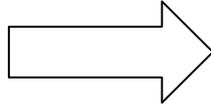


City of Prosser, WA  
601 7<sup>th</sup> Street  
Prosser, WA 99350



**CITY COUNCIL  
SPECIAL MEETING AGENDA  
7:00 P.M.  
TUESDAY, MAY 6, 2014**

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **CITIZEN PARTICIPATION**
5. **MAYOR AND CITY COUNCIL REPORTS AND COMMENTS**
  - a) **Proclamation Reading ~ “Older Americans Month”**
6. **CLOSED RECORD DECISION HEARING**
  - a.) **Rezone from Commercial Downtown (CD) to Commercial General (CG) at 804 6<sup>th</sup> Street ..... Page 5**
    - ~ Open Closed Record Decision Hearing*
    - ~Receive Citizen Comment From Those With Standing on the Record*
    - ~Close Hearing*
7. **COUNCIL ACTION**
  - a.) **Consideration of ORDINANCE 14-\_\_\_\_\_ Regarding Site Specific Rezone from Commercial Downtown (CD) to Commercial General (CG) at 804 6<sup>th</sup> Street ..... Page 5**

**RECOMMENDATION:** Approve, deny or remand ORDINANCE 14-\_\_\_\_\_ to the Planning Commission for changes to the proposed site specific rezone at 804 6<sup>th</sup> Street from Commercial Downtown (CD) to Commercial General (CG).

*The first Ordinance passed will be Ordinance 14-2884  
The first Resolution passed will be Resolution 14-1457*

**8. PUBLIC HEARING**

**a.) Nomadic Vendors ..... Page 38**

- ~ Open Public Hearing*
- ~Receive Citizen Comments*
- ~Close Public Hearing*

**9. COUNCIL ACTION**

**a.) Consideration of ORDINANCE 14-\_\_\_\_ Establishing a Licensing Policy for Nomadic Vendors and Allowing them to Operate Within the City of Prosser Subject to the Conditions of the Municipal Code ..... Page 41**

**MOTION #1: RECOMMENDATION:** Move to adopt ORDINANCE 14-\_\_\_\_ establishing a Licensing Policy for Nomadic Vendors and Allowing them to Operate Within the City of Prosser Subject to the Conditions of the Municipal Code

**Consideration of ORDINANCE 14-\_\_\_\_ Modifying the Zoning code to Comply with the Adoption of an Ordinance Allowing Nomadic Vendors Within the City of Prosser..... Page 51**

**MOTION #2: RECOMMENDATION:** Move to adopt ORDINANCE 14-\_\_\_\_ modifying the Zoning code to comply with the adoption of an Ordinance allowing Nomadic Vendors within the City of Prosser.

**b.) Consideration of ORDINANCE 14-\_\_\_\_ Adopting a Moratorium on the Establishment of Medical Cannabis Dispensaries and Collective Gardens; Defining “Medical Cannabis Dispensaries” and “Collective Gardens;” Declaring an Emergency; Adopting a Work Plan, and Establishing an Effective Date ..... Page 64**

**MOTION #1: RECOMMENDATION:** Move to adopt ORDINANCE 14-\_\_\_\_ adopting a Moratorium on the establishment of medical cannabis dispensaries and Collective Gardens; Defining “Medical Cannabis Dispensaries” and “Collective Gardens;” Declaring an Emergency; adopting a work plan, and establishing an effective date.

**Consideration of ORDINANCE 14-\_\_\_\_ Adopting a Public Participation Plan to Guide the Process to Adopt an Amendment to the Prosser Zoning Regulations Regarding Medical Cannabis ..... Page 72**

***The first Ordinance passed will be Ordinance 14-2884  
The first Resolution passed will be Resolution 14-1457***

**MOTION #2: RECOMMENDATION:** Move to adopt ORDINANCE 14-\_\_\_\_  
Adopting a Public Participation Plan to Guide the Process to Adopt an  
Amendment to the Prosser Zoning Regulations Regarding Medical Cannabis.

- c.) **Consideration ORDINANCE 14-\_\_\_\_ Adding a Definition for “Criminal Activity” to the City’s Rental Housing License Ordinance Codified as Prosser Municipal Code Chapter 15.30..... Page 136**

**RECOMMENDATION:** Move to adopt ORDINANCE 14-\_\_\_\_ adding a  
definition for “Criminal Activity” to the City’s Rental Housing License  
Ordinance Codified as Prosser Municipal Code Chapter 15.30.

- d.) **Consideration of ORDINANCE 14-\_\_\_\_ Repealing Ordinance 1485, Amending Ordinance 1471 and 1462 Regarding Annexation of Property Commonly Known as the Spray Field ..... Page 140**

**RECOMMENDATION:** Move to adopt ORDINANCE 14-\_\_\_\_ repealing  
Ordinance 1485, amending Ordinance 1471 and 1462 regarding annexation of  
property commonly known as the Spray Field.

- e.) **Review and Confirm the Appointments to Various Boards, Commissions and Committees as Appointed by Mayor Warden..... Page 162**

**MOTION #1: RECOMMENDATION:** Move to confirm the appointment of  
Council Member Ward to the PEDAs Board and Budget and Finance Committee  
as appointed by Mayor Warden.

**MOTION #2: RECOMMENDATION:** Move to confirm the appointment of Rob  
Siemens to the Planning Commission, Position No. 3, as appointed by Mayor  
Warden.

## **10. CONSENT AGENDA**

- a. Approve Drinking Water State Revolving Fund (DWSRF) Invoice Voucher Request No. 2 in the Amount of \$26,511.50, for the Zone 2.5 Water Supply Improvements Project and Authorize the Mayor to Sign the Documents ..... **Page 166**
- b. Approve Drinking Water State Revolving Fund (DWSRF) Invoice Voucher Request No. 10 in the Amount of \$594,858.05, for the Disinfection, Filtration and Source Improvements Project and Authorize the Mayor to Sign the Documents ..... **Page 176**
- c. Approve the March 11, 2014 Meeting Minutes..... **Page 195**

***The first Ordinance passed will be Ordinance 14-2884  
The first Resolution passed will be Resolution 14-1457***

- d. Approve the March 25, 2014 Meeting Minutes..... *Page 199*
- e. Approve the April 1, 2014 Meeting Minutes..... *Page 203*

**11. DISCUSSION ITEMS**

- a.) **Review, Discuss and Potentially Take Action to Approve Contracts with the US Bank for the Use of Credit Cards by City Staff** ..... *Page 206*
- b.) **Review and Discuss Potential Amendments to Prosser Municipal Code (PMC) 13.10.150, Regarding Late Fees**..... *Page 221*
- c.) **Review Ordinance 14-\_\_\_\_\_ Closing funds 442 and 443 Regarding the 1997 Water/Sewer Refunding Bond and Amending the 2014 Budget**..... *Page 224*

**12. ADJOURNMENT**

*The first Ordinance passed will be Ordinance 14-2884  
The first Resolution passed will be Resolution 14-1457*

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<b>Agenda Title:</b> Closed Record Hearing Site specific rezone from Commercial Downtown (CD) to Commercial General (CG) at 804 6 <sup>th</sup> Street in Prosser WA.	<b>Meeting Date:</b> May 6, 2014 Special Meeting
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------

<b>Department:</b> Planning	<b>Director:</b> Steve Zetz	<b>Contact Person:</b> Steve Zetz	<b>Phone Number:</b> (509) 786-2332
--------------------------------	--------------------------------	--------------------------------------	----------------------------------------

<b>Cost of Proposal:</b> NA	<b>Account Number:</b>
<b>Amount Budgeted:</b> NA	<b>Name and Fund#</b>

**Reviewed by Finance Department:**  
*Ragima Mawaa*

- Attachments to Agenda Packet Item:**
1. Planning Commission Packet
    - A. Application
    - B. SEPA Checklist
    - C. Affidavit of Mailing
    - D. Application Notice
    - E. Public Hearing Notice
    - F. Copy of Email routing SEPA
    - G. Comment Letter WSDOT
  2. Planning Commission Findings
  3. Determination of Non-Significance
  4. Notice of Closed Record Hearing (Council)

**Summary Statement:**  
The owner of property having the common address of 804 6<sup>th</sup> Street in Prosser has filed a request for a change of zone. The property is currently zoned Commercial Downtown (CD). The owner and tenant wish to change the zone to Commercial General (CG). The change in zone would allow the business to rent U-Haul trucks and trailers once the site is adequately improved to meet the requirements established under Prosser Municipal Code. The change of zone is consistent with the Prosser Comprehensive Plan and the recommendation from the Planning Commission is to approve the change.

No comments were received in opposition to the proposed change.

**Hearing Type: Quasi-Judicial**

This is a quasi-judicial hearing. This means that the hearing must not only be fair but appear to be fair. If you have had any ex parte contact with the applicant or anyone, other than City Staff, then you must disclose that contact and the nature of that contact. In the event that you have already made up your mind regarding the subject of this hearing and cannot rely on the evidence presented to make that decision, then you must disclose that fact. In the event that conflicts would prevent a quorum from making a

decision in this matter, then, under the doctrine of necessity, you would be able to hear this matter notwithstanding any conflicts.

- Does any member of the Council have any conflicts?
- Does any member of the public believe that any member has a conflict?

Consistent with or Comparison to:

Previous requests for zone changes consistent with the Comprehensive Plan.

Recommended City Council Action/Suggested Motion:

Approve, Deny, or Remand to Planning Commission for changes to the proposed site specific rezone at 804 6<sup>th</sup> Street from Commercial Downtown (CD) to Commercial General (CG).

<u>Reviewed by Department Director:</u> 	<u>Reviewed by City Attorney:</u> 	<u>Approved by Mayor:</u> 
Date:	Date: 4/28/14	Date: 5-1-14
<u>Today's Date:</u>	<u>Revision Number/Date:</u>	<u>File Name and Path:</u>



Deposit \$500 = SEPA

LUA-1

# LAND USE ZONING & PERMIT APPLICATION CITY OF PROSSER, WASHINGTON

APPLICANT'S NAME Martha Reynosa

PROJECT NAME Miranda's Meat Market

**PARCEL INFORMATION** (Include all parcel(s) information. Attach additional sheets, if necessary.)

Project Address: 804 6th St. Prosser WA, 99350  
(Leave blank if not assigned)

Parcel Number (Property Tax Account Number): \_\_\_\_\_

Legal Description: \_\_\_\_\_

**PROPERTY OWNER INFORMATION**

Name: RAMON ALCANTAR

Address: 1420 South Hill Rd City: Sunnyside State: WA Zip: 98944

Phone: (509) 439 3542 Cell Phone: (509) 439 3542

Email: \_\_\_\_\_ (email will not be used for transmittal of official findings)

OWNERS AUTHORIZED AGENT: Martha Reynosa

Address: 1214 Duddley Ave City: Prosser State: WA Zip: 99350

Phone: (509) 790 8924 Cell Phone: (509) 790 8924

Email: mirandasmeat@gmail.com (email will not be used for transmittal of official findings)

**PROJECT INFORMATION**

- |                                                    |                                                                                     |
|----------------------------------------------------|-------------------------------------------------------------------------------------|
| <input type="checkbox"/> Site Review               | <input type="checkbox"/> Conditional Use (requires Conditional Use form LUA-S1)     |
| <input type="checkbox"/> Annexation                | <input type="checkbox"/> Variance (requires Variance request form LUA-S2)           |
| <input checked="" type="checkbox"/> Change of Zone | <input type="checkbox"/> Similar Use                                                |
| <input type="checkbox"/> Accessory Dwelling Unit   | <input type="checkbox"/> Encroachment                                               |
| <input type="checkbox"/> Overlay Zone              | <input type="checkbox"/> Adult Family Home                                          |
| <input type="checkbox"/> Right-of-Way Use Permit   | <input type="checkbox"/> Continuation and/or Minor Alteration of Non-Conforming Use |
| <input type="checkbox"/> Other                     | <input checked="" type="checkbox"/> SEPA                                            |

PROJECT DESCRIPTION change from CD to CG

City of Prosser  
601 7th Street  
Prosser WA 99350  
(509) 786-2332

**PLEASE ATTACH THE REQUIRED VICINITY MAP**

ESTIMATED PROJECT VALUATION: \$ 1,500

**CONTRACTOR INFORMATION**

Company Name: \_\_\_\_\_ Email: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Contact Phone: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contractor's Registration No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

I, the undersigned, do hereby certify that, to the best of my knowledge, the information on this application and other submitted information is true and correct. In addition, I understand that acceptance of this application and fees does not constitute submittal of a valid application until so informed by the City. I have attached, enclosed, or submitted the applicable fees for this application.

[Signature]                      02/06/14                      [Signature]                      02/06/14  
Applicant Signature                      Date                      Owner Signature                      Date

If the property owner is other than an individual such as a corporation, partnership or agency, please provide proof of signatory authorization.

<p><b>SITE REVIEW</b> <u>Application must include the following.</u></p> <ol style="list-style-type: none"><li>1. Critical Areas Worksheet</li><li>2. Proof of Legal Lot</li><li>3. Proof of ownership or authority</li><li>4. 25 year Storm Water Calculations stamped by an engineer</li><li>5. Site Plan Drawing which shows....<ul style="list-style-type: none"><li><input type="checkbox"/> All existing and proposed lot lines.</li><li><input type="checkbox"/> The location of all existing structures to remain and the location of all proposed structures.</li><li><input type="checkbox"/> The location of all utilities proposed to be used.</li><li><input type="checkbox"/> The proposed number and location of water meters.</li><li><input type="checkbox"/> The location of all solid waste receptacle areas.</li><li><input type="checkbox"/> The method of handling storm water removal.</li><li><input type="checkbox"/> All easements and right-of-ways.</li><li><input type="checkbox"/> All off-street parking and loading areas.</li><li><input type="checkbox"/> All driveway locations.</li><li><input type="checkbox"/> All landscaping, outdoor lighting and fencing..</li><li><input type="checkbox"/> A north arrow.</li><li><input type="checkbox"/> Scale of drawing</li></ul></li></ol>	<p>Deposits are required at the time an application is submitted. You will still get a monthly bill for actual costs incurred. Your deposit will not be refunded until the project has closed.</p> <table><tr><td>SITE REVIEW</td><td>\$500.00 Deposit</td></tr><tr><td>VARIANCE</td><td>\$500.00 Deposit</td></tr><tr><td>SITE REVIEW</td><td>\$500.00 Deposit</td></tr><tr><td>SEPA</td><td>\$500.00 Deposit</td></tr><tr><td>ANNEXATION</td><td>\$500.00 Deposit</td></tr><tr><td>ZONE CHANGE</td><td>\$1000.00 Deposit</td></tr><tr><td>CONDITIONAL USE</td><td>\$500.00 Deposit</td></tr></table>	SITE REVIEW	\$500.00 Deposit	VARIANCE	\$500.00 Deposit	SITE REVIEW	\$500.00 Deposit	SEPA	\$500.00 Deposit	ANNEXATION	\$500.00 Deposit	ZONE CHANGE	\$1000.00 Deposit	CONDITIONAL USE	\$500.00 Deposit
SITE REVIEW	\$500.00 Deposit														
VARIANCE	\$500.00 Deposit														
SITE REVIEW	\$500.00 Deposit														
SEPA	\$500.00 Deposit														
ANNEXATION	\$500.00 Deposit														
ZONE CHANGE	\$1000.00 Deposit														
CONDITIONAL USE	\$500.00 Deposit														

**CITY USE ONLY**

RECIEVED BY \_\_\_\_\_ DATE \_\_\_\_\_

APPROVED BY \_\_\_\_\_ DATE \_\_\_\_\_

RETURNED BY \_\_\_\_\_ DATE \_\_\_\_\_

REASON FOR APPLICATION RETURN \_\_\_\_\_

ENVIRONMENTAL CHECKLIST

*Purpose of checklist:*

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

*Instructions for applicants:*

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

*Use of checklist for nonproject proposals:*

Complete this checklist for nonproject proposals, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:  
Miranda's Meat Market
2. Name of applicant:  
Martha Reynosa
3. Address and phone number of applicant and contact person:  
1214 DUDLEY AVE. 99350 (509)7908924
4. Date checklist prepared:  
2/6/14
5. Agency requesting checklist:  
City of Prosser
6. Proposed timing or schedule (including phasing, if applicable):

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain. **U-HAUL RENTAL**

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. **NONE**

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. **NO**

10. List any government approvals or permits that will be needed for your proposal, if known. **Sepa and check list**

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.) **Change Commercial Downtown at Commercial General**

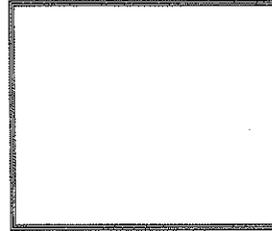
12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

**804 6th St Prosser, wa 99350**

TO BE COMPLETED BY APPLICANT	EVALUATION FOR AGENCY USE ONLY
B. ENVIRONMENTAL ELEMENTS	
1. Earth	
a. General description of the site (circle one): <b>Flat</b> , rolling, hilly, steep slopes, mountainous, other . . . . .	
b. What is the steepest slope on the site (approximate percent slope)?	
<b>0%</b>	
c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.	
<b>asphalt</b>	

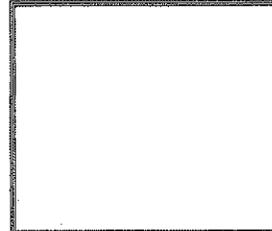
d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

not applicable



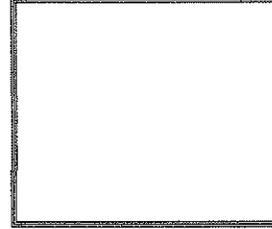
e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.

not applicable



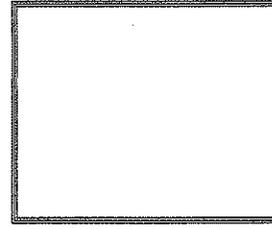
f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

no



g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

not applicable



h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

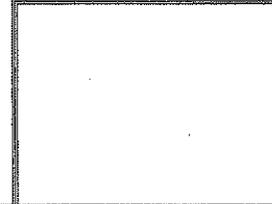
not applicable



2. Air

a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.

Not applicable



b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

not applicable

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

not applicable

3. **Water**

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

not applicable

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

not applicable

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

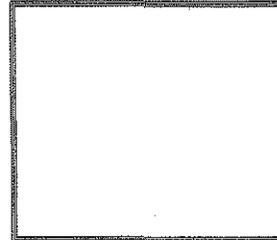
not applicable

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

not applicable

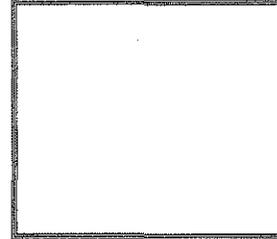
5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

not applicable



6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

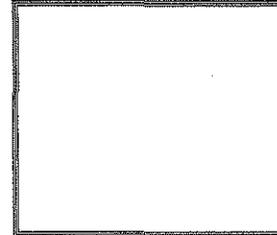
not applicable



b. Ground:

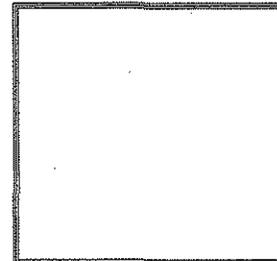
1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.

not applicable



2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

not applicable

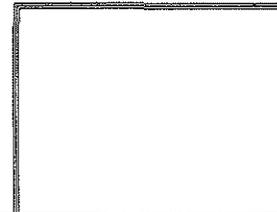


c.

Water runoff (including stormwater):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

not applicable



2) Could waste materials enter ground or surface waters? If so, generally describe.

not applicable

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

4. **Plants**

a. Check or circle types of vegetation found on the site:

- Deciduous tree: Alder, maple, aspen, other
- Evergreen tree: Fir, cedar, pine, other
- Shrubs
- Grass
- Pasture
- Crop or grain
- Wet soil plants: Cattail, buttercup, bullrush, skunk cabbage, other
- Water plants: Water lily, eelgrass, milfoil, other
- Other types of vegetation


b. What kind and amount of vegetation will be removed or altered?

not applicable

c. List threatened or endangered species known to be on or near the site.

not applicable

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

not applicable

5. **Animals**

a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:

Birds: Hawk, heron, eagle, songbirds, other: .....

Mammals: Deer, bear, elk, beaver, other: .....

Fish: Bass, salmon, trout, herring, shellfish, other: .....


b. List any threatened or endangered species known to be on or near the site.

not applicable

c. Is the site part of a migration route? If so, explain.

not applicable

d. Proposed measures to preserve or enhance wildlife, if any:

not applicable

**6. Energy and natural resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

not applicable

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

not applicable

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

not applicable

**7. Environmental health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

not applicable

1) Describe special emergency services that might be required.

not applicable

2) Proposed measures to reduce or control environmental health hazards, if any:	<p>not applicable</p>
b. Noise	
1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?	<p>not applicable</p>
2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.	
<p>not applicable</p>	<p>not applicable</p>
3) Proposed measures to reduce or control noise impacts, if any:	
8. Land and shoreline use	
a. What is the current use of the site and adjacent properties?	
<p><del>to park forest equipment</del></p> <p>currently General store</p>	
b. Has the site been used for agriculture? If so, describe.	
<p>not applicable</p>	
c. Describe any structures on the site.	
<p>our store</p>	
d. Will any structures be demolished? If so, what?	
<p>not applicable</p>	

<p>e. What is the current zoning classification of the site?  <i>Commercial downtown</i></p>	
<p>f. What is the current comprehensive plan designation of the site?  <i>change from commercial downtown to commercial general.</i></p>	
<p>g. If applicable, what is the current shoreline master program designation of the site?  <i>not applicable</i></p>	
<p>h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.  <i>not applicable</i></p>	
<p>i. Approximately how many people would reside or work in the completed project?  <i>four people</i></p>	
<p>j. Approximately how many people would the completed project?  <i>four people</i></p>	
<p>k. Proposed measures to avoid or reduce displacement impacts, if any:  <i>not applicable</i></p>	

1. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

*not applicable*

**9. Housing**

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

*not applicable*

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

*not applicable*

c. Proposed measures to reduce or control housing impacts, if any:

*not applicable*

**10. Aesthetics**

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

*not applicable*

b. What views in the immediate vicinity would be altered or obstructed?

*not applicable*

c. Proposed measures to reduce or control aesthetic impacts, if any:

not applicable

--

**11. Light and glare**

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

not applicable

--

b. Could light or glare from the finished project be a safety hazard or interfere with views?

not applicable

--

c. What existing off-site sources of light or glare may affect your proposal?

not applicable

--

d. Proposed measures to reduce or control light and glare impacts, if any:

not applicable

--

**12. Recreation**

a. What designated and informal recreational opportunities are in the immediate vicinity?

not applicable

--

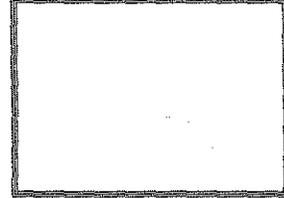
b. Would the proposed project displace any existing recreational uses? If so, describe.

not applicable

--

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

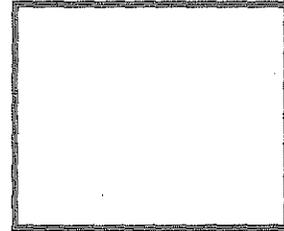
not applicable



**13. Historic and cultural preservation**

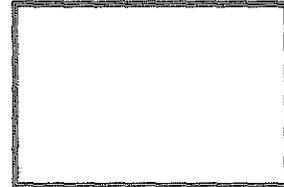
a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

not applicable



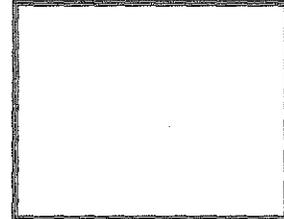
b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

not applicable



c. Proposed measures to reduce or control impacts, if any:

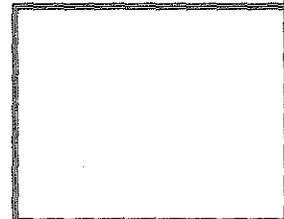
not applicable



**14. Transportation**

a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

not applicable



b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

not applicable



c. How many parking spaces would the completed project have? How many would the project eliminate?

not applicable

--

d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

not applicable

--

e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

not applicable

--

f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

not applicable

--

g. Proposed measures to reduce or control transportation impacts, if any:

Not applicable

--

15. Public services

a. Would the project result in an increased need for public services (for example: Fire protection, police protection, health care, schools, other)? If so, generally describe.

Moving services ~~and~~ such as truck rentals

--

b. Proposed measures to reduce or control direct impacts on public services, if any.

not applicable

16. Utilities

a. Circle utilities currently available at the site: Electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

not applicable

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

not applicable

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature:         *Quinn*        

Date Submitted:         02/06/14        

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS  
(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

not applicable

Proposed measures to avoid or reduce such increases are:

not applicable

2.

How would the proposal be likely to affect plants, animals, fish, or marine life?

not applicable

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

not applicable

3.

How would the proposal be likely to deplete energy or natural resources?

not applicable

Proposed measures to protect or conserve energy and natural resources are:

not applicable

4.

How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

not applicable

Proposed measures to protect such resources or to avoid or reduce impacts are:

not applicable

5.

How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

*not applicable*

Proposed measures to avoid or reduce shoreline and land use impacts are:

*not applicable*

6.

How would the proposal be likely to increase demands on transportation or public services and utilities?

*not applicable*

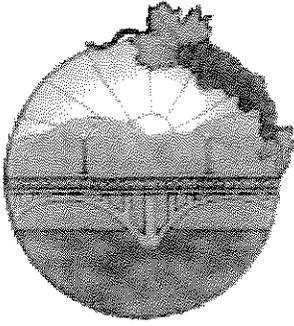
Proposed measures to reduce or respond to such demand(s) are:

*not applicable*

7.

Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

*not applicable*



City of Prosser

Washington

AFFIDAVIT OF MAILING

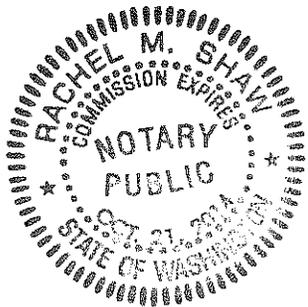
The undersigned, being first duly sworn on oath deposes and says: That he is now and at all times herein mentioned is and was a citizen of the United States and resident of the State of Washington, over the age of eighteen years; and

That on February 25, 20 14 I mailed a true copy of the attached notice to all interested parties as listed announcing see attachment.

Kathya D. Martinez  
(Signature)

Kathya D. Martinez-Quijano  
(Print)

SUBSCRIBED TO AND SWORN BEFORE ME THIS 25<sup>th</sup> DAY OF February, 2014.



Rachel M. Shaw

NOTARY PUBLIC in and for the State of Washington residing at Prosser.

My Commission Expires: 10/21/2014

Port of Benton  
3100 George Washington Way  
Richland, WA 99352

~~Paul Warden  
Mayor~~

Burlington Northern Santa Fe  
2454 Occidental Ave., Ste. 1A  
Seattle, WA 98134

Benton County Planning  
P.O. Box 910  
Prosser, WA 99350

Benton PUD  
250 N. Gap Rd.  
Prosser, WA 99350

Benton County Public Works  
P.O. Box 1001  
Prosser, WA 99350

Cascade Natural Gas  
701 S. First Ave.  
Yakima WA. 98902

Charter Communications  
1005 N. 16<sup>th</sup> Avenue  
Yakima, WA 98902

Benton REA  
P.O. Box 1150  
Prosser, WA 99350

Century Link  
405 S 5<sup>th</sup>  
Sunnyside, WA 98944

Benton Franklin District Health  
Environmental Health  
7102 West Okanogan Place  
Kennewick, WA 99336

Prosser School District  
Attn: Ray Tolcacher  
1126 Meade Ave Suite A  
Prosser, WA 99350

Washington State DOT  
South Central Region  
2809 Rudkin Road  
Union Gap, WA 98903-1648

Benton Clean Air Authority  
526 South Claudfelter Rd.  
Kennewick, WA 99336

~~WA Dept. of Fish & Wildlife  
2620 North Commercial Avenue  
Pasco, WA 99301-9506~~

Benton Franklin Council of  
Governments  
P.O. Box 217  
Richland, WA 99352

Prosser Memorial Hospital  
723 Memorial Street  
Prosser, WA 99350

*Emailed Sam*  
~~Washington State Department Of  
Commerce.  
[reviewteam@commerce.wa.gov](mailto:reviewteam@commerce.wa.gov)~~

Huibregtse, Louman Associates, Inc.  
801 N. 39<sup>th</sup> Avenue  
Yakima, WA 98902

~~Sunnyside Valley Irrigation District  
P.O. Box 239  
Sunnyside, WA 98944~~

~~Prosser Economic Development  
Association  
1230 Bennett Avenue  
Prosser, WA 99350~~

Benton PUD  
P.O. Box 6270  
Kennewick, WA 99336

Basin Disposal Inc.  
P. O. Box 3850  
Pasco WA 99302

WA State Liquor Control Board  
3000 Pacific Avenue SE  
Olympia, WA 98504-3080

Yakima Tribal Council  
Environmental Review  
PO Box 151  
Toppenish WA 98948

~~EMAIL TO ECOLOGY  
[sepaunit@ecy.wa.gov](mailto:sepaunit@ecy.wa.gov)~~

~~Department of Natural Resources  
[sepacenter@dnr.wa.gov](mailto:sepacenter@dnr.wa.gov)~~

PROSSER SCHOOL DISTRICT #116	1226 MEADE AVE	PROSSER	WA	99350
METHODIST CHURCH	824 6TH	PROSSER	WA	99350-0000
UNITED TELEPHONE CO OF THE NW	PO BOX 7909	OVERLAND PARK	KS	66207
BATES ROGER & DORIS A	815 6TH ST	PROSSER	WA	99350-1440
PROSSER COMMUNITY CHURCH	PO BOX 57	PROSSER	WA	99350
FLORES PAUL JR AND MARILU	PO BOX 1416	PROSSER	WA	99350
KENNEDY LAURIE RENEE	1120 PROSSER AVE	PROSSER	WA	99350-1369
RINES CONNIE J & ROBERT R	1602 S 28TH AVE	YAKIMA	WA	98902-5093
MOORE SPECIAL ACCOUNT LLC	901 PARKSIDE DR	PROSSER	WA	99350
MERCER JULIE M	2806 MIRADERO DR	SANTA BARBARA	CA	93105
<del>WASHINGTON STATE OF ARMORY</del>	<del>601 7TH ST</del>	<del>PROSSER</del>	<del>WA</del>	<del>99350-1459</del>
MATHIS RENEE G	501 LOWER COUNTY LINE RD	PROSSER	WA	99350-9615
BENSON DEAN & JUDITH	PO BOX 728	PROSSER	WA	99350
TREVINO ESTHER	PO BOX 1282	PROSSER	WA	99350-0881
NECHANICKY NOEL J & BERTIE M	1215 MEADE AVE UNIT A	PROSSER	WA	99350
RICK BRUCE A	PO BOX 511	PROSSER	WA	99350-0511
COSTIGAN MELINDA	1030 W SUTTER ISLAND CROSS RD	COURTLAND	CA	95615-9724
RODRIGUEZ JOSE N & PATRICIA	1214 DUDLEY AVE	PROSSER	WA	99350
KORSVIK TERRY A	5819 W CLEARWATER AVE	KENNEWICK	WA	99336
BARMORE WARREN A & MARJORIE	1109 ANNIE PL	PROSSER	WA	99350-1592
BRYANT MARY LOU	1213 MEADE AVE	PROSSER	WA	99350
BARNARD PROPERTIES LLC	708 6TH ST	PROSSER	WA	99350-1439
JENKIN WILLIAM R	PO BOX 288	PROSSER	WA	99350
THOMPSON PROPERTIES OF PROSSER LLC	11624 N MISSIMER RD	PROSSER	WA	99350
BRADLEY STEPHEN H & EILEEN	807 FORD ST	PROSSER	WA	99350-1562
SATTLER KEITH & MOLLY	PO BOX 901	PROSSER	WA	99350-0901
SIAS JOHN L	P O BOX 376	PROSSER	WA	99350
GOLDEN YAN RESTAURANT INC	1217 MEADE AVE	PROSSER	WA	99350-1423
WIMER LAURA LEE	PO BOX 19267	SPOKANE	WA	99219
ALCANTAR RAMON & GUADALUPE	1420 SOUTH HILL RD	SUNNYSIDE	WA	98944
HOGABOAM KRISTOPHER & KRISTI MICHELL	1501 PATTERSON RD	PROSSER	WA	99350
TAYLOR LAWRENCE & SHIRLEY	826 FORD ST	PROSSER	WA	99350-1563
NELSON FLINT	174002 W BRYON RD	PROSSER	WA	99350-8590
BOTTEMILLER JACK A & CONNIE L	715 MYRTLE AVE	PROSSER	WA	99350-1042
RICHMAN SHAWN P & NANCY LEE	815 7TH ST	PROSSER	WA	99350-1455
GARCIA GUADALUPE & ELIA	1224 PROSSER AVE	PROSSER	WA	99350-1431
MENDEZ HECTOR & GLORIA	5425 N MILE 4 1/2 W	WELACO	TX	78596
BECK DALE A & JENNIFER ANN	528 S SIXTH ST	SUNNYSIDE	WA	98944

37 addresses!

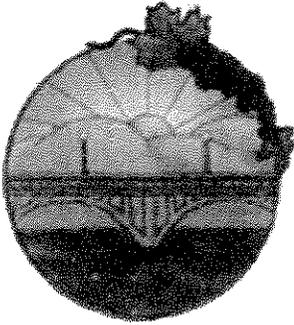
## Steve Zetz

---

**From:** Steve Zetz  
**Sent:** Tuesday, February 25, 2014 2:19 PM  
**To:** CTED Review (reviewteam@commerce.wa.gov); DNR (sepacenter@dnr.wa.gov); 'sepaunit@ecy.wa.gov'  
**Subject:** Prosser SEPA Application  
**Attachments:** SEPA.pdf

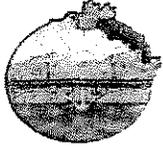
Attached please find the application and SEPA checklist for a rezone from commercial downtown to commercial general at 804 6<sup>th</sup> Street in Prosser WA.

Please contact me if you have any questions or require additional information.



## Steve Zetz

Prosser City Planner  
(509) 786-8212  
[szetz@cityofprosser.com](mailto:szetz@cityofprosser.com)



**FILE COPY**

**CITY OF PROSSER, WASHINGTON  
NOTICE OF COMPLETE APPLICATION AND  
OPTIONAL DETERMINATION OF NONSIGNIFICANCE  
NOTICE OF PUBLIC HEARING**

**Project Location: 804 6<sup>th</sup> Street  
Zone Change from Commercial Downtown to Commercial General  
Public Hearing March 20, 2014 6:00 p.m.**

---

**Notice of Application and Optional Mitigated Determination of Non-significance  
posted February**

**Type of Application: Rezone**

**Date of Application: February 10, 2014**

**Name of Applicant: Ramon Alcantar**

**Location of Project: 804 6<sup>th</sup> Street, Prosser WA 99350**

**Description of proposed project: Rezone property from Commercial Downtown (CG) to Commercial General (CG)**

**Other permits:**

The following additional permits are associated with this application: **None.**

The following studies have been required pursuant to RCW 36.70B.070: **State Environmental Policy Act Checklist.**

**Preliminary determination of consistency:** The City has determined that this application is consistent with the City's Development Regulations and Comprehensive Plan.

**Environmental Review:** The City is using the optional process contained in Washington Administrative Code (WAC) Section 197-11-355 to make its threshold determination. The City expects to issue a **Determination of Non-significance** DNS for this project. This may be your only opportunity to comment on the environmental impacts of the proposed project. A copy of the subsequent threshold determination for the project may be obtained upon request. The lead agency, the City of Prosser, will not act on this proposal for 14-days from the published date below.

**City of Prosser Contact:** Prosser City Clerk.

**Comments:** The public is invited to comment on the application and environmental review. The public comment period shall be **15-days and will begin February 26, 2014.** All public comments received on the Notice of Application and SEPA Checklist must be received no later than **5:00 pm, March 13, 2014.** Comments may be mailed or personally delivered to the;

City of Prosser  
Attn: City Clerk  
601 7<sup>th</sup> Street,  
Prosser, Washington, 99350

**NOTICE OF  
PUBLIC HEARING**

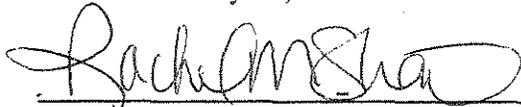
**NOTICE IS HEREBY GIVEN** by the undersigned City Clerk of the City of Prosser, Washington, that the **Prosser Planning Commission** will hold a Public Hearing on **Thursday, March 20, 2014, 6:00 p.m.**, or as soon thereafter as possible, in the City Council Chambers, City Hall, 601 7<sup>th</sup> Street, Prosser, Washington, for the purpose of receiving public comment on the proposed zone change. The City Hall Council Chambers is wheelchair accessible. American with Disabilities Act (ADA) accommodations are available upon request to the City Clerk at least 2 days in advance by calling (509)-786-2332.

All available information, including but not limited to, the application, and related documents for the application may be viewed at the City Clerk's Office, located at Prosser City Hall, 601 7th St, Prosser, Washington, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding official holidays and lunch hours between 11:00 a.m. and 12:00 p.m., or may be viewed at [www.cityofprosser.com](http://www.cityofprosser.com).

The person(s) receiving this notice may request a copy of the final decision in this matter.

The final decisions may be appealed in accordance with the Land Use Petition Act (RCW 36.70C).

Dated: February 21, 2014



Rachel Shaw, City Clerk  
City of Prosser

Published: Prosser Record Bulletin  
Publish Date: February 26, 2014

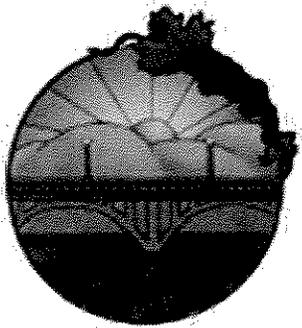
## Steve Zetz

---

**From:** Steve Zetz  
**Sent:** Tuesday, February 25, 2014 2:19 PM  
**To:** CTED Review (reviewteam@commerce.wa.gov); DNR (sepacenter@dnr.wa.gov); 'sepaunit@ecy.wa.gov'  
**Subject:** Prosser SEPA Application  
**Attachments:** SEPA.pdf

Attached please find the application and SEPA checklist for a rezone from commercial downtown to commercial general at 804 6<sup>th</sup> Street in Prosser WA.

Please contact me if you have any questions or require additional information.



## Steve Zetz

Prosser City Planner  
(509) 786-8212  
[szetz@cityofprosser.com](mailto:szetz@cityofprosser.com)



**Washington State  
Department of Transportation**

**Lynn Peterson**  
Secretary of Transportation

**South Central Region**  
2809 Rudkin Road  
Union Gap, WA 98903-1648

(509) 577-1600 / FAX: (509) 577-1603  
TTY: 1-800-833-6388  
www.wsdot.wa.gov

April 16, 2014

City of Prosser  
601 7<sup>th</sup> Street  
Prosser, WA 99350

Attention: Rachel Shaw, City Clerk

Subject: Nomadic Vendor Ordinance  
I-82, Exit 80 Interchange Vicinity

We have reviewed the proposed project and have the following comments.

A portion of the area affected by this proposal is adjacent to I-82 Exit 80 (Wine Country Road/Gap Road interchange). I-82, including the ramps, is a fully controlled limited access facility. The Wine Country Road/ Merlot Drive intersection is within the limited access boundaries of the interchange. The limited access boundaries extend northwesterly 236.28 feet and southeasterly 500 feet along Wine Country Road, and 455.25 feet easterly along Merlot Road from the intersection.

This proposal also affects areas adjacent to I-82 Exit 82 (SR 22/Wine Country Road interchange) and State Highway 22 (SR 22). The limited access boundaries extend southwestly 300 feet and northwesterly 2301.66 feet along Wine Country Road from the SR 22/Wine Country Road intersection (Highway Engineer's Station 37+36.73). SR 22 within the project area is a partially controlled limited access facility.

The selling and delivery of goods, wares, food or merchandise is prohibited within the limited access boundaries described above.

Thank you for the opportunity to review and comment on this proposal. If you have any questions regarding our comments, please contact Rick Holmstrom at (509) 577-1633.

Sincerely,

Paul Gonseth, P.E.  
Planning & Materials Engineer

PG: rh/mls

cc: File #7, I-82  
Tom Lenberg, Area 3 Maintenance Superintendent

p:\planning\devrev\Prosser\_Vendor Ordinance.docx

BEFORE THE PLANNING COMMISSION  
OF THE  
CITY OF PROSSER, WASHINGTON

IN THE MATTER OF )  
 )  
APPLICATION OF THE CITY OF PROSSER )  
PLANNING COMMISSION: )  
 )  
FOR THE RE-ZONING PUBLIC HEARING )  
FOR PARCEL NUMBER 1-0184-302-0104 )  
-001 FROM COMMERCIAL DOWNTOWN )  
DISTRICT (CD) TO COMMERCIAL GENERAL )  
DISTRICT (CG). )  
\_\_\_\_\_ )

Before the Planning Commission of the City of Prosser, Washington, in the matter of the request of Ramon and Guadalupe Alcantar, husband and wife, "applicant" for the re-zoning of property, currently zoned Commercial Downtown District (CD) to Commercial General District (CG).

FINDINGS OF FACT

1. The Applicant applied to amend the zoning map by application filed on February 10, 2014, with the City of Prosser, Washington, to have the following described real property having parcel number 1-0184-302-0104-001 situated in the City of Prosser, Benton County, Washington, zoned Commercial General District (CG):

LOTS 1, 2, and the Northwesterly 85 Feet of the Southwesterly 20 Feet of Lot 3, less the Southeasterly 55 feet of Lots 1 and 2, Block 104, Prosser First Subdivision, According to the Plat Thereof Records of Benton County, State of Washington.

2. The Benton County Assessor's records indicate that Applicant's Property is vested in Applicant's name.
3. The Applicant's Property is situated at the Southeast corner of the intersection of 6<sup>th</sup> Street and Dudley Avenue and consists of a grocery store and related parking.

4. The surrounding properties are zoned Commercial Downtown District (CD) and Residential Low Density District (RL).
5. The uses on the surrounding properties range from residential, commercial and public.
6. The Comprehensive Plan designates the applicant's property as Commercial on the Land Use Map.
7. Notice of the Application was published in the Prosser Record Bulletin on February 26, 2014, and posted in accordance with the Prosser Municipal Code.
8. Notice of this hearing was posted on the property, published in the City's Official Newspaper, and mailed to affected parties in accordance with the Prosser Municipal Code.
9. Applicant's property was previously zoned pursuant to an area-wide rezone. At that time, the character of the Applicant's property was consistent with such a zoning designation, but the Applicant's property is not in character with the appearance of other uses in the downtown.
10. There were no public comments on this application.
11. The City issue a DNS for this application on March 24, 2013.
12. Steve Zetz, Martha Reynosa, and Kenia Reynosa testified at the public hearing.
13. The commercial downtown is unlikely, in the foreseeable future to expand to encompass the Applicant's property.

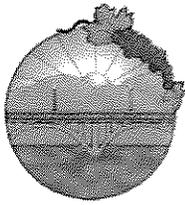
#### CONCLUSIONS

1. This zone request is in keeping with the Comprehensive Plan of the City of Prosser.

2. The request for a zoning map amendment is consistent with the Comprehensive Plan and the development regulations of the City of Prosser.
3. The property is improperly zoned as Commercial Downtown District (CD) because the area is unlikely to transition to a downtown character in the foreseeable future.
4. The change of zone from Commercial Downtown District (CD) to Commercial General District (CG) promotes the public necessity, convenience and general welfare since current zoning of the property is not appropriate.
5. The re-zoning of the Applicant's Property is consistent with the surrounding properties.
6. Since the character of the area has not and will not in the foreseeable future transition to the downtown area, there has been a substantial change in conditions since the previous zoning decision.
7. All notices were provided in accordance with the Prosser Municipal Code.
8. This application has been determined to be a minor action and to have a non-significant, adverse effect on the environment. An Environmental Impact Statement is not required under RCW 43.21C.030. This application is not an action requiring an environmental statement under WAC 197-11. This decision is made upon a determination into the guidelines of WAC 197-11 and City Ordinances.

#### RECOMMENDATION TO THE CITY COUNCIL

The Planning Commission recommends to the City Council that it amend the zoning map to change the zone for the property described above to Commercial General District (CG).



City of Prosser  
Washington  
Determination of Non-significance (DNS).

FILE COPY

Description of proposal: Rezone 804 6<sup>th</sup> Street

Proponent: Ramon Alcantar

Location of proposal: 804 6<sup>th</sup> Street

Lead Agency: City of Prosser

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

- There is no comment period for this DNS.
- This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.
- This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by \_\_\_\_\_.

Responsible Official: Steve Zetz  
Position/Title: City Planner  
Address: 601 7<sup>th</sup> Street Prosser, WA 99350  
Date: March 24, 2014



You may appeal this determination to \_\_\_\_\_ by sending your written comments  
Prosser City Hall, 601 7<sup>th</sup> Street, Prosser, WA. 99350 (509) 786-2332 no later than  
\_\_\_\_\_. You should be prepared to make specific factual objections. Contact  
Prosser City Hall to read or ask questions about the procedures for SEPA appeals.

There is no agency appeal



FILE COPY

City of Prosser  
**NOTICE OF  
CLOSED RECORD DECISION HEARING**

**NOTICE IS HEREBY GIVEN** by the undersigned City Clerk of the City of Prosser, Washington, that the City Council will hold a Closed Record Decision Hearing on May 6<sup>th</sup>, 2014 at 7:00 p.m. at a SPECIAL MEETING, or as soon thereafter as possible, in the City Council Chambers, City Hall, 601 7<sup>th</sup> Street, Prosser, Washington, for the purpose of receiving public comment on a proposed rezone at 804 6<sup>th</sup> Street from Commercial Downtown to Commercial General. The Council Chambers is wheelchair accessible. American with Disabilities Act (ADA) accommodations are available upon request to the City Clerk at least 2 days in advance by calling (509) 786-2332.

Pursuant to Title 19 of the Prosser Municipal Code, the Closed Record Decision Hearing shall be on the record before the City Council, and no new evidence or information may be presented, rather only appeal argument based on the existing Public Hearing record will be allowed. Any appeal argument based on the existing Public Hearing record as noted above may be submitted to the City Clerk's Office located in Prosser City Hall, 601 7th Street between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding official holidays and lunch hours between 11:00 a.m. and 12:00 p.m.

Any appeal argument may also be submitted at the hearing scheduled for May 6<sup>th</sup>, 2014 in the City of Prosser City Council Chambers, 601 7th Street, and prior to the close of the hearing. The City Council may accept the Planning Commission recommendation or it may modify the recommendation. The City Council may also remand the matter to the Planning Commission for further proceedings.

All available information and related documents for the hearing may be viewed at the City Clerk's Office, located at Prosser City Hall, 601 7th Street, Prosser, Washington, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding official holidays and lunch hours between 11:00 a.m. and 12:00 p.m., or may be viewed at [www.cityofprosser.com](http://www.cityofprosser.com).

The person(s) receiving this notice may request a copy of the final decision in this matter. The final decisions may be appealed in accordance with the Land Use Petition Act (RCW 36.70C).

Dated: April 17, 2014

Rachel Shaw CMC  
City Clerk  
City of Prosser

Published: Prosser Record Bulletin  
Publish Date: April 23, 2014

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<p><u>Agenda Title:</u> Public Hearing</p> <p>Consideration of Ordinance 14-_____ establishing a licensing policy for Nomadic Vendors and allowing them to operate within the City of Prosser subject to the conditions of the Municipal Code.</p> <p>Consideration of Ordinance 14-_____ modifying the Zoning Code to comply with the adoption of an ordinance allowing Nomadic Vendors within the City of Prosser.</p>		<p><u>Meeting Date:</u> May 6, 2014 Special Meeting</p>	
<p><u>Department:</u> Planning</p>	<p><u>Director:</u> Steve Zetz</p>	<p><u>Contact Person:</u> Steve Zetz</p>	<p><u>Phone Number:</u> (509) 786-8212</p>
<p><u>Cost of Proposal:</u> NA</p> <p><u>Amount Budgeted:</u> NA</p>		<p><u>Account Number:</u></p> <p><u>Name and Fund#</u></p>	
<p><u>Reviewed by Finance Department:</u></p> <p><i>Regina Mauras</i></p>			
<p><u>Attachments to Agenda Packet Item:</u></p> <ol style="list-style-type: none"> <li>1. Proposed Ordinance 14-_____</li> <li>2. Proposed Zoning Ordinance 14-_____</li> <li>3. SEPA Checklist</li> <li>4. DNS</li> <li>5. Commerce Review Letter</li> <li>6. Comment Letters</li> </ol>			
<p><u>Summary Statement:</u></p> <p>For the past year the Planning Commission has worked to craft an ordinance that would allow mobile vendors (nomadic vendors) to locate on private property for extended periods if the site meets or is brought up to standards as identified under 5.05.090:</p> <p><i>5.05.090 Nomadic Vendor Standards.</i></p> <p><i>All nomadic vendors licensed under this chapter shall comply with the following standards:</i></p> <p>A. <i>Nomadic Vendors shall be licensed only at those sites on which there is a permanent business operating and registered under Prosser Municipal Code Chapter</i></p>			

*5.04, unless the Nomadic Vendor obtains a conditional use permit from the City's Board of Adjustment and further meets all of the following conditions:*

*1. All surfaces used by the Nomadic Vendor, and not landscaped, must be paved or otherwise covered with a dust-free surface.*

*2. Sanitary restroom facilities must be available in accordance with the rules of the applicable regulatory agency.*

*3. Completion of site review including, without limitation, a landscape plan to reasonably buffer the use from other adjacent uses.*

*B. No nomadic vendor shall locate his or her vehicle, other conveyance, or temporary stand within twenty feet of the improved portion of any public right-of-way or within twenty feet of the intersection of any public right-of-way and private driveway.*

*C. The vehicle must be in good repair and of such design and color that it reasonably conforms to surrounding businesses.*

*D. No signs or signage shall be permitted other than that which can be contained on the vehicle or conveyance and one sandwich board sign in accordance with Prosser Municipal Code Chapter 18.72.*

*E. No vehicle, other conveyance or temporary stand shall be located closer than twenty feet from any building or structure on the licensed property or adjoining property.*

*F. No vehicle, other conveyance or temporary stand shall locate closer than fifty feet from flammable combustible liquid or gas storage and dispensing structures.*

*G. All nomadic vendors shall place at least one City approved garbage receptacle upon the site of business for customer use; additional cans may be required at the City's discretion.*

*H. Licensed nomadic vendor sites shall be cleaned of all debris, trash and litter at the conclusion of daily business activities.*

*I. All merchandise, goods, wares or food shall only be displayed or offered for sale within 15 feet of the vendor's conveyance and be located no closer than twenty feet from any building or structure on the licensed property or adjoining property.*

*J. All vehicles, other conveyances or temporary stands shall comply with the City's Fire Code.*

*K. No nomadic vendor shall be licensed to locate a vehicle, other conveyance, or temporary stand within 250 feet from another nomadic vendor except where vendors are separated by a public street. This provision does not apply to vendors within a designated and City-approved farmer's market.*

*L. No Nomadic Vendor may be licensed at a location if their vehicle, conveyance or temporary stand diminishes required off-street parking for the permanent business registered on the site.*

Currently there is no provision in the Municipal Code which allows mobile vendors to operate within the City of Prosser.

