

Subject: Annual Street Preservation Program – Phase I Slurry Seal
Accept Work

RECOMMENDATION:

It is recommended that City Council accept the work on the Annual Street Preservation Program Phase I Slurry Seal Project, as completed by Blackline, Inc., Spokane, WA, and establish the statutory lien period.

BACKGROUND DISCUSSION:

The 2012 Slurry Seal Project is the Phase I element of the Annual Street Preservation Program. It involved the application of a thin layer of fine aggregate and liquid asphalt placed on low-volume residential streets where light to moderate surface wear was documented. Slurry seal is a versatile and cost effective way to extend the life of the City's residential streets where there is no significant structural damage to the pavement section. It protects the asphalt surface from the effects of aging while improving the existing pavement condition. The 2012 Project resulted in the application of slurry seal on 14 lane miles of roadway in the Kingsgate, Rose Hill and Bridal Trails neighborhoods (Attachment A). The Phase II portion of the Annual Street Preservation Program is the Overlay Project and a separate acceptance memo for that Project will be submitted as a future City Council meeting agenda item.



The Annual Street Preservation Program for 2012 has a base budget of \$2.3 million. At their regular meeting of May 15, 2012, City Council awarded the Phase I Slurry Seal to Blackline, Inc. in the amount of \$276,476.80. In addition, at their regular meeting of May 24, 2012, City

Council awarded the Phase II Street Overlay Project and authorized a contribution of \$26,100 from the 2011 Emergency Sewer Program (ESP) to the Annual Street Preservation Program in order to pave NE 104th Street, where a new sewer main was installed. The City also received a mitigation payment from a private developer in the amount of \$2,779 for minimal overlay work that was required as a result of a new development on NE 124th Street. With this mitigation payment and the 2011 ESP contribution, the total Program budget for 2012 is \$2,328,879 (Attachment B).

The Phase I Slurry Seal work began on July 30th and was substantially complete in October, 2012. All streets that were originally programmed to receive a slurry seal application were completed; however, as a result of reduced quantities for certain bid items, the total amount paid to the contractor was \$269,979.60 (Attachment B).

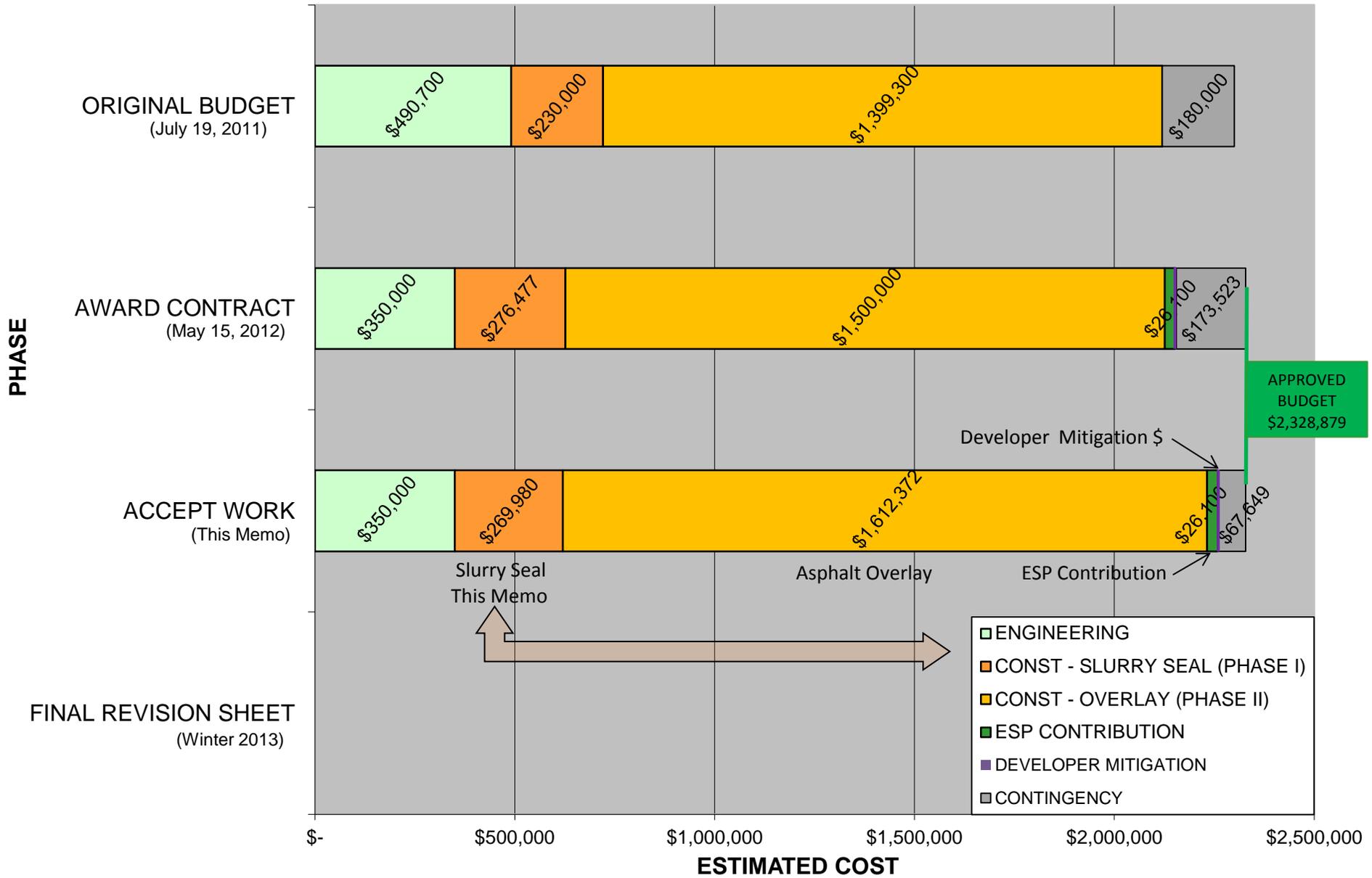
Attachment A: Slurry Seal Project Area Map

Attachment B: Slurry Seal Project Budget Report

2012 STREET PRESERVATION PROGRAM (ST-1206)

Attachment B

Project Budget Report





CITY OF KIRKLAND
Human Resources Department
505 Market Street Suite B, Kirkland, WA 98033 425.587.3210
www.ci.kirkland.wa.us

MEMORANDUM

To: Kurt Triplett, City Manager
From: James C. Lopez, Director of Human Resources & Performance Management
Date: October 24, 2012
Subject: Ratification of PSEU Local 519 Collective Bargaining Agreement - 2012 - 2013

RECOMMENDATION

Council adopts the 2012-2013 Collective Bargaining Agreement between the City of Kirkland and the PSEU Local 519, representing Kirkland Police Lieutenants Union. This is a two year contract to bring the schedule of the contract into alignment with the Commissioned Police Guild (Guild) contract.

BACKGROUND DISCUSSION:

On October 23, 2012, the City of Kirkland was advised that the members of the PSEU Local 519, voted for ratification of the 2012 – 2013 Collective Bargaining Agreement. This Agreement was the result of a collaborative negotiation process between the City and the Union.

Some highlights of the agreement are:

- Two year agreement (January 1, 2012 – December 31, 2013)
- Percentage based wage increases:
 - 2012 - 2.5 %
 - 2013 - 2.0%
- Longevity increase of 1% to employees with 20-24 years of service, and 1% increase for employees with 25+ years of service (commensurate with current Guild contract)
- Education Incentive increase of .5% for BA/BS degree, and .5% increase for Graduate degree (commensurate with current Guild contract)
- All of the above economic items are retroactive to January 1, 2012
- Physical Fitness Incentive of 1% for employees who pass the fitness test (same 1% incentive and schedule as current Guild contract, which is November to October, not Jan. to Dec.)
- Upon termination, employee's vacation leave balance may be directed to retiree medical account (benefit to employee – no cost to City)
- Life insurance language change to reflect a maximum guarantee of \$250K (current practice consistent with other bargaining units)
- Modification/clarification language regarding the use of take-home vehicle
- Collective Bargaining Agreement will now be aligned with Commissioned Police Guild contract.

Members of the Negotiation Teams warrant commendation for this collaborative negotiation process, which occurred during challenging economic times.

Staff is pleased to recommend to City Council the ratification and adoption of this Agreement (or a substantially similar version if minor corrections become necessary) with the PSEU Local 519.

Attachment: City of Kirkland and PSEU Local 519 Collective Bargaining Agreement, 2012 – 2013

2012 – 2013 Agreement

By and Between



CITY OF KIRKLAND

and

**PUBLIC SAFETY
EMPLOYEES UNION
#519**

**KIRKLAND POLICE
LIEUTENANTS UNION**



**2012 -2013 Agreement
By and Between
City of Kirkland
and
Kirkland Police Lieutenants Union
Public Safety Employees Union #519**

TABLE OF CONTENTS

PREAMBLE.....	6
ARTICLE 1 – DEFINITIONS.....	6
ARTICLE 2 – RECOGNITION.....	7
2.1 RECOGNITION	7
2.2 NEW CLASSIFICATIONS.....	7
2.3 CONTRACT PROPOSALS	7
ARTICLE 3 – UNION SECURITY	8
3.1 MEMBERSHIP.....	8
3.2 DUES DEDUCTION.....	8
3.3 BARGAINING UNIT ROSTER	9
3.4 NONDISCRIMINATION – UNION ACTIVITY	9
ARTICLE 4 – UNION/EMPLOYER RELATIONS	9
4.1 UNION ACCESS.....	9
4.2 FACILITY USE.....	9
4.3 STEWARDS	9
4.4 ORIENTATION	9
4.5 BULLETIN BOARDS.....	9
4.6 CONTRACT DISTRIBUTION	9
4.7 NEGOTIATIONS RELEASE TIME.....	10
4.8 GRIEVANCE RELEASE TIME	10
4.9 UNION BUSINESS.....	10
ARTICLE 5 – EMPLOYMENT.....	10
5.1 PROBATIONARY PERIODS.....	10
5.2 TYPES OF EMPLOYMENT	10
5.3 CONTRACTORS	10
5.4 STUDENTS/INTERNS/VOLUNTEERS.....	10
ARTICLE 6 – HOURS OF WORK AND OVERTIME.....	11
6.1 WORKDAY/WORKWEEK.....	11
6.2 REST/MEAL BREAKS.....	11
6.3 COMPENSATORY TIME / MANAGEMENT LEAVE	11

ARTICLE 7 – EMPLOYMENT PRACTICES.....	11
7.1 NONDISCRIMINATION.....	11
7.2 JOB POSTING.....	11
7.3 PROMOTIONS.....	12
7.4 SPECIAL ASSIGNMENTS	12
7.5 PERSONNEL FILES	12
7.6 EVALUATIONS	13
7.7 BILL OF RIGHTS	14
7.8 DISCIPLINE/CORRECTIVE ACTION	16
ARTICLE 8 – SENIORITY.....	17
8.1 DEFINITIONS.....	17
8.2 APPLICATION OF SENIORITY	18
8.3 PROBATIONARY PERIOD.....	18
8.4 LOSS OF SENIORITY.....	19
8.5 LAYOFFS.....	19
8.6 NOTICE.....	19
8.7 MEETING WITH UNION	20
8.8 AFFECTED GROUP.....	20
8.9 VACANT POSITIONS	21
8.10 SENIORITY LIST	21
8.11 ORDER OF LAYOFF	21
8.12 COMPARABLE EMPLOYMENT	21
8.13 LAYOFF OPTIONS	21
8.14 REDUCTION HOURS/FTE.....	22
8.15 RECALL.....	22
8.16 VACATION & LEAVE CASH OUTS/PAY	23
8.17 UNEMPLOYMENT CLAIMS.....	23
ARTICLE 9 – WAGES	23
9.1 WAGE SCHEDULE.....	23
9.2 HIRE-IN RATES	24
9.3 SPECIALTY PAY	24
9.4 LONGEVITY	24
9.5 OUT-OF-CLASS PAY	24
9.6 EDUCATION INCENTIVE.....	24
9.7 PHYSICAL FITNESS INCENTIVE.....	25
9.8 SHIFT DIFFERENTIAL	25
ARTICLE 10 – OTHER COMPENSATION.....	25
10.1 STANDBY PAY.....	25
10.2 CALL-BACK PAY.....	25
10.3 TAKE HOME VEHICLE/MILEAGE REIMBURSEMENT.....	25
10.4 CLOTHING AND EQUIPMENT	26
ARTICLE 11 – HOLIDAYS	26

11.1 HOLIDAYS	26
11.2 HOLIDAY ELIGIBILITY	27
11.3 HOLIDAY OBSERVANCE.....	27
11.4 HOLIDAY ON DAY OFF.....	27
11.5 HOLIDAY COMPENSATION	27
ARTICLE 12 – VACATION.....	27
12.1 VACATION ACCRUAL.....	27
12.2 VACATION UPON TERMINATION	28
ARTICLE 13 – SICK LEAVE.....	29
13.1 SICK LEAVE ACCRUAL	29
13.2 SICK LEAVE USAGE	29
13.3 SHARED LEAVE	30
13.4 COORDINATION – WORKERS’ COMPENSATION.....	30
13.5 FAMILY MEMBER.....	30
ARTICLE 14 – LEAVES OF ABSENCE.....	31
14.1 IN GENERAL.....	31
14.2 JURY DUTY/COURT	31
14.3 MILITARY LEAVE.....	31
14.4 BEREAVEMENT	31
14.5 MAINTENANCE OF SENIORITY	31
14.6 LEAVE WITHOUT PAY.....	31
14.7 FAMILY LEAVE FMLA	31
14.8 MATERNITY LEAVE.....	32
14.9 INCLEMENT WEATHER.....	32
ARTICLE 15 – HEALTH & WELFARE.....	33
15.1 MAINTENANCE OF BENEFITS	33
15.2 HEALTH AND LIFE INSURANCE.....	33
15.3 FLEXIBLE SPENDING ACCOUNT – FSA.....	34
15.4 RETIREMENT	34
ARTICLE 16 – TRAINING.....	34
16.1 TRAINING	34
ARTICLE 17 – LABOR/MANAGEMENT COMMITTEES.....	34
17.1 PURPOSE AND COMPOSITION OF COMMITTEES	34
17.2 COMPENSATION	34
ARTICLE 18 – HEALTH & SAFETY.....	35
18.1 SAFE WORKPLACE.....	35
18.2 HEALTH & SAFETY PLAN.....	35
18.3 DRUG FREE WORKPLACE.....	35
18.4 WORKPLACE VIOLENCE.....	35

ARTICLE 19 – GRIEVANCE PROCEDURE.....	35
19.1 GRIEVANCE DEFINED	35
19.2 GRIEVANCE PROCEDURE.....	36
19.3 UNION/EMPLOYER GRIEVANCE.....	37
19.4 SCHEDULE OF MEETINGS	37
ARTICLE 20 – NO STRIKE / NO LOCKOUT.....	37
20.1 NO STRIKE / NO LOCKOUT.....	37
ARTICLE 21 – MANAGEMENT RIGHTS AND RESPONSIBILITIES	37
21.1 MANAGEMENT RIGHTS AND RESPONSIBILITIES	37
21.2 INSURANCE.....	38
ARTICLE 22 – GENERAL PROVISIONS.....	38
22.1 SAVINGS CLAUSE.....	38
ARTICLE 23 – ENTIRE AGREEMENT.....	40
23.1 DURATION CLAUSE	40
23.2 ENTIRE AGREEMENT.....	40
Appendix “A”	41
Appendix “B”	63

**2012 – 2013 Agreement
By and Between
City of Kirkland
And
Kirkland Police Lieutenants Union
Public Safety Employees Union #519**

PREAMBLE

This agreement, made by and between the City of Kirkland, hereinafter referred to as the “Employer” and the Kirkland Police Lieutenants Union, PSEU #519 hereinafter referred to as the “Union.”

The purpose of the Employer and the Union in entering into this Agreement is to set forth their entire agreement with regard to wages, hours, and working conditions so as to promote uninterrupted public service, efficient operations, and harmonious relations, giving full recognition to the rights and responsibilities of the Employer and the Employees.

ARTICLE 1 – DEFINITIONS

As used herein, the following terms shall be defined as follows:

“Bargaining Unit” shall include all commissioned employees bearing the rank of Lieutenant within the City of Kirkland Police Department.

“Employee” shall mean regular and temporary, employees in the bargaining unit (as defined in Article 2, 3 and 5) covered by this agreement.

“Employer” shall mean the City of Kirkland, Washington.

“Health Care Provider’s Statement” shall mean a written statement from a professional health care provider certifying an illness or injury, the date an Employee is anticipated as able to return to full duty or a recommendation of temporary duty with reasonable accommodation, and the Employee’s ability to perform the required duties.

“Immediate family” shall be defined as persons related by blood, marriage, or legal adoption in the degree of relationship of grandparent, parent, wife, husband, brother, sister, child, grandchild, or domestic partner (as defined by Employer Policy), and other persons with the approval of the City Manager or designee.

ARTICLE 2 – RECOGNITION

2.1 RECOGNITION

The Employer recognizes the Union as the sole and exclusive bargaining representative for all regular or temporary commissioned employees bearing the rank of Lieutenant for the purpose of representation and collective bargaining with regard to matters pertaining to wages, hours, and conditions of employment.

2.2 NEW CLASSIFICATIONS

The Employer may create new positions or classifications; such may be designated as non-represented and excluded from the Bargaining Unit. The parties agree that the positions designated and approved by the Civil Service Commission to be within the non-represented pay plans shall be excluded from the bargaining unit.

If the Union disagrees with the non-represented designation for a new or reclassified position, the parties recognize the determination of whether the position is included within the bargaining unit may be reviewed by Public Employment Relations Commission (PERC) upon petition by the Union.

If new classifications are established by the Employer and appropriately added to the bargaining unit, if the duties of existing classifications are substantially changed, or if an employee is appointed to a position substantially different than the employee's classification, a proposed wage scale shall be assigned thereto, and the Employer shall forward the new or changed class and proposed wage to the Union for review. The contract will then be subject to reopening for the sole purpose of negotiating a wage for the class, and only if so requested by the Union. If the parties cannot agree to the pay range after negotiations and mediation, the matter shall be submitted to binding arbitration. The arbitrator shall establish a fair and equitable pay scale for the new or changed classification.

2.3 CONTRACT PROPOSALS

The Employer recognizes the Union's negotiation team as the exclusive contract negotiator. The Employer agrees to discuss contract proposals with the members of the Union's negotiation team only. The Union recognizes the City as the representative of the people of the City of Kirkland and agrees to negotiate only with the City through the negotiating agent or agents officially designated by the City Manager to act on its behalf.

The Union will notify the Human Resources Director and the Chief of Police in writing of their designated representatives.

ARTICLE 3 – UNION SECURITY

3.1 MEMBERSHIP

The Employer recognizes that Police Lieutenants may, become members of the Union. The Union accepts its responsibility to fairly represent all employees in the bargaining unit regardless of membership status.

All employees shall become members of the Union within thirty (30) days of their date of employment under this agreement or pay a service fee as provided below.

3.2 DUES DEDUCTION

The Employer, when authorized and directed by a member of the Union in writing upon an authorization form provided by the employer to do so, shall deduct Union dues from the wages of an employee.

An authorization for payroll deduction may be canceled upon written notice to the Employer and the Union before the 15th day of the month in which the cancellation is to become effective, subject to the provisions of this article.

Payroll Deduction – Upon written authorization from an employee within the bargaining unit, the Employer shall deduct from the wages of that employee the sum certified as assessments and monthly dues of the Union and shall forward such sum to the Union. Should any employee not have any monies due him, or the amount of such monies is not sufficient to satisfy the assessments, no deduction shall be made for that employee for that month.

The Union shall indemnify, defend, and hold the Employer harmless against claims made and against any suit instituted against the Employer on account of any check-off of dues for the Union. The Union shall refund to the employer any amounts paid to it in error on account of the check-off provision upon presentation of proper evidence thereof.

Any regular, non-probationary employee who is represented by the bargaining unit and elects to not join the Union within 30 days shall complete an authorization form and have deducted from their pay by the Employer, as a condition of employment, a monthly service fee in the amount of monthly dues to the Union. This service fee shall be segregated by the Union and used on a pro-rata basis solely to defray the cost for its services in negotiating and administering this agreement. A service fee deduction for an employee may be made only if the accrued earnings of the employee are sufficient to cover the service fee after all other authorized payroll deductions for the employee have been made. The Union shall assume the liability for all check-off matters beyond the Employer responsibility to make deductions in accordance with this Article.

An employee who objects to membership in the Union on the basis of religious tenets or teachings of a church or religious body of which such employee is a member shall inform the Employer and the Union of the objection. The employee shall establish with the

representatives of the Union an arrangement for contributing to a non-religious charity an amount of money equivalent to regular Union membership dues.

3.3 BARGAINING UNIT ROSTER

The Employer shall provide the Union with a roster of employees covered by this Agreement on a monthly basis.

The Union agrees to supply both the Chief and Human Resources with a current list of officers. The Employer will recognize the officers as soon as the list is received, in writing, by the Department and Human Resources.

3.4 NONDISCRIMINATION – UNION ACTIVITY

Neither party shall discriminate against any employee or applicant for employment because of membership in or non-membership in or activity on behalf of the Union.

ARTICLE 4 – UNION/EMPLOYER RELATIONS

4.1 UNION ACCESS

The Union's authorized staff representatives shall have access to the Employer's premises where employees covered by this Agreement are working for the purpose of investigating grievances and contract compliance, after notifying the Employer. Access for other purposes shall not be unreasonably denied by the Employer. Such visits shall not interfere with or disturb employees in the performance of their work during working hours.

4.2 FACILITY USE

Union meetings may be scheduled and held on City premises with the Chief's or Captain's permission, which shall not be unreasonably withheld.

4.3 STEWARDS

The Executive Board of the Union, or other designee, represents the members as stewards.

4.4 ORIENTATION

During the new employee orientation process, the Employer will notify the employee of the requirements of Article 3.1 and Union contact information.

4.5 BULLETIN BOARDS

The City shall permit the reasonable and lawful use of bulletin boards by the Union for the posting of notices relating to official Union business.

4.6 CONTRACT DISTRIBUTION

The Union will provide access to a copy of this Agreement to each new and current employee in the unit.

4.7 NEGOTIATIONS RELEASE TIME

The Employer shall endeavor to allow a minimum of two (2) members of the Union's negotiation committee to attend negotiation sessions during on-duty time, giving full consideration to operational needs. Such members shall be designated by the Union at least one (1) week in advance.

4.8 GRIEVANCE RELEASE TIME

Prior to any proposed investigation of a grievance requiring any substantial use of on-duty time, stewards or officers shall provide notice to the Chief or designee.

4.9 UNION BUSINESS

A Union official who is an employee in the bargaining unit (Union Executive Board and/or a member of the Negotiation committee) may, at the discretion of the Chief or his/her designee, be granted time off while conducting contract negotiations or grievance resolution, including arbitration proceedings, on behalf of the employees in the bargaining unit provided:

- They notify the Employer at least forty-eight (48) hours prior to the time off, unless such notice is not reasonably possible;
- The Employer is able to properly staff the employees' job duties during the time off;
- The wage cost to the Employer is no greater than the cost that would have been incurred had the Union Official not taken time off (i.e., no overtime expenditures)

ARTICLE 5 – EMPLOYMENT

5.1 PROBATIONARY PERIODS

The probationary period for new Lieutenants will be a total of twelve (12) months from the date of promotion.

5.2 TYPES OF EMPLOYMENT

The employment positions of this bargaining unit are covered by Civil Service regulations. Regular and temporary position appointments are described therein. The establishment and appointment to other types of employment would require agreement by the Employer, Union and Civil Service Commission.

5.3 CONTRACTORS

Not applicable to this unit.

5.4 STUDENTS/INTERNS/VOLUNTEERS

Student, volunteers and Internship programs may be created by the Employer provided such programs do not involve bargaining unit work. In the event the Employer seeks to have volunteers conduct bargaining unit work, it will provide notice to the Union and negotiate any such change.

ARTICLE 6 – HOURS OF WORK AND OVERTIME

6.1 WORKDAY/WORKWEEK

Hours of Work and Work Week: Recognizing that flexibility is required in the scheduling of assignments for command personnel, the normal work week shall be the equivalent of forty (40) hours per week on an annualized basis. Scheduling changes may be made by the Police Chief or Captain(s) when there is an operating need requiring a different schedule than that assigned to the employee. Schedules may also be adjusted by mutual agreement of the Employee and the Employer.

6.2 REST/MEAL BREAKS

For employees on eight (8) and ten (10) hour shifts, a workday shall include at least a thirty (30) minute lunch break.

6.3 COMPENSATORY TIME / MANAGEMENT LEAVE

It is recognized that employees may be required to spend additional time over and above their regular work week engaged in activities for the City. The parties agree that each member of the bargaining unit shall receive management leave each calendar year in the amount of forty (40) hours, which shall be pro-rated for new and separated members. Unused management leave will be cashed out once a year by the City, at the end of November. There shall be no carry-over of management leave hours from year to year. It is understood that this Agreement shall be interpreted and applied in a manner which will ensure, to the fullest extent possible, the continued exempt status of Lieutenants. The parties shall continue current practice concerning flex-time off for hours above and beyond this agreement.

ARTICLE 7 – EMPLOYMENT PRACTICES

7.1 NONDISCRIMINATION

The Union and the Employer agree to provide equal opportunity as to the provisions of this Agreement to all their members and employees. Neither the Employer nor the Union shall discriminate against any person on the basis of such person's race, sex, marital status, color, creed or religion, national origin, age, veteran status, sexual orientation or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification.

Wherever words denoting a specific gender are used in this Agreement, they are intended and shall be construed so as to apply equally to either gender.

7.2 JOB POSTING

When any position becomes vacant, the Employer will make every reasonable effort to fill it as soon as possible.

7.3 PROMOTIONS

The employment positions of this bargaining unit and respective promotional processes are covered by Civil Service regulations.

7.4 SPECIAL ASSIGNMENTS

Lieutenants shall manage an operational unit consistent with the Kirkland Police Organizational chart and/or giving full consideration to operational needs. Notwithstanding that assignment, other duties may be performed as described in the classification description for this position.

7.5 PERSONNEL FILES

The City Human Resources Division will retain the permanent personnel file. The Police Department shall maintain only one working personnel file for each employee.

Supervisory notes - This does not preclude a supervisor from maintaining notes regarding an employee's performance for purposes of formulating evaluation and performance appraisal or the department from maintaining separate computerized records relating to training, promotion, assignment, or similar data.

Information related to medical, psychological, background check information and grievance records shall be maintained in separate files.

Employees shall have access to their personnel file with reasonable frequency. Upon request, access shall be provided within a maximum of four (4) working days. Conditions of hiring, termination, change in status, shift, evaluations, commendations and disciplinary actions shall be in writing with a copy to the Employee prior to placement in their personnel file.

Upon receiving a request for all or part of a personnel file from any third party, the affected employee shall be notified of the request, and the information shall not be released for a period of three (3) business days from the time of said notification, except as part of an investigation being conducted by another law enforcement agency, the disclosure of which is necessary for effective law enforcement. Upon service of a court order or subpoena properly recorded and signed by a judge or magistrate demanding immediate release or as otherwise required by law, the employee shall be notified of the request and release will be made as required by law or as above. The City Attorney will advise the department in all matters pertaining to the release of information contained in a personnel file.

Employees shall have the right to provide a written response to any written evaluations or disciplinary actions to be included in the personnel file, which, together with the action, will be retained with the action in the personnel file.

Personnel Records Retention:

Records of disciplinary action may be retained in an employee's personnel file for a period of not more than five (5) years. After five years has elapsed, the employee may request in writing the removal of such records which shall be granted unless the employee's personnel record indicates a pattern of similar types of discipline, in which case, all such records may be retained until an additional period of two (2) years has elapsed, during which there has been no further disciplinary action for the same or similar behavior. After two (2) years has elapsed, the employee may request in writing removal of the record of disciplinary action.

Records retained in an employee's department personnel file longer than provided in this section shall not be admissible in any proceedings concerning disciplinary action, provided that the parties retain the right to introduce evidence regarding prior discipline of other employees for the purpose of establishing the consistency or non-consistency of discipline imposed in a case subject to a disciplinary appeal.

7.6 EVALUATIONS

The purpose of evaluation is to help an employee to be successful in performance and to understand the standards and goals of their position and their department. The evaluation will assess and focus on the employee's accomplishment of their job functions and the goals and standards of the position. Where the employee does not meet the above, a plan for correction, training or support should be developed with the employee.

Evaluation may occur in two forms:

7.6.1 All regular employees should be formally evaluated in writing by their immediate supervisor and/or department head or designee during the probationary or trial service period and at least annually (at date of hire or a common date) thereafter.

7.6.2 Additionally, evaluation of job performance may occur at any time and on an ongoing basis. Evaluation may occur in various ways and may include coaching, counseling or written assessment.

The evaluation process shall also include a review of the current job description.

Evaluation shall not, by itself, constitute disciplinary action – disciplinary action must be specifically identified as such, in writing, consistent with Article 7.8.

Employees will be given a copy of the evaluation. Employees will be required to sign the evaluation, acknowledging its receipt. Evaluations are not grievable, however, employees may elect to provide a written response to the evaluation, which will be retained with the evaluation in the employee's personnel file.

7.7 BILL OF RIGHTS

All employees within the bargaining unit shall be entitled to the protection of what shall hereafter be termed as the "Police Officers Bill of Rights." The wide-ranging powers and duties given to the department and its members involve them in all manner of contacts and relationships with the public. Of these contacts come many questions concerning the actions of members of the force. These questions often require an immediate investigation by superior officers designated by the Chief of Police. In an effort to ensure that these investigations are conducted in a manner, which is conducive to good order and discipline, the following guidelines are promulgated:

7.7.1 Employees shall be informed in writing, of the nature of the investigation, the right to request Union representation, and whether they are a witness or a subject, before any interview of the employee commences. In investigations other than criminal, this will include the name, address, and other information necessary to reasonably apprise them of the allegations of such complaint.

An employee who is identified as a subject, shall be advised in writing a minimum of forty-eight (48) hours prior to the time of the interview, if the interviewer either knows or reasonably should know that the questioning concerns a matter that could lead to criminal charges or misconduct that could be grounds for termination. Employees who are given a forty-eight (48) hour notification may waive that delay by signing a written waiver form, provided that the employee either has Union representation or waives the right to such representation in writing.

7.7.2 Any interview of an employee shall be at a reasonable hour, preferably when the employee is on duty unless the exigencies of the investigation dictate otherwise. Where practicable, interviews shall be scheduled for the daytime.

7.7.3 The interview, which shall not violate the employee's constitutional rights, shall take place at the Kirkland Police Station facility, except where impractical. The employee shall be afforded the opportunity and facilities to contact and consult privately with an attorney of the employee's own choosing and/or a representative of the Union. Said attorney and/or representative of the Union may be present during the interview but shall not participate in the interview except to counsel the employee, provided that the Union representative or attorney may participate to the extent permitted by law.

7.7.4 The questioning shall not be overly long, and the employee shall be entitled to such reasonable intermissions as they shall request for personal necessities, meals, telephone calls, and rest periods.

7.7.5 The employee shall not be subjected to any offensive language, nor shall he be threatened with dismissal, transfer, or other disciplinary punishment as a guise to attempt to obtain his resignation, nor shall they be intimidated in any

other manner. No promises or rewards shall be made as an inducement to answer questions.

7.7.6 It shall be unlawful for the City to require any employee covered by this agreement to take or be subjected to any polygraph or any polygraph type of examination as the condition of continued or continuous employment or to avoid any threatened disciplinary action.

7.7.7 At the employee's request, the interview shall be recorded on tape. One copy shall be provided to the Union representative or employee. There shall be no "off-the record" questions. Within three (3) calendar days of the completion of the investigation, and no later than three (3) calendar days prior to a pre-disciplinary hearing, the employee shall be advised of the results of the investigation and the recommended disposition and shall be furnished a complete copy of the investigation report, provided that the Employer is not required to release statements made by persons requesting confidentiality where the request was initiated by such persons and provided further that such confidential statements may not be relied upon to form the basis of discipline. All interviews shall be limited in scope to activities, circumstances, events, conduct or actions which pertain to the incident which is the subject of the investigation. Nothing in this section shall prohibit the Employer from questioning the employee about information which is developed during the course of the interview.