Drafts of the Ordinance have been posted on the City of Prosser website for over 6 months and a request for public input has been circulated to State Agencies via the SEPA process and the review period from Department of Commerce.

Two persons testified in support of the proposal, no persons testified against.

One comment letter has been received from WSDOT advising the City that vendors may not locate in state controlled limited access boundaries.

Consistent with or Comparison to:

The proposed ordinance is consistent with the City of Pasco's Vendor Ordinance.

Recommended City Council Action/Suggested Motion:

Council may approve as written, modify, continue public hearing, or close public hearing and continue discussion at a later meeting.

Recommend approval of Ordinance 14-\_\_\_\_\_ establishing a licensing policy for Nomadic Vendors and allowing them to operate within the City of Prosser subject to the conditions of the Municipal Code.

Recommend Approval of Ordinance 14-\_\_\_\_\_ modifying the Zoning Code to comply with the adoption of an ordinance allowing Nomadic Vendors within the City of Prosser.

<u>Reviewed by Department Director:</u> 	<u>Reviewed by City Attorney:</u>  Date: 4/29/14	<u>Approved by Mayor:</u>  Date: 5-1-14
<u>Today's Date:</u> April 24, 2014	<u>Revision Number/Date:</u>	<u>File Name and Path:</u>

**CITY OF PROSSER, WASHINGTON**

**ORDINANCE NO. 14-**

**AN ORDINANCE REQUIRING NOMADIC VENDORS AS DEFINED IN THE ORDINANCE TO OBTAIN A LICENSE TO OPERATE IN THE CITY OF PROSSER AND SETTING FORTH THE TERMS AND CONDITIONS UPON WHICH THE MAYOR OR HIS OR HER DESIGNEE MAY ISSUE SUCH A LICENSE. THE ORDINANCE ALSO LIMITS THE AREAS IN WHICH NOMADIC VENDORS MAY LOCATE OR DO BUSINESS. THE ORDINANCE MAKES VIOLATION OF ITS TERMS A CIVIL INFRACTION IN THE AMOUNT OF \$150 AND SETS FORTH WHEN SUCH LICENSE MAY BE REVOKED BY THE CITY. THE ORDINANCE ADOPTS FINDINGS IN SUPPORT OF ITS ADOPTION. THE ORDINANCE ALSO PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER; SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE; AND PROVIDES FOR PUBLICATION BY SUMMARY.**

**WHEREAS**, the Planning Commission held a public hearing on the new code chapter 5.05 05 and new code chapter 18.60.270 regarding nomadic vendors on April 17, 2014; and

**WHEREAS**, notice of the Planning Commission public hearing was published on April 2, 2014; and

**WHEREAS**, in addition, the Planning Commission held workshops or discussed the nomadic vendor ordinance at meetings to discuss the new chapter on April 18, 2013, May 16, 2013, June 20, 2013, July 18, 2013, August 15, 2013, September 19, 2013, November 21, 2013, December 12, 2013, and March 20, 2014; and

**WHEREAS**, the Planning Commission considered the new chapter in accordance with the City's Public Participation requirements in Title 19 of the Prosser Municipal Code; and

**WHEREAS**, the Planning Commission followed the process for amendments to its development regulations provided for in Prosser Municipal Code (PMC) Chapter 19.01. The City Council will held an additional public hearing in accordance with PMC 19.01.040 on May 6, 2014; and

**WHEREAS**, the City issued a Determination of non-significance on April 24, 2014, for the new code provisions; however, environmental review is ongoing with the City Council making the final determination in the Ordinance. Adopting the nomadic vendor code provisions, will be an integrated SEPA/GMA Document

issued in accordance with WAC 197-11-210 through WAC 197-11-235 and Prosser Municipal Code Chapter 16.08. This is a non-project action and comments will be taken on the SEPA determination through the City Council Hearing. Administration has provided for the use of the Optional DNS process to issue the DNS in this matter. Administration has issued a DNS which is retained by Council; and

**WHEREAS**, the following provided oral testimony at one or more of the hearings: Steve Zetz; and

**WHEREAS**, the following submitted written materials at one or more of the hearings: the City of Prosser and the Washington State Department of Transportation; and;

**WHEREAS**, the City published notices of all public hearings in the Prosser Record Bulletin which is the City's official newspaper; and

**WHEREAS**, all notices required by R.C.W. 36.70A.020 and the Prosser Municipal Code have been provided to interested parties; and

**WHEREAS**, pursuant to the Revised Code of Washington (RCW) 36.70A.120, the Washington State Growth Management Act (GMA) provides for that the City's development regulations must comply with its Comprehensive Plan; and

**WHEREAS**, these enactments are intended to bring the City's commercial and industrial zoning regulations into compliance with the City's Comprehensive Plan last adopted on April 5, 2011; and

**WHEREAS**, all development regulation amendments or enactments are legislative actions pursuant to Prosser Municipal Code (PMC) 19.01.040 and .060; and

**WHEREAS**, the enactments are consistent with the goals and requirements of the GMA and the City's Comprehensive Plan; and

**WHEREAS**, the City submitted the above-listed ordinances for 60-day review by the State on March 25, 2014, and was granted expedited review on April 10, 2014, and the Department of Commerce made no comments regarding the ordinances; and

**WHEREAS**, since it is consistent with the City's Comprehensive Plan, the enactments are consistent with RCW 36.70A.120, the Washington State Growth Management Act (GMA);

**WHEREAS**, the applicable procedural and notice requirements for a legislative action contained within the Prosser Municipal Code, including having conducted public hearings for the ordinance, have been adhered to; and

**WHEREAS**, all persons desiring to comment on the enactments were given a full and complete opportunity to be heard and submit written materials; and

**WHEREAS**, adoption of the nomadic vendor ordinance promotes the general health, safety and welfare of the public and is a proper use of the City's police power under the Washington State Constitution and the Revised Code of Washington; and

**WHEREAS**, Issuance of an integrated SEPA/GMA Document in accordance with WAC 197-11-210 through WAC 197-11-235 and Prosser Municipal Code Chapter 16.08 is the correct SEPA procedure to evaluate the environmental impacts caused by adoption of amendments or enactments to the City's development regulations;

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** Prosser Municipal Code Section 5.05.010 is hereby enacted to read as follows:

**5.05.010 Definitions.**

In construing the provisions of this chapter, except when otherwise declared, apparent, or clearly appearing from the context of the passage or section, the following definitions shall be applied:

"City," means the City of Prosser, Washington.

"Food" shall have its usual and ordinary meaning, and shall include all items designed for human consumption including, but not limited to, candy, gum, popcorn, hotdogs, sandwiches, peanuts, soft drinks and dairy products.

"Nomadic Vendor," means any person whether as owner, agent, consignee, or employee, whether a resident of the City or not, who engages in a business of selling and delivering goods, wares, food or merchandise of any kind or description, who conducts such a business outside of a permanent structure affixed to real property and who conducts business from a vehicle or other conveyance upon privately or publicly owned property, but not on a public street, sidewalk, alley or public way of the City.. A person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or

auctioneer, or by conducting such temporary business in connection with, as part of, or in the name of any local dealer, trader, merchant or auctioneer.

“Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, limited liability company, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

"Public Celebration," means any of the following: events officially authorized by the City Council; events authorized by a special event permit issued in accordance with Prosser Municipal Code Chapter 5.30; and events that are specifically exempt from the provisions of Prosser Municipal Code Chapter 5.30.

**Section 2.** Prosser Municipal Code Section 5.05.020 is hereby enacted to read as follows:

**5.05.020 License required.**

It shall be unlawful for a Nomadic Vendor to engage in business within the City of Prosser, Washington, except when licensed in compliance with the terms of this chapter. A separate license shall be required for each location of any nomadic vendor. A nomadic vendor who has obtained a license under this chapter shall be exempt from the provisions of chapter 5.04 of the Prosser Municipal Code. In the event of a conflict of provisions between this chapter and Chapter 5.04 of the Prosser Municipal Code, then this chapter shall prevail and be applicable to license the activity.

**Section 3.** Prosser Municipal Code Section 5.05.030 is hereby enacted to read as follows:

**5.05.030 Exemptions.**

The provisions of this chapter shall not be construed to apply to the following:

- A. Persons selling only fruits, vegetables, berries, eggs or any farm produce or edibles raised, gathered, produced or manufactured by such persons in the State of Washington.
- B. Persons selling only trees used for the celebration of the Christmas season.
- C. Caterers providing catering services at a wedding or other one-time event on private property.

**Section 4.** Prosser Municipal Code Section 5.05.040 is hereby enacted to read as follows:

**5.05.040 Application.**

Any person desiring to secure a license as a Nomadic Vendor shall make application to the City Clerk, on forms to be provided by the City. Such application shall include, but not be limited to the following information:

A. The name or names and address of the applicant, the applicant's UBI number, vehicle license numbers of all vehicles from which the applicant proposes to conduct business; description of the general type of goods, wares, merchandise or food proposed to be sold by the applicant; the place or places where the applicant proposes to engage in business;

B. Each application shall be accompanied with the license application fee as provided for in this chapter;

C. A notarized written authorization from the business owner to conduct the applicant's business at the place so noted on the application.

D. A statement explaining the method of trash and litter disposal being proposed by the vendor.

E. A drawing of a scale not greater than 50 feet per inch and not less than 10 feet per inch, which drawing shall depict the following information:

1. The portion of the property to be occupied by the business;
2. The portion of the property to be used for automobile parking and the number of automobiles accommodated in said area;
3. The location of driveways providing ingress and egress to the property;
4. The location of existing buildings and structures located on the property noting the use of each building or structure so identified.

F. The Mayor or his or her designee is authorized to establish an application form for Nomadic Vendor licenses.

**Section 5.** Prosser Municipal Code Section 5.05.050 is hereby enacted to read as follows:

**5.05.050 Standard for Approval of License.**

The Mayor or his or her designee shall deny any application upon written findings that the applicant's proposed business activity will violate any applicable law, rule, or regulation. Any license issued under this chapter shall contain the number of the license, the date the same was issued, the nature of the business authorized to be carried on, the

amount of license fee paid, the expiration date of said license, the place where said business may be carried on under such license and the name or names of the person or persons authorized to carry on the same. The City Clerk shall keep a record of all licenses issued under this chapter and shall promptly provide the Washington State Department of Revenue a copy of any license issued under this chapter.

**Section 6.** Prosser Municipal Code Section 5.05.060 is hereby enacted to read as follows:

**5.05.060 Fees—Expiration of License—Renewal.**

Fees shall be paid as follows:

A. Nomadic Vendors shall pay an initial application fee in the amount set forth in the City's fee schedule adopted by resolution or ordinance of the City Council. The application fee shall be submitted with all applications. Following approval of the application, a fee shall be paid for each business license issued under this chapter in an amount set forth in the City's most recent fee schedule adopted by resolution of the City Council. The license shall expire 12 months after the date it is issued. A separate application and license shall be required for each location of a nomadic vendor. The application fee is not required for license renewal provided the renewal is for the same location and provided the licensee was licensed at that location within 30 days from the date of the request to renew the license. A license renewal fee shall be paid in the amount set forth in the City's fee schedule adopted by resolution or ordinance of the City Council.

**Section 7.** Prosser Municipal Code Section 5.05.070 is hereby enacted as follows:

**5.05.070 Exhibition of License—Transfer.**

Any license issued under this chapter shall be posted conspicuously at the place of business authorized therein. Any license issued under this chapter shall not be transferred to any other person.

**Section 8.** Prosser Municipal Code Section 5.05.080 is hereby enacted to read as follows:

**5.05.080 Health Regulation.**

All nomadic vendors shall comply with all laws, rules and regulations regarding food handling including established by any applicable regulatory agency. All vehicles used for the sale of food by nomadic vendors shall comply with all the laws, rules and regulations respecting such vehicles established by any applicable regulatory agency.

**Section 9.** Prosser Municipal Code Section 5.05.090 is hereby enacted to read as follows:

**5.05.090 Nomadic Vendor Standards.**

All nomadic vendors licensed under this chapter shall comply with the following standards:

A. Nomadic Vendors shall be licensed only at those sites on which there is a permanent business operating and registered under Prosser Municipal Code Chapter 5.04, unless the Nomadic Vendor obtains a conditional use permit from the City's Board of Adjustment and further meets all of the following conditions:

1. All surfaces used by the Nomadic Vendor, and not landscaped, must be paved or otherwise covered with a dust-free surface.

2. Sanitary restroom facilities must be available in accordance with the rules of the applicable regulatory agency.

3. Completion of site review including, without limitation, a landscape plan to reasonably buffer the use from other adjacent uses.

B. No nomadic vendor shall locate his or her vehicle, other conveyance, or temporary stand within twenty feet of the improved portion of any public right-of-way or within twenty feet of the intersection of any public right-of-way and private driveway.

C. The vehicle must be in good repair and of such design and color that it reasonably conforms to surrounding businesses.

D. No signs or signage shall be permitted other than that which can be contained on the vehicle or conveyance and one sandwich board sign in accordance with Prosser Municipal Code Chapter 18.72.

E. No vehicle, other conveyance or temporary stand shall be located closer than twenty feet from any building or structure on the licensed property or adjoining property.

F. No vehicle, other conveyance or temporary stand shall locate closer than fifty feet from flammable combustible liquid or gas storage and dispensing structures.

G. All nomadic vendors shall place at least one City approved garbage receptacle upon the site of business for customer use; additional cans may be required at the City's discretion.

H. Licensed nomadic vendor sites shall be cleaned of all debris, trash and litter at the conclusion of daily business activities.

I. All merchandise, goods, wares or food shall only be displayed or offered for sale within 15 feet of the vendor's conveyance and be located no closer than twenty feet from any building or structure on the licensed property or adjoining property.

J. All vehicles, other conveyances or temporary stands shall comply with the City's Fire Code.

K. No nomadic vendor shall be licensed to locate a vehicle, other conveyance, or temporary stand within 250 feet from another nomadic vendor except where vendors are separated by a public street. This provision does not apply to vendors within a designated and City-approved farmer's market.

L. No Nomadic Vendor may be licensed at a location if their vehicle, conveyance or temporary stand diminishes required off-street parking for the permanent business registered on the site.

**Section 10.** Prosser Municipal Code Section 5.05.110 is hereby enacted to read as follows:

**5.05.110 Revocation of License.**

Any license issued pursuant to this chapter may be revoked, in writing, by the Mayor or his or her designee for any one or more of the following causes:

A. Any fraud, misrepresentation, or false statement contained in the application for a license.

B. Any fraud, misrepresentation, or false statement made in connection with the selling of products.

C. Conducting the business licensed under this chapter in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

D. The determination by the Benton County District Court that the licensee has committed more than two infractions issued pursuant to section 5.05.120, in any 24 month period.

**Section 11.** Prosser Municipal Code Section 5.05.120 is hereby enacted to read as follows:

**5.05.120 Penalty.**

A. Except as otherwise provided herein, any person violating any of the provisions of this chapter shall be deemed to have committed a civil infraction and be penalized by a fine in the amount of \$150.00, plus state assessments for each day he, she,

or it is in violation of this chapter. Such infractions shall be issued and prosecuted in accordance with Prosser Municipal Code Sections 1.40.070 through 1.40.210.

**Section 12.** Prosser Municipal Code Section 5.05.990 is hereby enacted to read as follows:

**5.05.990 Severability.**

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

**Section 13.** The recitals set forth above are hereby adopted as the City Council's findings in support of adoption of this ordinance.

**Section 14. SEVERABILITY.** The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this ordinance shall not as a result of said section, subsection, sentence, clause, or phrase be held unconstitutional or invalid.

**Section 15.** This Ordinance shall become effective 5 days after passage and publication of an approved summary thereof consisting of its title.

**PASSED** by the City Council and **APPROVED** by the Mayor, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**MAYOR PAUL WARDEN**

ATTEST:

\_\_\_\_\_  
**CITY CLERK, RACHEL SHAW**

Approved as to form:

\_\_\_\_\_  
**CITY ATTORNEY, HOWARD SAXTON**

Date of Publication: \_\_\_\_\_

**SUMMARY OF ORDINANCE NO. 14-\_\_\_\_\_**

of the City of Prosser, Washington

---

On the \_\_\_\_ day of \_\_\_\_\_, 2014, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE REQUIRING NOMADIC VENDORS AS DEFINED IN THE ORDINANCE TO OBTAIN A LICENSE TO OPERATE IN THE CITY OF PROSSER AND SETTING FORTH THE TERMS AND CONDITIONS UPON WHICH THE MAYOR OR HIS OR HER DESIGNEE MAY ISSUE SUCH A LICENSE. THE ORDINANCE ALSO LIMITS THE AREAS IN WHICH NOMADIC VENDORS MAY LOCATE OR DO BUSINESS. THE ORDINANCE MAKES VIOLATION OF ITS TERMS A CIVIL INFRACTION IN THE AMOUNT OF \$150 AND SETS FORTH WHEN SUCH LICENSE MAY BE REVOKED BY THE CITY. THE ORDINANCE ADOPTS FINDINGS IN SUPPORT OF ITS ADOPTION. THE ORDINANCE ALSO PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER; SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE; AND PROVIDES FOR PUBLICATION BY SUMMARY. AN ORDINANCE REQUIRING NOMADIC VENDORS AS DEFINED IN THE ORDINANCE TO OBTAIN A LICENSE TO OPERATE IN THE CITY OF PROSSER AND SETTING FORTH THE TERMS AND CONDITIONS UPON WHICH THE MAYOR OR HIS OR HER DESIGNEE MAY ISSUE SUCH A LICENSE. THE ORDINANCE ALSO LIMITS THE AREAS IN WHICH NOMADIC VENDORS MAY LOCATE OR DO BUSINESS. THE ORDINANCE MAKES VIOLATION OF ITS TERMS A CIVIL INFRACTION IN THE AMOUNT OF \$150 AND SETS FORTH WHEN SUCH LICENSE MAY BE REVOKED BY THE CITY. THE ORDINANCE ALSO PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER; SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE; AND PROVIDES FOR PUBLICATION BY SUMMARY.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

---

CITY CLERK, RACHEL SHAW

**CITY OF PROSSER, WASHINGTON**  
**ORDINANCE NO. 14-\_\_\_\_\_**

**AN ORDINANCE PERMITTING NOMADIC VENDORS IN ACCORDANCE WITH PROSSER MUNICIPAL CODE CHAPTER 5.05 IN CERTAIN ZONE S AND PROHIBITING THEM IN ALL OTHER ZONES. THE ORDINANCE ALSO ADOPTS FINDINGS IN SUPPORT OF ITS ADOPTION AND SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.**

**WHEREAS**, the Planning Commission held a public hearing on the new code chapter 5.05 and new code chapter 18.60.270 regarding nomadic vendors on April 17, 2014; and

**WHEREAS**, notice of the Planning Commission public hearing was published on April 2, 2014; and

**WHEREAS**, in addition, the Planning Commission held workshops or discussed the nomadic vendor ordinance at meetings to discuss the new chapter on April 18, 2013, May 16, 2013, June 20, 2013, July 18, 2013, August 15, 2013, September 19, 2013, November 21, 2013, December 12, 2013, and March 20, 2014; and

**WHEREAS**, the Planning Commission considered the new chapter in accordance with the City's Public Participation requirements in Title 19 of the Prosser Municipal Code; and

**WHEREAS**, the Planning Commission followed the process for amendments to its development regulations provided for in Prosser Municipal Code (PMC) Chapter 19.01. The City Council will held an additional public hearing in accordance with PMC 19.01.040 on May 6, 2014; and

**WHEREAS**, the City issued a Determination of non-significance on April 24, 2014, for the new code provisions; however, environmental review is ongoing with the City Council making the final determination in the Ordinance. Adopting the nomadic vendor code provisions, will be an integrated SEPA/GMA Document issued in accordance with WAC 197-11-210 through WAC 197-11-235 and Prosser Municipal Code Chapter 16.08. This is a non-project action and comments will be taken on the SEPA determination through the City Council Hearing. Administration has provided for the use of the Optional DNS process to issue the DNS in this matter. . Administration has issued a DNS which is retained by Council; and

**WHEREAS**, the following provided oral testimony at one or more of the hearings: Steve Zetz; and

**WHEREAS**, the following submitted written materials at one or more of the hearings: the City of Prosser and the Washington State Department of Transportation; and;

**WHEREAS**, the City published notices of all public hearings in the Prosser Record Bulletin which is the City's official newspaper; and

**WHEREAS**, all notices required by R.C.W. 36.70A.020 and the Prosser Municipal Code have been provided to interested parties; and

**WHEREAS**, pursuant to the Revised Code of Washington (RCW) 36.70A.120, the Washington State Growth Management Act (GMA) provides for that the City's development regulations must comply with its Comprehensive Plan; and

**WHEREAS**, these enactments are intended to bring the City's commercial and industrial zoning regulations into compliance with the City's Comprehensive Plan last adopted on April 5, 2011; and

**WHEREAS**, all development regulation amendments or enactments are legislative actions pursuant to Prosser Municipal Code (PMC) 19.01.040 and .060; and

**WHEREAS**, the enactments are consistent with the goals and requirements of the GMA and the City's Comprehensive Plan; and

**WHEREAS**, the City submitted the above-listed ordinances for 60-day review by the State on March 25, 2014, and was granted expedited review on April 10, 2014, and the Department of Commerce made no comments regarding the ordinances; and

**WHEREAS**, since it is consistent with the City's Comprehensive Plan, the enactments are consistent with RCW 36.70A.120, the Washington State Growth Management Act (GMA);

**WHEREAS**, the applicable procedural and notice requirements for a legislative action contained within the Prosser Municipal Code, including having conducted public hearings for the ordinance, have been adhered to; and

**WHEREAS**, all persons desiring to comment on the enactments were given a full and complete opportunity to be heard and submit written materials; and

**WHEREAS**, adoption of the nomadic vendor ordinance promotes the general health, safety and welfare of the public and is a proper use of the City's police power under the Washington State Constitution and the Revised Code of Washington; and

**WHEREAS**, Issuance of an integrated SEPA/GMA Document in accordance with WAC 197-11-210 through WAC 197-11-235 and Prosser Municipal Code Chapter 16.08 is the correct

SEPA procedure to evaluate the environmental impacts caused by adoption of amendments or enactments to the City's development regulations;

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** Prosser Municipal Code Section 18.60.270 is hereby enacted to read as follows:

**18.60.270 Nomadic Vendors.**

Nomadic Vendors regulated by Prosser Municipal Code Chapter 5.05 are allowed in all I and C zones except for Commercial Professional (CN) and Commercial Neighborhood (CP). Except as permitted in this section, Nomadic Vendors are prohibited in all other zones.

**Section 2.** The recitals set forth above are hereby adopted as the City Council's findings in support of adoption of this ordinance.

**Section 3. SEVERABILITY.** The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this ordinance shall not as a result of said section, sentence, clause, or phrase be held unconstitutional or invalid.

**Section 4.** This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**PASSED** by the City Council and **APPROVED** by the Mayor, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**MAYOR PAUL WARDEN**

ATTEST:

\_\_\_\_\_  
**CITY CLERK, RACHEL SHAW**

Approved as to form:

\_\_\_\_\_  
**CITY ATTORNEY, HOWARD SAXTON**

Date of Publication: \_\_\_\_\_

**SUMMARY OF ORDINANCE NO. 14-\_\_\_\_\_**

of the City of Prosser, Washington

---

On the \_\_\_\_ day of \_\_\_\_\_, 2014, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE PERMITTING NOMADIC VENDORS IN ACCORDANCE WITH PROSSER MUNICIPAL CODE CHAPTER 5.05 IN CERTAIN ZONE S AND PROHIBITING THEM IN ALL OTHER ZONES. THE ORDINANCE ALSO ADOPTS FINDINGS IN SUPPORT OF ITS ADOPTION AND SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

---

CITY CLERK, RACHEL SHAW

**WAC 197-11-960 Environmental checklist.**

ENVIRONMENTAL CHECKLIST

*Purpose of checklist:*

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

*Instructions for applicants:*

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

*Use of checklist for nonproject proposals:*

Complete this checklist for nonproject proposals, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:

Nomadic Vendors

2. Name of applicant: City of Prosser

3. Address and phone number of applicant and contact person:

Steve Zetz

601 7<sup>th</sup> Street Prosser, WA 99350

509-786-8212

4. Date checklist prepared: March 25, 2014

5. Agency requesting checklist: City of Prosser

6. Proposed timing or schedule (including phasing, if applicable):

To be complete by May 2014

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

No

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

SEPA Checklist

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

No

10. List any government approvals or permits that will be needed for your proposal, if known.

None

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

This ordinance allows for the placement of Nomadic Vendors as defined to set-up and sell goods from vehicles or trailers on private property if they comply with the following established in section 5.05.090 Nomadic Vendor Standards.

*All nomadic vendors licensed under this chapter shall comply with the following standards:*

*A. Nomadic Vendors shall be licensed only at those sites on which there is a permanent business operating and registered under Prosser Municipal Code Chapter 5.04, unless the Nomadic Vendor obtains a conditional use permit from the City's Board of Adjustment and further meets all of the following conditions:*

*1. All surfaces used by the Nomadic Vendor, and not landscaped, must be paved or otherwise covered with a dust-free surface.*

*2. Sanitary restroom facilities must be available in accordance with the rules of the applicable regulatory agency.*

*3. Completion of site review including, without limitation, a landscape plan to reasonably buffer the use from other adjacent uses.*

*B. No nomadic vendor shall locate his or her vehicle, other conveyance, or temporary stand within twenty feet of the improved portion of any public right-of-way or within twenty feet of the intersection of any public right-of-way and private driveway.*

*C. The vehicle must be in good repair and of such design and color that it reasonably conforms to surrounding businesses.*

*D. No signs or signage shall be permitted other than that which can be contained on the vehicle or conveyance and one sandwich board sign in accordance with Prosser Municipal Code Chapter 18.72.*

- E. No vehicle, other conveyance or temporary stand shall be located closer than twenty feet from any building or structure on the licensed property or adjoining property.*
- F. No vehicle, other conveyance or temporary stand shall locate closer than fifty feet from flammable combustible liquid or gas storage and dispensing structures.*
- G. All nomadic vendors shall place at least one City approved garbage receptacle upon the site of business for customer use; additional cans may be required at the City's discretion.*
- H. Licensed nomadic vendor sites shall be cleaned of all debris, trash and litter at the conclusion of daily business activities.*
- I. All merchandise, goods, wares or food shall only be displayed or offered for sale within 15 feet of the vendor's conveyance and be located no closer than twenty feet from any building or structure on the licensed property or adjoining property.*
- J. All vehicles, other conveyances or temporary stands shall comply with the City's Fire Code.*
- K. No nomadic vendor shall be licensed to locate a vehicle, other conveyance, or temporary stand within 250 feet from another nomadic vendor except where vendors are separated by a public street. This provision does not apply to vendors within a designated and City-approved farmer's market.*
- L. No Nomadic Vendor may be licensed at a location if their vehicle, conveyance or temporary stand diminishes required off-street parking for the permanent business registered on the site.*

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

City of Prosser, City wide.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: 

Date Submitted: March 25, 2019

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

- 1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Discharge of water and water service must be in compliance with State law and Prosser Municipal Code. Food service vendors must also comply with the Department of Health regulations. The proposal does not allow for the manufacturing or storage of materials that would generate noise or create a hazardous environment.

Proposed measures to avoid or reduce such increases are:

NA

- 2. How would the proposal be likely to affect plants, animals, fish, or marine life?

The proposal is unlikely to affect plants or animals. The nature of mobile vending requires less space than traditional commercial structures. Sales are generally smaller in nature.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

NA

- 3. How would the proposal be likely to deplete energy or natural resources?

Placement of vendors is done on existing sites, additional resources are not required.

Proposed measures to protect or conserve energy and natural resources are:

NA

- 4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

Placement of vendors is only allowed in certain zones. Vendors are still subject to all rules and regulations applicable to critical areas.

Proposed measures to protect such resources or to avoid or reduce impacts are:

NA

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Prosser shorelines are primarily zoned residential or public facility and placement of vendors in these zones are prohibited. Commercial zones adjacent to shorelines are still subject to the shoreline permitting process if the proposed site is within shoreline jurisdiction.

Proposed measures to avoid or reduce shoreline and land use impacts are:

Discourage placement near shorelines, encourage set-backs consistent with the policies established in the Comprehensive Plan.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

The proposal is likely to reduce transportation impacts by providing the public with available services closer to their places of business or homes.

Proposed measures to reduce or respond to such demand(s) are:

NA

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

No conflicts have been identified. Because the vendors are temporary it is unlikely that any impacts would be significant or long-term.



**City of Prosser  
Washington  
Determination of Non-significance (DNS).**

**Description of proposal: Nomadic Vendor Ordinance**

**Proponent: City of Prosser**

**Location of proposal: City of Prosser**

**Lead Agency: City of Prosser**

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

There is no comment period for this DNS.

This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by \_\_\_\_\_.

Responsible Official: Steve Zetz  
Position/Title: City Planner  
Address: 601 7<sup>th</sup> Street, Prosser, WA  
Date: April 24, 2014

X  \_\_\_\_\_

You may appeal this determination to \_\_\_\_\_ by sending your written comments

Prosser City Hall, 601 7<sup>th</sup> Street, Prosser, WA. 99350 (509) 786-2332 no later than \_\_\_\_\_ . You should be prepared to make specific factual objections. Contact Prosser City Hall to read or ask questions about the procedures for SEPA appeals.

There is no agency appeal

# FILE COPY

**Steve Zetz**

---

**From:** COM GMU Review Team [reviewteam@commerce.wa.gov]  
**Sent:** Thursday, April 10, 2014 6:23 AM  
**To:** Steve Zetz  
**Cc:** Andersen, Dave (COM)  
**Subject:** 20108, City of Prosser, Expedited Review Granted, DevRegs

Dear Mr. Zetz:

The City of Prosser has been granted expedited review for the: Proposed placement of mobile vending machines and trailers on private property in certain commercial and industrial zones subject to the restrictions in the ordinance. This proposal was submitted for the required state agency review under RCW 36.70A.106.

As of receipt of this email, the City of Prosser has met the Growth Management Act notice to state agency requirements in RCW 36.70A.106 for this submittal. For the purpose of documentation, please keep this email as confirmation.

If you have any questions, please contact Paul Johnson at 360.725.3048 or by email at [paul.johnson@commerce.wa.gov](mailto:paul.johnson@commerce.wa.gov)

Thank you.

Review Team, Growth Management Services  
Department of Commerce  
P.O. Box 42525  
Olympia WA 98504-2525  
(360) 725-3000  
FAX (360) 664-3123



**Washington State  
Department of Transportation**

**Lynn Peterson**  
Secretary of Transportation

**FILE COPY**

**South Central Region**  
2809 Rudkin Road  
Union Gap, WA 98903-1648

(509) 577-1600 / FAX: (509) 577-1603  
TTY: 1-800-833-6388  
www.wsdot.wa.gov

April 16, 2014

City of Prosser  
601 7<sup>th</sup> Street  
Prosser, WA 99350

Attention: Rachel Shaw, City Clerk

Subject: Nomadic Vendor Ordinance  
I-82, Exit 80 Interchange Vicinity

We have reviewed the proposed project and have the following comments.

A portion of the area affected by this proposal is adjacent to I-82 Exit 80 (Wine Country Road/Gap Road interchange). I-82, including the ramps, is a fully controlled limited access facility. The Wine Country Road/ Merlot Drive intersection is within the limited access boundaries of the interchange. The limited access boundaries extend northwesterly 236.28 feet and southeasterly 500 feet along Wine Country Road, and 455.25 feet easterly along Merlot Road from the intersection.

This proposal also affects areas adjacent to I-82 Exit 82 (SR 22/Wine Country Road interchange) and State Highway 22 (SR 22). The limited access boundaries extend southwesterly 300 feet and northwesterly 2301.66 feet along Wine Country Road from the SR 22/Wine Country Road intersection (Highway Engineer's Station 37+36.73). SR 22 within the project area is a partially controlled limited access facility.

The selling and delivery of goods, wares, food or merchandise is prohibited within the limited access boundaries described above.

Thank you for the opportunity to review and comment on this proposal. If you have any questions regarding our comments, please contact Rick Holmstrom at (509) 577-1633.

Sincerely,

Paul Gonseth, P.E.  
Planning & Materials Engineer

PG: rh/mls

cc: File #7, I-82  
Tom Lenberg, Area 3 Maintenance Superintendent

p:\planning\devrev\Prosser\_Vendor Ordinance.docx

CITY OF PROSSER, WASHINGTON  
**AGENDA BILL**

<p><b><u>Agenda Title:</u></b></p> <p>Consideration of Ordinance 14-_____ an Interim Ordinance of the City Council of the City of Prosser, Washington, Adopting a Moratorium on the Establishment of Medical Cannabis Dispensaries and Collective Gardens; Defining "Medical Cannabis Dispensaries" and "Collective Gardens;" Declaring an Emergency; Adopting a Work Plan, and Establishing an Effective Date.</p> <p>Consideration of Ordinance 14-_____ Adopting a Public Participation Plan to Guide the Process to Adopt an Amendment to the Prosser Zoning Regulations regarding Medical Cannabis.</p>		<p><b><u>Meeting Date:</u></b> May 6, 2014 Special Meeting</p>	
<p><b><u>Department:</u></b> Planning</p>	<p><b><u>Director:</u></b> Steve Zetz</p>	<p><b><u>Contact Person:</u></b> Steve Zetz</p>	<p><b><u>Phone Number:</u></b> (509) 786-8212</p>
<p><b><u>Cost of Proposal:</u></b> NA</p> <p><b><u>Amount Budgeted:</u></b> NA</p>		<p><b><u>Account Number:</u></b></p> <p><b><u>Name and Fund#</u></b></p>	
<p><b><u>Reviewed by Finance Department:</u></b></p> <p style="text-align: center;"><i>Regina Mamas</i></p>			
<p><b><u>Attachments to Agenda Packet Item:</u></b></p> <ol style="list-style-type: none"> <li>1. Proposed Ordinance 14-_____ (Moratorium)</li> <li>2. Proposed Ordinance 14-_____ (Public Participation Plan).</li> <li>3. Packet from the April 22, 2014, Meeting.</li> </ol>			
<p><b><u>Summary Statement:</u></b></p> <p>The City Council held a public hearing on April 22, 2014, to take public testimony on the potential extension of the existing medical cannabis moratorium and whether to establish a work plan for new medical cannabis zoning regulations. There was no testimony in opposition to extending the moratorium or to establishing a work plan for new regulations.</p> <p>After the public hearing, Council directed staff to draft an ordinance extending the existing medical cannabis moratorium for another six months. Council further directed staff to include a work plan that would ban medical cannabis until the state of Washington licensed the medical cannabis facility. In order to implement this work plan,</p>			

Council further directed staff to draft a public participation plan to guide the process to adopt the new regulations.

The attached ordinances implement the Council's direction given at the April 22, 2014, public meeting.

Consistent with or Comparison to:

The proposed ordinance is consistent with the direction from the City Council on April 22, 2014.

Recommended City Council Action/Suggested Motion:

Recommend approval of Ordinance 14-\_\_\_\_ an Interim Ordinance of the City Council of the City of Prosser, Washington, Adopting a Moratorium on the Establishment of Medical Cannabis Dispensaries and Collective Gardens; Defining "Medical Cannabis Dispensaries" and "Collective Gardens;" Declaring an Emergency; Adopting a Work Plan, and Establishing an Effective Date.

Recommend Approval of Ordinance 14-\_\_\_\_ Adopting a Public Participation Plan to Guide the Process to Adopt an Amendment to the Prosser Zoning Regulations regarding Medical Cannabis.

Reviewed by Department Director:



Date:

Today's Date:

April 29, 2014

Reviewed by City Attorney:



Date:

4/30/14

Revision Number/Date:

Approved by Mayor:



Date:

5-1-14

File Name and Path:

**CITY OF PROSSER, WASHINGTON**  
**ORDINANCE NO. 14-\_\_\_\_\_**

**AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL CANNABIS DISPENSARIES AND COLLECTIVE GARDENS; DEFINING “MEDICAL CANNABIS DISPENSARIES” AND “COLLECTIVE GARDENS;” DECLARING AN EMERGENCY; ADOPTING A WORK PLAN, AND ESTABLISHING AN EFFECTIVE DATE. THE ORDINANCE ALSO PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.**

**WHEREAS**, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for “qualifying patients” to the charge of possession of cannabis; and

**WHEREAS**, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be “construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes;” and

**WHEREAS**, the Washington State Department of Health opines that it is “not legal to buy or sell” medical cannabis and further opines that “the law [Chapter 69.51A RCW] does not allow dispensaries,” leaving enforcement to local officials; and

**WHEREAS**, on March 31, 2014, Division II of the Washington State Court of Appeals issued a decision regarding the City of Kent’s ban on collective gardens; and

**WHEREAS**, the Kent decision clarified that due to the Governor’s veto of certain portions of the Medical Use of Cannabis Act, collective gardens were not legal in the state of Washington; and

**WHEREAS**, the logic underlying the Kent decision means that medical cannabis dispensaries are also not legal in the state of Washington; and

**WHEREAS**, the City acknowledges the right of qualified health care professionals to recommend the medical use of cannabis, acknowledges the affirmative defense available to qualifying patients from the possession of cannabis as well as the right of patients to designate a “designated provider” who can “provide” rather than sell cannabis to “only one patient at any one time;” and

**WHEREAS**, the 2011 State Legislature passed E2SSB 5073 (“the Act”) and the Governor signed the bill but vetoed several sections of the bill; and

**WHEREAS**, E2SSB 5073 was effective on July 22, 2011, and has since been incorporated in the codification of Chapter 69.51A RCW, Medical Cannabis; and

**WHEREAS**, the act authorizes “collective gardens” which would authorize certain qualifying patients the ability to produce, grow and deliver cannabis for medical use; and

**WHEREAS**, the acceptance of development applications proposing medical cannabis dispensaries and collective gardens development may allow development that is incompatible with nearby existing land uses and lead to erosion of community character and harmony; and

**WHEREAS**, despite the Governor’s veto of certain Sections of E2SSB 5073, it is appropriate to impose a moratorium on medical cannabis dispensaries, so the City Council can determine whether further regulation is necessary; and

**WHEREAS**, the voters of the State of Washington approved Initiative 502 amending Chapter 69.50 RCW to allow for the recreational use of marijuana, effective November 16, 2012; and

**WHEREAS**, Initiative 502 has since been incorporated into the codification of Chapter 69.50 RCW; and

**WHEREAS**, the Washington State Liquor Control Board has adopted strict regulatory scheme for recreational marijuana; and

**WHEREAS**, on August 29, 2013, the United States Department of Justice acting through the Attorney General’s Office issued a memorandum (Memorandum) to all United States Attorneys providing guidance regarding marijuana enforcement; and

**WHEREAS**, the Memorandum is generally understood to mean that in order for the State, Political Subdivisions, and Municipalities to avoid prosecution, marijuana regulations that allowed the use of marijuana would have to address the following bullet points:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property;

**AND WHEREAS**, the regulations implementing Initiative 502 are generally believed to comply with and address the federal concerns enumerated above; and

**WHEREAS**, Chapter 69.51A, RCW, as currently enacted, may not in its entirety fully address the federal concerns enumerated above; and

**WHEREAS**, pursuant to Budget Proviso Language in Third ESSB 5034 Sec. 141(2) Washington Liquor Control Board, the Department of Health, and the Department of Revenue were directed to provide recommendations to the Washington Legislature regarding medical cannabis regulation.

**AND WHEREAS**, the Liquor Control Board made the following recommendations to the Washington State Legislature in 2014 (summarized):

The liquor control board must work with the department of health and the department of revenue to develop recommendations for the legislature regarding the interaction of medical marijuana regulations and the provisions of Initiative Measure No. 502. At a minimum, the recommendations must include provisions addressing the following:

- (i) Age limits;
- (ii) Authorizing requirements for medical marijuana;
- (iii) Regulations regarding health care professionals;
- (iv) Collective gardens;
- (v) Possession amounts;
- (vi) Location requirements;
- (vii) Requirements for medical marijuana producing, processing and retail licensing; and
- (viii) Taxation of medical marijuana in relation to recreational marijuana;
- (ix) Determine which State Agency should administer medical cannabis;

**WHEREAS**, the Legislature, in its most recent session, did not pass any bills in relation to the recommendation of the Liquor Control Board's recommendation changing the provisions of RCW Chapter 69.51A, to make collective gardens and medical cannabis dispensaries acceptable to the Federal Government; and

**AND WHEREAS**, the City Council finds that it is in the public interest that any zoning and development regulations are consistent with both federal and state law; and

**WHEREAS**, the City Council deems it to be in the public interest to establish a zoning moratorium pending local review of the anticipated changes to Chapter 69.51A, RCW; and

**WHEREAS**, a public hearing regarding this ordinance was held on April 22, 2014; and

**WHEREAS**, there was no testimony in opposition to the renewal of the existing medical cannabis moratorium; and

**WHEREAS**, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to enact this moratorium; and

**WHEREAS**, the City is adopting a work plan to amend its zoning code to add regulations regarding medical cannabis;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** Pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Prosser prohibiting the establishment, location, operation, registration or licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181 Laws of 2011, Chapter 69.51A RCW, or any other laws of the State of Washington. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above. No business registration or license shall be granted or accepted while this moratorium is in effect for any of the activities listed above. Any land use approvals, business registrations or licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force of effect.

**Section 2.** A “Medical Cannabis Dispensary” means any business, agency, organization, cooperative, network, consultation operation, or other group, or person, no matter how described or defined, including its associated premises and equipment, which has for its purposes or which is used to grow, select, measure, package, label, deliver, sell, or otherwise transfer (for consideration or otherwise) cannabis for medical use. A person who is the designated provider for only one qualified patient during any 15 day period and who complies with Chapter 69.51A RCW shall not be deemed a medical cannabis dispensary for the purposes of this moratorium.

**Section 3.** “A Medical Cannabis Collective Garden” is an area or garden where qualifying patients engage in the production, processing, transporting, and delivery of cannabis for medical use as set forth in the Act and subject to the limitations therein.

**Section 4.** Medical cannabis dispensaries and medical cannabis collective gardens as defined in this Ordinance are hereby designated as prohibited uses in the City of Prosser and a moratorium related to these uses is hereby established. No business registration or license shall be issued to any person or entity for a medical cannabis dispensary or a medical cannabis collective garden, which are hereby defined to be prohibited uses under the Ordinances of the City of Prosser.

**Section 5.** Pursuant to RCW 36.70A.106, this interim Ordinance shall be transmitted to the Washington State Department of Commerce as required by law.

**Section 6.** Work Plan. The City Council directs the City Planning Commission to hold a

public hearing or hearings to consider the permanent ban of collective gardens in residential zones and to consider a ban on collective gardens and medical cannabis dispensaries (both as defined herein) unless and until the State of Washington develops a tightly regulated market acceptable to the Federal Government for such uses, and until the State issues a license specifically to operate a collective garden or medical cannabis dispensary in the city of Prosser.

**Section 7.** Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other person or circumstances.

**Section 8.** This Ordinance shall not be codified.

**Section 9.** The above "Whereas" clauses of this Ordinance constitute specific findings by the Council in support of passage of this Ordinance.

**Section 10.** The City Council declares that an emergency exists requiring passage of this Ordinance for the protection of public health, safety, welfare, and peace based on the Findings set forth in Section 9 above. This Ordinance shall take effect and be in full force immediately upon passage and shall expire November 5, 2014, unless extended or released according to law

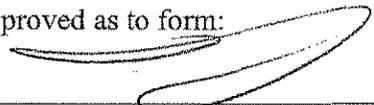
**PASSED** by the City Council and **APPROVED** by the Mayor, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**MAYOR PAUL WARDEN**

ATTEST:

\_\_\_\_\_  
**CITY CLERK, RACHEL SHAW**

Approved as to form:

  
\_\_\_\_\_  
**CITY ATTORNEY, HOWARD SAXTON**

Date of Publication: \_\_\_\_\_

**SUMMARY OF ORDINANCE NO. 14-\_\_\_\_\_**

of the City of Prosser, Washington

---

On the \_\_\_\_ day of \_\_\_\_\_, 2014, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL CANNABIS DISPENSARIES AND COLLECTIVE GARDENS; DEFINING "MEDICAL CANNABIS DISPENSARIES" AND "COLLECTIVE GARDENS;" DECLARING AN EMERGENCY; ADOPTING A WORK PLAN, AND ESTABLISHING AN EFFECTIVE DATE. THE ORDINANCE ALSO PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

---

CITY CLERK, RACHEL SHAW

CITY OF PROSSER, WASHINGTON  
ORDINANCE NO. 14-\_\_\_\_\_

AN ORDINANCE ADOPTING A PUBLIC PARTICIPATION PLAN TO GUIDE THE PROCESS TO ADOPT AN AMENDMENT TO THE PROSSER ZONING REGULATION REGARDING MEDICAL CANNABIS. THE ORDINANCE ALSO SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.

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

**Section 1. Adoption.** The City of Prosser 2014 Public Participation Plan, attached to this ordinance and incorporated herein by this reference as if set forth in full, is hereby adopted. The City will follow the Public Participation Plan during the consideration of the 2014 amendment to its zoning regulations for Medical Cannabis.

**Section 2. Dissemination.** The Planning Department shall broadly disseminate the Public Participation Plan using some or all of the methods set forth for the dissemination of public notices in Section 6.5 of the Public Participation Plan.

**Section 3. SEVERABILITY.** The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this ordinance shall not as a result of said section, sentence, clause, or phrase be held unconstitutional or invalid.

**Section 4.** This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**PASSED** by the City Council and **APPROVED** by the Mayor, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR PAUL WARDEN

ATTEST:

\_\_\_\_\_  
CITY CLERK, RACHEL SHAW

Approved as to form:



---

**HOWARD SAXTON, CITY ATTORNEY**

Date of Publication: \_\_\_\_\_

**SUMMARY OF ORDINANCE NO. 14-\_\_\_\_\_**

of the City of Prosser, Washington

---

On the \_\_\_\_ day of \_\_\_\_\_, 2014, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE ADOPTING A PUBLIC PARTICIPATION PLAN TO GUIDE THE PROCESS TO ADOPT AN AMENDMENT TO THE PROSSER ZONING REGULATION REGARDING MEDICAL CANNABIS. THE ORDINANCE ALSO SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

---

CITY CLERK, RACHEL SHAW

## **Public Participation Plan**

### **1.0 Introduction**

The City Council has adopted a Medical Cannabis Moratorium by passage of Ordinance Number 14-\_\_\_\_\_, consideration of the new zoning text amendment is required by the work plan referenced in that Ordinance.

The Growth Management Act recommends that local governments establish a public participation program for the evaluation and amendment of its Zoning Regulations. This Public Participation Plan describes the steps that the City of Prosser will take to involve the community. The goal is to provide the public with timely information, an understanding of the process, and opportunities to review and comment on the draft Comprehensive Plan, and to have these comments forwarded to the City's decision makers.

### **2.0 2014 Comprehensive Plan Amendment**

The 2014 Zoning Text Amendment is an update to account for changes in the law with regard to Medical Cannabis.

### **3.0 Public Engagement and Involvement to Date**

See section 4.3 below.

### **4.0 2013 Public Review**

Opportunities for public involvement will be provided through the 2014 Comprehensive Plan Amendment to encourage early and continuous public participation. The following steps will be taken to provide information to the public:

#### **4.1 Availability of Draft 2014 Zoning Text Amendment**

The City of Prosser will make the Draft 2014 Zoning Text Amendment available in a number of formats:

- The entire draft will be available at the City of Prosser website, linked from the City's homepage [www.cityofprosser.com](http://www.cityofprosser.com).
- A hard copy of the entire document will be available at Prosser City Hall, 601 7<sup>th</sup> Avenue, Prosser, WA 99350
- A summary of the new regulations will be inserted into the City's Utility Mailing.

#### **4.2 Public Involvement**

The City Planning Department will meet with interested persons to explain the Zoning Text Amendment at its office in City Hall on an as-needed basis. The City will meet with civic groups to explain the changes to the plan.

### **4.3 Draft Comprehensive Plan Public Review Timeline**

The Planning Commission will serve as the central advisory committee for the public review of the draft Zoning Text Amendment. The following is the anticipated meeting timeline. Public comment will be taken at the beginning and end of each Planning Commission meeting and City Council meeting. Additional meetings may be scheduled at the discretion of the Planning Commission and/or City Council to ensure adequate review of the draft Zoning Text Amendment. Announcement of changes to the meeting timeline will be disseminated per Section 4.5.

#### ***May 8, 2014***

2014 Draft Medical Cannabis Regulations public release.

#### ***May 15, 2014***

Planning Commission workshop and discussion regarding the Draft Medical Cannabis Regulations.

#### ***June 19, 2014, and July 17, 2014***

Planning Commission Public Hearings on the Draft Medical Cannabis Regulations.

#### ***August 12, 2014***

City Council Public Hearing on the Draft Medical Cannabis Regulations.

### **4.4 Written Comments**

Written comments are welcome and encouraged throughout the 2014 Amendment process. Forms will be available on the City's website. Written comments other than through the website will be accepted as well. Written comments submitted by mail or fax should be sent to:

City of Prosser Planning Department  
601 7<sup>th</sup> Street  
Prosser, WA 99350  
Fax: (509) 786-3717

To ensure consideration, all written comments must be received by the City of Prosser prior to the close of the public hearings.

### **4.5 Public Notices and Information Dissemination**

The City of Prosser will use a variety of methods to inform the public about upcoming public meetings, availability of relevant planning documents and reports, and important milestones. The

Prosser website shall be the primary location for public notices and announcements for the Draft Medical Cannabis Regulations:

*Mailing List:*

The City of Prosser will maintain a list of interested persons and organizations to receive notices regarding meetings. Notices will be provided either by mail or e-mail. Individuals interested in being on the mailing list should contact the City of Prosser Planning Department at (509) 786-8212.

*News Releases:*

The City of Prosser will issue news releases announcing public meetings, hearings, and comment periods to local media, primarily to the Prosser Record Bulletin, Yakima Herald, and Tri-City Herald.

**5.0 Public Hearing Process**

The Planning Commission may conduct multiple public hearings. The City Council will hold at least one public hearing. The purpose of these hearings is to gather and consider public testimony on the Draft Medical Cannabis Regulations. The hearings are anticipated to conclude on August 12, 2014 (see above anticipated timeline). Public notices will be published in the Prosser Record Bulletin, posted at the City's public notice locations, and sent to the Draft Medical Cannabis Regulations mailing list.

**6.0 Recording of Meetings**

All public meetings and hearings will be audio recorded. Minutes and/or meeting summaries for all public meetings related to the 2014 Draft Medical Cannabis Regulations will be prepared, posted to the City's website, [www.cityofprosser.com](http://www.cityofprosser.com), and hard copies made available upon request.

In the event that an audio recording fails, then the body, before whom the recording failed, shall hold at least one additional public hearing to allow the public to make comments for the record.

C:\Users\howard\AppData\Local\Temp\PUBLICPARTICIPATIONPLAN 2014cannabis.doc

**CITY OF PROSSER, WASHINGTON  
AGENDA BILL**

<u>Agenda Title:</u> Public Hearing on the Possible Six-Month Extension of the Existing Moratorium on the Establishment of Medical Cannabis Dispensaries and Collective Gardens.		<u>Meeting Date:</u> April 22, 2014 Regular Meeting	
<u>Department:</u> Planning	<u>Director:</u> Steve Zetz	<u>Contact Person:</u> Steve Zetz	<u>Phone Number:</u> (509) 786-8212
<u>Cost of Proposal:</u> \$0		<u>Account Number:</u>	
<u>Amount Budgeted:</u> \$0		<u>Name and Fund#</u>	
<u>Reviewed by Finance Department:</u> 			
<u>Attachments to Agenda Packet Item:</u> 1. Council Packet on Moratorium from November 12, 2013 2. <u>Cannabis Action Coalition vs. City of Kent</u> 3. Public Hearing Notice			
<u>Summary Statement:</u>  At the November 12, 2013, City Council meeting, Council adopted Ordinance 13-2857 enacting a moratorium on certain medical cannabis uses. Unless extended, the moratorium will expire on May 9, 2014.  The exiting moratorium made medical marijuana (cannabis) dispensaries and collective gardens prohibited uses in the City. It also directed the Planning Commission to consider making the provisions of the Ordinance permanent, unless the Washington State Legislature amended RCW Chapter 69.51A to be consistent with the above-referenced U.S. Department of Justice memo (from previous Council Packet).  Although the Planning Commission has not held a public hearing on medical cannabis, the Planning Commission has discussed the issue at length and listened to a presentation given by a group supporting medical cannabis use in the city.  On March 31, 2014, a long-awaited Court of Appeals case was issued (see attached <u>Cannabis Action Coalition vs. City of Kent</u> ). The Court in <u>Kent</u> held as follows (bracketed language is not in the Court Opinion):  We hold that neither the plain language of the statute nor the governor's intent as expressed in her veto message supports a reading of ESSSB 5073 [the medical cannabis bill] that legalizes collective gardens. The Kent city council acted within its authority by enacting the ordinance banning collective gardens.			

This language can be found at the bottom of page two of the attached Court Opinion. The Court also stated that ESSSB 5073 did not legalize collective gardens or legalize medical marijuana, rather, it merely created an affirmative defense against prosecution for such offenses. The Court also stated (on page 21 of the attached opinion) as follows:

...the MUCA expressly authorizes cities to enact zoning requirements to regulate or exclude collective gardens.

The portion of the state statute that allows cities to enact zoning requirements to regulate collective gardens also applies to dispensaries. The only zoning restriction the MUCA (Medical Use of Cannabis Act) references is that cities may not enact an ordinance that precludes the possibility of a licensed dispensary locating in the city. Since the Governor vetoed all sections of ESSSB 5073 that created licensed dispensaries, the Court in Kent held that cities are free to ban collective gardens and by extension dispensaries.

The reason the Governor vetoed most of ESSSB 5073 was because the U. S. Department of Justice threatened to prosecute state officials who participated in licensing medical cannabis providers or collective gardens.

Since that time the Federal Government has relaxed its position and has allowed the states of Washington and Colorado to proceed with licensing recreational marijuana, producers, processors, and retailers. The Federal Government is allowing this experiment to proceed because both Washington and Colorado have developed a tightly regulated market that meets the requirement of the Federal Government.

Since there is not a tightly regulated market for medical marijuana, the city is faced with a difficult choice. Either it can ban medical cannabis dispensaries and collective gardens or it can develop its own tightly regulated market that is acceptable to the Federal Government. Given the limited resources available to the city, a ban makes more sense.

Staff proposes to bring back an ordinance on May 6, 2014, extending the medical cannabis moratorium. That ordinance would be effective upon passage. Since the city is extending the moratorium past its original termination date, it must also adopt a work plan to enact legislation on medical cannabis. Staff recommends that the Council direct the Planning Commission to work on an ordinance that bans medical cannabis collective gardens and medical cannabis dispensaries that are not licensed by the State of Washington. The effect of this will be that until the State enacts legislation acceptable to the Federal Government licensing medical cannabis collective gardens and dispensaries, collective gardens and dispensaries will be illegal in the city.

The following work plan dates are suggested for Council approval by separate ordinance (public participation plan):

May 15, 2014	Planning Commission (PC) reviews proposed ordinance
May 16, 2014	Unless PC has changes send to Department of Commerce
May 16, 2014	City files application for text change and begin SEPA process
June 19, 2014	PC holds public hearings on proposed ordinance which is continued
July 17, 2014	PC makes recommendation to Council regarding passage or rejection of the proposed ordinance
August 12, 2014	Council adopts or rejects the proposed ordinance.

<u>Recommended City Council Action/Suggested Motion:</u>		
Give direction to staff regarding extension of the existing medical cannabis moratorium and give direction regarding staff's proposed work plan.		
<u>Reviewed by Department Director:</u> 	<u>Reviewed by City Attorney:</u> 	<u>Approved by Mayor:</u> 
Date: 4/17/14	Date: 4/17/14	Date: 4-17-14
<u>Today's Date:</u> April 17, 2014	<u>Revision Number/Date:</u>	<u>File Name and Path:</u>

**CITY OF PROSSER, WASHINGTON  
AGENDA BILL**

<b>Agenda Title:</b> Approve an Interim Ordinance of the City Council of the City of Prosser, Washington, Adopting a Moratorium on the Establishment of Medical Cannabis Dispensaries and Collective Gardens; Defining "Medical Cannabis Dispensaries" and "Collective Gardens;" Providing for a Public Hearing; Declaring an Emergency; and Establishing an Effective Date.		<b>Meeting Date:</b> November 12, 2013 Regular Meeting	
<b>Department:</b>  Planning	<b>Director:</b>  Paul Warden	<b>Contact Person:</b>  Paul Warden/Steve Zetz	<b>Phone Number:</b>  (509) 786-216 and 786-8212
<b>Cost of Proposal:</b> \$0		<b>Account Number:</b>	
<b>Amount Budgeted:</b> \$0		<b>Name and Fund#</b>	
<b>Reviewed by Finance Department:</b>  <i>R Mauras</i>			
<b>Attachments to Agenda Packet Item:</b>  <ol style="list-style-type: none"> <li>1. Proposed Ordinance No. _____.</li> <li>2. August 29, 2013, memo from the U. S. Department of Justice.</li> <li>3. Press release: Liquor Control Board Adopts Proposed Rules for I-502 Implementation.</li> <li>4. Press release: Board to file single revision to marijuana rules regarding 1,000' buffer measurement.</li> <li>5. Press release: Liquor Control Board Statement following Department of Justice's Guidance Memo on Marijuana.</li> <li>6. Press release: Three agencies release draft recommendations on medical marijuana.</li> <li>7. Draft Recommendations of the Medical Marijuana Work Group.</li> <li>8. Press release: Liquor Control Board to hold public hearing on draft medical marijuana recommendations</li> </ol>			

Summary Statement:

On November 7, 2013, administration discussed the benefits to the City of enacting a zoning moratorium on Medical Cannabis (Marijuana). The City Council reached a consensus that such a moratorium would be appropriate.

The attached Ordinance enacts a moratorium that will be in effect for approximately six months. The Ordinance also sets a public hearing for December 10, 2013, to hear public comment on the moratorium and to consider whether it should continue.

The Ordinance makes medical marijuana (cannabis) dispensaries and collective gardens prohibited uses in the City. The Ordinance directs the Planning Commission to consider making the provisions of the Ordinance permanent, unless the Washington State Legislature amends RCW Chapter 69.51A to be consistent with the above-referenced U.S. Department of Justice memo.

The Ordinance declares an emergency making its provisions effective immediately. Passage of the Ordinance requires five affirmative votes.

Consistent with or Comparison to:

EXISTING ADOPTED OR PREVIOUS PLANS, POLICIES OR ACTIONS TAKEN BY THE COUNCIL

Recommended City Council Action/Suggested Motion:

Approve an Interim Ordinance of the City Council of the City of Prosser, Washington, Adopting a Moratorium on the Establishment of Medical Cannabis Dispensaries and Collective Gardens; Defining "Medical Cannabis Dispensaries" and "Collective Gardens;" Providing for a Public Hearing; Declaring an Emergency; and Establishing an Effective Date. (ROLL CALL VOTE).

Reviewed by Department Director:



Date: 11-8-13

Reviewed by City Attorney:



Date: 11/8/13

Approved by Mayor:



Date: 11-8-13

Today's Date:

November 8, 2013

Revision Number/Date:

File Name and Path:

CITY OF PROSSER, WASHINGTON  
ORDINANCE NO. 13-\_\_\_\_\_

**AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL CANNABIS DISPENSARIES AND COLLECTIVE GARDENS; DEFINING "MEDICAL CANNABIS DISPENSARIES" AND "COLLECTIVE GARDENS;" PROVIDING FOR A PUBLIC HEARING; DECLARING AN EMERGENCY; AND ESTABLISHING AN EFFECTIVE DATE. THE ORDINANCE ALSO PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.**

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for "qualifying patients" to the charge of possession of cannabis; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be "construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes;" and

WHEREAS, the Washington State Department of Health opines that it is "not legal to buy or sell" medical cannabis and further opines that "the law [Chapter 69.51A RCW] does not allow dispensaries," leaving enforcement to local officials; and

WHEREAS, the City acknowledges the right of qualified health care professionals to recommend the medical use of cannabis, acknowledges the affirmative defense available to qualifying patients from the possession of cannabis as well the right of patients to designate a "designated provider" who can "provide" rather than sell cannabis to "only one patient at any one time;" and

WHEREAS, the 2011 State Legislature passed E2SSB 5073 ("the Act") and the Governor signed the bill but vetoed several sections of the bill; and

WHEREAS, E2SSB 5073 was effective on July 22, 2011, and has since been incorporated in the codification of Chapter 69.51A RCW, Medical Cannabis; and

WHEREAS, the act authorizes "collective gardens" which would authorize certain qualifying patients the ability to produce, grow and deliver cannabis for medical use; and

WHEREAS, the acceptance of development applications proposing medical cannabis dispensaries and collective gardens development may allow development that is incompatible with nearby existing land uses and lead to erosion of community character and harmony; and

WHEREAS, despite the Governor's veto of certain Sections of E2SSB 5073, it is appropriate to impose a moratorium on medical cannabis dispensaries, so the City Council can

determine whether further regulation is necessary; and

**WHEREAS**, the voters of the State of Washington approved Initiative 502 amending Chapter 69.50 RCW to allow for the recreational use of marijuana, effective November 16, 2012; and

**WHEREAS**, Initiative 502 has since been incorporated into the codification of Chapter 69.50 RCW; and

**WHEREAS**, on November 16, 2013, the Liquor Control Board rules adopting a strict regulatory scheme for recreational marijuana will become effective; and

**WHEREAS**, The State Liquor Control Board will adopt an emergency rule changing the way the 1,000 set back from certain uses is measured which will be effective from November 20, 2013, to March 19, 2014; and

**WHEREAS**, on August 29, 2013, the United States Department of Justice acting through the Attorney General's Office issued a memorandum (Memorandum) to all United State's Attorneys providing guidance regarding marijuana enforcement; and

**WHEREAS**, the Memorandum is generally understood to mean that in order for the State, Political Subdivisions, and Municipalities to avoid prosecution, marijuana regulations that allowed the use of marijuana would have to address the following bullet points:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property;

**AND WHEREAS**, the regulations implementing Initiative 502 are generally believed to comply with and address the federal concerns enumerated above; and

**WHEREAS**, RCW Chapter 69.51A, as currently enacted, is generally believed to not address the federal concerns enumerated above; and

**WHEREAS**, pursuant to Budget Proviso Language in Third ESSB 5034 Sec. 141(2) Washington Liquor Control Board, the Department of Health, and the Department of Revenue were directed to provide recommendations to the Washington Legislature regarding medical cannabis regulation.

**AND WHEREAS**, the Liquor Control Board held a public hearing on the following draft medical marijuana recommendations on November 13, 2013, which recommendation must be made to the Washington State Legislature by January 1, 2014:

The liquor control board must work with the department of health and the department of revenue to develop recommendations for the legislature regarding the interaction of medical marijuana regulations and the provisions of Initiative Measure No. 502. At a minimum, the recommendations must include provisions addressing the following:

- (i) Age limits;
- (ii) Authorizing requirements for medical marijuana;
- (iii) Regulations regarding health care professionals;
- (iv) Collective gardens;
- (v) Possession amounts;
- (vi) Location requirements;
- (vii) Requirements for medical marijuana producing, processing and retail licensing; and
- (viii) Taxation of medical marijuana in relation to recreational marijuana;

**AND WHEREAS**, the City Council finds that it is in the public interest that any zoning and development regulations are consistent with both federal and state law; and

**WHEREAS**, the City Council deems it to be in the public interest to establish a zoning moratorium pending local review of the anticipated changes to RCW Chapter 69.51A; and

**WHEREAS**, pursuant to RCW 36.70A.390 a public hearing must be held within 60 days of the passage of this Ordinance; and

**WHEREAS**, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to enact this moratorium;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** Pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Prosser prohibiting the establishment, location, operation, registration or licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181 Laws of 2011, Chapter

69.51A RCW, or any other laws of the State of Washington. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above. No business registration or license shall be granted or accepted while this moratorium is in effect for any of the activities listed above. Any land use approvals, business registrations or licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force of effect.

**Section 2.** A "Medical Cannabis Dispensary" means any business, agency, organization, cooperative, network, consultation operation, or other group, or person, no matter how described or defined, including its associated premises and equipment, which has for its purposes or which is used to grow, select, measure, package, label, deliver, sell, or otherwise transfer (for consideration or otherwise) cannabis for medical use. A person who is the designated provider for only one qualified patient during any 15 day period and who complies with Chapter 69.51A RCW shall not be deemed a medical cannabis dispensary for the purposes of this moratorium.

**Section 3.** "A Medical Cannabis Collective Garden" is an area or garden where qualifying patients engage in the production, processing, transporting, and delivery of cannabis for medical use as set forth in the Act and subject to the limitations therein.

**Section 4.** Medical cannabis dispensaries and medical cannabis collective gardens as defined in this Ordinance are hereby designated as prohibited uses in the City of Prosser and a moratorium related to these uses is hereby established. No business registration or license shall be issued to any person or entity for a medical cannabis dispensary or a medical cannabis collective garden, which are hereby defined to be prohibited uses under the Ordinances of the City of Prosser.

**Section 5.** Pursuant to RCW 36.70A.106, this interim Ordinance shall be transmitted to the Washington State Department of Commerce as required by law.

**Section 6.** Pursuant to RCW 36.70A.390, the City Council sets the City Council Regular Meeting of December 10, 2013, which begins at 7:00 p.m. at Prosser City Hall, 601 7th Street, Prosser, Washington 99350, as the date and time for a public hearing on the continuance of this moratorium. The City Clerk is directed to cause appropriate notice of such hearing to be given.

**Section 7.** Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other person or circumstances.

**Section 8.** This Ordinance shall not be codified.

**Section 9.** The above "Whereas" clauses of this Ordinance constitute specific findings by the Council in support of passage of this Ordinance.

**Section 10.** This Ordinance shall be referred to the Prosser Planning Commission for its review and recommendation for inclusion in the zoning Ordinances of the City of Prosser. The Prosser Planning Commission may recommend creating medical cannabis regulations to allow certain medical cannabis USES in designated zoning districts in the event that the Washington State Legislature establishes regulations similar to those regulations that exist for recreational marijuana.

**Section 11.** The City Council declares that an emergency exists requiring passage of this Ordinance for the protection of public health, safety, welfare, and peace based on the Findings set forth in Section 9 above. This Ordinance shall take effect and be in full force immediately upon passage and shall expire May 9, 2014, unless extended or released according to law

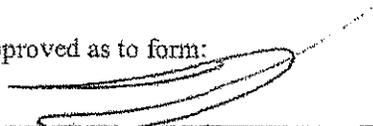
PASSED by the City Council and APPROVED by the Mayor, this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MAYOR PAUL WARDEN

ATTEST:

\_\_\_\_\_  
CITY CLERK, RACHEL SHAW

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY, HOWARD SAXTON

Date of Publication: \_\_\_\_\_

SUMMARY OF ORDINANCE NO. 13-\_\_\_\_\_

of the City of Prosser, Washington

---

On the \_\_\_\_ day of \_\_\_\_\_, 2013, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL CANNABIS DISPENSARIES AND COLLECTIVE GARDENS; DEFINING "MEDICAL CANNABIS DISPENSARIES" AND "COLLECTIVE GARDENS;" PROVIDING FOR A PUBLIC HEARING; DECLARING AN EMERGENCY; AND ESTABLISHING AN EFFECTIVE DATE. THE ORDINANCE ALSO PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013

---

CITY CLERK, RACHEL SHAW



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole   
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.<sup>1</sup>

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

---

<sup>1</sup> These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman  
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch  
United States Attorney  
Eastern District of New York  
Chair, Attorney General's Advisory Committee

Michele M. Leonhart  
Administrater  
Drug Enforcement Administration

H. Marshall Jarrett  
Director  
Executive Office for United States Attorneys

Ronald T. Hosko  
Assistant Director  
Criminal Investigative Division  
Federal Bureau of Investigation



Washington State  
**Liquor Control Board**

Published on *Washington State Liquor Control Board*  
(<http://www.liq.wa.gov>)

[Home](#) > Liquor Control Board Adopts Proposed Rules for I-502 Implementation

## **Liquor Control Board Adopts Proposed Rules for I-502 Implementation**

Liquor Control Board Adopts Proposed Rules for I-502 Implementation

OLYMPIA – The Washington State Liquor Control Board (WSLCB) today adopted the proposed rules for implementing Initiative 502. By week's end the WSLCB will file the CR103 – the formal procedure for adoption of proposed rules – which is the final step in the rulemaking process. These rules will serve as the basis for Washington's newly created recreational marijuana market and are the result of 10 months of research and public input. Thirty days after adoption the rules will become effective, November 16.

"Over these last several months we have put together a comprehensive system of rules which will serve as the foundation for this new industry," said Board Chair Sharon Foster. "This has been a very open process of rule-making with public involvement each step of the way. We appreciate all the support and involvement we've had from Gov. Inslee, local officials, law enforcement, industry members and Washington citizens along the way."

The rules achieve the Board's stated goal of implementing a tightly regulated and controlled recreational marijuana market. They also align with the Department of Justice's stated areas of concern by addressing out-of-state diversion of product, traceability of product from start to sale, youth access and other public and consumer safety concerns.

Later this month, to align with federal guidelines, agency staff will file emergency rulemaking to modify the way the 1,000 foot distance between marijuana locations and the listed exclusion zones is measured. The method of measuring will change from "most common path of travel" to "shortest straight line" from property line to property line.

The agency will open a 30 day licensing window for all three license types (marijuana producer, processor and retailer) on November 18. The WSLCB's Marijuana Licensing Unit is holding a series of seven educational seminars across the state to help potential applicants navigate the licensing process.

For more information regarding the implementation of I-502 including summaries of the law and rules, answers to frequently asked questions, or to sign up for an educational seminar please visit the WSLCB website at [www.liq.wa.gov](http://www.liq.wa.gov) [1]

*The Washington State Liquor Control Board's mission is to promote public safety by consistent and fair administration of liquor and cannabis laws through education, voluntary compliance, responsible sales and preventing the misuse of alcohol, cannabis and tobacco.*

Copyright © 2013 Washington State Liquor Control Board

**Source URL:**

[http://www.liq.wa.gov/pressreleases/lcb\\_adopts\\_proposed\\_rules\\_i502\\_implementation](http://www.liq.wa.gov/pressreleases/lcb_adopts_proposed_rules_i502_implementation)

**Links:**

[1] <http://www.liq.wa.gov>



Washington State  
**Liquor Control Board**

Published on *Washington State Liquor Control Board*  
(<http://www.liq.wa.gov>)

[Home](#) > Board to file single revision to marijuana rules regarding 1,000' buffer measurement

## **Board to file single revision to marijuana rules regarding 1,000' buffer measurement**

*Emergency rule will not affect implementation timeline*

OLYMPIA – The Washington State Liquor Control Board (WSLCB) announced today that it will file an emergency rule on October 16, 2013, to make a single technical revision to the recreational marijuana rules. The emergency rule will revise the method of measurement of the 1,000 foot buffer measurement between a licensed marijuana business and an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or arcade where admission is not restricted to those age 21 and older. The emergency rule will not affect the Initiative 502 implementation timeline.

The current proposed rules filed with the Code Reviser on September 4, 2013, state “the distance shall be measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds.”

The emergency rule will state: “The distance shall be measured as the shortest straight line distance from the property line of the licensed premises to the property line of the entities listed below...”

"The current measurement mirrors the existing method of measurement between liquor-licensed businesses and schools," said agency director Rick Garza. "We've since learned that this measurement, as it pertains to marijuana, conflicts with federal law. Although the emergency rule won't be filed until October 16, it is critical that we announce our intentions now so that potential licensees, local government and law enforcement will have clarity and predictability going forward."

### Timeline (2013)

- Oct. 08  
Public Hearing on permanent rules in Seattle
- Oct. 09  
Public Hearing on permanent rules in Spokane
- Oct. 16  
Board adoption of permanent rules  
Board adoption of emergency rule on 1,000 foot measurement
- Nov. 16  
Permanent rules become effective
- Nov. 17  
Emergency rule on 1,000 foot measurement becomes effective
- Nov. 18  
WSLCB begins taking license applications (30-day window)
- Dec. 01  
Deadline for adopting I-502 rules

For more information regarding the implementation of I-502 including summaries of the law and rules, answers to frequently asked questions and other documents, please visit the WSLCB website at [www.liq.wa.gov](http://www.liq.wa.gov) <sup>(1)</sup>.

Board to file single revision to marijuana rules regarding 1,000'... Page 3 of 3

Contact: Brian Smith, WSLCB Communications, 360-664-1774  
Mikhail Carpenter, WSLCB Communications, 360-664-  
1621

Copyright © 2013 Washington State Liquor Control Board

**Source URL:**

[http://www.liq.wa.gov/pressreleases/board\\_files\\_single\\_revision\\_on\\_measurement](http://www.liq.wa.gov/pressreleases/board_files_single_revision_on_measurement)

**Links:**

[1] <http://www.liq.wa.gov>



Washington State  
**Liquor Control Board**

Published on *Washington State Liquor Control Board*  
(<http://www.liq.wa.gov>)

[Home](#) > Liquor Control Board Statement following Department of Justice's Guidance  
Memo on Marijuana

# **Liquor Control Board Statement following Department of Justice's Guidance Memo on Marijuana**

OLYMPIA – The Washington State Liquor Control Board (WSLCB) issued the following statement regarding the Department of Justice's announcement today.

The Washington State Liquor Control Board would like to thank the Obama Administration, particularly Attorney General Eric Holder and the Dept. of Justice for its guidance today.

We would also like to thank Gov. Jay Inslee and Attorney General Bob Ferguson for their leadership and efforts on this issue these past nine months. As Gov. Inslee stated today, the Department of Justice today helped lay a path forward for Washington and Colorado to implement its systems of producing, processing and retailing recreational marijuana.

The Board's primary rule-making focus has been to create a tightly regulated market with emphasis on public safety and restricting youth access. In his letter, AG Holder shared the same concerns.

We believe the action taken today by the federal government is the result of the conversations by our state elected leaders with the Dept. of Justice as well as the open and transparent system in which the rules have been crafted. The Board is confident that Washington's recreational marijuana system will meet most, if not all, of the federal government's stated concerns.

With the federal government's approval the Board will continue to move forward and implement I-502 and carry out the will of Washington State voters.

Copyright © 2013 Washington State Liquor Control Board

Source URL: <http://www.liq.wa.gov/pressreleases/lcb-statement-following-dept-of-justice-memo>

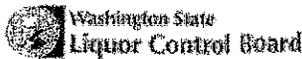


Washington State  
Liquor Control Board

Published on *Washington State Liquor Control Board* (<http://www.liq.wa.gov>)

[Home](#) > Three agencies release draft recommendations on medical marijuana

## Three agencies release draft recommendations on medical marijuana



*Public may provide written comment on draft recommendations until November 8, 2013*

OLYMPIA –The three state agencies drafting proposed recommendations for regulating medical marijuana for the Liquor Control Board to consider sending to the Legislature today released a draft. Now there is an opportunity for the public to provide written comments.

A proviso in Section 141 of the state operating budget directs the Liquor Control Board to work with the departments of Revenue and Health to develop recommendations for the Legislature regarding the interaction of medical marijuana regulations and the emerging recreational marijuana system. A workgroup, consisting of staff from the three agencies, has been working on draft recommendations since July.

Per the budget proviso, the workgroup has prepared draft recommendations in eight categories that include possession amounts, medical marijuana authorizing requirements, taxation and other topics. If enacted, these recommendations will help provide patients with an adequate, safe and secure source of medical marijuana.

Among the recommendations are developing a registry for patients and their designated providers, reducing the amount of marijuana qualified patients or designated providers may possess at one time and requiring patients to

receive an in-person exam by a qualified health care provider before medical marijuana can be authorized. The recommendations reflect Washington State's commitment to address the concerns outlined by U.S. Attorney General Eric Holder in his August 2013 message to state leaders.

The full set of draft recommendations can be viewed [here](#) [1].

Written comments may be submitted at [medicalmarijuana@liq.wa.gov](mailto:medicalmarijuana@liq.wa.gov) [2] through November 8, 2013. Below is the timeline for finalizing, reporting and delivering the final recommendations to the Legislature.

Date (2013)	Milestone
October 21	Draft recommendations submitted to stakeholders for comment
November 8	Deadline for written comments
December TBD	Liquor Control Board will consider adoption of recommendations
January 1, 2014	Deadline for the Liquor Control Board to submit recommendations to the Legislature

For answers to frequently asked questions about the current state of medical marijuana, please visit the [medical marijuana section](#) [3] of the Department of Health's website.

Copyright © 2013 Washington State Liquor Control Board

**Source URL:**

[http://www.liq.wa.gov/pressreleases/3agencies\\_release\\_draft\\_recommendations\\_on\\_mmi](http://www.liq.wa.gov/pressreleases/3agencies_release_draft_recommendations_on_mmi)

**Links:**

[1] <https://lcb.box.com/draft-recommendations>

[2] <mailto:medicalmarijuana@liq.wa.gov>

[3] [http://www.doh.wa.gov/SearchResults.aspx?tag=Medical%20Marijuana%20\(Cannabis\)](http://www.doh.wa.gov/SearchResults.aspx?tag=Medical%20Marijuana%20(Cannabis))



Washington State  
Liquor Control Board

---

DRAFT Recommendations of the Medical Marijuana Work Group

Budget Proviso Language: 3ESSB 5034 Sec. 141(2):

(a) The liquor control board must work with the department of health and the department of revenue to develop recommendations for the legislature regarding the interaction of medical marijuana regulations and the provisions of Initiative Measure No. 502. At a minimum, the recommendations must include provisions addressing the following:

- (i) Age limits;
- (ii) Authorizing requirements for medical marijuana;
- (iii) Regulations regarding health care professionals;
- (iv) Collective gardens;
- (v) Possession amounts;
- (vi) Location requirements;
- (vii) Requirements for medical marijuana producing, processing and retail licensing; and
- (viii) Taxation of medical marijuana in relation to recreational marijuana.

(b) The board must submit its recommendations to the appropriate committees of the legislature by January 1, 2014.

---

1. Age limits

- Adults 18 to 20 years old should be allowed access to medical marijuana with proper authorization from a health care professional.
- Children 17 years old or younger should be allowed access to medical marijuana with parent or guardian consent to the authorization. The parent or guardian should participate in the child's treatment.
- Authorizing health care professionals should be required to engage in frequent re-examination and follow-up with a child patient and communication with the parent or guardian. The authorizing health care professional should also be required to consult with other health care providers involved in the child's treatment before authorization or reauthorization of medical marijuana.
- The child's parent or guardian should be required to act as the child's designated provider and be entered in the registry as such.
- The parent or guardian should have sole control over the child's medical marijuana. The child should be allowed to possess no more medical marijuana than necessary for his or her next dose.
- Medical marijuana consumed in a school setting should be held and administered by school personnel in the same manner as any other medication. Consistent with current law, schools should not be compelled to accommodate on-site use of medical marijuana on school grounds or school buses.
- Medical marijuana products should be prohibited from being labeled in a manner that mimics candy, soda or other treats attractive to children.

Under I-502:

A person must be 21 years old to legally possess marijuana, to hold a marijuana license or enter a licensed marijuana premise.

2. Authorizing requirements for medical marijuana

- A mandatory patient and designated provider registry should be established and maintained by the Department of Health.
- The registry should be mandatory for all patients as a condition of receiving an authorization.

October 21, 2013

- The registry should be used to determine eligibility for exemption from state and local retail sales and use taxes on marijuana purchases by qualified patients.
- Designated providers should be required to participate in the registry in conjunction with the patient.
- Patient and designated provider information should be entered into the registry by the authorizing health care professional. The information must contain sufficient unique identifiers (Washington driver's license or identification card number or social security number) to ensure accurate identification of the patient or designated provider.
- Registration should expire annually and the patient or designated provider may be re-entered in the registry only after a new or follow-up examination.
- Cards should be issued from the registry to identify patients and designated providers.
- The registry should be available to law enforcement and to the Department of Revenue as necessary to verify tax-exempt purchases under Title 82 RCW.
- Disciplining authorities for the health care professions allowed to authorize medical marijuana should have access to the registry to monitor compliance by their licensees.
- Consistent and reliable funding must be provided to establish and maintain the registry.
- The registry should contain sufficient security features to protect patient privacy. Information in the registry that could identify patients should be excluded from public disclosure.
- All existing authorizations should expire on a date certain to coincide with full implementation of the registry and retail market. All patients with existing authorizations would need to be re-evaluated by a health care professional pursuant to the revised standards and placed in the registry within a designated timeframe.

Under I-502:

N/A

### 3. Regulations regarding health care professionals

- Define "debilitating" and "intractable pain" to clearly indicate the condition must be severe enough to significantly interfere with the patient's activities of daily living and ability to function, and can be objectively assessed and evaluated.
- Enact comprehensive requirements defining the standard of care for health care professionals who authorize medical marijuana similar to those required by ESHB 2876 (2010) regarding the use of opioids to manage chronic pain. The requirements should address topics such as adequacy of examination, follow-up care and recording keeping.
- Restrict a health care professional's practice to ensure it does not consist primarily of authorizing medical marijuana.
- Require a permanent physical location for a health care professional's place of practice.
- Require in person examinations for authorizations.
- Require an expiration of authorizations to ensure a regular cycle of re-examination and follow-up care.
- Eliminate the provision allowing for petitions to add qualifying conditions. Patients with conditions other than those already authorized can follow the legislative process to change the law and can avail themselves of the recreational marijuana market until such time as the law is changed. In the alternative, amend the petition provision to allow the Medical Quality Assurance Commission to make a preliminary finding of good cause prior to holding a hearing and expand the time frame for the hearing to be completed.

Under I-502:

N/A

### 4. Collective gardens

Eliminate Collective Gardens.

Under I-502:

N/A

October 21, 2013 2

**5. Possession amounts**

- Reduce the amount a qualified patient or designated provider can possess at any given time from twenty-four ounces of useable marijuana (a sixty day supply) to three ounces (a one week supply).
- Allow additional limits for marijuana infused products in solid or liquid form.
- Eliminate home grows and the ability for a qualified patient or designated provider to possess marijuana plants in any stage of growth. Define "plant" to avoid any misconstruction of this provision.
- Eliminate the ability for designated providers to also be qualified patients and thus possess double the legal limit of medical marijuana.
- Require labeling to include the levels of tetrahydrocannabinol (THC) and cannabinoids in medical marijuana products.
- Restrict labeling and marketing of medical marijuana products to ensure that they are not intentionally attractive to minors or recreational users.
- Eliminate the provision in RCW 69.51A.045 that grants qualified patients or designated providers an affirmative defense to criminal charges of possession above the legal amount if they can prove at trial the patient's necessary medical use exceeds the amount determined in law.

**Under I-502:**

One ounce of useable marijuana; 16 ounces of marijuana infused product in solid form; or 72 ounces of marijuana infused product in liquid form.

**6. Location requirements**

Not applicable because only current I-502 licensed retail stores may sell marijuana and accept medical marijuana authorization cards.

**Under I-502:** Medical marijuana licensed business cannot be within one thousand feet of the perimeter of the grounds of any of the following entities:

1. Elementary or secondary school;
2. Playground;
3. Recreational center or facility;
4. Child care center;
5. Public park;
6. Public transit center;
7. Library; or
8. Any game arcade where admission is not restricted to persons age twenty-one or older.

**7. Requirements for medical marijuana producing, processing and retail licensing**

A single system for medical and recreational producer and processor licenses. Only recreational marijuana stores with an endorsement may accept medical marijuana authorization cards. Make the new regulatory system for medical marijuana effective no sooner than January 1, 2015.

**Under I-502:**

1. Three separate license tiers: producer, processor and retailer;
2. A licensee may hold both a producer and processor license simultaneously, but not a retailer license;
3. Open registration for all license types for a 30-day window;
4. Three month state residency requirement to qualify for a license;
5. Personal criminal history, fingerprint and background checks of applicants;
6. Point system for all arrests and/or convictions;
7. License limits;
8. Production limits; and
9. Maximum allowable amount of marijuana on licensed locations.

October 21, 2013 3

**8. Taxation of medical marijuana in relation to recreational marijuana**

Utilize the same tax structure as recreational marijuana, but provide an exemption from state and local retail sales and use taxes on purchases by medical marijuana patients registered with the Department of Health.

**Under I-502:**

1. Producers
  - a. Pay 25% excise tax on wholesale sales
  - b. Pay B&O tax as wholesaler
2. Processors
  - a. Pay 25% excise tax on wholesale sales
  - b. Pay B&O tax as manufacturer
3. Retailers
  - a. Pay 25% excise tax on retail sales
  - b. Pay B&O tax as retailer
  - c. Collect state/local retail sales & use tax
4. Retail Buyers
  - a. Pay state/local retail sales & use tax

October 21, 2013 4



Washington State  
**Liquor Control Board**

Published on *Washington State Liquor Control Board* (<http://www.liq.wa.gov>)

[Home](#) > Liquor Control Board to hold public hearing on draft medical marijuana recommendations

## Liquor Control Board to hold public hearing on draft medical marijuana recommendations

*Single hearing to be held on November 13, at Saint Martin's University*

OLYMPIA – The Washington State Liquor Control Board (Board) announced today that it will hold a public hearing on Nov. 13, 2013, to take public testimony regarding recent draft medical marijuana recommendations.

### Hearing Details

Date: Nov. 13, 2013

Time: 6:00 – 9:00 p.m.

Location: Worthington Center - Saint Martin's University (5300 Pacific Ave. Lacey, WA 98503)

A proviso in Section 141 of the state operating budget directs the Washington State Liquor Control Board to work with the departments of Revenue and Health to develop recommendations for the Legislature regarding the interaction of medical marijuana regulations and the emerging recreational marijuana system.

The draft recommendations <sup>(1)</sup> on which the Board will take comment cover eight categories that include possession amounts, medical marijuana authorizing requirements, taxation and other topics.

The Board will present final recommendations to the Legislature by January 1, 2014. The date for the Board's approval of the final recommendations has not yet been determined. The Board continues to take written testimony at [medicalmarijuana@liq.wa.gov](mailto:medicalmarijuana@liq.wa.gov) <sup>(2)</sup>.

The event agenda is posted on the Board website at [www.liq.wa.gov](http://www.liq.wa.gov) <sup>(3)</sup>. For more information about the current state of medical marijuana, please visit the WSLCB website or the Department of Health website at [www.doh.wa.gov](http://www.doh.wa.gov) <sup>(4)</sup>.

Contact: Mikhail Carpenter, WSLCB Communications, 360-864-1621

Copyright © 2013 Washington State Liquor Control Board

**Source URL:**

[http://www.liq.wa.gov/pressreleases/lcb\\_to\\_hold\\_hearing\\_on\\_draft\\_medical\\_mj\\_recommendations](http://www.liq.wa.gov/pressreleases/lcb_to_hold_hearing_on_draft_medical_mj_recommendations)

**Links:**

[1] [http://www.liq.wa.gov/marijuana/mmj\\_draft\\_recommendations](http://www.liq.wa.gov/marijuana/mmj_draft_recommendations)

[2] <mailto:mailto:medicalmarijuana@liq.wa.gov>

[3] <http://www.liq.wa.gov/>

[4] <http://www.doh.wa.gov/>

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON

2014 MAR 31 PM 12:04

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CANNABIS ACTION COALITION, ARTHUR WEST,	)	
	)	DIVISION ONE
Plaintiffs,	)	
	)	No. 70396-0-1
STEVE SARICH, JOHN	)	(Consolidated with
WORTHINGTON, and DERYCK	)	No. 69457-0-1)
TSANG,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	
CITY OF KENT, a local municipal corporation,	)	PUBLISHED OPINION
	)	
Respondent.	)	FILED: March 31, 2014

DWYER, J. — The Washington Constitution grants the governor the power to veto individual sections of a bill. The governor may exercise this power even when doing so changes the meaning or effect of the bill from that which the legislature intended. As a corollary of this power, when the governor's sectional veto alters the intent of the bill and the legislature does not override the veto, the governor's veto message becomes the exclusive statement of legislative intent that speaks directly to the bill as enacted into law.

In this case, the governor vetoed over half of the sections in a 2011 bill amending the Washington State Medical Use of Cannabis Act<sup>1</sup> (MUCA), substantially changing the meaning, intent, and effect of the bill. Although Engrossed Second Substitute Senate Bill (ESSSB) 5073 was originally designed to legalize medical marijuana through the creation of a state registry of lawful users, as enacted it provides medical marijuana users with an affirmative defense to criminal prosecution.

Following the governor's sectional veto and the new law's effective date, the City of Kent enacted a zoning ordinance which defined medical marijuana "collective gardens" and prohibited such a use in all zoning districts. By so doing, Kent banned collective gardens.

An organization and several individuals (collectively the Challengers) brought a declaratory judgment action challenging the ordinance. The Challengers claimed that ESSSB 5073 legalized collective gardens and that Kent was thus without authority to regulate or ban collective gardens. In response, Kent sought an injunction against the individual challengers enjoining them from violating the ordinance. The superior court ruled in favor of Kent, dismissed the Challengers' claims for relief, and granted the relief sought by Kent.

We hold that neither the plain language of the statute nor the governor's intent as expressed in her veto message supports a reading of ESSSB 5073 that legalizes collective gardens. The Kent city council acted within its authority by enacting the ordinance banning collective gardens. Accordingly, the trial court

---

<sup>1</sup> Ch. 69.51A RCW.

did not err by dismissing the Challengers' actions and granting relief to Kent.

1

In 2011, the Washington legislature adopted ESSSB 5073, which was intended to amend the MUCA.<sup>2</sup> The bill purported to create a comprehensive regulatory scheme, whereby—with regard to medical marijuana—all patients, physicians, processors, producers, and dispensers would be registered with the state Department of Health. The legislature's intended purpose in amending the statute, as stated in section 101 of the bill, was so that

(a) Qualifying patients and designated providers complying with the terms of this act and registering with the department of health will no longer be subject to arrest or prosecution, other criminal sanctions, or civil consequences based solely on their medical use of cannabis;

(b) Qualifying patients will have access to an adequate, safe, consistent, and secure source of medical quality cannabis; and

(c) Health care professionals may authorize the medical use of cannabis in the manner provided by this act without fear of state criminal or civil sanctions.

ENGROSSED SECOND SUBSTITUTE S. B. (ESSSB) 5073, § 101, 62nd Leg., Reg.

Sess. (Wash. 2011) (italics and boldface omitted). The legislature also amended

RCW 69.51A.005, the MUCA's preexisting purpose and intent provision, to state,

in relevant part:

Qualifying patients with terminal or debilitating medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of cannabis, shall not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of

---

<sup>2</sup> The MUCA, as it existed prior to the 2011 legislative session, was a product of Initiative Measure No. 692 passed by the voters in the 1998 general election and subsequently codified as chapter 69.51A RCW. The MUCA was amended in 2007 and 2010 in manners not pertinent to the issues presented herein. LAWS OF 2007, ch. 371; LAWS OF 2010, ch. 284.

cannabis, notwithstanding any other provision of law.

ESSSB 5073, § 102.

As drafted by the legislature, ESSSB 5073 established a state-run registry system for qualified patients and providers. Significantly, section 901 of the bill required the state Department of Health, in conjunction with the state Department of Agriculture, to "adopt rules for the creation, implementation, maintenance, and timely upgrading of a secure and confidential registration system." ESSSB 5073, § 901(1). Patients would not be required to register; rather, the registry would be "optional for qualifying patients." ESSSB 5073, § 901(6). On the one hand, if a patient was registered with the Department of Health, he or she would not be subject to prosecution for marijuana-related offenses.<sup>3</sup> ESSSB 5073, § 405. On the other hand, if a patient did not register, he or she would be entitled only to an affirmative defense to marijuana-related charges.<sup>4</sup> ESSSB 5073, § 406.

The bill also allowed qualified patients to establish collective gardens for the purpose of growing medical marijuana for personal use.<sup>5</sup> ESSSB 5073,

---

<sup>3</sup> This section of the bill is now codified as follows:

The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance.

RCW 69.51A.040.

<sup>4</sup> This section is now codified as RCW 69.51A.043(1), which states, "A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act may raise the affirmative defense."

<sup>5</sup> Now codified as RCW 69.51A.085, this section provides:

§ 403. Furthermore, even though the bill purported to legalize medical marijuana for registered patients and providers, it nevertheless granted authority to municipalities to regulate medical marijuana use within their territorial confines.

Section 1102, now codified as RCW 69.51A.140, provides in relevant part:

(1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in this act is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

ESSSB 5073, § 1102.

---

(1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) No more than ten qualifying patients may participate in a single collective garden at any time;

(b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

(c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;

(d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and

(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter.

The bill was passed by both houses of the legislature and sent to Governor Gregoire for her signature.

On April 14, 2011, the United States Attorneys for the Eastern and Western Districts of Washington wrote an advisory letter to Governor Gregoire regarding ESSSB 5073. Therein, the district attorneys explained the Department of Justice's position on the bill:

The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. . . . In addition, state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA.<sup>6</sup> Potential actions the Department could consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA.

After receiving this missive, Governor Gregoire vetoed all sections of the bill which might have subjected state employees to federal charges. The governor vetoed 36 sections<sup>7</sup> of the bill that purported to establish a state registry, including section 901, and including section 101, the legislature's statement of intent. LAWS OF 2011, ch. 181. The governor left intact those sections of the bill that did not create or were not wholly dependent on the creation of a state registry. LAWS OF 2011, ch. 181. In her official veto message, Governor Gregoire explained her decision to leave parts of the bill intact:

---

<sup>6</sup> Controlled Substances Act, Title 21 U.S.C., Ch. 13.

<sup>7</sup> The bill contained 58 sections as passed by the legislature. The governor vetoed 36 of those sections.

Today, I have signed sections of Engrossed Second Substitute Bill 5073 that retain the provisions of Initiative 692 and provide additional state law protections. Qualifying patients or their designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions. Qualifying patients or their designated providers are also protected from certain state civil law consequences.

LAWS OF 2011, ch. 181, governor's veto message at 1374-75.

The governor recognized that her extensive exercise of the sectional veto power rendered meaningless any of the bill's provisions that were dependent upon the state registry, noting that "[b]ecause I have vetoed the licensing provisions, I have also vetoed" numerous other sections. LAWS OF 2011, ch. 181, governor's veto message at 1375. However, the governor also recognized that—after her extensive vetoes—portions of some sections would remain meaningful even though references to the registry within those sections would not.

Importantly, in one particular example, the governor stated:

I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

LAWS OF 2011, ch. 181, governor's veto message at 1376. Another section that the governor believed to have meaning, even though it referenced registered entities, was section 1102. With respect to this section, the governor stated:

Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for such licensed dispensers. It is with this understanding that I approve

section 1102.

LAWS OF 2011, ch. 181, governor's veto message at 1375. The bill, now consisting only of the 22 sections not vetoed by the governor, was signed into law and codified in chapter 69.51A RCW. The legislature did not override the governor's veto.

Subsequently, Kent sought to exercise its zoning power to regulate collective gardens. On July 5, 2011 and January 3, 2012, Kent issued six month moratoria prohibiting collective gardens within the city limits. On June 5, 2012, Kent enacted Ordinance No. 4036 (the Ordinance), defining collective gardens and banning them within the city limits. The Ordinance states, in relevant part:

A. *Collective gardens*, as defined in KCC 15.02.074, are prohibited in the following zoning districts:

1. All agricultural districts, including A-10 and AG;
2. All residential districts, including SR-1, SR-3, SR-4.5, SR-6, SR-8, MR-D, MR-T12, MR-T16, MR-G, MR-M, MR-H, MHP, PUD, MTC-1, MTC-2, and MCR;
3. All commercial/office districts, including: NCC, CC, CC-MU, DC, DCE, DCE-T, CM-1, CM-2, GC, GC-MU, O, O-MU, and GWC;
4. All industrial districts, including: MA, M1, M1-C, M2, and M3; and
5. Any new district established after June 5, 2012.

B. Any violation of this section is declared to be a public nuisance per se, and shall be abated by the city attorney under applicable provisions of this code or state law, including, but not limited to, the provisions of KCC Chapter 1.04.

Thereafter, the Cannabis Action Coalition, Steve Sarich, Arthur West, John Worthington, and Deryck Tsang filed suit against Kent, seeking declaratory,

injunctive, and mandamus relief.<sup>8</sup> Worthington, Sarich, and West stated in their complaint that they intended to participate in a collective garden in Kent. None of the three, however, actually resided in, owned or operated a business in, or participated in a collective garden in Kent. Tsang, on the other hand, is a resident of Kent and currently participates in a collective garden in the city limits.

In the superior court proceeding, the parties filed competing motions for summary judgment. After considering all documentation submitted by the parties, the trial court ruled in favor of Kent. The trial court dismissed the claims of Cannabis Action Coalition, Sarich, West, and Worthington for lack of standing.<sup>9</sup> On the merits of Tsang's claims, the trial court held that "[t]he Kent City Council had authority to pass Ordinance 4036, Ordinance 4036 is not preempted by state law, and Ordinance 4036 does not violate any constitutional rights of Plaintiffs." The trial court also granted Kent's request for a permanent injunction against all plaintiffs, prohibiting them from violating the Ordinance.

The Challengers appealed to the Washington Supreme Court and requested a stay of the injunction. The Supreme Court Commissioner granted the stay. While the appeal was pending, Kent filed a motion to strike portions of Worthington's reply brief, which Worthington countered with a motion to waive Rule of Appellate Procedure (RAP) 10.3(c).<sup>10</sup> The Supreme Court transferred

---

<sup>8</sup> The Cannabis Action Coalition is no longer a party to this matter. Although West filed a notice of appeal, he never filed an appellate brief; he has thus abandoned his appeal.

<sup>9</sup> However, the trial court stated that "even if all plaintiffs do have standing," its motion granting summary judgment in favor of Kent was "dispositive as to all plaintiffs."

<sup>10</sup> Kent asserts that the majority of Worthington's reply brief should be stricken because they contain arguments not raised in the trial court, they contain arguments not raised in Worthington's opening brief, and they are not in response to Kent's brief. Worthington contends

the appeal to this court, along with the two unresolved motions.

II

A

The Challengers contend that the plain language of the MUCA legalizes collective gardens.<sup>11</sup> This is so, they assert, because the MUCA provides that

---

that this court should waive RAP 10.3(c) and that his entire reply brief should be considered in order to "meet the ends of justice and facilitate a ruling on the merits."

RAP 10.3(c) provides that, "[a] reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) and be limited to a response to the issues in the brief to which the reply brief is directed." "A reply brief is generally not the proper forum to address new issues because the respondent does not get an opportunity to address the newly raised issues." City of Spokane v. White, 102 Wn. App. 955, 963, 10 P.3d 1095 (2000) (citing RAP 10.3(c); Dykstra v. Skagit County, 97 Wn. App. 670, 676, 985 P.2d 424 (1999)).

Sections A, C, G, and I of Worthington's reply brief all consist of arguments not previously raised or are premised on facts not in the record. Kent's motion is granted with respect to these sections. Kent's motion is denied with respect to sections B, D, and H.

Kent additionally moved to strike all appendices to Worthington's reply brief. "An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4(c)." RAP 10.3(a)(8).

Appendix D does not appear in the record, nor did Worthington seek permission from the Supreme Court to include materials not contained in the record. We therefore grant Kent's motion to strike appendix D. Kent's motion is denied with respect to Appendices A and C.

Appendix B is a copy of an unpublished federal district court decision, which Worthington cited in support of his argument in section G. As we have already stricken section G, we have no basis to consider the material in Appendix B. Kent's motion with respect to this appendix is thus moot.

Worthington contends that we should waive RAP 10.3(c) and nevertheless consider sections A, C, G, I, and Appendices B and D. RAP 18.8(a) allows this court to waive any of the RAPs "in order to serve the ends of justice." In addition to Worthington's opening brief, this court has received briefing from Sarich, Tsang, Kent, and two amici curiae. Accordingly, it is not necessary to consider Worthington's new arguments "in order to serve the ends of justice" in this case. Worthington's motion is denied.