7.7.8 Use of Deadly Force Situations: When an employee, whether on or off duty, uses deadly force which results in the injury or death of a person, or discharges a firearm in which no injury occurs, the employee shall not be required to make a written or recorded statement for twenty-four (24) hours after the incident except that immediately following the incident the employee shall verbally report to a superior a brief summary of the incident and any information necessary to secure evidence, identify witnesses, or apprehend suspects. The affected employee may waive the requirement to wait twenty-four (24) hours. The department and the Union shall mutually agree on designated peer support counselors.

7.7.9 Medical or Psychological Examinations: When there is probable cause to believe that an employee is medically or psychologically unfit to perform his/her duties, the employer may require the employee to undergo a medical or psychological examination in accordance with current standards established by the Washington Association of Sheriffs and Police Chiefs, the International Association of Chiefs of Police, the Americans with Disabilities Act, and other applicable State or Federal laws. Consultations with the City's Employee Assistance Program are not considered medical or psychological examinations.

7.8 DISCIPLINE/CORRECTIVE ACTION

No employee shall, by reason of his employment, be deprived of any rights or freedoms, which are afforded to other citizens of the United States by the State and Federal Constitutions and Washington law.

No employee shall be compelled by the City to give self-incriminating information, either verbal or written, during any criminal investigation when such investigation involves allegations against the employee nor in any internal investigation which could lead to a criminal charge against the employee. Any refusal by an employee to give self-incriminating information under these conditions will not result in the employee's termination, suspension, reprimand, transfer, or any other form of disciplinary action by the City.

The Employer agrees to act in good faith in the discipline, dismissal or demotion of any regular employee and any such discipline, dismissal or demotion shall be made only for just cause.

The parties recognize that just cause requires progressive discipline. Progressive discipline may include:

- oral reprimands, which will be documented;
- written reprimands;
- disciplinary transfer;
- suspension with or without pay;
- demotion; or
- discharge.

The intent of progressive discipline is to assist the employee with performance improvement or to correct misconduct. Progressive discipline shall not apply where the offense requires more serious discipline in the first instance. Both the sequencing and the steps of progressive discipline are determined on a case-by-case basis, given the nature of the problem.

All disciplinary actions shall be clearly identified as such in writing. The employee will be requested to sign the disciplinary action. The employee's signature thereon shall not be construed as admission of guilt or concurrence with the discipline. Employees shall have the right to provide a written response to any written disciplinary action to be included in the personnel file, which, together with the action, will be retained in the personnel file, for so long as the disciplinary action is retained.

A copy of all disciplinary notices shall be provided to the employee before such material is placed in their personnel file. Employees disciplined or discharged shall be entitled to utilize the grievance procedure. If, as a result of the grievance procedure utilization, just cause is not shown, personnel records shall be cleared of reference to the incident, which gave rise to the grievance.

The Employer will notify the Union in writing within three (3) working days after any notice of discharge. The failure to provide such notice shall not affect such discharge but will extend the period within which the affected employee may file a grievance.

The Employer recognizes the right of an employee who reasonably believes that an investigatory interview with a supervisor may result in discipline to request the presence of a Union representative at such an interview. Upon request, the employee shall be afforded a Union representative. The Employer will delay the interview for a reasonable period of time in order to allow a Union representative an opportunity to attend. If a Union representative is not available or delay is not reasonable, the employee may request the presence of a bargaining unit witness. (Weingarten rights)

Employees shall also have a right to a notice and a determination meeting prior to any disciplinary action (except oral reprimands). The Employer must provide a notice and statement in writing to the employee identifying the performance violations or misconduct alleged, a copy of the investigative file as per Article 7.7.7, and a finding of fact and the reasons for the proposed action. The employee shall be given an opportunity to respond to the charges in a meeting with the Employer, and shall have the right to Union representation during that meeting, upon request. (Loudermill rights)

The Employer shall endeavor to correct employee errors or misjudgments in private, with appropriate Union representation if requested by the employee.

Discipline shall be subject to the grievance procedure in this Agreement as to whether or not such action as to any post-probationary employee was for just cause.

ARTICLE 8 – SENIORITY

8.1 DEFINITIONS

Seniority shall be established upon appointment to a regular full-time budgeted position within the bargaining unit.

Bargaining Unit Seniority: the total length of continuous calendar-based service with the Employer and in the bargaining unit.

Employer Seniority: the total length of continuous calendar-based service with the Employer.

Classification Seniority: the total length of continuous calendar-based service within a position and employment type represented by the bargaining unit. Classification seniority shall include all time at a higher ranked classification, for which the employee does not have continuing job rights.

Consistent with Article 14.5, the Employer shall adjust the employee's anniversary date to reflect any period of unpaid leave of thirty (30) continuous days or more. Seniority

shall continue to accrue and the employee's anniversary date shall not be adjusted for periods of legally protected leave, such as FMLA, L&I or military leave adjusted for periods of up to six (6) months (or as otherwise required by USERRA).

8.2 APPLICATION OF SENIORITY

In the event of reassignment, transfer, layoff, or recall, seniority shall be the determining factor where employees are equally qualified to do the job.

Seniority shall be applied in the following manner:

8.2.1 Postings / promotions

In regard to job postings, promotion and reassignment, "qualifications" and/or "ability" will be the primary consideration, with seniority determinative where employees are equally qualified. Qualifications will include the minimum qualifications of education, training and experience as set forth in the job description, as well as the job performance, ability, employment record and contribution to the needs of the department.

When a position becomes vacant, the Employer will make a reasonable effort to fill it.

8.2.2 Layoffs

Total classification seniority shall determine who is to be laid off within the selected classification (affected group). The least senior regular employee(s) within the classification shall be the affected employee(s). In the event of two employees having the same classification seniority, bargaining unit seniority shall be determinative. In the event of two employees having the same bargaining unit seniority, Department seniority shall be determinative.

8.2.3 Bumping

An employee shall be allowed to bump less senior employees (by Department seniority) within the department in lower classifications, in accordance with Article 8.13.2, provided that the employee is "competent" and has the ability to adequately perform the essential functions of the job assignment.

8.2.4 Recall

Seniority shall be determinative in the identification of which employee is to be recalled, when there is more than one on the recall list who is qualified and/or have previously performed a position.

8.3 PROBATIONARY PERIOD

The probationary period for new Lieutenants will be a total of twelve (12) months from the date of promotion, per Article 5.1.

8.4 LOSS OF SENIORITY

An employee will lose seniority rights by and/or upon:

8.4.1 Resignation.

8.4.2 Discharge.

8.4.3 Retirement.

8.4.4 Layoff / Recall list of more than fourteen (14) consecutive months, consistent with Article 8.15.

8.4.5 Medical Reinstatement / Recall list of more than twenty-four (24) consecutive months, consistent with Article 8.15.

8.4.6 Failure to respond to an offer of recall to former or comparable employment.

Employees who are re-employed following the loss of their seniority, shall be deemed a newly-hired employee for all purposes under this Agreement, except if an employee is recalled consistent with Article 8.15 and the time-lines therein, they shall regain the seniority that they had as of their last date of employment.

8.5 LAYOFFS

A layoff is identified as the anticipated and on-going or prolonged reduction in the number of full-time equivalent (FTE) positions within the department or within a job classification covered by this Agreement. A reduction in force in classification may occur for reasons of lack of funds, lack of work, efficiency or reorganization. Reductions in force are identified by classification within the department.

8.6 NOTICE

The Union shall be notified of all proposed layoffs and of positions to which laid off employees may be eligible to bump through the attachment of a current seniority list.

Employees affected / being laid off shall be given written notice of such layoff thirty (30) calendar days prior to the layoff if possible. In no event shall written notice of layoff be less than fourteen (14) calendar days. If the Employer does not provide fourteen (14) calendar days written notice, the employer shall compensate the employee at his or her normal rate of pay for the time between the last day of work and fourteen (14) calendar from the date the employee receives the notice of layoff, in addition to any other compensation due the employee.

The employee shall inform the Employer within five (5) working days of the receipt of the notice of layoff of their intention to exercise bumping rights. When all bumping rights have been acted upon, or when someone has chosen not to act on their bumping right, the employee least senior or the employee choosing not to bump shall be the person

laid off. Only one thirty (30) day notice of layoff is required, irrespective of the number of bumps.

An employee desiring to exercise bumping rights must do so by delivering written notice to the Employer within five (5) working days of receipt of notice of layoff. The written notice must state the proposed position to be bumped.

8.7 MEETING WITH UNION

The Union shall also be notified in writing of any reduction in hours proposed by the Employer, including the purpose, scope, and duration of the proposed reduction.

Upon the Union's request, the Employer and the Union shall meet promptly during the first two (2) weeks of the notice period identified in Article 8.6 to discuss the reasons and the time-lines for the layoff and to review any suggestions concerning possible alternatives to layoff. Union concerns shall be considered by the Employer prior to implementation of any reduction in hours. This procedure shall not preclude the Employer from providing notice to employees or requesting volunteers to take leaves of absence without pay, provided the Employer notifies the Union of the proposed request.

8.8 AFFECTED GROUP

The following procedure shall apply to any layoff:

8.8.1 Affected employees

The Employer shall first determine by job classification the number of employees or FTEs to be affected by the layoff. The employee(s) holding such FTEs, which are subject to layoff, shall be the "affected employee(s)."

The least senior employee within the affected job classification shall be selected for layoff, consistent with Article 8.2.2.

In cases where seniority within a job classification is equal, bargaining unit seniority will be the determining factor. In the event this is also equal, Employer seniority will control. If all of the seniorities are equal, then Management shall make the final decision based on performance and job skills.

8.8.2 Volunteers

Simultaneous with implementing the provisions of the layoff procedure, the Employer may first seek, by a five (5) working day posting process, volunteers for layoff or voluntary resignation from among those employees who work within the same job classification as the affected employees. If there are more volunteers than affected employees, volunteers will be chosen by bargaining unit seniority. Employees who volunteer for layoff may opt for recall rights as described in this article at the time of layoff.

If there are no or insufficient volunteers within the affected job classification, the remaining affected employees who have received notice must choose promptly

(within five (5) full working days of receipt of the Notice) among the layoff options set forth in Article 8.13.

8.8.3 Probationary Employees

If the number of volunteers is not sufficient to meet the announced number of necessary layoffs, and if the affected employee is an initial probationary employee, then that employee shall be laid off and is ineligible to select among layoff options.

8.9 VACANT POSITIONS

Positions will be filled in accordance with Article 8.2 and other sections of this Article.

Within the bargaining unit and the department, affected employees and employees on the recall list shall be given first opportunity for vacant bargaining unit comparable positions prior to outside hiring by the Employer, consistent with Article 8.13.1.

8.10 SENIORITY LIST

The Employer shall update the seniority list and provide it to the Union monthly, consistent with Article 3.3. If a layoff is announced, a current ranked seniority list including job classifications, names, job locations, and FTE or hours per week shall be provided to the Union and posted in the affected department.

8.11 ORDER OF LAYOFF

The least senior employee (by classification seniority) within the affected job classification shall be selected for layoff. No regular employee shall be laid off while another employee in the same classification within the department is employed on a probationary basis.

8.12 COMPARABLE EMPLOYMENT

For purposes of this Article, “comparable employment,” “comparable position” or vacancy shall be defined to include a position which has the same salary pay range and the educational and experience qualifications.

8.13 LAYOFF OPTIONS

Affected employees who have completed their probationary period shall have the following options:

8.13.1 Assume a Vacant Position

On a bargaining unit seniority basis, to assume a vacant position of equal or lesser rank.

8.13.2 Bump

Consistent with Article 8.2.3, laid off employees, including bumped employees, shall be allowed to bump less senior employees (by bargaining unit seniority) within the department in lower classifications.

An employee who has bumped shall move to the highest step of the new range that does not exceed their current salary.

If there is no employee in the next lower classification who is less senior than the person scheduled for layoff, that person may look progressively to the next lower classification for such bumping rights.

The employee who is bumped by the affected employee shall have the same rights under this Article.

8.13.3 Recall

If the affected employee elects not to take a vacant position or elects not to bump, then that employee will be placed on the recall list and will be eligible for recall under Article 8.15.

Nothing contained in this layoff section shall be construed as requiring the Employer to modify its position and classification structure in order to accommodate bumping or other re-employment rights.

Employees bumping to another position shall retain their old anniversary date for purposes of step increases. Persons recalled to the same salary range shall be placed in their former step and time in step.

8.14 REDUCTION HOURS/FTE

An employee will not be subject to an involuntary reduction in their FTE (i.e. less than full-time) absent notice and negotiation of the matter with the Union. If the reduction results in hours less than their budgeted FTE, it will be considered a layoff and the affected employee shall have either the right to bump or go onto the recall list.

8.15 RECALL

Any reference to recall rights and recall lists pertains to both those employees who are laid off or on medical reinstatement, as below:

An employee who has been laid off shall be entitled to recall rights for a period of fourteen (14) months from the effective date of their layoff.

An employee who is placed on the medical reinstatement list shall be entitled to recall rights for a period of twenty-four (24) months from the employee's last date of employment. Recall under this provision requires that the individual has been certified as fit for duty or fit for duty with reasonable accommodation by a medical health care provider statement. The department may, at its own expense, request a second opinion by another health care provider(s) or panel. Should the employee be certified as fit for duty, that employee shall then be considered as laid-off and the provisions of Article 8.17 shall apply. Should that certification occur during the last six (6) months of the twenty-four (24) month period, that employee shall be entitled to recall for a period of six (6) months from the date of that certification.

Employees recalled after the initial fourteen (14) month period shall be subject to the background check process.

If a vacancy occurs in a position, employees on the recall list shall be notified of such vacancies at the employee's address on file with the Human Resources Department. The vacancy will be filled, in accordance with seniority, among current employees and those on the recall list. If employees on the recall list elect not to accept an offer to return to work in the former or a comparable position or fail to respond within seven (7) consecutive days of the offer of recall, they shall be considered to have terminated or abandoned their right to re-employment and relinquished all recall rights. If employees on the recall list elect not to accept an offer of a non-comparable position, they may retain their recall rights for the balance of their recall period.

As long as any employee remains on the recall list, the Employer shall not newly employ by hiring persons into the affected bargaining unit classification(s), within their department, until all qualified employees holding recall rights to that affected classification have been offered recall.

8.16 VACATION & LEAVE CASH OUTS/PAY

Upon separation of employment, an Employee shall be paid for all unused, earned vacation leave, holiday leave and compensatory time, to the extent of established maximums. Sick leave balances at the date of layoff shall be restored upon re-employment with the Employer from the recall list. No sick leave shall accrue during the period of time on the recall list / layoff.

8.17 UNEMPLOYMENT CLAIMS

If laid off employees apply for unemployment compensation benefits, the Employer will not contest the claim and will confirm that the employee was laid off.

ARTICLE 9 – WAGES

9.1 WAGE SCHEDULE

The monthly rate of pay (base wage) is reflected in the following salary schedule chart.

PSEU

Salary Schedule: January 1, 2012 (2.5% Wage Adjustment)

Police Lieutenant	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
Monthly	7,397	7,636	7,875	8,113	8,352	8,591	8,829	9,068	9,306	9,545

9.1.1 Wage Adjustments

9.1.1.a Effective January 01, 2012, the monthly rate of pay shall be increased by two and one half percent (2.5%) through December 31st, 2012.

9.1.1.b Effective January 01, 2013, the monthly rate of pay shall be increased by two percent (2.0%) through December 31st, 2013.

An accreditation premium of 1% shall be applied to the monthly basic wage rate for the duration of the contract.

9.2 HIRE-IN RATES

Due to the unique prerequisite requirements in promotion to the rank of Lieutenant, a successful candidate will start off at Step 9. At the Chief's discretion, they may advance to Step 10 at a point no later than the completion of the probationary period.

9.3 SPECIALTY PAY

Not applicable to this unit.

9.4 LONGEVITY

Employees shall receive, in addition to their monthly base wage, the following longevity incentive pay based upon their years of service for the Kirkland Police Department:

<u>Years of Service</u>	<u>Monthly Premium</u>
5-10 years	1.5%
11-15 years	3%
16-19 years	5%
20- 24 years	7%
25 years or more	8%

9.5 OUT-OF-CLASS PAY

Assignment to "acting" Chief or "acting" Captain will be made at the sole discretion of the Police Chief. Any work performed out of classification for longer than 30 days will be paid at the higher classification pay rate during the period of assignment, once all prerequisites have been met per the City Administrative Policy 4-33.

9.6 EDUCATION INCENTIVE

Employees with a BA/BS degree and higher from an accredited institution will be eligible for an educational/performance incentive, as set forth below:

Education / Performance Premium

BA/BS Degree	2.5%
Graduate Degree	3.5%

It is the employee's responsibility to have their diploma or transcripts provided from an accredited institution to the department time-keeper in order to be eligible for the Incentive. The Education Incentive shall be added to the monthly rate of pay of the

employee's current classification and paid in the same manner, but on alternate pay periods, as the Longevity pay described in Article 9.4.

A "Command School" premium of 3.0% shall be applied to the monthly basic wage rate. The premium will be awarded for each employee upon completion of a command level certification program which is approved by the Chief.

9.7 PHYSICAL FITNESS INCENTIVE

Employees shall be eligible for physical fitness incentives as provided in Appendix B.

9.8 SHIFT DIFFERENTIAL

Not applicable to this unit.

ARTICLE 10 – OTHER COMPENSATION

10.1 STANDBY PAY

Not applicable to this unit.

10.2 CALL-BACK PAY

All employees will respond to call-outs unless extenuating circumstances such as illness or other incapacitation prevent the employee from responding.

10.3 TAKE HOME VEHICLE/MILEAGE REIMBURSEMENT

An essential function of a Lieutenant is to respond to emergencies on a 24/7 basis to critical incidents and assume command as necessary. In order to facilitate this essential function, the Employer agrees to provide each Lieutenant a take home City vehicle. Collisions resulting from the authorized use of a City vehicle by a Lieutenant while responding to an official call of duty will be considered "on duty" for the purposes of L&I and state collision reports.

Lieutenants are allowed use of their take home vehicle during their days off to facilitate a quick response as needed. Unless specifically authorized by the Chief, or if being used on official business, take home vehicles are not allowed outside a thirty (30) mile radius from the City.

Lieutenants may use their take home vehicles to pick up family members while on the way to or from work as long as the stops do not deviate significantly from the normal route or distance to and from work or take them outside of a thirty (30) mile radius.

Lieutenants attending work related training, conferences, ceremonies, memorials, or other work related travel are allowed to have family members accompany them in their take home vehicles.

Examples of prohibited use of a take home vehicle include:

- a. Family outings;
- b. Loans to immediate family, friends, relatives, or any other non-Departmental person;
- c. Any form of illegal activity;
- d. Political campaigns, including use of the vehicle in parades or any other form of political sponsorship of a candidate.
- e. Personal use, as defined by the federal tax code.

Care, maintenance, insurance, and fuel for take home vehicles will be the responsibility of the Employer.

All bargaining unit employees who are required to use their own vehicles for Employer business shall be reimbursed at the mileage rate set by the current policy for all miles driven on such business.

10.4 CLOTHING AND EQUIPMENT

The Employer shall provide necessary uniforms and equipment. Lieutenants are required to perform both uniform and non-uniform work. Lieutenants shall be provided an annual allowance for clothing of not less than three hundred dollars (\$300) every six months. The clothing allowance shall be reflected as taxable income.

The Employer shall provide for the cleaning of uniforms and non-uniform work wear for Lieutenants. The provisions for the cleaning of street clothing and/or clothing excluding uniforms, shall be taxable to the employee in accordance with IRS rules.

In addition, the Employer agrees to replace or repair equipment or clothing belonging to the employee, which is damaged in the line of duty. Equipment or clothing shall be construed to mean items owned by the employee, which are required to perform their duties. To be considered for repair or replacement, equipment or clothing damaged in the line of duty must be submitted to the employee's supervisor no later than the end of the Employee's next regular duty day, along with a written report and documentation to support the cost of the damaged item.

No Lieutenant shall be required to work without a firearm unless mutually agreed to the contrary.

ARTICLE 11 – HOLIDAYS

11.1 HOLIDAYS

Lieutenants shall receive the following holidays:

New Year's Day	January 1
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May

Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
½ Day Christmas Eve	Last working day before December 2
Day after Thanksgiving	Fourth Friday in November
Christmas Day	December 25
½ Day New Year's Eve	Last working day before January 1
One Floating Holiday	At employee's choice
Community Service Day	At employee's choice

11.2 HOLIDAY ELIGIBILITY

An employee must be employed for six (6) consecutive months in order to be eligible for their floating holiday. In selecting the Floating Holiday, the employee's choice will be granted, provided that prior approval is given by the immediate supervisor or the Division Commander. The Floating Holiday must be taken during the calendar year, or entitlement to the day will be forfeited.

Utilization of the Community Service Day shall be for purposes of participation and volunteering for legitimate non-profit organizations, community service organizations or public agencies. Authorization and scheduling shall be in accordance with the same procedures as a Floating Holiday.

11.3 HOLIDAY OBSERVANCE

Employees will observe the Holiday on the day the City observes the respective Holiday.

11.4 HOLIDAY ON DAY OFF

An employee who does not work on a holiday which occurs on a scheduled day off, or is unable to utilize holiday hours due to the necessity of having to work on a holiday, shall receive the holiday leave time in their leave bank. Such holiday hours / leave banks may be carried over to the following calendar year, not to exceed one hundred twenty (120) hours.

11.5 HOLIDAY COMPENSATION

Lieutenants who are assigned by a superior ranking officer to work on a holiday shall be eligible for compensatory time-off at one and one-half (1 ½) times the employee's hourly rate for the number of hours actually worked on the specified holiday. The Holiday leave will be replaced in the Employee's bank.

ARTICLE 12 – VACATION

12.1 VACATION ACCRUAL

Each regular full-time employee shall accrue vacation leave at the rate of one-half (1/12) of annual vacation per month of service, based on the following schedule:

<u>Years of Employment</u>	<u>Annual Vacation (Working Hours)</u>
1st year of employment	104 hours
2 – 3 – 4 years	104 hours
5 – 6 – 7 years	128 hours
8 – 9 – 10 years	136 hours
11 – 12 – 13 years	144 hours
14 – 15 – 16 years	160 hours
17 – 18 – 19 years	176 hours
20th year and beyond	192 hours

Vacation leave cannot be accrued during any leave without pay, but such leave shall not be considered an interruption of consecutive years of employment for the purpose of determining entitlement to additional vacation days under the foregoing schedule.

Vacation leave shall not be accumulated in excess of two hundred eighty-eight (288) hours within a calendar year without the express prior written authorization of the City Manager or his/her or her designee. No more than two hundred eighty-eight (288) hours may be carried over from one calendar year to the next except as provided in Section 11.4.

Requests to the City Manager or designee for exceptions shall be for a specific number of hours to be used for a specific purpose and to be taken by a specific date. Accrued unused vacation leave shall not, under any circumstance, exceed three hundred twenty (320) hours.

Employees are encouraged to utilize Vacation for appropriate time off and manage vacation requests throughout the year. Any vacation leave accrued in excess of the maximums shall be forfeited and shall not form the basis for any additional compensation. Upon termination of employment for any reason, no payment for vacation accumulation shall exceed two hundred forty (240) hours.

Earned vacation leave may be taken at any time during a period of illness after expiration of sick leave. Taking leave without pay in any month shall result in pro-ration of vacation accruals for that month, calculated upon actual hours worked as a percentage of the total hours of the pay period.

Vacations will be scheduled with review and approval by the Chief or Captain at a time that will cause minimum interference with the operations of the City and Department.

12.2 VACATION UPON TERMINATION

Upon separation of employment, an Employee shall be paid for all unused, earned vacation leave up to established maximums. As an option, the Union may annually elect to have the vacation leave cash-out contributed on behalf of the employee to the Retiree Medical Account as set forth in Article 13.2.

In no case will an employee be paid for accrued vacation upon separation if he/she has been employed by the City for less than twelve (12) consecutive months.

ARTICLE 13 – SICK LEAVE

13.1 SICK LEAVE ACCRUAL

After completion of the one-year probationary period, new employee's sick leave with pay shall accrue at the rate of eight (8) hours of leave for each full calendar month of the employee's service, and any such leave accrued in any year shall be accumulative for succeeding years to a maximum of 960 hours.

13.2 SICK LEAVE USAGE

Sick leave shall be available to employees after they have worked for a minimum of thirty (30) consecutive calendar days after the most recent date of hire.

Consistent with the confidentiality provisions of the Americans with Disabilities Act, and upon good cause, a doctor's report may be required for such leaves of three (3) shifts or more and may be required for shorter periods.

Contributions on behalf of each eligible employee shall be based on sick leave cash-outs upon retirement. Eligibility is limited to employees who retire from service with leave cash-out rights during the term of the collective bargaining agreement. Employer contributions shall include the cash-out value of the employee's sick leave balance as described below.

Conversion of Accrued Sick Leave cash out to Retiree Medical Account: Upon normal or disability retirement from the City, the employer shall make contributions into an Employee Benefit Trust, to be established, in an amount equal to fifty percent (50%) of the cash value of employee's accrued sick leave balance at the time of retirement (accrued sick leave hours x regular rate of pay x fifty percent (50%) and shall not exceed Ten Thousand and Five Hundred Dollars (\$10,500). The trust fund will be established in accordance with applicable federal and state laws, and the City shall contribute the monies on a pre-tax basis. The monies contributed to the trust fund shall only be used for retiree insurance premiums or health service expenses. The City will also contribute \$75.00 per month to each individual member's Retiree Medical Account.

Contributions on behalf of each eligible employee may also be based upon vacation leave cash-outs upon retirement. Eligibility is limited to employees who retire from service with leave cash-out rights. The Union shall inform the Employer no later than November 1st of each year if vacation leave cash-outs are to be contributed on behalf of the employee to the Retiree Medical Account, or will be included as a cash-out on their final paycheck from the Employer. The Union election is binding for all employees within the bargaining unit who retire during that calendar year.

For the purpose of this Article, retirement shall be defined as either normal service retirement or voluntary termination in good standing after twenty (20) years of continuous service with the Kirkland Police Department.

13.3 SHARED LEAVE

The Employer may permit an employee to receive vacation consistent with the current Shared Leave policy.

13.4 COORDINATION – WORKERS’ COMPENSATION

Workers’ Compensation Supplement (LEOFF II). The City will provide a disability leave supplement for LEOFF II employees injured in the line of duty when such injury is directly related to the inherent dangers associated with employment in law enforcement. The supplement shall go into effect when an employee becomes eligible for State workers’ compensation benefits and shall equal the difference between the State workers’ compensation monthly payment and the employee's base monthly salary. This pay supplement shall continue as long as the employee is off work and receiving workers’ compensation benefits.

In no event, shall the combination of Workers’ Compensation, long term disability benefit, and this Workers’ Compensation supplement exceed one hundred percent (100%) of the employee's regular salary.

While the Workers’ Comp Supplement is governed by rules established and administered by DRS, employees are advised of the following current DRS practices, which are subject to change by DRS:

During the first 48 hours of disability leave, the wages are reported as L & I sixty percent (60%) and Sick Leave forty percent (40%). The remainder of the disability time is reported as L & I (60%), Sick Leave twenty percent (20%) and Supplementary Disability twenty percent (20%) as per RCW 41.04.510.

Time-loss payment from L & I are not subject to federal income or Social Security taxes. The Department of Retirement Systems considers eighty percent 80% (L & I payment and supplemental disability) of your time not reportable hours for service credits. Employees have the option to request the reestablishment of these service credits by submitting a written request to DRS.

13.5 FAMILY MEMBER

Sick leave may be utilized as above for illness in the immediate family requiring the employee’s attendance.

Immediate family shall be defined as persons related by blood, marriage, or legal adoption in the degree of relationship of grandparent, parent, wife, husband, brother, sister, child, grandchild, or domestic partner (as defined by Employer Policy), and other persons with the approval of the City Manager or designee.

ARTICLE 14 – LEAVES OF ABSENCE

14.1 IN GENERAL

Leave of absence requests shall not be unreasonably denied. All leaves are to be requested in writing as far in advance as possible.

Leave of Absence shall be governed by existing City policies.

As appropriate for the type of leave requested, paid leave accruals will be utilized prior to unpaid leave, unless otherwise provided for in this Agreement.

Leave does not accrue nor may it be used until the first day of the pay period in which it is earned (no “negative” leave use during the period in which it is earned).

14.2 JURY DUTY/COURT

An employee who is required to serve on Jury duty shall be authorized leave with pay. Any amount received from the court for such service shall be re-paid to the employer.

14.3 MILITARY LEAVE

All regular employees shall be allowed military leave as required by RCW 38.40.060 and as interpreted by the Court. This provides for twenty-one (21) working days of military leave per year (October 1 through September 30).

14.4 BEREAVEMENT

Employees shall be entitled to five (5) days Bereavement Leave without loss of compensation upon the death of a member of the Employee’s immediate family. For the purposes of this contract, immediate family shall be defined as stipulated in Article 13.5. Additional time off as may be required for travel or other circumstances may be granted if approved in advance by the employer. Such additional time shall be deducted from an accrued leave of the employee’s choice.

14.5 MAINTENANCE OF SENIORITY

The Employer shall adjust the employee’s anniversary date to reflect any period of unpaid leave of thirty (30) continuous days or more. Seniority shall continue to accrue and the employee’s anniversary date shall not be adjusted for periods of legally protected leave, such as FMLA or military leave.

14.6 LEAVE WITHOUT PAY

Unpaid Leave of Absence shall be governed by existing City policies.

14.7 FAMILY LEAVE FMLA

Family Medical leave will be allowed consistent with State and Federal law and with existing City policies.

Under the terms of the Family and Medical Leave Act of 1993 (FMLA) and the state law, upon the completion of one (1) year of employment, any employee who has worked at

least one thousand two hundred and fifty (1250) hours during the prior twelve (12) months shall be entitled to up to twelve (12) weeks of leave per rolling year for the birth, adoption or placement of a foster child; to care for a spouse or immediate family member with a serious health condition; or when the employee is unable to work due to a serious health condition. For purposes of this Article, the definition of “immediate family” will be found in Article 13.5.

The Employer shall maintain the employee’s health benefits during this leave. If the employee fails to return from leave for any reason other than the medical condition initially qualifying for the FMLA absence, the Employer may recover from the employee the insurance premiums paid during any period of unpaid leave.

If a leave qualifies under both federal and state law, the leave shall run concurrently. Ordinarily, the employee must provide thirty (30) days written advance notice to the Employer when the leave is foreseeable. The employee should report qualifying events as soon as known and practicable.

The combination of FMLA and other types of leave(s) is not precluded and, in fact, leave utilizations are to be concurrent, with the intent that appropriate paid accruals are to be utilized first, consistent with other Articles of this Agreement. The Employee may elect to retain up to forty (40) hours of sick leave and up to forty (40) hours of vacation (prorated by their FTE) for use upon return to work, consistent with the process identified in the personnel policy. Upon the employee’s election, any accrued comp time may be utilized prior to any period of unpaid leave.

14.8 MATERNITY LEAVE

Consistent with WAC 162-30-020, the Employer will grant a leave of absence for a period of temporary disability because of pregnancy or childbirth. This may be in addition to the leave entitlements of FMLA. This leave provides female employees with the right to a leave of absence equivalent to the disability phase of pregnancy and childbirth. There is no eligibility requirement, however the Employer has no obligation to pay for health insurance benefits while on this leave (unless utilized concurrent with FMLA).

Leave for temporary disability due to pregnancy or childbirth will be medically verifiable. There is no limit to the length of the disability phase, except for the right for medical verification and the right of second opinion at the employer’s expense. At the end of the disability leave, the employee is entitled to return to the same job or a similar job of at least the same pay. Employees must use their accrued vacation and sick leave, if any, during the leave period and, at their election, any accrued comp time, consistent with the retention provision as provided in Article 14.7. Once this paid leave is exhausted, the employee’s leave may be switched over to unpaid leave.

14.9 INCLEMENT WEATHER

Employee rights and responsibilities during severe weather and emergency or disaster conditions are covered by the current Inclement Weather Policy of the Employer. The

goal shall be to continue to provide essential Employer services, consistent with public and employee safety and emergency operations priorities. Law enforcement is critical to these essential services and the expectation is that employees will report to duty as scheduled.

ARTICLE 15 – HEALTH & WELFARE

15.1 MAINTENANCE OF BENEFITS

Medical Insurance - The Employer shall self-insure medical benefits. The Employer will offer the Prime Medical plan and shall make every effort to maintain substantially equivalent benefits.

PSEU shall take part in and have an appointed representative on the Health and Welfare Benefits Committee. The purpose of the Committee is to monitor and evaluate the benefits costs and the plan designs. Among the items to be considered would be identification of options for retiree medical participation.

The Benefits Committee representative shall have no authority to negotiate on behalf of PSEU any changes to be scheduled or content of benefit plans. The Employer shall continue with collective bargaining obligations with PSEU, as currently exist under law for any such changes.

Participation in benefits shall be consistent with Article 15.2 of this Agreement and as established January 1, 2011.

15.2 HEALTH AND LIFE INSURANCE

Medical Insurance - The Employer shall pay each month one hundred percent (100%) of the premium necessary for the purchase of Employee coverage and one hundred percent (100%) of the premium necessary for the purchase of dependent coverage under the City of Kirkland Prime Plan, Group Health Plan, or their equivalent for each Employee of the bargaining unit.

Dental and Vision - The Employer shall pay each month one hundred percent (100%) of the premium necessary for the purchase of Employee coverage and one hundred percent (100%) of the premium necessary for the purchase of dependent coverage under Washington Dental Services, Willamette Dental, and Vision Service Plan or their equivalent.

The Employer shall pay each month one hundred percent (100%) of the premium necessary for the purchase of Employee term life insurance coverage that has a policy value of two (2) times the annual base rate of pay of the Employee, up to a guaranteed issue amount of two hundred and fifty thousand (\$250,000). The Employee is responsible for any taxes associated with this benefit.

In the event an Employee is killed in the course of his/her official duty, the City agrees to continue to provide existing medical and dental coverage to the surviving dependents for a period of one (1) year or until re-marriage of the surviving spouse occurs, whichever occurs first.

15.3 FLEXIBLE SPENDING ACCOUNT – FSA

The Employer makes no assurance of ongoing participation and assumes no liability for claims or benefits.

The employer shall make a contribution in the amount of three hundred dollars (\$300) for health care expenses for any qualifying employee electing to participate. For purpose of encouraging employee health and early identification of health issues and opportunities, upon presentation of an affirmation by the employee of an annual physical by a health care provider to the department time-keeper by November 1st of the year, the employee's FSA account shall be funded for the following year in the amount of three hundred dollars (\$300).

Additional contributions to the flexible spending account can be made by the employee as a payroll deduction subject to the rules and limitations contained within the Internal Revenue Code.

15.4 RETIREMENT

Pensions for employees and contributions to pension funds will be governed by the Washington State Statutes in relation thereto in existence at the time.

ARTICLE 16 – TRAINING

16.1 TRAINING

Compensation associated with training or representation of the Employer on official business shall be consistent with the current policy and the Fair Labor Standards Act (FLSA) and WAC 296-128-500. Reimbursement of associated costs shall be consistent with City Policy.

ARTICLE 17 – LABOR/MANAGEMENT COMMITTEES

17.1 PURPOSE AND COMPOSITION OF COMMITTEES

The Executive Employee Relations Committee shall meet as needed at the request of either party, provided that five (5) working days notice of the meeting is given to discuss and resolve issues of continuing importance to the Union and/or Employer.

17.2 COMPENSATION

All meeting time spent by members of the joint Labor-Management Committee will be considered time worked if during duty hours and will be paid at the appropriate regular rate of pay.

ARTICLE 18 – HEALTH & SAFETY

18.1 SAFE WORKPLACE

The Employer is responsible for maintaining a safe and healthful workplace. The Employer shall comply with all federal, state, and local laws applicable to the safety and health of its employees.

Recognizing that danger is an inherent aspect of law enforcement work, Employees who have a reasonable basis for believing the assignment would constitute a danger to their health and safety, should report the concern. The employee shall immediately contact a supervisor who shall make a final determination with regard to safety. No directive shall be delayed pending such determination.

All on-the-job injuries, no matter how slight, must be reported. Employees must immediately notify their supervisor if they are unable to work because of a work-related injury or illness.

18.2 HEALTH & SAFETY PLAN

The Employer shall develop and follow written policies and procedures to deal with on-the-job safety and shall have effective safety and accident prevention plans in conformance with state (WAC 296-800) and federal laws.

18.3 DRUG FREE WORKPLACE

The City and the Union agree to abide by the City of Kirkland Police Department Substance Abuse Policy that is attached as Appendix A.

18.4 WORKPLACE VIOLENCE

The employer is committed to employee health and safety. Workplace violence, including threats of violence by or against a City employee, will not be tolerated and should be immediately reported whether or not physical injury occurs, except those in the course and performance of law enforcement duties.

ARTICLE 19 – GRIEVANCE PROCEDURE

19.1 GRIEVANCE DEFINED

A grievance means a claim or dispute by a grieved employee, group of grieved employees, or the Union Executive Board with respect to the interpretation or application of the provisions of this agreement.

19.1.1 Reference to days in this Article shall refer to calendar days.

A grievance means a claim or dispute by an employee, the Union, or the Employer with respect to the interpretation or application of the provisions of this agreement.

19.2 GRIEVANCE PROCEDURE

In the event that an employee believes that the City is operating in violation of this agreement, the employee shall notify his/her immediate supervisor in writing within fourteen (14) business days after the employee first becomes aware or reasonably should have become aware of the violation. This notification must be signed by the employee and must state the issue, section of the agreement violated, facts giving rise to the grievance and remedy sought. This notification will be forwarded through the chain of command to the level of authority capable of addressing and correcting the violation. An Employer grievance may be initiated at this step and follows the same timelines.

It is agreed that filing with a court of law or taking a matter to a hearing before the Civil Service Commission constitutes an election of remedies and a waiver of any duty arising under this agreement to enter into binding arbitration. Similarly, upon the subsequent filing of an action as described above, a grievance, previously filed, shall be deemed withdrawn.

Step 1: The City shall respond in writing within fourteen (14) business days advising the employee what action, if any, will be taken to correct the alleged violation. If the action taken by the City corrects the alleged violation to the satisfaction of the presenting party, the grievance shall be deemed resolved. In the event the employee does not feel the alleged violation has been corrected to their satisfaction, the employee shall proceed to the next step within seven (7) business days.

Step 2: Upon receiving a written grievance from an employee or the Union, the Chief of Police shall attempt to resolve the grievance within fourteen (14) days. If the Chief of Police is unable to resolve the grievance to the satisfaction of the presenting party(s), the presenting party shall be notified in writing. In the event the presenting party(s) does not feel the alleged violation has been corrected to their satisfaction, notice may be given and the grievance shall proceed to Step 3 within seven (7) days.

Step 3: Upon receiving a written grievance, the City Manager or designee shall attempt to resolve it within thirty (30) days. If the grievance is not resolved by the City Manager or designee, the presenting party(s) will be notified in writing. In the event the Union, does not feel the alleged violation has been corrected to their satisfaction, the grievance may, within thirty (30) calendar days, be referred to arbitration.

Binding Arbitration: If agreement cannot be reached as to the arbitrator within fourteen (14) days of notice of the desire to proceed, the parties shall jointly request the American Arbitration Association to provide a panel of eleven (11) arbitrators from which the parties may select one. The representatives of the Employer and the Union shall alternately eliminate the name of one person from the list until only one name remains. The person whose name was not eliminated shall be the arbitrator. It shall be the function of the arbitrator to hold a hearing at

which the parties may submit their cases concerning the grievance. The arbitrator shall render their decision based on the interpretation and application of the provisions of this agreement within thirty (30) days after such hearing. The decision shall not add to, modify, or delete any provision of the agreement; and it shall be final and binding upon both parties to the grievance provided the decision does not involve action by the Employer, which is beyond its jurisdiction. The expenses of the arbitration hearing shall be borne equally by the Employer and the Union. Each party shall be completely responsible for all costs of preparing and presenting its own case, including compensating its own representatives and witnesses. If either party desires a record of the proceedings, it shall solely bear the cost of producing such a record.

19.3 UNION/EMPLOYER GRIEVANCE

Either the Union or the Employer may initiate a grievance.

The Employer may not grieve the acts of individual employees, but rather, only orchestrated acts or actions of authorized representatives believed to be in conflict with this Agreement. An Employer grievance will not be subject to Arbitration and may only go to mediation upon mutual agreement.

Such grievances may be referred to mediation services by mutual agreement prior to Arbitration.

19.4 SCHEDULE OF MEETINGS

Consistent with Article 4.8, grievance investigations and meetings on duty time shall be subject to prior notice and approval. If authorization cannot be immediately granted, the Employer will arrange to allow investigation of the grievance at the earliest possible time.

ARTICLE 20 – NO STRIKE / NO LOCKOUT

20.1 NO STRIKE / NO LOCKOUT

It is understood and agreed that the services performed by City employees included in this Agreement are essential to the public health, safety, and welfare. Therefore, the employees agree that there shall be no strikes, slowdowns, or stoppage of work, or any interference with the efficient operation of the Police Department. Violation of this Article shall subject the employee to disciplinary action or discharge.

The Employer shall not lockout any employee during the life of this Agreement.

ARTICLE 21 – MANAGEMENT RIGHTS AND RESPONSIBILITIES

21.1 MANAGEMENT RIGHTS AND RESPONSIBILITIES

The Union recognizes that the Employer retains the exclusive rights and responsibilities to operate and manage the business of the City, to direct, control and schedule its

operations and workforce and to make any decisions affecting the City. Such prerogatives shall include, but not be limited to, the sole and exclusive rights and responsibilities to: recruit; hire; promote, lay-off, assign, classify, reclassify, evaluate, transfer; discharge and discipline employees; select and determine the number of its employees, including the number assigned to any particular work; increase or decrease that number; direct and schedule the work-force; determine the location and type of operations; determine and schedule when reasonable overtime shall be worked (schedule and require reasonable overtime work); install or move equipment; determine the work duties of employees; promulgate, modify, post and enforce policies, procedures, rules and regulations governing the conduct and acts of employees during working hours; select supervisory and managerial employees; train employees; create or eliminate jobs; relieve employees because of lack of work, retirement, or for other legitimate reasons; discontinue or reorganize or combine any department or branch of operations with any consequent reduction or other change in the working force; or relocate bargaining unit work; introduce new and improved methods of operation or facilities, regardless of whether or not such may cause a reduction in the working force; establish work performance levels and standards of performance for the employees; and in all respects carry out, in addition, the ordinary and customary functions of management, except as specifically expressed in the terms of this Agreement.

21.2 INSURANCE

Consistent with existing Kirkland Municipal Code provisions, the City shall secure and maintain with responsible insurers such false arrest, malicious prosecution and liability insurance as is customarily maintained by public bodies with respect to the operation of police departments, all to the extent that such insurance can be secured and maintained at reasonable costs. The coverage to be so provided shall, to the extent available, be substantially equal to such coverage provided by the City immediately prior to the effective date of this agreement.

Such insurance shall include coverage for punitive damage awards made against an officer resulting from conduct found to be within his or her scope of duty or, the City may self-insure. Should a damage award result from conduct found to be outside the officer's scope of duty, including but not limited to punitive damages, the City and its insurer will not be responsible for payment of that award. Each allegation or cause of action for conduct complained of will be analyzed separately in determining whether the conduct was within or outside the officer's scope of duty for the purposes of this Article. A determination by the City Manager that conduct was outside of the officer's scope of duties is final but may be reviewed only by an action in King County Superior Court.

ARTICLE 22 – GENERAL PROVISIONS

22.1 SAVINGS CLAUSE

Nothing in this agreement is intended to, nor shall be deemed to be in conflict with RCW 41.12 (Civil Service for City Police), and the Kirkland Civil Service Commission Rules and Regulations. Nothing herein shall be construed to be a waiver of the Union's right to

engage in collective bargaining or to affect the enforceability of any provisions of this contract. In prescribing policies and procedures relating to personnel and practices, and to the conditions of employment, the Employer will comply with State law to negotiate over mandatory subjects of bargaining.

If any provision of this agreement shall be held invalid by operation of law, or any tribunal of competent jurisdiction, or if compliance or enforcement of any provision should be restrained by such tribunal pending final determination as to its validity, the remainder of this agreement shall not be invalid and will remain in full force and effect. Provided that should either party so request, the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement of such invalid provision.

ARTICLE 23 – ENTIRE AGREEMENT

23.1 DURATION CLAUSE

Except as otherwise stated herein, this agreement shall become effective on signature by both parties but not earlier than January 1, 2012 and will carry through December 31, 2013. In the event negotiations for a new agreement have not been completed by the termination date of this agreement, the provisions contained in this agreement shall remain in effect until the conclusion of the negotiations for a new agreement.

23.2 ENTIRE AGREEMENT

This agreement expressed herein in writing constitutes the entire agreement between the parties, and there shall be no amendments, except in writing and with the agreement of both parties.

SIGNATURES

Dated this _____ day of _____, 2012

CITY OF KIRKLAND;

PSEU #519;

By _____
Kurt Triplett, City Manager

By _____
PSEU Representative

Date _____

Date _____

APPROVED AS TO FORM:

William Evans, Assistant City Attorney

Date _____

**Appendix “A”
to the
AGREEMENT
by and between**

**City of Kirkland
and
PUBLIC SAFETY
EMPLOYEES UNION
519
KIRKLAND POLICE
LIEUTENANTS UNION**

SUBSTANCE ABUSE POLICY

Table of Contents

A.	PURPOSE	42
B.	POLICY	42
C.	APPLICABILITY	42
D.	DEFINITIONS.....	42
E.	EDUCATION	44
F.	EMPLOYEE RIGHTS AND RESPONSIBILITIES	45
G.	DETECTION	46
H.	TESTING PROCEDURES	47
I.	REPORTING OF RESULTS.....	50
J.	REHABILITATION AND RETURN TO DUTY	51
K.	RANGE OF CONSEQUENCES	53
L.	OTHER	55
M.	SUPPORTIVE DOCUMENTS:	55
	SUPERVISOR’S GUIDELINES.....	56
	CONSENT/RELEASE FORM	58
	REPORT FORM.....	59
	INTERVIEW FORM.....	60
	EXHIBIT 1.....	61

**POLICIES AND PROCEDURES FOR
DRUG/ALCOHOL TESTING AND TREATMENT**

These policies and procedures have been agreed to by the parties and shall become a part of the current labor agreement between the City of Kirkland and PSEU # 519. All applicable articles of the contract shall apply to these policies and procedures.

A. PURPOSE

The City of Kirkland recognizes that employees are our most valued resource. The goal of this policy is to ensure a substance abuse free workplace providing prevention, training and rehabilitation for employees. In order to protect the health, welfare, and safety of its employees, and the citizens whom they serve, the following policy regarding substance abuse in the work place is adopted.

B. POLICY

1. It is the policy of the City of Kirkland to provide an alcohol and drug-free workplace for its employees.
2. The City's philosophy on substance abuse is to emphasize prevention, training, rehabilitation, and recovery from substance abuse. Counseling and support will be made available through an Employee Assistance Program, and the employees' right to privacy will be respected at all times.
3. It is the responsibility of the City and the Union to preserve and protect public trust, public safety, and fitness for duty.
4. It is the responsibility of all employees to report for duty and be able to perform their jobs safely and effectively, unimpaired by drugs, alcohol, or any other intoxicating substance.
5. The possession, manufacture, use, distribution, or sale of alcohol, unlawful drugs or drug paraphernalia on City premises or while on duty is prohibited.

C. APPLICABILITY

This policy applies to all bargaining unit employees through the rank of Sergeant.

D. DEFINITIONS

For purposes of this policy, the following terms have the meanings indicated:

1. Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

2. Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of Federal, State, or City drug laws.
3. Counseling means participation in a substance abuse treatment or rehabilitation program provided through the City of Kirkland's Employee Assistance Program (EAP).
4. Criminal drug statute means a criminal law involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.
5. Medical Review Officer (MRO) is a licensed physician selected by joint agreement between the parties to receive positive drug test results from the laboratory, analyze and interpret the results, and report to the employer those results as outlined in Section I of this policy.
6. Prohibited Substances are those substances, whose dissemination is regulated by law, including, but not limited to narcotics, depressants, stimulants, hallucinogens, cannabis, and alcohol. For the purpose of this policy, substances that require a prescription or other written approval from a licensed health care provider or dentist for their use shall also be included when used other than as prescribed. The drugs and/or their metabolites that are included in these categories are as follows:
 - a) marijuana
 - b) cocaine
 - c) opium or opiates
 - d) phencyclidine (PCP)
 - e) amphetamines
 - f) or methamphetamines
7. Reasonable suspicion means facts and circumstances sufficiently strong to lead a reasonable person to suspect that the employee is under the influence of drugs and/or alcohol which is corroborated by a second individual other than the designated Union representative.
8. Representation mean Employee's right to Union or legal representation at testing sites and at any subsequent disciplinary action related to implementation of substance abuse procedures.
9. Substance abuse means the use of a substance, including medically authorized drugs other than as prescribed for the user, which impairs job performance or poses a hazard to the safety and welfare of the employee, the public or other employees.

10. Substance Abuse Professional (SAP) is a licensed physician, psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.
11. Unreasonable delay means a delay of the testing procedure for a period of time, as defined by the collection site or laboratory personnel, which would render the test useless or inaccurate.

E. EDUCATION

Pursuant to the provisions of the Drug-Free Workplace Act of 1988, the City will establish an education and training program to assist employees to understand and avoid the perils of drug and alcohol abuse. The City will use this program in an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace.

The City's program will inform employees about:

- a) The dangers of drug and alcohol abuse in the workplace;
- b) The City's policy of maintaining a drug- and alcohol-free workplace;
- c) The availability of drug and alcohol treatment, counseling and rehabilitation programs; and
- d) The penalties that may be imposed upon employees for drug and alcohol abuse violations.

As part of its program, the City shall provide educational materials that explain the City's philosophy regarding drug and alcohol use, requirements of applicable regulations, and the City's Substance Abuse policy and procedures. Employees shall be provided with information concerning:

- a) The effects of alcohol and drug use on an individual's health, work and personal life;
- b) Signs and symptoms of an alcohol or drug problem; and
- c) Available methods of intervening when an alcohol or drug problem is suspected, including confrontation and/or referral to management.

In addition to the training above, the City shall provide training to supervisors who may be asked to determine whether reasonable suspicion exists to require an employee to undergo drug and/or alcohol testing. The supervisory training shall include training on alcohol abuse and drug use. This training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol abuse and drug use. Supervisors who have not received the initial training described above will not be asked to determine whether reasonable suspicion exists to initiate drug/alcohol testing. However, these supervisors

may request another supervisor who has undergone this training to make the determination

F. EMPLOYEE RIGHTS AND RESPONSIBILITIES

1. The City shall not require an employee to undergo a drug and/or alcohol test unless there is reasonable suspicion to indicate the employee is under the influence of a substance which causes the employee to pose a hazard to the safety of the employee, the public, or other employees. However, an employee may be required to undergo a re-examination drug and/or alcohol test as provided in Section J.2. of this policy.
2. It is the employee's responsibility to report for duty, able to perform his/her job safely and effectively, unimpaired by drugs, alcohol, or any other intoxicating substance.
3. Employees are responsible for:
 - a) Obtaining from their health care provider adequate information about the effects of prescription medication on job performance; and
 - b) Promptly notifying his/her supervisor of same; OR
 - c) Promptly notifying his/her supervisor of the effects on job performance of over-the-counter medication being taken.
4. Employees are prohibited from possessing, manufacturing, using, distributing, or selling alcohol, controlled substances or drug paraphernalia on City premises or while on duty. For purposes of this policy, "on duty" time includes meal and break periods during the work day.
5. Employees are encouraged to request assistance with drug use and/or alcohol abuse problem(s), with the understanding that a voluntary request for assistance will not be used as the basis for disciplinary action. However, a request for assistance shall not be used to exempt employees from job performance requirements.
6. In accordance with the Drug-Free Workplace Act of 1988, an employee who is convicted of a violation of a criminal drug statute shall notify the City's Human Resources Director no later than five (5) days after such conviction. For purposes of this policy, a criminal drug statute means a criminal law involving the manufacture, distribution, dispensation, use, or possession of any controlled substance.
7. Employees have the right to challenge the results of any tests and any discipline imposed in accordance with the Grievance procedure of their labor contract. Employees who dispute the results of a drug test may have their split sample tested at their cost at another DHHS-certified laboratory. This request must be made within seventy-two (72) hours of notification of a positive drug test result by the MRO.

8. Employees having knowledge of another employee's condition/behavior that poses a potential threat to the safety of employees and/or the public are to notify their immediate supervisor.
9. Employees who are required to undergo a drug and/or alcohol test will be provided transportation to the collection facility and shall also be offered transportation home by a Department representative. If suspected of being impaired, the employee will be advised against driving him/herself home or otherwise operating a motor vehicle.
10. Employees may have a Union representative present at the collection facility. However, the lack of Union representation shall not cause unreasonable delays in the collection process.
11. Employees shall fully cooperate in the collection process.

G. DETECTION

1. Reasonable Suspicion. Once the steps outlined in the attached "Supervisor's Guidelines" are followed, an employee may be required to undergo a drug and/or alcohol test when reasonable suspicion exists to indicate that the employee is under the influence of a prohibited substance.
2. The decision to conduct a drug and/or alcohol test shall be made by the reporting supervisor and the highest-ranking supervisor on duty. For purposes of this policy, acting officers are considered supervisors. The higher of the two supervisors will make timely notification of the situation to the department head or the department head's management level designee, and the Human Resources Director his/her designee. Refusal to submit to a drug and/or alcohol test authorized by this policy shall be grounds for discipline, up to and including discharge.
3. Searches
 - a) The Department has the right to search, without employee consent, City-owned property to which the employee has no reasonable expectation of privacy. These areas may include office space, desks, file cabinets and the like, that several different individuals may use or access. A reasonable expectation of privacy shall exist in personal containers marked and locked inside an Officer's desk drawer.
 - b) If the employee's consent to search is first obtained, the Department shall have the right to search (1) City-owned property to which the employee has a reasonable expectation of privacy, and (2) private property belonging to the employee, such as a personal equipment bag, brief case, or private vehicle. If such consent is given, the

employee shall have the right to Union representation during the search. City-owned areas where the employee has a reasonable expectation of privacy are the employee's personal lockers.

- c) If the Department requests the employee's consent to search, the Department shall first inform the employee that:
 - (1) The Department has reasonable suspicion to suspect that evidence exists within the area or item to be searched which could be used in disciplinary and/or legal proceedings against the employee; and
 - (2) The employee has the right to Union representation during the search if consent is given; and
 - (3) Refusal to give consent to search will not be considered by the Department to be an admission of guilt or cause for disciplinary or retaliatory action.
 - d) An employee's refusal to give consent to search shall not preclude the Department from contacting the police authority having jurisdiction to conduct a search according to and in the manner authorized by law.
4. Possession, manufacture, distribution or sale of alcohol, drugs, or drug paraphernalia on City property or during work time is expressly prohibited and may provide a basis for discipline under department rules and regulations, but shall not in and of itself constitute cause for drug and/or alcohol testing under this policy. For purposes of this policy, work time includes meal and break periods or any other time when the employee is on paid status. Alcoholic beverages that are properly stored, unopened, in the trunk of an employee's vehicle will not be considered a violation of this policy. Any illegal drugs and/or drug paraphernalia coming into the City's possession will be turned over to the police authority having jurisdiction.

H. TESTING PROCEDURES

- 1. Drug and alcohol testing shall be conducted in a manner designed to protect employees, protect the integrity of the testing process, safeguard the validity of test results, and ensure that those results are attributed to the correct employee. The City and Union agree that if the security of the urine or blood sample is compromised in any way, any positive test shall be invalid and may not be used for any purpose.
- 2. Employees who are required to undergo a drug and/or alcohol test will be provided transportation to the collection facility and shall also be offered transportation home by a Department representative.

3. Employees may have a Union representative present at the collection facility. However, the lack of Union representation shall not unreasonably delay the collection process.
4. Employees required to undergo a drug and/or alcohol test shall cooperate fully in the collection process and complete all required forms and documents. These forms may include a Consent/Release form and an Interview form.
5. Urine samples for drug testing shall be collected at a collection site designated by the City and Union using the split sample collection method. The split sample is made available if re-testing becomes necessary. Any specimen that tests positive for drugs shall be retained in long-term frozen storage by the laboratory conducting the analysis for a minimum of one year.
6. If medical personnel at the collection site have reason to believe that an adulterated or substituted sample has been provided (or that the employee may alter or substitute the sample), the employee will be required to submit a second sample (or the original sample). This collection shall be under the direct observation of a same gender collection site staff person. The employee will be required to provide the additional or original sample during an observed collection prior to leaving the collection site.
7. An approved chain of custody procedure shall be followed in the administration of all drug tests. Urine samples shall be sealed and initialed by the employee and a witness.
8. Urine samples shall be promptly sent to and tested by a laboratory that is certified to perform drug tests by the Department of Health and Human Services (DHHS). Initial drug screening shall be conducted using an accepted immunoassay method. All positive tests shall be confirmed using the gas chromatography/mass spectrometry (GC/MS) drug testing method. The laboratory shall test for only the substances and within the limits as follows for the initial and confirmation tests, as provided within NIDA standards, unless this section is modified by amended agreements provided for in Section L.3.:
 - a) Initial Tests
 - (1) Alcohol .02 g/210 ml expired air
 - (2) Marijuana metabolites 50 ng/ml
 - (3) Cocaine metabolites 300 ng/ml
 - (4) Opiate metabolites (1) 300 ng/ml
 - (5) Phencyclidine 25 ng/ml
 - (6) Amphetamines 1000 ng/ml

(7) If immunoassay is specific for free morphine the initial test level is 25 ng/ml.

b) Confirmatory Test

(1) Alcohol	.02 g/210 ml expired air
(2) Marijuana metabolites	15 ng/ml
(3) Cocaine metabolites	150 ng/ml
(4) Opiates	
(a) Morphine	300 ng/ml
(b) Codeine	300 ng/ml
(c) Phencyclidine	25 ng/ml
(d) Amphetamine	500 ng/ml
(e) Methamphetamine	500 ng/ml

9. Alcohol shall be tested by means of Breathalyzer machine currently in use (B.A.C.) or future equipment which may supersede the B.A.C. machine (but excludes the P.B.T. device). Breathalyzer alcohol tests shall be conducted in private at the collection site designated by the City and the Union. The testing shall follow the protocols established for criminal investigations, including the requirement of two breath samples within the proper variance. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test shall be performed to confirm the results of the initial test at the election of the employee. The confirmatory test shall also use a 0.02 blood alcohol concentration level to measure a positive test. If the Employee refuses to take the second confirmatory test, the first test will be used to determine alcohol concentration.
10. Upon written request by the employee, the City shall make one legible copy of the results of his/her drug and/or alcohol tests available to the employee.
11. All information collected in the process of conducting a drug and/or alcohol test shall be treated as confidential information. These files shall be separate from the personnel file and sealed and maintained in a secure medical file.
12. Employees who refuse or fail to fully cooperate in the collection process may be subject to discipline up to and including discharge. Examples of a failure to fully cooperate include such actions as, refusing to sign the necessary consent/release forms; delaying and/or obstructing the collection process; failing to provide the specimen for testing; and attempting to substitute or adulterate a specimen. The foregoing list is not intended to be an all-inclusive list. City management shall, in all circumstances, have the final right to determine the appropriate level of discipline depending on the specific circumstances, the employee's performance record, and any other pertinent facts.

I. REPORTING OF RESULTS

1. The City shall have a designated Medical Review Officer (MRO) who must be a licensed physician with knowledge of substance abuse disorders and familiar with the characteristics of the laboratory tests (sensitivity, specificity, and predictive value). The role of the MRO will be to review and interpret the positive drug test results.
2. Alcohol Test Results. Laboratory or collection site personnel will report the test results to the City's Human Resources Manager, or his/her designee. The Human Resources Director will promptly advise the appropriate Department Head of these test results. If the confirmation test meets or exceeds 0.02 g/210 ml expired air, the laboratory or collection site personnel shall report to the Human Resources that the employee tested positive for alcohol. If the test result is below 0.02 g/210 ml expired air, the laboratory or collection site personnel will report to the Human Resources Director that the employee tested negative for alcohol.
3. Drug Test Results. Laboratory personnel will advise the Human Resources Director, or his/her designee directly of all negative drug test results. The Human Resources Director will promptly advise the appropriate Department Head of these test results.

The laboratory will advise only the MRO of any positive drug test results. The MRO must examine alternate medical explanations for any positive test results. This process shall include an interview with the affected employee and a review of the incident file, employee's medical history and any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Employees involved in this step of the examination shall make themselves and any relevant records they wish to present available to the MRO within forty-eight (48) hours after request.

After reviewing the incident file and interviewing the employee, the MRO shall report to the City's Human Resources Director or his/her designee the name of the employee, and whether a positive test of a prohibited substance has been verified. The Human Resources Director shall promptly notify the appropriate Department Head of the test result.

4. Rehabilitation Program. If the tested employee is referred on to rehabilitation or treatment, the MRO is authorized to communicate specific results to the Substance Abuse Professional (SAP) or counselor overseeing the employee's treatment program.

5. Grievance. The laboratory and/or the MRO will be authorized to release specific test results to the City and the Union in cases of a grievance and/or a legal challenge.

J. REHABILITATION AND RETURN TO DUTY

1. The City recognizes that substance abuse can be successfully treated, enabling an employee to return to satisfactory job performance. Employees who are concerned about their own drug use and/or alcohol abuse are encouraged to voluntarily seek assistance through the City's EAP. All such voluntary requests for assistance will remain confidential.
2. Any employee who tests positive for a prohibited substance or is otherwise required to submit to a drug and/or alcohol test by this policy shall be medically evaluated, counseled, and treated for rehabilitation as recommended by the SAP. If the employee is required to participate in such a program, his/her reinstatement or continued employment shall be contingent upon:
 - a) Successful completion of the program and remaining drug- and/or alcohol-free for its duration; and
 - b) Passing a return to duty drug and/or alcohol test as recommended by the SAP; and
 - c) Obtaining a final release for duty by the SAP (the final release for duty may be preceded by a temporary release for duty).
3. Employees who successfully complete a rehabilitation program and are released for duty, in addition to being subject to reasonable suspicion testing at any time, will be subject to follow up testing, which involves unannounced drug and/or alcohol testing at least six (6) times during the following twenty-four (24) months. The SAP will determine the dates for these drug and/or alcohol tests. These test dates will be communicated to the Human Resources Director who will inform the employee of those dates. The appointment for the collection will be made in advance and maintained in a confidential manner by the Human Resources Director until the day of the collection. The Human Resources Director shall provide the supervisor with adequate notice of the test dates. The employee will not be notified until just prior to the testing. The employee may request a Union representative to accompany him/her to the collection site, provided the sample is collected within two (2) hours following notification.
4. Upon notification of selection for the follow up tests, the employee must proceed directly to the collection site for testing. At this time, the employee will receive an Employee Notification of Scheduled Drug/Alcohol Test letter from the designated contact. The employee will be required to sign this letter and a Consent/Release form. The employee

must present photo identification to collection site personnel. The Human Resources Director or his/her designee will retain a copy of all the forms.

5. Refusing to submit to a return to duty or a follow up test will be considered grounds for discharge. If the selected employee fails to report to the collection site within two (2) hours of notification of testing, this will also be considered grounds for disciplinary action up to and including discharge.
6. If an employee voluntarily enters a drug/alcohol rehabilitation program, it shall not be considered an offense under this policy. Such employees are, however, still subject to this policy and may be required to undergo a drug and/or alcohol test if reasonable suspicion exists.
7. All appointments with the SAP may be scheduled as vacation, or leave without pay with prior approval of the supervisor, Department Head, or management designee. The SAP will contact the Department Head or his/her designee to make a recommendation as to the need for further treatment. Once vacation leave is exhausted, the employee will be placed on leave without pay. The Department Head or his/her management level designee shall maintain confidentiality regarding the reason for the leave.
8. The employee will be responsible for all costs, not covered by insurance, which arise from such treatment.
9. Once an employee has tested positive for substance abuse and the MRO has notified the City, the employee will be placed on leave status (vacation, holiday leave bank, compensatory time or leave without pay). The employee will remain on leave until s/he has a release for duty from the SAP and has passed a return to duty drug and/or alcohol test as recommended by the SAP. The release for duty may be a temporary or final release as described below depending on the circumstances.
10. Temporary Release for Duty. The SAP shall sign a temporary release for duty indicating that the employee can satisfactorily return to regular work assignment and continue treatment on an outpatient basis. The temporary release for duty shall indicate the length of time such release is valid not to exceed four (4) months. The employee must present a final release for duty on or before the expiration date of the temporary release. A temporary release shall include follow up testing. The employee must present both the temporary and final release for duty to his/her supervisor.
11. Final Release for Duty. A final release for duty shall be signed by the SAP indicating that the employee has:
 - a) Satisfactorily completed treatment and follow up testing; or

- b) Does not require treatment at this time, and the employee may return to regular work assignment without restrictions. Failure to provide a final release for duty to the supervisor may result in disciplinary action up to and including discharge.
12. Once an employee provides the supervisor with the final release for duty the employee shall be returned to his/her regular duty assignment. After three years of no further violation of this policy, the employee's personnel file shall be purged of any reference to the incident, including any disciplinary actions taken, provided, however, records may be retained beyond three (3) years when retention is required by applicable law. Should applicable law require retention of records past three (3) years, and if allowed by such law, such records shall be sealed and may not be opened without consent of the employee.
 13. If an employee tests positive during the twenty-four (24) -month period following rehabilitation on a reasonable suspicion drug or alcohol test, the employee will be subject to discipline, up to and including discharge.
 14. If an employee tests positive during the twenty-four (24)-month period following rehabilitation on a random drug or alcohol test, the employee will be placed on leave without pay during the period the SAP makes a decision on the need for further treatment. The employee will remain on leave without pay during any treatment period and until they have provided the employer with a return to duty form signed by the SAP. If such an employee completes the return to duty process and again tests positive on either a reasonable suspicion or random drug or alcohol test, they shall be subject to discharge.