<sup>11</sup> As an initial matter, Kent claims that Sarich and Worthington lack standing to assert these arguments. However, in the trial court, Kent sought and was granted affirmative relief against all plaintiffs, including Sarich and Worthington. Because Sarich and Worthington are now subject to a permanent injunction, they both have standing on appeal. Orion Corp. v. State, 103 Wn.2d 441, 455, 693 P.2d 1369 (1985); see also Casey v. Chapman, 123 Wn. App. 670, 676, 98 P.3d 1246 (2004) ("Parties whose financial interests are affected by the outcome of a declaratory judgment action have standing."). Moreover, as soon as Kent sought affirmative relief against them in the trial court, their standing was established. Vovos v. Grant, 87 Wn.2d 697, 699, 555 P.2d 1343 (1976) ("A person has standing to challenge a court order or other court action if his protectable interest is adversely affected thereby.") The critical question is whether "if the relief requested is granted," will the litigants' protectable interests be affected. Herrold v. Case, 42 Wn.2d 912, 916, 259 P.2d 830 (1953); cf. Snohomish County Bd. of Equalization v. Dep't of Revenue, 80 Wn.2d 262, 264-64, 493 P.2d 1012 (1972) ("Without a decision of this court, [the

No. 70396-0-I (consol. with No. 69457-0-I)/11

"[q]ualifying patients may create and participate in collective gardens." RCW 69.51A.085(1). Kent, in response, contends that the plain language of the MUCA did not legalize collective gardens because collective gardens would only have been legalized in circumstances wherein the participating patients were duly registered, and the registry does not exist. The trial court properly ruled that Kent is correct.

We review issues of statutory interpretation *de novo*. Fiore v. PPG Indus., Inc., 169 Wn. App. 325, 333, 279 P.3d 972 (2012). "The goal of statutory interpretation is to discern and carry out legislative intent." Bennett v. Seattle Mental Health, 166 Wn. App. 477, 483, 269 P.3d 1079, review denied, 174 Wn.2d 1009 (2012). "The court must give effect to legislative intent determined 'within the context of the entire statute.'" Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) (quoting State v. Elgin, 118 Wn.2d 551, 556, 825 P.2d 314 (1992)). "If the statute's meaning is plain on its face, we give effect to that plain meaning as the expression of what was intended." TracFone Wireless, Inc. v. Dep't of Revenue, 170 Wn.2d 273, 281, 242 P.3d 810 (2010) (citing Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). "In approving or disapproving legislation, the governor acts in a legislative capacity and as part of the legislative branch of government." Hallin v. Trent, 94 Wn.2d 671, 677, 619 P.2d 357 (1980). Accordingly, when the governor

---

plaintiffs] were placed in a position of making a determination of a difficult question of constitutional law with the *possibility of facing both civil and criminal penalties* if they made the wrong choice. One of the purposes of declaratory judgment laws is to give relief from such situations." (emphasis added) (footnotes omitted)).

No. 70396-0-1 (consol. with No. 69457-0-1)/12

vetoed sections of a bill, the governor's veto message is considered a statement of legislative intent. Dep't of Ecology v. Theodoratus, 135 Wn.2d 582, 594, 957 P.2d 1241 (1998).

The plain language of ESSSB 5073, as enacted, does not legalize medical marijuana or collective gardens. Subsection (1) of RCW 69.51A.085 delineates the requirements for collective gardens. RCW 69.51A.085 further provides that "[a] person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter." RCW 69.51A.085(3).

The "protections of this chapter" to which RCW 69.51A.085(3) refers are found in RCW 69.51A.040 and 69.51A.043. RCW 69.51A.040 provides that "[t]he medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime" if the patient meets the six listed requirements. One of the listed requirements is that

*The qualifying patient or designated provider keeps a copy of his or her proof of registration with the registry established in \*section 901 of this act and the qualifying patient or designated provider's contact information posted prominently next to any cannabis plants, cannabis products, or useable cannabis located at his or her residence.*

RCW 69.51A.040(3) (emphasis added). Therefore, in order to obtain the protections provided by RCW 69.51A.040, the patient must be registered with the state.

RCW 69.51A.043, on the other hand, delineates the protections for patients who are not registered:

*(1) A qualifying patient or designated provider who is not registered with the registry established in \*section 901 of this act*

*may raise the affirmative defense set forth in subsection (2) of this section, if:*

(a) The qualifying patient or designated provider presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1);

(c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter;

*(2) A qualifying patient or designated provider who is not registered with the registry established in \*section 901 of this act, but who presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis, may assert an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she otherwise meets the requirements of RCW 69.51A.040. A qualifying patient or designated provider meeting the conditions of this subsection but possessing more cannabis than the limits set forth in RCW 69.51A.040(1) may, in the investigating peace officer's discretion, be taken into custody and booked into jail in connection with the investigation of the incident.*

(Emphasis added.) Section 901 of ESSSB 5073, referred to in both RCW 69.51A.040 and 69.51A.043, was vetoed. As a result of the governor's veto, the state registry does not exist. Thus, it is impossible for an individual to be registered with the registry. Accordingly, no individual is able to meet the requirements of RCW 69.51A.040.

Pursuant to RCW 69.51A.043, patients who are *not registered* may be entitled to an affirmative defense. As we hold today in State v. Reis, No. 69911-3-I, slip op. at 11 (Wash. Ct. App. Mar. 31, 2014), "by default, qualifying patients and designated providers are entitled only to an affirmative defense." As such, the only available "protection" to which collective garden participants are entitled pursuant to RCW 69.51A.085(3) is an affirmative

defense to prosecution.

Although such a reading may appear to render RCW 69.51A.040 meaningless, it does not, in fact, do so. RCW 69.51A.040 delineates the non-registry related conditions for possessing medical marijuana. These conditions are referenced in RCW 69.51A.043<sup>12</sup> and are essential components of the affirmative defense. Thus, the plain language of the statute does not legalize the use of medical marijuana.<sup>13</sup> Instead, it provides a defense to an assertion that state criminal laws were violated. As such, medical marijuana use, including collective gardens, was not legalized by the 2011 amendments to the MUCA.

B

All parties contend that the legislative history of ESSSB 5073 supports their reading of the Act. In order to analyze the legislative history of ESSSB 5073 as enacted, however, we must first determine which sources of legislative intent are proper for us to consider. For the reasons that follow, we hold that the

---

<sup>12</sup> "(b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1); (c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter." RCW 69.51A.043(1).

<sup>13</sup> In State v. Kurtz, 178 Wn.2d 466, 476, 309 P.3d 472 (2013), the Supreme Court briefly stated in dicta, "[I]n 2011 the legislature amended the Act making qualifying marijuana use a legal use, not simply an affirmative defense." As authority for this assertion, the court cited RCW 69.51A.005. RCW 69.51A.005, a preexisting provision entitled "Purpose and Intent," was amended by the legislature in ESSSB 5073, section 102. Section 102 was included in the bill as passed by both houses of the legislature and accurately expresses the intent of the original bill. While the governor did not veto section 102, the governor's veto of numerous other sections of the bill significantly changed the bill's purpose. Additionally, the governor did veto section 101, a new statement of legislative purpose quoted, supra, at 3. Moreover, the parties in Kurtz did not address this question in their briefing to the Supreme Court and the court's footnoted statement was not important to its holding. Thus, we do not view this statement in Kurtz as controlling the outcome of this litigation. In our decision in Reis, No. 69911-3-1, we further explain our view in this regard.

No. 70396-0-1 (consol. with No. 69457-0-1)/15

governor's veto message is the sole source of relevant legislative history on the 2011 amendments to the MUCA, as enacted.

Article III, section 12 of the Washington Constitution allows for the governor to veto "one or more sections . . . while approving other portions of the bill." Prior to 1984, the long-standing rule governing the governor's sectional veto power was that the governor could only use the executive veto power in a "negative" manner, and not in an "affirmative" manner. Wash. Fed'n of State Employees, AFL-CIO, Council 28 AFSCME v. State, 101 Wn.2d 536, 545, 682 P.2d 869 (1984). Phrased another way,

"[T]he Governor may use the veto power to prevent some act or part of an act of the legislature from becoming law. Likewise, the Governor may not use the veto power to reach a new or different result from what the legislature intended. In other words, the veto power must be exercised in a destructive and not a creative manner."

State Employees, 101 Wn.2d at 545 (alteration in original) (quoting Wash. Ass'n of Apartment Ass'ns v. Evans, 88 Wn.2d 563, 565-66, 564 P.2d 788 (1977)).

In State Employees, the Supreme Court disavowed that rule, holding that, "[i]ts use by the judiciary is an intrusion into the legislative branch, contrary to the separation of powers doctrine, and substitutes judicial judgment for the judgment of the legislative branch." 101 Wn.2d at 546 (citations omitted). From then on, "[t]he Governor [was] free to veto 'one or more sections or appropriation items', without judicial review." State Employees, 101 Wn.2d at 547. Thus, the current analytical approach is that the governor is free to veto sections of a bill even

when doing so changes the meaning of the bill from that which the legislature originally intended.

Significantly, the Supreme Court characterized the veto process as follows:

"In approving or disapproving legislation, the Governor acts in a legislative capacity and as part of the legislative branch of government." Hallin v. Trent, 94 Wn.2d 671, 677, 619 P.2d 357 (1980). In effect, the Governor holds one-third of the votes. The veto is upheld if the Legislature fails to override it. Fain v. Chapman, 94 Wn.2d 684, 688, 619 P.2d 353 (1980). To override the Governor's veto, the Senate and House must agree by a two-thirds vote. Const. art. 3, § 12 (amend. 62).

State Employees, 101 Wn.2d at 544. The legislature's power to override, the Supreme Court held, serves as an adequate "check" on the governor's veto power. State Employees, 101 Wn.2d at 547. Thus, if the legislature disapproves of the new meaning or effect of the bill resulting from the governor's veto, it can vote to override the veto and restore the bill to its original meaning or effect.

Here, Governor Gregoire vetoed 36 of the 58 sections of ESSSB 5073. This veto significantly altered the meaning and effect of the sections that remained for enactment. When returning the bill to the Senate, the governor provided a formal veto message expressing her opinion as to the meaning and effect of the bill after her veto. See Wash. State Grange v. Locke, 153 Wn.2d 475, 490, 105 P.3d 9 (2005) ("The expression of [an opinion as to the statute's interpretation] is within the governor's prerogative.") Had the legislature objected to the governor's veto, it could have overturned it by a two-thirds vote. CONST.

No. 70396-0-I (consol. with No. 69457-0-I)/17

art. III, § 12. A legislative override would also have nullified the governor's veto message. By not overriding the veto, the legislature failed to provide an interpretation of the MUCA contrary to that articulated by Governor Gregoire. Cf. Rozner v. City of Bellevue, 116 Wn.2d 342, 349, 804 P.2d 24 (1991) (legislature's actions in not overriding veto, but later amending parts of the statute, functioned as legislative approval of governor's veto message with respect to unamended portions of the statute).

All parties urge us to consider the intent of the legislature in passing ESSSB 5073. However, ESSSB 5073, as passed by both houses of the legislature, was not the bill that was enacted. Rather, the bill that was enacted was that which existed after the governor's veto. Thus, the governor's veto message is the only legislative history that speaks directly to the law as it was enacted. It is the paramount source for us to refer to in order to discern the legislative intent behind the enacted law.

The governor's intent in vetoing a significant portion of ESSSB 5073 was that there should not be a state registry, and that medical marijuana should not be legalized. In her veto message, Governor Gregoire stated:

*I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. Such exemption from criminal penalties should be conditioned on compliance with local government location and health and safety specifications.*

LAWS OF 2011, ch. 181, governor's veto message at 1376 (emphasis added). By stating that she was open to future legislation that would exempt patients from

criminal penalties, the governor indicated that she did not read *this* bill as creating any such exemptions.

Further, the governor concluded her veto message by stating:

I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

LAWS OF 2011, ch. 181, governor's veto message at 1376. This statement indicates that the governor realized that her veto would preclude the legislature's attempt to legalize certain medical marijuana uses. The governor affirmatively stated her understanding that only affirmative defenses to criminal prosecutions survived her veto.

These two statements, read in conjunction, demonstrate that the governor did not intend for ESSSB 5073 to legalize medical marijuana. The governor did not read the bill as enacted as exempting medical marijuana users from prosecution. Significantly, although the MUCA provides for an affirmative defense, "[a]n affirmative defense does not per se legalize an activity." State v. Fry, 168 Wn.2d 1, 10, 228 P.3d 1 (2010). Thus, the plain language of the statute, which does not read so as to legalize medical marijuana, is consonant with the governor's expressed intent in signing the bill, as amended by her vetoes.

The governor's statement regarding collective gardens does not suggest otherwise. In her veto message, Governor Gregoire stated, "Qualifying patients or their designated providers may grow cannabis for the patient's use or

participate in a collective garden without fear of state law criminal prosecutions.”<sup>14</sup> LAWS OF 2011, ch. 181, governor's veto message at 1374-75. Two paragraphs earlier, Governor Gregoire stated, “In 1998, Washington voters made the compassionate choice to remove the fear of state criminal prosecution for patients who use medical marijuana for debilitating or terminal conditions.” LAWS OF 2011, ch. 181, governor's veto message at 1374. The governor's use of the phrase “state criminal prosecution[s]” in both sentences indicates that she intended for the bill to extend the *existing* legal protections to collective gardens. The 1998 ballot initiative (I-692) provided qualifying patients with an affirmative defense to drug charges. Former RCW 69.51A.040 (1999). I-692 did not legalize medical marijuana, but the governor nevertheless described it as “remov[ing] the fear of state criminal prosecution.” Her use of the same phrase when describing ESSSB 5073 must be read in this light. The governor plainly did not intend for ESSSB 5073, after her vetoes, to legalize medical marijuana. The plain language of the MUCA is consonant with the governor's expressed intent.

III

A

The Challengers nevertheless contend that the plain language of the MUCA does not allow Kent to regulate collective gardens. This is so, they assert, because RCW 69.51A.085, which deals with collective gardens, is a stand-alone statute that does not grant any regulatory authority to municipalities.

---

<sup>14</sup> Kent characterizes this statement as errant. As stated above, the governor was not saying that she intended to legalize marijuana. As the bill did add an affirmative defense relating to collective gardens, the governor's statement was not errant.

No. 70396-0-I (consol. with No. 69457-0-I)/20

We disagree.

Although RCW 69.51A.085 does not itself grant powers to municipalities, this statutory provision cannot be read in isolation. "We construe an act as a whole, giving effect to all the language used. Related statutory provisions are interpreted in relation to each other and all provisions harmonized." C.J.C. v. Corp. of Catholic Bishop of Yakima, 138 Wn.2d 699, 708, 985 P.2d 262 (1999) (citing State v. S.P., 110 Wn.2d 886, 890, 756 P.2d 1315 (1988)). RCW 69.51A.085 was passed as part of a comprehensive bill amending the MUCA. This provision must therefore be read in conjunction with the other enacted provisions of ESSSB 5073.

Importantly, ESSSB 5073, as enacted, includes a section specifically granting regulatory powers to municipalities. RCW 69.51A.140 states:

*Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction.*

(Emphasis added.) The plain language of this section allows municipalities to regulate the production, processing, and dispensing of medical marijuana.

Only "licensed dispensers" are listed as users that a city may not exclude.

This necessarily implies that a city retains its traditional authority to regulate

all other uses of medical marijuana.<sup>15</sup> Thus, the MUCA expressly authorizes cities to enact zoning requirements to regulate or exclude collective gardens.

B

The Challengers contend that the legislative history of ESSSB 5073 does not support a reading of RCW 69.51A.140 that would allow a city to regulate or exclude collective gardens. To the contrary, it is the Challengers' interpretation of the statute that is not supported by the legislative history.

In enacting the 2011 amendments to the MUCA, the governor provided some insight into a locality's ability to regulate medical marijuana. In her veto message, the governor stated:

Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for such licensed dispensers. It is with this understanding that I approve Section 1102.

LAWS OF 2011, ch. 181, governor's veto message at 1375. This statement indicates that the governor intended section 1102 to have meaning even though one provision therein was meaningless. Accordingly, the governor's understanding of section 1102 of the bill was that municipalities would be able to regulate medical marijuana production, processing or dispensing within their territorial confines.

---

<sup>15</sup> A city's traditional authority is defined by the state constitution as the power to "make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." CONST. art. XI, § 11.

Further, the governor stated:

I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. *Such exemption from state criminal penalties should be conditioned on compliance with local government location and health and safety specifications.*

LAWS OF 2011, ch. 181, governor's veto message at 1376 (emphasis added).

"[L]ocation and health and safety specifications" are precisely what the Washington Constitution anticipates municipalities will address by enacting ordinances. "Municipalities derive their authority to enact ordinances in furtherance of the *public safety, morals, health and welfare* from article 11, section 11 of our state constitution." City of Tacoma v. Vance, 6 Wn. App. 785, 789, 496 P.2d 534 (1972) (emphasis added); accord Hass v. City of Kirkland, 78 Wn.2d 929, 932, 481 P.2d 9 (1971). The governor's message thus indicated her understanding that, in the future, if a bill succeeded in legalizing medical marijuana, municipalities should continue to retain their ordinary regulatory powers, such as zoning.

Nonetheless, the Challengers contend that the phrase "production, processing, or dispensing of cannabis or cannabis products" in RCW 69.51A.140 refers only to commercial production, processing, or dispensing. The Challengers' interpretation would render all of RCW 69.51A.140 a nullity. Commercial producers, processors, and dispensers are those producers, processors, and dispensers that would have been licensed by the Department of Health. ESSSB 5073, § 201(12), (13), (14). As a result of the governor's veto of

all sections creating a licensing system, commercial producers, processors, and dispensers do not exist. If "producers, processors, and dispensers" referred only to those commercial licensed entities, all of section 1102 would be meaningless. However, the governor did not veto section 1102 along with the other sections creating licensed producers, processors, and dispensers. Rather, the governor stated in her veto message that only those "provisions in Section 1102 that local governments' zoning requirements cannot 'preclude the possibility of siting licensed dispensers within the jurisdiction' are without meaning." LAWS OF 2011, ch. 181, governor's veto message at 1375. The governor's veto did not leave municipalities without the ability to regulate. In this regard, the Challengers' interpretation of the amended MUCA is contrary to the legislative history of the bill.

The governor clearly understood the bill to allow cities to use their zoning power to regulate medical marijuana use within their city limits. The governor's understanding is consistent with the plain language of the MUCA.

#### IV

The Challengers next contend that the Ordinance is invalid because, they assert, the MUCA preempts local regulation of medical marijuana and because the Ordinance conflicts with state law.<sup>16</sup> We disagree.

---

<sup>16</sup> The Challengers also contend that RCW 69.51A.025 precludes cities from banning collective gardens. This provision states, "Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040." RCW 69.51A.025. Contrary to the Challengers' assertion, a city zoning ordinance is not a "rule adopted to implement" the MUCA. The cited provision refers to anticipated Department of Health regulations which would

Generally, municipalities possess constitutional authority to enact zoning ordinances as an exercise of their police power. CONST. art. XI, § 11. However, a municipality may not enact a zoning ordinance which is either preempted by or in conflict with state law. HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning & Land Servs., 148 Wn.2d 451, 477, 61 P.3d 1141 (2003).

State law preempts a local ordinance when "the legislature has expressed its intent to preempt the field or that intent is manifest from necessary implication." HJS Dev., 148 Wn.2d at 477 (citing Rabon v. City of Seattle, 135 Wn.2d 278, 289, 957 P.2d 621 (1998); Brown v. City of Yakima, 116 Wn.2d 556, 560, 807 P.2d 353 (1991)). Otherwise, municipalities will have concurrent jurisdiction over the subject matter. HJS Dev., 148 Wn.2d at 477. The MUCA does not express the intent to preempt the field of medical marijuana regulation. To the contrary, as previously discussed in section III, the MUCA explicitly recognizes a role for municipalities in medical marijuana regulation. As the MUCA explicitly contemplates its creation, the Ordinance is not directly preempted by state law.

A local ordinance that is not directly preempted may nevertheless be invalid if it conflicts with state law. Pursuant to article XI, section 11 of the Washington Constitution, "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." A city ordinance is unconstitutional under

---

have been adopted as rules contained within the Washington Administrative Code, had the governor not vetoed the regulatory scheme.

article XI, section 11 if "(1) the ordinance conflicts with some general law; (2) the ordinance is not a reasonable exercise of the city's police power; or (3) the subject matter of the ordinance is not local." Edmonds Shopping Ctr. Assocs. v. City of Edmonds, 117 Wn. App. 344, 351, 71 P.3d 233 (2003). Whether a local ordinance is valid under the state constitution is a pure question of law, which this court reviews de novo. Edmonds Shopping Ctr., 117 Wn. App. at 351.

Here, the Challengers contend that the Ordinance is unconstitutional because it conflicts with the MUCA.<sup>17</sup> Ordinances are presumed to be constitutional. HJS Dev., 148 Wn.2d at 477. As the party challenging the Ordinance, the burden is on the Challengers to prove beyond a reasonable doubt that it is unconstitutional. Edmonds Shopping Ctr., 117 Wn. App. at 355. "In determining whether an ordinance is in "conflict" with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." City of Tacoma v. Luvene, 118 Wn.2d 826, 834-35, 827 P.2d 1374 (1992) (internal quotation marks omitted) (quoting City of Bellingham v. Schampera, 57 Wn.2d 106, 111, 356 P.2d 292 (1960)). "The conflict must be direct and irreconcilable with the statute, and the ordinance must yield to the statute if the two cannot be harmonized." Luvene, 118 Wn.2d at 835.

"The scope of [a municipality's] police power is broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people." State v. City of Seattle, 94 Wn.2d 162, 165, 615 P.2d 461 (1980). Generally speaking, a municipality's police powers are

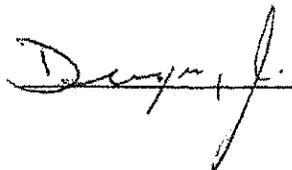
---

<sup>17</sup> The Challengers do not contend that the Ordinance is unreasonable or not local.

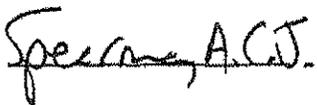
No. 70396-0-1 (consol. with No. 69457-0-1)/26

coextensive with those possessed by the State. City of Seattle, 94 Wn.2d at 165. Without question, a municipality's plenary powers include the power to "enact ordinances prohibiting and punishing the same acts which constitute an offense under state laws." Schampera, 57 Wn.2d at 109; accord State v. Kirwin, 165 Wn.2d 818, 826-27, 203 P.3d 1044 (2009). As the plain language of the statute and the governor's veto message indicate, collective gardens are not legal activity. The Ordinance, by prohibiting collective gardens, prohibits an activity that constitutes an offense under state law. As it prohibits an activity that is also prohibited under state law, the Ordinance does not conflict with the MUCA.<sup>18</sup> The trial court did not err by so holding.<sup>19</sup>

Affirmed.



We concur:



---

<sup>18</sup> To decide this case, we need not determine whether the Ordinance would be valid had the MUCA actually legalized medical marijuana. Therefore, we decline to further address this subject.

<sup>19</sup> The Challengers additionally assert that the trial court erred by issuing a permanent injunction against them. We review the trial court's decision to grant a permanent injunction for an abuse of discretion. Wash. Fed'n of State Emps. v. State, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983). "A party seeking an injunction must show (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) actual and substantial injury as a result." Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 445-46, 300 P.3d 376 (2013). In their pleadings, each plaintiff expressed an intention to violate Kent's ordinance. Thus, the trial court did not abuse its discretion by granting the injunction.

**CITY OF PROSSER, WASHINGTON  
NOTICE OF PUBLIC HEARING**

**APRIL 22, 2014 at 7:00 p.m.  
City Hall Council Chambers  
601 7<sup>th</sup> Street  
Prosser, Washington 99350**

**Extension of the Moratorium on Medical Cannabis Dispensaries  
and Collective Gardens through October 17, 2014**

NOTICE IS HEREBY GIVEN that the Prosser City Council will conduct a public hearing regarding the potential extension of the moratorium established by Ordinance Number 13-2857 adopted by the City Council on November 12, 2013, which ordinance imposed a moratorium effective until May 9, 2014, on the filing and acceptance of development applications for, the installation of, and issuance of permits and approvals for, medical cannabis (marijuana) gardens, dispensaries, and facilities related to such uses, within the City of Prosser; the ordinance also directed the development of comprehensive zoning and business regulations pertaining to such gardens and dispensaries and related facilities; and provided that the moratorium would be in effect through May 9, 2014. The public hearing on April 22, 2014, will determine whether or not to adopt an ordinance to extend the moratorium established by Ordinance Number 13-2857 through October 17, 2014. The ordinance extending the moratorium will also adopt a work plan to establish permanent zoning regulations for medical marijuana dispensaries and collective gardens, and adopt findings in support of such extension and work plan.

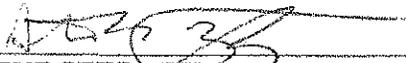
Said public hearing will be held on Tuesday, April 22, 2014, at 7:00 p.m., or as soon thereafter as may be held, in the Council Chambers at the Prosser City Hall at 601 7<sup>th</sup> Street, Prosser, Washington, for the City Council to receive public testimony and evidence regarding the extension of the moratorium, and to adopt findings of fact supporting the extension of the moratorium, and to adopt a work plan to establish permanent regulations for medical marijuana dispensaries and collective gardens, all as required by state law.

Anyone interested may appear and be heard, or provide written comments regarding the requested variance.

The City Hall Council Chambers is wheelchair accessible. American with Disabilities Act (ADA) accommodations are available upon request to the City Clerk at least 2 days in advance by calling 509-786-2332.

All available information, including but not limited to, the existing moratorium ordinance, and related documents for the ordinance may be viewed at the City Clerk's Office, located at Prosser City Hall, 601 7th St, Prosser, WA 99350, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding official holidays and lunch hours between 11:00 a.m. and 12:00 p.m., or may be viewed at [www.cityofprosser.com](http://www.cityofprosser.com). If you have any difficulty locating any documents regarding the moratorium, please call the Planning Department at 509-786-8212 for assistance.

Dated: April 4, 2014

  
\_\_\_\_\_  
STEVE ZETZ, CITY PLANNER  
Publication date: April 9, 2014

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<u>Agenda Title:</u> Consideration of Ordinance 14-_____ Adding a Definition for "Criminal Activity" to the City's Rental Housing License Ordinance Codified as Prosser Municipal Code Chapter 15.30.		<u>Meeting Date:</u> May 6, 2014 Special Meeting	
<u>Department:</u> Building	<u>Director:</u> Barry Morrow	<u>Contact Person:</u> Barry Morrow	<u>Phone Number:</u> (509) 786-8210
<u>Cost of Proposal:</u> NA		<u>Account Number:</u>	
<u>Amount Budgeted:</u> NA		<u>Name and Fund#</u>	
<u>Reviewed by Finance Department:</u> <i>Regina Mawias</i>			
<u>Attachments to Agenda Packet Item:</u>  1. Proposed Ordinance 14-_____			
<u>Summary Statement:</u>  The attached ordinance updates the City's Rental Housing Ordinance to add a definition for "Criminal Activity" consistent with RCW 35.106.010(2).			
<u>Consistent with or Comparison to:</u>  The proposed ordinance is consistent with the requirements of Chapter 35.106 RCW.			
<u>Recommended City Council Action/Suggested Motion:</u>  Recommend approval of Ordinance 14-_____ Adding a Definition for "Criminal Activity" to the City's Rental Housing License Ordinance Codified as Prosser Municipal Code Chapter 15.30.			
<u>Reviewed by Department Director:</u> <i>BAM</i>	<u>Reviewed by City Attorney:</u> 	<u>Approved by Mayor:</u> <i>Paul Wender</i>	
Date: <i>5/01/14</i>	Date: <i>4/30/14</i>	Date: <i>5-1-14</i>	
<u>Today's Date:</u> April 30, 2014	<u>Revision Number/Date:</u>	<u>File Name and Path:</u>	

**CITY OF PROSSER, WASHINGTON**  
**ORDINANCE NO. 14-\_\_\_\_\_**

**AN ORDINANCE ADDING A DEFINITION FOR "CRIMINAL ACTIVITY" TO THE CITY'S RENTAL HOUSING LICENSE ORDINANCE CODIFIED AS PROSSER MUNICIPAL CODE CHAPTER 15.30. THE ORDINANCE AMENDS PROSSER MUNICIPAL CODE SECTION 15.30.010 AND SECTION 2 OF ORDINANCE NUMBER 2692. THE ORDINANCE ALSO SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.**

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

**Section 1.** Section 2 of Ordinance Number 2692 and Prosser Municipal Code Section 15.30.010 are hereby amended to read as follows:

**15.30.010 DEFINITIONS.**

A) "Person" means any individual, firm, partnership, limited liability company, corporation, association, receiver, assignee, trustee in bankruptcy, trust, estate, joint venture, club, joint stock company, business trust, society, or any group of individuals acting as a unit.

B) "Residential dwelling unit" means any structure or part of a structure which is used as a home, residence or sleeping place by one, two, or more persons maintaining a common household, including but not limited to single-family residences and units of multiplexes, apartment buildings and mobile homes.

C) "Criminal activity" means a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants, owner, guests, occupants, or property manager.

**Section 2.** **SEVERABILITY.** The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this ordinance shall not as a result of said section, sentence, clause, or phrase be held unconstitutional or invalid.

**Section 3.** This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**PASSED** by the City Council and **APPROVED** by the Mayor, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**MAYOR PAUL WARDEN**

ATTEST:

\_\_\_\_\_  
**CITY CLERK, RACHEL SHAW**

Approved as to form:

  
\_\_\_\_\_  
**CITY ATTORNEY, HOWARD SAXTON**

Date of Publication: \_\_\_\_\_

**SUMMARY OF ORDINANCE NO. 14-\_\_\_\_\_**

of the City of Prosser, Washington

---

On the \_\_\_\_ day of \_\_\_\_\_, 2014, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE ADDING A DEFINITION FOR "CRIMINAL ACTIVITY" TO THE CITY'S RENTAL HOUSING LICENSE ORDINANCE CODIFIED AS PROSSER MUNICIPAL CODE CHAPTER 15.30. THE ORDINANCE AMENDS PROSSER MUNICIPAL CODE SECTION 15.30.010 AND SECTION 2 OF ORDINANCE NUMBER 2692. THE ORDINANCE ALSO SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

---

CITY CLERK, RACHEL SHAW

**CITY OF PROSSER, WASHINGTON**

**AGENDA BILL**

<b>Agenda Title:</b> Ordinance 14-_____ Repealing Ordinance 1485, amending Ordinance 1471 and 1462 regarding annexation of property commonly known as the Sprayfield.		<b>Meeting Date:</b> May 6, 2014 Special Meeting	
<b>Department:</b> Planning, Public Works, Administration	<b>Director:</b> Steve Zetz	<b>Contact Person:</b> Howard Saxton	<b>Phone Number:</b> (509) 786-2332
<b>Cost of Proposal:</b> Staff plus attorney time		<b>Account Number:</b>	
<b>Amount Budgeted:</b> \$0		<b>Name and Fund#</b>	
<b>Reviewed by Finance Department:</b> <i>Regina Maurer</i>			
<b>Attachments to Agenda Packet Item:</b>  <ol style="list-style-type: none"> <li>1. Ordinance 14-_____</li> <li>2. Ordinance 1298</li> <li>3. Ordinance 1471</li> <li>4. Ordinance 1485</li> <li>5. Maps</li> </ol>			
<b>Summary Statement:</b>  <p>The Office of Financial Management (OFM) contacted the City of Prosser advising that the annexation of the Sprayfield had several errors. While reviewing the annexations in detail, it was apparent that several parcels located in the Sprayfield have been annexed more than once with differing legal descriptions (Ordinance 1298 annexed what are called parcels B and J in the later ordinance and has the correct legal descriptions; for some reason those same parcels were annexed again by Ordinance 1471 with the incorrect legal descriptions; Ordinance 1485 then corrected the legal description for Parcel J but never amended Ordinance 1298 that included both parcels B and J).</p> <p>The attached Ordinance 14- _____ corrects the previous errors and corrects the legal of what portion of Bettinson Road was annexed by Ordinance Number 1471 (Parcel K).</p> <p>City maps will also be updated to reflect that portion of Bettinson Road which is located within city limits (as shown on the attached map).</p>			
<b>Consistent with or Comparison to:</b>  EXISTING ADOPTED OR PREVIOUS PLANS, POLICIES OR ACTIONS TAKEN BY THE COUNCIL			

Recommended City Council Action/Suggested Motion:

Recommend approval of Ordinance 14-\_\_\_\_\_ Repealing Ordinance 1485, amending Ordinance 1471 and 1462 regarding annexation of property commonly known as the Sprayfield.

<p><u>Reviewed by Department Director:</u></p>  <p>Date:</p>	<p><u>Reviewed by City Attorney:</u></p>  <p>Date: 4/28/14</p>	<p><u>Approved by Mayor:</u></p>  <p>Date: 5-1-14</p>
<p><u>Today's Date:</u> April 24, 2014</p>	<p><u>Revision Number/Date:</u></p>	<p><u>File Name and Path:</u></p>

**CITY OF PROSSER, WASHINGTON  
ORDINANCE NO. 14-\_\_\_\_\_**

**AN ORDINANCE CORRECTING ERRORS IN THE LEGAL DESCRIPTIONS OF THE ANNEXATION ORDINANCES ANNEXING THE CITY'S PROPERTY COMMONLY KNOWN AS THE SPRAYFIELD BY: AMENDING SECTION 3 OF ORDINANCE 1298, AND SECTION 1 OF ORDINANCE NUMBER 1471 AND REPEALING ORDINANCE 1485. THE ORDINANCE ALSO SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.**

**WHEREAS**, Ordinance 1298 passed by Council on December 11, 1984, annexed the following described real property:

**PARCEL J:**

The Southwest Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M., EXCEPT the North 15 acres thereof, AND EXCEPT canal right of way, AND EXCEPT portions conveyed to Kennewick Irrigation District, described as follows:

Beginning at the Southwest corner of said Southwest Quarter of Southwest Quarter; thence East 100 feet; thence Northwesterly 110 feet, more or less, to a point on the West line of said Southwest Quarter of Southwest Quarter distance 45 feet North of point of beginning; thence South 45 feet to point of beginning; AND EXCEPT

Beginning at the Southeast corner of said Southwest Quarter of Southwest Quarter; thence West 440 feet; thence Northeasterly to a point on the East line of said Southwest Quarter of Southwest Quarter distant 150 feet North of Southeast corner thereof; thence South 150 feet to point of beginning, AND EXCEPT that portion of the South 282.00 feet of the Southwest Quarter of said Section 36, lying North of the Kennewick Irrigation District Canal right of way and West of Grande Road right of way, AND EXCEPT Old Inland Empire Highway AND EXCEPT said Grande Road, AND EXCEPT the South 12 feet for roadway.

TOGETHER WITH the West half of the Southeast Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M., EXCEPT portion South of Kennewick Power Canal.

**AND WHEREAS**, Ordinance 1471 amended and replaced Ordinance 1462 and also annexed the property described in 1471 as Parcels "B" and "J;" and

**WHEREAS**, Ordinance 1485 amended Ordinance Number 1471 to correct the legal description of Parcel J described above but did not amend the entire section of that Ordinance; and

**WHEREAS**, the above ordinances must be corrected in order for the State of Washington to properly determine which parcels are part of the City and when they became part of the City;

**NOW THEREFORE**, THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1.** Ordinance Number 1471 repealed Ordinance Number 1462.

**Section 2.** Section 1 of Ordinance Number 1471 is hereby amended to read as follows:

The aforesaid findings, recitals and determinations are hereby found to be true, and correct in all respects; full compliance has been made with all requirements of the law in respect to annexation as per RCW 35A.14.300.

It is further determined that the below described property, owned by the City of Prosser, is being annexed into the City of Prosser for municipal purposes, to—wit, continued spray irrigation of wastewater from the sewerage treatment plant of the City of Prosser, and such annexation to be effective on and after the approval, passage and publication of this Ordinance; and on and after said date, said property shall be and constitute a part of the City of Prosser and shall be subject to all its laws and ordinances then and thereafter in force and effect; said property being situated in the County of Benton, State of Washington, and particularly described as follows:

PARCEL A:

That portion of the South half of the Northwest quarter of the southwest quarter of Section 36, Township 9 North, Range 24 East, W.M., lying Easterly and Southerly of the Following Described line:

Beginning at the Highway Engineer's Station 703+00 on the HR Line Survey of State Highway SR-82; thence Easterly to a point 40 feet Easterly, when measured at right angles, from said HR Line at Station 703+00; thence Northeasterly to a point 75 feet easterly from and opposite 708+35 on said HR Line; thence Northeasterly to a point 50 feet Southeasterly from and opposite Station 42+00 on the HC Line of said Highway; thence Northeasterly Parallel with said HC Line to a point opposite Station 46+25.16; thence Northeasterly to a point 30 feet Southeasterly from and opposite station 48+00 on said HC Line; thence Northeasterly and Easterly, parallel with said HC Line, 1500.0 feet to the terminus of said line.

AND

The North 15 acres of the Southwest quarter of the Southwest quarter of said Section 36;

EXCEPT the West 290.0 feet of the South 175.0 feet of the North 235.0 feet of the North 15 acres thereof and EXCEPT that portion lying north of the South right of way line of Bettinson Road.

PARCEL C:

Tracts 25, 26 and 27 Inclusive, State Addition to Prosser No. 1, according to the plat thereof recorded in volume 2 of Plats, page 56, records of Benton County, Washington, EXCEPT Portion of Tract 25 lying North of the Northerly right of way of SR 82 and EXCEPT portion deeded for highway purposes.

PARCEL D:

Tracts 28, 29 and 53, State Addition to Prosser No. 1, according to the plat thereof recorded in Volume 2 of Plats, page 56, records of Benton County, Washington, EXCEPT that portion of Tract 53 lying North of the Northerly right of way of SR 82, and EXCEPT Kennewick Irrigation District Canal right of way AND EXCEPT portions deeded for Highway and EXCEPT Portion deeded to United States of America under Auditor's file No. 86-3727.

PARCEL E:

Tracts 36, 37, and that portion of 38 lying south of I-82, State Addition to Prosser No. 1; according to the plat thereof recorded in Volume 2 of plats, page 56, records of Benton County, Washington EXCEPT Kennewick Irrigation District canal right of way, and EXCEPT Portion of Tract 39 lying North of the Northerly right of way of SR 82 and EXCEPT Portion deeded for Highway purposes.

PARCEL H:

That portion of Tract 54, lying south of I-82, State Addition to Prosser No. 1, according to the plat thereof recorded in Volume 2 of plats, page 56, records of Benton County, Washington, EXCEPT Kennewick Irrigation District Canal right of way and EXCEPT Portion deeded for highway purposes.

ALL OF THE FOREGOING PARCELS, TOGETHER WITH ALL APPURTENANCES, HEREDITAMENTS AND RIGHTS THEREUNTO BELONGING AND BENEFITTING; TOGETHER WITH ALL ROADWAYS, EASEMENTS, RIGHTS OF WAY.

PARCEL I:

TOGETHER WITH roads and rights of way shown in State Addition to Prosser No. 1, lying south of the southerly right of way of SR 82, and North of Kennewick Irrigation District Canal right of way, according to the plat thereof recorded in Volume 2 of Plats, page 56, records of Benton County, Washington.

PARCEL K:

That portion of Bettinson Road lying in the Northeast Quarter of the Southwest Quarter, and lying in the Southeast Quarter, all in Section 36, Township 9 North, Range 24 East W.M.

**Section 3.** Ordinance Number 1485 is hereby repealed.

**Section 4.** Section 3 of Ordinance Number 1298 is amended to read as follows:

The Southwest Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M., EXCEPT the North 15 acres thereof, AND EXCEPT canal right of way, AND EXCEPT portions conveyed to Kennewick Irrigation District, described as follows:

Beginning at the Southwest corner of said Southwest Quarter of Southwest Quarter; thence East 100 feet; thence Northwesterly 110 feet, more or less, to a point on the West line of said Southwest Quarter of Southwest Quarter distance 45 feet North of point of beginning; thence South 45 feet to point of beginning; AND EXCEPT

Beginning at the Southeast corner of said Southwest Quarter of Southwest Quarter; thence West 440 feet; thence Northeasterly to a point on the East line of said Southwest Quarter of Southwest Quarter distant 150 feet North of Southeast corner thereof; thence South 150 feet to point of beginning; AND EXCEPT Old Inland Empire Highway AND EXCEPT said Grande Road, AND EXCEPT the South 12 feet for roadway.

TOGETHER WITH the West half of the Southeast Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M., EXCEPT portion South of Kennewick Power Canal.

**Section 5. SEVERABILITY.** The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this ordinance shall not as a result of said section, sentence, clause, or phrase be held unconstitutional or invalid.

**Section 6.** This ordinance shall take effect five (5) days after passage and publication of

an approved summary thereof consisting of the title.

**PASSED** by the City Council and **APPROVED** by the Mayor, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**MAYOR PAUL WARDEN**

ATTEST:

\_\_\_\_\_  
**CITY CLERK, RACHEL SHAW**

Approved as to form:

\_\_\_\_\_  
**CITY ATTORNEY, HOWARD SAXTON**

Date of Publication: \_\_\_\_\_

SUMMARY OF ORDINANCE NO. 14-\_\_\_\_\_

of the City of Prosser, Washington

---

On the \_\_\_\_ day of \_\_\_\_\_, 2014, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE CORRECTING ERRORS IN THE LEGAL DESCRIPTIONS OF THE ANNEXATION ORDINANCES ANNEXING THE CITY'S PROPERTY COMMONLY KNOWN AS THE SPRAYFIELD BY: AMENDING SECTION 3 OF ORDINANCE 1298, AND SECTION 1 OF ORDINANCE NUMBER 1471 AND REPEALING ORDINANCE 1485. THE ORDINANCE ALSO SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

---

CITY CLERK, RACHEL SHAW

CITY OF PROSSER, WASHINGTON

ORDINANCE NO. 1298

AN ORDINANCE ANNEXING AN AREA CONTIGUOUS TO THE  
CITY OF PROSSER ON PETITION

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

Section 1. Prior to October 16, 1984, James L. Grande and Nancy C. Grande, husband and wife, owners of 100% in value, according to the assessed valuation for general taxation for the property hereinafter described for annexation, notified the City Council of the City of Prosser, Washington, in writing of their intention to commence annexation proceedings. Thereafter, the City Council met with such initiating parties within 60 days after filing of the request. The City Council determined that the City would accept the proposed annexation, and that the City would not require the assumption of all or any portion of existing City indebtedness by the area to be annexed.

Section 2. That on October 16, 1984, there was received by the City Council of the City of Prosser, Washington, and filed with the City Clerk of said City, a Petition addressed to the Mayor and City Council of said City, praying that the boundaries of said City be altered by including therein a certain area lying contiguous to the City of Prosser, the legal description of which is set forth below, said Petition having been signed by the owners of 100% in value, according to the assessed valuation for taxation of the property for which annexation was petitioned. On the 13th day of November, 1984, in regular meeting, the City Council determined that the Petition for Annexation met the requirements specified in Chapter 35A.14 of Revised Code of Washington, and fixed December 11, 1984, at 8:00 p.m., as the date for public hearing thereon. Notice of said public hearing having been heretofore

published in one or more issues of the Prosser Record-Bulletin, a newspaper of general circulation in the City, and notice also having been posted in three public places within the territory proposed for annexation, specifying the time and place of hearing and inviting interested persons to appear and voice approval or disapproval of the annexation.

Section 3. That the territory proposed by said Petition to be annexed to the City of Prosser is situated in the County of Benton, State of Washington, is contiguous, proximate and adjacent to the present corporate limits of said City, and is particularly bounded and described as follows, to-wit:

The Southwest Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M., EXCEPT the North 15 acres thereof, AND EXCEPT canal right of way, AND EXCEPT portions conveyed to Kennewick Irrigation District, described as follows:

Beginning at the Southwest corner of said Southwest Quarter of Southwest Quarter; thence East 100 feet; thence Northwesterly 110 feet, more or less, to a point on the West line of said Southwest Quarter of Southwest Quarter distance 45 feet North of point of beginning; thence South 45 feet to point of beginning; AND EXCEPT

Beginning at the Southeast corner of said Southwest Quarter of Southwest Quarter; thence West 440 feet; thence Northeasterly to a point on the East line of said Southwest Quarter of Southwest Quarter distant 150 feet North of Southeast corner thereof; thence South 150 feet to point of beginning, AND EXCEPT that portion of the South 282.00 feet of the Southwest Quarter of said Section 36, lying North of the Kennewick Irrigation District Canal right of way and West of Grande Road right of way, AND EXCEPT Old Inland Empire Highway AND EXCEPT said Grande Road, AND EXCEPT the South 12 feet for roadway.

TOGETHER WITH the West half of the Southeast Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M., EXCEPT portion South of Kennewick Power Canal.

Section 4. That the territory set forth in this Ordinance and for which Petition for Annexation was filed, should be and is hereby made a part of the City of Prosser, Benton County, Washington.

Section 5. No property within the limits of the annexed territory shall ever be taxed or assessed to pay any indebtedness of the City contracted prior to or existing at the date of such annexation; nor shall any of the annexed property be released from any taxes or assessments levied against it or from liability for payment of outstanding bonds or warrants issued prior to said annexation.

Section 6. Upon passage of this Ordinance, the City Clerk shall cause to be filed a certified copy with the Board of County Commissioners of Benton County.

Section 7. This Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as required by law.

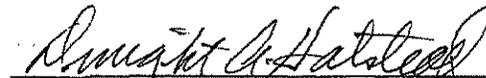
ADOPTED by the City Council and APPROVED by the Mayor this 11th day of December, 1984.

  
MAYOR

ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

Published: December 20, 1984

CITY OF PROSSER, WASHINGTON

ORDINANCE NO. 1471

AN ORDINANCE OF THE CITY OF PROSSER,  
WASHINGTON ANNEXING CERTAIN TERRITORY TO THE  
CITY OF PROSSER FOR MUNICIPAL PURPOSES

WHEREAS, under the provisions of RCW 35A.14.300, the Legislative body, by a majority of vote, elected to annex certain territory outside its city limits as hereinbelow more particularly described, for municipal purposes, and

WHEREAS, all of the territory annexed is contiguous City owned property, lying south of I-82, held for a public purpose and is exempted from the requirements of Section 36.93.090 (1) of Revised Code of Washington;

WHEREAS, this Ordinance No. 1471 is hereby declared to amend and replace Ordinance No. 1462;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The aforesaid findings, recitals and determinations are hereby found to be true, and correct in all respects; full compliance has been made with all requirements of the law in respect to annexation as per RCW 35A.14.300.

It is further determined that the below described property, owned by the City of Prosser, is being annexed into the City of Prosser for municipal purposes, to-wit, continued spray irrigation of wastewater from the sewerage treatment plant of the City of Prosser, and such annexation to be effective on and after the approval, passage and publication of this Ordinance; and on and after said date, said property shall be and constitute a part of the City of Prosser and shall be subject to all its laws and ordinances then and thereafter in force and effect; said property being situated in the County of Benton, State of Washington, and particularly described as follows:

PARCEL A:

That portion of the South half of the Northwest quarter of the southwest quarter of Section 36, Township 9 North, Range 24 East, W.M., lying Easterly and Southerly of the Following Described line:

Beginning at the Highway Engineer's Station 703+00 on the HR Line Survey of State Highway SR-82; thence Easterly to a point 40 feet Easterly, when measured at right angles, from said HR Line at Station 703+00; thence Northeasterly to a point 75 feet easterly from and opposite 708+35 on said HR Line; thence Northeasterly to a point 50 feet Southeasterly from and opposite Station 42+00 on the HC Line of said Highway; thence Northeasterly Parallel with said HC Line to a point opposite Station 46+25.16; thence Northeasterly to a point 30 feet Southeasterly from and opposite station 48+00 on said HC Line; thence Northeasterly and Easterly, parallel with said HC Line, 1500.0 feet to the terminus of said line.

AND

The North 15 acres of the Southwest quarter of the Southwest quarter of said Section 36;

EXCEPT the West 290.0 feet of the South 175.0 feet of the North 235.0 feet of the North 15 acres thereof and EXCEPT that portion lying north of the South right of way line of Bettinson Road.

PARCEL B:

The West 485 feet of the following described parcel:

That portion of the Southwest quarter of the Southwest quarter of Section 36, Township 9 North, Range 24 East, W.M.,

EXCEPT the North 15 acres thereof, and Except the South 370 feet thereof, and EXCEPT right of way for the Prosser Pressure Pipeline of the Sunnyside Valley Irrigation District and EXCEPT right of way for the Old Inland Empire Highway of Benton County.

PARCEL C:

Tracts 25, 26 and 27 Inclusive, State Addition to Prosser No. 1, according to the plat thereof recorded in volume 2 of Plats, page 56, records of Benton County, Washington, EXCEPT Portion of Tract 25 lying North of the Northerly right of way of SR 82 and EXCEPT portion deeded for highway purposes.

PARCEL D:

Tracts 28, 29 and 53, State Addition to Prosser No. 1, according to the plat thereof recorded in Volume 2 of Plats, page 56, records of Benton County, Washington, EXCEPT that portion of Tract 53 lying North of the Northerly right of way of SR 82, and EXCEPT Kennewick Irrigation District Canal right of way AND EXCEPT portions deeded for Highway and EXCEPT Portion deeded to United States of America under Auditor's file No. 86-3727.

PARCEL E:

Tracts 36, 37, and that portion of 38 lying south of I-82, State Addition to Prosser No. 1; according to the plat thereof recorded in Volume 2 of plats, page 56, records of Benton County, Washington EXCEPT Kennewick Irrigation District canal right of way, and EXCEPT Portion of Tract 39 lying North of the Northerly right of way of SR 82 and EXCEPT Portion deeded for Highway purposes.

PARCEL H:

That portion of Tract 54, lying south of I-82, State Addition to Prosser No. 1, according to the plat thereof recorded in Volume 2 of plats, page 56, records of Benton County, Washington, EXCEPT Kennewick Irrigation District Canal right of way and EXCEPT Portion deeded for highway purposes.

ALL OF THE FOREGOING PARCELS, TOGETHER WITH ALL APPURTENANCES, HEREDITAMENTS AND RIGHTS THEREUNTO BELONGING AND BENEFITTING; TOGETHER WITH ALL ROADWAYS, EASEMENTS, RIGHTS OF WAY.

PARCEL I:

TOGETHER WITH roads and rights of way shown in State Addition to Prosser No. 1, lying south of the southerly right of way of SR 82, and North of Kennewick Irrigation District Canal right of way, according to the plat thereof recorded in Volume 2 of Plats, page 56, records of Benton County, Washington.

PARCEL J:

The Southwest Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M., EXCEPT the North 15 acres thereof; and EXCEPT: The west 485 feet of the following described parcel: the Southwest Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East W.M., except the north 15 acres thereof, and except the south 370 feet thereof, and except right-of-way for the Prosser Pressure Pipeline of the Sunnyside Valley Irrigation District, and except right-of-way for the Old Inland Empire Highway of Benton County; EXCEPT canal right of way; and except portions conveyed to Kennewick Irrigation District, described as follows:  
Beginning at the Southwest corner of said southwest Quarter of Southwest Quarter; thence East 100 feet; thence Northwesterly 110 feet, more or less, to a point on the West line of said Southwest Quarter of Southwest quarter distant 45 feet North of point of beginning; thence South 45 feet to point of beginning; and EXCEPT Beginning at the Southeast corner of said Southwest Quarter of the Southwest Quarter; thence West 440 feet; thence Northeasterly to a point on the East line of said Southwest Quarter of Southwest Quarter distant 150 feet North of southeast corner thereof; thence South 150 feet to point of beginning; AND EXCEPT that portion of the South 282.00 feet of the Southwest Quarter of said Section 36, lying North of the Kennewick Irrigation District Canal right of way and west of Grand Road right of way; AND EXCEPT Old Inland Empire Highway; AND EXCEPT said Grand Road; AND EXCEPT the

South 12 feet for roadway. TOGETHER WITH the West half of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M., EXCEPT portion South of Kennewick Power Canal.

PARCEL K:

Bettinson Road lying between the north-south 1/16th line of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M. and its easterly end.

Section 2. This Ordinance shall be effective upon its passage, approval, and five (5) days after its publication.

A notice to the State of Washington shall be given pursuant to RCW 35A.14.700.

PASSED by the City Council and APPROVED by the Mayor this 10th day of April, 1990.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

CITY OF PROSSER, WASHINGTON

ORDINANCE NO. 1485

AN ORDINANCE AMENDING SUBSECTION PARCEL J OF SECTION 1 OF ORDINANCE 1471, CORRECTING A SCRIVENOR'S ERROR, BEING AN ORDINANCE OF ANNEXATION

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

Section 1. Subsection J of Section 1 of Ordinance No. 1471, be and is hereby amended to read as follows:

"PARCEL J:

The Southwest Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M., EXCEPT the North 15 acres thereof; and EXCEPT: The west 485 feet of the following described parcel:

The Southwest Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 EWM, except the north 15 acres thereof, and except the south 370 feet thereof, and except right-of-way for the Prosser Pressure Pipeline of the Sunnyside Valley Irrigation District, and except right-of-way for the Old Inland Empire Highway of Benton County; EXCEPT canal right of way; and EXCEPT portions conveyed to Kennewick Irrigation District, described as follows:

Beginning at the Southwest corner of said Southwest Quarter of Southwest Quarter; thence East 100 feet; thence Northwesterly 110 feet, more or less, to a point on the West line of said Southwest Quarter of Southwest Quarter distant 45 feet North of Point of beginning; thence South 45 feet to point of beginning; and EXCEPT Beginning at the Southeast corner of said Southwest Quarter of Southwest Quarter; thence West 440 feet; thence Northeasterly to a point on the East line of said Southwest Quarter of Southwest Quarter distant 150 feet North of Southeast corner thereof; thence South 150 feet to point of beginning; AND EXCEPT Old Inland Empire Highway; AND EXCEPT said Grande Road; AND EXCEPT the South 12 feet for roadway. TOGETHER WITH the West half of the Southeast Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 24 East, W.M.; EXCEPT portion South of Kennewick Power Canal."

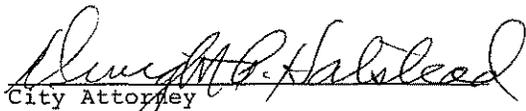
PASSED by the City Council and APPROVED by the Mayor, this 14th day of August, 1990.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

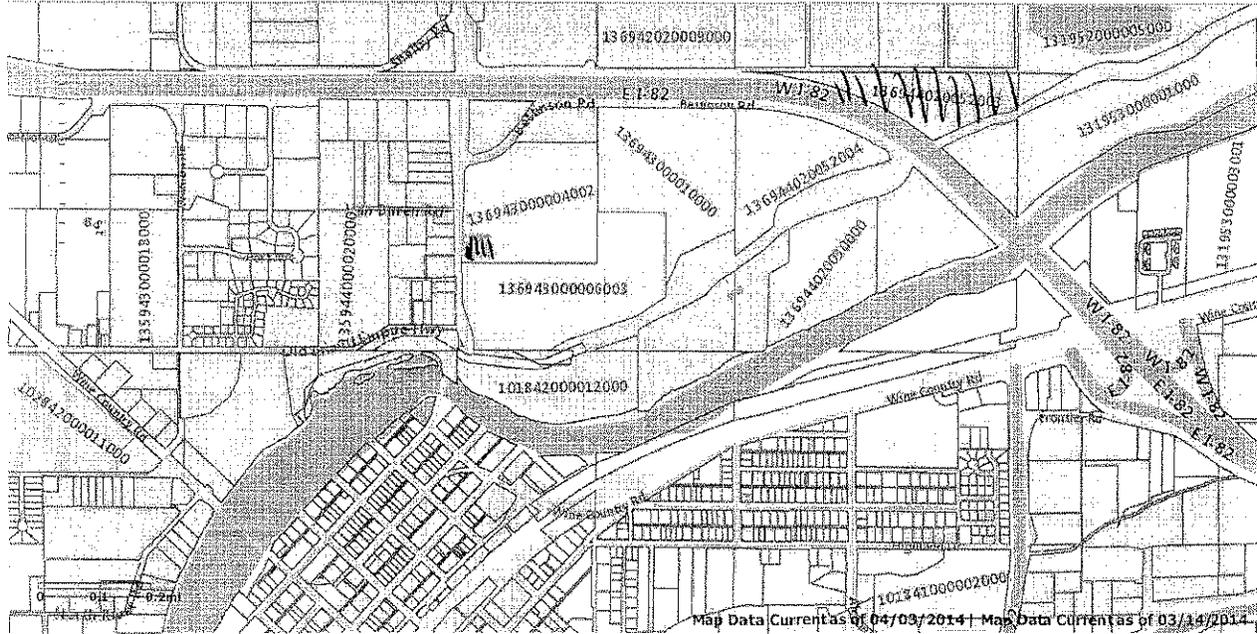
Login

Barbara Wagner, Assessor  
Benton County, Washington

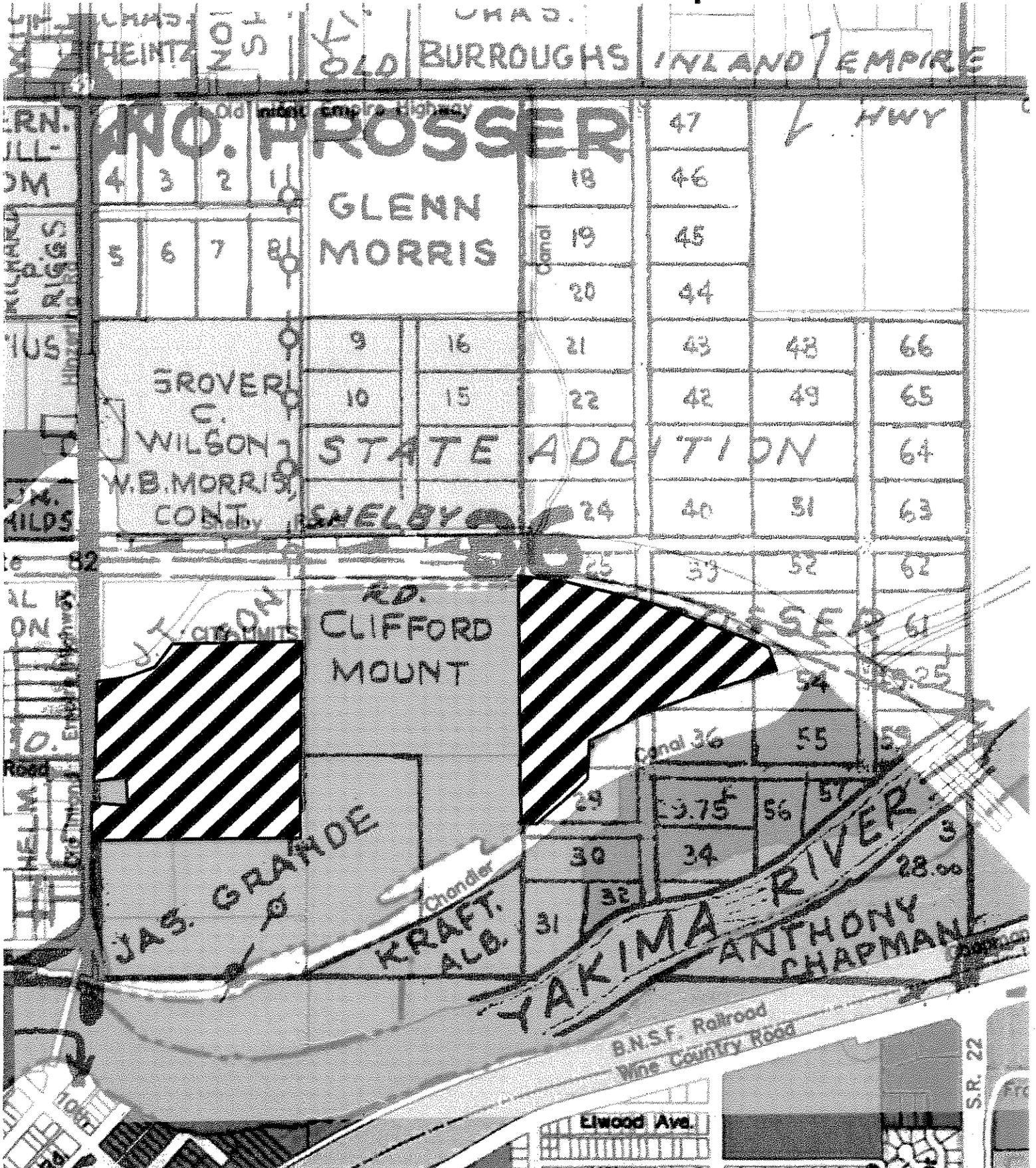
Monday, April 21, 2014

Home

Aerial Photos Map Layers



# Section 2 Map

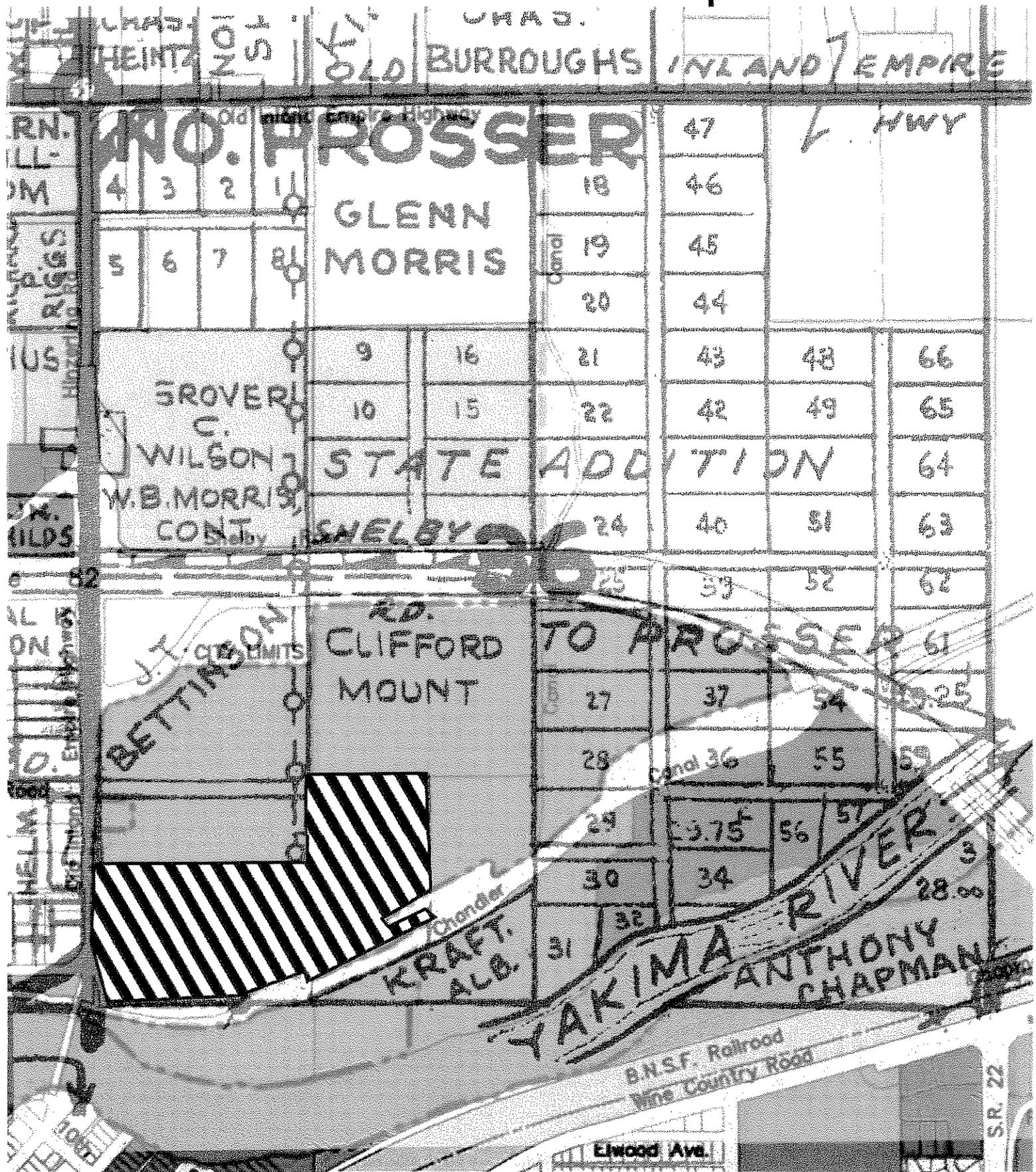


CHAS. HEINTZ  
O.S.  
Z.S.

CHAS. OLD BURROUGHS INLAND EMPIRE



# Section 4 Map





136944020052003

136944020030000

136943000010000

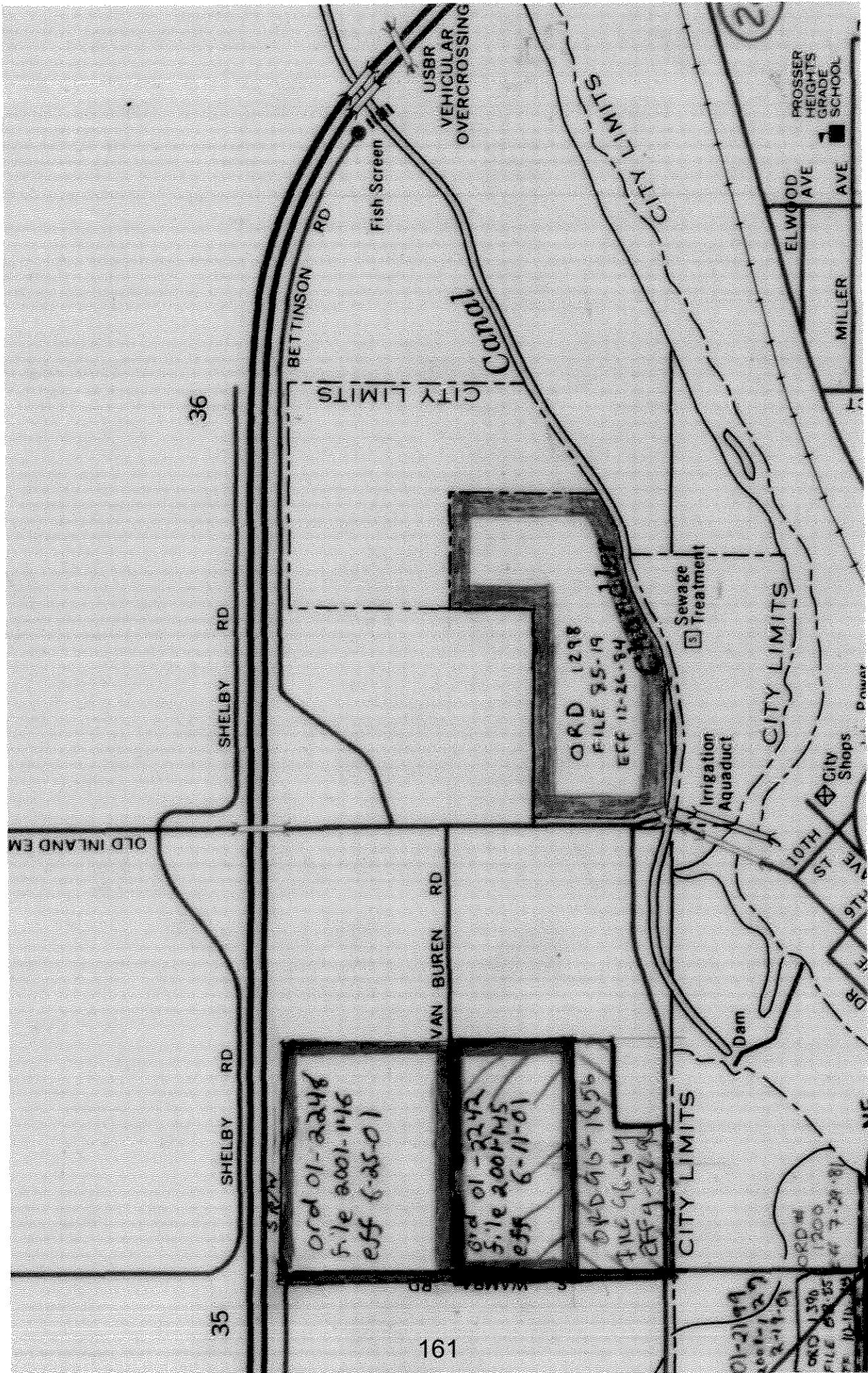
F82

36-00-24

F82

13694300004002

136943000006003



ORD 01-2248  
 FILE 2001-146  
 EFF 6-25-01

ORD 01-2242  
 FILE 2001-145  
 EFF 6-11-01

64045-1856  
 FILE 96-64  
 EFF 9-22-96

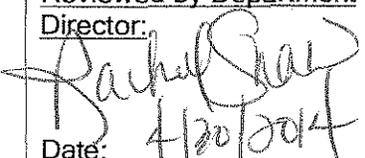
ORD 01-2199  
 FILE 2001-125  
 EFF 7-29-01

ORD 1298  
 FILE 95-19  
 EFF 11-26-84

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<u>Agenda Title:</u> Review and confirm the appointments to various Boards, Commissions, and Committees as appointed by Mayor Warden.		<u>Meeting Date:</u> May 6, 2014 Special Meeting	
<u>Department:</u> City Clerk	<u>Director:</u> Rachel Shaw	<u>Contact Person:</u> Rachel Shaw	<u>Phone Number:</u> (509) 786-8218
<u>Cost of Proposal:</u> n/a		<u>Account Number:</u> n/a	
<u>Amount Budgeted:</u> n/a		<u>Name and Fund#</u> n/a	
<u>Reviewed by Finance Department:</u>  N/A			
<u>Attachments to Agenda Packet Item:</u>  1. City of Prosser Boards, Commissions, and Committee Appointment Listing			
<u>Summary Statement:</u>  With the recent appointment of Council Member Ward to Council Position No. 3, it is necessary to appoint Members of Council to Boards accordingly. Mayor Warden has appointed Council Member Ward to the Prosser Economic Development Association (PEDA) Board as well as the Budget and Finance Committee.  Additionally in an effort to fill the recently vacated seat on the Planning Commission, Mayor Warden has appointed Robin Siemens to Position No. 3, with a term set to expire June 30, 2016.  Attached are the appointments made by Mayor Warden to be confirmed by City Council.			
<u>Consistent with or Comparison to:</u>  EXISTING ADOPTED OR PREVIOUS PLANS, POLICIES OR ACTIONS TAKEN BY THE COUNCIL			
<u>Recommended City Council Action/Suggested Motion:</u>  <u>Motion No. 1:</u> Confirm the appointment of Council Member Ward to the PEDA Board and Budget and Finance Committee as appointed by Mayor Warden.  <u>Motion No. 2:</u> Confirm the appointment of Rob Siemens to the Planning Commission to Position No. 3, as appointed by Mayor Warden.			

<u>Reviewed by Department Director:</u>  Date: 4/30/2014	<u>Reviewed by City Attorney:</u>  Date: 4/30/14	<u>Approved by Mayor:</u>  Date: 5-1-14
<u>Today's Date:</u>  April 30, 2014	<u>Revision Number/Date:</u>  	<u>File Name and Path:</u>  

## City Boards, Commissions & Committees

Name	Committee	Length of Term	Day/Time	Meeting Location	Meeting Location Address	Beginning of	Term Expiration	Date of
						Current Term		Reappointment
Steve Becken	Ben Franklin Transit Board	2 year term	2nd Thursday, 7:00 pm	Three Rivers Transit	7169 W Okanogan Pl.	1/1/2013	1/1/2015	1/8/2013
Randy Taylor (Mayor Pro-tem - Alternate)	Ben Franklin Transit Board	2 year term	2nd Thursday, 7:00 pm		Kennewick	1/1/2013	1/1/2015	1/8/2013
Paul Warden	Benton County Law & Justice Committee		2nd Tuesday, 12:00 pm			1/1/2008	upon resignation	1/8/2008
Thomas Groom	Benton County Mosquito Control Board	2 year term				1/1/2013	12/31/2014	12/11/2012
Steve Becken	Benton Franklin Community Action Council		4th Thursday, 5:30 pm	BF Action Office	720 W Court St, Pasco	1/8/2008	upon resignation	1/8/2008
Randy Taylor	Benton Franklin Council of Governments		3rd Friday, 11:30 am			1/8/2008	upon resignation	1/8/2008
Paul Warden (Alternate)	Benton Franklin Council of Governments		3rd Friday, 11:30 am			1/1/2008	upon resignation	1/3/2008
Bob Elder	Benton Franklin Solid Waste Advisory Council		Quarterly, 6 p.m.	WSU Ext, County Annex	5600 E W Canal Dr, Kennewick	1/1/2012	1/1/2014	1/14/2014
Tammy McKeirnan	Board of Adjustment	3 year term	1st Thursday, 6:00 pm	City Hall	601 7th St. Prosser	5/8/2012	1/1/2017	1/14/2014
Mike Kelley	Board of Adjustment	3 year term	1st Thursday, 6:00 pm	City Hall	601 7th St. Prosser	1/1/2011	1/1/2017	1/14/2014
Bill Riley	Board of Adjustment	3 year term	1st Thursday, 6:00 pm	City Hall	601 7th St. Prosser	1/1/2012	1/1/2015	2/14/2012
Idalia Aguilar	Board of Adjustment	3 year term	1st Thursday, 6:00 pm	City Hall	601 7th St. Prosser	1/1/2012	1/1/2015	8/27/2012
Gary Krebs	Board of Adjustment	3 year term	1st Thursday, 6:00 pm	City Hall	601 7th St. Prosser	1/1/2013	1/1/2016	11/26/2013
Eric Stagg	Board of Adjustment	3 year term	1st Thursday, 6:00 pm	City Hall	601 7th St. Prosser	1/1/2013	1/1/2016	5/10/2011
Dan Baldwin	Board of Adjustment	3 year term	1st Thursday, 6:00 pm	City Hall	601 7th St. Prosser	1/1/2013	1/1/2016	6/22/2010
TBD	Board of Health		4th Thursday, 7:00 pm	BFHD Office	412 W Clark St., Pasco			
Marvin Ward	Budget & Finance Committee		2nd & 4th Tuesday, 5:30pm	City Hall	601 7th St. Prosser	1/1/2014		5/6/2014
Randy Taylor	Budget & Finance Committee		2nd & 4th Tuesday, 5:30pm	City Hall	601 7th St. Prosser	1/1/2013		1/8/2008
Steve Becken	Budget & Finance Committee		2nd & 4th Tuesday, 5:30pm	City Hall	601 7th St. Prosser	1/1/2013		1/8/2008
Don Aubrey	Chamber Board		2nd Friday, 7am	Chamber Conference Room	1230 Bennett Prosser	1/1/2014	12/31/2014	1/28/2014
Wyatt Cone	Civil Service Commission	6 year term	2nd Thursday, 10:30 am	City Hall	601 7th St. Prosser	1/1/2012	12/31/2015	3/13/2012
Dan Baldwin	Civil Service Commission	6 year term	2nd Thursday, 10:30 am	City Hall	601 7th St. Prosser	1/1/2012	12/31/2016	1/8/2013
Glenda Schmidt	Civil Service Commission	6 year term	2nd Thursday, 10:30 am	City Hall	601 7th St. Prosser	1/1/2012	12/31/2017	3/13/2012
Morgan Everett	Council Policy and Procedures Committee		As Needed	City Hall	601 7th St. Prosser	1/1/2008		
Randy Taylor	Council Policy and Procedures Committee		As Needed	City Hall	601 7th St. Prosser	1/1/2008		
TBD	Council Policy and Procedures Committee		As Needed	City Hall	601 7th St. Prosser	1/1/2008		
TBD	County Seat Task Force Committee		As Needed					
TBD	County Seat Task Force Committee		As Needed					
TBD	Depot, Inc.		As Needed					
TBD	Downtown Revitalization Committee		3rd Monday, noon	Depot Conference Room	1230 Bennett, Prosser			
Steve Becken	Farmer's Market Liason		4th Monday, 7:00 pm			1/8/2008		1/8/2008

## City Boards, Commissions & Committees

Name	Committee	Length of Term	Day/Time	Meeting Location	Meeting Location Address	Beginning of Current Term	Term Expiration	Date of Appointment or Reappointment
TBD	Flood Hazard Management Citizens Advisory Committee		As Needed					
Steve Becken	Good Roads Committee		3rd Wednesday, 6:00 pm			1/8/2008		1/8/2008
Paul Warden	Good Roads Committee (Alternate)		3rd Wednesday, 6:00 pm			1/8/2008		1/8/2008
TBD	Benton Franklin Housing Continuum of Care		2nd Wednesday, 3:30 pm	BF Action Office	720 W Court St, Pasco			
Becky Yeaman	Hotel/Motel Local Tax Advisory Committee/TPA	1 year term	As Needed	City Hall	601 7th St. Prosser	1/1/2014	12/31/2014	1/14/2014
Fred Lamb	Hotel/Motel Local Tax Advisory Committee/TPA	1 year term	As Needed	City Hall	601 7th St. Prosser	1/1/2014	12/31/2014	1/14/2014
Tom Denlea	Hotel/Motel Local Tax Advisory Committee/TPA	1 year term	As Needed	City Hall	601 7th St. Prosser	1/1/2014	12/31/2014	1/14/2014
Marilyn Dalstra	Hotel/Motel Local Tax Advisory Committee/TPA	1 year term	As Needed	City Hall	601 7th St. Prosser	1/1/2014	12/31/2014	1/14/2014
Morgan Everett	Hotel/Motel Local Tax Advisory Committee/TPA	1 year term	As Needed	City Hall	601 7th St. Prosser	1/1/2014	12/31/2014	1/14/2014
Rob Steelman	Hotel/Motel Local Tax Advisory Committee/TPA	1 year term	As Needed	City Hall	601 7th St. Prosser	1/1/2014	12/31/2014	1/14/2014
Deb Augusto	Hotel/Motel Local Tax Advisory Committee/TPA	1 year term	As Needed	City Hall	601 7th St. Prosser	1/1/2014	12/31/2014	1/14/2014
Bob Elder	LEOFF Board	2 year term	1st Wednesday, 2:00 pm	County Commissioner's	620 Market, Prosser	1/1/2014	12/31/2016	1/28/2014
TBD	MidColumbia Library Board (Appointed by the County)	7 years	3rd Monday, 7:00 pm	MidColumbia Library -	405 S. Dayton, Kennewick,			
* Marvin Ward	PEDA		1st Thursday, 5:30 pm	Depot Conference Room	1230 Bennett	1/1/2014	12/31/2014	5/6/2014
Paul Warden (alternate)	PEDA		1st Thursday, 5:30 pm	Depot Conference Room	1230 Bennett	1/1/2014	12/31/2014	1/28/2014
Glenda Schmidt, Chair	Planning Commission Position No. 1	3 year term	3rd Thursday, 6:00 pm	City Hall	601 7th St. Prosser	6/30/2011	6/30/2014	3/22/2011
Trevor Day	Planning Commission Position No. 2	3 year term	3rd Thursday, 6:00 pm	City Hall	601 7th St. Prosser	6/26/2012	6/30/2015	11/26/2013
* Robin Siemens	Planning Commission Position No. 3	3 year term	3rd Thursday, 6:00 pm	City Hall	601 7th St. Prosser	6/30/2013	6/30/2016	5/6/2013
Dorothy Evans	Planning Commission Position No. 4	3 year term	3rd Thursday, 6:00 pm	City Hall	601 7th St. Prosser	6/26/2012	6/30/2015	6/26/2012
Jeremy Lynn	Planning Commission Position No. 5	3 year term	3rd Thursday, 6:00 pm	City Hall	601 7th St. Prosser	6/30/2013	6/30/2016	7/9/2013
Samuel Fitch	Planning Commission Position No. 6	3 year term	3rd Thursday, 6:00 pm	City Hall	601 7th St. Prosser	6/30/2013	6/30/2016	7/9/2013
Devina Rfojas	Planning Commission Position No. 7	3 year term	3rd Thursday, 6:00 pm	City Hall	601 7th St. Prosser	6/30/2011	6/30/2014	3/12/2013
Bob Elder	Regional Fire Authority Board			Fire Department		1/10/2012		1/1/2012
Morgan Everett	Regional Fire Authority Board			Fire Department		3/24/2009		3/24/2009
Randy Taylor	Regional Fire Authority Board			Fire Department				
Randy Taylor	RTPO (Regional Transportation)		2nd Thursday, 7:00 am					
TBD	School District Facilities Committee		As Needed					
Paul Warden	Sign Committee		As Needed			1/8/2008		1/8/2008
Scott Hamilton	Yakima Sub-Basin Recovery Board	1 year term	Quarterly, 2 p.m.	1110 West Lincoln Ave. Yakima	1110 West Lincoln Ave. Yakima	1/1/2014	12/31/2014	1/14/2014
Steve Zetz	Benton and Franklin Counties Steering Committee		Annually	Dept of Human Services	7207 West Deschutes Ave Kennewick			

Last Modified: 4/30/2014

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<u>Agenda Title:</u> Approve Drinking Water State Revolving Fund (DWSRF) Invoice Voucher Request No. 2 in the amount of \$26,511.50 for the Zone 2.5 Water Supply Improvements Project and authorize the Mayor to sign the documents.		<u>Meeting Date:</u> May 6, 2014 Special Meeting	
<u>Department:</u> Public Works	<u>Director:</u> L.J. Da Corsi	<u>Contact Person:</u> L.J. Da Corsi	<u>Phone Number:</u> (509) 786-2332
<u>Cost of Proposal:</u> Estimated Total Project Cost \$881,500.00 DWSRF Invoice Voucher Request No. 2 - \$ 26,511.50		<u>Account Number:</u>	
<u>Amount Budgeted:</u> ; Funding derived through an approved low-interest loan from the Drinking Water State Revolving Fund (DWSRF)		<u>Name and Fund#</u> Zone 2.5 Water Supply Improvements Fund (420)	
<u>Reviewed by Finance Department:</u> <i>Regina Mauras</i>			
<u>Attachments to Agenda Packet Item:</u>  <ol style="list-style-type: none"> <li>1. Public Works Board - DWSRF Project Status Report</li> <li>2. WA State Department of Commerce Form 19-1A Voucher Distribution for \$26,511.50, dated 01/01/14 - 02/28/14</li> <li>3. HLA Invoice Number 13109E-002 for \$14,388.50, dated 02/01/2014</li> <li>4. HLA Invoice Number 13109E-003 for \$12,123.00, dated 03/01/2014</li> <li>5. Project Cost to Date Breakdown, dated 3/7/2014</li> </ol>			
<u>Summary Statement:</u> <p>This Agenda Bill is to approve DWSRF Invoice Voucher Request No. 2 in the amount of \$26,511.50 for engineering services from January 1, 2014, through March 1, 2014, on this project and authorize the Mayor to sign the documents. This cost includes Project Administration, Design, Final Plans and Specifications. To date, this portion of the project is 4% complete.</p> <p>The City of Prosser applied for and received 2013 Drinking Water State Revolving Fund (DWSRF) loan monies to construct 4,000 linear feet of new 12" water transmission main from the Water Treatment Plant on SR 22 to the Painted Hills Booster Station. Included in the project is the demolition of the Booster Station and retiring of service of the Painted Hills Reservoir which will no longer</p>			

be necessary upon project completion. The total original contract amount is \$890,315.00. The project budget is \$881,500.00 and the loan fee is \$8,815.00.

**NOTE:**

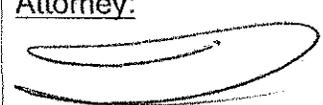
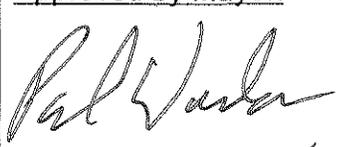
(On August 27, 2013, the Prosser City Council approved the contractual agreement between the City of Prosser and the Public Works Board for this project. The funds originate from the U.S. Environmental Protection Agency and are appropriated by the Public Works Board from the Drinking Water Assistance Account (DWSRF). The Board then enters into contract with the City of Prosser to disburse the funds, oversee the loan, and perform other services as defined in the Contract. The City also has contractual obligations that it must adhere to for the life of the loan, which in this case is 24 years. The time of performance for this project is 48 months from the Contract execution date to Project Completion date. Design is currently underway and should be completed in May-June 2014. Construction is tentatively scheduled to commence November 2014 and reach completion by August 2015.)

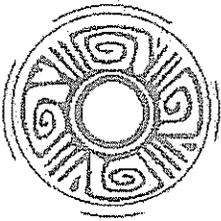
As with standard procedures for other City utility projects funded by state and federal agencies, Council must approve the pay voucher requests before the funding agency can release any monies.

Consistent with or Comparison to:

Recommended City Council Action/Suggested Motion:

Approve Drinking Water State Revolving Fund (DWSRF) Invoice Voucher Request No. 2 in the amount of \$26,511.50 for the Zone 2.5 Water Supply Improvements Project and authorize the Mayor to sign the documents.

<p><u>Reviewed by Department Director:</u></p>  <p>Date: 4/28/14</p>	<p><u>Reviewed by City Attorney:</u></p>  <p>Date: 4/23/14</p>	<p><u>Approved by Mayor:</u></p>  <p>Date: 5-1-14</p>
<p><u>Today's Date:</u></p> <p>April 23, 2014</p>	<p><u>Revision Number/Date:</u></p>	<p><u>File Name and Path:</u></p>



**Washington State  
Public Works Board**

1011 Plum Street SE  
Post Office Box 42525  
Olympia, Washington 98504-2525

**DWSRF PROJECT STATUS REPORT**

Submitter: Paul Warden - Mayor

Date of Submission: \_\_\_\_\_

This form must be completed each time you submit a reimbursement request. Reimbursement requests will not be processed unless accompanied by a current Project Status Report.

Client Name:	<b>Prosser</b>
Contract Number:	<b>DM13-952-140</b>
Project Name:	<b>Zone 2.5 Water Supply Improvements</b>
Scheduled Project Completion Date:	<b>9/30/2017</b>

**1) Project Progress**

Please describe the progress you have made to date on your project's scope of work (see Attachment A in your contract).

Design engineering, surveying and environmental compliance required for the project have started and are ongoing.

Approximately, what percentage of the project is complete?	3	%
------------------------------------------------------------	---	---

When do you expect the project to be completed (month/day/year)?	12/01/2015
------------------------------------------------------------------	------------

if the anticipated completion date is different from the one above, what factors led to the change in the completion date?

## 2) Disadvantaged Business Enterprises (DBEs)

Did you award any DBE contracts this Quarter? NO

Total DBE contracted out this Quarter or Reporting Period: \$ 0.00

Type of Business	Contract Total	Award Date	Indicate Type of Service * construction * supplies * services * equipment	Contractor Name	Contractor Address
Minority Owned Business					
Women Owned Business					
Small Business in Rural Area					
Small Business Enterprise (SBE)					
Historically Underutilized Business (HUB) Zone Small Business Concerns					
Labor Surplus Area Firms (LSAF)					
Other Entities Meeting EPA's DBE Rule Criteria					

## 3) Federal Funds Expenditures

What is your jurisdiction's fiscal year? January To: December

During the fiscal year, how much has your system expended in (all sources) federal funds? \$375,421.03  
(2014)

(Fiscal year is your fiscal year as determined by your organization)

Note: Borrowers that expend \$500,000 or more in federal funds (all sources) in their fiscal year must have an audit conducted in accordance with Office of Management and Budget (OMB) revised Circular A-133. The audit must be conducted within nine months of the end of the fiscal year in which the audit was "triggered." The applicable federal category for the DWSRF is CFDA 66.468.

## 4) Dedicated Repayment Account (Private Systems Only)

Please enter the current account balance for the repayment account: \$ 0.00

 Form ATR-1A	<b>WASHINGTON STATE</b> DEPARTMENT OF COMMERCE	AGENCY NUMBER	Short Code	Commerce Contract Number
	VOUCHER DISTRIBUTION DEPARTMENT OF COMMERCE PO BOX 42625 OLYMPIA, WA 98504-2625	<b>1030</b>		<b>DM13-952-140</b>

VENDOR OR CLAIMANT (Warrant is to be payable to:)  <p style="text-align: center;">           City of Prosser            601 Seventh Street            Prosser WA, 99350         </p>	<b>INSTRUCTIONS TO VENDOR OR CLAIMANT:</b> Submit this form to claim payment for materials, merchandise, or services. Show complete details for each item.  Vendor's Certificate: The individual signing this voucher below warrants they have the authority to do so as authorized and on the behalf of the entity identified in the Vendor/Client section. The individual signing below certifies under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race creed, color, national origin, handicap, religion or Vietnam era or disabled veterans status.
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Contact Person:	Toni Yost	By: _____  Mayor _____ (SIGN IN BLUE INK) (TITLE) _____ (DATE)
Phone:	(509) 786-2332	
Contract Period	9/30/2017	
REPORT PERIOD	01/01/14 - 02/28/14	

	Original Contract Amount	\$890,315.00			
	Loan Fee (if any)	\$8,815.00			
Date	DESCRIPTION	Budget	Previously Requested	Amount of This Invoice	Award Remaining Balance
3/7/2014	Design and Final Plans and Specifications Voucher No. 2	\$881,500.00	\$6,574.00	\$26,511.50	\$848,414.50
<b>Totals</b>		<b>\$881,500.00</b>	<b>\$6,574.00</b>	<b>\$26,511.50</b>	<b>\$848,414.50</b>

Match: Year / Dollars / Coding				PROGRAM APPROVAL (The individual signing this voucher warrants they have the authority to sign the voucher)				DATE	
DOC DATE		CURRENT DOC. NO.		REFERENCE DOC. NO.		VENDOR NUMBER and SUFFIX			
						<b>SWV0015958-00</b>			
ACCOUNTING NO.				ASD NUMBER		VENDOR MESSAGE			
				<b>28185</b>					
TRANS CODE	MASTER	INDEX	SUB OBJ	SUB SUB OBJ	GL	ACCT	SUBSID	AMOUNT	INVOICE
SIGNATURE OF ACCOUNTING PREPARER FOR PAYMENT							DATE		<b>WARRANT TOTAL</b>
ACCOUNTING APPROVAL FOR PAYMENT							DATE		



# HLA

Huibregtse, Louman Associates, Inc.

Civil Engineering • Land Surveying • Planning

Huibregtse, Louman Associates, Inc.  
2803 River Road  
Yakima, WA 98902

City of Prosser  
601 Seventh St.  
Prosser, WA 99350

Invoice number 13109E-002  
Date 02/01/2014

Project 13109E Prosser - Zone 2.5 Water Supply  
Improvements

Payment is Due within 30 Days of the Date of this Invoice.

FOR:

Professional Engineering and Land Surveying Services in connection with the Zone 2.5 Water Supply Improvements project, per your request, for services performed January 1 through January 31, 2014.

Description	Contract Amount	Percent Complete	Prior Billed	Total Billed	Current Billed
Phase 4 - Design and Final Plans and Specifications	79,500.00	25.00	6,360.00	19,875.00	13,515.00
Total	79,500.00	25.00	6,360.00	19,875.00	13,515.00

Phase 1 - Environmental Compliance

	Hours	Rate	Billed Amount
Licensed Professional Engineer	5.00	145.00	725.00
Phase subtotal			725.00

Phase 2 - Project Administration

	Hours	Rate	Billed Amount
Senior Engineering Tech	1.50	99.00	148.50
Phase subtotal			148.50

Invoice total 14,388.50

HUIBREGTSE, LOUMAN ASSOC., INC.

Jeffrey T. Louman, PE  
President

*PHASE 1 - ENVIRONMENTAL COMPLIANCE*

*Contract Amount: \$10,000.00*  
*Total Amount Billed to Date: \$ 795.00*  
*Contract Balance Remaining: \$ 9,205.00*

*PHASE 2 - PROJECT ADMINISTRATION*

*Contract Amount: \$10,000.00*  
*Total Amount Billed to Date: \$ 292.50*  
*Contract Balance Remaining: \$ 9,707.50*

*PHASE 3 - EASEMENT AQUISITION ASSISTANCE*

*Contract Amount: \$5,000.00*  
*Total Amount Billed to Date: \$ 0.00*  
*Contract Balance Remaining: \$5,000.00*



Huibregtse, Louman Associates, Inc.  
 2803 River Road  
 Yakima, WA 98902

City of Prosser  
 601 Seventh St.  
 Prosser, WA 99350

Invoice number 13109E-003  
 Date 03/01/2014

Project 13109E Prosser - Zone 2.5 Water Supply  
 Improvements

Payment is Due within 30 Days of the Date of this Invoice.

FOR:

Professional Engineering and Land Surveying Services in connection with the Zone 2.5 Water Supply Improvements project, per your request, for services performed February 1 through February 28, 2014.

Description	Contract Amount	Percent Complete	Prior Billed	Total Billed	Current Billed
Phase 4 - Design and Final Plans and Specifications	79,500.00	40.00	19,875.00	31,800.00	11,925.00
Total	79,500.00	40.00	19,875.00	31,800.00	11,925.00

Phase 2 - Project Administration

	Hours	Rate	Billed Amount
Senior Engineering Tech	2.00	99.00	198.00
Phase subtotal			198.00
Invoice total			<b>12,123.00</b>

HUIBREGTSE, LOUMAN ASSOC., INC.

Jeffrey T. Louman, PE  
 President

*PHASE 1 - ENVIRONMENTAL COMPLIANCE*

*Contract Amount: \$10,000.00*  
*Total Amount Billed to Date: \$ 795.00*  
*Contract Balance Remaining: \$ 9,205.00*

*PHASE 2 - PROJECT ADMINISTRATION*

*Contract Amount: \$10,000.00*  
*Total Amount Billed to Date: \$ 490.50*  
*Contract Balance Remaining: \$ 9,509.50*

*PHASE 3 - EASEMENT AQUISITION ASSISTANCE*

*Contract Amount: \$5,000.00*  
*Total Amount Billed to Date: \$ 0.00*  
*Contract Balance Remaining: \$5,000.00*



CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<p><u>Agenda Title:</u> Approve Drinking Water State Revolving Fund (DWSRF) Invoice Voucher Request No. 10 in the Amount of \$594,858.05 for the Disinfection, Filtration and Source Improvements Project and Authorize the Mayor to Sign the Documents.</p>		<p><u>Meeting Date:</u> May 6, 2014 Special Meeting</p>	
<p><u>Department:</u> Public Works</p>	<p><u>Director:</u> L.J. Da Corsi</p>	<p><u>Contact Person:</u> L.J. Da Corsi</p>	<p><u>Phone Number:</u> (509) 786-2332</p>
<p><u>Cost of Proposal:</u> Estimated Total Project Cost \$1,999,800.00 Voucher No.10 Amount \$ 594,858.05</p>		<p><u>Account Number:</u></p>	
<p><u>Amount Budgeted:</u> Funding derived through an approved low-interest loan from the Washington State Department of Health - Drinking Water State Revolving Fund (DWSRF)</p>		<p><u>Name and Fund#</u> Water 403</p>	
<p><u>Reviewed by Finance Department:</u></p> <p><i>Regina Mauer</i></p>			
<p><u>Attachments to Agenda Packet Item:</u></p> <ol style="list-style-type: none"> <li>1. DWSRF Project Status Report</li> <li>2. WA State Dept. of Commerce Voucher Distribution Form 19-1A for \$594,858.05</li> <li>3. DWSRF Labor Standards Certification</li> <li>4. Letter from HLA to City of Prosser, RE: Progress Estimate No. 4 - \$223,097.01, recommending approval for payment by the City of Prosser, dated January 31, 2014</li> <li>5. Project Quantities Itemized Spreadsheet for Progress Estimate No. 4, dated January 24, 2014</li> <li>6. Letter from HLA to City of Prosser, RE: Progress Estimate No. 5 - \$314,670.97, recommending approval for payment by the City of Prosser, dated March 5, 2014</li> <li>7. Project Quantities Itemized Spreadsheet for Progress Estimate No. 5</li> <li>8. HLA Invoice Number 11110C-006, dated 02/01/14, for \$27,012.79</li> <li>9. HLA Invoice Number 11110E-023, dated 02/01/14, for \$392.50</li> <li>10. HLA Invoice Number 11110C-007, dated 03/01/14, for \$29,437.28</li> <li>11. HLA Invoice Number 11110E-024, dated 03/01/14, for \$247.50</li> <li>12. Project Costs To Date, dated 3/7/2014</li> </ol>			

Summary Statement:

This Agenda Bill is to approve DWSRF Invoice Voucher Request No.10 in the amount of \$594,858.05 for construction and engineering work from January 1, 2014, through February 28, 2014, on this project.

The City of Prosser applied for and received 2011 Drinking Water State Revolving Fund (DWSRF) loan monies to make specific improvements to the potable water system. The total amount of monies to be received is \$1,999,800. The improvements include:

- Water Treatment Plant Disinfection System - Construct a new system to improve safety and performance.
- Water Treatment Plant Green Sand Pressure Filters - Add two new 0.9 MGD filters to increase capacity from 5.3 MGD to 7.1 MGD, and add new feed pumps to increase efficiency and performance.
- Backup Power Supplies at Well #4-B and Well #6 - Add new power generators to each well in order to maintain water supply to the community in the event of a power failure.

Construction began on September 30, 2013 and the project is approximately 94% complete. The anticipated completion date is 10/31/14.

As with standard procedures for other City utility projects funded by state and federal agencies, Council must approve the pay voucher requests before the funding agency can release any monies.

Consistent with or Comparison to:

EXISTING ADOPTED OR PREVIOUS PLANS, POLICIES OR ACTIONS TAKEN BY THE COUNCIL

Recommended City Council Action/Suggested Motion:

Approve Drinking Water State Revolving Fund (DWSRF) Invoice Voucher Request No. 10 in the Amount of \$594,858.05 for the Disinfection, Filtration and Source Improvements Project and Authorize the Mayor to Sign the Documents.

Reviewed by Department

Director:

  
Date: 4/28/14

Today's Date:

April 23, 2014

Reviewed by City Attorney:

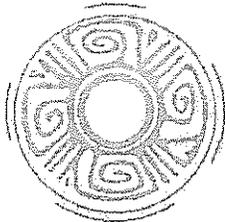
  
Date: 4/23/14

Revision Number/Date:

Approved by Mayor:

  
Date: 5-1-14

File Name and Path:



Washington State  
Public Works Board

Post Office Box 42525  
Olympia, Washington 98504-2525

**DWSRF PROJECT STATUS REPORT**

This form must be completed each time you submit a reimbursement request. Reimbursement requests will not be processed unless accompanied by a current Project Status Report.

Client Name:	CITY OF PROSSER
Contract Number:	DM11-952-030
Project Name:	DISINFECTION, FILTRATION AND SOURCE IMPROVEMENTS
Scheduled Project Completion Date:	02/16/16

**1) Project Progress**

Please describe the progress you have made to date on your project's scope of work (see Attachment A in your contract).

The City awarded the contract to Rotschy, Inc. Construction began on September 30, 2013 and is ongoing. Construction is anticipated to be complete by April 4, 2014. The disinfection building structure is complete and generator pads are prepped at both well sites. Interior piping and equipment installation is ongoing.

Approximately, what percentage of the project is complete?	65%
------------------------------------------------------------	-----

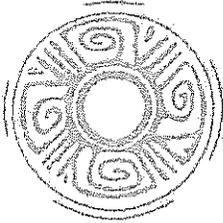
When do you expect the project to be completed (month/day/year)?	10/31/14
------------------------------------------------------------------	----------

If the anticipated completion date is different from the one above, what factors led to the change in the completion date?

Administrative services provided by the Department of Commerce

(360) 725-3150

Fax (360) 586-8440



**Washington State  
Public Works Board**  
Post Office Box 42525  
Olympia, Washington 98504-2525

**2) Disadvantaged Business Enterprises (DBEs)**

Did you award any DBE contracts this Quarter? NO  
Total DBE contracted out this Quarter or Reporting Period: \$0.00

Type Business	Contract Total	Award Date	Indicate Type of Service • construction • supplies • services • equipment	Contractor Name	Contractor Address
Minority Owned Business					
Women Owned Business					
Small Business in Rural Area					
Small Business Enterprise (SBE)					
Historically Underutilized Business (HUB) Zone Small Business Concerns					
Labor Surplus Area Firms (LSAF)					
Other Entities Meeting EPA's DBE Rule Criteria					

**3) Federal Funds Expenditures**

What is your jurisdiction's fiscal year? January to December

During the fiscal year, how much has your system expended in (all sources) federal funds? \$375,421.03 (2014)

(Fiscal year is your fiscal year as determined by your organization)

Note: Borrowers that expend \$500,000 or more in federal funds (all sources) in their fiscal year must have an audit conducted in accordance with Office of Management and Budget (OMB) revised Circular A-133. The audit must be conducted within nine months of the end of the fiscal year in which the audit was "triggered." The applicable federal category for the DWSRF is CFDA 66.468.

**4) Dedicated Repayment Account (Private Systems Only)**

Please enter the current account balance for the repayment account: \$0.00

Administrative services provided by the Department of Commerce

(360) 725-3150

Fax (360) 586-8440



Washington State Department of Commerce

**PUBLIC WORKS BOARD  
DRINKING WATER STATE REVOLVING FUND  
LABOR STANDARDS CERTIFICATION**

City of Prosser  
Legal Name

DM11-952-030  
Contract Number

10  
Invoice Voucher Request #

**CERTIFICATION**

I hereby certify that all certified payrolls for the period supported by the attached invoice voucher have been reviewed to ensure that all laborers and mechanics are being paid at least the higher of the wage rates contained in the applicable federal or state wage decisions for the type of work performed.

Borrowers Signature: \_\_\_\_\_

Print Name: Paul Warden

Title: Mayor

Date: \_\_\_\_\_



Jeffrey T. Louman, PE    Terry D. Alapeteri, PE    Stephanie J. Ray, PE  
Theodore W. Pooler, PE    Gene W. Soules, PE    Dustin L. Posten, PE  
Michael T. Battle, PE    Timothy D. Fries, PLS    Stephen S. Hazzard, PE  
Eric T. Herzog, PLS    Justin L. Bellamy, PE    Michael R. Heits, PE

Civil Engineering ♦ Land Surveying ♦ Planning

January 31, 2014

City of Prosser  
601 7<sup>th</sup> Street  
Prosser, WA 99350

Attn: Accounts Payable

Re: City of Prosser  
DISINFECTION, FILTRATION AND SOURCE IMPROVEMENTS  
HLA Project No.: 11110C  
Progress Estimate No.: 4

To Whom It May Concern:

Enclosed is Progress Estimate No. 4 for work performed by Rotschy, Inc., through January 24, 2013, in connection with their contract on the above referenced project. The amount due the Contractor of \$223,097.01 is net after retainage, as per the contract documents. We have received Certified Payrolls through January 11, 2014 from Rotschy, Inc. and subcontractors. We recommend this Progress Estimate be considered and approved for payment by the City of Prosser.

Please contact this office if you have questions or if we may furnish additional information.

Very truly yours,

Dustin L. Posten, PE

DLP/crf

Enclosure

copy: L.J. DaCorsi, City of Prosser  
Rotschy, Inc.  
Steven Sziebert, HLA  
Archie McPherson, HLA  
Caroline Fitzsimmons  
Correspondence File

City of Prosser  
601 Seventh Street  
Prosser, WA 99350

DISINFECTION, FILTRATION AND SOURCE IMPROVEMENTS

HLA Project No.: 11110C

TO: Rotschy, Inc.  
9210 NE 62nd Avenue  
Vancouver, WA 98665

Progress Estimate No.: 4

Date: January 24, 2014

Item No.	Description	Unit	Contract Quantity	Unit Price	Estimate 4 Quantity	Quantity to Date	Amount	Contract Quantity
<b>NEW DISINFECTION BUILDING</b>								
1	Mobilization	LS	1	\$175,500.00	0%	100%	\$175,500.00	100%
2	Clearing and Grubbing	LS	1	\$10,000.00	0%	100%	\$10,000.00	100%
3	Existing Disinfection Facility Demolition	LS	1	\$10,000.00	0%	0%	\$0.00	0%
4	Building Excavation and Backfill	LS	1	\$20,000.00	0%	100%	\$20,000.00	100%
5	Site Grading and Drainage, Complete	LS	1	\$50,000.00	0%	10%	\$5,000.00	10%
6	Crushed Surfacing Base Course	TON	130	\$35.00	0.00	173.19	\$6,061.65	133%
7	Crushed Surfacing Top Course	TON	80	\$35.00	0.00	0.00	\$0.00	0%
8	HMA Cl. 3/8 In., PG 64-28	TON	30	\$245.00	0.00	0.00	\$0.00	0%
9	Cement Concrete Sidewalk, 4 In., Incl. Aggregate Base	SY	125	\$56.90	0.00	126.95	\$7,223.46	102%
10	Disinfection Building, Complete	LS	1	\$194,014.00	11%	87%	\$169,700.00	87%
11	Disinfection Building Equipment, Piping, Fittings, and Valves, Complete	LS	1	\$121,932.00	0%	1%	\$1,000.00	1%
12	Heating and Ventilation System, Complete	LS	1	\$13,285.00	0%	0%	\$0.00	0%
13	Disinfection Building Electrical and Control System, Complete	LS	1	\$75,000.00	2%	48%	\$36,120.00	48%
14	Site Piping, Complete	LS	1	\$100,000.00	0%	61%	\$60,500.00	61%
15	Shoring or Extra Excavation	LS	1	\$1,000.00	0%	100%	\$1,000.00	100%
16	Chain Link Security Fencing	LF	150	\$35.35	0.00	0.00	\$0.00	0%
17	Boffard	EA	4	\$377.00	0	0	\$0.00	0%
18	Record Drawing (Minimum Bid \$3,000)	LS	1	\$3,000.00	0%	0%	\$0.00	0%
19	O&M Manuals (Minimum Bid \$2,000)	LS	1	\$2,000.00	0%	0%	\$0.00	0%
20	Minor Change	FA	1	\$15,000.00	0.00	0.00	\$0.00	0%
<b>FILTER BUILDING IMPROVEMENTS</b>								
21	Existing Building Modifications	LS	1	\$15,763.00	34%	34%	\$5,400.00	34%
22	Elevated Access Platform for New Filter Units, Complete	LS	1	\$9,300.00	0%	0%	\$0.00	0%
23	Raw Water Booster Pump And Motor	LS	1	\$50,000.00	0%	0%	\$0.00	0%
24	Piping, Fittings, and Valves, Complete	LS	1	\$80,000.00	0%	0%	\$0.00	0%
25	Vertical Pressure Filter Units, Complete	LS	1	\$300,000.00	0%	0%	\$0.00	0%
26	Filter Building Electrical and Control System, Complete	LS	1	\$30,000.00	2%	41%	\$12,350.00	41%
<b>WELL NO. 4B ENGINE GENERATOR</b>								
27	Well No. 4B Engine Generator, Complete	LS	1	\$105,000.00	84%	88%	\$92,500.00	88%
<b>WELL NO. 6 ENGINE GENERATOR</b>								
28	Well No. 6 Engine Generator and Transfer Switch, Complete	LS	1	\$124,000.00	80%	86%	\$106,300.00	86%
<b>ADDITIVE BID ITEMS</b>								
29	Additive Bid Item No. 1 - Replace Existing Raw Water Pump VFDs	LS	1	\$38,700.00	0%	0%	\$0.00	0%

Item No.	Description	Unit	Contract Quantity	Unit Price	Estimate 4 Quantity	Quantity to Date	Amount	Contract Quantity
30	Additive Bid Item No. 2 - Replace Existing Raw Water Pump Motors	LS	1	\$40,900.00	0%	0%	\$0.00	0%
31	Additive Bid Item No. 3 - Remove and Replace Existing Filter Media	EA	6	\$135,000.00	0.00	0.00	\$0.00	0%
32	Additive Bid Item No. 4 - North Elevated Access Platform, Complete	LS	1	\$18,500.00	0%	0%	\$0.00	0%
33	Additive Bid Item No. 5 - South Elevated Access Platform, Complete	LS	4	\$26,000.00	0%	0%	\$0.00	0%
34	Additive Bid Item No. 6 - Elevated Access Platform Stairway, Complete	LS	4	\$13,000.00	0%	0%	\$0.00	0%
35	Additive Bid Item No. 7 - Water Main Connection for Future Zone 2.5 Improvements	LS	4	\$16,000.00	0%	0%	\$0.00	0%
SUBTOTAL							\$708,655.11	
SUBTOTAL, WORK TO DATE							\$708,655.11	
PLUS MATERIALS ON HAND							\$0.00	
SUBTOTAL AMOUNTS							\$708,655.11	
8.3% STATE SALES TAX							\$58,818.37	
TOTAL							\$767,473.48	
LESS TOTAL RETAINAGE							\$35,432.76	
LESS AMOUNTS PREVIOUSLY PAID							\$508,943.71	
AMOUNT NOW DUE							\$223,097.01	

Progress Estimate No. 1 \$ 217,987.64  
Progress Estimate No. 2 \$ 231,351.97  
Progress Estimate No. 3 \$ 59,604.10  
Progress Estimate No. 4 \$ 223,097.01

I hereby certify that the foregoing is a true and correct statement of the work performed under this Contract.



Dustin L. Posten, PE



Jeffrey T. Louman, PE  
Theodore W. Pooler, PE  
Michael T. Battle, PE  
Eric T. Herzog, PLS

Terry D. Alapeteri, PE  
Gene W. Soules, PE  
Timothy D. Fries, PLS  
Justin L. Bellamy, PE

Stephanie J. Ray, PE  
Dustin L. Posten, PE  
Stephen S. Hazzard, PE  
Michael R. Heit, PE

Civil Engineering ♦ Land Surveying ♦ Planning

March 5, 2014

City of Prosser  
601 7<sup>th</sup> Street  
Prosser, WA 99350

Attn: Accounts Payable

Re: City of Prosser  
DISINFECTION, FILTRATION AND SOURCE IMPROVEMENTS  
HLA Project No.: 11110C  
Progress Estimate No.: 5

To Whom It May Concern:

Enclosed is Progress Estimate No. 5 for work performed by Rotschy, Inc., through February 21, 2014, in connection with their contract on the above referenced project. The amount due the Contractor of \$314,670.97 is net after retainage, as per the contract documents. We have received Certified Payrolls through February 22, 2014 from Rotschy, Inc. We recommend this Progress Estimate be considered and approved for payment by the City of Prosser.

Please contact this office if you have questions or if we may furnish additional information.

Very truly yours,

Dustin L. Posten, PE

DLP/crf

Enclosure

copy: L.J. DaCorsi, City of Prosser  
Rotschy, Inc.  
Steven Sziebert, HLA  
Archie McPherson, HLA  
Caroline Fitzsimmons  
Correspondence File

City of Prosser  
601 Seventh Street  
Prosser, WA 99350

DISINFECTIION, FILTRATION AND SOURCE IMPROVEMENTS

HLA Project No.: 11110C

TO: Rotschy, Inc.  
9210 NE 62nd Avenue  
Vancouver, WA 98665

Progress Estimate No.: 5

Date:

Item No.	Description	Unit	Contract Quantity	Unit Price	Estimate 5 Quantity	Quantity to Date	Amount	Contract Quantity
<b>NEW DISINFECTIION BUILDING</b>								
1	Mobilization	LS	1	\$175,500.00	0%	100%	\$175,500.00	100%
2	Clearing and Grubbing	LS	1	\$10,000.00	0%	100%	\$10,000.00	100%
3	Existing Disinfection Facility Demolition	LS	1	\$10,000.00	0%	0%	\$0.00	0%
4	Building Excavation and Backfill	LS	1	\$20,000.00	0%	100%	\$20,000.00	100%
5	Site Grading and Drainage, Complete	LS	1	\$50,000.00	68%	78%	\$39,000.00	78%
6	Crushed Surfacing Base Course	TON	130	\$35.00	0.00	173.19	\$6,061.65	133%
7	Crushed Surfacing Top Course	TON	80	\$35.00	0.00	0.00	\$0.00	0%
8	HMA Cl. 3/8 In., PG 64-28	TON	30	\$245.00	0.00	0.00	\$0.00	0%
9	Cement Concrete Sidewalk, 4 In., Incl. Aggregate Base	SY	125	\$56.90	0.00	126.95	\$7,223.46	102%
10	Disinfection Building, Complete	LS	1	\$194,014.00	11%	98%	\$190,457.00	98%
11	Disinfection Building Equipment, Piping, Fittings, and Valves, Complete	LS	1	\$121,932.00	39%	39%	\$48,150.00	39%
12	Heating and Ventilation System, Complete	LS	1	\$13,285.00	89%	89%	\$11,785.00	89%
13	Disinfection Building Electrical and Control System, Complete	LS	1	\$75,000.00	30%	78%	\$58,470.00	78%
14	Site Piping, Complete	LS	1	\$100,000.00	13%	73%	\$73,000.00	73%
15	Shoring or Extra Excavation	LS	1	\$1,000.00	0%	100%	\$1,000.00	100%
16	Chain Link Security Fencing	LF	150	\$35.35	153.00	153.00	\$5,408.55	102%
17	Bollard	EA	4	\$377.00	0	0	\$0.00	0%
18	Record Drawing (Minimum Bid \$3,000)	LS	1	\$3,000.00	0%	0%	\$0.00	0%
19	O&M Manuals (Minimum Bid \$2,000)	LS	1	\$2,000.00	0%	0%	\$0.00	0%
20	Minor Change	FA	1	\$15,000.00	550.00	550.00	\$550.00	4%
<b>FILTER BUILDING IMPROVEMENTS</b>								
21	Existing Building Modifications	LS	1	\$15,763.00	53%	87%	\$13,763.00	87%
22	Elevated Access Platform for New Filter Units, Complete	LS	1	\$9,300.00	0%	0%	\$0.00	0%
23	Raw Water Booster Pump And Motor	LS	1	\$50,000.00	88%	88%	\$43,800.00	88%
24	Piping, Fittings, and Valves, Complete	LS	1	\$80,000.00	7%	7%	\$5,500.00	7%
25	Vertical Pressure Filter Units, Complete	LS	1	\$300,000.00	3%	3%	\$8,000.00	3%
26	Filter Building Electrical and Control System, Complete	LS	1	\$30,000.00	24%	65%	\$19,475.00	65%
<b>WELL NO. 4B ENGINE GENERATOR</b>								
27	Well No. 4B Engine Generator, Complete	LS	1	\$105,000.00	9%	97%	\$102,200.00	97%
<b>WELL NO. 6 ENGINE GENERATOR</b>								
28	Well No. 6 Engine Generator and Transfer Switch, Complete	LS	1	\$124,000.00	9%	95%	\$118,000.00	95%
<b>ADDITIVE BID ITEMS</b>								
29	Additive Bid Item No. 1 - Replace Existing Raw Water Pump VFDs	LS	1	\$38,700.00	77%	77%	\$29,850.00	77%

Item No.	Description	Unit	Contract Quantity	Unit Price	Estimate 5 Quantity	Quantity to Date	Amount	Contract Quantity
30	Additive Bid Item No. 2 - Replace Existing Raw Water Pump Motors	LS	1	\$40,900.00	61%	61%	\$25,080.00	61%
34	Additive Bid Item No. 3 - Remove and Replace Existing Filter Media	EA	6	\$135,000.00	0.00	0.00	\$0.00	0%
32	Additive Bid Item No. 4 - North Elevated Access Platform, Complete	LS	1	\$18,500.00	5%	5%	\$1,000.00	5%
33	Additive Bid Item No. 5 - South Elevated Access Platform, Complete	LS	4	\$26,000.00	0%	0%	\$0.00	0%
34	Additive Bid Item No. 6 - Elevated Access Platform Stairway, Complete	LS	4	\$13,000.00	0%	0%	\$0.00	0%
35	Additive Bid Item No. 7 - Water Main Connection for Future Zone 2.5 Improvements	LS	4	\$16,000.00	0%	0%	\$0.00	0%
SUBTOTAL							\$1,013,273.66	
SUBTOTAL, WORK TO DATE							\$1,013,273.66	
PLUS MATERIALS ON HAND							\$0.00	
SUBTOTAL AMOUNTS							\$1,013,273.66	
8.3% STATE SALES TAX							\$84,101.71	
TOTAL							\$1,097,375.37	
LESS TOTAL RETAINAGE							\$50,663.68	
LESS AMOUNTS PREVIOUSLY PAID							\$732,040.72	
AMOUNT NOW DUE							\$314,670.97	

Progress Estimate No. 1	\$ <u>217,987.64</u>	Retainage \$ <u>10,551.19</u>
Progress Estimate No. 2	\$ <u>231,351.97</u>	Retainage \$ <u>11,198.07</u>
Progress Estimate No. 3	\$ <u>59,604.10</u>	Retainage \$ <u>2,885.00</u>
Progress Estimate No. 4	\$ <u>223,097.01</u>	Retainage \$ <u>10,798.50</u>
Progress Estimate No. 5	\$ <u>314,670.97</u>	Retainage \$ <u>15,230.92</u>

I hereby certify that the foregoing is a true and correct statement of the work performed under this Contract.

  
 \_\_\_\_\_  
 Dustin L. Posten, PE



Huibregtse, Louman Associates, Inc.  
 2803 River Road  
 Yakima, WA 98902

City of Prosser  
 601 Seventh St.  
 Prosser, WA 99350

Invoice number 11110C-006  
 Date 02/01/2014

Project 11110C Prosser - Disinfection, Filtration  
 and Source Imp. - Construction Services

Payment is Due within 30 Days of the Date of this Invoice.

FOR:

Professional Engineering Services in connection with the Disinfection, Filtration and Source Improvements project, services during construction, per your request, for services performed January 1 through January 31, 2014.

Phase 5 - Services During Construction

	Hours	Rate	Billed Amount
Licensed Principal Engineer	1.50	176.00	264.00
Licensed Professional Engineer	39.50	145.00	5,727.50
Project Engineer	43.00	119.00	5,117.00
Resident Engineer/Inspector	117.00	99.00	11,583.00
Senior Engineering Tech	6.00	99.00	594.00
Engineering Technician	11.00	70.00	770.00
	Units	Rate	Billed Amount
Vehicle Miles	749.00	0.55	411.95
	Cost Amount	Multiplier	Billed Amount
Baer Testing, Inc.	1,034.00	1.07	1,106.38
Conley Engineering, Inc.	1,344.82	1.07	1,438.96
Phase subtotal			27,012.79
			Invoice total <b>27,012.79</b>

Invoice Summary

Description	Contract Amount	Total Billed	Remaining
Phase 5 - Services During Construction	195,600.00	132,516.92	63,083.08
Total	195,600.00	132,516.92	63,083.08

HUIBREGTSE, LOUMAN ASSOCIATES



Jeffrey T. Louman, PE  
President



# HLA

Huibregtse, Louman Associates, Inc.

Civil Engineering ♦ Land Surveying ♦ Planning

Huibregtse, Louman Associates, Inc.  
2803 River Road  
Yakima, WA 98902

City of Prosser  
601 Seventh St.  
Prosser, WA 99350

Invoice number 11110E-023  
Date 02/01/2014

Project 11110E Prosser - Disinfection, Filtration  
and Source Improvements

Payment is Due within 30 Days of the Date of this Invoice.

FOR:

Professional Engineering Services in connection with the Disinfection, Filtration and Source Improvements project, per your request, for services performed January 1 through January 31, 2014.

**Phase 2 - Project Administration**

	Hours	Rate	Billed Amount
Licensed Professional Engineer	1.00	145.00	145.00
Senior Engineering Tech	2.50	99.00	247.50
Phase subtotal			392.50
		Invoice total	392.50

HUIBREGTSE, LOUMAN ASSOC., INC.

Jeffrey T. Louman, PE  
President

Contract Amount: \$10,000.00  
Total Amount Billed to Date: \$ 7,054.94  
Contract Balance Remaining: \$ 2,945.06



Huibregtse, Louman Associates, Inc.  
 2803 River Road  
 Yakima, WA 98902

City of Prosser  
 601 Seventh St.  
 Prosser, WA 99350

Invoice number 11110C-007  
 Date 03/01/2014

Project 11110C Prosser - Disinfection, Filtration  
 and Source Imp. - Construction Services

Payment is Due within 30 Days of the Date of this Invoice.

FOR:

Professional Engineering Services in connection with the Disinfection, Filtration and Source Improvements project, services during construction, per your request, for services performed February 1 through February 28, 2014.

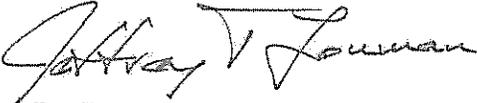
Phase 5 - Services During Construction

	Hours	Rate	Billed Amount
Licensed Principal Engineer	2.00	176.00	352.00
Licensed Professional Engineer	33.50	145.00	4,857.50
Project Engineer	42.00	119.00	4,998.00
Resident Engineer/Inspector	121.00	99.00	11,979.00
Senior Engineering Tech	4.00	99.00	396.00
Engineering Technician	7.50	70.00	525.00
	Units	Rate	Billed Amount
Vehicle Miles	613.00	0.55	337.15
	Cost Amount	Multiplier	Billed Amount
Conley Engineering, Inc.	5,600.59	1.07	5,992.63
Phase subtotal			29,437.28
Invoice total			29,437.28

Invoice Summary

Description	Contract Amount	Total Billed	Remaining
Phase 5 - Services During Construction	195,600.00	161,954.20	33,645.80
Total	195,600.00	161,954.20	33,645.80

HUIBREGTSE, LOUMAN ASSOC., INC.



Jeffrey T. Louman, PE  
President



Huibregtse, Louman Associates, Inc.  
 2803 River Road  
 Yakima, WA 98902

City of Prosser  
 601 Seventh St.  
 Prosser, WA 99350

Invoice number 11110E-024  
 Date 03/01/2014

Project 11110E Prosser - Disinfection, Filtration  
 and Source Improvements

Payment is Due within 30 Days of the Date of this Invoice.

FOR:

Professional Engineering Services in connection with the Disinfection, Filtration and Source Improvements project, per your request, for services performed February 1 through February 28, 2014.

Phase 2 - Project Administration

	Hours	Rate	Billed Amount
Senior Engineering Tech	2.50	99.00	247.50
Phase subtotal			247.50
		Invoice total	247.50

HUIBREGTSE, LOUMAN ASSOC., INC.

Jeffrey T. Louman, PE  
 President

Contract Amount: \$10,000.00  
 Total Amount Billed to Date: \$ 7,302.44  
 Contract Balance Remaining: \$ 2,697.56

**City of Prosser**  
**DISINFECTION, FILTRATION AND SOURCE IMPROVEMENTS**

DWSRF Project No.: DM11-952-030

HLA Project No. 11110

Invoice Date	Project Costs To Date						
	PE Phase 1	PE Phase 2	PE Phase 3	PE Phase 4	CE Phase 5	CE Prog Est	Project Total
03/01/12	\$ 82.50	\$ 660.00	\$ -	\$ 3,680.00	\$ -	\$ -	\$ 4,422.50
04/01/12	\$ 563.00	\$ -	\$ 180.00	\$ 3,680.00	\$ -	\$ -	\$ 4,423.00
05/01/12	\$ 150.50	\$ 412.50	\$ 360.00	\$ 920.00	\$ -	\$ -	\$ 1,843.00
06/01/12	\$ 1,651.00	\$ -	\$ 3,960.00	\$ 6,440.00	\$ -	\$ -	\$ 12,051.00
07/01/12	\$ 3,495.00	\$ -	\$ 900.00	\$ 14,720.00	\$ -	\$ -	\$ 19,115.00
08/01/12	\$ -	\$ -	\$ 600.00	\$ 16,560.00	\$ -	\$ -	\$ 17,160.00
09/01/12	\$ -	\$ -	\$ -	\$ 42,320.00	\$ -	\$ -	\$ 42,320.00
10/01/12	\$ -	\$ -	\$ -	\$ 14,720.00	\$ -	\$ -	\$ 14,720.00
11/01/12	\$ -	\$ -	\$ -	\$ 11,040.00	\$ -	\$ -	\$ 11,040.00
12/01/12	\$ 112.00	\$ -	\$ -	\$ 23,920.00	\$ -	\$ -	\$ 24,032.00
01/01/13	\$ -	\$ -	\$ -	\$ 9,200.00	\$ -	\$ -	\$ 9,200.00
02/01/13	\$ -	\$ 240.00	\$ -	\$ 3,680.00	\$ -	\$ -	\$ 3,920.00
03/01/13	\$ -	\$ 1,130.44	\$ -	\$ 5,520.00	\$ -	\$ -	\$ 6,650.44
04/01/13	\$ -	\$ 240.00	\$ -	\$ 6,440.00	\$ -	\$ -	\$ 6,680.00
05/01/13	\$ -	\$ 458.00	\$ -	\$ 6,440.00	\$ -	\$ -	\$ 6,898.00
06/01/13	\$ -	\$ 144.00	\$ -	\$ 5,520.00	\$ -	\$ -	\$ 5,664.00
07/01/13	\$ -	\$ 351.00	\$ -	\$ 9,200.00	\$ -	\$ -	\$ 9,551.00
08/01/13	\$ -	\$ 1,433.00	\$ -	\$ -	\$ -	\$ -	\$ 1,433.00
09/01/13	\$ -	\$ -	\$ -	\$ -	\$ 2,951.36	\$ -	\$ 2,951.35
10/01/13	\$ -	\$ 288.00	\$ -	\$ -	\$ 10,223.52	\$ -	\$ 10,511.52
11/01/13	\$ -	\$ 214.00	\$ -	\$ -	\$ 46,288.03	\$ -	\$ 46,502.03
11/05/13	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 217,987.64	\$ 217,987.64
12/01/13	\$ -	\$ 611.50	\$ -	\$ -	\$ 26,459.69	\$ -	\$ 27,071.19
12/02/13	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 231,351.97	\$ 231,351.97
01/01/14	\$ -	\$ 480.00	\$ -	\$ -	\$ 19,581.54	\$ -	\$ 20,061.54
01/08/14	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 59,604.10	\$ 59,604.10
01/31/14	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 223,097.01	\$ 223,097.01
02/01/14	\$ -	\$ 392.50	\$ -	\$ -	\$ 27,012.79	\$ -	\$ 27,405.29
03/01/14	\$ -	\$ 247.50	\$ -	\$ -	\$ 29,437.28	\$ 314,670.97	\$ 344,355.75
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	\$ 6,054.00	\$ 7,302.44	\$ 6,000.00	\$ 184,000.00	\$ 161,954.20	\$ 1,046,711.69	\$ 1,412,022.33

HLA Contract	\$ 6,000.00	\$ 10,000.00	\$ 6,000.00	\$ 184,000.00	\$ 195,600.00		\$ 401,600.00
Rotschy, Inc.						\$ 1,766,932.91	\$ 1,766,932.91
<b>Contract Total</b>							\$ 2,168,532.91

DWSRF Loan	\$ 1,999,800.00	(Loan Fee of \$19,800.00 included)						\$ 1,980,000.00
------------	-----------------	------------------------------------	--	--	--	--	--	-----------------

<b>Costs to Date</b>	\$ 6,054.00	\$ 7,302.44	\$ 6,000.00	\$ 184,000.00	\$ 161,954.20	\$ 1,046,711.69	\$ 1,412,022.33
<b>Fund Loan Balance</b>							\$ 567,977.67

- Phase 1 - Environmental Compliance
- Phase 2 - Project Administration
- Phase 3 - Evaluation of Disinfection Alternatives
- Phase 4 - Design and Final Plans and Specifications
- Phase 5 - Services During Construction
- Phase 6 - Construction Progress Estimates - Rotschy, Inc.

**CITY OF PROSSER, WASHINGTON  
601 7<sup>TH</sup> STREET  
CITY COUNCIL CHAMBERS  
CITY COUNCIL REGULAR MEETING  
TUESDAY, MARCH 11, 2014**

**CALL TO ORDER**

Mayor Warden called the Regular Meeting of the Prosser City Council to order at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

**ROLL CALL**

Council Members Aubrey, Hamilton, Everett, Becken, and Elder were present. Council Members Brumley and Taylor requested an excused absence.

Others in attendance were City Clerk Shaw, Finance Director Mauras, Police Chief Giles, City Planner Zetz, and City Attorney Saxton.

**MAYOR AND COUNCIL REPORTS AND COMMENTS**

Mayor Warden stated the WATV ordinance would be coming forward at the next Regular City Council meeting for consideration.

Mayor Warden also stated there were two add-on items to the Council agenda related to the Regional Fire Authority (RFA), for Council's consideration.

**ADD-ON ITEM**

***Regional Fire Protection Service Authority (RFA)***

Mayor Warden provided an explanation. A motion was made by Council Member Everett, seconded by Council Member Elder to adopt Resolution No. 14-1445 recommending the joint decision to proceed with a Regional Fire Protection Service Authority (RFA) as the governance model for the Fire Department. Motion passed 5 YES, 0 NO, 2 ABSENT (Brumley, Taylor).

A motion was made by Council Member Everett, seconded by Council Member Elder to adopt Ordinance No. 14-2874 establishing compensation for the City appointed members to the RFA Planning Committee. Motion passed 4 YES, 1 NO (Hamilton), 2 ABSENT (Brumley, Taylor).

**CONSENT AGENDA**

A motion was made by Council Member Becken, seconded by Council Member Everett to approve Consent Agenda Items "A – G." Motion passed 5 YES, 0 NO, 2 ABSENT (Brumley, Taylor).

- a. Approve Payment of Payroll Checks Nos. 600019 through 600028 in the Amount of \$18,076.20, and Direct Deposits in the Amount of \$100,331.90, for the Period Ending February 28, 2014

- b. Approve Payment of Claim Checks Nos. 10204 through 10214 and 10216 through 10302, in the Amount of \$593,089.24, and Electronic Payments in the Amount of \$45,986.66, for the Period Ending March 11, 2014
- c. Accept Invoice for Operation of the Visitor Information Center and Reimbursable Tourism and Promotional Expenses for the Month of January and Authorize Payment for Those Services in the Amount of \$13,000.00
- d. Approve the USDA Outlay Report and Draw Request No. 28 in an Amount of \$5,567.00, for Costs Associated with the Northwest Prosser Water and Sewer System Improvements Project (Contract Addendum No. 2) and Authorize the Mayor to Sign the Documents
- e. Adopt Resolution 14-1446 Expressing the Intent to Adopt an Update of the Shoreline Master Program (SMP) and Authorizing the Submittal of this Proposed SMP Update to the Washington State Department of Ecology and to the Department of Commerce
- f. Approve the February 4, 2014 Meeting Minutes
- g. Approve the February 11, 2014 Meeting Minutes

### **COUNCIL ACTION**

#### **APPROVE PAYMENT OF CLAIM CHECK NOS. 10215 IN THE AMOUNT OF \$59,489.45, FOR THE PERIOD ENDING MARCH 11, 2014**

A motion was made by Council Member Everett, seconded by Council Member Becken to approve payment of claim check nos. 10215 in the Amount of \$59,489.45, for the Period Ending March 11, 2014. Motion passed 4 YES, 0 NO, 2 ABSENT (Brumley, Taylor), 1 ABSENTION (Hamilton).

### **CITIZEN PARTICIPATION**

Ed Youngblood, 485 North River Road, spoke in favor of the consideration of an acceptance of gift of right-of-way by Catholic Charities Housing Services, for the property located at 480 North River Road.

#### **CONSIDERATION OF AN ACCEPTANCE OF GIFT OF RIGHT-OF-WAY BY CATHOLIC CHARITIES HOUSING SERVICES ALONG THE SOUTHERN BOUNDARY OF THE PARCEL COMMONLY ADDRESSED AS 480 NORTH RIVER ROAD, FOR CONSTRUCTION OF A NEW STREET**

A motion was made by Council Member Everett, seconded by Council Member Elder to accept the gift of right-of-way by.

City Attorney Saxton stated the motion needed to be amended and restated to include "contingent upon taxes and irrigation being paid."

There was discussion regarding the construction of the road and the necessity of donating the right-of-way to the City.

Council Member Becken expressed his concern with the City taking on more undeveloped property that could potentially become a code enforcement issue.

Nathan Poel, Office of Rural Farmworker Housing (ORFH), stated his agency is the developer on the property and explained the gift of right-of-way is a procedural issue and the next step in the process of the development. Mr. Poel further explained the public right-of-way needs to be off-site per funding obligations.

An amended motion was made by Council Member Everett, seconded by Council Member Elder to accept the gift of right-of-way by Catholic Charities Housing Services along the southern boundary of the parcel commonly addressed as 480 North River Road, for construction of a new street, contingent upon taxes and irrigation being paid.

Council Member Becken inquired what other cities has the developer worked with that had similar funding requirements.

Mr. Poel stated at least two other Washington cities.

Council directed staff to bring this item back at the next Regular City Council meeting for re-consideration after obtaining the names of the other Washington cities with similar projects and funding requirements.

Council Member Everett withdrew his motion.

Council Member Elder withdrew his second.

Mayor Warden stated staff will prepare this item for the March 25, 2014, Regular City Council meeting agenda for Council consideration.

**REVIEW, DISCUSS AND POTENTIAL ADOPTION OF ORDINANCE 14-2875 AMENDING COMMERCIAL SEWER REQUIREMENTS**

A motion was made by Council Member Aubrey, seconded by Council Member Everett to adopt Ordinance 14-2875 amending commercial sewer requirements. Motion passed 5 YES, 0 NO, 2 ABSENT (Brumley, Taylor).

**ORDINANCE ENACTING PROSSER MUNICIPAL CODE 2.09 ESTABLISHING A CODE OF ETHICS**

Council inquired as to why staff brought this item forward for consideration.

Finance Director Mauras explained there are RCW's and the personnel policy manual in place which addresses the ethical responsibilities of elected and appointed officials, as well as other

staff, however the proposed Code of Ethics was drafted in an effort to establish clear expectations and is also an important component of the City's internal controls.

Council Member Becken stated the proposal appeared to be duplicative of the State law that elected and appointed officials are already governed by and therefore adopted a Code of Ethics is not necessary.

City Attorney Saxton offered to prepare a side-by-side comparison of staff's proposal verses that of state law.

Council concurred they would appreciate seeing a comparison and directed staff to bring the item back at a future City Council meeting for consideration.

**EXECUTIVE SESSION**

At 7:43 p.m., Mayor Warden recessed the Special Meeting of the Prosser City Council to conduct an Executive Session pursuant to RCW 42.140(4)(a) collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b), that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress. The Executive Session was expected to last for 10 minutes and was to include Mayor and Council Members, City Clerk, Finance Director, and City Attorney.

At 7:53 p.m., Mayor Warden reconvened the Regular Meeting of the Prosser City Council and stated no action occurred.

Council Member Elder inquired as to the status of the previously proposed Council Chamber remodel project.

Mayor Warden stated the City received a bid proposal however it was over budget and would not be coming forward during this fiscal year.

**ADJOURNMENT**

There being no further business before the City Council at this time, the Regular Meeting of the Prosser City Council was adjourned at 7:56 p.m.

---

Mayor Paul Warden

Attest:

---

City Clerk Rachel Shaw

**CITY OF PROSSER, WASHINGTON  
601 7<sup>TH</sup> STREET  
CITY COUNCIL CHAMBERS  
CITY COUNCIL REGULAR MEETING  
TUESDAY, MARCH 25, 2014**

**CALL TO ORDER**

Mayor Warden called the Regular Meeting of the Prosser City Council to order at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

**ROLL CALL**

Council Members Aubrey, Hamilton, Taylor, Everett, Becken, and Elder were present. Council Member Brumley requested an excused absence

Others in attendance were City Clerk Shaw, Finance Director Mauras, Police Chief Giles, Finance Manager Yost, City Planner Zetz, and City Attorney Saxton.

**CITIZEN PARTICIPATION**

Citizen Participation would be handled during the consideration of the related topic.

**MAYOR AND COUNCIL REPORTS AND COMMENTS**

Mayor Warden removed Council Action Item 7e from the agenda and stated it would be moved to a scheduled meeting in April.

A memo was provided by Public Works Director DaCorsi regarding the possible donation of private property for right-of-way use on 6<sup>th</sup> Street. Mayor Warden asked if there were any objections to the proposed donation and parking. Council Member Elder state angled parking can be difficult for drivers to maneuver when exiting into traffic and he prefers off-street parking. Council Member Hamilton inquired of the response from surrounding property owners. Public Works Director DaCorsi stated the area already existed as angled parking with four parking spaces and sidewalk. Council Member Becken inquired if the owners would complete the work before it was dedicated. Public Works Director DaCorsi stated the project would be completed first.

**CONSENT AGENDA**

A motion was made by Council Member Taylor, seconded by Council Member Everett to approve Consent Agenda Items "A – I." Motion passed 6 YES, 0 NO, 1 ABSENT (Brumley).

- a. Approve Payment of Payroll Checks Nos. 600029 through 600031 in the Amount of \$2,173.87, and Direct Deposits in the Amount of \$11,733.58, for the Period Ending March 11, 2014

- b. Approve Payment of Claim Checks Nos. 10303 through 10370, in the Amount of \$190,538.77 and Electronic Payments in the Amount of \$24,233.65, for the Period Ending March 25, 2014
- c. Accept Monthly Report by Prosser Economic Development Association for the Month of February 2014 and Authorize Payment for those Services in the Amount of \$2,166.66 and Authorize Payment in the Amount of \$1,416.67 for Grant Writer Services
- d. Adopt Resolution 14-1447 Approving the Interlocal Cooperation Agreement between the City of Prosser and Benton County for Aerial Photography and Orthophoto Mapping Project of Portions of Benton County, Including the Areas Lying Within the City of Prosser and its Urban Growth Area and Authorizing the Mayor of Sign to Sign the Agreement
- e. Approve a Labor Agreement between the City of Prosser and Teamsters Local 839, Public Works Staff for the term of January 1, 2014, through December 31, 2016
- f. Approve a Letter of Understanding with Teamsters 839, Public Works regarding Standby Pay
- g. Approve a Letter of Understanding with Teamsters 839, Public Works regarding the 4/10 Work Schedule
- h. Approve a Subscription Agreement with Washington Teamsters Healthcare Trust for Teamsters 839, Public Works Employees
- i. Approve an Agreement with Washington Conference of Teamsters Pension Trust for Teamsters 839, Public Works Employees

**COUNCIL ACTION**

**APPROVE PAYMENT OF CLAIM CHECK NOS. 10371 AND 10372 IN THE AMOUNT OF \$214.05 FOR THE PERIOD ENDING MARCH 25, 2014**

Council Member Hamilton recused himself due to a conflict of interest. A motion was made by Council Member Everett, seconded by Council Member Becken to approve payment of claim check nos. 10371 and 10372 in the Amount of \$214.05 for the Period Ending March 25, 2014. Motion passed 5 YES, 0 NO, 1 ABSENT (Brumley), 1 ABSENTION (Hamilton).

**CONSIDERATION OF AN ACCEPTANCE OF GIFT OF RIGHT-OF-WAY BY CATHOLIC CHARITIES HOUSING SERVICES ALONG THE SOUTHERN BOUNDARY OF THE PARCEL COMMONLY ADDRESSED AS 480 NORTH RIVER ROAD, FOR CONSTRUCTION OF A NEW STREET**

A motion was made by Council Member Everett, seconded by Council Member Taylor to accept the gift of Right-of-Way from Catholic Charities Housing Services contingent upon release of all security interests from the portion being gifted to the City. Motion passed 4 YES, 1 NO (Becken), 1 ABSENT (Brumley), 1 ABSENTION (Hamilton).

Council Member Becken inquired as to why Council Member Hamilton abstained from the vote.

Council Member Hamilton explained he has no personal interest in the project, rather he is concerned with the cost of maintaining an additional city street when the streets the city does have are already poorly maintained.

**RESOLUTION 14-1448 APPROVING THE INTERLOCAL COOPERATION AGREEMENT FOR BRIDGE INSPECTION WITH BENTON COUNTY AND AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT**

Council Member Becken recused himself due to a conflict of interest. Council Member Elder inquired who was responsible for bridge maintenance. A motion was made by Council Member Taylor, seconded by Council Member Everett to adopt Resolution No. 14-1448 approving the Interlocal Cooperation Agreement for bridge inspection with Benton County and authorize the Mayor to sign the agreement. Motion passed 5 YES, 0 NO, 1 ABSENT (Brumley), 1 ABSENTION (Becken).

**RESOLUTION 14-1449 APPROVING THE INTERLOCAL AGREEMENT REGARDING SOLID WASTE MANAGEMENT BETWEEN THE CITY OF PROSSER AND BENTON COUNTY (LEAD AGENCY) AND AUTHORIZE THE MAYOR TO SIGN THE DOCUMENTS**

Council Member Becken recused himself due to a conflict of interest. A motion was made by Council Member Everett, seconded by Council Member Taylor to adopt Resolution No. 14-1449 approving the Interlocal Agreement regarding Solid Waste Management between the City of Prosser and Benton County (Lead Agency) and authorize the Mayor to sign the documents. Motion passed 5 YES, 0 NO, 1 ABSENT (Brumley), 1 ABSENTION (Becken).

**RESOLUTION APPROVING ALL SPECIFICATIONS, PLANS, ESTIMATES, BID DOCUMENTS, CONTRACT PROVISIONS, PREPARED BY BENTON COUNTY PURSUANT TO THE INTERLOCAL AGREEMENT EXECUTED ON JANUARY 14, 2014, AND ACCEPTING THE LOWEST QUALIFIED BIDDER GRANITE CONSTRUCTIONS COMPANY BID IN THE TOTAL AMOUNT OF \$1,172,000.00, OF WHICH THE CITY'S PORTION IS \$74,312.00, AND AUTHORIZING THE MAYOR TO SIGN AND EXECUTE ANY DOCUMENTS OR CONTRACTS, IF ANY, NECESSARY FOR THE 2014 BITUMINOUS SURFACE TREATMENT PROJECT**

This item was removed from the agenda and scheduled to be considered at a meeting to be held in April.

**ORDINANCE 14-2876 ALLOWING WATVS ON PUBLIC STREETS**

Dan Denchel, 325 Merlot Drive, expressed his gratitude to Council for their forward thinking on this item. Mr. Denchel requested Council consider amending the language in the proposed ordinance to 16 as the legal age limit to operate WATV on city streets, rather than 21.

James Rasey, Wilgus Road, stated he had recently been in contact with Commissioner Small and reported the County Commissioners will also be considering a similar ordinance for County roads. Mr. Rasey stated if the City adopts an ordinance with a different age limit than what State law allows for, it could potentially conflict with what the County adopts and also requested Council consider changing the age limit to.

Mr. Denchel stated Desert Valley Motor Sports will host training and would like to work with the City if the ordinance is passed.

Council Member Hamilton expressed his concern with lowering the legal age limit and stated that he would not support the ordinance if the age limit was lowered.

A motion was made by Council Member Everett, seconded by Council Member Taylor to adopt Ordinance No. 14-2876 allowing WATVs on Public Streets. Motion passed 6 YES, 0 NO, 1 ABSENT (Brumley).

**ORDINANCE 14-2877 DECREASING THE IMPREST FUNDS OF PETTY CASH FOR THE CITY OF PROSSER AND IDENTIFYING ITS DISTRIBUTION**

A motion was made by Council Member Everett, seconded by Council Member Elder to adopt Ordinance No. 14-2877 decreasing the imprest funds of petty cash for the City of Prosser and identifying its distribution. Motion passed 6 YES, 0 NO, 1 ABSENT (Brumley).

**REVIEW, DISCUSS AND POTENTIAL ADOPTION OF ORDINANCE 14-2878 AMENDING PROSSER MUNICIPAL CODE 2.95 REGARDING THE USE OF CREDIT CARDS**

A motion was made by Council Member Everett, seconded by Council Member Aubrey to adopt Ordinance No. 14-2878 amending Prosser Municipal Code 2.95 regarding the use of credit cards. Motion passed 5 YES, 1 NO (Taylor), 1 ABSENT (Brumley).

**APPROVE VARIOUS AGREEMENTS WHICH ALLOW FOR THE ACCEPTANCE OF DEBIT/CREDIT CARDS AND OTHER ELECTRONIC PAYMENTS**

A motion was made by Council Member Becken, seconded by Council Member Aubrey to approve the eight agreements detailed in the agenda bill. Motion passed 6 YES, 0 NO, 1 ABSENT (Brumley).

**ADJOURNMENT**

There being no further business before the City Council at this time, the Regular Meeting of the Prosser City Council was adjourned at 8:11 p.m.

---

Mayor Paul Warden

Attest:

---

City Clerk Rachel Shaw

**CITY OF PROSSER, WASHINGTON  
601 7<sup>TH</sup> STREET  
CITY COUNCIL CHAMBERS  
CITY COUNCIL SPECIAL MEETING  
TUESDAY, APRIL 1, 2014**

**CALL TO ORDER**

Mayor Warden called the Special Meeting of the Prosser City Council to order at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Prosser Heights Elementary “Kid that Cares” Martha Akinbade.

**ROLL CALL**

Council Members Aubrey, Hamilton, Taylor, Everett, Becken, and Elder were present. Council Member Brumley resigned her position on the City Council due to personal reasons.

Others in attendance were City Clerk Shaw, Finance Director Mauras, and City Attorney Saxton.

**CITIZEN PARTICIPATION** (None)

**MAYOR AND COUNCIL REPORTS AND COMMENTS**

Council Member Becken reported Ben--Franklin Transit is currently recruiting for the Executive Director position.

Council Member Elder provided a reminder for the April 12, 2014, Sharefest event.

Mayor Warden stated Burlington Northern Railroad would be closing the intersection at 6<sup>th</sup> Street and Bennett Avenue, to make some necessary repairs. Local businesses and the media have been notified.

***Yakima Valley Tourism 2013 Annual Report***

John Cooper, President & CEO, provided a handout of the 2013 Annual Report and Official Visitors Guide. Mr. Cooper reviewed the highlights of the year discussed the 2020 six year strategic plan.

***Prosser Economic Development Association Quarterly Report***

Deb Heintz, Executive Director, thanked Council for their continued support and thanked Mr. Cooper for the ongoing partnership with PEDDA. Mrs. Heintz notified Council the PEDDA office has relocated to the Walter Clore Wine & Culinary Center. Additionally she provided Council with the 2013 Annual Report and discussed the year in review. Mrs. Heintz invited Council to attend the Annual PEDDA Meeting on April 7, 2014, from 5:30 p.m. to 7:00 p.m., at the Walter Clore Wine & Culinary Center.

***Grant Writer Quarterly Report***

Sue Jetter, Grant Writer, presented Council with the First Quarter PEDA Grantwriter Report and discussed current projects. Mrs. Jetter provided the status of the Washington State Traffic & Safety Commission application for illuminated crosswalks and the USDA grant application for the City Park Restroom project.

***Mid-Columbia Library 2013 Annual Report***

Katy McLaughlin, Prosser Library Branch Manager, presented the 2013 Annual Report and the Year to Date Quarterly Report. Mrs. McLaughlin provided an overview of the reports and discussed the upcoming remodel project.

**CONSENT AGENDA**

A motion was made by Council Member Taylor, seconded by Council Member Everett to approve Consent Agenda Items "A – B." Motion passed 6 YES, 0 NO, 0 ABSENT.

- a. Approve Payment of Claim Checks Nos. 10387 through 10389, in the Amount of \$862.99, and Electronic Payment in the Amount of \$0, for the Period Ending April 1, 2014
- b. Approve Maintenance Contract with Abadan for Konica Minolta Bizhub 215 Copier

**COUNCIL ACTION**

**ORDINANCE 14-2879 REPEALING PROSSER MUNICIPAL CODE 2.48 REGARDING THE USE OF LIBRARY FACILITIES**

A motion was made by Council Member Taylor, seconded by Council Member Everett to adopt Ordinance 14-2879 repealing Prosser Municipal Code 2.48 regarding the use of library facilities. Motion passed 6 YES, 0 NO, 0 ABSENT.

**ORDINANCE 14-2880 REPEALING ORDINANCE NO. 96-1902 AND REPEALING PROSSER MUNICIPAL CODE CHAPTER 3.80 REGARDING THE LIBRARY FEES**

A motion was made by Council Member Taylor, seconded by Council Member Everett to adopt Ordinance 14-2880 repealing Ordinance No. 96-1902 and repealing Prosser Municipal Code 3.80 regarding the library fees. Motion passed 6 YES, 0 NO, 0 ABSENT.

**REVIEW, DISCUSS AND ADOPT RESOLUTION 14-1450 APPROVING THE INTERLOCAL AGREEMENT BETWEEN MID-COLUMBIA LIBRARIES AND THE CITY REGARDING LIBRARY BUILDING IMPROVEMENTS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT**

A motion was made by Council Member Taylor, seconded by Council Member Everett to adopt Resolution No. 14-1450 approving the Interlocal Agreement between Mid-Columbia Libraries and the City regarding library building improvements and authorizing the Mayor to execute the agreement. Motion passed 6 YES, 0 NO, 0 ABSENT.

**REVIEW, DISCUSS AND ADOPT ORDINANCE 14-2881 AMENDING SECTION 4 OF ORDINANCE NO. 933 RELATED TO THE LIBRARY MEMORIAL FUND**

A motion was made by Council Member Taylor, seconded by Council Member Everett to adopt Ordinance No. 14-2881 amending Section 4 of Ordinance No. 933 related to the Library Memorial Fund. Motion passed 6 YES, 0 NO, 0 ABSENT.

**ADJOURNMENT**

There being no further business before the City Council at this time, the Special Meeting of the Prosser City Council was adjourned at 7:50 p.m.

\_\_\_\_\_  
Mayor Paul Warden

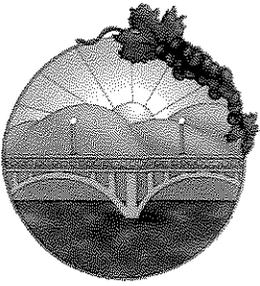
Attest:

\_\_\_\_\_  
City Clerk Rachel Shaw

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<u>Agenda Title:</u> Review, Discuss, and Potential Take Action to Approve Contracts with the US Bank for the use of Credit Cards by City Staff.		<u>Meeting Date:</u> May 6, 2014 Special Meeting	
<u>Department:</u> Administration	<u>Director:</u> Paul Warden	<u>Contact Person:</u> Regina Mauras	<u>Phone Number:</u> (509) 786-8225
<u>Cost of Proposal:</u> n/a		<u>Account Number:</u>	
<u>Amount Budgeted:</u> n/a		<u>Name and Fund#</u>	
<u>Reviewed by Finance Department:</u> <i>Regina Mauras</i>			
<u>Attachments to Agenda Packet Item:</u>  1. Administrative Policy - Credit Card Use Policy - ADM 005 2. Prosser Municipal Code 2.95 3. Political Subdivision Addendum 4. Political Subdivision Request to Participate Form			
<u>Summary Statement:</u>  Recently, the City Council took action to approve amendments to PMC 2.95 regarding the use of credit cards. Now that those amendments are in place the City can further discuss the option to participate in the State of Washington's credit card contract. The use of credit cards has significant benefits and risks. The attached draft administrative policy was drafted to ensure that the City and staff utilize the cards in a responsible and efficient manner.			
<u>Consistent with or Comparison to:</u>  EXISTING ADOPTED OR PREVIOUS PLANS, POLICIES OR ACTIONS TAKEN BY THE COUNCIL			
<u>Recommended City Council Action/Suggested Motion:</u>  Review and Discuss the use of Credit Cards by City Staff.  Approve of State of Washington contracts with US Bank for the issuance of credit cards and Authorize the Mayor to execute the necessary documents.			
<u>Reviewed by Department Director:</u>  <i>Regina Mauras</i>  Date: <i>4/30/2014</i>	<u>Reviewed by City Attorney:</u>    Date: <i>4/22/14</i>	<u>Approved by Mayor:</u>    Date: <i>5-1-14</i>	



# Administrative Policy and Procedure City of Prosser, Washington

<b>SUBJECT: Credit Card Use Policy</b>		
	Policy No. ADM.005	Pages:
Effective Date:		
Developed By:	Department Head Approval:	City Administrator Approval:

## OVERVIEW

### 1. PURPOSE.

To authorize the City’s Policy on the use of City credit cards to transact official City business.

### 2. ABSENCE OF CITY ADMINISTRATOR.

Prior to October 2, 2015, the term City Administrator shall mean the Mayor. After October 2, 2015, in the event that the office of City Administrator is unfilled, then the term City Administrator shall mean the Mayor.

### 3. ORGANIZATIONS AFFECTED.

This policy applies to the Mayor, City Council, City Administrator, Department Heads and employees.

### 4. REFERENCES.

- PMC 2.95
- RCW 43.09
- RCW 42.24.115

### 5. RESPONSIBILITIES

**5.1 Authority.** Prosser Municipal Code 2.95.060 authorizes the Mayor or City Administrator under the direction of the Mayor, and Finance Director to implement a credit card policy and monitor compliance with the policy. The policy requires the Finance Director to develop forms for employees to appeal administrative refusal to reimburse credit card purchases to the City Council.

### 6. STATEMENTS OF POLICY AND PROCEDURES

**6.1 Authorized use of credit cards.** The City Council has authorized the Finance Director to implement procedures for the use of City credit cards for the following uses:

- 6.1.1 Fuel (for City owned vehicles), supplies, copies, equipment and other official city purchases and acquisitions. If the employee has been issued a separate fuel card, that card should be used rather than the general credit card.
- 6.1.2 Registrations for training seminars and related conferences.
- 6.1.3 Travel and training expenses including deposits to hold rooms, lodging, airline tickets, tips, parking, and gasoline. (the purchase of meals is prohibited)

**6.2 Credit Card Limits.** The credit limit on each card issued shall not exceed \$2,500 except for the Accounts Payable card which shall have a credit limit of \$5,000

**6.3 Prohibited use of the credit cards.** The following uses for credit cards issued are prohibited

- 6.3.1 Cash advances of any nature (RCW 43.09.2855 (6))
- 6.3.2 Personal purchases of any kind
- 6.3.3 Purchase of meals associated with meals, travel, or training. Due to the City's per diem policy for business travel it is necessary to exempt the purchase of meals from credit card use.

#### **6.4 Procedures**

6.4.1 Authorization. Payment of all credit card expenditures is contingent upon the City Administrator's or Department Head's approval of the monthly statement of transactions. If an expenditure is deemed inappropriate, the assigned credit card holder will be responsible for reimbursing the City.

6.4.2 Receipts/Verification.

6.4.2.1 Receipts must be obtained for each credit card transaction. These receipts must be detailed and include information on the vendor, a detailed list of charges including item description and cost, and the date and time of the purchase.

6.4.2.2 The purpose of the charge and the name of the individual(s) involved must be clearly written on the receipt.

6.4.2.3 Receipt or purchase verification for on-line charges are to be saved and retained by the assigned individual or designee.

6.4.2.4 Receipts should be immediately (within 7 days) provided to the Finance Department or Department Director.

6.4.2.5 The Department Heads will verify department credit card expenditures against the monthly statement and return the verified statement including all supporting documents and receipts to the Finance Department for audit and processing.

6.4.3 Appeal

6.4.3.1 If it is determined that an expenditure is deemed inappropriate, the assigned card holder may appeal the decision to the City Council. Such an appeal must be submitted on the attached Request for Appeal form and filed with the City Administrator. The assigned card holder is still required for reimbursing the expense as outlined in 5.4.1, and return their card if requested, to prevent any additional fines, penalties, or additional charges. Depending upon the decision of the City Council, the assigned card holder may be reimbursed for the expense paid and card returned

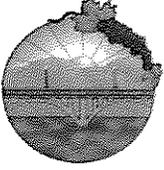
**6.5 Control.**

- 6.5.1 Each department is responsible for contacting the vendor when goods purchased with the credit card are not acceptable (incorrect order, damaged, etc.) and for arranging a return for credit or exchange.
- 6.5.2 The Finance Director is responsible for administration of the cards to include, but not limited to, selection of card provider, payment of credit card bills, managing the issuance of cards and ensuring proper use.
- 6.5.3 The Budget and Finance Committee will review all payments, as part of their regular voucher review process, to ensure that all payments are compliant with this policy.
- 6.5.4 The City Administrator will disallow the use of the assigned City credit card for violation or misuse of the credit card in accordance with this policy. Please refer to section 5.3 of this policy regarding prohibited uses of the credit card.
- 6.5.5 Any exception to this policy must be approved in writing in advance by the City Administrator.
- 6.5.6 Assigned individuals will sign a Credit Card User Agreement (attachment A) before they are eligible to use the card.
- 6.5.7 Credit cards are to be returned to the City immediately upon the written demand of the Finance Director.
- 6.5.8 Misuse of a city credit card may result in disciplinary action or termination of legal action.
- 6.5.9 Failure to provide detailed documentation as required by this policy will result in user being responsible for the charge. The City will have the right to withhold any and all funds payable to the elected official or employee in the amount of the charge including any associated interest or penalty.



**APPENDIX A: Credit Card User Agreement**

---



**CITY OF PROSSER, WA**

601 7th Street, Prosser, Washington 99350 (509)786-2332 Fax (509)786-3717

**CREDIT CARD USER AGREEMENT**

I, \_\_\_\_\_, as an employee of the City of Prosser accept personal responsibility for the safeguard and proper use of the City credit card # \_\_\_\_\_ which has been assigned to me for use in the performance of my job, in accordance with the terms outlined below.

Credit cards are to be used solely for travel related business expenses (within and outside the city), and conference/class registrations incurred by the assigned individual only. **EXCLUDING MEALS**

Credit cards may be used for purchasing department supplies up to \$ \_\_\_\_\_ only if prior approved by the assigned card holder's Department Head.

I have read and understand the credit card policies and procedures as set out in Prosser Municipal Code 2.95 and Administrative Policy ADM.005.

I understand the City Administrator will disallow my use of a City credit card for violation or misuse of the credit card and/or credit card policies and procedures and that such violation or misuse may subject me to discipline, including termination, under the City's Personnel Policies.

I understand that each time I use, or authorize the use thereof, that I am adhering to the following statement:

"I hereby certify under penalty of perjury that this is a true and correct claim for necessary expenditures incurred by me and that no payment has been received by me on account thereof."

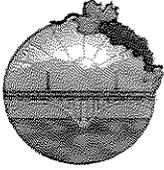
I understand that I will be held personally liable for inappropriate charges I incur on the City credit card, and payment for any such inappropriate charges and any associated interest or penalties is hereby authorized to be withheld from my paycheck.

The undersigned individual has read and understands the above statements.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Date

**APPENDIX B: Request for Appeal**



**CITY OF PROSSER, WA**

601 7th Street, Prosser, Washington 99350 (509)786-2332 Fax (509)786-3717

**CREDIT CARD USE  
REQUEST FOR APPEAL**

Date:

Employee Name:

Credit Card Charge Information
<b>Date of Purchase:</b>
<b>Vendor:</b>
<b>Amount of Charge:</b>
<b>Product or Service:</b>
<b>Reason for Denial of Charge:</b>

Appeal Summary
<p><b>Please provide an explanation or additional information which will assist the Council while considering your appeal. (please attach an additional page if necessary)</b></p>

Once signed, please submit this completed form to the City Administrator's Office for scheduling on the City Council Agenda. You will be contacted with a meeting time and date once assigned.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Date

## Chapter 2.95 CREDIT CARD POLICY

Sections:

- 2.95.010 Purpose.
- 2.95.020 Distribution of credit cards.
- 2.95.030 Authorized use of credit cards.
- 2.95.040 Credit card limits.
- 2.95.050 Prohibited uses of the credit cards.
- 2.95.060 Accounting of credit card charges.
- 2.95.070 Use of credit card for an unauthorized purpose.
- 2.95.900 Severability.

### **2.95.010 Purpose.**

The purpose of this chapter shall be to set forth the policy of the city of Prosser, Washington, for the use of credit cards by elected officials, appointed officers, and city employees. This chapter shall be interpreted to provide for the use of credit cards by authorized persons to the fullest extent allowed by RCW 43.09.2855 and 42.24.115. (Ord. 2878 § 1, 2014; Ord. 2596 § 3, 2008).

### **2.95.020 Distribution of credit cards.**

City elected officers, city appointed officers, and employees of the city are authorized to use credit cards for official government travel and purchases. The credit cards issued may be ones that accrue airline miles or rebates at no extra cost. All earned flyer miles or rebates shall be used for city of Prosser business purposes only. (Ord. 2878 § 2, 2014; Ord. 2596 § 4, 2008).

### **2.95.030 Authorized use of credit cards.**

Elected officials, appointed officers and employees who are issued cards are authorized to use credit cards for the following purchases and travel-related expenses:

- A. Fuel (for city-owned vehicles), supplies, copies, equipment and other official city purchases and acquisitions.
- B. Registrations for training seminars and related conferences.

C. Travel and training expenses including deposits to hold rooms, lodging, airline tickets, parking and gasoline. (Ord. 2878 § 3, 2014; Ord. 2596 § 5, 2008).

**2.95.040 Credit card limits.**

---

The credit limit on each credit card issued in accordance with this chapter shall be not more than five thousand dollars. (Ord. 2596 § 6, 2008).

**2.95.050 Prohibited uses of the credit cards.**

---

The following uses for credit cards issued in accordance with this chapter are prohibited:

- A. Cash advances of any nature.
- B. Personal purchases.
- C. The purchase of meals associated with business travel or business meetings. Food which is purchased as part of a general gathering or buffet is acceptable. (Ord. 2878 § 4, 2014; Ord. 2596 § 7, 2008).

**2.95.060 Accounting of credit card charges.**

---

City elected officials, appointed officers, and city employees shall forward detailed receipts for authorized purchases to the finance director within seven business days after the credit card is used by the person. The finance director is authorized to make administrative policies to implement this section. If detailed receipts are not submitted on a timely basis, the city shall have a prior lien against and a right to withhold any and all funds payable to the elected official, appointed officer, or employee in the amount of the purchase, interest, and any associated fees or penalties charged by the company which issued the credit card for the period of time that the charges were not paid. The finance director will pay all submitted charges on a monthly basis. (Ord. 2878 § 5, 2014; Ord. 2596 § 8, 2008).

**2.95.070 Use of credit card for an unauthorized purpose.**

---

The finance director and the city council's budget and finance committee shall review and audit all credit card purchases for compliance with this chapter. Any unauthorized charges discovered during the audit shall be disallowed and shall be paid by the elected official, appointed officer, or employee by check, U.S. currency, or salary deduction. If, for any reason, disallowed charges are not repaid before the credit card billing is due and payable, the city shall have a prior lien against and a right to withhold any and all funds of the disallowed charges and interest at the same rate as charged by the company which issued the credit card. In the event that the elected official, appointed officer, or employee disagrees with the disallowance of the claim he or she

may submit a request for reimbursement of the charge amount to the city council. Such request shall be made on forms adopted by the finance director. (Ord. 2878 § 6, 2014; Ord. 2596 § 9, 2008).

**2.95.900 Severability.**

---

The provisions of this chapter are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this chapter or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this chapter shall not as a result of said section, subsection, sentence, clause, or phrase be held unconstitutional or invalid. (Ord. 2596 § 10, 2008).

## POLITICAL SUBDIVISION ADDENDUM

---

This Political Subdivision Addendum ("**Political Subdivision Addendum**") is entered into, by and between U.S. Bank National Association ("**U.S. Bank**") and the Political Subdivision identified herein and executing this Political Subdivision Addendum as "**Political Subdivision**", and constitutes an addendum to and modification of the Participating Addendum, dated December 6, 2007 (the "**Participating Addendum**") between the State of Washington (the "**State**") and U.S. Bank, which constitutes an addendum to the Master Services Agreement 5-06-99-01 dated October 19, 2006 (the "**MSA**") between the State of California (the "**State of California**") and U.S. Bank. This Political Subdivision Addendum shall become effective upon signing by or on the behalf of U.S. Bank ("**Effective Date**") and supersedes any previous and like addenda with the Political Subdivision.

### RECITALS

- A. The State has entered into the Participating Addendum for the purpose of making available a Purchase Card Program, Corporate Card Program and One Card Program as described in the Participating Addendum and the MSA for use by the State Agencies and Political Subdivisions;
- B. The State is willing to permit Political Subdivision's to participate in the Purchase Card Program, Corporate Card Program and One Card Program, provided that Political Subdivision assumes all responsibility and liability for Political Subdivision's performance of the terms and conditions of the Participating Addendum and MSA as if Political Subdivision was the entity signing the Participating Addendum and MSA as the State. Neither the State of California nor the State shall bear liability or responsibility for Political Subdivision under the Participating Addendum, the MSA or this Political Subdivision Addendum; and
- C. Political Subdivision has received a copy of the MSA and the Participating Addendum from the State, and after a thorough review of the MSA and the Participating Addendum, desires to become a Political Subdivision; provided that Political Subdivision assumes all responsibility and liability for Political Subdivision's performance of the terms and conditions of this Political Subdivision Addendum, as well as the MSA and Participating Addendum, as if Political Subdivision was the entity signing the MSA and the Participating Addendum as the State, but Political Subdivision shall not be liable for the acts and omissions of the State of California or State under the MSA, the Participating Addendum or this Political Subdivision Addendum.

### AGREEMENT

Now therefore, in consideration of the foregoing Recitals, which are incorporated herein by reference, the mutual promises and covenants set forth in the MSA and the Participating Addendum, which are incorporated herein by reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all parties agree as follows:

1. Capitalized terms used in this Political Subdivision Addendum and not otherwise defined in this Political Subdivision Addendum are used with the same respective meanings attributed thereto in the MSA and the Participating Addendum.
2. Political Subdivision agrees to accept and perform all duties, responsibilities and obligations required of the State as such relates to State Agencies as set forth in the MSA and the Participating Addendum. Cards shall be issued to designated employees of Political Subdivision upon execution of this Political Subdivision Addendum by Political Subdivision and U.S. Bank.
3. In order to determine credit qualifications for the Political Subdivision, the Political Subdivision shall provide U.S. Bank with the last three (3) years of audited financial statements with this signed Political Subdivision Addendum. The Political Subdivision shall provide to U.S. Bank annual financial statements thereafter. U.S. Bank will review the financial statements and notify the Political Subdivision of the approval or decline of its credit qualification. If such financial statements can be independently obtained by U.S. Bank, the Political Subdivision will not be required to provide such financial statements.

4. Political Subdivision shall make payment to U.S. Bank for all Debt incurred by Political Subdivision, its Cardholders and Accountholders as provided in the MSA and the Participating Addendum. **"Debt"** means all amounts charged to a card and/or account including without limitation all amounts related to purchases, fees and other Charges that are owed to U.S. Bank by Political Subdivision, its Cardholders and Accountholders.
5. Political Subdivision declares that cards shall be used for official Political Subdivision purchases only, and shall not be used for individual, consumer purchases or to incur consumer debt. Political Subdivision warrants that it possesses the financial capacity to perform all of its obligations under the MSA, the Participating Addendum and this Political Subdivision Addendum.
6. **Effect of Early Termination on the Revenue Share Payment Under the One Card and Corporate Card Programs Only.**
  - A. Upon the termination of this Political Subdivision Addendum for cause by Political Subdivision or without cause by U.S. Bank, U.S. Bank will pay to Customer a pro rata portion of the Performance and/or Volume Rebate based on the number of completed months between the start of the Addendum Year through the effective date of said termination. The last Revenue Share calculation and payment will be made within eight (8) months after the end of the Agreement Year to allow for any Charge-offs. If any Revenue Share payment date falls on a non-business day, Revenue Share payments due shall be made on the next business day.
  - B. In the event that the Political Subdivision Addendum is terminated early without cause by the Political Subdivision or with cause by U.S. Bank, in addition to any other remedies available to U.S. Bank, this Revenue Share opportunity shall immediately terminate and no rebate shall be paid.
7. The representations, warranties and recitals of Political Subdivision set forth in this Political Subdivision Addendum, the Participating Addendum and the MSA constitute valid, binding and enforceable agreements of Political Subdivision. All extensions of credit made pursuant to this Political Subdivision Addendum, the Participating Addendum and the MSA to Political Subdivision will be valid and enforceable obligations of Political Subdivision and Political Subdivision shall pay to U.S. Bank or Voyager, respectively, all Debts incurred by Political Subdivision in accordance with the terms of the MSA, the Participating Addendum and this Political Subdivision Addendum. The execution of this Political Subdivision Addendum and the performance of the obligations hereunder and under the Participating Addendum and the MSA are within the power of Political Subdivision, have been authorized by all necessary action and do not constitute a breach of any agreement to which Political Subdivision is a party or is bound.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

8.

The notice address for Political Subdivision is:

Political Subdivision:

City of Prosser, Wa

601 7<sup>th</sup> Street

Prosser, WA 99350

Attn: Finance Director

9. Authorization and Execution. Political Subdivision represents and warrants that this transaction is within the scope of the normal course of business and does not require further authorization for the Political Subdivision to be duly bound by this Political Subdivision Addendum. This Political Subdivision Addendum requires approval as to form by the Attorney for the Political Subdivision. If this Political Subdivision Addendum is not approved as to form by the Attorney for the Political Subdivision, the completion of a Certificate of Authority is required and must accompany this Political Subdivision Addendum.

In witness whereof, the parties have, by their duly authorized representatives, executed this Political Subdivision.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by: \_\_\_\_\_

City of Prosser, Wa

U.S. Bank National Association

Legal Name of Political Subdivision

(Signature of Authorized Individual)

(Signature of Authorized Individual)

Paul Warden

Kelly Caspers

(Printed Name of Authorized Individual)

(Printed Name of Authorized Individual)

Mayor

Vice President

(Printed Title of Authorized Individual)

(Printed Title of Authorized Individual)

Approved as to form:

(Signature of Attorney for Political Subdivision)

Howard Saxton III

(Printed Name of Attorney)



- If your agency requires that you have original signature documents on file at your agency, please send more than one set of the above documents to U.S. Bank.

Please send completed documents to:

WSCA Sales Coordinator  
U.S. Bank CPS  
1025 Connecticut Ave. NW Suite 510  
Washington, D.C. 20036

**QUESTIONS?** Email us at :

[cpsmidmarketsalescoordinator@usbank.com](mailto:cpsmidmarketsalescoordinator@usbank.com)

---

*For U.S. Bank Use Only*

Date Submitted \_\_\_\_\_

Banker's Employee ID \_\_\_\_\_ Treasury Management Employee ID \_\_\_\_\_  
IPM \_\_\_\_\_ RM/AM \_\_\_\_\_

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<u>Agenda Title:</u> Review and Discuss potential changes to Prosser Municipal Code 13.10.150 regarding late fees.		<u>Meeting Date:</u> May 6, 2014 Special Meeting	
<u>Department:</u> Administration	<u>Director:</u> Paul Warden	<u>Contact Person:</u> Paul Warden	<u>Phone Number:</u> (509) 786-2332
<u>Cost of Proposal:</u>		<u>Account Number:</u>	
<u>Amount Budgeted:</u>		<u>Name and Fund#</u>	
<u>Reviewed by Finance Department:</u> <i>Regina Maurer</i>			
<u>Attachments to Agenda Packet Item:</u>  1. Prosser Municipal Code 13.10.150			
<u>Summary Statement:</u>  In previous meetings, the Council discussed the idea of making updates to Prosser Municipal Code in regards to the 5% late fee charged to delinquent accounts. The following ideas were presented to council: <ul style="list-style-type: none"> <li>• Added a dollar amount cap to the late fee. For instance, we would charge the 5% late fee to customer up to the amount of \$100.</li> <li>• Allow customers to apply for a waiver of the late fee once every 36 months.</li> </ul> Staff would like to receive direction from Council regarding this provision and determine whether adjustment to this code section is necessary.			
<u>Consistent with or Comparison to:</u>  EXISTING ADOPTED OR PREVIOUS PLANS, POLICIES OR ACTIONS TAKEN BY THE COUNCIL			
<u>Recommended City Council Action/Suggested Motion:</u>  Review and Discuss potential changes to Prosser Municipal Code 13.10.150 regarding late fees.			
<u>Reviewed by Department Director:</u> <i>Paul Warden</i>	<u>Reviewed by City Attorney:</u> <i>[Signature]</i>	<u>Approved by Mayor:</u> <i>Paul Warden</i>	
Date: <i>5-1-14</i>	Date: <i>4/22/14</i>	Date: <i>5-1-14</i>	
<u>Today's Date:</u> April 22, 2014	<u>Revision Number/Date:</u>	<u>File Name and Path:</u>	

## Prosser Municipal Code

### 13.10.150 Billing procedures.

---

A. Combined billing statements for the bulk water, irrigation, garbage, sewer, and water services shall be sent to all customers on a regular and periodic basis in accordance with this chapter. All bills shall be mailed to the address of the owner of the property being served by bulk water, irrigation, garbage, sewer, and water services, as the address appears in the records of the city. Upon written request of a customer, billing statements may be sent directly to the occupant of the property being served; however, in such cases the owner shall remain ultimately liable for payment of the bill, and the property shall remain subject to a lien for a delinquent account, as provided for in this chapter. The owner of the property may waive his or her right to receive duplicate copies of the combined billing statements by filing a waiver with the city.

B. All combined bills for bulk water, irrigation, garbage, sewer, and water services are due on the tenth day of each month and shall become delinquent on the twentieth day of each month. The owner of the property shall be responsible to pay these charges to the city prior to delinquency.

C. In the event that any fees or charges assessed for such services are not paid by the twentieth day of each month for such services, they shall be considered delinquent and shall automatically constitute a lien against the property to which the services were rendered. All delinquent accounts shall be assessed a late penalty in the amount set forth in the city's fee schedule for each month that an account is delinquent. A lien, for up to four months of charges, penalties and surcharges, shall encumber the property, and shall be the obligation of the owner of the property, its heirs, successors and assigns, until the same is paid in full. The city may enforce the lien by shutting off water, sewer, garbage and/or irrigation services until all delinquent and unpaid charges are paid in full; provided, that procedure for discontinuance of service shall be in accordance with the provisions of this chapter.

D. All payments on utility bills shall be applied first to surcharges and penalties, second to the irrigation and bulk water accounts, third to the garbage account, fourth to the sewer account, and fifth to the water account.

E. For each notice sent to a utility customer advising the customer that an account is delinquent or that utility service will be discontinued by reason of the delinquency, there shall be a service penalty added to the account in the amount set forth in the city's fee schedule.

F. The finance director is authorized to waive the late penalty and service penalty under the following circumstances:

1. Where a utility customer has made arrangements with the city, prior to the date the billing is due, for deferral of the payment of the bill; or
2. Where another public agency must obtain approval for payment of the billing and the customer's payment cycle is inconsistent with the city's billing cycle; or
3. In such other circumstances where, in the judgment of the finance director, the customer can demonstrate a bona fide economic hardship. The finance director is hereby authorized to establish policies and procedures setting forth what constitutes a bona fide economic hardship. (Ord. 2789 § 1, 2012; Ord. 2752 § 16, 2011).

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<b>Agenda Title:</b> Review Ordinance 14 - _____ closing fund 442 and 443 regarding the 1997 Water/Sewer Refunding Bond and amending the 2014 Budget.		<b>Meeting Date:</b> May 6, 2014 Special Meeting	
<b>Department:</b> Finance	<b>Director:</b> Regina Mauras	<b>Contact Person:</b> Toni Yost	<b>Phone Number:</b> (509) 786-8215
<b>Cost of Proposal:</b> n/a		<b>Account Number:</b>	
<b>Amount Budgeted:</b> n/a		<b>Name and Fund#</b> 1997 Water/Sewer Refunding Bond Redemption (442)  1997 Water/Sewer Refunding Bond Reserve (443)	
<b>Reviewed by Finance Department:</b>			
<i>Regina Mauras</i>			
<b>Attachments to Agenda Packet Item:</b>			
1. Ordinance 97-1934 2. Ordinance 14 - _____			
<b>Summary Statement:</b>			
<p>In 1997 the City Council adopted Ordinance 97-1934. This ordinance combined the outstanding debt of several water and sewer bonds and created one bond, the 1997 Water/Sewer Refunding Bond.</p> <p>In December of 2013 the last payment was made on this bond and the debt has been paid in full. Therefore, the attached ordinance has been drafted to close these funds because they are no longer needed and return any remaining balance to the water and sewer utilities. (54% to water and 46% to sewer). This ordinance also amends the 2014 budget to allow for these transfers.</p> <p>RCW 35A.33.090 requires that emergency budget amendments of this type must be introduced and reviewed at least 5 days prior to the Council taking action on the amendments. Therefore, this item is being presented for discussion purposes only and will be brought back to the Council at a future meeting for action.</p>			

<u>Consistent with or Comparison to:</u>		
EXISTING ADOPTED OR PREVIOUS PLANS, POLICIES OR ACTIONS TAKEN BY THE COUNCIL		
<u>Recommended City Council Action/Suggested Motion:</u>		
No motion is necessary. Review Ordinance 14 - _____ closing fund 442 and 443 regarding the 1997 Water/Sewer Refunding Bond and amending the 2014 Budget.		
<u>Reviewed by Department Director:</u>	<u>Reviewed by City Attorney:</u>	<u>Approved by Mayor:</u>
Regina Mamas		
Date: 4/30/2014	Date: 4/30/14	Date: 5-1-14
<u>Today's Date:</u>	<u>Revision Number/Date:</u>	<u>File Name and Path:</u>
April 23, 2014		

**CITY OF PROSSER, WASHINGTON**  
**ORDINANCE NO. 14-\_\_\_\_\_**

**AN ORDINANCE CLOSING THE 1997 WATER/SEWER REFUNDING BOND REDEMPTION FUND NUMBER 442 AND THE 1997 WATER/SEWER REFUDNING BOND RESERVE FUND NUMBER 443; AND AN ORDINANCE AMENDING ORDINANCE 13-2859, ORDINANCE 14-2871, AND ORDINANCE 14-2883; AMENDING THE 2014 BUDGET FOR THE 1997 WATER/SEWER REFUNDING BOND REDEMPTION FUND (442) AND 1997 WATER/SEWER REFUDNING BOND RESERVE FUND (443) FOR UNAPPROPRIATED REVENUE RESERVED BY THE CITY DURING 2014. THE ORDINANCE ALSO PROVIDES FOR EXPENDITURE OF THOSE APPROPRIATIONS AND DECLARES AN EMERGENCY. THE ORDINANCE AMENDS THE 2014 BUDGET FOR THE ABOVE FUND AT THE FUND LEVEL AND FINDS THAT AMENDMENTS TO THE 2014 BUDGET ARE IN THE BEST INTEREST OF THE CITY. THE ORDINANCE ALSO AUTHORIZES THE FINANCE DIRECTOR TO MAKE ALL ADJUSTMENTS TO THE 2014 BUDGET NECESSARY TO ACCOMPLISH THE PURPOSE OF THIS ORDINANCE. THE ORDINANCE ALSO DECLARES THAT THE PROVISIONS OF THE ORDINANCE ARE SEVERABLE FROM ONE ANOTHER AND SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDING FOR PUBLICATION BY SUMMARY.**

**WHEREAS**, Ordinance 97-1934 was adopted on May 29, 1997, creating the 1997 Water and Sewer Revenue Improvement and Refunding Bond by combining a number of outstanding revenue bonds for the water and sewer utilities, and

**WHEREAS**, fund 442 and fund 443 were created per the bond requirements; and

**WHEREAS**, in December, 2013 the final payment was made on this bond and the obligation has expired, therefore it is in the best interest of the city to close these funds and return any remaining balance to the water and sewer utilities;

**WHEREAS**, pursuant to RCW 35A.33.090, a public emergency exists which could not have been reasonably foreseen at the time of the filing of the 2014 Budget which requires the receipt and expenditure of money not provided for in the annual budget and is not one of the emergencies specifically enumerated in RCW 35A.33.080; and

**WHEREAS**, the facts constituting an emergency are enumerated as follows:

1. The adopted 2014 budget was an estimate of revenues and expenditures; and
2. Because the final payment on the bonds referred to above has been paid, the bond funds must be closed and the cash contained in those funds transferred to the water and sewer funds; and
3. Prudent fiscal management requires immediate amendment of the budget; and
4. The funds need to be transferred to the water and sewer funds by the end of 2014; and
5. It is in the best interest of the city of Prosser to amend the budget as provided in

this ordinance for fund numbers 442 and 443; and

**WHEREAS**, an emergency exists; and

**WHEREAS**, this Ordinance was first introduced to the City Council on May 6, 2014; and

**WHEREAS**, the public was given an opportunity to comment for or against this emergency budget amendment; and

**WHEREAS**, expenses and revenues will occur in 2014 that could not have been foreseen at the time of the preparation of the 2014 budget;

**NOW THEREFORE**, THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1.** Fund No. 442 (1997 Water/Sewer Refunding Bond Redemption Fund) is hereby closed.

**Section 2.** Fund No. 443 (1997 Water/Sewer Refunding Bond Reserve Fund) is hereby closed.

**Section 3.** The City wishes to appropriate revenue in the amount \$73,500, and it desires to appropriate for expenditure in the 1997 Water/Sewer Refunding Bond Redemption Fund (442) at the Fund level.

**Section 4.** The City wishes to appropriate revenue in the amount \$628,500, and it desires to appropriate for expenditure in the 1997 Water/Sewer Refunding Bond Reserve Fund (443) at the Fund level.

**Section 5.** The City Council finds that it is in the best interest of the City of Prosser, Washington to amend the 2014 City Budget to appropriate the reserved revenues and to provide for the expenditure of those revenues or appropriations at the fund level as set forth in Section 6 below.

**Section 6.** The 2014 Budget Adopted by Ordinance Number 13-2859, as amended by Ordinances Numbered 14-2871 and 14-2883 is hereby amended for the following funds in the following amounts:

Fund No.	FUND	Revenue	Expenditure
442	1997 Water/Sewer Refunding Bond Redemption Fund	\$73,500	\$73,500
443	1997 Water/Sewer Refunding Bond Reserve Fund	\$628,500	\$628,500

**Section 7.** The Finance Director is hereby authorized to transfer the funds remaining in

the closed funds 54% to the Water Fund and 46% to the Sewer Fund and make all adjustments to the City's Budget to accomplish the purposes of this Ordinance in accordance with Chapter 35A.33 RCW.

**Section 8.** An emergency is declared to exist and the recitals set forth above are hereby adopted as findings in support of such emergency.

**Section 9. SEVERABILITY.** The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this ordinance shall not as a result of said section, subsection, sentence, clause, or phrase be held unconstitutional or invalid.

**Section 10.** Since this budget amendment is being approved in accordance with RCW 35A.33.090, its passage requires the affirmative vote of 5 Council Members. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**PASSED** by the City Council and **APPROVED** by the Mayor, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**MAYOR PAUL WARDEN**

ATTEST:

\_\_\_\_\_  
**CITY CLERK, RACHEL SHAW**

Approved as to form:



\_\_\_\_\_  
**CITY ATTORNEY, HOWARD SAXTON**

Date of Publication: \_\_\_\_\_

**SUMMARY OF ORDINANCE NO. 14-\_\_\_\_\_**

of the City of Prosser, Washington

---

On the \_\_\_\_ day of \_\_\_\_\_, 2014, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE CLOSING THE 1997 WATER/SEWER REFUNDING BOND REDEMPTION FUND NUMBER 442 AND THE 1997 WATER/SEWER REFUDNING BOND RESERVE FUND NUMBER 443; AND AN ORDINANCE AMENDING ORDINANCE 13-2859, ORDINANCE 14-2871, AND ORDINANCE 14-2883; AMENDING THE 2014 BUDGET FOR THE 1997 WATER/SEWER REFUNDING BOND REDEMPTION FUND (442) AND 1997 WATER/SEWER REFUDNING BOND RESERVE FUND (443) FOR UNAPPROPRIATED REVENUE RESERVED BY THE CITY DURING 2014. THE ORDINANCE ALSO PROVIDES FOR EXPENDITURE OF THOSE APPROPRIATIONS AND DECLARES AN EMERGENCY. THE ORDINANCE AMENDS THE 2014 BUDGET FOR THE ABOVE FUND AT THE FUND LEVEL AND FINDS THAT AMENDMENTS TO THE 2014 BUDGET ARE IN THE BEST INTEREST OF THE CITY. THE ORDINANCE ALSO AUTHORIZES THE FINANCE DIRECTOR TO MAKE ALL ADJUSTMENTS TO THE 2014 BUDGET NECESSARY TO ACCOMPLISH THE PURPOSE OF THIS ORDINANCE. THE ORDINANCE ALSO DECLARES THAT THE PROVISIONS OF THE ORDINANCE ARE SEVERABLE FROM ONE ANOTHER AND SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDING FOR PUBLICATION BY SUMMARY.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014.

---

CITY CLERK, RACHEL SHAW

CITY OF PROSSER WASHINGTON

ORDINANCE NO. 97-1934

AN ORDINANCE of the City of Prosser, Washington, combining the separate water and sewer systems of the City; providing for the defeasance of the outstanding Water Revenue Bonds, 1973, of the City; providing for the issuance of \$4,430,000 par value of Water and Sewer Revenue Improvement and Refunding Bonds, 1997, of the City to provide part of the funds with which to pay the cost of making major repairs and replacements to the City's sewage treatment plant and to pay the cost of refunding all of the outstanding Sewer Revenue and Refunding Bonds, 1987, Sewer Revenue Bonds, 1992, Water Revenue Bonds, 1992, and Water Revenue Bonds, 1994, of the City, and to pay the administrative costs of such refunding and the costs of issuance and sale of such bonds; fixing the date, form, maturities, interest rates, terms and covenants of the bonds; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the bonds herein authorized and for the use and application of the money derived from those investments; authorizing the execution of an agreement with Marine Midland Bank of New York, New York, as refunding trustee; providing for the call, payment and redemption of the bonds to be refunded; providing for bond insurance; and approving the sale by placement contract and providing for the delivery of the bonds to Bank of America, NT&SA, doing business as Seafirst Bank, of Seattle, Washington.

*This document prepared by:*

*Foster Pepper & Shefelman PLLC  
1111 Third Avenue, Suite 3400  
Seattle, Washington 98101  
(206) 447-4400*

CITY OF PROSSER, WASHINGTON

ORDINANCE NO. 97-1934

AN ORDINANCE of the City of Prosser, Washington, combining the separate water and sewer systems of the City; providing for the defeasance of the outstanding Water Revenue Bonds, 1973, of the City; providing for the issuance of \$4,430,000 par value of Water and Sewer Revenue Improvement and Refunding Bonds, 1997, of the City to provide part of the funds with which to pay the cost of making major repairs and replacements to the City's sewage treatment plant and to pay the cost of refunding all of the outstanding Sewer Revenue and Refunding Bonds, 1987, Sewer Revenue Bonds, 1992, Water Revenue Bonds, 1992, and Water Revenue Bonds, 1994, of the City, and to pay the administrative costs of such refunding and the costs of issuance and sale of such bonds; fixing the date, form, maturities, interest rates, terms and covenants of the bonds; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of the bonds herein authorized and for the use and application of the money derived from those investments; authorizing the execution of an agreement with Marine Midland Bank of New York, New York, as refunding trustee; providing for the call, payment and redemption of the bonds to be refunded; providing for bond insurance; and approving the sale by placement contract and providing for the delivery of the bonds to Bank of America, NT&SA, doing business as Seafirst Bank, of Seattle, Washington.

WHEREAS, the City of Prosser, Washington (the "City"), now owns, operates and maintains a separate waterworks utility (the "Water System"); and

WHEREAS, pursuant to Ordinance No. 887, the City heretofore issued its \$750,000 par value Water Revenue Bonds, 1973 (the "1973 Water Bonds"), and, by Section 13 of that ordinance, provided for the issuance of additional water revenue bonds of the City on a parity with the 1973 Bonds; and

WHEREAS, pursuant to Ordinance No. 1574, the City heretofore issued its \$655,000 par value Water Revenue Bonds, 1992 (the "1992 Water Bonds"), on a parity with the 1973 Bonds, and by that ordinance reserved the right to redeem the 1992 Water Bonds prior to their

maturity on September 1, 1997, or any interest payment date thereafter, at a price of par plus accrued interest to the date fixed for redemption; and

WHEREAS, there are presently outstanding \$655,000 par value of 1992 Water Bonds maturing on September 1 of each of the years 1998 through 2005, inclusive, and bearing interest at various rates ranging from 6.50% to 6.85%; and

WHEREAS, pursuant to Ordinance No. 1722, the City heretofore issued its \$1,010,000 par value Water Revenue Bonds, 1994 (the "1994 Water Bonds"), on a parity with the 1973 Water Bonds and the 1992 Water Bonds; and

WHEREAS, there are presently outstanding \$1,010,000 par value of 1994 Water Bonds maturing on July 1 of each of the years 2006 through 2013, inclusive, and bearing interest at various rates ranging from 6.10% to 6.75%; and

WHEREAS, the 1973 Water Bonds, the 1992 Water Bonds and the 1994 Water Bonds (collectively, the "Water Bonds") were issued on a parity of lien upon the gross revenue of the Water System and any utility local improvement district assessments pledged to the payment of such parity bonds and superior to any other charges whatsoever, subject only to maintenance and operation expenses; and

WHEREAS, the City now owns, operates and maintains a separate sewage disposal system (the "Sewer System"); and

WHEREAS, pursuant to Ordinance No. 1364, the City heretofore issued its \$1,270,000 par value Sewer Revenue and Refunding Bonds, 1987 (the "1987 Sewer Bonds"), and by that ordinance reserved the right to redeem the 1987 Sewer Bonds prior to their maturity on July 1, 1997, or any interest payment date thereafter, at a price of par plus accrued interest to the date fixed for redemption; and

WHEREAS, there are presently outstanding \$780,000 par value of 1987 Sewer Bonds maturing on July 1 of each of the years 1997 through 2002, inclusive, and bearing interest at various rates ranging from 7.40% to 8.20%; and

WHEREAS, pursuant to Ordinance No. 1572, the City heretofore issued its \$1,140,000 par value Sewer Revenue Bonds, 1992 (the "1992 Sewer Bonds"), and by that ordinance reserved the right to redeem the 1992 Sewer Bonds prior to their maturity on September 1, 2002, or on any interest payment date thereafter, at a price of par plus accrued interest to the date fixed for redemption; and

WHEREAS, there are presently outstanding \$1,140,000 par value of 1992 Sewer Bonds maturing on September 1 of each of the years 2003 through 2008, inclusive, and bearing interest at various rates ranging from 6.80% to 7.00%; and

WHEREAS, the 1987 Sewer Bonds and the 1992 Sewer Bonds (collectively, the "Refunded Sewer Bonds") were issued on a parity of lien upon the gross revenue of the Sewer System and any utility local improvement district assessments pledged to the payment of such parity bonds and prior and superior to any other charges whatsoever, subject only to maintenance and operation expenses; and

WHEREAS, the City heretofore entered into the following outstanding Public Works Trust Fund Loans Nos. PW-86-031, PW-5-90-280-031 and PW-5-04-791-ELP-054 payable from revenue of the Water System and/or Sewer System (the "Junior Lien Loans"), and consent has been requested that the Junior Lien Loans be subordinate to the bonds authorized by this ordinance; and

WHEREAS, other than the Water Bonds and the Refunded Sewer Bonds, the City has no other outstanding revenue bonds of the Water System or the Sewer System; and

WHEREAS, after due consideration, it appears to the City Council that provision be made for the defeasance of the 1973 Water Bonds from money on deposit with the City and that the 1992 Water Bonds and the 1994 Water Bonds (collectively, the "Refunded Water Bonds") and the Refunded Sewer Bonds may be refunded by the issuance and sale of the bonds authorized herein (the "Bonds"), so that the City may combine its Water System and Sewer System and modify certain covenants and security with respect to the City's bonds and so that a substantial savings will be effected by the difference between the principal and interest cost over the life of the Bonds and the principal and interest cost over the life of the Refunded Water Bonds and the Refunded Sewer Bonds (collectively, the "Refunded Bonds") but for such refunding, which refunding will be effected by:

- (a) The issuance of the Bonds and the payment of the costs of the issuance of the Bonds allocated to the refunding and the costs of the refunding;
- (b) The call, payment and redemption on July 1, 1997, of all of the outstanding 1987 Sewer Bonds at a price of par plus accrued interest;
- (c) The call, payment and redemption on September 1, 1997, of all of the outstanding 1992 Water Bonds at a price of par plus accrued interest;
- (d) The payment of the interest on the 1992 Sewer Bonds when due up to and including September 1, 2002, and the call, payment and redemption on September 1, 2002, of all of the 1992 Sewer Bonds at a price of par; and
- (e) The payment of the interest on the 1994 Water Bonds when due up to and including July 1, 2004, and the call, payment and redemption on July 1, 2004, of all of the 1994 Water Bonds at a price of par;

and

WHEREAS, to effect that refunding in the manner that will be most advantageous to the City it is found necessary and advisable that certain Acquired Obligations (hereinafter defined) bearing interest and maturing at such time or times as necessary to accomplish the refunding as aforesaid be purchased out of the proceeds of the Bonds; and

WHEREAS, the City is in need of financing major repairs and replacements to the sewage treatment plant (the "Improvements"); and

WHEREAS, the City Council deems it to be in the best interests of the City to issue and sell the Bonds to pay the cost of carrying out the Improvements, to pay part of the cost of refunding the Refunded Bonds, and to pay the administrative costs of such refunding and the costs of issuance and sale of the Bonds; and

WHEREAS, AMBAC Indemnity Corporation, a Wisconsin-domiciled stock insurance company ("AMBAC Indemnity" or the "Bond Insurer"), has made a commitment to issue an insurance policy (the "Municipal Bond Insurance Policy") insuring the payment when due of the principal of and interest on the Bonds as provided therein, and the City Council deems that the purchase of the Municipal Bond Insurance Policy is in the best interest of the City; and

WHEREAS, Bank of America, NT&SA, doing business as Seafirst Bank, has offered to place the Bonds under the terms and conditions hereinafter set forth; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN, as follows:

Section 1. Definitions. As used in this ordinance the following words shall have the following meanings:

**"Acquired Obligations"** means those United States Treasury Certificates of Indebtedness, Notes and Bonds--State and Local Government Series and other direct, noncallable obligations of the United States of America purchased to accomplish the refunding of the Refunded Bonds as authorized by this ordinance.

**"Annual Debt Service"** for the applicable issue or series of Parity Bonds for any year means all the interest plus all principal (except principal of Term Bonds due in any Term Bond

Maturity Year in which Term Bonds are subject mandatory prior redemption), and plus all mandatory redemption requirements for that year, less all bond interest payable from the proceeds of any such Parity Bonds in that year.

**"Assessment Bonds"** means the original principal amount of any issue of Future Parity Bonds equal to the total remaining unpaid principal amount (at the time of passage of the ordinance providing for the issuance and sale of those bonds) of ULID Assessments on any final assessment roll or rolls of one or more ULIDs formed in connection with the improvements being financed by that issue of Future Parity Bonds (or bonds being refunded by those Future Parity Bonds). The original principal amount of such issue of bonds in excess of Assessment Bonds shall be referred to as "bonds that are not Assessment Bonds." Assessment Bonds shall be allocated to each \$5,000 of bonds in proportion to their percentage of the entire issue of bonds. When a bond of any issue of bonds containing Assessment Bonds is redeemed or purchased, and retired, the same percentage of that bond as the percentage of Assessment Bonds is to that total issue of bonds shall be treated as being redeemed or purchased, and retired.

**"Average Annual Debt Service"** means the sum of the Annual Debt Service for the remaining years to the last scheduled maturity of the applicable series of bonds divided by the number of those years, except that for purposes of computing the Reserve Requirement the estimated amount of Bonds to be redeemed prior to maturity may be taken into account if required under United States Treasury regulations relating to arbitrage.

**"Bond Fund"** means that special fund of the City known as the Water and Sewer Revenue Bond Fund created by this ordinance for the payment of the principal of and interest on the Parity Bonds.

**"Bond Insurer"** or **"AMBAC Indemnity"** means AMBAC Indemnity Corporation, a Wisconsin-domiciled stock insurance company.

**"Bond Register"** means the registration books of the Bond Registrar on which is recorded the names and addresses of the owners of the Bonds.

**"Bond Registrar"** means the Fiscal Agency.

**"Bonds"** means the \$4,430,000 par value Water and Sewer Revenue Improvement and Refunding Bonds, 1997, authorized to be issued by this ordinance.

**"1973 Water Bonds"** means the outstanding Water Revenue Bonds, 1973, issued for the purposes provided in and pursuant to Ordinance No. 887, the defeasance of which has been provided for by this ordinance.

**"1987 Sewer Bonds"** means the outstanding Sewer Revenue and Refunding Bonds, 1987, issued for the purposes provided in and pursuant to Ordinance No. 1364, the refunding of which has been provided for by this ordinance.

**"1992 Sewer Bonds"** means the outstanding Sewer Revenue Bonds, 1992, issued for the purposes provided in and pursuant to Ordinance No. 1572, the refunding of which has been provided for by this ordinance.

**"1992 Water Bonds"** means the outstanding Water Revenue Bonds, 1992, issued for the purposes provided in and pursuant to Ordinance No. 1574, the refunding of which has been provided for by this ordinance.

**"1994 Water Bonds"** means the outstanding Water Revenue Bonds, 1994, issued for the purposes provided in and pursuant to Ordinance No. 1722, the refunding of which has been provided for by this ordinance.

**"City"** means the City of Prosser, Washington.

"Code" means the United States Internal Revenue Code of 1986, as amended, together with all applicable rulings and regulations heretofore or hereafter promulgated thereunder.

"Coverage Requirement" means annual Net Revenue of the Waterworks Utility at least equal to 1.25 times actual Annual Debt Service on Parity Bonds that are not Assessment Bonds, and annual Net Revenue together with ULID Assessments at least equal to Annual Debt Service on Parity Bonds that are Assessment Bonds.

"Fiscal Agency" means either of the fiscal agencies of the State of Washington located in Seattle, Washington, and New York, New York, as the same may be designated from time to time.

"Future Parity Bonds" means any and all water and sewer revenue bonds of the City issued after the date of the issuance of the Bonds, the payment of the principal of and interest on which constitutes a charge or lien on the Gross Revenue of the Waterworks Utility and ULID Assessments equal in rank with the charge and lien upon such revenue and assessments required to be paid into the Bond Fund to pay and secure the payment of the principal of and interest on the Bonds.

"Government Obligations" means non-callable direct obligations of the United States of America.

"Gross Revenue of the Waterworks Utility" or "Gross Revenue" means all of the earnings and revenues received by the City from the maintenance and operation of the Waterworks Utility and all earnings from the investment of money on deposit in the Bond Fund, except ULID Assessments, government grants, City taxes, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Waterworks Utility obligations until commingled with other earnings and

revenues of the Waterworks Utility, or held in a special account for the purpose of paying a rebate to the United States Government under the Code.

**"Maintenance and Operation Expense"** means all reasonable expenses incurred by the City in causing the Waterworks Utility of the City to be operated and maintained in good repair, working order and condition, but shall not include any depreciation or taxes levied or imposed by the City or payments to the City in lieu of taxes, but shall include payments made to any other municipal corporation for water and/or sewer service in the event the City enters into a contract for such services.

**"Maximum Annual Debt Service"** means at the time of calculation, the maximum amount of Annual Debt Service that will mature or come due in the current calendar year or any future year on any outstanding Parity Bonds.

**"Municipal Bond Insurance Policy"** means the municipal bond insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

**"Net Revenue of the Waterworks Utility"** or **"Net Revenue"** means the Gross Revenue less Maintenance and Operation Expense.

**"Parity Bonds"** means the Bonds and any Future Parity Bonds.

**"Permitted Investment"** means Government Obligations, except that as long as the Municipal Bond Insurance Policy is in effect, Permitted Investments shall be restricted to those listed in Exhibit B.

**"Principal and Interest Account"** means the account of that name created in the Bond Fund for the payment of the principal of and interest on Parity Bonds.

**"Refunded Bonds"** means, collectively, the 1987 Sewer Bonds, the 1992 Sewer Bonds, the 1992 Water Bonds and the 1994 Water Bonds.

**"Refunding Plan"** means:

(a) the placement of sufficient proceeds of the Bonds which, together with other money of the City, if necessary, will acquire the Acquired Obligations to be deposited, with cash, if necessary, with the Refunding Trustee;

(b) The call, payment and redemption on July 1, 1997, of all of the 1987 Sewer Bonds at a price of par, plus accrued interest;

(c) The call, payment and redemption on September 1, 1997, of all of the 1992 Water Bonds at a price of par, plus accrued interest;

(d) The payment of the interest on the 1992 Sewer Bonds when due up to and including September 1, 2002, and the call, payment and redemption on September 1, 2002, of all of the 1992 Sewer Bonds at a price of par;

(e) The payment of the interest on the 1994 Water Bonds when due up to and including July 1, 2004, and the call, payment and redemption on July 1, 2004, of all of the 1994 Water Bonds at a price of par; and

(f) The payment of the costs of issuing the Bonds and the costs of carrying out the foregoing elements of the Refunding Plan.

**"Refunding Trust Agreement"** means a Refunding Trust Agreement between the City and the Refunding Trustee substantially in the form of that which is on file with the City Clerk/Finance Director and by this reference incorporated herein.

**"Refunding Trustee"** means Marine Midland Bank of New York, New York, serving as trustee or escrow agent or any successor trustee or escrow agent.

**"Reserve Account"** means the account of that name created in the Bond Fund for the purpose of securing the payment of the principal of and interest on Parity Bonds.

**"Reserve Insurance"** means, in lieu of cash and investments, insurance obtained by the City equal to part or all of the Reserve Requirement for any Parity Bonds then outstanding for which such insurance is obtained.

**"Reserve Requirement"** means, for all bonds payable from the Bond Fund, the lesser of (i) Maximum Annual Debt Service on those bonds, (ii) 125% of Average Annual Debt Service on those bonds, or (iii) 10% of the proceeds of those bonds. Notwithstanding the above, the deposit to be made in the Reserve Account shall be decreased for any issue of bonds payable from the Bond Fund when and to the extent that the City provides for Reserve Insurance to secure the payment of the principal of and interest on that issue of bonds. The amount payable under any Reserve Insurance shall be credited against the amount otherwise required to be made into the Reserve Account to meet the Reserve Requirement for that issue of bonds.

**"Term Bond Maturity Year"** means any last maturity year in which the bonds of any one issue or series now or hereafter scheduled to mature (regardless of any reservation of prior redemption rights) is more than two times the average annual principal maturity of the bonds of such issue or series for the five years immediately preceding such year.

**"Term Bonds"** means those outstanding bonds of any single issue or series scheduled to mature in any Term Bond Maturity Year.

**"ULID"** means Utility Local Improvement District.

**"ULID Assessments"** means all assessments levied and collected in any ULID of the City created for the acquisition or construction of additions to and extensions and betterments of the Waterworks Utility, if those assessments are pledged to be paid into the Bond Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments shall include installments thereof and any interest or penalties which may be due thereon.

**"Waterworks Utility"** means the waterworks utility of the City, including the sewerage system as a part thereof, and all additions thereto and betterments and extensions thereof at any

time made or constructed, and any storm drainage or any other utility system which hereafter may be combined therewith.

Section 2. Combination of Water and Sewer Systems. The separate waterworks utility and sewage disposal system of the City are combined into the Waterworks Utility of the City.

Section 3. Defeasance of 1973 Water Bonds. To accomplish the defeasance of the claim or lien of the 1973 Water Bonds on the Gross Revenue of the Waterworks Utility, there shall be deposited prior to the delivery of the Bonds, irrevocably in trust with the City Clerk/Finance Director of the City, an amount sufficient to pay and redeem all of the outstanding 1973 Water Bonds on September 1, 1997, plus accrued interest thereon. Such money shall irrevocably be deposited in the Principal and Interest Account of the Water Revenue Bond Fund, 1973, from money on deposit in the reserve account of that fund allocable to the 1973 Water Bonds and, if necessary, from other money of the City legally available therefor. Any investment earnings thereon shall be retained in the Principal and Interest Account and used for the purposes of that account.

Section 4. Authorization and Description of Bonds. For the purpose providing the money required to make major repairs and replacements to the sewage treatment plant and to carry out of the Refunding Plan, the City shall issue the Bonds in the aggregate principal amount of \$4,430,000. The Bonds shall be designated Water and Sewer Revenue Improvement and Refunding Bonds, 1997; shall be dated June 1, 1997; shall be in the denomination of \$5,000 or any integral multiple thereof within a single maturity; shall be numbered separately in the manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification; shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) payable semiannually on each March 1 and September 1, commencing September 1,

1997, to the maturity or earlier redemption of the Bonds; and shall mature on September 1 in years and amounts and bear interest at the rates per annum as follows:

<u>Maturity Years</u>	<u>Amounts</u>	<u>Interest Rates</u>
1997	\$165,000	3.90%
1998	210,000	4.25
1999	215,000	4.50
2000	230,000	4.60
2001	240,000	4.75
2002	305,000	4.85
2003	280,000	4.95
2004	290,000	5.00
2005	295,000	5.05
2006	315,000	5.10
2007	335,000	5.15
2008	350,000	5.15
2009	225,000	5.25
2010	235,000	5.30
2011	240,000	5.35
2012	245,000	5.40
2013	255,000	5.45

Portions of the above maturity amounts are allocated to paying the respective costs of the Improvements and of carrying out the Refunding Plan, including a ratable share of proceeds used to pay the costs of issuance of the Bonds, in accordance with the schedule attached hereto as Exhibit A and by this reference made a part hereof.

Section 5. Registration and Transfer of Bonds. The Bonds shall be issued only in registered form as to both principal and interest and shall be recorded on the Bond Register. The Bond Register shall contain the name and mailing address of the owner of each Bond and the principal amount and number of each of the Bonds held by each owner.

Bonds surrendered to the Bond Registrar may be exchanged for Bonds in any authorized denomination of an equal aggregate principal amount and of the same interest rate and maturity. Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to

the Bond Registrar. Any exchange or transfer shall be without cost to the owner or transferee. The Bond Registrar shall not be obligated to exchange or transfer any Bond during the 15 days preceding any principal payment or redemption date.

Section 6. Payment of Bonds. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid by checks or drafts of the Bond Registrar mailed on the interest payment date to the registered owners at the addresses appearing on the Bond Register on the 15th day of the month preceding the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the registered owners at either of the principal offices of the Bond Registrar at the option of the owners. The Bonds shall be payable solely out of the Bond Fund and shall not be general obligations of the City.

Section 7. Optional Redemption and Open Market Purchase of Bonds. Bonds maturing in the years 1997 through 2007, inclusive, shall be issued without the right or option of the City to redeem those Bonds prior to their stated maturity dates. The City reserves the right and option to redeem Bonds maturing on or after September 1, 2008, prior to their stated maturity dates on or after September 1, 2007, as a whole at any time, or in part on any interest payment date within one or more maturities selected by the City (and by lot within a maturity in such manner as the Bond Registrar shall determine), at par plus accrued interest to the date fixed for redemption.

Portions of the principal amount of any Bond, in installments of \$5,000 or any integral multiple thereof, may be redeemed. If less than all of the principal amount of any Bond is redeemed, upon surrender of that Bond at either of the principal offices of the Bond Registrar, there shall be issued to the registered owner, without charge therefor, a new Bond (or Bonds,

at the option of the registered owner) of the same maturity and interest rate in any of the denominations authorized by this ordinance in the aggregate principal amount remaining unredeemed.

The City further reserves the right and option to purchase any or all of the Bonds in the open market at any time at any price acceptable to the City plus accrued interest to the date of purchase.

All Bonds purchased or redeemed under this section shall be cancelled.

Section 8. Notice of Redemption. The City shall cause notice of any intended redemption of Bonds to be given not less than 30 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the registered owner of any Bond to be redeemed at the address appearing on the Bond Register at the time the Bond Registrar prepares the notice, and the requirements of this sentence shall be deemed to have been fulfilled when notice has been mailed as so provided, whether or not it is actually received by the owner of any Bond. Interest on Bonds called for redemption shall cease to accrue on the date fixed for redemption unless the Bond or Bonds called are not redeemed when presented pursuant to the call. In addition, the redemption notice shall be mailed within the same period, postage prepaid, to Moody's Investors Service, Inc., and Standard & Poor's at their offices in New York, New York, or their successors, to Seafirst Bank at its principal office in Seattle, Washington, or its successor, to the Bond Insurer at its principal office in New York, New York, and to such other persons and with such additional information as the City Clerk/Finance Director shall determine, but these additional mailings shall not be a condition precedent to the redemption of Bonds.

Section 9. Failure to Redeem Bonds. If any Bond is not redeemed when properly presented at its maturity or call date, the City shall be obligated to pay interest on that Bond at

the same rate provided in the Bond from and after its maturity or call date until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Fund and the Bond has been called for payment by giving notice of that call to the registered owner of each of those unpaid Bonds.

Section 10. Form and Execution of Bonds. The Bonds shall be printed or lithographed on good bond paper in a form consistent with the provisions of this ordinance and state law, shall be signed by the Mayor and City Clerk/Finance Director, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon.

Only Bonds bearing a Certificate of Authentication in the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

CERTIFICATE OF AUTHENTICATION

This Bond is one of the fully registered City of Prosser, Washington, Water and Sewer Revenue Improvement and Refunding Bonds, 1997, described in the Bond Ordinance.

WASHINGTON STATE FISCAL AGENCY  
Bond Registrar

By \_\_\_\_\_  
Authorized Signer

The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered and are entitled to the benefits of this ordinance.

If any officer whose facsimile signature appears on the Bonds ceases to be an officer of the City authorized to sign bonds before the Bonds bearing his or her facsimile signature are

authenticated or delivered by the Bond Registrar or issued by the City, those Bonds nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bonds.

Section 11. Bond Registrar. The Bond Registrar shall keep, or cause to be kept, at its principal corporate trust office, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this ordinance and City Ordinance No. 1342 establishing a system of registration for the City's bonds and obligations.

The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on the Bonds. The Bond Registrar may become the owner of Bonds with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Bond owners.

Section 12. Application of Proceeds of the Bonds. Accrued interest on the Bonds, if any, received from the sale and delivery of the Bonds shall be deposited in the Principal and Interest Account of the Bond Fund. Principal proceeds shall be deposited as follows: (a) an

amount sufficient to carry out the Refunding Plan shall be deposited with the Refunded Trustee in accordance with Section 13 and (b) the balance of the principal proceeds of the Bonds shall be deposited in the Sewer Fund of the City previously created in the office of the City Clerk/Finance Director, and used to pay the costs of carrying out the Improvements.

Section 13. Refunding of the Refunded Bonds.

(a) Appointment of Refunding Trustee. Marine Midland Bank of New York, New York, is appointed Refunding Trustee.

(b) Use of Bond Proceeds: Acquisition of Acquired Obligations. The remaining principal proceeds of the sale of the Bonds, after the deposits required by Section 12, shall be deposited immediately upon the receipt thereof with the Refunding Trustee and used to discharge the obligations of the City relating to the Refunded Bonds under Ordinances Nos. 1364, 1572, 1574 and 1722 (the "Refunded Bond Ordinances") by providing for the payment of the amounts required to be paid by the Refunding Plan. To the extent practicable, such obligations shall be discharged fully by the Refunding Trustee's simultaneous purchase of the Acquired Obligations, bearing such interest and maturing as to principal and interest in such amounts and at such times so as to provide, together with a beginning cash balance, if necessary, for the payment of the amount required to be paid by the Refunding Plan. The Acquired Obligations are listed and more particularly described in Schedule A attached to the Refunding Trust Agreement between the City and the Refunding Trustee, but are subject to substitution as set forth below. Any Bond proceeds or other money deposited with the Refunding Trustee not needed to purchase the Acquired Obligations and provide a beginning cash balance, if any, and to pay the costs of issuance of the Bonds shall be returned to the City at the time of delivery of the Bonds to the

initial purchaser thereof and deposited in the Bond Fund to pay interest on the Bonds on the first interest payment date.

(c) Substitution of Acquired Obligations. Prior to the purchase of any Acquired Obligations, the City reserves the right to substitute other direct, noncallable Government Obligations for any of the Acquired Obligations and to use any savings created thereby for any lawful City purpose if, (a) in the opinion of Foster Pepper & Shefelman PLLC, the City's bond counsel, the interest on the Bonds and the Refunded Bonds will remain excluded from gross income for federal income tax purposes under Sections 103, 148 and 149(d) of the Code, and (b) such substitution shall not impair the timely payment of the amounts required to be paid by the Refunding Plan, as verified by a nationally recognized independent certified public accounting firm.

After the purchase of the Acquired Obligations by the Refunding Trustee, the City reserves the right to substitute therefor cash or Government Obligations subject to the conditions that such money or securities held by the Refunding Trustee shall be sufficient to carry out the Refunding Plan, that such substitution will not cause the Bonds and the Refunded Bonds to be arbitrage bonds within the meaning of Section 148 of the Code and regulations thereunder in effect on the date of such substitution and applicable to obligations issued on the issue date of the Bonds, and that the City obtain, at its expense: (1) a verification by a nationally recognized independent certified public accounting firm acceptable to the Refunding Trustee confirming that the payments of principal of and interest on the substitute securities, if paid when due, and any other money held by the Refunding Trustee will be sufficient to carry out the Refunding Plan; and (2) an opinion from Foster Pepper & Shefelman PLLC, bond counsel to the City, its successor, or other nationally recognized bond counsel to the City, to the effect that the

disposition and substitution or purchase of such securities, under the statutes, rules and regulations then in force and applicable to the Bonds, will not cause the interest on the Bonds or the Refunded Bonds to be included in gross income for federal income tax purposes and that such disposition and substitution or purchase is in compliance with the statutes and regulations applicable to the Bonds. Any surplus money resulting from the sale, transfer, other disposition or redemption of the Acquired Obligations and the substitutions therefor shall be released from the trust estate and transferred to the City to be used for any lawful City purpose.

(d) Administration of Refunding Plan. The Refunding Trustee is authorized and directed to purchase the Acquired Obligations (or substitute obligations) and to make the payments required to be made by the Refunding Plan from the Acquired Obligations (or substitute obligations) and money deposited with the Refunding Trustee pursuant to this ordinance. All Acquired Obligations (or substitute obligations) and the money deposited with the Refunding Trustee and any income therefrom shall be held irrevocably, invested and applied in accordance with the provisions of the Refunded Bond Ordinances, this ordinance, chapter 39.53 RCW and other applicable statutes of the State of Washington and the Refunding Trust Agreement. All necessary and proper fees, compensation and expenses of the Refunding Trustee for the Bonds and all other costs incidental to the setting up of the escrow to accomplish the refunding of the Refunded Bonds and costs related to the issuance and delivery of the Bonds, including bond printing, verification fees, bond counsel's fees and other related expenses, shall be paid out of the proceeds of the Bonds.

(e) Authorization for Refunding Trust Agreement. To carry out the Refunding Plan provided for by this ordinance, the Mayor is authorized and directed to execute and deliver to the Refunding Trustee a Refunding Trust Agreement substantially in the form on file with the

City Clerk/Finance Director and by this reference made a part hereof setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the payment, redemption and retirement of the Refunded Bonds as provided herein and stating that the provisions for payment of the fees, compensation and expenses of such Refunding Trustee set forth therein are satisfactory to it. Prior to executing the Refunding Trust Agreement, the Mayor is authorized to make such changes therein which do not change the substance and purpose thereof or which assure that the escrow provided therein and the Bonds are in compliance with the requirements of federal law governing the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 14. Call for Redemption of the Outstanding Bonds. The City calls for redemption on the following dates all of the then outstanding bonds of each issue at par, plus accrued interest to the date of redemption:

<u>Bond Issue</u>	<u>Call Date</u>
1987 Sewer Bonds	July 1, 1997
1992 Water Bonds	September 1, 1997
1992 Sewer Bonds	September 1, 2002
1994 Water Bonds	July 1, 2004

Such calls for redemption shall be irrevocable after the delivery of the Bonds to the initial purchaser thereof. The dates on which the Refunded Bonds are herein called for redemption are the earliest dates, respectively, on which those bonds may be called.

The proper City officials are authorized and directed to give or cause to be given such notices as required, at the times and in the manner required pursuant to the respective bond ordinance, in order to effect the redemption prior to their maturity of those refunded Bonds.

Section 15. City Findings with Respect to Refunding. The City Council finds and determines that the issuance and sale of the Bonds at this time will effect a savings to the City

and is in the best interest of the City and its ratepayers and in the public interest. In making such finding and determination, the City Council has given consideration to the fixed maturities of the Bonds and the Refunded Bonds, the costs of issuance of the Bonds and the known earned income from the investment of the proceeds of the issuance and sale of the Bonds and other money of the City used in the Refunding Plan pending payment and redemption of the Refunded Bonds.

The City Council further finds and determines that it is in the best interest of the City to combine its water and sewer systems and to establish modern revenue bond covenants and terms and conditions that cannot be used under the existing bond ordinances.

The City Council further finds and determines that the money to be deposited with the City Clerk/Finance Director for the 1973 Water Bonds in accordance with Section 3 of this ordinance will discharge and satisfy the obligations of the City under Ordinance No. 887 with respect to those bonds, and the pledges, charges, trusts, covenants and agreements of the City therein made or provided for as to those bonds, and that the 1973 Water Bonds shall no longer be deemed to be outstanding under Ordinance No. 887 immediately upon the deposit of such money with the City Clerk/Finance Director.

The City Council further finds and determines that the money to be deposited with the Refunding Trustee for the Refunded Bonds in accordance with Section 13 of this ordinance will discharge and satisfy the obligations of the City under the Refunded Bond Ordinances with respect to the Refunded Bonds, and the pledges, charges, trusts, covenants and agreements of the City therein made or provided for as to the Refunded Bonds, and that the Refunded Bonds shall no longer be deemed to be outstanding under their respective bond ordinance immediately upon the deposit of such money with the Refunding Trustee.

Section 16. Bond Fund; Payments into Bond Fund. There is created in the office of the City Clerk/Finance Director a special fund known as the Water and Sewer Revenue Bond Fund (the "Bond Fund"), which fund shall be divided into two accounts: the Principal and Interest Account and the Reserve Account. So long as any Parity Bonds are outstanding against the Bond Fund, the City shall set aside and pay into the Bond Fund all ULID Assessments upon their collection and, out of the Gross Revenue of the Waterworks Utility, certain fixed amounts without regard to any fixed proportion, namely:

(a) Into the Principal and Interest Account, upon the delivery of the Bonds, the accrued interest received, and on or before the 20th day of each month commencing with the month of June, 1997, 1/3 of the amount of principal and interest to become due and payable on the Bonds on September 1, 1997, and continuing thereafter 1/6th of the amount of interest and 1/12 of the amount of principal to become due and payable on the Bonds outstanding on the next interest or principal and interest payment date; and

(b) Into the Reserve Account, after transferring \$393,504.61 to the Reserve Account from the debt service reserve accounts for the Refunded Bonds, the additional money and investments necessary to bring the total amount on deposit in the Reserve Account up to the Reserve Requirement for the Bonds within two years from the issue date of the Bonds.

The City further agrees that when the total Reserve Requirement has been paid into the Reserve Account, it will at all times, except for withdrawals therefrom as authorized herein, maintain such amount therein until there is a sufficient amount in the Principal and Interest Account and Reserve Account to pay the principal of and interest to maturity on all the outstanding Parity Bonds. When the total amount in the Bond Fund shall equal the total amount of principal and interest requirements of all outstanding Parity Bonds to the last maturity thereof, no further payments need be made into the Bond Fund, at which time the money in the Reserve Account may be used to pay such principal and interest.

The Reserve Account shall be used for the sole purpose of making up any deficiency existing in the Principal and Interest Account to meet maturing installments of either principal or interest, as the case may be, of any or all outstanding Parity Bonds. Any deficiency created in the Reserve Account by reason of any such withdrawal therefrom shall be made up from the Gross Revenue of the Waterworks Utility and ULID Assessments first available after making necessary provisions for the required payments into the Principal and Interest Account. Money in the Reserve Account also may be used to pay the last maturing outstanding Parity Bonds. Furthermore, if the Reserve Account is fully funded, any money in excess of the Reserve Requirement may be withdrawn and expended for the purpose of retiring bonds payable from the Bond Fund or for any other lawful Waterworks Utility purpose.

All money in the Reserve Account may be kept in cash or on deposit in the official bank depository of the City or may be invested in direct obligations of the United States Government maturing not later than prior to the last maturity date of any outstanding Parity Bonds and/or may be deposited in shares of savings and loan institutions to the extent that such shares are guaranteed by the Federal Savings and Loan Insurance Corporation. Interest earned on any such deposits or investments shall be deposited in and become a part of the Principal and Interest Account in the Bond Fund.

The amounts in the Reserve Account may be decreased for any issue of Parity Bonds when and to the extent the City has provided for Reserve Insurance.

Notwithstanding the provisions for the deposit of earnings, any earnings which are subject to a federal tax or rebate requirement may be withdrawn from the Bond Fund for deposit into a separate fund or account for that purpose.

If the City fails to set aside and pay into the Bond Fund the amounts set forth above, the owner of any of the outstanding bonds payable out of the Bond Fund may bring action against the City and compel such setting aside and payment.

Section 17. Due Regard Finding. The City Council finds and determines that the Gross Revenue to be derived from the operation and maintenance of the Waterworks Utility of the City at the rates to be charged for services from the Waterworks Utility will be more than sufficient to meet all Maintenance and Operation Expense (and cost of maintenance and operation under RCW 35.92.100) and to permit the setting aside into the Bond Fund out of the Gross Revenue of the Waterworks Utility of amounts sufficient to pay the principal of and interest on the Bonds as the same become due.

The City Council finds and determines it has exercised due regard for Maintenance and Operation Expense (and cost of maintenance and operation under RCW 35.92.100) and that it has not obligated the City to set aside and pay into the Bond Fund a greater amount of the Gross Revenue of the Waterworks Utility than in its judgment will be available over and above such Maintenance and Operation Expense (and cost of maintenance and operation under RCW 35.92.100).

Section 18. Pledge of Revenue and Lien Position. The Gross Revenue of the Waterworks Utility and ULID Assessments are pledged to the payment of the Parity Bonds, and the Parity Bonds shall constitute a lien and charge upon such Gross Revenue and ULID Assessments prior and superior to any other charges whatsoever, subject only to Maintenance and Operation Expense. The right of the City to issue bonds on a parity of lien with the 1973 Water Bonds, the 1987 Sewer Bonds, the 1992 Sewer Bonds, the 1992 Water Bonds or the 1994

Water Bonds in accordance with the provisions of their respective bond ordinance is permanently revoked.

Section 19. Covenants. The City covenants and agrees with the owner of each Parity Bond at any time outstanding, as follows:

(a) All ULID Assessments shall be paid into the Bond Fund and may only be used to pay the principal of and interest on the outstanding Parity Bonds. However, nothing in this ordinance or this section shall be construed to prohibit the City from issuing water and sewer revenue bonds junior in lien to the Parity Bonds and pledging as security for their payment assessments levied in any utility local improvement district which may have been specifically created to pay part of the cost of improvements to the Waterworks Utility for which those junior lien bonds are specifically issued.

(b) It will at all times maintain and keep the Waterworks Utility in good repair, working order and condition, and also will at all times operate that Waterworks Utility and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) It will not sell or dispose of all of the property of the Waterworks Utility unless provision is made for payment into the Bond Fund of a sum sufficient to pay and retire the Parity Bonds then outstanding and it will not sell or dispose of any part of the useful operating properties of the Waterworks Utility unless provision is made for proportional payment into the Bond Fund of the greatest of the following:

(i) An amount which will be at least in the same proportion to the amount of the principal and interest due and payable to the first par call date of all then outstanding bonds that the revenue from the portion of the Waterworks Utility sold or disposed of which is available for debt service on such bonds for the twelve months preceding such sale or disposition bears to the revenue available for debt service from the Waterworks Utility of the City for the same period, or

(ii) An amount which will be at least in the same proportion to the amount of the principal and interest due and payable to the first par call date of all then outstanding bonds that the number of customers connected with that portion of the Waterworks Utility sold or disposed of bears to the total number of customers connected to the Waterworks Utility immediately prior to such sale or disposal, or

(iii) An amount which will be at least in the same proportion to the amount of the principal and interest due and payable to the first par call date of all then outstanding bonds that the depreciated cost value of the facilities of the Waterworks Utility in the area sold or disposed of bears to the depreciated cost value of all of the facilities of the Waterworks Utility immediately prior to such sale or disposal.

All such sums of money so paid into the Bond Fund shall be used to retire outstanding Bonds at the earliest possible date on which any of such Bonds may be redeemed at par.

(d) It will establish, maintain and collect such rates and charges for services and facilities furnished which, together with the collection of ULID Assessments, so long as any of the Parity Bonds are outstanding, will make available for the payment of the principal of and interest on such bonds as the same shall become due, Gross Revenue of the Waterworks Utility in an amount which will equal the Coverage Requirement.

(e) While any of the Bonds remain outstanding, it will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Waterworks Utility, and it will furnish the original purchaser or purchasers of the Bonds or any subsequent owner or owners thereof, at the written request of such owner or owners, complete operating and income statements of the Waterworks Utility in reasonable detail covering any fiscal year not more than 90 days after the close of such fiscal year and it will grant any owner or owners of at least 25% of the outstanding Bonds the right at all reasonable times to inspect the entire Waterworks Utility and all records, accounts and data of the City relating thereto.

(f) It will carry the type of insurance in the amounts normally carried by similar utilities engaged in the operation of water and sewer systems, and the cost of such insurance shall be considered part of Maintenance and Operation Expense, or in lieu thereof, may self-insure or participate in a joint intergovernmental insurance assuring the same coverage as is carried by such similar utilities. If, as, and when the United States of America or some agency thereof shall provide for war risk insurance at reasonable cost, the City further agrees to take out and maintain such insurance on all or such portion of the Waterworks Utility on which such war risk insurance may be written in an amount or amounts to cover adequately the value thereof.

(g) It will not furnish water or sewer service to any customer whatsoever free of charge (except to aid the poor or inform, to provide resource conservation or to provide for the proper handling of hazardous materials) and it shall take such legal action as may be feasible to enforce collection of all collectible delinquent accounts and proceed with the foreclosure of the delinquent

ULID Assessments or delinquent installments thereof in the shortest time period provided by law.

Section 20. Preservation of Tax Exemption for Interest on Bonds. The City covenants that it will take all actions necessary to prevent interest on the Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds at any time during the term of the Bonds which will cause interest on the Bonds to be included in gross income for federal income tax purposes. The City certifies that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

Section 21. Flow of Funds. All ULID Assessments shall be paid into the Bond Fund as provided by Section 16. The Gross Revenue of the Waterworks Utility shall be used for the following purposes only and shall be applied in the following order of priority:

- (a) To pay the Maintenance and Operation Expense;
- (b) To pay the interest on the outstanding Parity Bonds;
- (c) To pay the principal of the outstanding Parity Bonds;
- (d) To make all payments required to be made into any sinking fund account created to provide for the payment of the principal of Term Bonds;
- (e) To make all payments required to be made into the Reserve Account;
- (f) To make all payments required to be made into any revenue bond redemption fund or warrant redemption fund and debt service account or reserve account created to pay or secure the payment of the principal of and interest on any revenue bonds, or revenue warrants or other revenue obligations of the City having a lien upon the revenue of the Waterworks Utility junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

(g) To retire by redemption or purchase in the open market any outstanding revenue bonds or other revenue obligations of the Waterworks Utility, to make necessary additional betterments, improvements and repairs to or extensions and replacements of the Waterworks Utility, or for any other lawful City purposes.

The City may transfer any money from any funds or accounts of the Waterworks Utility legally available therefor, except bond redemption funds, refunding escrow funds or defeasance funds, to meet the required payments to be made into the Bond Fund.

Section 22. Provisions for Future Parity Bonds. The City further covenants with the owner of each of the Bonds for as long as any of the same remain outstanding that it will not create any special fund or funds for the payment of the principal of and interest on any other water and sewer revenue bonds which will rank on a parity with or have any priority over the payments to be made out of the Gross Revenue of the Waterworks Utility of the City into the Bond Fund, except that it reserves the right for,

(a) The purpose of acquiring, constructing and installing additions and improvements to and betterments of, acquiring necessary equipment for or making necessary replacements of equipment or capital improvements to the Waterworks Utility of the City, or

(b) The purpose of exchanging or purchasing and retiring prior to or at their maturity any outstanding water and sewer revenue bonds of the City,

to issue Future Parity Bonds and to make payments into the Bond Fund for the payment of such Future Parity Bonds from the Gross Revenue of the Waterworks Utility, together with ULID Assessments, sufficient to pay the principal of and interest on such Future Parity Bonds and to maintain a reserve therefor if the following conditions and requirements are met and complied with at the time of the issuance of such Future Parity Bonds:

(a) That all payments required by this ordinance pertaining to outstanding Parity Bonds shall have been made into the Bond Fund for the payment of those outstanding Parity Bonds and no deficiency exists therein;

(b) That the ordinance providing for the issuance of such Future Parity Bonds shall provide that all assessments and interest thereon which may be levied in any utility local improvement districts hereafter created for the purpose of paying in whole or in part the principal of and interest on such Future Parity Bonds shall be paid directly into the Bond Fund;

(c) That the revenues of the Waterworks Utility of the City for any 12 consecutive month period out of the immediately preceding 24 consecutive month period, plus the additional revenues reasonably anticipated to be received from the proposed improvement in connection with which such Future Parity Bonds are to be issued, plus the additional revenues reasonably anticipated to be received from normal growth in the number of users of the waterworks utility of the City, plus the additional revenues reasonably anticipated to be received as a result of an increase in charges for water and/or sewer service furnished put into effect prior to the issuance of such Future Parity Bonds, together with collections of assessments, both principal and interest and penalties, collected on the assessment rolls of any ULIDs hereafter created in connection with the issuance of such Future Parity Bonds, shall be and be deemed sufficient, after the payment of normal operation and maintenance costs and taxes, to equal at least the Coverage Requirement of the Parity Bonds then outstanding, any additional Future Parity Bonds then outstanding and of the additional Future Parity Bonds proposed to be so issued, excluding the principal requirements but including the interest requirements of any Term Bond Maturity Year after deducting the normal costs of maintenance, operation and taxes from the revenues of the Waterworks Utility of the City. Such determination of the sufficiency of the revenues shall be made and certified to by an independent professional registered engineer experienced in municipal utilities and licensed to practice in the State of Washington. This certificate shall not be required in the event that the additional Future Parity Bonds proposed to be so issued are issued for the purpose of refunding outstanding water and sewer revenue bonds and the Average Annual Debt Service requirements of such proposed additional Future Parity Bonds are not increased over the requirement for the bonds being so refunded; and

(d) That the ordinance authorizing the issuance of such additional Future Parity Bonds shall provide that (1) an amount equal to the Reserve Requirement of those Future Parity Bonds proposed to be issued or (2) Reserve Insurance or an amount plus Reserve Insurance equal to the Reserve Requirement for those Future Parity Bonds, shall be accumulated as a reserve in the Bond Fund, such amount to be accumulated out of the collection of ULID Assessments levied and collected for the payment of the principal of and interest on such Future Parity Bonds and/or revenues of the Waterworks Utility of the City by monthly deposits commencing not later than one month after the date of the issuance of the bonds and to be accumulated within five years after the date of issuance. In the case of refunding bonds, the ordinance authorizing the issuance of such refunding bonds shall provide that the moneys in the reserve account for the bonds to be refunded shall be transferred to the reserve account or separate

reserve account for the refunding bonds, or that the moneys in the reserve account for the bonds to be refunded shall be used to redeem such bonds, in which event an amount equal to the Reserve Requirement for the refunding bonds proposed to be issued shall be accumulated as a reserve in the same manner and within the same time as set forth herein for additional revenue bonds.

Nothing contained in the provisions for Future Parity Bonds shall prevent the City from issuing water and sewer revenue bonds which are a charge upon the Gross Revenue of the Waterworks Utility of the City junior or inferior to the payments required to be made therefrom into the Bond Fund for the payment of Parity Bonds.

Section 23. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to the laws of the State of Washington or use money available from any other lawful source to pay when due the principal of and interest on the Bonds, or any portion thereof included in a refunding or defeasance plan, and to redeem and retire, refund or defease all such then-outstanding Bonds (hereinafter collectively called the "defeased Bonds") and to pay the costs of the refunding or defeasance. If money and/or Government Obligations or other Permitted Investments maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defease the defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account irrevocably pledged to that redemption, retirement or defeasance of defeased Bonds (hereinafter called the "trust account"), then all right and interest of the owners of the defeased Bonds in the covenants of this ordinance and in the Gross Revenue of the Waterworks Utility, ULID Assessments, funds and accounts obligated to the payment of the defeased Bonds, other than the right to receive the funds to set aside and pledged, thereafter shall cease and become void. The owners of defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account. The City shall include in the refunding or defeasance plan such

provisions as the City deems necessary for the random selection of any defeased Bonds that constitute less than all of a particular maturity of the Bonds, for notice of the defeasance to be given to the owners of the defeased Bonds and to such other persons as the City shall determine, and for any required replacement of Bond certificates for defeased Bonds. The defeased Bonds shall be deemed no longer outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to any lawful purposes as it shall determine.

If the refunding plan provides that the defeased Bonds or the refunding bonds to be issued be secured by money and/or Government Obligations or other Permitted Investments pending the prior redemption of the defeased Bonds and if such refunding plan also provides that certain money and/or Government Obligations or other Permitted Investments are pledged irrevocably for the prior redemption of the defeased Bonds included in that refunding plan, then only the debt service on the Bonds which are not defeased Bonds and the refunding bonds, the payment of which is not so secured by the refunding plan, shall be included in the computation of the Coverage Requirement for the issuance of Future Parity Bonds and the annual computation of coverage for determining compliance with the rate covenants.

Notwithstanding anything in this section to the contrary, if the principal of and/or interest due on the Bonds is paid by the Bond Insurer pursuant to the Municipal Bond Insurance Policy, the Bonds shall be treated as remaining outstanding for all purposes, not defeased or otherwise satisfied and shall not be considered paid by the City, and the covenants, agreements and other obligations of the City to the registered owners of the Bonds shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of those registered owners.

Section 24. Small Governmental Issuer Arbitrage Rebate Exemption and Designation of Bonds as "Qualified Tax-Exempt Obligations." The City finds and declares that (a) it is a duly organized and existing governmental unit of the State of Washington and has general taxing power; (b) no Bond which is part of this issue of Bonds is a "private activity bond" within the meaning of Section 141 of the Code; (c) at least 95% of the net proceeds of the Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City); (d) the aggregate face amount of all tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculations) issued by the City and all entities subordinate to the City (including any entity which the City controls, which derives its authority to issue tax-exempt obligations from the City or which issues tax-exempt obligations on behalf of the City) during the current calendar year is not reasonably expected to exceed \$5,000,000; and (e) the amount of tax-exempt obligations, including the Bonds, designated by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Bonds are issued does not exceed \$10,000,000. The City therefore certifies that the Bonds are eligible for the arbitrage rebate exemption under Section 148(f)(4)(D) of the Code and designates the Bonds as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code.

Section 25. Bonds Negotiable. The Bonds shall be negotiable instruments to the extent provided by RCW 62A.8-102 and 62A.8-105.

Section 26. Preliminary Official Statement Deemed Final. The City Council has been provided with copies of a preliminary official statement dated May 20, 1997 (the "Preliminary Official Statement"), prepared in connection with the sale of the Bonds. For the sole purpose

of the Bond purchaser's compliance with Securities and Exchange Commission ("SEC") Rule 15c2-12(b)(1), the City "deems final" that Preliminary Official Statement as of its date, except for the omission of information as to offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, maturity dates, options of redemption, delivery dates, ratings and other terms of the Bonds dependent on such matters.

Section 27. Approval of Placement Contract. Bank of America NT&SA, doing business as Seafirst Bank, has presented a placement contract (the "Bond Placement Contract") to the City offering to place the Bonds under the terms and conditions provided in the Bond Placement Contract, which written Bond Placement Contract is on file with the City Clerk/Finance Director and is incorporated herein by this reference. The City Council finds that entering into the Bond Placement Contract is in the City's best interest and therefore accepts the offer contained therein and authorizes its execution by City officials.

The Bonds will be printed at City expense and will be delivered to the purchaser in accordance with the Bond Placement Contract, with the approving legal opinion of Foster Pepper & Shefelman PLLC, municipal bond counsel of Seattle, Washington, regarding the Bonds printed on each Bond. Bond counsel shall not be required to review and shall express no opinion concerning the completeness or accuracy of any official statement, offering circular or other sales or disclosure material issued or used in connection with the Bonds, and bond counsel's opinion shall so state.

The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Bonds to the purchasers and for the proper application and use of the proceeds of the sale thereof.

Section 28. Undertaking to Provide Continuing Disclosure. To meet the conditions of paragraph (d)(2) of United States Securities and Exchange Commission ("SEC") Rule 15c2-12 (the "Rule") as required to qualify for the limited exemption from paragraph (b)(5) of the Rule, as applicable to a participating underwriter for the Bonds, the City makes the following undertaking (the "Undertaking") for the benefit of holders of the Bonds:

(a) Undertaking to Provide Annual Financial Information and Notice of Material Events. The City undertakes to provide or cause to be provided, either directly or through a designated agent:

(i) To any person upon request, or annually to a state information depository, if any, established in the state of Washington (the "SID"), annual financial information and operating data of the type included in the final official statement for the Bonds and described in Section 28(b) ("annual financial information") that is customarily prepared by the City and is otherwise publicly available; and

(ii) To each nationally recognized municipal securities information repository designated by the SEC in accordance with the Rule ("NRMSIR") or the Municipal Securities Rulemaking Board ("MSRB"), and to the SID, timely notice of the occurrence of any of the following events with respect to the Bonds, if material: (1) principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the Bonds; (7) modifications to rights of holders of the Bonds; (8) Bond calls (other than scheduled mandatory redemptions of Term Bonds); (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds; and (11) rating changes.

(b) Type of Annual Financial Information Undertaken to be Provided. The annual financial information that the City undertakes to provide:

(i) Shall consist of (1) a statement of authorized, issued and outstanding bonded debt secured by the Gross Revenue of the Waterworks Utility; (2) debt service coverage ratios; and (3) number of customers and current rates; and

(ii) Shall be available from the City Clerk/Finance Director of the City, whose current address and telephone number are identified in the final official statement for the Bonds.

(c) Amendment of Undertaking. The Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, rating agency, NRMSIR, the SID or the MSRB, under the circumstances and in the manner permitted by the Rule.

The City will give notice to each NRMSIR or the MSRB, and the SID, of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

(d) Beneficiaries. The Undertaking evidenced by this Section 28 shall inure to the benefit of the City and any holder of Bonds, and shall not inure to the benefit of or create any rights in any other person.

(e) Termination of Undertaking. The City's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this Undertaking shall terminate if those provisions of the Rule which require the City to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of nationally recognized bond counsel or other counsel familiar with federal securities laws delivered to the City, and the City provides timely notice of such termination to each NRMSIR or the MSRB and the SID.

(f) Remedy for Failure to Comply with Undertaking. As soon as practicable after the City learns of any failure to comply with the Undertaking, the City will proceed with due diligence to cause such noncompliance to be corrected. No failure by the City or other obligated person to comply with the Undertaking shall constitute a default in respect of the Bonds. The sole remedy of any holder of a Bond shall be to take such actions as that holder deems necessary, including seeking an order of specific performance from an appropriate court, to compel the City or other obligated person to comply with the Undertaking.

(g) Designation of Official Responsible to Administer Undertaking. The City Clerk/Finance Director of the City (or such other officer of the City who may in the future perform the duties of the City Clerk/Finance Director) or his or her designee is authorized and directed in his or her discretion to take such further actions as may be necessary, appropriate or convenient to carry out the

Undertaking of the City in respect of the Bonds set forth in this Section 28 and in accordance with the Rule, including, without limitation, the following actions:

(i) Preparing, filing and/or making available the annual financial information undertaken to be provided;

(ii) Determining whether any event specified in Section 28(a) has occurred, assessing its materiality with respect to the Bonds, and, if material, preparing and disseminating notice of its occurrence;

(iii) Determining whether any person other than the City is an "obligated person" within the meaning of the Rule with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of material events for that person in accordance with the Rule;

(iv) Determining and monitoring the aggregate amount of outstanding municipal securities of the City and of any other obligated person for purposes of the qualification of the City and any other obligated person for the limited exemption from paragraph (b)(5) of the Rule;

(v) Selecting, engaging and compensating designated agents and consultants, including but not limited to financial advisors and legal counsel, to assist and advise the City in carrying out the Undertaking; and

(vi) Effecting any necessary amendment of the Undertaking.

Section 29. Bond Insurance. The City is authorized to purchase from the Bond Insurer the Municipal Bond Insurance Policy insuring the prompt payment of the principal of and interest on the Bonds and agrees to the conditions for obtaining that policy, including the payment of the premium therefor. Any notice required to be given to the Bond Insurer shall be sent by certified or registered mail to AMBAC Indemnity Corporation, One State Street Plaza, New York, New York 10004.

While the Municipal Bond Insurance Policy is in effect, the City or the Bond Registrar shall furnish to the Bond Insurer (to the attention of the Surveillance Department, unless otherwise indicated):

(a) As soon as practicable after the filing thereof, copies of any financial statements, audits and annual reports of the City;

(b) copies of any notices given to the registered owners of the Bonds, including, without limitation, notices of any redemption of or defeasance of Bonds, and any certificate rendered pursuant to this ordinance relating to the security for the Bonds; and

(c) such additional information the Bond Insurer may reasonably request.

The Bond Registrar shall notify the Bond Insurer of any failure of the City to provide relevant notices and certificates.

The City will permit the Bond Insurer to discuss the affairs, finances and accounts of the City or any information the Bond Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the City. The Bond Registrar and the City will permit the Bond Insurer to have access to and make copies of all books and records relating to the Bonds at any reasonable time.

The Bond Insurer shall have the right to direct an accounting at the City's expense, and the City's failure to comply with such direction within 30 days after receipt of written notice of the direction from the Bond Insurer shall be deemed a default hereunder unless compliance cannot occur within such period. In that event and only if an extension would not materially adversely affect the interest of any registered owner of the Bonds, that 30-day period will be extended so long as compliance is begun within that period and diligently pursued.

Section 30. Payment Procedures Under Bond Insurance. The Bond Insurer requires that the following sections be included in this ordinance:

"As long as the bond insurance shall be in full force and effect, the Issuer, the Trustee and any Paying Agent agree to comply with the following provisions:

"(a) At least one (1) day prior to all Interest Payment Dates the Trustee or Paying Agent [the Bond Registrar], if any, will determine whether there will

be sufficient funds in the Funds and Accounts to pay the principal of or interest on the Bonds on such Interest Payment Date. If the Trustee or Paying Agent, if any, determines that there will be insufficient funds in such Funds or Accounts, the Trustee or Paying Agent, if any, shall so notify AMBAC Indemnity. Such notice shall specify the amount of the anticipated deficiency, the Bonds to which such deficiency is applicable and whether such Bonds will be deficient as to principal or interest, or both. If the Trustee or Paying Agent, if any, has not so notified AMBAC Indemnity at least one (1) day prior to an Interest Payment Date, AMBAC Indemnity will make payments of principal or interest due on the Bonds on or before the first (1st) day next following the date on which AMBAC Indemnity shall have received notice of nonpayment from the Trustee or Paying Agent, if any.

"(b) the Trustee or Paying Agent, if any, shall, after giving notice to AMBAC Indemnity as provided in (a) above, make available to AMBAC Indemnity and, at AMBAC Indemnity's direction, to the United States Trust Company of New York, as insurance trustee for AMBAC Indemnity or any successor insurance trustee (the "Insurance Trustee"), the registration books of the Issuer maintained by the Trustee or Paying Agent, if any, and all records relating to the Funds and Accounts maintained under this ordinance.

"(c) the Trustee or Paying Agent, if any, shall provide AMBAC Indemnity and the Insurance Trustee with a list of registered owners of Bonds entitled to receive principal or interest payments from AMBAC Indemnity under the terms of the Municipal Bond Insurance Policy, and shall make arrangements with the Insurance Trustee (i) to mail checks or drafts to the registered owners of Bonds entitled to receive full or partial interest payments from AMBAC Indemnity and (ii) to pay principal upon Bonds surrendered to the Insurance Trustee by the registered owners of Bonds entitled to receive full or partial principal payments from AMBAC Indemnity.

"(d) the Trustee or Paying Agent, if any, shall, at the time it provides notice to AMBAC Indemnity pursuant to (a) above, notify registered owners of Bonds entitled to receive the payment of principal or interest thereon from AMBAC Indemnity (i) as to the fact of such entitlement, (ii) that AMBAC Indemnity will remit to them all or a part of the interest payments next coming due upon proof of Bondholder entitlement to interest payments and delivery to the Insurance Trustee, in form satisfactory to the Insurance Trustee, of an appropriate assignment of the registered owner's right to payment, (iii) that should they be entitled to receive full payment of principal from AMBAC Indemnity, they must surrender their Bonds (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of such Bonds to be registered in the name of AMBAC Indemnity) for payment to the Insurance Trustee, and not the Trustee or Paying Agent, if any, and (iv) that should they be entitled to receive partial payment of principal from AMBAC Indemnity, they must first surrender their Bonds for payment thereon first to the Trustee or

Paying Agent, if any, who shall note on such Bonds the portion of the principal paid by the Trustee or Paying Agent, if any, and the, along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee, to the Insurance Trustee, which will then pay the unpaid portion of principal.

"(e) in the event that the Trustee or Paying Agent, if any, has notice that any payment of principal of or interest on a Bond which has become Due for Payment and which is made to a Bondholder by or on behalf of the Issuer has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee or Paying Agent, if any, shall, at the time AMBAC Indemnity is notified pursuant to (a) above, notify all registered owners that in the event that any registered owner's payment is so recovered, such registered owner will be entitled to payment from AMBAC Indemnity to the extent of such recovery if sufficient funds are not otherwise available, and the Trustee or Paying Agent, if any, shall furnish to AMBAC Indemnity its records evidencing the payments of principal of and interest on the Bonds which have been made by the Trustee or Paying Agent, if any, and subsequently recovered from registered owners and the dates on which such payments were made.

"(f) in addition to those rights granted AMBAC Indemnity under this ordinance, AMBAC Indemnity shall, to the extent it makes payment of principal of or interest on Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Municipal Bond Insurance Policy, and to evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the Trustee or Paying Agent, if any, shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Trustee or Paying Agent, if any, upon receipt from AMBAC Indemnity of proof of the payment of interest thereon to the registered owners of the Bonds, and (ii) in the case of subrogation as to claims for past due principal, the Trustee or Paying Agent, if any, shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Trustee or Paying Agent, if any, upon surrender of the Bonds by the registered owners thereof together with the proof of the payment of principal thereof."

Section 31. Parties Interested Herein. To the extent that this ordinance confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this ordinance, the Bond Insurer is explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder. Nothing expressed or implied in this ordinance is intended or shall be construed to confer upon,

or to give or grant to, any person or entity, other than the City, the Bond Insurer and the registered owners of the Bonds, any right, remedy or claim under or by reason of this ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Bond Insurer and the registered owners of the Bonds.

Notwithstanding any other provision of this ordinance, the City shall notify the Bond Insurer immediately if at any time there are insufficient funds to make any payments of principal and/or interest as required and immediately upon the occurrence of any event of default hereunder.

Any provision of this ordinance expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer. Unless otherwise provided in this section, the Bond Insurer's consent shall be required, in addition to Bond owner consent, when required, for the following purposes: (i) execution and delivery of any supplemental ordinance, and (ii) initiation or approval of any other action which requires Bond owner consent. Anything in this ordinance to the contrary notwithstanding, upon the occurrence and continuance of an event of default, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bond owners for the benefit of the Bond owners under this ordinance.

Any reorganization or liquidation plan with respect to the City must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of all bondholders who hold AMBAC Indemnity-insured bonds absent

a default by the Bond Insurer under the applicable Municipal Bond Insurance Policy insuring such bonds.

Section 32. Temporary Bond. Pending the printing, execution and delivery to the purchaser of the definitive Bonds, the City may cause to be executed and delivered to the purchaser a single temporary Bond in the total principal amount of the Bonds. The temporary Bond shall bear the same date of issuance, interest rates, principal payment dates and terms and covenants as the definitive Bonds, shall be issued as a fully registered Bond in the name of the purchaser, and otherwise shall be in a form acceptable to the purchaser. Such temporary Bond shall be exchanged for definitive Bonds as soon as they are printed, authenticated and available for delivery.

Section 33. Effective Date of Ordinance. This ordinance shall take effect from and after its passage and five days following the date of its publication in the official newspaper of the City.

PASSED by the City Council and APPROVED by the Mayor of the City of Prosser, Washington, this 29th day of May, 1997, at a special open public meeting notice thereof having been given as required by law.

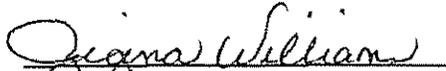
CITY OF PROSSER, WASHINGTON

By



Mayor

ATTEST:

  
City Clerk/Finance Director

FORM APPROVED:

  
City Attorney

Published: 6/4/97

EXHIBIT A

ALLOCATION OF BONDS

<u>Maturity Years</u>	<u>New Money</u>	<u>Current Refunding</u>	<u>Advance Refunding</u>	<u>Total Principal</u>
1997	--	\$120,000	\$45,000	\$165,000
1998	--	185,000	25,000	210,000
1999	--	195,000	20,000	215,000
2000	--	205,000	25,000	230,000
2001	--	215,000	25,000	240,000
2002	--	305,000	--	305,000
2003	--	95,000	185,000	280,000
2004	--	95,000	195,000	290,000
2005	--	95,000	200,000	295,000
2006	--		315,000	315,000
2007	--		335,000	335,000
2008	--		350,000	350,000
2009	\$100,000		125,000	225,000
2010	100,000		135,000	235,000
2011	100,000		140,000	240,000
2012	100,000		145,000	245,000
2013	100,000		155,000	255,000

EXHIBIT B

PERMITTED INVESTMENTS

A. AMBAC Indemnity will allow the following obligations to be used as Permitted Investments for all purposes, including defeasance investments in refunding escrow accounts.

(AMBAC Indemnity does not give a premium credit for the investment of accrued and/or capitalized interest.)

- (1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (2) below), or
- (2) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America.

B. AMBAC Indemnity will allow the following Obligations to be used as Permitted Investments for all purposes other than defeasance investments in refunding escrow accounts.

- (1) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:

- Export-Import Bank
- Farm Credit System Financial Assistance Corporation
- Rural Economic Community Development Administration (formerly the Farmers Home Administration)
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration
- Federal Financing Bank;

- (2) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:

- Senior debt obligations rated "Aaa" by Moody's and "AAA" by S&P issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC)
- Obligations of the Resolution Funding Corporation (REFCORP)
- Senior debt obligations of the Federal Home Loan Bank System
- Senior debt obligations of other Government Sponsored Agencies approved by AMBAC;

- (3) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P and "P-1" by Moody's and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank.);

- (4) Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by S&P and "P-1" by Moody's and which matures not more than 270 days after the date of purchase;

- (5) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by S&P;

- (6) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and
- (A) which are rated, based on an irrevocable escrow account or fund (the 'escrow'), in the highest rating category of S&P and Moody's or any successors thereto; or
- (B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph A(2) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate; [Pre-refunded Municipal Obligations meeting the requirements of subsection (B) hereof may not be used as Permitted Investments for annual appropriation lease transactions without the prior written approval of S&P.]
- (7) General obligations of States with a rating of at least "A2/A" or higher by both Moody's and S&P.
- (8) Investment agreements approved in writing by AMBAC Indemnity Corporation [supported by appropriate opinions of counsel] with notice to S&P; and
- (9) Other forms of investments (including repurchase agreements) approved in writing by AMBAC with notice to S&P.

C. The value of the above investments shall be determined as follows:

"Value", which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows:

- (1) As to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;
- (2) As to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;
- (3) As to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and
- (4) As to any investment not specified above: the value thereof established by prior agreement between the Issuer, the Trustee and AMBAC Indemnity Corporation.