K. RANGE OF CONSEQUENCES

1. Employees who violate this policy will be subject to a range of disciplinary consequences depending upon the severity of the infraction and/or the employee's past performance record. In all cases, the City reserves the right to determine the appropriate disciplinary measures, which may be more or less severe than those included in this guideline. The following list of actions and the related consequences is intended as a guideline only, and further, is not intended to be an all-inclusive list of possible disciplinary consequences.
2. If an employee has an alcohol concentration of 0.02 or greater in any authorized alcohol test, and/or tests positive for drugs and/or their metabolites in any authorized drug test and it is the employee's *first offense*, then s/he shall be referred to the EAP for counseling and/or completion of a substance abuse treatment or rehabilitation program. However, if an employee violates a work rule in conjunction with failing a drug and/or alcohol test, then s/he may be subject to disciplinary action.

The City shall have the right to take disciplinary action, up to and including discharge, based on the severity of the incident and/or the employee's past record.

3. Employees will be subject to disciplinary action, up to and including discharge, for any of the following infractions:
 - a) Refusal to submit to an authorized drug and/or alcohol test. Refusal to submit to testing means that the employee fails to provide an adequate urine or breath sample for testing without a valid medical explanation after s/he has received notice of the requirement to be tested, or engages in conduct that clearly obstructs the testing process. Refusal to submit to testing includes, but is not limited to, refusal to execute any required consent forms, refusal to cooperate regarding the collection of samples, refusal or failure to provide necessary documentation to the MRO when requested, and/or submission or attempted submission of an adulterated or substituted urine sample.
 - b) Drinking alcoholic beverages or using drugs while on duty, on City property, in City vehicles, or during breaks and/or meal periods during work hours.
 - c) Unlawful manufacture, distribution, dispensation, possession, concealment or sale of any controlled substance, including an alcoholic beverage, while on duty, on City property, in City vehicles, or during breaks and/or meal periods during work hours.
 - d) Any criminal drug statute conviction and/or failure to notify the City of such conviction within 5 days.
 - e) Failure to complete a counseling, treatment, or rehabilitation program as prescribed by the SAP.
 - f) Testing positive on a return to duty.
 - g) Any two failures on follow up drug and/or alcohol testing during the 24 month following rehabilitation.
 - h) Failure to report to a collection site within two (2) hours of notification for return to duty or follow up testing.
 - i) Second offense – alcohol concentration of 0.02 or greater in any reasonable suspicion authorized alcohol test, and/or testing positive for drugs and/or their metabolites in any authorized reasonable suspicion drug test.

- j) Employee's failure to participate in the temporary and/or final releases for duty testing in a timely manner.
4. Although the foregoing infractions will ordinarily result in discharge regardless of the employee's position, the City reserves the right to consider extenuating circumstances and to impose lesser discipline when such action is deemed appropriate.

L. OTHER

1. The City shall pay for initial costs of the substance abuse examination including the expenses of the Medical Review Officer.
2. This policy was initiated at the request of the City and the Employer shall assume sole responsibility for the administration of this policy. The City agrees to indemnify and hold the Union and its officers harmless from any and all claims of any nature (except those arising from the negligence of the Union and/or its officers) arising from the Employer's, laboratories', or Medical Review Officer's implementation of this policy.
3. The parties recognize that during the life of this agreement there may be improvements in the technology of testing procedures which provide more accurate testing for on-the-job impairment or which constitute less invasive procedures for the employees. In that event, the parties will bargain in good faith whether to amend this procedure to include such improvements. If the parties are unable to agree, the issue will be submitted to impasse procedures under RCW 41.56.
4. If any provision of this Agreement shall be held invalid by operation of law, or any Tribunal of competent jurisdiction, or if compliance or enforcement of any provision should be restrained by such Tribunal pending final determination as to its validity, the remainder of this Agreement shall not be held to be invalid, and will remain in full force and effect, and the parties, upon request of one to the other shall initiate immediate negotiations for the purpose of arriving at a mutually satisfactory replacement of such provision.
5. The following attachments shall be a part of this Policy: Supervisor's Guidelines, Report Form, Interview Form, Consent/Release Form.

M. SUPPORTIVE DOCUMENTS:

**POLICIES AND PROCEDURES FOR
DRUG/ALCOHOL TESTING AND TREATMENT SUPERVISOR'S
GUIDELINES**

The primary goal of the Substance Abuse Policy is to provide a working and service delivery environment free from the effects of alcohol/drug abuse. The supervisor's role is to identify employees who may be a threat to the safety and welfare of the employee, other employees, and the public by being under the influence of drugs and/or alcohol while on-duty. Such employees *must* be removed from the workplace.

Follow the steps below to ensure that you are proceeding correctly. It is important that proper procedures are followed to preserve the privacy of the individual and to comply with legal and contractual requirements.

1. Contact your appropriate command staff and explain the situation.
2. Your supervisor will:
 - a) Advise you of what appropriate action to take regarding your status as the shift supervisor.
 - b) Notify the Chief of Police and the Human Resources Director (or their designees) in a timely manner, then join you at your location to assist you and corroborate your observations during the interview.
3. Prepare yourself for an interview with the employee by completing the Report Form. Refer to Attachment 1 for descriptions of physical and behavioral signs which may indicate substance abuse.
4. After your supervisor has arrived, advise the employee you wish to interview him/her and provide a private location to conduct the interview.
 - a) Be sure to advise the employee that you suspect him/her of being under the influence of a prohibited substance (defined in the policy) and that s/he may have a Union representative present during the interview.
 - b) Do not argue with a belligerent or threatening employee. Advise him/her that his/her cooperation during the interview and testing procedure (if warranted) are direct orders and that continued disruptive behavior, preventing completion of the interview, shall be the same as refusal to submit to testing and shall be cause for discipline (cooperation *does not* mean that any employee must give facts or evidence which may incriminate himself/herself).
 - c) Complete the Interview Form with your supervisor.

5. Review the relevant information with your supervisor. If your supervisor decides that the test is required, relieve the employee of duty, with pay, during the course of the exam and MRO review.
6. Have the employee sign a Consent/Release Form.
 - a) Read the form to the employee and direct him/her to sign it. Do not alter the form in any way.
 - b) Be sure, if the employee has declined Union representation, that s/he understands that s/he may choose to have a Union representative accompany him/her to the testing facility.
 - c) If the employee refuses to sign the form, advise him/her that this is a direct order and that failure to comply shall be cause for discipline.
 - d) Issue a second order for the employee to sign the consent form. If s/he still refuses, relieve the employee of duty, with pay, explain that disciplinary action may follow. You or your supervisor will transport the employee home. (No employee suspected of impairment from alcohol/drug abuse shall be allowed to drive.)
7. Your supervisor shall transport the employee to the testing facility, and wait at the testing facility until the testing is completed.
8. When the exam is completed, your supervisor will:
 - a) Reconfirm with the employee that s/he has been relieved of duty, with pay, and
 - b) Advise the employee that s/he will be contacted by the MRO to review the results (if positive), and
 - c) Advise the employee that s/he will be contacted by the department advising him/her how to return to duty, and
 - d) Drive or arrange transportation for the employee home. Do not return the employee to a City facility.
9. Once the employee has been sent home, your supervisor will:
 - a) Gather copies or originals of the Report Form, Interview Form, Consent/Release Form, and any other written notes or reports and forward them to the Police Chief and Human Resources Manager.

**City of Kirkland Police Department
Substance Abuse Policy
CONSENT/RELEASE FORM**

I consent to the collection of urine, a blood and/or expired air sample by _____ and its analysis by _____ for those drugs, alcohol, and or controlled substances specified in the Collective Bargaining Agreement pursuant to the Substance Abuse Policy agreed to between the City of Kirkland and the Union.

The laboratory administering the tests may release the results to the Medical Review Officer (MRO), who shall release his/her conclusions to the employer after review and interpretation. If I test positive, I agree to make any requested records and myself available to the MRO within 48 hours of such request. The information provided to the employer from the MRO shall be limited to whether the tests were confirmed positive or negative, and no other test results will be released, except as provided herein, without my written consent. The laboratory will advise the employer's representative whether the initial alcohol screen is positive or negative.

I understand that I have the right to my complete test results and that the laboratory will preserve the sample for at least one year. If I test positive, I have the right to have the split sample tested at my expense at a second DHHS-certified laboratory of my choice. I understand that I must request such test of the split sample within 72 hours of notification of a positive test result by the MRO.

I understand that the Employer is requiring me to submit to this testing as a condition of my employment and that if I tamper with, alter, substitute, or otherwise obstruct or fail to cooperate with the testing process, I will be subject to disciplinary action up to and including termination.

I further understand that a confirmed positive test will result in actions taken by the employer and for the employee which are consistent with the City's policies and procedures for substance abuse testing and treatment.

I understand that the employer will administer the Policy consistent with federal and state constitutional and statutory requirements. Also, by signing this consent form, I am not waiving the right to challenge any confirmed positive test result and any Employer action based thereon. In order to pursue any challenge related to this test, I will, however, be required to authorize the laboratory and MRO to release to my Employer and the Union any information relating to the test or test results. Further, I understand that my employer may require that I participate in a treatment or rehabilitation program. If required to do so, I authorize the laboratory and MRO to release any information relating to the test or test results to the Substance Abuse Professional (SAP) or treatment counselor. My signature below indicates my consent for release of this information.

Employee Signature _____ **Date** _____

**City of Kirkland Police Department
Substance Abuse Policy
REPORT FORM**

This form must be filled out prior to any drug/alcohol testing. Review Supervisor's Guidelines before completing this form. The information contained on this form is confidential and shall be viewed only by necessary supervisory/managerial employees, the testing facility, MRO, and the employee being interviewed/tested. When this form is completed and signed, make one copy of the form and distribute as follows: Original to Police Chief, Copy attached to consent form.

Employee Name: _____

Speech: _____

Dexterity: _____

Standing: _____

Walking: _____

Judgment: _____

Decision-making: _____

Appearance (eyes, clothing, etc.): _____

Odor: _____

Other: _____

Location where these were observed: _____

Time of observation: _____

Witnesses: _____

Supervisor's Signature _____ Date / Time: _____

**City of Kirkland Police Department
Substance Abuse Policy
INTERVIEW FORM**

Name of Employee _____

I understand that I am entitled to Union representation during this meeting and during any subsequent meetings or at testing facilities. I understand that I am being ordered to answer these questions and that if I refuse to answer these questions I am subject to discipline up to and including termination. I do or do not (please circle one) want a representative at this time. I understand that I am entitled to Union representation at any time whether I choose to have one now or not.

Employee signature: _____

1. I (we) have noticed (describe behavior/evidence) _____

2. Do you have any explanation? _____

3. Are you using any type of illicit drug or alcohol? _____

If yes, what? _____

When did you take it? _____

Where did you take it? _____

How much did you take? _____

Do you have any drugs/alcohol in your possession at work? _____

(if yes, get agreement to confiscate)

Based on the interview and the completed Report Form, I believe the employee should be tested for drugs and/or alcohol.

Dated _____

Supervisor (position) _____

_____ Agree _____

Don't Agree

Witness* (position) _____

_____ Agree _____

Don't Agree

*Witness is an individual other than the designated Union representative

**City of Kirkland Police Department
Substance Abuse Policy
Exhibit 1**

Listed below are some behavioral descriptions which may guide the supervisor in determining whether an employee is “under the influence” of a prohibited substance. There is no one behavior which is unique to drugs/alcohol. Almost every behavior/sign can also be associated with medical or emotional problems such as high blood pressure, diabetes, thyroid disease, psychiatric disorders, epilepsy, head injury, emotional problems, stress, etc. Even so, a supervisor usually knows the employees “normal” behavior and must try and distinguish alcohol and/or drug abuse from other problems.

Supervisors should be aware that the following physical, behavioral, or performance symptoms may indicate drug/alcohol abuse:

- a) Either very dilated or constricted pupils
- b) Hyperactivity
- c) Unsteady gait
- d) Irritability
- e) Slurred speech
- f) Anxiousness
- g) Wide mood swings
- h) Odor of alcohol
- i) Overreaction to criticism
- j) Staggering
- k) Listlessness
- l) Illogical speech and thought process
- m) Unusual/abnormal behavior
- n) Poor judgment
- o) Avoiding others/withdrawal
- p) Sudden increase in absenteeism

**Appendix “B”
to the
AGREEMENT
by and between
City of Kirkland
and
Public Safety Employees Union #519
(Representing the Kirkland Police Lieutenants Union)**

PHYSICAL FITNESS INCENTIVE PROGRAM

This Appendix is supplemental to the AGREEMENT by and between the CITY OF KIRKLAND, WASHINGTON, hereinafter referred to as the “Employer”, and the Kirkland Police Lieutenants Union, hereinafter referred to as “Union.”

B.1 A mutual goal of the Employer and the Guild is to encourage good physical fitness. The parties agree that an acceptable level of physical fitness is an essential function of the job of a Police Lieutenant. The purpose of this program is to promote the physical capability of the commissioned members of the Kirkland Police Department and to enhance the members’ general physical fitness level.

B.2 Pursuant to Article 9.7 of the Collective Bargaining Agreement between the parties, the information contained in this appendix shall serve as the rules and regulations of a physical fitness program and the procedures by which the program shall be administered.

B.3 Both parties agree that participation in the physical fitness program is voluntary. The Employer and the Union encourage participation in the fitness program by members. Training, exercising, and general conditioning in preparation to take the physical fitness test shall be on an individual and voluntary basis without compensation. The Employer agrees to offer the fitness test in the fall of 2012 and twice per year in 2013. The test will be conducted during work hours in conjunction with the spring and fall KPD in-service training block. This on-duty status during the testing process shall protect members against loss of pay for time off work due to any injury sustained while participating in the fitness test. Members who wish to participate in the fitness test shall be required to sign the general liability waiver set forth in B.8.

B.4 The fitness test shall be comprised of three core components: push-ups, sit-ups, and 1.5 mile run. Based on medical necessity, as an alternative to the 1.5 mile run, an employee may do the Three (3) Mile Walk Test. To be eligible for such an exemption, an employee must submit to the Employer a written statement from the employee’s physician establishing the condition or disability which prevents the employee from participation in the 1.5 mile run. This “Cooper” test is modified for age/gender and is set

forth in Section B.7 of this Appendix. The components are generally designed to measure aerobic/cardiovascular endurance, and upper/lower body muscular strength. A member must satisfy the standards of each test component in order to qualify for the monetary incentive; i.e., failing one component of the test constitutes overall failure. A member shall be allowed one opportunity to pass the various fitness test components during the test.

B.5 The cycle year for the physical fitness incentive program is November 1st – October 31st.

B.6 Members who successfully pass-the fitness test receive an incentive pay of one percent (1%) of the monthly rate of base pay for the following cycle year. The test will be offered twice each cycle year and it is the individual employee's responsibility to be trained and available for one of the scheduled opportunities. Individual tests will not be arranged. For 2012, the employee will have one opportunity in the fall to take the test. A passing score qualifies the employee to receive retro one percent (1%) incentive pay for the November 1, 2011 – October 31, 2012 cycle, as well as qualify for the November 1, 2012 – October 31, 2013 cycle. In this manner, a Lieutenant would have two opportunities (spring and fall) to successfully pass the test, which would ensure the one percent (1%) fitness incentive for the following cycle year. An employee who fails to pass either test offered shall be eligible to receive the one percent (1%) up until October 31st. He/she may take the test, but upon passing, the one percent (1%) incentive pay shall be effective at the commencement of the next cycle year, November 1st. The same cycle structure shall apply for 2013.

B.7 Physical Fitness Test Description

The physical fitness test shall be comprised of the following components. The results of these tests shall be made available to the Employer.

Employee Age:	20 – 29	30 – 39	40 – 49	50 – 59
----------------------	----------------	----------------	----------------	----------------

<i>1.5 mile run</i>				
Male	12:51	13:36	14:29	15:26
Female	15:26	15:57	16:58	17:54

An employee who performs the alternative Three (3) Mile Walk Test must satisfactorily complete the test within the times listed below in order to qualify for the incentive pay. Walking is defined as one foot on the ground at all times. No running is allowed. The passing times are in accordance with standards set forth by the Cooper Institute for the Three (3) Mile Walk Test.

Employee Age:	20 – 29	30 – 39	40 – 49	50 – 59
----------------------	----------------	----------------	----------------	----------------

<i>Three (3)Mile Walk Test</i>				
Male	38:31	40:01	42:01	45:01
Female	40:31	42:01	44:01	47:01

Employee Age:	20 – 29	30 – 39	40 – 49	50 – 59
----------------------	----------------	----------------	----------------	----------------

<i>Push-ups (1 minute)</i>				
Male	29	24	18	13
Female	15	11	9	5
Female (modified)	23	19	13	12

- The body should be straight and the hands about shoulder width apart
- The body should remain rigid throughout the down phase; with the chest coming to within three (3) inches of the floor. (The tester can place a foam block on the floor beneath the participant's chest)
- From the down phase, the participant must return to the up position with the arms straight
- The participant is only permitted to rest in the up position
- The total number of push-ups which the participant performs in 1 minute are counted
- Females may choose to use the modified push-up (knees on ground with feet up in the air)

Employee Age:	20 – 29	30 – 39	40 – 49	50 – 59
----------------------	----------------	----------------	----------------	----------------

<i>Sit-ups (1 minute)</i>				
Male	38	35	29	24
Female	32	25	20	14

- The participant lies on the back with the knees flexed at a right angle. The hands, with fingers interlocked, are placed at the back of the neck.
- A partner sits on the participant's insteps with his/her hands placed behind the subject's calf muscles to keep the heels in contact with the floor.
- The participant sits up to touch the knees with the elbows.
- Without pause, the participant returns to the starting position just long enough for his/her head (not just shoulder blades) to touch the mat and immediately sits up again.

B.8 Physical Fitness Test General Liability Waiver Form:

City of Kirkland

Kirkland Police Department—Fitness Ability Test

I hereby acknowledge that the format of the City of Kirkland Fitness Ability Test has been explained to me and I understand that the purpose of this test is to measure my fitness ability in my current position as a Police Lieutenant for the City of Kirkland.

I also acknowledge that participation in the Fitness Ability Test is totally voluntary and, while I may be permitted to participate in the test on compensable duty time, I am under no compulsion or directive to do so.

I certify that to the best of my knowledge, I am fit to undertake the activities involved in the test and have no physical impairment or medical condition which would preclude my completion of the test. I have had the opportunity to consult my personal physician and have done so or chosen not to. I understand that the tests are strenuous and hold the potential for serious injury or death. I understand that I may stop the test at any time and that the persons administering the test may discontinue it at any time they have a reasonable basis for belief that continuation of the test could be detrimental to my health. Discontinuance may prevent successfully passing the test, consistent with Section B.4.

I assume full and complete responsibility for undertaking the test and I hereby release the City of Kirkland, its officers, employees, and agents from any responsibility or liability for any loss or damage arising from the bodily injury relating to my participation in the test, except for any loss or damage arising solely from the negligence of the City of Kirkland, its officers, employees, or agents.

Name (print)

Signature

Date



CITY OF KIRKLAND

Department of Finance & Administration

123 Fifth Avenue, Kirkland, WA 98033 425.587.3100

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Barry Scott, Purchasing Agent

Date: October 25, 2012

Subject: REPORT ON PROCUREMENT ACTIVITIES FOR COUNCIL MEETING OF NOVEMBER 7, 2012

This report is provided to apprise the Council of recent and upcoming procurement activities where the cost is estimated or known to be in excess of \$50,000. The "Process" column on the table indicates the process being used to determine the award of the contract.

The City's major procurement activities initiated since the last report, dated October 4, 2012, are as follows:

	Project	Process	Estimate/Price	Status
1.	A&E Consulting Services for Peter Kirk Elementary School Sidewalk	A&E Roster	\$93,776	Contract awarded to WHPacific, Inc. based on qualifications using A&E Roster process as provided for in RCW 39.80.
2.	A&E Consulting Services for 2012 Street Preservation Program	A&E Roster	\$79,560	Contract awarded to Northwest Management Systems based on qualifications using A&E Roster process as provided for in RCW 39.80.
3.	A&E Consulting Services Totem Lake Park Master Plan	Request for Qualifications	\$75,000 - \$100,000	RFQ issued the week of 10/28 with qualifications due the week of 12/9.

Please contact me if you have any questions regarding this report.



CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Sri Krishnan, Financial Planning Manager

Date: October 25, 2012

Subject: PUBLIC HEARING ON PRELIMINARY 2013-2014 BUDGET

RECOMMENDATION:

City Council hold a public hearing on the Preliminary 2013-2014 Budget.

BACKGROUND DISCUSSION:

The purpose of this public hearing is to solicit public comment on the Preliminary 2013-2014 Budget as submitted by the City Manager and available to the public on October 16, 2012. The budget document is available at:

http://www.kirklandwa.gov/depart/Finance_and_Administration/Budget/Budget_Documents.htm.

A public hearing on anticipated revenue sources was held on September 18, 2012. RCW 35A.33 requires that a public hearing on the upcoming budget period be held on or before the first Monday in December.

Study sessions are scheduled for October 25th, November 7th, and November 13th (if needed). Another public hearing will be held on November 20, 2012. The budget is expected to be adopted at the December 11, 2012 City Council meeting.

At the beginning of the public hearing, staff will provide a summary of Council's discussion to date on the Preliminary 2013-2014 Budget.

**CITY OF KIRKLAND**

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Rob Jammerman, Development and Environmental Services Engineering Manager
William Evans, Assistant City Attorney
Ray Steiger, P.E., Public Works Director

Date: October 25, 2012

Subject: Amendment to the Woodinville Water District Franchise Agreement

RECOMMENDATION:

1. Conduct the first reading of the proposed ordinance authorizing the amendment of the existing Franchise Agreement with Woodinville Water District (WWD) and;
2. Conduct a public hearing to receive comments on the proposed amendment.
3. Direct staff to bring back the final ordinance at the next Council meeting on November 20, 2012.

BACKGROUND DISCUSSION:

On May 17, 2011, the City Council approved a franchise agreement with the Woodinville Water District (WWD). WWD provides water and sewer service to Kirkland residents in the northeast corner of the City's 2011 annexation area (see Attachment A-Vicinity Map). When staff negotiated the agreement with WWD, the existing Northshore Utility District (NUD) franchise agreement was used as a template to draft the WWD agreement and the two agreements (NUD and WWD) are nearly identical. During a recent review of the agreement by WWD staff, they realized that a key sentence had been inadvertently omitted as the City and WWD staff was finalizing the agreement in April of 2011. The language that was omitted resides in Section 8 of the agreement and is underlined below:

Section 8. Franchise Term. Subject to the provisions of Sections 9 and 10 below, this Franchise is and shall remain in full force and effect from its Effective Date as defined in Section 20 herein until December 31, 2018, provided that on January 1, 2019, and on January 1 every five (5) years thereafter, the term shall automatically be extended for an additional five (5) years, unless either WWD or the City gives the other party written notice of non-renewal prior to any such renewal date; in which case this Franchise shall terminate five (5) years after such renewal date and provided further, however, WWD shall have no rights under this Franchise unless WWD shall, within fifteen (15) days after

the passage date of the Ordinance referred to in Section 20 herein, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney. If the City gives WWD written notice of non-renewal prior to January 1, 2019, and the City, following the termination of this Franchise, assumes pursuant to Chapter 35.13A RCW, or as such statute may be modified or amended, all or any part of the District's Facilities located within the Franchise Area, the City shall pay the District at the time any such assumption is effective the greater of (1) the District's indebtedness allocated to the District's Facilities assumed by the City pursuant to applicable law, District revenue bond covenants or other contracts related to District capital debt, or (2) the depreciated value of District capital improvements undertaken in the Franchise Area since the Effective Date of this Franchise determined by the total project cost of all District capital improvements undertaken in the Franchise Area since the Effective Date of this Franchise amortized on a straight-line basis over a thirty five (35) year useful life.

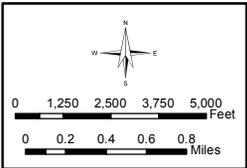
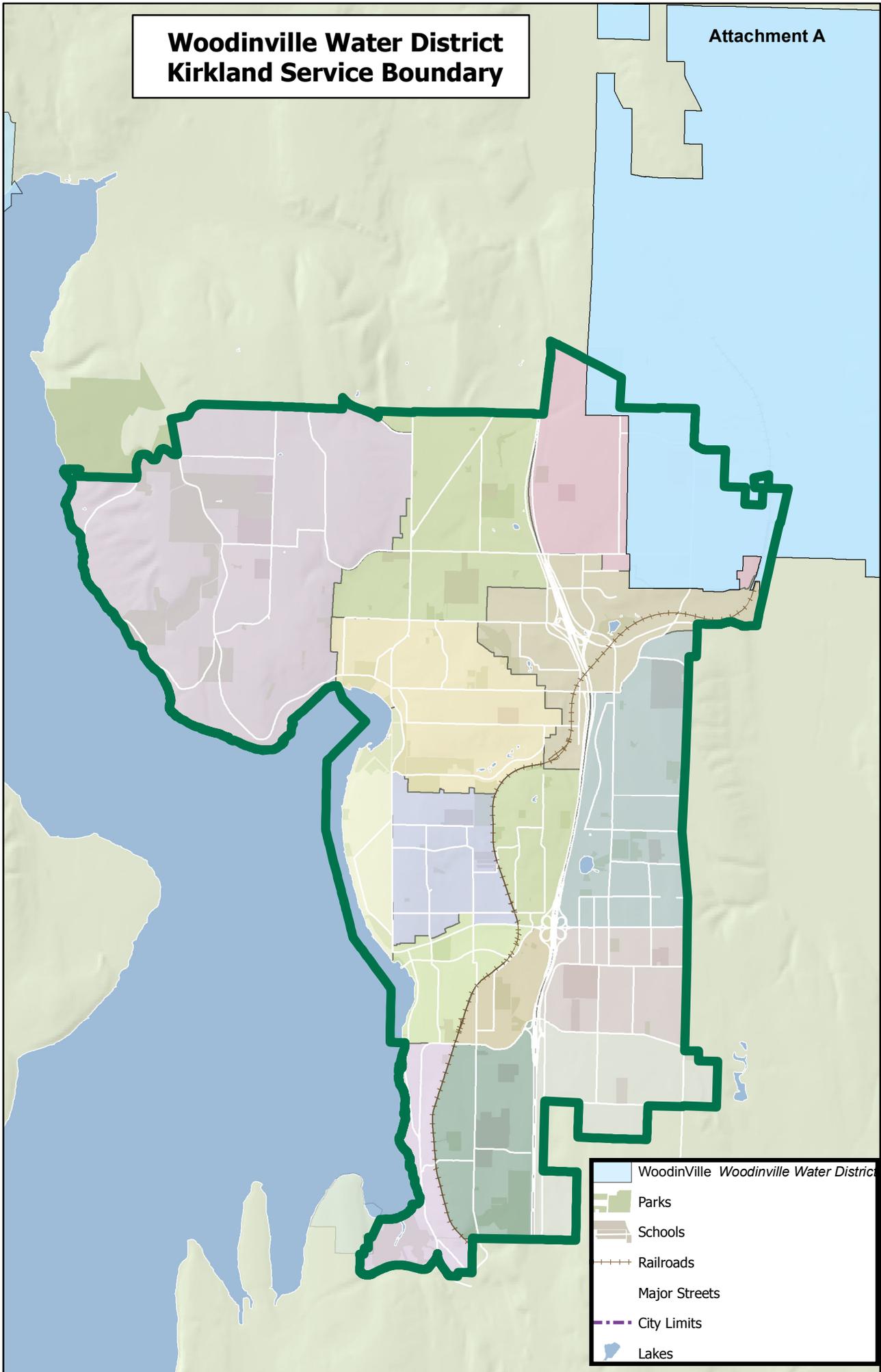
As mentioned above, this same language allowing for the five-year transition also resides in the NUD Agreement and it was always the intention of the City and WWD to include this language in the WWD agreement (it is unclear how this language was omitted from the version presented to Council). City staff is in full agreement that the franchise should be amended to include the language if the Council believes the original intent should govern its decision. The language gives WWD five years to prepare should the City decide that to proceed with assumption of the District (portion within Kirkland).

Any grant of a Franchise agreement requires a first reading of the agreement, a public hearing, and approval of the agreement at a subsequent meeting. As this amendment would have the effect of granting an additional five years to the franchise, the same procedure should be followed.

Attachments (2): Attachment A – Vicinity Map
 Ordinance

Woodinville Water District Kirkland Service Boundary

Attachment A



Produced by the City of Kirkland.
© 2012, the City of Kirkland, all rights reserved. No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

Author:
Name: woodinville water district
Date Saved: 10/26/2012 5:16:12 PM

- Woodinville Woodinville Water District
- Parks
- Schools
- Railroads
- Major Streets
- City Limits
- Lakes

ORDINANCE O-4382

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO AMENDMENT OF ORDINANCE O-4299 OF THE CITY OF KIRKLAND RELATING TO GRANTING WOODINVILLE WATER DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA WATER AND SEWER FACILITIES FOR PURPOSES OF ITS WATER AND SEWER UTILITY BUSINESS.

WHEREAS, Woodinville Water District ("WWD" or "District") owns water and sewer facilities ("Facilities") in the City of Kirkland ("City"), and a portion of such Facilities are located within the City right-of-way; and

WHEREAS, RCW 57.08.005(3) and (5) authorize WWD to conduct water and sewage throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District; and

WHEREAS, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated water and sewer facilities; and

WHEREAS, the City and WWD drafted the "Ordinance of the City of Kirkland Relating to Granting Woodinville Water District, a Washington Municipal Corporation, the Right, Privilege, Authority and Franchise to Construct and Maintain, Repair, Replace, Operate Upon, Over, Under, Along and Across the Franchise Area Water and Sewer Facilities for Purposes of its Water and Sewer Utility Business" ("Franchise Agreement") to allow WWD to operate its facilities within the City right-of-way, which took effect in 2011; and

WHEREAS, language regarding the term of the Franchise Agreement was inadvertently left out of the Franchise Agreement, which requires an amendment as allowed by Section 19 of the Franchise Agreement to restore that missing language.

NOW THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City an Amendment of the Franchise Agreement, herein incorporated by reference, substantially similar to the Amendment attached hereto as Exhibit A.

Section 2. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2012.

Signed in authentication thereof this ____ day of _____, 2012.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

Amendment of the 2011 Franchise Agreement Granted to the Woodinville Water District by the City of Kirkland

This Amendment is entered into on this ____ day of _____, 2012, by and between the City of Kirkland ("City") and Woodinville Water District ("WWD") for the purposes of amending the 2011 Ordinance of the City of Kirkland Relating to Granting Woodinville Water District, a Washington Municipal Corporation, the Right, Privilege, Authority and Franchise to Construct and Maintain, Repair, Replace, Operate Upon, Over, Under, Along and Across the Franchise Area Water and Sewer Facilities for Purposes of its Water and Sewer Utility Business ("Franchise Agreement"), herein incorporated by reference.

Whereas, language regarding the term of the Franchise Agreement was inadvertently left out of the Franchise Agreement, which requires an amendment as allowed by Section 19 of the Franchise Agreement to restore that missing language; and

Whereas, pursuant to RCW 35A.47.040, by ordinance the Kirkland City Council authorized the City Manager to amend the Franchise Agreement after two readings of the ordinance on November 7 and at its regular meeting of November 20, 2012,

Now, therefore, the City and WWD hereby agree as follows:

1. The Franchise Agreement is amended to read as follows:

Section 8. Franchise Term. Subject to the provisions of Section 9 and 10 below, this Franchise is and shall remain in full force and effect from its Effective Date as defined in Section 20 herein until December 31, 2018, provided that on January 1, 2019, and on January 1 every five (5) years thereafter, the term shall automatically be extended for an additional five (5) years, unless either WWD or the City gives the other party written notice of non-renewal prior to any such renewal date; in which case this Franchise shall terminate five (5) years after such renewal date and provided further, however, WWD shall have no rights under this Franchise unless WWD shall, within fifteen (15) days after the passage date of the Ordinance referred to in Section 20 herein, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney. If the City gives WWD written notice of non-renewal prior to January 1, 2019, and the City, following the termination of this Franchise, assumes pursuant to Chapter 35.13A RCW, or as such statute may be modified or amended, all or any part of the District's Facilities located within the Franchise Area, the City shall pay the District at the time any such assumption is effective, the greater of (1) the District's indebtedness allocated to the District's Facilities assumed by the City pursuant to applicable law, District revenue bond covenants or other contracts related to District capital debt, or (2) the depreciated value of District capital improvements undertaken in the Franchise Area since the Effective Date of this Franchise determined by the total project cost of all District capital improvements undertaken in the Franchise Area since the Effective Date of this Franchise amortized on a straight-line basis over a thirty five (35) year useful life.

2. Except as modified herein, all of the remaining terms and conditions of the Franchise Agreement remain in full force and effect.

CITY OF KIRKLAND

WOODINVILLE WATER DISTRICT

By: _____
Kurt Triplett, City Manager

By: _____
Ken Howe, General Manager

Approved as to Form:

PUBLICATION SUMMARY
OF ORDINANCE O-4382

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO AMENDMENT OF ORDINANCE O-4299 OF THE CITY OF KIRKLAND RELATING TO GRANTING WOODINVILLE WATER DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA WATER AND SEWER FACILITIES FOR PURPOSES OF ITS WATER AND SEWER UTILITY BUSINESS.

SECTION 1. Authorizes and directs the City Manager to execute on behalf of the City an Amendment of the Franchise Agreement relating to granting Woodinville Water District the right, privilege, authority and franchise to construct and maintain, repair, replace, operate upon, over, under, along and across the franchise area water and sewer facilities for purposes of its water and sewer utility business.

SECTION 2. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2012.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033
425.587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager
From: Eric Shields, Planning Director
Date: October 16, 2012
Subject: Nonconforming Density Regulations

RECOMMENDATION

That the Council Reviews the Zoning Code amendments recommended by the Planning Commission and the potential alternatives presented below and then directs staff to prepare an ordinance for consideration at a future meeting. If the Council selects an alternative for consideration that is significantly different from the PC recommendation, it is recommended that a public hearing be scheduled.

BACKGROUND DISCUSSION

As part of a recent large group of Zoning Code amendments, the Planning Commission recommended amendments to regulations governing nonconforming density. The regulations specify the circumstances under which a building with more dwelling units than allowed under the current zoning must be brought into conformance.

The amendments were precipitated by discussions during the update of the Lakeview and Central Houghton Neighborhood plans in 2011. Both neighborhoods contain buildings that were constructed when zoning regulations allowed greater density. During the plan update process, concerns were raised by residents that current zoning regulations unreasonably restrict maintenance and remodeling of these structures. In response, the Planning Commission and Houghton Community Council considered including policies in the neighborhood plans that would support more flexibility in dealing with nonconforming density within those neighborhoods. However, this approach was ultimately rejected because it was focused solely on two neighborhoods, rather than addressing the issue throughout the City. Instead, it was agreed to look at the regulations on a City-wide basis.

The amendments recommended by the Planning Commission remove construction cost limits on maintenance and remodeling of structures with nonconforming density, as well as generally simplify the regulations. The proposed amendments, however, continue to restrict the expansion of structures with nonconforming density, although the language was changed somewhat.

Correspondence has been submitted suggesting that the current restriction on expanding structures is too restrictive. Many of the older structures that exceed current density limits are smaller in size than current regulations, particularly lot coverage regulations, allow. The

correspondence asks that the regulations be further amended to allow structures to expand, consistent with current dimensional standards, without requiring that density be brought into conformance.

The regulations recommended by the Planning Commission are included in Attachment 1 and show the complete proposed wording changes to the current code. Following are alternatives to paragraph 3 of the regulations which addresses remodeling, with a brief explanation of each alternative's implications:

Planning Commission recommendation:

3. *Remodeling may be carried out consistent with the provisions of this chapter; provided, there is no change to the configuration of exterior walls and the density within the remodeled structure is no greater than contained in the original structure.*

Implications: The Planning Commission proposal removes construction cost restrictions on remodeling but allows no change to exterior walls. If expansion is desired, buildings must be brought into compliance with existing density limits. Consequently, this restriction tends to discourage substantial redevelopment. Since buildings with nonconforming density are older and typically smaller and more affordable than newer structures, the regulation also has the effect of preserving some of the City's more affordable housing stock.

Alternative 1 - Limit remodeling to existing major exterior dimensions:

3. *Remodeling may be carried out consistent with the provisions of this chapter; provided, there is no change to the configuration of exterior walls the remodeled structure does not exceed the major exterior dimensions of the original structure and the density within the remodeled structure is no greater than contained in the original structure.*

Implications: This is very similar to and fundamentally consistent with the Planning Commission recommendation, but uses language more similar to the current regulations with regard to structure expansion. Expansion is still generally prohibited, but the language allows for more flexibility in making minor changes.

Alternative 2 - Allow limited expansion:

3. *Remodeling or minor additions may be carried out consistent with the provisions of this chapter; provided, there is no change to the configuration of exterior walls the gross floor area of the structure is not expanded by more than X%, and the density within the remodeled or expanded structure is no greater than contained in the original structure, and any expansion of the structure complies with all applicable zoning regulations.*

Implications: This alternative would allow structures with nonconforming density to be expanded by a limited percentage of the floor area in existing structures. The Council would need to determine the appropriate percentage. Any further expansion would require that the density comply with current regulations. This alternative allows more flexibility for remodeling. It would also increase the possibility of fully redeveloping existing buildings,

but would typically not allow expansion or rebuilding up to current dimensional standards unless density is reduced.

Alternative 3 - Allow complete redevelopment:

3. *Remodeling or redevelopment may be carried out consistent with the provisions of this chapter; provided, there is no change to the configuration of exterior walls and the density within the remodeled structure is no greater than contained in the original structure and any expansion of the structure complies with all applicable zoning regulations.*

Implications: This alternative would allow for complete redevelopment while maintaining the existing nonconforming density. The Planning Commission discussed this idea and concluded that it would be inappropriate as it would essentially create spot zoning of higher density within areas generally planned for lower densities. This would create an inequitable regulation of density for similarly situated properties.

Alternative 4 – Rezone areas with significant nonconforming density:

In lieu of alternative 3, but potentially in addition to one of the other alternatives, areas with high concentrations of nonconforming density could be up-zoned consistent with the prevailing highest density. For example, the largest concentration of properties with nonconforming density is in the RM 3.6 and PR 3.6 zones south of downtown, as shown in Attachment 2. Rezoning would allow all properties in a defined area to redevelop under the same density regulations. This alternative would require amendments to the Comprehensive Plan. Such amendments could be considered during the 2013/14 update of the Plan.

Public Hearing Recommended

If the Council is interested in considering regulations that are significantly different than those recommended by the Planning Commission such as alternatives 2 or 3, it is recommended that the Council conduct a public hearing to receive public comment. To provide sufficient time for advertising, the earliest date to schedule the hearing would be December 11, 2012. If Alternative 4 is of interest, Council may direct that this alternative be considered in the upcoming Comprehensive Plan update.

Attachments:

1. Proposed regulations recommended by the Planning Commission
2. Properties with nonconforming density in the RM 3.6 and PR 3.6 zones south of downtown

Es: CC memo nonconforming density 9-12

Planning Commission Recommended Amendments to Nonconforming Density Regulations

162.6035.12 ~~Special Provisions for Continued Uses—~~ Nonconforming Density

The provisions of this section set forth when, and under what circumstances, residential property with nonconforming density may continue in existence or be rebuilt or redeveloped. An existing lawful use of a residential structure which became nonconforming as to density ~~either as a result of amendatory Ordinance No. 2347 or due to other zoning changes implemented to bring about conformity with the Comprehensive Plan~~ shall be allowed to continue in existence, or be remodeled, repaired or maintained subject to the conditions listed below. ~~Redevelopment or rebuilding may not occur unless the structure is destroyed by fire or other casualty (see subsection (4) of this section).~~

1. The provisions of this section apply only to multifamily structures in areas designated by the ~~Comprehensive Plan~~ Zoning Code for multifamily use.
2. ~~Any change in use shall conform to the Comprehensive Plan and zoning regulations in effect at the time such change is made.~~
3. ~~Any change in density shall comply with the provisions of this section.~~
42. Ordinary repairs and maintenance may be carried out consistent with the provisions of this chapter; ~~provided, that there shall be~~ with no limitation on the amount or cost of such repairs and maintenance.
53. Remodeling may be carried out consistent with the provisions of this chapter; provided, ~~that within any 24 month period, the value of all improvements may not exceed 50 percent of either the assessed valuation of the existing structure based on the King County assessed valuation of the structure, or the value of the existing building as determined by the most current Building Standards as published by the International Conference of Building Officials, whichever is greater. If there is no King County assessment for the structure to be remodeled, the most current Building Standards as published by the International Conference of Building Officials shall be used to determine valuation~~ there is no change to the configuration of exterior walls; and
The density within the remodeled density structure is no greater than must be at least 75 percent of that contained in the original structure. The major exterior dimensions of the structure shall not exceed the major exterior dimensions of the previous structure. Except as noted in this subsection and subsection (7) of this section, this provision shall not reduce any requirements of the zoning, building, or fire codes in effect when the structure is remodeled.
64. Residential property with nonconforming density shall not be subject to the provisions of this chapter relating to destruction by fire or other casualty. In the event a residential structure that is nonconforming as to density is destroyed to any extent by fire or other casualty, the structure may be rebuilt as a residential structure; provided, however, that the number of dwelling units, gross floor area of the structure, and major exterior dimensions of the structure shall not exceed the same dimensions or standards of the previous structure. This subsection shall not reduce any requirements of the zoning, building, or fire codes in effect when the structure is rebuilt. The property owner shall also have the option of rebuilding the structure at a reduced density, as described in subsection (5) of this section. The provisions of this subsection shall only be available if an application for a building permit is filed within 12 months of fire or other casualty and construction is commenced and completed in conformance with the provisions of the building code then in effect.

~~7. Should the number of parking stalls provided on-site be insufficient to meet zoning regulations in effect at the time of remodeling, this deficiency shall be allowed to remain with the remodel; provided, that the number of stalls may not be reduced from the number of stalls on-site with the original structure. Any surplus of parking stalls above those required by the zoning regulations in effect at the time of remodeling may be eliminated.~~

~~85. The owner of a continued use nonconforming as to density may request the issuance of a "certificate of continued use" which shall identify the property, existing use, density and site characteristics for which the certificate is issued and which shall include the provisions of this chapter.~~

~~162.35.1213.~~ Any Other Nonconformance

If any nonconformance exists on the subject property, other than as specifically listed in the prior subsections of this section, these must be brought into conformance if:

- a. The applicant is making any alteration or change or doing any other work in a consecutive 12-month period to an improvement that is nonconforming or houses, supports or is supported by the nonconformance, and the cost of the alteration, change or other work exceeds 50 percent of the replacement cost of that improvement; or
- b. The use on the subject property is changed and this code establishes more stringent or different standards or requirements for the nonconforming aspect of the new use than this code establishes for the former use.



CITY OF KIRKLAND

Police Department

123 Fifth Avenue, Kirkland, WA 98033 425.587.3400

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Eric Olsen, Chief of Police
Bill Hamilton, Captain
Marie Stake, Communications Program Manager

Date: October 22, 2012

Subject: Watercraft Noise Update

RECOMMENDATION:

That Council receives an update report regarding the impacts of the new boating noise ordinance.

BACKGROUND

Amplified noise from watercraft stereo systems was identified as a growing concern for our shoreline community. Title 14 of the Kirkland Municipal Code addresses many marine related issues, but did not provide a suitable enforcement solution for boat related noise. At Council's direction, staff garnered various stakeholder input and subsequently proposed a two phase response to watercraft related issues. The first phase specifically addressed boat related noise for which Council revised Kirkland Municipal Code ("KMC") Section 11.84A.070, adding watercraft noise to the existing language. Phase I was implemented during the 2012 boating season and Phase II will be addressed in the upcoming months.

Phase I- Implementation Update

Although the boating noise ordinance was only implemented this summer, positive impacts have already been observed.

Per the Police Department's request, the King County Marine Unit increased their visibility and interaction with boaters. They advised boaters of the new boating noise ordinance and distributed the Kirkland boating noise ordinance informational "Have Fun, Have Respect" postcard (Attachment 1). Posters regarding the new ordinance were placed at the Kirkland dock. Posters were also distributed to other Lake Washington communities to be posted near their common boat access areas.

Kirkland's boating community originally expressed concerns regarding fears of "over policing." The Police Department has not received any enforcement complaints from boaters and only three boating related noise citations were issued during the 2012 boating season.

Kirkland's Police Department recently solicited post implementation feedback from previously identified Juanita Bay residential stakeholders. The residents were appreciative and noted a significant improvement in unreasonable boat related noise. For example:

- "I have talked to a lot of folks on both sides of the bay. We are excited and incredibly grateful."
- "We never thought the City would listen. We are happy with the response thus far."
- "We credit KPD and their interaction with King County Marine in making this happens."

NEXT STEPS

The Public Involvement Plan presented to the Council in April 2012 calls for extended outreach to stakeholders in Phase II. Keeping to the commitment to conduct a comprehensive review to Title 14, the following activities are planned for Phase II.

1. **Internal Review of Title 14:** The Police Department will coordinate an internal review of Title 14 "Waters & Surfacecraft" with the Parks and Community Services Department, City Manager's Office, City Attorney's Office and King County Sheriff's Office. Policy questions needing clarification will be presented to the Council's Public Safety Committee during this review. This review will bring to light issues that stakeholders may have great interest in which will be further explored through an online survey. Potential topics may include speed and anchoring limits and pollution and water quality impacts of boating. (November 2012-January 2013)
2. **Online survey:** The City Manager's Office will coordinate the development of an online survey that will allow interested stakeholders to give input on certain current and proposed provisions of Title 14. The internal review and stakeholder survey will help to develop amendments that will be presented to the Public Safety Committee and then to the full Council. (February-March 2013)
3. **Public Workshop:** The Police Department and City Manager's Office will host an informational meeting to present the draft ordinance (April 2013)
4. **Ongoing public information:** The City Manager's Office will coordinate ongoing public information on the progress and outcomes of Phase II through the website (www.kirklandwa.gov/watercraftsafety) and email (list serv) updates, media relations, and city communications tools.
5. **Title 14 Amendments/Ordinance Adoption:** The goal is to have the Council adopt a final ordinance prior to the 2013 boating season. The targeted timeline is to bring the legislation to the Council at one of the May 2013 meetings for discussion and adoption.

The enforcement philosophy remains one of balance, so that boaters maintain the ability to enjoy themselves, while being respectful of their potential impact on others. The collective feedback and early results to date have been positive. It is critical that that we continue to monitor and adjust our response as needed to continue the positive outcomes.

HAVE FUN HAVE RESPECT

Boat noise ordinance now in effect

The Kirkland Police Department and King County Sheriff's Office Marine Unit ask for your cooperation in complying with the new public disturbance regulations that apply to watercraft (Kirkland Municipal Code 11.84A.070). Prohibited noise

includes frequent, repetitive or continuous sounds from a horn or siren; excessive engine noise; and audio sound system noise audible from 300 feet or more. Please be considerate of your boating and land neighbors. www.kirklandwa.gov/watercraftsafety



**CITY OF KIRKLAND****Planning and Community Development Department**
123 Fifth Avenue, Kirkland, WA 98033
425.587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Eric Shields, Planning Director

Date: October 25, 2012

Subject: Medical Marijuana Collective Gardens

RECOMMENDATION

Provide direction to staff on whether to prepare for Council consideration on December 11, 2012 either an ordinance renewing the existing medical marijuana collective gardens moratorium or an ordinance establishing interim zoning regulations for collective gardens. Staff recommends that the existing moratorium be allowed to expire and that interim regulations not be adopted.

BACKGROUND DISCUSSION

On June 19, 2012 the City Council adopted Ordinance 4358 (attachment 1) which extended a previously adopted moratorium on the establishment of medical marijuana collective gardens (collective gardens). The current moratorium will expire on December 29, 2012. The last regular Council meeting prior to expiration is December 11, 2012.

As the Council may recall, collective gardens were allowed by E2SSB 5073 which became effective in July 2011. Collective gardens are places where up to ten qualifying patients may join together to produce, grow and deliver up to 45 marijuana or cannabis plants for medical purposes.

Options When Existing Moratorium Expires.

If desired, the Council could (1) renew the moratorium, (2) adopt interim regulations, or (3) let the moratorium expire. In accordance with RCW 35A.63.220 and RCW 36.70.390, either option (1) or (2) would require a public hearing. Each of these options is discussed below.

Option 1: Renew the Moratorium. This option would continue to expressly prohibit medical marijuana collective gardens for up to another six months. The current moratorium has already been effect for a year. The moratorium was designed to preserve the status quo while the City considered new regulations to respond to new and changing circumstances relating to medical marijuana dispensaries and collective gardens not addressed in City codes. During the period of the moratorium, City staff researched the medical marijuana ordinances, land use impacts, and enforcement issues in other Washington cities.

Staff has conducted sufficient study to develop interim regulations without the extension of the moratorium. However, if the Council does select this option, it is recommended that Council also direct staff and the Planning Commission to prepare proposed zoning regulations for Council consideration prior to expiration of the further extended moratorium.

Option 2: Interim Regulations. As with the moratorium option, interim regulations would only be in effect for a six month period pending the preparation of permanent regulations. However, instead of an outright ban, interim regulations would establish where collective gardens are to be allowed and how they would be regulated.

If this option is selected, staff recommends that interim regulations allow collective gardens only in defined light industrial zones: Light Industrial Technology, Planned Area 6G and Totem Lake 7, as shown in light blue on the attached map. The collective gardens could be further restricted by prohibiting them within proximity to sensitive uses such as parks, schools or day care centers. The attached map also shows portions of the light industrial zones that are more than 1000 feet from the above uses.

This approach is similar to the permanent collective gardens regulations adopted by the City of Issaquah and is also similar to the way Kirkland regulates "adult activities." According to Issaquah's Planning Director, Issaquah chose this approach because the Issaquah City Council desired to provide places for collective gardens to locate. He also noted that two collective gardens are currently in operation in Issaquah and that he is unaware of any problems.

Using this approach for interim regulations would be appropriate if the City Council is interested in using the same approach for permanent regulations. If so, the Council should direct the staff and Planning Commission to prepare proposed zoning regulations for Council consideration prior to expiration of the interim regulations.

Option 3: Allow the Moratorium to Expire Without Adopting Interim Regulations. With this option, following the expiration of the current moratorium, collective gardens would be governed by existing zoning regulations. Those regulations do not allow collective gardens within any zone of the City. Kirkland's Zoning Code typically defines permitted uses using broad types of uses, for example dwelling units, retail establishments, office uses, wholesale trade and manufacturing. Collective gardens would not fall within any of the use types listed in the code.

However, collective gardens could be considered to be accessory to a permitted uses, particularly residential uses. Section 5.10.015 of the Zoning Code defines "accessory" as:

A use, activity, structure or part of a structure which is subordinate and incidental to the main activity or structure on the subject property.

Section 115.10 of the Zoning Code addresses accessory uses, facilities and activities and states that they must be clearly secondary to the permitted use. A small medical marijuana collective garden in a backyard shared by the property resident with a few others would seem to fit this definition, but not a garden of the maximum size allowed by state law, involving ten patients and up to 45 plants. Although residential uses are allowed in all but a few zones in the City, it is unlikely that gardens would be associated with multi-family uses due to limited land availability. The most likely locations, therefore, would be in single family residential zones.

Zoning Regulations

Even if the City Council chooses not to renew the moratorium or adopt interim regulations, the Council could choose to initiate a process for Zoning Code amendments that would either codify a complete ban on collective gardens or conversely allow for and regulate collective gardens as free-standing uses not accessory to another use. For example, the City of Kent recently adopted an outright ban on collective gardens in its zoning code. The ordinance was challenged in superior court, but the judge found in favor of the city and upheld the ban. Seattle, on the other hand, has adopted regulations that are more permissive (and also allow dispensaries) in order to provide more generous opportunities for locating collective gardens.

If the Council decides not to renew the moratorium or adopt interim regulations for collective gardens but is interested in considering new zoning regulations, it is not necessary to start this project immediately. To allow full consideration of other potentially desirable planning projects, it is recommended that a decision to begin work on collective gardens zoning regulations be considered when the Council reviews the 2013 Planning Work Program in early 2013.

Public Safety Committee Review

The Public Safety Committee discussed this issue on October 18, 2012. Members were in general agreement to not renew the moratorium or enact interim regulations. There was interest, however, in finding out more about why Issaquah and Seattle made the regulatory choices they did (briefly noted above). There was also interest in understanding more about how enforcement would work under our existing code (see below).

Enforcement

As noted above, medical marijuana collective gardens are not an allowed use in any zone under the Kirkland Zoning Code, but a small scale collective garden could be considered an accessory to a residential use. If collective gardens were to be established in violation of the regulations, the City would follow normal enforcement procedures:

- An investigation is initiated upon receipt of a complaint;
- A code enforcement officer (CEO) investigates and contacts the alleged violator;
- If a violation is found, the CEO asks the violator to cease the violation;
- If the violator agrees, a voluntary compliance agreement is negotiated;
- If the violator does not agree, the CEO issues a notice of civil violation which stipulates fines of \$100/ day. A hearing is scheduled before the Hearing Examiner;
- The Hearing Examiner holds a hearing and issues a decision within ten days of

the hearing. If the Hearing Examiner finds for the City, she will require cessation of the violation and payment of the fines. Fines will continue to accrue until the violation is ceased.

- If fines are not paid, the matter will be referred to collection.

The police department would also be able to enforce upon any criminal activity.

Concerns of the Police Department in Allowing Collective Gardens

From a law enforcement perspective the police are sworn to uphold the Constitution and the Laws of the United States of America as well as the laws of the State of Washington and the City of Kirkland. Marijuana is still illegal under Federal law. By allowing "collective gardens" the City of Kirkland would place its Law Enforcement Officers in a difficult grey area as there is so much conflict between the Federal and State laws. The Kirkland police participate in several "Task Force" operations such as the Secret Service and Eastside Narcotics Task Force with the Federal Government and other local law enforcement agencies that have brought resources to our citizens they would not otherwise be able to access. By participating in those Task Force operations, KPD may or may not encounter "collective gardens" and be required to enforce Federal Law.

The Kirkland Police also receive grant funding from the Federal Government such as Byrne Grants and Department of Justice grants that could be jeopardized.

In addition, there is always the concern about public health issues, increased potential for criminal behavior with others trying to buy, steal, or otherwise get the product from the collective gardens or the participant gardeners.

Changing Policy Landscape

Initiative 502, which legalizes and regulates marijuana for adults in the State of Washington, is on the November 6, 2012 election ballot. This memo is being written prior to the election but the Council meeting will occur the day after the election. If the Initiative passes it is unclear how it will impact medical marijuana dispensaries or collective gardens. I-502 is silent on medical marijuana but marijuana could be purchased at retail stores, and state and local criminal penalties for possession and use would be eliminated. If I-502 is approved, private stores, producers, and processors would be licensed to sell marijuana. The Liquor Control Board would establish the maximum number of retailers per county and the maximum amount of marijuana a retailer and producer could have on the premises. The State Legislature may also once again take up the issue of medical or legalized marijuana during the 2013 session. Given the shifting policy landscape around the issue of medical marijuana, it is prudent for the City to continue to be patient and flexible in its approach to the issue.

Recommendation

Staff therefore recommends that the existing moratorium be allowed to expire and that interim regulations not be adopted. This will effectively ban collective gardens except possibly as accessory uses in residential zones. If Council concurs, staff from the City Manager's office, Police, Planning and the City Attorney's office would continue to monitor the situation, identify any negative community impacts, and come back to the Council as issues emerge that need policy direction.

ORDINANCE O-4358

AN ORDINANCE OF THE CITY OF KIRKLAND EXTENDING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA COLLECTIVE GARDENS, DEFINING "MEDICAL MARIJUANA COLLECTIVE GARDENS"; 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, on July 19, 2011, the City Council passed Ordinance 4316, imposing a moratorium on the licensing, establishment, maintenance or continuation of any medical marijuana collective garden; and

WHEREAS, on August 2, 2011, the City Council conducted a public hearing to take public testimony on the imposition of the moratorium; and

WHEREAS, on January 3, 2012, the City Council, after conducting a public hearing, adopted Ordinance 4344 which extended the moratorium for an additional six months; and

WHEREAS, the moratorium enacted by Ordinance 4344 will expire on July 3, 2012; and

WHEREAS, Ordinances 4316 and 4344 defined the medical marijuana collective gardens that were subject to the moratorium and adopted findings and conclusions supporting the moratorium; and

WHEREAS, additional time is needed to allow the City to consider land use regulations to address medical marijuana collective gardens; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 allow the City to extend a moratorium for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal; and

WHEREAS, on June 3, 2012, a determination of nonsignificance was issued on the proposed extension of the medical marijuana collective gardens moratorium, pursuant to the State Environmental Policy Act; and

WHEREAS, the City Council desires to enter findings in support of the extension of the moratorium;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The recitals set forth above are hereby incorporated as findings of fact.

Section 2. The City Council further finds as follows:

- a. The possession or distribution of marijuana has been and continues to be a violation of state law pursuant to Chapter 69.50 RCW (Washington's uniform Controlled Substances Act), and federal law, through the Controlled Substances Act; and

O-4358

- b. In 1998 the voters of Washington State approved Initiative 692, now codified as Chapter 69.51A RCW, which created a limited defense to marijuana charges under state, not federal, law if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Ch. 69.51A RCW; and
- c. In 2011 the state legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073 making significant amendments to the medical marijuana law in Washington; and
- d. The Governor signed the E2SSB 5073, but vetoed several portions expressing her reservations about provisions that involved state employees in activities that could be interpreted as in violation of federal laws; and
- e. E2SSB 5073 became effective on July 22, 2011; and
- f. E2SSB 5073 authorizes "collective gardens" where up to ten qualifying patients may join together to produce, grow and deliver up to 45 marijuana or cannabis plants for medical use; and
- g. Under E2SSB 5073 there is no limit to the number of medical marijuana collective gardens that may be located at any site nor restrictions as to where collective gardens may be located in relation to other uses; and
- h. Medical marijuana collective gardens are not currently addressed in the Kirkland Zoning code and under Section 1102 of E2SSB 5073 cities may adopt zoning requirements for collective gardens; and
- i. The City's adoption of land use regulations applicable to medical marijuana collective gardens may be subject to federal or state preemption.
- j. Additional time is needed to study the land use impacts of medical marijuana collective gardens.
- k. Unless the moratorium imposed by Ordinance 4316 and extended by Ordinance 4344 is further extended, medical marijuana collective gardens may be located within the City of Kirkland while the City lacks the necessary tools to ensure the location is appropriate and that the potential secondary impacts of collective gardens are minimized and mitigated; and
- l. The City Council deems it to be in the public interest to further extend the moratorium imposed by Ordinance 4316, and extended by Ordinance 4344, pending consideration of land use regulations to address medical marijuana collective gardens.

Section 3. Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, the moratorium enacted by Ordinance 4316 and extended by Ordinance 4344 prohibiting the licensing, establishment, maintenance or continuation of any medical marijuana collective garden in the City of Kirkland is extended for six months. A "medical marijuana collective garden" is an area or garden where qualifying patients engage in the production, processing, or transporting and delivery of marijuana for medical use as set forth in the E2SSB 5073 and subject to the limitations therein.

Section 4. Medical marijuana collective gardens as defined in Section 3 are hereby designated as prohibited uses in the City of Kirkland. In accordance with the provisions of RCW 35A.82.020 and Kirkland Municipal Code 7.02.290, no business license shall be issued to any person for a medical marijuana collective garden, which use is hereby defined to be a prohibited use under the ordinances of the City of Kirkland.

Section 5. The moratorium set forth in this Ordinance shall be in effect for a period of six months from the date this Ordinance is passed and shall automatically expire on that date unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Kirkland City Council.

Section 6. The City Manager is hereby authorized and directed to develop draft regulations regarding medical marijuana collective gardens. The regulations shall be referred to the Kirkland Planning Commission for review and recommendation for inclusion in the Kirkland Zoning Code.

Section 7. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 8. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 19th day of June, 2012.

Signed in authentication thereof this 19th day of June, 2012.


MAYOR

Attest:

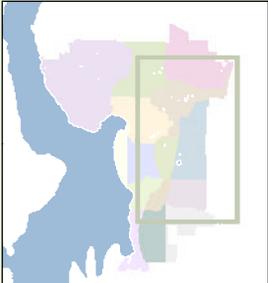

City Clerk

Approved as to Form:


City Attorney

E-page 142 Potential Medical Marijuana Collective Gardens Locations

-  LIT, PLA 6G, TL 7 & TL 9A
-  Zoning Area Outside 1000 Foot Facility Radius
-  Day Care Facility
-  Parks
-  School
-  Railroads
-  Major Streets
-  City Limits
-  Lakes



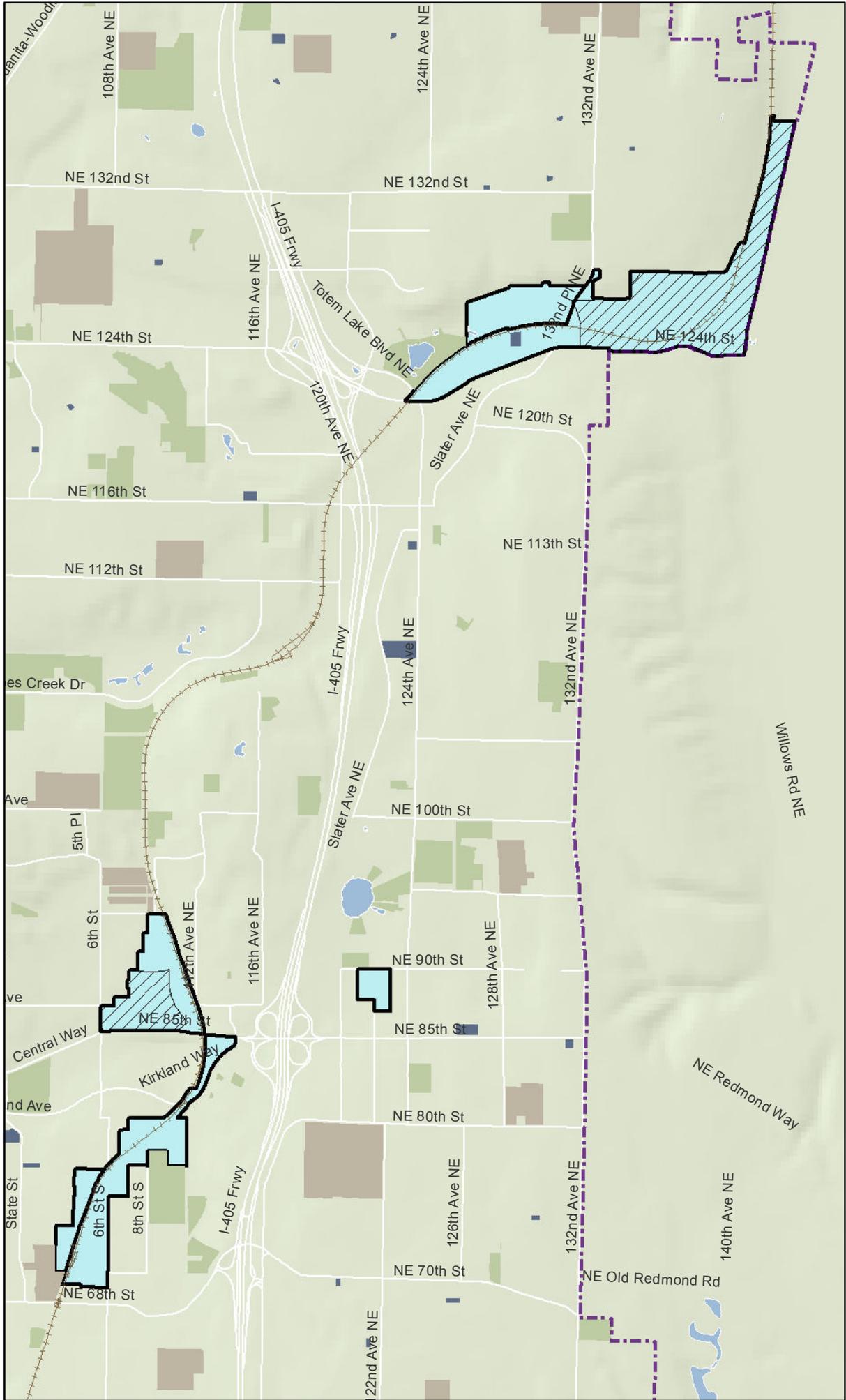

0 575 1,150 1,725 2,300 Feet

0 0.1 0.2 0.3 0.4 Miles



Produced by the City of Kirkland.
© 2012, the City of Kirkland, all rights reserved. No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

Author: Name In Map Doc Properties
Name: LocationAnalysis10102012
Date Saved: 10/25/2012 11:49:51 AM





CITY OF KIRKLAND

City Manager's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3001

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager
From: Kari Page, Neighborhood Outreach Coordinator
Date: October 18, 2012
Subject: Upcoming City Council Meetings with the North Rose Hill neighborhood

RECOMMENDATION:

City Council finalize the agenda for the City Council Meeting in the North Rose Hill neighborhood and begin thinking about if and when any changes should be made to the City Council Meetings in the Neighborhoods format and/or cycle.

BACKGROUND:

Upcoming Meeting

The Council is scheduled to meet with North Rose Hill neighborhood residents on Monday, November 19, 2012 6:45–8:45 p.m. at North Rose Hill Fire Station, 9930 124th Avenue NE.

Unless otherwise instructed by Council, staff will continue to format the meeting similar to the last City Council meeting with the Moss Bay Neighborhood.

The agenda for the meeting is as follows:

- 6:45-7:00 p.m. Informal Casual Conversations
- 7:00-7:05 p.m. Welcome and Introduction—Mayor Joan McBride
- 7:05-7:10 p.m. Comments from the North Rose Hill Neighborhood Chair, Margaret Carnegie
- 7:10-7:30 p.m. Introductions from City Council Members
- 7:30-8:45 p.m. General Discussion and Questions from Audience
- 8:45 p.m. Social Time

The following topics were submitted by the North Rose Hill Neighborhood Chair for discussion at the meeting. These will be added to the list of questions submitted online by residents and, as usual, answers will be distributed at the meeting and posted online.

- Please explain why a resident has to pay a fee to raise a safety concern about a construction project. What are the fees and why do we have them?
- What can be done to make the intersection of 128th Avenue NE and NE 95th Street safer for children walking to and from school?

- The City added a westbound to southbound turn lane on NE 95th Street at 124th Avenue NE. By doing so, they widened the road and took away the space along the road for pedestrians to walk. Can a sidewalk be added or something to make it safer for pedestrians at this intersection?
- What is the status of the remaining Slater Avenue Traffic Control Plan? When will the remaining elements of the plan be implemented?
- Please explain what the City Council's priority is related to neighborhoods in light of the strong focus on economic development.

Attachment A outlines the remaining 2012 timeline for receiving the questions and answers in advance of the meetings and a map of the areas.

City Council Meetings in the Neighborhood Format

The City Council meetings in the Neighborhoods have been a way for the City Council to keep in touch with the interests and needs of the community. The program has been ongoing since the mid 1990s, with format changes periodically. The Council has not made any changes to the program since prior to the annexation in 2010. The projected schedule (based upon the current policy of meeting with each neighborhood every three years) is listed below. The goal of the program has been to reach every neighborhood at least every three years (approximately four neighborhoods per year).

2012

Moss Bay (May 21)
Lakeview (March 29)
Everest (moved to 2013 due to Holiday on September 25)
North Rose Hill (November 19)

2013

Everest (Tentatively postponed from 2012 to Feb 26, 2013)
Market
Highlands/Norkirk (Agreed to meet together)
South Rose Hill/Bridle Trails

2014

Totem Lake/Evergreen Hill
Central Houghton
Juanita
Finn Hill

Now that the City's population has nearly doubled in size, and the number of neighborhood associations has grown from 11 to 13, staff would like to ask if the Council would like to make any changes to either the format or the structure of this program. Below is a list of questions to help assess whether changes should be considered.

- Would Council prefer the same number of neighborhood meetings per year (i.e. typically two in the fall and two in the spring)?
- Would Council like to combine some neighborhood meetings?
- Would Council like more flexibility with meeting dates or continue to meet on a neighborhood's regularly scheduled meeting date? At times the neighborhood meeting dates fall on days when Council has other obligations (e.g. preparing for a Council meeting the following day.)

- Are there any changes the Council would like to see in the meeting format itself?

Staff will be at the November 7 City Council meeting to talk further with Council about possible changes to the format or structure of the meetings with the Neighborhoods. If you have any suggestions or changes to this schedule, please contact Kari Page at (425) 587-3011.

2012

January							February							March						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4					1	2	3
8	9	10	11	12	13	14	5	6	7	8	9	10	11	4	5	6	7	8	9	10
15	16	17	18	19	20	21	12	13	14	15	16	17	18	11	12	13	14	15	16	17
22	23	24	25	26	27	28	19	20	21	22	23	24	25	18	19	20	21	22	23	24
29	30	31	26	27	28	29	25	26	27	28	29	30	31							

April							May							June						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7			1	2	3	4	5					1	2	
8	9	10	11	12	13	14	6	7	8	9	10	11	12	3	4	5	6	7	8	9
15	16	17	18	19	20	21	13	14	15	16	17	18	19	10	11	12	13	14	15	16
22	23	24	25	26	27	28	20	21	22	23	24	25	26	17	18	19	20	21	22	23
29	30	27	28	29	30	31	24	25	26	27	28	29	30							

July							August							September						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4							1
8	9	10	11	12	13	14	5	6	7	8	9	10	11	2	3	4	5	6	7	8
15	16	17	18	19	20	21	12	13	14	15	16	17	18	9	10	11	12	13	14	15
22	23	24	25	26	27	28	19	20	21	22	23	24	25	16	17	18	19	20	21	22
29	30	31	26	27	28	29	30	31	23	24	25	26	27	28	29	30				

October							November							December						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6					1	2	3							1
7	8	9	10	11	12	13	4	5	6	7	8	9	10	2	3	4	5	6	7	8
14	15	16	17	18	19	20	11	12	13	14	15	16	17	9	10	11	12	13	14	15
21	22	23	24	25	26	27	18	19	20	21	22	23	24	16	17	18	19	20	21	22
28	29	30	31	25	26	27	28	29	30	23	24	25	26	27	28	29	30	31		

Fall 2012 City Council Meetings in the Neighborhoods	
	Everest Neighborhood: Postponed until 2013 September 25, 2012 (<i>Jewish Holiday</i>)
	North Rose Hill Neighborhood: November 19, 2012

Milestone	
	Residents receive mailing and submit questions
	Regular Council meeting to finalize agenda
	Directors answer questions from residents
	City Council receives questions and answers
	City Council meeting with the Neighborhood



CITY OF KIRKLAND

City Attorney's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3030

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Robin S. Jenkinson, City Attorney

Date: October 25, 2012

Subject:Potala Village Settlement Agreement

RECOMMENDATION:

Staff recommends that the Council authorize the City Manager to execute a proposed Settlement Agreement resolving the current claims of Lobsang Dargey and Potala Village Kirkland, LLC ("Potala") against the City. The final agreement is still being negotiated and will be distributed to the Council and the public as soon as it is completed. The goal is to complete the agreement by Friday, November 2, 2012, so that the Council and the public may review it in advance of the November 7, 2012, Council meeting.

BACKGROUND:

Potala has legal interests in property located at the southeast corner of 10th Avenue South and Lake Street South, with site addresses of 21 10th Avenue South, 1006 Lake Street South, and 1020 Lake Street South ("the Property"). The Property is zoned Neighborhood Business ("BN") under the City's Zoning Code. On February 23, 2011, Potala submitted an application for a Shoreline Substantial Development permit based on a mixed-use project that included 143 residential units and approximately 6,200 square feet of commercial space on the ground floor.

The City imposed a moratorium related to the BN zone on November 15, 2011, under Ordinance O-4335A. After a public hearing, the City renewed the Moratorium on January 3, 2012, under Ordinance O-4343; and then extended the Moratorium again, after another public hearing on May 1, 2012, under Ordinance O-4355, and then, after another public hearing on October 16, 2012, extended the Moratorium once more to no longer than December 31, 2012, under Ordinance O-4379.

On May 24, 2012, Potala filed a Complaint for Declaratory Judgment Writs and Injunction in King County Superior Court against the City. On June 28, 2012, Potala filed a Petition for Review with the Central Puget Sound Growth Management Hearings Board challenging the Moratorium extended by Ordinance O-4355.

City staff began negotiating the resolution of the claims made against the City in the Complaint and Petition. The proposed Settlement Agreement will represent the results of those negotiations. The proposed Settlement Agreement will provide for the full settlement and discharge of all claims by Potala which have been made against the City in the Complaint and Petition based upon the terms and conditions set forth in the proposed Settlement Agreement. By virtue of entering into this proposed Settlement Agreement, the City will not admit any liability or wrongdoing.

RESOLUTION R-4940

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN A SETTLEMENT AGREEMENT BETWEEN LOBSANG DARGEY AND TAMARA AGASSI DARGEY, POTALA VILLAGE KIRKLAND, LLC, AND THE CITY OF KIRKLAND TO SETTLE LITIGATION OVER PLAINTIFFS' CHALLENGE OF THE CITY'S MORATORIUM AS IT RELATES TO PLAINTIFFS' DEVELOPMENT OF THE POTALA VILLAGE PROJECT.

WHEREAS, Potala Village Kirkland, LLC, a Washington limited liability company, and Lobsang Dargey and Tamara Agassi Dargey, a married couple ("Plaintiffs") have legal interests in property located at the southeast corner of 10th Avenue South and Lake Street South in the City of Kirkland, with site addresses of 21 10th Avenue South, 1006 Lake Street South, and 1020 Lake Street South; and

WHEREAS, on February 23, 2011, Plaintiffs submitted an application for a Shoreline Substantial Development permit ("SDP") based on a mixed-use project that included 143 residential units and approximately 6,200 square feet of commercial space on the ground floor; and

WHEREAS, the City imposed a moratorium related to the Neighborhood Business ("BN") zone on November 15, 2011, under Ordinance 2335A; and

WHEREAS, after a public hearing, the City renewed the moratorium on January 3, 2012, under Ordinance O-4343; and then extended the moratorium again after another public hearing, on May 1, 2012, under Ordinance O-4355; and then after another public hearing, on October 16, 2012, the City extended it once more to no longer than December 31, 2012, under Ordinance O-4379 (the "Moratorium"); and

WHEREAS, on or about May 24, 2012, Plaintiffs caused to be filed and served a Summons and Complaint in King County Superior Court under cause number 12-2-18714-1 SEA (the "Complaint"), challenging the Moratorium; and

WHEREAS, on or about June 28, 2012, Plaintiffs caused to be filed and served a Petition for Review with the Central Puget Sound Growth Management Hearings Board under cause number 12-3-0005 (the "Petition"), challenging the Moratorium; and

WHEREAS, the City expressly denies Plaintiffs' claims as alleged in the Complaint and the Petition (collectively referred to herein as the "Litigation");

WHEREAS, the parties desire to enter into the attached Settlement Agreement in order to provide for the full settlement and discharge of all claims by the Plaintiffs which have been made against

the City in the Litigation upon the terms and conditions set forth in the attached Settlement Agreement;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to sign a Settlement Agreement substantially similar to that attached as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2012.

Signed in authentication thereof this ____ day of _____, 2012.

MAYOR

Attest:

City Clerk

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this ____ day of _____, 2012, by and between LOBSANG DARGEY and TAMARA AGASSI DARGEY, a married couple, and POTALA VILLAGE KIRKLAND, LLC, a Washington limited liability company (collectively referred to as "Plaintiffs"), and the City of Kirkland, including all elected officials, various department heads, and employees ("City"), to settle litigation over Plaintiffs' challenge of the City's Moratorium as it relates to Plaintiffs' development of the Potala Village Project in the City of Kirkland.

1. Parties

- 1.1 **City/Defendant.** CITY OF KIRKLAND ("City"), a Washington municipal corporation.
- 1.2 **Plaintiffs.** POTALA VILLAGE KIRKLAND, LLC, a Washington limited liability company, and LOBSANG DARGEY and TAMARA AGASSI DARGEY, a married couple.
- 1.3 **Legal Representation.** The City is represented by City Attorney Robin Jenkinson and Stephanie E. Croll of Keating, Bucklin & McCormack, Inc., P.S.; Plaintiffs are represented by Duana Kolouskova of Johns Monroe Mitsunaga Kolouskova, PLLC.

2. Background

- 2.1 Plaintiffs have legal interests in property located at the southeast corner of 10th Avenue South and Lake Street South in the City of Kirkland, site addresses of 21 10th Avenue South, 1006 Lake Street South, and 1020 Lake Street South and comprised of tax parcel numbers 935490-0220, 935490-0240 and 082505-9233 (collectively referred to herein as the "Property"). The Property is zoned "BN" under the City's zoning codes.
- 2.2 On February 23, 2011, Plaintiffs submitted an application for a Shoreline Substantial Development permit ("SDP") based on a mixed-use project that included 143 residential units and approximately 6,200 square feet of commercial space on the ground floor.
- 2.3 The City imposed a Moratorium related to the BN zone on November 15, 2011, under Ordinance 2335A. After a public hearing, the City renewed the

Moratorium on January 3, 2012 under Ordinance O-4343; and then extended the Moratorium again, after another public hearing, on May 1, 2012, under Ordinance O-4355; and then after another public hearing, on October 16, 2012, the City extended it once more to no longer than December 31, 2012, under Ordinance O-4379. These moratoria are collectively referred to herein as the "Moratorium."

- 2.4 On or about May 24, 2012, Plaintiffs caused to be filed and served a Summons and Complaint in King County Superior Court under cause number 12-2-18714-1 SEA (the "Complaint").
- 2.5 The City expressly denies Plaintiffs' claims as alleged in the Complaint. However, the parties have agreed that the City need not file an Answer to the Complaint as a result of this Settlement Agreement.
- 2.6 On or about June 28, 2012, Plaintiffs caused to be filed and served a Petition for Review with the Central Puget Sound Growth Management Hearings Board under cause number 12-3-0005 (the "Petition").
- 2.7 The City expressly denies Plaintiffs' claims as alleged in the Petition. However, the parties have agreed that the City need not file an Answer to the Petition as a result of this Settlement Agreement.
- 2.8 The Complaint and Petition are collectively referred to herein as "the Litigation."

The parties desire to enter into this Settlement Agreement in order to provide for the full settlement and discharge of all claims by Plaintiffs which have been made against the City in the Litigation upon the terms and conditions set forth herein.

3. Terms of Agreement

3.1 Plaintiffs' Obligations

- 3.1.1 After the City lifts the Moratorium (which shall occur at the next City Council meeting following the approval of this Agreement), and before the City's annual amendments to its Zoning Code and Comprehensive Plan go into effect (which shall occur on February 1, 2013), Plaintiffs shall submit a building permit application for the Property that proposes not more than 100 residential units, irrespective of unit size or bedroom number (referred to hereinafter as "the Building Permit Application"). The Building Permit Application shall be based on the zoning and building codes in effect as of the date this Settlement Agreement is executed.

The Building Permit Application shall propose ground floor commercial uses. In the event the City changes the applicable zoning code to reduce the land

use buffer for all commercial uses (including retail uses) to ten (10) feet or less, then, retail tenants of the Property shall have the right to request tenant improvements that allow for a buffer of ten (10) feet or less, consistent with the zoning code in effect at the time their application for tenant improvements is filed.

- 3.1.2 Plaintiffs are not obligated to revise the pending Environmental Impact Statement ("EIS") currently being processed except as provided herein. Consistent with the Building Permit Application, Plaintiffs shall submit a revised site plan for their shoreline substantial development permit. The revised site plan shall not affect the vesting date of Plaintiffs' SDP permit application. The City agrees no fees will be charged for submittal or review of the revised site plan. The revised site plan may require new public noticing and a new public comment period.

Plaintiffs agree to take all reasonable steps necessary to allow the City to expeditiously process the SDP application, the EIS and the Building Permit Application. This does not mean the City agrees to process the applications in an expedited manner; provided, with regard to their Building Permit Application, Plaintiffs may request Progressive Plan Review (PPR).

- 3.1.3 Consistent with the terms of the Final Environmental Impact Statement (FEIS), Plaintiffs agree to the following terms and conditions:

- (a) Plaintiffs will step back the top floor along the west building façade an average of 10-feet from the façade on the floor below;
- (b) Along the north, facade, provide exterior wall modulation with a width of at least 35 feet and a depth of at least 10 feet on the upper three floors. On the upper two floors, balconies shall not take up more than 50% of the area of the modulation and the walls of the balconies shall be either transparent or railings, but shall not be solid;
- (c) The building may extend across the entire ground floor except for an inset plaza with a minimum dimension of 40' X 40' located along the west façade;
- (d) Along the west, facade, provide exterior wall modulation with a width of at least 40 feet and a depth of at least 85 feet on the upper three floors. On the second and third floor, the balconies may extend into the modulation five feet in depth on both sides, but shall not be longer than 30 lineal feet total on each side ; and
- (e) Along the east, facade, provide exterior wall modulation with a width of at least 40 feet and a depth of at least 10 feet on the upper two floors. On the upper floor, balconies shall not take up more than 50% of the area of the modulation and the walls of the balconies shall be either transparent or railings, but shall not be solid;

- (f) The City will accept a portion of the landscape buffer below the level of adjacent properties provided plantings are of a sufficient height to provide buffering to adjacent properties;
- (g) Modulation shall be further enhanced by the use of colors, materials and other design features.

3.2 City's Obligations

- 3.2.1 The City shall continue to process the SDP, EIS and FEIS in as expeditious a manner as is reasonably feasible, including processing of any administrative appeals.
- 3.2.2 The Building Permit Application shall be deemed vested to those land use laws, codes and regulations in effect as of the date of this Settlement Agreement. The City agrees not to adopt any changes to the BN zone or building codes between the date of this Settlement Agreement and Plaintiffs' submittal of the building permit application, if submitted by Plaintiffs on or before February 1, 2013, that would affect Plaintiffs' proposed project at not more than 100 residential units. This section shall not preclude the City from continuing with its ongoing legislative review of the BN zone, nor shall this Section be construed as requiring the City to make a commitment to adopt any particular legislation or affirmatively take any legislative action.
- 3.2.3 As allowed per the City's Zoning Code, KZC Ch. 105, the City will agree to accept 1.7 parking spaces per multifamily residential dwelling unit which will be sufficient for resident and guest parking. This amount of parking will also be sufficient for commercial parking if supported by a shared parking plan submitted to the City.
- 3.2.4 The City agrees to lift the Moratorium on the BN zone and Plaintiffs can then submit their Building Permit Application of not more than 100 residential units under the land use codes and regulations in effect as of the date of this Settlement Agreement.
- 3.2.5 The City shall not take any unlawful action that is intended to impermissibly impede or delay Plaintiffs' submittal of the Building Permit Application, or the City's processing and issuance of a final decision on the SDP application, the EIS, and/or the Building Permit Application.
- 3.2.6 While the City cannot commit in advance to approving a building permit application for not more than 100 residential units per 3.2.3, the City recognizes that a building permit for not more than 100 residential units is possible to approve under the City's building and zoning codes in effect as of the date of this Settlement Agreement is executed, depending on the size of the units and any other applicable environmental factors.

- 3.2.7 The City acknowledges that there is no required design review process under the BN zone as of the date this Settlement Agreement is executed. The City agrees that the Building Permit Application shall not be subject to design review or review by the City's design review board.
- 3.2.8 The City will not impose unlawful conditions or unlawful mitigation on the SDP or building permit that would impermissibly require a reduction in the residential unit count to less than 100 per 3.2.3, or impermissibly reduce the proposed number of floors or square footage. The City reserves its authority to impose conditions or mitigation under the Final EIS. Such conditions and/or mitigation are not affected by this Settlement Agreement, except to the extent such conditions have been previously agreed to by Plaintiffs and the City, and incorporated herein, as set forth in paragraph 3.1.3 above. The parties do not, by signing this Agreement, waive any appeal rights they have regarding the Final EIS, and any conditions or mitigations imposed thereunder; except with regard to those conditions set forth in paragraph 3.1.3 above. In the event of any condition, mitigation or potential denial, the City shall provide Plaintiffs with a reasonable opportunity to cure any defect in project design, including allowing Plaintiffs a reasonable opportunity to revise any building plans, engineering, surveying or any other component of the proposed project as allowed by state and local law.
- 3.2.9 The parties acknowledge that mediation discussions are occurring with the community surrounding the Potala Village site. The purpose of the mediation is to avoid possible future litigation that may affect all parties. The mediation may result in the City choosing to make a financial contribution to the Plaintiffs for a mediated settlement agreed to by both parties that would result in a smaller project with potentially less required parking. Such agreement, if reached, must be reached by November 20, 2012, so that the City Council can consider the agreement at the December 11, 2012 City Council meeting. The amount and type of the financial contribution must be mutually agreed to by both parties.

3.3 General Obligations

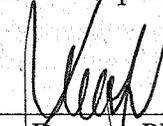
- 3.3.1 The parties agree to stay the Litigation, to allow for the parties to complete their foregoing, respective obligations up to the point of final decision on the Building Permit Application. The parties recognize this may require a stay of several months or longer in order to complete this process.
- 3.3.2 The parties agree that this settlement is a compromise of an existing disputed claim, and further agree that any action or other concession made in this Settlement Agreement by either party shall not be construed or asserted as an admission of liability, wrongdoing, or fault by any party. The parties further recognize that this Settlement Agreement does not restrict the ability of any

party to bring any claim, appeal, lawsuit or other action regarding a future decision, permit, approval, or construction activity of the project that is not subject to the terms of this Settlement Agreement.

- 3.3.3 The Settlement Agreement is not an admission or waiver of the validity of any claims or defenses applicable to the Litigation.
- 3.3.4 The parties agree that each party shall bear all of their own attorneys' fees and costs incurred in connection with the Litigation, this Settlement Agreement, and/or the matters and documents referred to herein.
- 3.3.5 The parties agree that this Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.
- 3.3.6 The parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.
- 3.3.7 Except as may be expressly provided herein, this Settlement Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Settlement Agreement shall have any third-party beneficiary or other rights whatsoever hereunder.
- 3.3.8 The obligations in this Settlement Agreement may be modified only by written agreement of the parties; signed by duly authorized representatives of each of the settling parties. Any such modification shall not affect any other provision of this Settlement Agreement.
- 3.3.9 This Settlement Agreement constitutes the entire agreement between the parties. This Settlement Agreement is fully integrated and constitutes the complete and final agreement between the parties. All previous agreements, offers, counteroffers, and negotiations are merged herein. There are no other or further agreements which modify the terms of this Settlement Agreement. This Settlement Agreement cannot be modified or amended in any way (except in writing as set forth in Section 3.3.8 above).
- 3.3.10 The parties agree that each of the parties is giving up certain rights, claims, and defenses in executing this Settlement Agreement, and each party hereby agrees to act in good faith in carrying out their respective duties and obligations herein.
- 3.3.11 The parties have each participated and had an equal opportunity to participate in the drafting of this Settlement Agreement. No ambiguity shall be construed

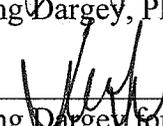
against any party based upon a claim that such party drafted the ambiguous language.

DATED: Nov. 2. 2012



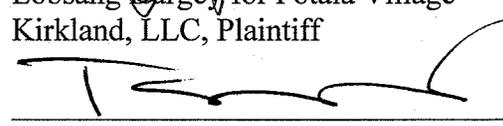
Lobsang Dargey, Plaintiff

DATED: Nov. 2. 2012



Lobsang Dargey for Potala Village
Kirkland, LLC, Plaintiff

DATED: 11-2-12



Tamara Agassi Dargey, Plaintiff

DATED: _____

CITY OF KIRKLAND

By _____
Its _____



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033
425-587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Dawn Nelson, Planning Supervisor
Eric Shields, Planning Director

Date: October 25, 2012

Subject: IMPACT FEE EXEMPTIONS FOR AFFORDABLE HOUSING, FILE CAM12-01289

RECOMMENDATION

Staff recommends that the City Council adopts the enclosed ordinance amending the Kirkland Municipal Code chapters related to the exemption of impact fees for low-income (affordable) housing.

BACKGROUND DISCUSSION

After several years of considering amendments to allow local jurisdictions to exempt low-income housing from impact fees, the state legislature adopted Engrossed House Bill 1398 (EHB 1398) last spring. The legislation went into effect on June 7, 2012. The City of Kirkland adopted passage of this bill as one of its priority legislative agenda items for 2012 and lobbied for the amendments in order to give cities an additional tool to help support the creation of low-income (affordable) housing.

The amendments to [RCW 82.02.060](#) allow cities to grant an exemption of up to 80 percent of the impact fees on low-income housing without the city being required to pay the exempted fees from public funds. The City originally proposed exempting 100% of the waived impact fees, but that is not what passed the legislature. A full waiver of the impact fees is also allowed, but the portion above 80 percent is required to be paid by the city from other public fund accounts. Prior to this amendment, cities could grant exemptions for low-income housing but were required to pay all exempted fees from public funds other than impact fee accounts. Low-income housing is defined as housing affordable to those earning no more than 80 percent of county median income, adjusted for family size.

Amendments to the Kirkland Municipal Code (KMC) are required if the City wants to enact the changes allowed by EHB 1398. [KMC 27.04](#) is the regulations for Transportation Impact Fees, [KMC 27.06](#) is the regulations for Park Impact Fees and [KMC 27.08](#) pertains to School Impact Fees that the City collects on behalf of the Lake Washington School District. Each of those chapters defines low-income housing as owner occupied housing units affordable to households whose income is less than 80 percent of county median and renter occupied housing units affordable to households whose income is less than 60 percent of county median. Those definitions are consistent with the state statute and do not need to be changed.

The transportation and park impact fee regulations currently contain the following language:

The amount of impact fees not collected from low-income housing pursuant to this exemption shall be paid from public funds other than the impact fee account and budgeted for this purpose by the Kirkland city council. If claims for exemptions under this subsection exceed the funds the Kirkland city council has budgeted for the payment of impact fees for low-income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted.

The language about budgeting funds to pay impact fees for low-income housing was added in late 2009 when the City adopted mandatory requirements for affordable housing. However, the City has never budgeted funds for impact fee exemptions. Other incentives, such as increased density, building height and multifamily tax exemptions, were also adopted to offset the cost to private developers of creating affordable housing. There is no similar language in the school impact fee regulations because any waived impact fees are addressed by the Lake Washington School District.

The Council Housing Committee provided initial direction on this issue. The following sections outline staff's rationale for the proposed amendments shown in the attached ordinance.

MAJOR ISSUES – TRANSPORTATION AND PARK IMPACT FEES

A. What types of projects should be granted exemptions? The enclosed ordinance establishes that impact fee exemptions be considered for developments creating a greater number of affordable units or providing greater affordability than mandated by the current regulations. Also, the need for impact fee waivers to make the project economically viable will be considered. Waivers would apply to:

- Impact fees for low-income units created above the minimum required by City codes; or
- Impact fees for all of the units in projects that will be using public assistance targeted for affordable housing.

Since 2010, affordable housing units have been required to be constructed as part of market rate housing and mixed use developments in many zones throughout the City of Kirkland. The current regulations require 10 percent of units to be affordable. The developments usually include just a few units of required affordable housing and are granted the incentives previously identified. The value of the available incentives, to date, has been comparable to the cost to the developer of providing the affordable units. Therefore, impact fee exemptions for the affordable units are not needed for the economics of those projects to work.

Offering impact fee exemptions may make it more enticing for a developer to create a greater number of affordable units or provide greater affordability than the regulations would require. The value of all available incentives should be considered in determining whether to grant an exemption. Those developments could be undertaken by for profit or non-profit developers.

The City has seen a recent increase in affordable housing projects developed by non-profit housing providers within the City. Imagine Housing recently completed a 61 unit affordable rental housing project in Totem Lake and has requested funding through ARCH this fall for a second phase, which would include 95 units of affordable senior housing. They are also in the process of developing 58 units of affordable housing as part of the South Kirkland Transit Oriented Development. *Friends of Youth* currently has a building permit application in for Youth Haven, a group facility for up to 17 homeless youth. They have also applied for funding from ARCH this fall for two residences at their north Kirkland campus to be used as transitional housing for young adults.

Affordable housing developed by non-profit housing providers relies extensively on public funding from cities, counties, the state and federal governments. Kirkland provides its share of that funding through contributions to the ARCH Housing Trust Fund. Impact fee exemptions would be another way the City could contribute to the package of public funding needed to make these projects possible. Impact fee exemptions would be regarded by other funders as a source of local contribution and would be taken into account in determining the total amount of public funding that should be provided to a project.

- B. How much of an exemption should be granted?** The proposed amendments allow an applicant to request an exemption of 100 percent of the transportation and park impact fees for low-income housing.

RCW 82.02.060 allows exemption of 100 percent of the impact fees on low-income housing. However, only an 80 percent exemption is allowed without the City offsetting the exempted fees from other public funds. To be consistent with state law, the impact fee exemption language has been updated to address this limitation. The requirement that the City Council budget funds to pay impact fees for low income housing is now limited to the portion *above* 80 percent.

Exempting development from impact fees means that there will be less revenue available for the necessary public transportation and park facilities that impact fees are intended to support. There is no way to predict how many projects will request an exemption in a given year or Capital Facilities Plan cycle. However, based on past experience, private developers have rarely provided additional affordability, and the limitation of public funding sources limits the number of non-profit, publicly assisted projects that are developed.

The following table shows an example of the magnitude of impact fees that would be exempted for Imagine Housing's proposed Senior Housing project in Totem Lake.

	Impact Fee Per Unit of Senior Housing	Total for Project
Transportation Impact Fees	\$1,121 ¹	\$106,495
Park Impact Fees	\$2,515	\$238,925
School Impact Fees	N/A ²	N/A
Total	\$3,636	\$345,420
80% of Total		\$276,336
20% of Total		\$69,084

¹Transportation Impact Fee for Senior Housing is half the impact fee for multifamily housing.

²School Impact Fees are not required for Senior Housing.

- C. Who should make the exemption decision?** The ordinance provides a process and criteria for the City Manager to make the decision on impact fee exemptions for low-income housing.

The impact fee regulations currently allow the Public Works Director and the Director of Parks and Community Services, respectively, to make the determination on transportation and park impact fee exemptions. Allowed exemptions are listed in KMC 27.04.050 and KMC 27.06.050 and are straight forward. They include replacement of structures, accessory dwelling units, minor site improvements and low-income housing where the City Council had previously set aside funds for the impact fees.

The one exception is for transportation impact fee exemptions associated with the facilities of community based human service agencies. Those exemption decisions are made by the City Manager and this provides greater neutrality in the decision making process. Currently the agencies seeking the exemption could be supported by funding through the City's Human Services function administered by Parks and the loss of revenue affects the Capital Facilities Plan administered by Public Works. Having the City Manager make the decision avoids the perception of a conflict of interest with either department.

The ordinance makes the City Manager the decision maker for low-income housing exemptions to maintain a similar level of neutrality.

Under the ordinance as drafted, there is no appeal to the City Manager's decision.

SCHOOL IMPACT FEES

The City began collecting school impact fees on behalf of the Lake Washington School District in 2011. KMC 27.08.050(5)(B) states:

The amount of impact fees not collected from low-income housing pursuant to this exemption shall be paid by the Lake Washington School District. The impact fees for these units shall be considered paid for by the Lake Washington School District through its other funding sources, without the district actually transferring funds from its other funding sources into the impact fee account.

EHB 1398 added the distinction that 80 percent of impact fees for low-income housing can be exempted without offsetting the cost, and 100 percent can be exempted as long as the remaining 20 percent are paid from public funds. Based on the language in KMC 27.08.050(5)(B), the change to the RCW has no impact on what the LWSD is already providing in terms of fee waivers for low-income housing. The District can continue to exempt 100% of the school impact fees for low-income housing without any change to the KMC.

Staff recommends adoption of this ordinance in furtherance of the Council's Housing Goal which states:

The City's housing stock meets the needs of a diverse community by providing a wide range of types, styles, sizes and affordability.

Council Goal: To ensure the construction and preservation of housing stock that meet a diverse range of incomes and needs.

ORDINANCE O-4383

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION AND PARK IMPACT FEE EXEMPTIONS FOR CREATION OR CONSTRUCTION OF LOW-INCOME HOUSING AND AMENDING KIRKLAND MUNICIPAL CODE CHAPTERS 27.04 AND 27.06.

The City Council of the City of Kirkland does ordain as follows:

Section 1. Kirkland Municipal Code ("KMC") Section 27.04.050 is hereby amended to read as follows:

27.04.050 Exemptions.

(a) The following building permit applications shall be exempt from impact fees:

(1) Replacement of a structure with a new structure of the same gross floor area and use at the same site or lot when such replacement occurs within five years of the demolition or destruction of the prior structure. For replacement of structures in a new subdivision, see Section 27.04.030(f).

(2) Replacement, alteration, expansion, enlargement, remodeling, rehabilitation or conversion of an existing dwelling unit where no additional units are created and the use is not changed.

(3) Any building permit for a legal accessory dwelling unit approved under Title 23 of this code (Zoning Code) as it is considered part of the single-family use associated with this fee.

(4) Alteration of an existing nonresidential structure that does not expand the usable space or change the use.

(5) Miscellaneous improvements, including but not limited to fences, walls, swimming pools, mechanical units, and signs.

(6) Demolition or moving of a structure.

~~(7)(A) Construction or Creation of Low-Income Housing may request an exemption of 100 percent of the required impact fee for low-income housing units subject to the criteria in subsection (a)(7)(C). The amount of impact fee not collected from low-income housing that is in excess of 80 percent of the required fees shall be paid from public funds other than the impact fee account and budgeted for this purpose by the city council. If claims for exemptions under this subsection exceed the funds the city council has budgeted for the payment of impact fees for low-income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted. Any claim for an exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low income housing will continue. Before approval of the exemption, the department shall approve the form of the lien and covenant. Within ten days of approval, the applicant shall execute and record the approved lien and covenant with the King County department of records and~~

~~elections. The lien and covenant shall run with the land. In the event that the housing unit is no longer used for low income housing, the current owner shall pay the current impact fee plus interest to the date of the payment.~~

~~(B) The amount of impact fees not collected from low income housing pursuant to this exemption shall be paid from public funds other than the impact fee account and budgeted for this purpose by the Kirkland city council. If claims for exemptions under this subsection exceed the funds the Kirkland city council has budgeted for the payment of impact fees for low income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted.~~

(B) Any applicant for an exemption from the impact fees which meets the criteria set forth in subsection (a)(7)(C) of this section shall apply to the city manager for an exemption. The application shall be on forms provided by the city and shall be accompanied by all information and data the city deems necessary to process the application.

(C) Exemption Criteria. To be eligible for the impact fee exemption established by this section, the applicant shall meet each of the following criteria:

(i) The applicant must be proposing a greater number of low-income housing units or a greater level of affordability for those units than is required by the Kirkland Zoning Code and/or the Kirkland Municipal Code. The allowed exemption shall only apply to those units in excess of the minimum required by Code unless the development will be utilizing public assistance targeted for low-income housing.

(ii) The applicant must demonstrate to the city manager's satisfaction that the amount of the impact fee exemption is justified based on the additional affordability provided above that required by Code and is necessary to make the project economically viable.

(iii) The proposed housing must meet the goals and policies set forth in Section VII.C of the city of Kirkland comprehensive plan.

(D) The city manager shall review applications for exemptions under subsection (a)(7)(A) of this section pursuant to the above criteria and shall advise the applicant, in writing, of the granting or denial of the application. In addition, the city manager shall notify the city council when such applications are granted or denied.

(E) The determination of the city manager shall be the final decision of the city with respect to the applicability of the low income housing exemption set forth in this subsection.

(F) Any claim for exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low-income housing use will continue. Before approval of the exemption, the Planning department shall approve the form of lien and covenant, which shall, at a minimum, meet the requirements of RCW 82.02.060. Prior to issuance of a certificate of occupancy for any portion of the

development, the applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event the property is no longer used for low-income housing, the current owner shall pay the current impact fee plus interest to the date of the payment.

(8)(A) Development activities of community-based human services agencies which meet the human services needs of the community such as providing employment assistance, food, shelter, clothing, or health services for low- and moderate-income residents.

(B) Any applicant for an exemption from the impact fee which meets the criteria set forth in subsection (a)(8)(C) of this section ~~may~~ shall apply to the city manager for an exemption. The application shall be on forms provided by the city and shall be accompanied by all information and data the city deems necessary to process the application.

(C) Exemption Criteria. To be eligible for the impact fee exemption established by this section, the applicant shall meet each of the following criteria:

(i) The applicant must have secured federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(ii) The applicant's services must be responsive to the variety of cultures and languages that exist in the city.

(iii) The applicant must provide services and programs to those considered most vulnerable and/or at risk, such as youth, seniors, and those with financial needs, special needs and disabilities.

(iv) The applicant's services must meet the human services goals and policies set forth in Section XII.B of the city of Kirkland comprehensive plan.

(v) The applicant shall certify that no person shall be denied or subjected to discrimination in receipt of the benefit of services and programs provided by the applicant because of sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(vi) The applicant must provide direct human services at the premises for which the applicant is seeking exemption.

(D) The city manager shall review applications for exemptions under subsection (a)(8)(A) of this section pursuant to the above criteria and shall advise the applicant, in writing, of the granting or denial of the application. In addition, the city manager shall notify the city council when such applications are granted or denied.

(E) The determination of the city manager shall be the final decision of the city with respect to the applicability of the community-based human services exemption set forth in this subsection ~~subject to the appeals procedures set forth in Section 27.04.130.~~

(F) Any claim for exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a

draft lien and covenant against the property guaranteeing that the human services use will continue. Before approval of the exemption, the department shall approve the form of lien and covenant. Within ten days of approval, the applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event the property is no longer used for human services, the current owner shall pay the current impact fee plus interest to the date of the payment.

(G) The amount of impact fees not collected from human services agencies pursuant to this exemption shall be paid from public funds other than the impact fee account.

(b) Unless otherwise established in this section, the planning director shall be authorized to determine whether a particular development for a proposed building permit, or a change in land use when no building permit is required, falls within an exemption of this chapter or in this code. Determinations of the director shall be subject to the appeals procedures set forth in Section 27.04.130.

Section 2. KMC Section 27.06.050 is hereby amended to read as follows:

27.06.050 Exemptions.

(a) The following building permit applications shall be exempt from impact fees:

(1) Replacement, alteration, expansion, enlargement, remodeling, rehabilitation or conversion of an existing dwelling unit where no additional units are created and the use is not changed. Replacement must occur within five years of the demolition or destruction of the prior structure. For replacement of structures in a new subdivision, see Section 27.04.030(f).

(2) Any building permit for a legal accessory dwelling unit approved under Title 23 of this code (Kirkland Zoning Code).

(3) Miscellaneous improvements, including but not limited to fences, walls, swimming pools, mechanical units, and signs.

(4) Demolition or moving of a structure.

(5)(A) Construction or Creation of Low-Income Housing may request an exemption of 100 percent of the required impact fee for low-income housing units subject to the criteria in subsection (a)(5)(C). The amount of impact fee not collected from low-income housing that is in excess of 80 percent of the required fees shall be paid from public funds other than the impact fee account and budgeted for this purpose by the city council. If claims for exemptions under this subsection exceed the funds the city council has budgeted for the payment of impact fees for low-income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted. Any claim for an exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low income housing will continue. Before approval of the exemption, the department shall approve the form of the lien and covenant. Within ten days of approval, the

~~applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event that the housing unit is no longer used for low income housing, the current owner shall pay the current impact fee plus interest to the date of the payment.~~

~~(B) The amount of impact fees not collected from low income housing pursuant to this exemption shall be paid from public funds other than the impact fee account and budgeted for this purpose by the Kirkland city council. If claims for exemptions under this subsection exceed the funds the Kirkland city council has budgeted for the payment of impact fees for low income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted.~~

(B) Any applicant for an exemption from the impact fee which meets the criteria set forth in subsection (a)(5)(C) of this section shall apply to the city manager for an exemption. The application shall be on forms provided by the city and shall be accompanied by all information and data the city deems necessary to process the application.

(C) Exemption Criteria. To be eligible for the impact fee exemption established by this section, the applicant shall meet each of the following criteria:

(i) The applicant must be proposing a greater number of low-income housing units or a greater level of affordability for those units than is required by the Kirkland Zoning Code and/or the Kirkland Municipal Code. The allowed exemption shall only apply to those units in excess of the minimum required by code unless the development will be utilizing public assistance targeted for low-income housing.

(ii) The applicant must demonstrate to the city manager's satisfaction that the amount of the impact fee exemption is justified based on the additional affordability provided above that required by code and is necessary to make the project economically viable.

(iii) The proposed housing must meet the goals and policies set forth in Section VII.C of the comprehensive plan.

(D) The city manager shall review applications for exemptions under subsection (a)(5)(A) of this section pursuant to the above criteria and shall advise the applicant, in writing, of the granting or denial of the application. In addition, the city manager shall notify the city council when such applications are granted or denied.

(E) The determination of the city manager shall be the final decision of the city with respect to the applicability of the low income housing exemption set forth in this subsection.

(F) Any claim for exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low-income housing use will continue. Before approval of the exemption, the planning department shall approve the form of lien and covenant, which shall, at a

minimum, meet the requirements of RCW 82.02.060. Prior to issuance of a certificate of occupancy for any portion of the development, the applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event the property is no longer used for low-income housing, the current owner shall pay the current impact fee plus interest to the date of the payment.

(b) Unless otherwise established in this section, the planning director shall be authorized to determine whether a particular development for a proposed building permit, or a change in land use when no building permit is required, falls within an exemption of this chapter or of this code. Determinations of the director shall be subject to the appeals procedures set forth in Section 27.06.130.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2012.

Signed in authentication thereof this ____ day of _____, 2012.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4383

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION AND PARK IMPACT FEE EXEMPTIONS FOR CREATION OR CONSTRUCTION OF LOW-INCOME HOUSING AND AMENDING KIRKLAND MUNICIPAL CODE CHAPTERS 27.04 AND 27.06.

SECTION 1. Amends Kirkland Municipal Code ("KMC") Section 27.04.050 relating to low income housing exemptions to payment of transportation impact fees.

SECTION 2. Amends KMC Section 27.06.050 relating to low income housing exemptions to payment of park impact fees.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2012.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033
425-587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Dawn Nelson, Planning Supervisor
Eric Shields, Planning Director

Date: October 25, 2012

Subject: SECTION 8 VOUCHER NONDISCRIMINATION, FILE CAM12-01309

RECOMMENDATION

Staff recommends that the City Council adopts the enclosed ordinance amending the Kirkland Municipal Code to prohibit landlords from refusing to rent residential units based solely on a request by a rental applicant to use a Section 8 rental voucher to cover a portion of the rent. Enforcement would be handled through the Code Enforcement process administered by the Planning Department. Kirkland is also a member of A Regional Coalition for Housing (ARCH). The ARCH Board has recommended that all member jurisdictions adopt such a non-discrimination ordinance as one strategy to help preserve affordable housing tools.

Alternatively, the Council may choose to hold a public hearing at a future meeting prior to considering the ordinance.

BACKGROUND DISCUSSION

In the fall of 2008, the Kirkland City Council first considered a similar ordinance. There was some negative response from property owners and the Council chose to delay action on the ordinance. Staff presented a background report at the January 20, 2009 City Council meeting which can be found at this [link](#). The Council decided to defer action to see if statewide legislation addressing the issue would be adopted. State legislation on this issue has not yet been adopted.

The background information on the Section 8 program and regulations in surrounding jurisdictions in the January 2009 staff memo is still valid. One thing that has changed is that the City of Redmond, on February 7, 2012, unanimously adopted an ordinance similar to that being proposed. Redmond was prompted to act because two companies owning rental properties in Redmond had sent letters to tenants using Section 8 vouchers saying that they would not extend their leases under the same terms. While both companies had decided prior to the City's action that they would extend the leases of existing tenants using Section 8 as part of their rent payment, the adoption of the ordinance made it illegal for them to refuse to rent to future tenants in the same situation. One of those companies recently acquired rental property in Kirkland, but staff does not know if any of the units are occupied by tenants using Section 8 vouchers and we have not been informed of any intent to not honor Section 8 vouchers.

One of the benefits of being a member of ARCH is the sharing of information. As a result of the Redmond process, ARCH staff prepared the information found in Attachment 1. It includes the staff memo to the City Council outlining the background on the issue and staff's outreach efforts prior to the public hearing. It also includes a transcript of the public testimony and council comments at the hearing.

Exceptions

The ordinance also makes clear that the legislation does not prohibit:

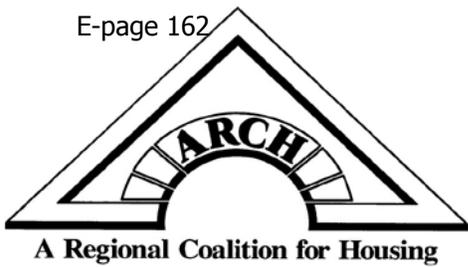
- the renting, sub-renting, leasing, or subleasing of a portion of a single-family dwelling, wherein the owner or person entitled to possession thereof maintains a permanent residence, home or abode therein;
- any person from making a choice among prospective tenants on the basis of factors other than participation in a Section 8 program;
- a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on the basis of race, color, national origin or other illegal discriminatory basis;
- treating disabled persons more favorably than persons who are not disabled;
- any person from limiting the rental or occupancy of a dwelling based on the use of force or violent behavior by an occupant or prospective occupant, including behavior intended to produce fear of imminent force or violence against the person or property of the owner, manager, or other agent of the owner.

The ordinance also includes language that it cannot be construed to protect criminal conduct.

The Council Housing Committee provided direction for staff to bring this issue back to the City Council. Kirkland staff has not had any public outreach related to the proposed ordinance. If the Council would like staff to pursue that before considering the ordinance, staff will contact a variety of landlord and tenant groups to get their input.

Attachments

1. ARCH Memo – Prohibiting Discrimination Against Residents with Section 8



Together Center Campus
16225 NE 87th Street, Suite A-3 ♦ Redmond, Washington 98052
(425) 861-3677 ♦ Fax: (425) 861-4553 ♦ WEBSITE: www.archhousing.org

SUBJECT: Prohibiting discrimination against residents with Section 8.

FROM: Arthur Sullivan, Program Manager, ARCH

DATE: June 12, 2012

Earlier this year Redmond council approved an ordinance prohibiting discrimination against residents with Section 8 Vouchers. This issue was initiated last year when a local apartment complex notified existing residents with Section 8 Vouchers that their leases would not be renewed (and in some cases, residents urged to move prior to their lease expiring). The property owner, which is a national company, had not had bad experiences with these residents, but said their new policy was due only to a business decision at corporate level. State law allows cities to adopt ordinances making it illegal to discriminate based on a resident having Section 8 vouchers. Bellevue, Seattle, King County and now Redmond, currently have such ordinances.

The Redmond council unanimously approved adopting this ordinance, even after several members expressed some reservation with taking action that could be interpreted as additional regulation on private business (a summary of their individual testimony is included in the enclosed material). Because of what has occurred locally, the public input was quite extensive. As a result the information and testimony provided at the Redmond Council provides a full overview of the issue. One of ARCH's purposes is to help cities learn from the experiences of others. Along those lines ARCH staff has gathered a variety of information that came out of this process as background information for others. The attached packet includes the following materials:

- City staff report to council with background information
- Public and council member testimony
- Written and oral comments from the Rental Housing Association (RHA) with responses from King County Housing Authority and others
- Final ordinance adopted by the City of Redmond

Please feel free to contact us if you have any questions on this material.



MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: ~~January 17, 2012~~ February 7, 2012

SUBJECT: PUBLIC HEARING: PROPOSED ORDINANCE PROHIBITING REFUSAL TO RENT BASED ON SECTION 8 PAYMENT

I. RECOMMENDED ACTION

Adopt the proposed ordinance prohibiting refusal to rent based solely on use of Section 8 Vouchers as a form of payment.

II. DEPARTMENT CONTACTS

Rob Odle, Director, Planning and Community Development, 425-556-2417
 Colleen Kelly, Human Services Manager, 425-556-2423
 Arthur Sullivan, Program Manager, ARCH, 425-861-3677

III. DESCRIPTION/BACKGROUND

About Section 8 Vouchers

Section 8 Vouchers are also referred to as housing choice vouchers. The housing choice voucher program is a program of the federal government which assists very low-income families, the elderly, and the disabled, to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing. The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects.

Housing choice vouchers are administered locally by the King County Housing Authority (KCHA) which receives funds from the U.S. Department of Housing and Urban Development (HUD) to operate the voucher program. A family that is issued a housing voucher is responsible for finding a suitable housing unit of the family's choice where the owner agrees to rent under the program. The voucher holder is advised of the unit size for which it is eligible based on family size and composition. Rental units must meet minimum standards of health and safety, as determined by the KCHA.

Housing Vouchers - How Do They Function?

The KCHA determines a payment standard that is the amount generally needed to rent a moderately-priced dwelling unit in the local housing market and that is used to calculate the amount of housing assistance a family will receive; however, the payment standard does not limit and does not affect the amount of rent a landlord may charge or the family

may pay. A family which receives a housing voucher can select a unit with a rent that is below or above the payment standard.

The housing voucher family must pay 30 percent of its monthly adjusted gross income for rent and utilities; and if the unit rent is greater than the payment standard, the family is required also to pay the additional amount. A housing subsidy is paid to the landlord directly by the KCHA on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program.

Recent Activity Locally

Earlier this year, it came to the attention of staff that the Archstone Company had notified all tenants utilizing Section 8 vouchers as part of their payment that those leases would not be extended under the same terms. This meant that tenants unable to pay market rate rent on their own would be forced to move when their leases expired. At the time that Archstone adopted their new policy, their Redmond property had 19 units rented to households receiving assistance through Section 8 Vouchers. Over the past few years there have been approximately 250 households in Redmond using Section 8 Vouchers at any given time.

Upon investigating further, staff was informed that this was a business decision being applied throughout the company, except for its buildings in jurisdictions that explicitly prohibit discrimination by landlords based solely on source of income. Bellevue, Seattle and King County (for unincorporated areas) have such ordinances in place. Subsequently, Archstone modified its position slightly by agreeing to extend the leases of existing tenants using housing choice vouchers, but continuing to decline to enter into any new leases using that program.

The Archstone action prompted staff to begin exploring the question of whether Redmond should introduce an ordinance similar to the one on record in Bellevue, and on October 4, 2011, ARCH staff and City staff presented a draft ordinance to the Parks and Human Services Committee for initial conversation. Direction at that time was to schedule the topic for a study session, which was subsequently held on November 29, 2011.

In late October 2011 staff learned that another company, Avalon Bay, had also sent a letter informing its tenants that Section 8 Vouchers will no longer be accepted as a form of payment, and tenants relying on that assistance would need to move when their leases expire. It now appears that there was only one current tenant likely to be affected by this new policy and that tenant has since been informed that she will not be forced to move. It does appear, however, that like Archstone, Avalon Bay intends to deny consideration to future tenants who need to pay a portion of their rent using Section 8 Vouchers.

Key Issues and Considerations

Access to affordable housing is consistently identified as the greatest barrier to families and individuals being able to build or rebuild a solid foundation. In many cases, this assistance allows individuals to maintain employment, though often not at a wage sufficient to fully afford market rate housing. In addition to work the City is doing to expand affordable housing options, it is critical that we work to maintain those options already in place.

Another consideration in establishing such an ordinance is whether private property owners are unduly constrained in the use of their properties if they are required to consider applicants with Section 8 Vouchers. There may be differing perspectives on this question, but staff notes that in King County (outside Seattle); over 8,000 households are using Section 8 assistance, mostly in privately-owned housing. Also, during interviews of managers of Redmond properties that changed their policies regarding Section 8, they noted there were no particular difficulties with the residents that had the Section 8 assistance, and the decision was more based on corporate direction and not specific experiences with residents at their property.

The following is taken from the *Landlord Participation Manual*: "Depending on the complexity of situation (i.e., level of rent, unit failing inspections, contract return delayed by the owner, etc.) total time for lease up and payment could take as little time as a week to as much as six weeks. Each situation is different. The only extra cost to a landlord for participation on the program is if the landlord chooses to lower the rent or pay to fix deficiencies found through the inspection in order to have their unit qualify. There is no fee for participating on the Section 8 program."

Finally, having such an ordinance will lead to a certain amount of staff time being needed to follow up if there are complaints of discrimination. Bellevue staff noted that investigation of such complaints often reveal other factors contributed to households being denied housing.

The City Council will be holding a public hearing regarding the proposed ordinance at its meeting on January 17, 2012. In addition to having been invited to submit comments in writing, individuals wishing to directly address the Council on this topic will have the opportunity to do so at this hearing. At the conclusion of the testimony and any additional discussion, the Council may choose to close the hearing or to keep the hearing open for additional information. If the hearing is closed, the Council has the option to take action on the proposed ordinance immediately.

Outreach Efforts

Based on the assumption that both landlords and tenant groups might be particularly interested in this issue in general and the draft ordinance in particular, staff made significant efforts to ensure awareness of the City's actions and the scheduled public hearing. Of course, the notice of public hearing was published as required. In addition, the following groups were contacted directly:

- National Association of Residential Property Managers, King County Chapter (several representatives)
- King County Housing Authority
- Tenant's Union of Washington
- Washington Multi-Family Housing Association
- Housing Development Consortium
- Affordable Housing Manager's Association
- Hopelink Housing Programs

IV. IMPACT

There are no direct fiscal impacts to the City should this ordinance be adopted, though there may be some impact on staff time as noted above. There are service delivery impacts for residents in terms of ensuring greater access to housing options for those enrolled in the Section 8 Program.

V. ALTERNATIVES

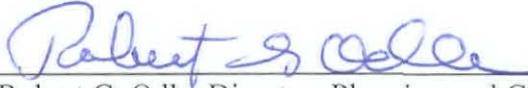
- A. The Council may adopt the proposed ordinance which would then go into effect five days after publication of the ordinance title in the City's newspaper of record.
- B. The Council may choose to amend the ordinance and then adopt the ordinance which would then go into effect five days after publication of the ordinance title in the City's newspaper of record.
- C. The Council may choose to continue the public hearing and take action on the proposed ordinance at a later date.
- D. The Council may reject the proposed ordinance.

VI. TIME CONSTRAINTS

There are no particular time constraints, although prompt action may prevent additional attempts to prohibit units being rented to participants in the Section 8 Program.

VII. LIST OF ATTACHMENTS:

Attachment A: Proposed Ordinance

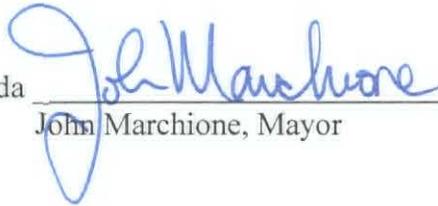


Robert G. Odle, Director, Planning and Community Development

1/6/2012

Date

Approved for Council Agenda



John Marchione, Mayor

1/9/12

Date

PROHIBITING REFUSAL TO RENT BASED ON HAVING SECTION 8 REDMOND PUBLIC HEARING SUMMARY

Comments from Rental Housing Association (private landlords opposed to ordinance) are presented in a separate document.

PERSPECTIVE OF LANDLORDS WHO SUPPORTED ORDINANCE

Meghan Altimore, Hopelink (non-profit services and housing agency)

Here in Redmond we rent 51 apartments to homeless families and we receive Section 8 subsidies for 43 of those.

- The families we serve are one and two parent families who are striving to pay their bills, raise their children, and make ends meet. They go to work and school and they are good neighbors. They are able to exit homelessness and this wouldn't be possible without the Section 8 subsidy that they receive.
- Participating in the Section 8 program is not onerous. It is not costly or a challenge. The paperwork is reasonable and the inspections are timely and effective.

Helen Leuzzi, Executive Director of The Sophia Way (a shelter and housing program in East King County and also a board member of the Alliance of Eastside Agencies).

- Landlords have many tools to aid them in selecting candidates to their properties. Landlords will maintain their ability to screen applicants for poor credit and rental history. In addition, the King County Housing Authority includes a rigid process for qualification of benefits providing for additional assurances.
- The use of a Section 8 voucher says nothing about the tenant's personal history that would suggest the person applying for residency would not be a quality tenant. Discrimination based only on income source marginalizes people from all walks of life due to financial status.

Faouzi Serfrioui. I have been a private landlord since the early 80's. I think that the previous speakers have said it all and they have said enough for you to approve this resolution.

Jill Richardson, Redmond resident. I am a private landlord for 31 years in the city of Redmond and I have rented to Section 8 people. I'm embarrassed that we have to have it.

Linda Hall, YWCA, non-profit housing organization. In my professional capacity, I have also been a landlord for twelve years and I have experience working with housing authorities and accepting residents holding Section 8 vouchers. We've evaluated residents based on a full set of screening criteria. Applicants holding Section 8 vouchers have been accepted and denied. But denials were not based upon having a voucher, it was based on the applicant themselves and the screening criteria. It in no way prevented me in either terminating a lease if I needed to in those unfortunate circumstances, but also in renewing leases for some absolutely wonderful residents that I have met over the years.

Leslie Leber I currently work for Providence Health and Services managing Section 8 subsidized supportive housing for seniors and people with disabilities.

They will be able to use the same screening criteria for an applicant with a Section 8 voucher as one without. But what they won't be able to do is reject an applicant just because part of their rent is paid a Section 8 subsidy.

Let me tell you a little bit about the residents in the Section 8 subsidized housing programs at Providence. They are seniors who spent their working years as teachers, truck drivers, and store clerks. They are people with disabilities that keep them from working full time or at livable waged jobs. Many of our residents are living on social security income of less than a thousand dollars per month. The reason they are receiving a housing subsidy, they are poor, that's all. Without the subsidy, the Section 8 subsidy, they could not afford to live in decent housing. Without it many would be homeless.

The ordinance you are considering tonight will help ensure that low income households receive the same opportunity to live in Redmond as any other persons seeking to live in this city.

Philip Nored, (HNN Associates, private property manager). Written Testimony. Our ownership group and management company has worked closely with King County Housing Authority and affordable housing programs for many years. Their efforts benefit the residents and communities of King County. We encourage others to recognize the community benefits of working with King County Housing Authority and the affordable housing programs.

PERSPECTIVES RELATED TO SECTION 8 RESIDENTS

Yezenia Hernandez I live here in Redmond. We had a leak from our upstairs neighbor. So we had to go and move out of our apartment and go to a hotel because the leak was so extensive. One of the times when we were dealing with the office with the leak, they said, "oh by the way this is a good time to tell you that you we're no longer taking Section 8. This would be a good time for you to move. I don't think we should wait until your end of your lease." We had just moved in. I have three daughters. One of them is hearing impaired. How do you all of a sudden tell her we have twenty days to move? We are on a limited income. When we need to move we start saving because we know we have to give some deposits. But if they come and tell you you have twenty days to move we don't have the money.

Jonathan Grant, Executive Director of the Tenants Union of Washington State. The Tenants Union was contacted by a number of Section 8 voucher holders living in the city of Redmond who had their tenancies not renewed by Archstone Properties. Letter here from "Arisca Cordellian" who had to relocate and moved to another Archstone Properties. The building that she moved into was just across the street from Redmond on 148th Avenue in Bellevue. Because the city of Bellevue has passed source of income discrimination protections, she was allowed to stay there.

Joe Ingram I have the contract with the Homeless Outreach with the city. I lived in Archstone and they gave me twenty day notice to go. Only because I was on Section 8. When I went to a place a couple blocks away they said, "Oh no we don't talk to you guys" you know 'we do not take Section 8'. I had to move all the way down to Cougar Mountain (Issaquah) because I had to find an ADA unit. So now when I get calls in the middle of the night from the police or fire department to help a homeless person I'm twenty minutes away when before I was five minutes away.

There are a lot of tenants out there that have issues past eviction, bad credit and so forth that aren't on Section 8 and are still accepted. And to discriminate just because we're too poor or we have a disability. It's just like back in the 50's and 60's, "no, you are the wrong color or you were this or you were that and they would redline people and that is what they are doing with Section 8 recipients is redlining people.

Paula Matthyias, The Eastside Community Network. I watched a friend struggle to find housing when Archstone changed their policies. This grandparent who was the stabilizing safety net for a daughter-in-law and two young children who were survivors of domestic violence received a letter that said, "you have to move". So during the time when this family was working to heal after something very traumatizing they were traumatized again. They could not find housing in the city of Redmond and they moved farther south, away from their jobs and away from their safety net within the community.

Latonya Kemp If it weren't for Section 8 I wouldn't be able to live anywhere. I only receive \$600 a month. There is nowhere that you can live for \$600 a month and have heat and food. Because without a place to live with my diabetes, my other health conditions, I would either end up in assisted living, a nursing home, or probably dead. And I just have to say thank you for the fighting chance this ordinance would give me.

Omar Barraza I am an attorney and a member of the board of directors of the Tenants Union of Washington.

One of my previous employment positions I was the administrator of the Section 8 program for the Seattle Housing Authority in Seattle. I am here to tell you that I have seen with my own eyes hundreds of families who are unable to use their Section 8 vouchers within the allotted window to find housing because in large part they couldn't find landlords who would take Section 8. And it's nothing more depressing than having to see families who make it to the top of the wait list unable to find housing because the market is so resistant, I talked to people and consistently refusal to take Section 8 was the number one issue

I have also worked for the king county office of civil rights where I have trained hundreds of landlords and I have found many landlords who found the program to work quite well for them

OTHER PERSPECTIVES

Doris Townsend, Redmond Resident. Redmond has grown and changed in the 35 years that I have lived here. We now have a more diverse population. By enacting a source of income discrimination ordinance we are protecting our most vulnerable citizens: families fleeing domestic violence, veterans, people with disabilities, senior citizens. I heard this evening that 245 households in Redmond currently use Section 8 vouchers this will keep them from the disruption of having to move as we have heard this evening. I volunteer here in Redmond for Faith Lutheran Church. Redmond is a generous community. I live here, I work here, and I volunteer here. I urge the city council to help these families with your support of a source of income discrimination ordinance.

Maria Williams, Eastside Domestic Violence Program. According to the National Center for Children in Poverty, 80% of homeless mothers are victims of domestic violence. In our housing programs we focus on helping families obtain stable, permanent housing. By acquiring this, families can experience safety and security in a way that they may never have had before. When one of our families is awarded a Section 8 voucher they know that they have the ability to live in a location that is best for their family at a price that they can afford. Recently a resident of our transitional living facility was awarded a Section 8 voucher. She had developed a network of supportive services and friends. When she began looking for housing many landlords would not agree to work with her. Many landlords turned her down simply based on having a history of homelessness and now having a Section 8 voucher. Had this ordinance been in place the women like the one in this story could have had the confidence and assurance that after all their family has been through renting a property with a Section 8 voucher would not be a problem. It would be a solution to ending the cycle of domestic violence and homelessness.

Elizabeth Hendren, Northwest Justice Project, civil legal aide provider. We frequently here from families who after spending years on the waiting list to receive a voucher tragically forfeit the voucher solely because they can't find a landlord who will rent to them. A family usually only has between 60-120 days to find housing after they are given a voucher. The reluctance of some landlords to accept Section 8 is based more on misinformation and prejudice than realities of complying with the Section 8 program. No significance additional burdens are imposed on landlords that don't already exist within their landlord tenant relationship. The most common complaint we here from landlords is that Section 8 imposes onerous cost and burden on landlords. This is simply not true. The duties that are included within the Section 8 program include are deciding if the family is suitable for tenancy, maintaining the unit, complying with Equal Opportunities requirements, preparing a rental agreement, collecting rent, enforcing tenant obligations, and paying for utilities and services. Normal duties for any rental units. The only additional duty imposed on landlords is to have an inspection to make sure they are complying with federal and local law.

Kelly Rider, Housing Development Consortium of King County (HDC). HDC is a non-profit membership organization working to develop affordable housing here in King County. Currently 14% of households are paying more than half of their income for their housing needs.

Renters across the eastside rely on tenant based rental assistance to ensure that they can afford housing and still have enough money for basic expenses like gas, groceries, and childcare. As we've heard here tonight, voucher holders are being turned away from apartments here in Redmond in which they are otherwise qualified to rent solely because they plan to use vouchers. The proposed ordinance protects the rights of the landlords to screen all potential residents, to ensure they are renting to good tenants while also protecting the ability of renters to utilize the Section 8 program to help stabilize their lives.

Debbie Miller Murphy, Redmond Resident, Board of Directors, Imagine Housing. Imagine housing provides affordable housing units here in five different cities on the eastside. We in this area are very fortunate in many ways but one of the ways we aren't is we live in an expensive housing market. We're not talking about Microsofties like me. We're talking about the people that do our coffee, the people that teach our children that literally cannot afford to live in this community that they work in. These are the people we are asking to help support and vouchers and supporting this ordinance is just one way to do it.

Steve Daschle, Redmond Human Services Commission. We encourage you to join Bellevue, King County, and Seattle in working to maintain housing affordability for very low income residents in Redmond. Over the past year the Human Services Commission has been investigating Human Services needs in Redmond. And consistently the greatest challenge facing many families is finding affordable housing. We should be encouraging more use of vouchers rather than less. As Redmond continues to grow and as more workers seek to live near the places of employment please do not take this critical option off the table.

COUNCIL DELIBERATION

Councilmember Vache. It would be hard to imagine coming up with more reasons to do this than nineteen people who took time out of their busy schedule to come and talk to us tonight. I don't think I could add to that, but I would like to remind us that there was a reason that this is before us and that is because last spring, we had a landlord who began to refuse to renew leases for people that were on Section 8 vouchers and the only reason they were refusing to renew the leases was because they were on Section 8 vouchers. Hearing all the testimony it is hard to imagine a negative impact of this ordinance yet it is pretty easy to see a lot of positive reasons for doing it. One, it does, it helps us meet our community goals about affordable housing and it is but one simple tool that we can add to the vast number of tools that we have, and it takes a lot of tools in a place like Redmond to create a supply of affordable housing. I think you need to consider that many of us went out and counted homeless folks on probably one of the coldest nights of the year and on the eastside alone we found 138 families that were living without housing. I think have enough information to deal with here, but some 15% of the people that do have Section 8 vouchers are unable to use them because they simply cannot find housing that will accept their vouchers. I think we need to consider that we are working with King County Housing Authority which has been nationally recognized for their ability to help people with their housing issues. Finally it really is an affirmation of how our community believes in the people that live here and the diversity of our community. So I fully support this ordinance.

Councilmember Allen. I'm going to join with Mr. Vache in supporting this. It really hit me kind of close to home because one of the landlords that are refusing to rent to Section 8 tenants is my own and frankly I am appalled at that. So this ordinance comes in just the nick of time. In this economy where so many people are facing such financial struggle to put one more impediment in their way after they finally work their way through years of being on the waiting list and get the voucher and then to find out that they can take it to someone who can on that one basis say, "sorry, not going to rent to you". I just don't think that's the kind of community we want to be. I also think there are few among us that can say affirmatively that neither mine or mine own will ever be in a position where they might need that kind of assistance as well. I think that the impediments to the landlords have been, especially in King County, largely overcome. The process has become efficient in terms of inspecting the units, which has really been the major complaint from what I understand. The money goes right into the landlord's bank account. Finally our neighbors, King County, Seattle, and Bellevue, all bar this type of discrimination that this ordinance would forbid and I guess the question we have to ask ourselves is do we want to be a haven for discrimination that our neighbors are not allowing? We talk a good deal here about caring for our neighbors and being a community of good neighbors. So I'm going to support this ordinance wholeheartedly.

Councilmember Myers. First of all I have to say that years ago when my kids were in college I was asked to co-sign their rent and if the landlords knew that that was probably more shaky than refusing government subsidies. I'm glad we got through it. Having said that, it's a reasonable request to avoid regulation when:

There is no clear purpose for the regulation;
If there is onerous or burdensome requirements; or
If there is experience that contradicts the stated purpose of the regulation.

In this case there are benefits for all parties including the tenants, human service agencies, and property owners. The key question is whether if the landlords should be required to accept Section 8 tenants on an equal basis with other tenants. I believe the significant practical benefits of the program outweigh the philosophical opposition to the proposed ordinance. Early on I contacted property managers and the Rental Housing Association to find out if there was actual experience with Section 8 tenants that indicated a greater risk or generated more problems as a group and was told there was no such experience. I also checked the experience of surrounding communities to see if their requirements were burdensome or onerous or affected the market dynamics and found no problems. I appreciate the desire of owners to protect the value of their properties. If there was real evidence of Section 8 tenants creating problems I'd might vote differently, but I can find no reason to single out this specific group for different treatment and I will support the ordinance.

Councilmember Stillin. Well, I think I took a very similar journey. Because when this first came up what was on my mind was, is to weigh the rights of different parties. In this case it was weighing the rights of people that own property and the rights of people that want to rent property. And up until a couple of weeks ago I hadn't really heard much from the owners of property. And I did some research and I pretty much found out that you're probably in better shape if you are renting to somebody with a Section 8 voucher as a property owner. The King County Housing Authority provides a lot of protections for property owners. They talked about how they became efficient at doing their inspections. Well I think what happens, in what I've learned, is the King County Housing Authority has taken away every objection that a property owner could have and it leaves you with one last assumption about why they wouldn't want to rent. This weekend I received a letter from a realtor that ends, "don't take away my freedom to choose who I rent or don't rent to otherwise I will send all of the Section 8 applicants to your house and tell them you love welfare queens and they can sleep in your house." And when somebody writes something like that, that tells me what's left out there. It's not a matter of where they are getting the money from, it's just you are discriminating, and we are not going to tolerate that in Redmond. And even if I would had voted against this, I would had said to the people renting property in this city, "look, you've got enough property here, I think you can share it with some people that are a little less fortunate than others". It's the quality of our community that allows you to charge the rents you charge and make a profit and if you don't want to share in our community, maybe you don't belong in our community." So I'm voting to support this.

Councilmember Margeson. I too am emphatically supporting this. But I want to start off by saying I want to thank everybody, including Mr. Martin, for testifying before us. It was quite overwhelming as we listened to folks talk- 19 in support, and one against. We all received that same email, and I think it all struck us the same way, which is to say, do we want to support a position that allows discrimination just because someone has a job that doesn't pay very much? You go back to one of the speakers, who was talking about in the 50's and 60's we

discriminated based on the basis of the color of a person's skin. Eventually we got through that and I'm hoping eventually we get through this stigma of folks who may earn a little less, that they just need a little help and that's what we are trying to do here. Redmond is a welcoming community and we want people to live here of all types, income levels. That is why we try to build houses that suit all different income levels. This in my mind fills a gap for a segment of our community who had seemed to have fallen through the cracks in getting some protections. And I just want to share one thing. A couple of folks that testified before us mentioned the homeless count. I'll never forget the first time that I went out on the homeless count. And the first time I encountered someone sleeping outside on a very, very cold January evening. It shook me to my core and for that very reason alone I want to make sure that we find something for those folks to live in and get out of the cold and get back on their feet and start earning some income and contributing to society.

Councilmember Carson. This issue is a difficult issue for me because the property owner has rights that they enjoy or should enjoy from owning their property. Obviously renters and lease holders should be given a fair shake. I'm glad to hear some of things that the King County Housing Authority has mentioned. I think it's important that we understand that most folks are, in a transitional period and it's a time for them to move into something eventually bigger and better. So given information provided tonight, I am set to support this. I am concerned that it does kind of tip toe on landlords' rights to do as they see fit with their business, which is a concern, but we can always undo this if we find it to be particularly burdensome and not appropriate.

Councilmember Flynn. When I started looking at this, I wanted I think about what is the vision we have for Redmond and last year spending a lot of time going through a comp plan and updating that for 2030. A big portion of that was making sure that we had affordable housing throughout our community. And to me that's a high value and I believe it's a high value for the city of Redmond. I agree that I think part of our responsibility is weighing the rights of business owners and others as well as the renters who are in our community. And I feel like the benefits of this ordinance far outweigh some of the additional work that's required by the landlords and so for that reason I am also in support of this. And I won't tread over some of the other ground that has already been spoken of. But I would agree with the general consensus of the council.

COMMENTS FROM RENTAL HOUSING ASSOCIATION WITH RESPONSES FROM KING COUNTY HOUSING AUTHORITY ET AL

RENTAL HOUSING ASSOCIATION COMMENTS (with responses indented)

Opposed to the Redmond ordinance and other efforts to require property owners to accept residents who receive Section 8 voucher. If Redmond makes Section 8 a protected class, landlords will be required accept Section 8 tenants even though there are valid and legitimate business reasons that have led some landlords to choose not to participate

WRITTEN COMMENTS

The Section 8 or Housing Voucher Program is a creature of the federal government. As such, it comes with rules and regulations set by Congress and HUD. None of the rules or regulations can be changed or modified by any state or local government. .

The Section 8 Housing Voucher Program is governed and funded by HUD. However, in 2003, the King County Housing Authority was chosen by HUD, because of its 'high-performing' status, to participate in a program called Moving to Work (MTW). As a participant of MTW, KCHA is allowed to change the vast majority of regulations in the Housing Act of 1937, which governs the Section 8 program. To date, KCHA has made many changes which have improved the program's overall effectiveness and efficiency for both landlords and tenants. One example of this is that KCHA now allows landlords to self-certify that minor inspection issues have been addressed rather than requiring a re-inspection.

Congress has always recognized that some landlords may choose not to participate in the Section 8 program and has never made such participation mandatory. There are no compelling reasons for Redmond to require landlords to participate in the Section 8 program

The compelling reason for Redmond to consider adopting this ordinance is the recent announcement by two local apartment complexes that renters with Section 8 vouchers as a source of income would no longer be allowed to rent in their buildings and current tenants paying with Section 8 would be evicted upon the expiration of their current leases. In addition, the Redmond City attorney researched the legality of local jurisdictions ordinances prohibiting discrimination against households with Section 8. No restrictions against such ordinances were identified. Nine states, and three other jurisdictions within King County (King County, Seattle and Bellevue), currently have such ordinances.

The Section 8 program has policies and procedures to which some landlords object. For these reasons, some landlords choose not to participate in the program. Some of the reasons cited by landlords for not participating include the following:

1. Since Section 8 is funded by the federal government, there are uncertainties about the amount of such funding from year to year.

Almost all of KCHA's 3,000 landlords – 90% -- receive their payments through direct deposit, and landlords frequently cite the reliability of payments as one of the benefits of renting to a tenant with a Section 8 voucher.

While Section 8 is funded by the federal government, it is the local housing authority that administers funding to landlords with Section 8 tenants. If funding for the Section 8 program were to be severely cut, policy changes would be made which may affect the residents, but not the landlords during the term of a lease. For example, a housing authority facing a severe funding cut to their Section 8 program may choose to decrease the size of the program (the number of vouchers leased up at any given time), or decrease the payment standards (which would increase the amount of rent that the Section 8 resident is required to pay). While it has not occurred in the past, it is theoretically possible that program cuts could ultimately result in decreased assistance to individual households. However, such an event would not occur during the term of a lease, and if a resident were not able to afford future rents, their lease would not be extended and they would need to move. This risk is no different than a situation where a resident has a loss of employment, which can occur at any point in time.

2. If the landlord wants to increase the fair market rent it can only be done on the annual renewal date and only with the approval of the local housing authority that administers the program.

Landlords renting to Section 8 tenants are allowed to increase their rent as they would for any other tenant after the initial lease term. Since the initial term of a Section 8 lease is 12 months, no rent increases are allowed during that time. After the first year, provided no new lease is signed, a landlord is able to request a rent increase as frequently as every 60 days as long as proper notice is given to the Housing Authority and the tenant. After the landlord requests an increase, the housing authority determines if the increase is in alignment with similar units in that market. Just as with any rent increase by a landlord, if the resident were not able to afford the increase in rent, they would then need to move.

3. If a landlord accepts a tenant that has a Section 8 voucher, the rental cannot begin until the property has been inspected and approved by the local housing authority. These inspections can take between 2 and 4 weeks to complete and the landlord receives no rent while waiting for the inspection process to be completed.

To ensure that public dollars are spent on units of reasonable quality, KCHA does require that each apartment is inspected before the tenant moves in. When a tenant finds a suitable unit the tenant brings with them paperwork that they give to the landlord and the process is initiated through that. The landlord fills out the paperwork (one page) and then schedules an inspection. It usually takes 2 to 10 days for an inspection to be scheduled and completed. Rent payments can begin as soon as the unit passes the inspection. (see attached schedule). If a property owner is not willing to

make repairs identified in the inspection then the unit will not be eligible for the Section 8 voucher program.

4. The property is inspected annually by the housing authority and if there are repair issues caused by the behavior of the tenant or the tenant's family, the landlord is required to make the repairs or the subsidy checks are withheld.

KCHA does inspect Section 8 units annually. If a unit fails the inspection and the damage was caused by the tenant, the Housing Authority will not withhold payment provided the landlord can document the tenant has been notified of their responsibility to make the repairs. However, if the landlord does not notify the tenant of their responsibility to repair the deficiency, KCHA will ultimately hold the landlord responsible and may withhold payment until the problem is mitigated.

5. By definition, a Section 8 tenant is low income and it would be difficult to collect a monetary claim. Normally, if a tenant is deemed to be a financial risk, the landlord would charge a higher deposit. However, a landlord may not charge a higher deposit to a Section 8 tenant and, as a result, runs a financial risk if damage is done to the property.

While Section 8 residents do have low incomes, this does not mean they are more likely to damage a unit than other non-Section 8 tenants. Families with a Section 8 voucher may actually be less likely to damage a unit since they will lose their Section 8 voucher if they are evicted. As such, landlords should not base the amount of deposit on Section 8 status. Landlords should charge tenants with or without a Section 8 voucher the same amount of damage deposit in accordance with their written policies. That said, a landlord may charge a higher deposit for Section 8 and non-Section 8 residents deemed to be a financial risk.

6. A Section 8 tenancy can only be terminated "for cause" and this will generally lead to an eviction lawsuit and the increased costs and delays that go with it.

Section 8 tenants have no greater protection against eviction than non-Section 8 tenants. By signing a lease, the landlord agrees that if the tenant, Section 8 or not, does not violate that lease, then they have no "cause" to terminate the lease. According to state law, a lease, while it is in effect, can only be terminated for "cause" —such as non-payment of rent or repeated violation of the lease. Following the initial term of the lease, a landlord then has the choice of renewing or not renewing the lease with the tenant and can ask the tenant to leave without going through eviction proceedings. There is no difference between Section 8 and ordinary private (i.e., non-Section 8) tenancies.

ADDITIONAL RHA COMMENTS AT HEARING. (Sean Martin, RHA)

Would create a protective class in the city of Redmond for Section 8 rental voucher recipients.

A landlord can refuse to rent to a Section 8 voucher holder for cause – in other words apply the same standards they do to any other applicant. The acceptance of one

Section 8 tenant by a landlord does not change the rules for subsequent applicants. If source of income is not protected from discrimination, a landlord can reject a Section 8 voucher holder due solely to their participation in the program regardless of whether that landlord had previously accepted a Section 8 tenant. If there is a source of income protection statute, then the landlord would need to justify each rejection for a reason other than simply that they were a Section 8 voucher holder.

This comment may have its origins in an old rule that if a landlord accepted one voucher holder they would have to accept all voucher holders (barring rejection for cause). This Federal requirement was eliminated almost a decade ago.

Federal regulations that govern Section 8 programs require that owners enter into one year leases for initial term with new Section 8 residents. Some owners may not want to bind themselves to such a term. Our members report to us that most owners manage their lease expirations so that there are certain number of floor plans which exist each month that come up so that there is an availability of stock to new perspectives renters. If an owner is required to always have twelve month leases they lose the ability to effectively manage that aspect of their business.

If a landlord chooses not to offer annual leases to any tenants and offers only short-term or month-to-month leases, the ordinance would not apply because it only prohibits a landlord from refusing to rent to a tenant “solely” because the tenant proposes to do so using a Section 8 voucher. If the landlord has made a business decision not to offer long-term leases to anyone, Section 8 and non-Section 8 tenants alike, then the refusal to rent is not solely based on Section 8.

I think there is another big factor. If a tenant holding a Section 8 voucher is denied residency, it is not due to the Section 8 voucher. It is due to criminal, credit, or rental history.

Under the proposed ordinance, landlords will maintain their ability to screen applicants for poor credit and rental history. They will be able to use the same screening criteria for an applicant with a Section 8 voucher as one without. What they won't be able to do is reject an applicant just because their rent is paid in part by a Section 8 subsidy.

Section 8 tenants must go through suitability background checks and can lose their vouchers for things like failure to pay rent, if they have their utilities disconnected, if they engage in illegal activity or if they commit serious violations of their lease agreements.

It is not something that is going to fit every landlord business model. It fits for some, but for many individual landlords the extra restrictions and burdens don't fit with those business models.

Based on the previous responses to issues raised above, the Section 8 program does not appear to dictate the business model used by landlords. Its purpose is to prevent landlords from using Section 8 as a sole basis for screening potential residents.

Some of our members say that have been told by Section 8 that they are not allowed to require renters insurance of Section 8 voucher recipients.

Section 8 has no written rules governing a requirement or non-requirement to have renters insurance. As long as an owner's policy regarding renters insurance is applied equally to both Section 8 and non-Section 8 residents, there should be no cause for concern by the Section 8 staff.

There is no shortage of landlords who accept tenants who receive Section 8 vouchers. The Washington Human Rights Commission has previously conducted studies and has determined there was not a need for source of income as a protected class as there is housing availability. Needs of low income persons were being met and not being discriminated against on the basis of their source of income.

Based on communication with staff at the Washington Human Rights Commission, they are unaware of any current report that makes such a statement. At the hearing the Tenants Union referred to a 2007 the Washington State Human Rights Commission report that listed several of the most common legal form of discrimination included source of income discrimination. The Tenants Union also cited a pre-2000 Commission report that states renters experience discrimination for reasons not protected by fair housing laws, especially refusal to rent because of source of income such as Section 8 rent certificates, or welfare. The statements in these reports appear to be more general statements that were not based on extensive research. The Washington State Human Rights Commission staff indicated that they have not researched this issue in recent years and therefore do not have a position on the topic.

We've also contacted many of the local housing authorities throughout the Sound area. Not one offered any opinion or evidence that Section 8 tenants were being unfairly refused the opportunity to submit an application because of the Section 8 voucher nor did any state there was an actual shortage or unavailability of units for those people to find.

Not sure which housing authorities they contacted. The King County Housing Authority testified to the City of Redmond on this ordinance, strongly encouraging them to adopt this ordinance.

Ordinance appears to be a result of primarily of two apartment companies adopting policies which would discontinue accepting future Section 8 applicants.

It is true that the city staff report highlighted the experience of the two companies that notified residents of their intent to discontinue accepting future Section 8 applicants. There are a couple reasons these companies were highlighted. First, they are both national companies that have a large number of rental units in Redmond and the region. Second, in the letter sent by one company to its current Section 8 residents, they stated they had been a good resident, and referred them to other properties they owned located in Bellevue and Seattle, cities with Section 8 discrimination ordinances. This indicates both that they were individually good residents and that the Section 8 program was not so onerous that they would be willing to have them live in other communities they manage.

Apparent outreach made by the city to the rental housing industry which unfortunately did not include RHA and our 4600 members.

City Staff indicated in their report to the City Council that in addition to the required public notice, based on the assumption that both landlords and tenant groups might be particularly interested in this issue staff directly contacted the following groups:

- National Association of Residential Property Managers, King County Chapter (Several representatives)
- King County Housing Authority
- Tenant's Union of Washington
- Washington Multi-Family Housing Association
- Housing Development Consortium
- Affordable Housing Manager's Association
- Hopelink Housing Programs

RHA is a huge supporter of voluntary voucher programs. It's something we've pushed through the state legislature for at least ten years and just haven't gotten traction with the legislature down there for voluntary voucher funding.

The general philosophy of voucher programs is to offer choice of residents to select housing based on the needs of the households (e.g. locating near family or employment) One concern with the proposed voluntary voucher funding has been supporting a program that is designed to potentially limit its ability to be used broadly. May be difficult for legislators to support a program in which members of the sponsoring association say they would not participate.

KING COUNTY HOUSING AUTHORITY COMMENTS

Elizabeth Westburg: King County Housing Authority.

The King County Housing Authority provides homes to over 47,000 people on any given night this includes over 10,000 households utilizing Section 8. Currently Redmond is home to 245 households who use Section 8 vouchers. Here is a snapshot of these households:

- 28% are elderly / 47% are living with a disability
- The remaining households are families with children including over 200 school aged children.
- The average income of these families is just over \$12,000 a year and many are on fixed incomes or working for minimum wage. Section 8 vouchers fill the gaps for these families between 30% of their income and their rent, making housing affordable to them.

According to a recently commissioned report by Dupree & Scott there were only three market rate apartments affordable to a person earning minimum wage in Redmond. The Section 8 program helps make rental housing more affordable to Redmond residents who would otherwise be priced out of the Redmond rental housing market. With the high cost of housing in this region and particularly here on the Eastside demand for this program is at an all-time high.

The King County Housing Authority has consistently been rated a high performer since HUD began rating housing authorities in 1992. In 2003 the King County Housing Authority was chosen by HUD because of our high performing status to participate in a program called Moving to Work or MTW. As a participant of MTW the Housing Authority is allowed to change the vast majority of federal housing regulations that govern the Section 8 programs to be more responsive to local needs. To date the Housing Authority has made many changes which have improved the program's overall efficiency and effectiveness for both tenants and landlords. For example

- We have simplified our Section 8 inspections so that landlords can self-certify that they have fixed certain deficiencies.
- We have raised the local maximum rent allowable on the Eastside including Redmond as a reflection of more expensive rents here and
- We have clustered our annual inspections for landlords which saves time by only scheduling one or two inspections per year even if they have many tenants with Section 8 vouchers.

We encourage the Redmond city council to join the twelve states and many other local jurisdictions including Bellevue, Seattle, and un-incorporated King County that have already enacted source of income discrimination protections.

Estimated Timeline for Leasing on Section 8

Submittal of Request for Tenancy Approval	1 day
Review of Rent amount	1 - 2 days
Schedule inspection	1-2 days
Perform inspection	2 – 10 days as long as unit is ready
If it passes tenant can move in and contract process can begin.	
If unit fails, a follow-up inspection is scheduled	1 – 10 days (once repairs have been made)
Once unit passes and KCHA receives a copy of the lease, the Housing Assistance Payments Contract is drawn up and sent to the owner for signature	2 – 10 days
Owner must send signed contract back to the Section 8 office	
Once received, entered into computer for payment	(Return time up to owner)
Payments made to owner twice per month, usually via direct deposit	1 – 21 days (depending on timing of return of contracts and twice monthly check run)

Depending on the complexity of situation (i.e., level of rent, unit failing inspections, contract return delayed by the owner, etc.) total time for lease up and payment could take as little time as a week to as much as 6 weeks. Each situation is different. The only extra cost to a landlord for participation on the program is if the landlord chooses to lower the rent or pay to fix deficiencies found through the inspection in order to have their unit qualify. There is no fee for participating on the Section 8 program.

CODE

**CITY OF REDMOND
ORDINANCE NO. 2645 (AM)**

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, ADOPTING RMC CHAPTER 6.38, PROHIBITING THE REFUSAL TO RENT A DWELLING UNIT SOLELY ON THE BASIS THAT A TENANT PROPOSES TO RENT PURSUANT TO A SECTION 8 HOUSING VOUCHER OR CERTIFICATE, AND PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, access to affordable housing is consistently identified as the greatest barrier to families and individuals being able to build or rebuild a solid foundation; and

WHEREAS, the Section 8 voucher program is a program of the federal government which assists very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market; and

WHEREAS, it has come to the attention of the Redmond City Council that some property owners in Redmond may refuse to rent to tenants proposing to utilize a Section 8 voucher or certificate; and

WHEREAS, after holding a public hearing, the Redmond City Council has determined that prohibiting the refusal to rent a dwelling unit solely because the tenant proposes to do so using a Section 8 voucher or certificate will further the City's policies on affordable housing and promote the public health, safety, and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption of Chapter. RMC Chapter 6.38,
Refusal to Rent Based Solely on Section 8 Voucher or Certificate Request Prohibited, is hereby adopted to read as follows:

**Chapter 6.38
REFUSAL TO RENT BASED SOLELY ON SECTION 8 VOUCHER OR
CERTIFICATE REQUEST PROHIBITED**

Sections:

- 6.38.010 Purpose.
- 6.38.020 Prohibitions.
- 6.38.030 Exceptions.

6.38.010 Purpose.

(A) The Redmond council finds and declares that practices of housing discrimination against any persons on the basis of participation in the Section 8 program constitute matters of local concern and are contrary to the public welfare, health, peace and safety of the residents of Redmond.

6.38.020 Prohibitions.

(A) No person shall refuse to rent a dwelling unit to any rental applicant solely on the basis that the applicant proposes to rent such unit pursuant to a Section 8 voucher or certificate issued under the Housing and Community Development Act of 1974 (42 USC 1437(F)); provided this section shall only apply with respect to a Section 8 certificate if the monthly rent

on such residential unit is within the allowable rent as established by the Department of Housing and Urban Development. "Dwelling unit" shall have the meaning set forth in RZC 21.78.

6.38.030 Exceptions.

(A) Nothing in this chapter shall:

(1) apply to the renting, sub-renting, leasing, or subleasing of a single-family dwelling, wherein the owner or person entitled to possession thereof maintains a permanent residence, home or abode;

(2) be interpreted to prohibit any person from making a choice among prospective purchasers or tenants of real property on the basis of factors other than participation in a Section 8 program;

(3) prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such

religion is restricted on the basis of race, color, or national origin;

(4) be construed to prohibit treating disabled persons more favorably than persons who are not disabled;

(5) be construed to protect criminal conduct; and

(6) prohibit any person from limiting the rental or occupancy of a dwelling based on the use of force or violent behavior by an occupant or prospective occupant, including behavior intended to produce or incite imminent force or violence to the person or property of the owner, manager, or other agent of the owner.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance shall take effect five (5) days after passage and publication of an approved summary consisting of the title, or as otherwise provided by law.

ADOPTED by the Redmond City Council this 7th day of
February, 2012.

CITY OF REDMOND



JOHN MARCHIONE, MAYOR

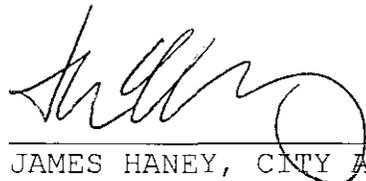
ATTEST:



MICHELLE M. MCGEHEE, MMC, CITY CLERK

(SEAL)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:



JAMES HANEY, CITY ATTORNEY

FILED WITH THE CITY CLERK:	February 1, 2012
PASSED BY THE CITY COUNCIL:	February 7, 2012
SIGNED BY THE MAYOR:	February 7, 2012
PUBLISHED:	February 13, 2012
EFFECTIVE DATE:	February 18, 2012
ORDINANCE NO. 2645 (AM)	

ADOPTED 7-0: Allen, Carson, Flynn, Margeson, Myers, Stilin and Vache

ORDINANCE O-4384

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO AMENDING THE KIRKLAND MUNICIPAL CODE TO ENACT A NEW CHAPTER 7.74 FAIR HOUSING REGULATIONS; PROHIBITING THE REFUSAL TO RENT A DWELLING UNIT SOLELY ON THE BASIS OF A SECTION 8 VOUCHER OR CERTIFICATE RENTAL REQUEST; AND PROVIDING FOR THE ENFORCEMENT THEREOF BY AMENDING KIRKLAND MUNICIPAL CODE SECTION 1.12.020.

WHEREAS, the City Council has determined that a significant number of persons are not able to secure adequate rental housing without financial assistance, such as that provided pursuant to a Section 8 voucher or certificate issued under the Housing and Community Development Act of 1974 (42 USC 1437f) ("Act"); and

WHEREAS, the City Council has also determined that it is essential to assure that housing is available to persons who need financial assistance to secure decent housing; and

WHEREAS, the City Council has therefore determined that it is necessary and appropriate that the City prohibit the refusal to rent a dwelling unit to any rental applicant solely on the basis that the applicant has made such application pursuant to a Section 8 voucher or certificate under the Act, in order to assure that sufficient amounts of financially assisted housing are available to those persons needing such housing;

NOW THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Purpose. The purpose of this ordinance is to prohibit the refusal to rent a dwelling unit to any rental applicant solely on the basis that the applicant has made such application pursuant to a Section 8 voucher or certificate under the Housing and Community Development Act of 1974 (42 USC) 1437f, in order to assure that sufficient amounts of financially assisted housing are available to those persons needing such housing.

Section 2. The City of Kirkland adopts a new chapter to the Kirkland Municipal Code, 7.74 "Fair Housing Regulations," which is set forth as follows:

7.74.010 Refusal to rent based solely on Section 8 Voucher or certificate request prohibited.

No person shall refuse to rent a dwelling unit to any rental applicant solely on the basis that the applicant proposes to rent such unit pursuant to a Section 8 voucher or certificate issued under the Housing and Community Development Act of 1974 (42 USC 1437f); provided this section shall only apply with respect to a Section 8 certificate if the monthly rent on such residential unit is within the fair market rent as established by the Department of Housing and Urban Development. "Dwelling unit" shall have the meaning set forth in Kirkland Municipal Code Section 23.5.250.

7.74.020 Exceptions.

(A) Nothing in this chapter shall:

(1) apply to the renting, sub-renting, leasing, or subleasing of a portion of a single-family dwelling, wherein the owner or person entitled to possession thereof maintains a permanent residence, home or abode therein;

(2) be interpreted to prohibit any person from making a choice among prospective tenants on the basis of factors other than participation in a Section 8 program;

(3) prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on the basis of race, color, national origin or other illegal discriminatory basis;

(4) be construed to prohibit treating disabled persons more favorably than persons who are not disabled;

(5) be construed to protect criminal conduct; and

(6) prohibit any person from limiting the rental or occupancy of a dwelling based on the use of force or violent behavior by an occupant or prospective occupant, including behavior intended to produce fear of imminent force or violence against the person or property of the owner, manager, or other agent of the owner.

7.74.030 Enforcement.

The prohibitions of this Chapter shall be enforced using the processes provided in Chapter 1.12 of this Code.

Section 3. Section 1.12.020 is hereby amended to read as follows:

1.12.020 Definitions.

As used in this chapter, unless a different meaning is plainly required:

"Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.

"Act" means doing or performing something.

"Applicable department director" means the director of the department or his or her designee.

"Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions issued pursuant to Title 11 are specifically excluded from the application of this chapter.

"Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts governed by a city regulation.

"Emergency" means a situation which in the opinion of the applicable department director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.

"Hearing examiner" means the Kirkland hearing examiner and the office thereof established pursuant to Chapter 3.34.

"Omission" means a failure to act.

"Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

"Person responsible for the violation" means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the city, and includes but is not limited to owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs. For violations of the city sign regulations, this definition includes, but is not limited to, sign installers/posters, sign owners, and any other persons who cause or participate in the placement of a sign in a manner that constitutes a civil violation. For violations of city tree regulations, this definition includes any person who caused or participated in the removal of a tree in a manner that constitutes a civil violation.

"Regulation" means and includes the following, as they now exist or are hereafter amended:

- (1) Title 23 (Kirkland Zoning Code);
- (2) Title 21, Buildings and Construction (including codes adopted by reference);
- (3) Chapter 15.52 (Surface Water Management);
- (4) Title 29 (Land Surface Modification);
- (5) Chapter 19.04 (Obstructing Streets or Sidewalks);
- (6) Chapter 11.76 (Junk Vehicles);
- (7) Chapter 11.24 (Nuisances);
- (8) The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city;
- (9) Chapter 7.74 (Fair Housing Regulation).

"Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.

"Violation" means an act or omission contrary to a city development regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2012.

Signed in authentication thereof this _____ day of _____, 2012.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney