

# Kelso City Council Agenda

Regular Meeting, 6:00 pm  
March 4, 2014  
City Hall, Council Chambers  
203 South Pacific  
Kelso, WA 98626



\*\*Special accommodations for the handicapped and hearing impaired are available by special arrangement through the City Clerk's Office at 360-423-0900\*\*

## **Invocation:**

Pastor Chris Davis, Abundant Life Nazarene

## **Roll Call to Council Members:**

### **1. Approve Minutes:**

1.1. February 18, 2014 – Regular Meeting

### **2. Presentation:**

2.1. Kelso Police Department Annual Report

### **3. Consent Items:**

### **4. Citizen Business:**

### **5. Council Business:**

5.1. Amendment – Cowlitz County 'Big Idea' Interlocal Agreement

### **6. Action/Motion Items:**

6.1. Ordinance, 1<sup>st</sup> Reading

6.1.1. Encode Fees to Master Fee Schedule

6.2. Ordinance, 1<sup>st</sup> Reading

6.2.1. Marijuana Land Use

6.3. Ordinance, 1st Reading

6.3.1. Marijuana Code Amendment/Repealed

# Kelso City Council Agenda

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## **Other Items:**

- City Manager Report
- Staff/Dept Head Reports
- Council Reports
- Other Business
- Executive Session

Major Dave Davis, Salvation Army, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor David Futcher. Councilmembers in attendance were: Schimmel, McDaniel, Franklin, Archer, Roberson, Myers and Futcher.

**Minutes:** Upon motion by Councilmember Schimmel, seconded by Councilmember Roberson, 'Approve the Minutes of the 2/4/14 Regular Meeting,' motion carried, all voting yes.

**Citizen Appreciation Award:** Anthony Currena presented a plaque to Police Chief Andrew Hamilton for his exceptional dedication to the community.

**CONSENT AGENDA:**

1. **Contract:** Cowlitz County, Reimbursable Work
2. **Auditing of Accounts:** \$3,070,556.71

Upon motion by Councilmember Myers, seconded by Councilmember Roberson, 'Approve the Consent Agenda and the Auditing of Accounts in the amount of \$3,070,556.71.' motion carried, all voting yes.

**CITIZEN BUSINESS:**

**Rick Von Rock,** 400 North 7<sup>th</sup> Ave., Kelso, spoke in support of increasing the state minimum wage.

**Jim Hill,** 1100 North 2<sup>nd</sup> Ave., Kelso, spoke to thank Public Works Superintendent, Randy Johnson and the city employees for the incredible job they did during the recent snow.

**Johann Peters,** 512 West Main St., Kelso, spoke about the façade improvement program. Discussion followed.

**Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Expand the Façade Improvement program to include West Main Street,' motion failed, all voting no. Workshop will be scheduled to discuss options available.**

**Anthony Currena,** 803 South 6<sup>th</sup> Ave., Kelso, spoke about citizens not being able to park on their own lawns.

**COUNCIL BUSINESS:**

**Interlocal Agreement Amendment – Cowlitz Wahkiakum Narcotics Task Force:**

Upon motion by Councilmember Schimmel, seconded by Councilmember Myers, ‘Approve Amendment to the Cowlitz Wahkiakum Narcotics Task Force Interlocal Agreement,’ motion passed, all voting yes.

**MOTION ITEMS:**

**Resolution No. 14-1110 – Parks & Recreation Comprehensive Plan:** The Deputy Clerk read the proposed resolution by title only. Upon motion by Councilmember Archer, seconded by Councilmember Roberson, ‘Pass Resolution No. 14-1110, ‘A RESOLUTION OF THE CITY OF KELSO, WASHINGTON, ADOPTING REVISIONS TO THE CITY OF KELSO PARK AND RECREATION COMPREHENSIVE PLAN,’ motion carried, all voting yes.

**Resolution No. 14-1111 – Declare Surplus of Personal Property:** The Deputy Clerk read the proposed resolution by title only. Upon motion by Councilmember Schimmel, seconded by Councilmember Archer, ‘Pass Resolution No. 14-1111, ‘A RESOLUTION OF THE CITY OF KELSO, WASHINGTON, DECLARING CERTAIN PERSONAL PROPERTY OF THE CITY OF KELSO TO BE SURPLUS AND DIRECTING THE DISPOSITION THEREOF,’ motion carried, all voting yes.

**MANAGER’S REPORT:**

**Steve Taylor:** 1) Commented that the 1997 GMC Sonoma pickup declared as surplus will continue to be used until it no longer functions. 2) Briefed the Council on the Planning Commission’s progress regarding marijuana regulations. 3) Informed the Council that the Airport Operating Board approved a \$5,000 increase to the annual operating expense budget. Discussion followed.

**Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, ‘Approve the \$5,000 increase in the Airport Operating Board expense budget.’ Councilmembers Roberson, Franklin, McDaniel, Schimmel, Myers and Futcher voted yes. Councilmember Archer voted no. Motion passed 6 to 1.**

**STAFF REPORT:**

**Janean Parker:** Provided a summary of the current State Attorney General’s opinion on marijuana regulations.

**Mike Kardas:** Provided a brief update on the progress of the West Main Realignment.

**COUNCIL REPORTS:**

**Gary Archer:** Commented that the Kelso Elks will be offering a variety of services for veterans between 1:00 to 5:00 p.m. tomorrow, Wednesday, February 19<sup>th</sup>. Free medical checks and referrals for assistance will be provided.

**Todd McDaniel:** Provided a brief update on the recent River Cities Transit meeting.

**Jared Franklin:** No report.

**Dan Myers:** Provided a brief update on the Council of Governments performance evaluation.

**Gary Schimmel:** No report.

**Rick Roberson:** Provided a brief update on the recent South Kelso Neighborhood Association meeting.

**David Futcher:** No report.

There being no further business, Mayor Futcher adjourned the meeting at 6:47 p.m.

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**MAYOR**

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**CITY CLERK**

**AGENDA SUMMARY SHEET**  
**Business of the City Council**  
**City of Kelso, Washington**

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**SUBJECT TITLE:**

AMENDING AND RECONSTITUTING THE  
COWLITZ COUNTY REGIONAL TOURISM  
DEVELOPMENT PARTNERSHIP PROGRAM –  
“THE BIG IDEA” INTERLOCAL AGREEMENT

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** \_\_\_\_\_ City Manager \_\_\_\_\_

**For Agenda of:** March 4, 2014

**Originator:** Steve Taylor

**PRESENTED BY:**

Steve Taylor

**City Attorney:** **Janean Parker**

**City Manager:** **Steve Taylor**

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**Agenda Item Attachments:**

Exhibit A - Redlined Amended Interlocal Agreement for “The Big Idea”

Exhibit B - Clean Amended Interlocal Agreement for “The Big Idea”

**SUMMARY STATEMENT:**

The City is party to an interlocal agreement with Cowlitz County for the pooling and redistribution of lodging tax revenues throughout the County. The City’s annual contribution to the pool was set at \$7,625 for a period of six years (2012 through 2017), with the annual revenue collected from all entities standing at \$67,676. Each participating jurisdiction would receive the full annual amount during their designated year. Kelso’s tourism project will be funded in 2016.

Last year, the State Auditor questioned whether the distribution of the funds fell within the appropriate regulations, and the County responded with the attached amended interlocal agreement that better aligns the process for allocating lodging tax funds with state laws relating to the gifting of public funds and appropriation of restricted lodging tax monies. The only significant change to the process is that the City’s Lodging Tax Advisory Committee and Council will have to formally approve allocating money to a participating jurisdiction’s project (that is recommended by “The Big Idea” Board) and disburse the money directly to that jurisdiction rather than writing an annual check to the County for its disbursement to the entity.

**OPTIONS:**

- 1) Move to approve the Amended Interlocal Agreement with Cowlitz County for Regional Tourism Development;
- 2) Do not approve the Amended Interlocal Agreement;
- 3) Take no action and defer consideration to a subsequent regular meeting.

**RECOMMENDED ACTION:**

Move to approve the Amended Interlocal Agreement with Cowlitz County for Regional Tourism Development.

Exhibit A

**Interlocal Agreement**  
**Reconstituting and Amending the Cowlitz County**  
**Regional Tourism Development Partnership Program**  
**AKA “The Big Idea” and Tourism Board of Directors**  
**Interlocal Agreement**  
~~**Cowlitz County Regional Tourism Development Partnership Program**~~  
~~**AKA “The Big Idea” and Tourism Board of Directors**~~

**THIS AGREEMENT** made and entered into between **COWLITZ COUNTY**, a political subdivision of the State of Washington, acting by and through its Board of Commissioners, hereinafter referred to as “County,” and the Cities of **LONGVIEW, KELSO, CASTLE ROCK, KALAMA, and WOODLAND**, each political subdivisions of the State of Washington, acting by and through their respective City Councils or City Managers for the purpose of creating an Interlocal Agreement to create and administer the Cowlitz County Regional Tourism Development Partnership Program (hereinafter “The Big Idea”).

**WHEREAS**, the Interlocal Cooperation Act, Chapter 39.34, Revised Code of Washington (RCW), permits local governmental units in Washington State to develop and implement Interlocal agreements regarding issues of common interest and concern; and

**WHEREAS**, each of the parties to this Agreement independently collects and expends special excise taxes used to pay the cost of tourism promotion, which is defined in RCW 67.28 as activities and expenditures designed to increase tourism, including advertising, publicizing or otherwise distributing information for the purpose of attracting visitors and encouraging tourism expansion; and

**WHEREAS**, each of the parties to this Agreement are also authorized to expend the special excise taxes for acquisition, construction or operation of tourism-related facilities as defined in RCW 67.28 to include facilities that support tourism, the performing arts, or the accommodation of tourist activities, or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purposes (these include such items as events, attractions, or activities); and

**WHEREAS**, the parties wish to enter into a collaborative partnership for the promotion of tourism and for the acquisition, construction or operation of tourism-related facilities to stimulate the local economy for the benefit of the businesses and citizens of their individual entities of Cowlitz County; and

**WHEREAS**, it is the desire of the parties to contribute resources and cooperate to develop a regional vision, plans and projects to diversify tourism programs and activities within the geographical boundaries of Cowlitz County to accomplish more together than can be done separately. The intent of the annual “Big Idea” program is to draw visitors for potential overnight stays thereby adding to the lodging tax funding pool while also creating something that will continue to draw visitors in the future.

**NOW, THEREFORE**, in consideration of the mutual undertakings and promises contained herein and the benefits to be realized by each party, and in further consideration of the benefit to the general public to be realized by the performance of this Agreement, the parties agree as follows:

**1. Board of Directors Created.** There is hereby created a Tourism Board of Directors (“Tourism Board”), consisting of nineteen (19) voting members, and four (4) nonvoting ex officio members who shall be the County’s Tourism Director, a representative of the United States Forest Service, a representative of the Washington State Parks & Recreation Commission and the County’s Exposition/Conference Center Director. The Tourism Board will be responsible to review, select and recommend to the local lodging tax advisory committees and legislative authorities of each party and select for funding projects or programs submitted by the parties as further described in this Agreement. The projects or programs are intended to have a regional vision in order to diversify tourism programs and activities within the geographical boundaries of Cowlitz County and to provide each entity with an equal vote to implement that vision, the projects, and oversee the direction of those projects and programs. The projects and programs should, among other things, establish a collaborative partnership for the promotion of tourism and tourism-related activities to stimulate the local economy for the benefit of the businesses and citizens of each entity and Cowlitz County as a whole.

**A. Membership of Tourism Board of Directors.**

(1) Number, Terms and Qualifications of Members. The board shall consist of nineteen (19) members and three (3) nonvoting ex officio members as follows:

<b>Regional Tourism Board of Directors</b>				
Jurisdiction	Position	Status	# of Members	Initial Term
Longview	[City Manager], or designee	Voting	One (1)	___ years
Longview	Hotelier or designee	Voting	One (1)	___ years
Longview	Citizen or Stakeholder	Voting	One (1)	___ years
Kelso	[City Manager] , or designee	Voting	One (1)	___ years
Kelso	Hotelier or designee	Voting	One (1)	___ years
Kelso	Citizen or Stakeholder	Voting	One (1)	___ years
Castle Rock	[Mayor] , or designee	Voting	One (1)	___ years
Castle Rock	Hotelier or designee	Voting	One (1)	___ years
Castle Rock	Citizen or Stakeholder	Voting	One (1)	___ years
Kalama	[Mayor] , or designee	Voting	One (1)	___ years
Kalama	Hotelier or designee	Voting	One (1)	___ years
Kalama	Citizen or Stakeholder	Voting	One (1)	___ years
Woodland	[Mayor] , or designee	Voting	One (1)	___ years
Woodland	Hotelier or designee	Voting	One (1)	___ years
Woodland	Citizen or Stakeholder	Voting	One (1)	___ years
Cowlitz County	[Commissioner], or designee	Voting	One (1)	___ years
Cowlitz County	Hotelier or designee	Voting	One (1)	___ years
Cowlitz County	Citizen or Stakeholder-Hwy 503	Voting	One (1)	___ years
Cowlitz County	Citizen or Stakeholder-Hwy 504	Voting	One (1)	___ years

Cowlitz County	County's Tourism Director	Non-Voting	One (1)	6 years
State of WA	Parks & Recreation Commission	Non-Voting	One (1)	6 years
U.S. Forest Service	Representative	Non-Voting	One (1)	6 years
Cowlitz County	Expo/Conference Center Director	Non-Voting	One (1)	6 years

Voting members shall serve six-year terms or until a member's successor is duly appointed and confirmed. PROVIDED THAT the terms of the first Tourism Board shall be staggered so that each entity shall have one voting member with a two-year term, each entity shall have one voting member with a four-year term, and each entity shall have one voting member with a six-year term. During the first meeting of the Tourism Board, the Directors shall, by majority vote, determine which Director's seats shall be for shorter terms in order to establish the staggered term rotation. It is the intent of the parties that one-third of the voting Directors shall be selected every-other year. Directors shall not be limited in number of successive years on the Tourism Board.

(2) Qualifications. Nominees for a Tourism Board position should be individuals with backgrounds and experience in tourism, planning, advertising, and marketing.

(3) Appointment. Tourism Board members shall be appointed by the City Council or Board of Commissioners for the jurisdiction represented in a manner consistent with the jurisdiction's appointment procedures. The Hotelier and Citizen or Stakeholder-at-large representing the cities shall be appointed by the City Manager, or designee. Prior to appointment, applicants for the Tourism Board are required to meet with the entity they wish to represent. Entities will seek a recommendation from their Lodging Tax Advisory Committees.

(4) Vacancies. Vacancies occurring other than through the expiration of the term shall be filled for the unexpired term in the same manner as for appointments as provided herein.

**B. Meetings.**

The Tourism Board shall hold such regular and special meetings as may be necessary to carry out its responsibilities. The Tourism Board shall elect from among its members a chair who shall preside at all meetings and a vice chair who shall preside in the absence of the chair. A majority of the Tourism Board shall constitute a quorum for the transaction of business and a majority vote of those present shall be necessary to carry any motion.

**C. Duties and Responsibilities.**

The Tourism Board shall be an advisory body to the City Councils and the Board of Commissioners. Duties of the Tourism Board shall include:

(1) Collaboration. Work collaboratively with Lodging Tax Advisory Committees, community stakeholders, and City and County Elected Officials and staff, and the Cowlitz County Tourism Director to identify eligible projects and programs that meet the requirements of laws regarding the use of the monies which are the subject of this Agreement and that meet the operational and programmatic needs of the participating partners.

All activities, projects, programs and expenses of the program supported with funds received from the County and the Cities in furtherance of this Agreement must conform to requirements of RCW 67.28, as now enacted or hereinafter amended, and shall further be subject to such other restrictions as might be contained in this Agreement.

(2) Regional Tourism Projects & Programs. Annually select and recommend to the local lodging tax advisory committees and legislative authorities of each of the parties award funding for one or more current or new activities, attractions, events, or other causes that will promote tourism and lodging throughout the County and/or a City that is a party to this Agreement pursuant to the terms of this Agreement. (For example: the City of Woodland operates a Visitor's Center that serves tourism county-wide and therefore extended support would benefit all entities involved. Due to the volume of visitors receiving information from Woodland's Visitor Center, Woodland retains the ability to use its "Big Idea" Fund-collective funding to support its Visitor's Center over a period of years to the benefit of the other entities. Other entities may also choose to invest a portion of their "Big Idea" Fund-lodging tax monies in the operations of the Woodland Visitor's Center to promote on-going events and activities in the area.)

(3) Annual and Periodic Reports. The Tourism Board shall, at least annually not later than April each year, provide a written report to the Board of County Commissioners and each City Council related to the activities-operation of the Tourism Board which should include, among other things:

- a) A narrative detailing the implementation and accomplishments of the Tourism Board for the prior year related to the goals set out in this Agreement (including, but not limited to, the information required by RCW 67.28.1816(2)(c)(i), as now enacted or hereafter amended); and
- b) The status of regional tourism development planning program; and
- c) A summary of the actual, collective expenditures and revenues for the "Big Idea" program for the prior year; and
- d) Such other information as may be requested by the parties or would be helpful in understanding the overall program.

(4) Ad Hoc Committees. The Tourism Board may from time to time create short-term ad hoc committees that include nonmembers who are deemed important in performing the Tourism Board's duties. Tenure shall vary with the need as determined by the Tourism Board'. Ad Hoc Committee Members shall not have voting rights.

#### **D. County Staff Support.**

Administrative staff support shall be provided by Cowlitz County and/or other designee of the cities. Staff support shall be responsible to provide clerical, administrative and other assistance as necessary to enable the Tourism Board to conduct business and carry out its duties and responsibilities.

**2. Financial Contributions.**

**A. ~~Tourism Pooled Collective~~ “Big Idea” Funding.** The parties to this Agreement agree ~~to review promptly the annual recommendation of the Tourism Board for the collective funding of a project or program, either approving or disapproving the recommendation within a month of receipt. If a party, in good faith, disapproves the annual recommendations, the parties and the Tourism Board shall promptly confer to resolve the disagreement and shall seek to resolve the dispute in time to permit proper funding of that year’s recipient of the funding. Within two weeks of the approval by all parties, each party shall transmit to the agreed recipient the amounts as provided below. to create a special/pooled fund to be maintained by Cowlitz County, under all general regulations governing financial and budgetary management of Cowlitz County Government and the terms of this Agreement. The monies in said fund, including contributions of parties, interest earnings on said funds, grant and matching monies that might be received, gifts and donations will be deposited with the Treasurer of Cowlitz County. Cowlitz County will keep a separate set of accounts for all such funds and expenditures of such funds. The Tourism Board and recipient shall will submit final accounting to and for the parties. Board of County Commissioners to authorize expenditures from the fund in accordance with a budget and program approved by the Tourism Board of Directors. Entity contributions, as set forth herein, shall be paid directly to the County annually, in advance, on or before November 15<sup>th</sup> of each year, or at such other times as the parties may agree in writing.~~

**B. Participating Entities Annual ~~Contributions~~ Commitment to Regional Tourism.** ~~Amount~~Funds to be ~~paid~~ committed for regional tourism by each participating entity are anticipated to come from each entity’s lodging tax receipts, but the actual source ~~and amount~~ of ~~contribution~~ fundings shall be determined by each entity. More specifically; each entity may derive its ~~funding~~ contributions from sources other than the lodging tax, provided the source meets all state, federal, and local legal requirements. General fund dollars, community partnership fundraising capital or lodging tax funds can be contributed either in combination or alone to meet the entities’ ~~require~~ anticipated annual ~~contributions~~ commitments. Each entity ~~is anticipated to commit~~ will contribute the following amounts each year for six years (2012, 2013, 2014, 2015, 2016, and 2017):

Entity	Annual Contribution (2012 -2017)
Longview	\$ 3,632
Kelso	\$ 7,625
Castle Rock	\$ 1,279
Kalama	\$ 352
Woodland	\$ 2,540
Cowlitz County	\$18,410
Total Entity Annual Contributions:	\$33,838
Cowlitz County (match)	\$33,838
Total Program Contributions	\$67,676

**C. Monetary Default.** Failure of a party ~~to make payments~~ to fulfill its commitments, as specified, herein, shall constitute a default under the terms of this Agreement. If the default is

not cured within forty-five (45) days after the County notifies the agency in writing of such default, the voting privileges of the Directors representing such defaulting entity shall be suspended. Additionally, the entity will not qualify to receive proceeds from the “Big Idea” Fund until ~~all its contribution~~ regional tourism commitments have been made and the default has been cured. ~~In the event of a default of an entity has already received proceeds from the “Big Idea” Fund the non-defaulting parties shall have the right to seek reimbursement of all funds distributed to the defaulting party, including interest from the date of distribution.~~

**3. Distributions from Tourism Pooled “Big Idea” Fund.** ~~The parties agree that Allocation of monies for the from the Tourism Pooled “Big Idea” F~~ funding will be ~~made paid~~ annually ~~by each party~~ on or before January 31 to support a program or project ~~collectively~~ approved by the ~~parties~~ Tourism Board. Each entity will be entitled to receive proceeds ~~in accordance with this Agreement from the Tourism Pooled “Big Idea” Fund~~ once during the initial term of this Agreement, or once every six years if the Agreement is extended.

With funds ~~received committed by under the terms of this Agreement and collectively awarded by the parties from the Tourism Pooled “Big Idea” Fund~~, each entity agrees to design, construct and complete the approved project or program within one year of receiving the funds. However, an entity may request approval from the ~~parties, with the review and recommendation of the~~ Tourism Board, for an extension of time to complete a project where it can be shown that substantial progress has been made toward implementing or completing an approved project or program especially where the ~~recommended “Big Idea” F~~ collective fundings expands activities such as marketing, promotions, and licensing. Entities may also share a portion of their ~~“Big Idea” lodging tax funds from associated with this Agreement~~ with another participating entity to enhance collaborative marketing and/or activities. Entities may contribute excess proceeds distributed to it to the County Department of Tourism to pursue collaborative efforts or opportunities as may be approved by the Tourism Board, ~~or as otherwise agreed by the parties.~~

**PROVIDED HOWEVER**, that each entity may request approval from the ~~parties, with the review and recommendation of the~~ Tourism Board, to receive an amount not to exceed ten per cent (10%) or Six Thousand Seven Hundred Sixty-seven dollars and 60/100 (\$6,767.60) of its allocation prior to the year in which they would receive the annual ~~distribution commitment of funds~~. Funds advanced under this provision must be used to promote, plan, or secure contracts associated with their “Big Idea” project. Such funds will only be distributed ~~only if all parties agree, which agreement shall not be unreasonably withheld, provided the Tourism Pooled “Big Idea” Fund has sufficient resources to do so.~~

**PROVIDED FURTHER**, that distribution of the “Big Idea” ~~collective F~~ funding intended for the City of Woodland may be used for the Woodland Visitor Center and ~~such distribution requires only approval of the Woodland representatives on the Tourism Board. The Woodland Visitor Center~~ is exempt from the requirement to expend funds granted to it within the one year time frame described above. This paragraph does not preclude other entities from contributing a portion of their “Big Idea” ~~collective f~~ Fund to The Woodland Visitor’s Center. All funds distributed pursuant to this Agreement in support of The Woodland Visitor’s Center must meet the requirements of RCW 67.28 and be disclosed to the ~~Tourism Board other parties~~ for inclusion in their ~~ir~~ annual reports.

In the event that ~~proceeds~~collective funds have been disbursed to the entity and the project or program does not proceed or is not completed as anticipated or redistributed as described herein, the entity hereby guarantees that it will refund all ~~such proceeds disbursed to it~~respective funds to the respective parties who contributed, together with accrued interest at the same rate as if the funds had been invested with the Washington State Local Government Investment Pool.; ~~PROVIDED~~provided that the entity may deduct such amounts as it shall have applied to its project or program through the date on which a decision is made not to proceed with or to abandon the project or program. Refunded proceeds will be returned to the ~~parties.~~Tourism Pooled “Big Idea” Fund.

**4. Acquisition and Ownership of Capital Equipment, Property and Facilities.** The parties do not anticipate the joint acquisition or ownership of capital equipment, property or facilities with the monies ~~to be paid and administered~~committed for regional tourism under the provisions of this Agreement. ~~PROVIDED~~ however, should the parties determine later that such ~~joint-venture~~ acquisitions should be made, this Agreement will be amended to provide for the disposition of such equipment, property or facilities upon the termination of this Agreement. For purposes of this Agreement, the term “capital equipment” shall mean expenditure for a non-recurring physical asset that is not consumed within a year, but rather has a multi-year life and a value exceeding \$5,000.00.

**5. Contract Administrator.** The County’s Finance Director shall be the administrator of this Agreement.

**6. Effective Date/Termination.** The initial term of this Agreement shall be January 1, 2012 through December 31, 2017. The Agreement may be renewed by the parties upon such terms and conditions as the parties agree. Any party may terminate their part in this Agreement by giving written notice thereof at least 180 days before the end of any calendar year.

**7. Penalty for Early Withdrawal.** In the event that any party to this Agreement shall withdraw from further participation prior to expiration of the initial term of this Agreement, and

(a) The withdrawing party shall have received ~~a~~collective funding pursuant to this Agreement~~distribution from the Tourism Pooled “Big Idea” Fund~~ prior to the time of withdrawal, the withdrawing party shall either

(1) Refund all ~~of the monies received~~respective funds received to the~~respective parties who contributed~~from the Tourism Pooled “Big Idea” Fund, or

(2) ~~Pay~~Commit to pay to the other parties into the Tourism Pooled “Big Idea” Fund the amounts ~~due from~~committed by ~~it~~the withdrawing party as specified in Paragraph 2B above. ~~PROVIDED~~, that the withdrawing party shall receive as a credit against the amounts ~~due~~committed under this paragraph, all sums previously ~~paid~~contributed by the withdrawing party under the terms of this Agreement.

(b) PROVIDED FURTHER, that any party that withdraws from this Agreement prior to expiration of the initial term shall NOT be entitled to a refund of any contributions made in accordance with this Agreement~~to the Tourism Pooled-  
“Big Idea” Fund.~~

**8. Relationship of the Parties.** No agent, official, employee, servant, or representative of one party shall be deemed an officer, employee, agent, servant or representative of another party or for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, or representatives.

**9. Nonwaiver.** No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies.

**10. Interpretation and Implementation.** In the event that any dispute should arise regarding the interpretation of any term of this Agreement or the implementation of any of the provisions hereof, and such dispute is not resolved by mutual discussions within ten (10) days after a written description of such dispute is delivered by one party to the other, such dispute may be submitted to binding arbitration in the manner described in RCW 39.34.180 as now enacted or hereafter amended. In any legal action between the parties with respect to the matters covered by this Agreement, the prevailing party will be entitled to receive its reasonable attorney’s fees and costs incurred in such legal action, in addition to any other relief it may be awarded.

**11. Construction of Agreement.** In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.

**12. Invalidity.** Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any of the other provisions hereof and such other provisions shall remain in full force and effect despite such invalidity or illegality. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**13. Severability.** If a court of law determines any provision of the Agreement to be unenforceable or invalid, the parties hereto agree that all other portions of this Agreement shall remain valid and enforceable.

**14. Paragraphs.** The paragraph headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport and shall not



Kelso, WA 98626

If to Castle Rock

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City of Castle Rock  
P.O. Box 370  
Castle Rock, WA 98611

Copy to:  
City Attorney  
P.O. Box 370  
Castle Rock, WA 98611

If to Kalama:

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City of Kalama  
P. O. Box 1007  
Kalama, WA

Copy to  
City Attorney  
P. O. Box 1007  
Kalama, WA

If to Woodland:

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City of Woodland  
P. O. Box 9  
Woodland, WA 98674

Copy to  
City Attorney  
P. O. Box 9  
Woodland, WA 98674

If to Cowlitz County:

Board of County Commissioners  
County Administration Building, Room 300  
207 North 4<sup>th</sup> Ave  
Kelso, WA 98626

Copy to:  
Chief Civil Deputy  
Cowlitz County Prosecuting Attorney  
312 South 1<sup>st</sup> Ave West  
Kelso, WA 98626

**20. Compliance with Laws.** All parties shall comply with all applicable federal, state and local laws, regulations and rules in performing this Agreement.

**21. Applicable Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to the Agreement shall be Cowlitz County, Washington.

**22. Interlocal Cooperation Act.** The performance of the obligations of this Agreement shall be in compliance with the provisions of RCW 39.34, the Interlocal Cooperation Act. The parties agree that no separate legal administrative entities are necessary in order to carry out this Agreement. For purposes of RCW 39.34.030(4)(a), the Director of the County Office of Financial Management shall serve as the administrator responsible for administering the joint and cooperative undertaking among the parties to this Agreement. There shall be no “joint board” as that term is used in RCW 39.34.030(4)(a), except as noted in 1 of this Agreement.

**23. Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart. The effective date of this Agreement shall be the last date executed by any one of the parties to this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year written below.

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

**BOARD OF COUNTY COMMISSIONERS  
OF COWLITZ COUNTY, WASHINGTON**

\_\_\_\_\_  
| Mike A. Karnofski~~George Raiter~~, Chairman

\_\_\_\_\_  
| James R. Misner~~Michael A. Karnofski~~, Commissioner

\_\_\_\_\_  
| Dennis P. Weber~~James R. Misner~~, Commissioner

Approved as to Form:

Attest:

\_\_\_\_\_  
Chief Civil Deputy Prosecuting Attorney

\_\_\_\_\_  
Vickie M. Musgrove, Clerk of the Board

\_\_\_\_\_  
Date

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year written below.

**CITY OF LONGVIEW**

\_\_\_\_\_  
Robert J. Gregory, City Manager

Attest:

\_\_\_\_\_  
Ann Davis, City Clerk

Approved as to Form:

\_\_\_\_\_  
| ~~James McNamara~~ ~~Marilyn Haan~~, City Attorney

\_\_\_\_\_  
Date

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written below.

**CITY OF KELSO**

\_\_\_\_\_  
| ~~Steve Taylor~~Denny Richards, City Manager

Attest:

\_\_\_\_\_  
Brian Butterfield, Clerk/Treasurer

Approved as to Form:

\_\_\_\_\_  
Janean Parker, City Attorney

\_\_\_\_\_  
Date

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year written below.

**CITY OF KALAMA**

\_\_\_\_\_  
Pete Poulsen, Mayor

Attest:

\_\_\_\_\_  
Coni McMaster, Clerk/Treasurer

Approved as to Form:

\_\_\_\_\_  
Paul Brachvogel, City Attorney

\_\_\_\_\_  
Date

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year written below.

**CITY OF CASTLE ROCK**

\_\_\_\_\_  
Paul Helenberg, Mayor

Attest:

\_\_\_\_\_  
Ryana Covington, City Clerk/Treasurer

Approved as to Form:

\_\_\_\_\_  
Frank Randolph, City Attorney

\_\_\_\_\_  
Date

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written below.

**CITY OF WOODLAND**

\_\_\_\_\_  
| Grover Laeske~~Charles E. Blum~~, Mayor

Attest:

\_\_\_\_\_  
Mari E. Ripp, Clerk/Treasurer

Approved as to Form:

\_\_\_\_\_  
William Eling, City Attorney

\_\_\_\_\_  
Date

Exhibit B

**Interlocal Agreement  
Reconstituting and Amending the Cowlitz County  
Regional Tourism Development Partnership Program  
AKA “The Big Idea” and Tourism Board of Directors**

**THIS AGREEMENT** made and entered into between **COWLITZ COUNTY**, a political subdivision of the State of Washington, acting by and through its Board of Commissioners, hereinafter referred to as “County,” and the Cities of **LONGVIEW, KELSO, CASTLE ROCK, KALAMA, and WOODLAND**, each political subdivisions of the State of Washington, acting by and through their respective City Councils or City Managers for the purpose of creating an Interlocal Agreement to create and administer the Cowlitz County Regional Tourism Development Partnership Program (hereinafter “The Big Idea”).

**WHEREAS**, the Interlocal Cooperation Act, Chapter 39.34, Revised Code of Washington (RCW), permits local governmental units in Washington State to develop and implement Interlocal agreements regarding issues of common interest and concern; and

**WHEREAS**, each of the parties to this Agreement independently collects and expends special excise taxes used to pay the cost of tourism promotion, which is defined in RCW 67.28 as activities and expenditures designed to increase tourism, including advertising, publicizing or otherwise distributing information for the purpose of attracting visitors and encouraging tourism expansion; and

**WHEREAS**, each of the parties to this Agreement are also authorized to expend the special excise taxes for acquisition, construction or operation of tourism-related facilities as defined in RCW 67.28 to include facilities that support tourism, the performing arts, or the accommodation of tourist activities, or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purposes (these include such items as events, attractions, or activities); and

**WHEREAS**, the parties wish to enter into a collaborative partnership for the promotion of tourism and for the acquisition, construction or operation of tourism-related facilities to stimulate the local economy for the benefit of the businesses and citizens of their individual entities of Cowlitz County; and

**WHEREAS**, it is the desire of the parties to contribute resources and cooperate to develop a regional vision, plans and projects to diversify tourism programs and activities within the geographical boundaries of Cowlitz County to accomplish more together than can be done separately. The intent of the annual “Big Idea” program is to draw visitors for potential overnight stays thereby adding to the lodging tax funding pool while also creating something that will continue to draw visitors in the future.

**NOW, THEREFORE**, in consideration of the mutual undertakings and promises contained herein and the benefits to be realized by each party, and in further consideration of the

benefit to the general public to be realized by the performance of this Agreement, the parties agree as follows:

**1. Board of Directors Created.** There is hereby created a Tourism Board of Directors (“Tourism Board”), consisting of nineteen (19) voting members, and four (4) nonvoting ex officio members who shall be the County’s Tourism Director, a representative of the United States Forest Service, a representative of the Washington State Parks & Recreation Commission and the County’s Exposition/Conference Center Director. The Tourism Board will be responsible to review, select and recommend to the local lodging tax advisory committees and legislative authorities of each party for funding projects or programs submitted by the parties as further described in this Agreement. The projects or programs are intended to have a regional vision in order to diversify tourism programs and activities within the geographical boundaries of Cowlitz County and to provide each entity with an equal vote to implement that vision, the projects, and oversee the direction of those projects and programs. The projects and programs should, among other things, establish a collaborative partnership for the promotion of tourism and tourism-related activities to stimulate the local economy for the benefit of the businesses and citizens of each entity and Cowlitz County as a whole.

**A. Membership of Tourism Board of Directors.**

(1) Number, Terms and Qualifications of Members. The board shall consist of nineteen (19) members and three (3) nonvoting ex officio members as follows:

<b>Regional Tourism Board of Directors</b>				
Jurisdiction	Position	Status	# of Members	Initial Term
Longview	[City Manager], or designee	Voting	One (1)	___ years
Longview	Hotelier or designee	Voting	One (1)	___ years
Longview	Citizen or Stakeholder	Voting	One (1)	___ years
Kelso	[City Manager] , or designee	Voting	One (1)	___ years
Kelso	Hotelier or designee	Voting	One (1)	___ years
Kelso	Citizen or Stakeholder	Voting	One (1)	___ years
Castle Rock	[Mayor] , or designee	Voting	One (1)	___ years
Castle Rock	Hotelier or designee	Voting	One (1)	___ years
Castle Rock	Citizen or Stakeholder	Voting	One (1)	___ years
Kalama	[Mayor] , or designee	Voting	One (1)	___ years
Kalama	Hotelier or designee	Voting	One (1)	___ years
Kalama	Citizen or Stakeholder	Voting	One (1)	___ years
Woodland	[Mayor] , or designee	Voting	One (1)	___ years
Woodland	Hotelier or designee	Voting	One (1)	___ years
Woodland	Citizen or Stakeholder	Voting	One (1)	___ years
Cowlitz County	[Commissioner], or designee	Voting	One (1)	___ years
Cowlitz County	Hotelier or designee	Voting	One (1)	___ years
Cowlitz County	Citizen or Stakeholder-Hwy 503	Voting	One (1)	___ years
Cowlitz County	Citizen or Stakeholder-Hwy 504	Voting	One (1)	___ years
Cowlitz County	County’s Tourism Director	Non-Voting	One (1)	6 years
State of WA	Parks & Recreation Commission	Non-Voting	One (1)	6 years
U.S. Forest Service	Representative	Non-Voting	One (1)	6 years

Cowlitz County	Expo/Conference Center Director	Non-Voting	One (1)	6 years
----------------	---------------------------------	------------	---------	---------

Voting members shall serve six-year terms or until a member’s successor is duly appointed and confirmed. PROVIDED THAT the terms of the first Tourism Board shall be staggered so that each entity shall have one voting member with a two-year term, each entity shall have one voting member with a four-year term, and each entity shall have one voting member with a six-year term. During the first meeting of the Tourism Board, the Directors shall, by majority vote, determine which Director’s seats shall be for shorter terms in order to establish the staggered term rotation. It is the intent of the parties that one-third of the voting Directors shall be selected every-other year. Directors shall not be limited in number of successive years on the Tourism Board.

(2) Qualifications. Nominees for a Tourism Board position should be individuals with backgrounds and experience in tourism, planning, advertising, and marketing.

(3) Appointment. Tourism Board members shall be appointed by the City Council or Board of Commissioners for the jurisdiction represented in a manner consistent with the jurisdiction’s appointment procedures. The Hotelier and Citizen or Stakeholder-at-large representing the cities shall be appointed by the City Manager, or designee. Prior to appointment, applicants for the Tourism Board are required to meet with the entity they wish to represent. Entities will seek a recommendation from their Lodging Tax Advisory Committees.

(4) Vacancies. Vacancies occurring other than through the expiration of the term shall be filled for the unexpired term in the same manner as for appointments as provided herein.

**B. Meetings.**

The Tourism Board shall hold such regular and special meetings as may be necessary to carry out its responsibilities. The Tourism Board shall elect from among its members a chair who shall preside at all meetings and a vice chair who shall preside in the absence of the chair. A majority of the Tourism Board shall constitute a quorum for the transaction of business and a majority vote of those present shall be necessary to carry any motion.

**C. Duties and Responsibilities.**

The Tourism Board shall be an advisory body to the City Councils and the Board of Commissioners. Duties of the Tourism Board shall include:

(1) Collaboration. Work collaboratively with Lodging Tax Advisory Committees, community stakeholders, and City and County Elected Officials and staff, and the Cowlitz County Tourism Director to identify eligible projects and programs that meet the requirements of laws regarding the use of the monies which are the subject of this Agreement and that meet the operational and programmatic needs of the participating partners.

All activities, projects, programs and expenses of the program supported with funds received from the County and the Cities in furtherance of this Agreement must conform to requirements of RCW 67.28, as now enacted or hereinafter amended, and shall further be subject

to such other restrictions as might be contained in this Agreement.

(2) Regional Tourism Projects & Programs. Annually select and recommend to the local lodging tax advisory committees and legislative authorities of each of the parties funding for one or more current or new activities, attractions, events, or other causes that will promote tourism and lodging throughout the County and/or a City that is a party to this Agreement pursuant to the terms of this Agreement. (For example: the City of Woodland operates a Visitor's Center that serves tourism county-wide and therefore extended support would benefit all entities involved. Due to the volume of visitors receiving information from Woodland's Visitor Center, Woodland retains the ability to use its collective funding to support its Visitor's Center over a period of years to the benefit of the other entities. Other entities may also choose to invest a portion of their lodging tax monies in the operations of the Woodland Visitor's Center to promote on-going events and activities in the area.)

(3) Annual and Periodic Reports. The Tourism Board shall, at least annually not later than April each year, provide a written report to the Board of County Commissioners and each City Council related to the operation of the Tourism Board which should include, among other things:

- a) A narrative detailing the implementation and accomplishments of the Tourism Board for the prior year related to the goals set out in this Agreement (including, but not limited to, the information required by RCW 67.28.1816(2)(c)(i), as now enacted or hereafter amended); and
- b) The status of regional tourism development planning program; and
- c) A summary of the actual, collective expenditures and revenues for the "Big Idea" program for the prior year; and
- d) Such other information as may be requested by the parties or would be helpful in understanding the overall program.

(4) Ad Hoc Committees. The Tourism Board may from time to time create short-term ad hoc committees that include nonmembers who are deemed important in performing the Tourism Board's duties. Tenure shall vary with the need as determined by the Tourism Board'. Ad Hoc Committee Members shall not have voting rights.

#### **D. County Staff Support.**

Administrative staff support shall be provided by Cowlitz County and/or other designee of the cities. Staff support shall be responsible to provide clerical, administrative and other assistance as necessary to enable the Tourism Board to conduct business and carry out its duties and responsibilities.

## **2. Financial Contributions.**

**A. Collective "Big Idea" Funding.** The parties to this Agreement agree to review promptly the annual recommendation of the Tourism Board for the collective funding of a

project or program, either approving or disapproving the recommendation within a month of receipt. If a party, in good faith, disapproves the annual recommendations, the parties and the Tourism Board shall promptly confer to resolve the disagreement and shall seek to resolve the dispute in time to permit proper funding of that year’s recipient of the funding. Within two weeks of the approval by all parties, each party shall transmit to the agreed recipient the amounts as provided below. The Tourism Board and recipient shall submit final accounting to and for the parties.

**B. Participating Entities Annual Commitment to Regional Tourism.** Funds to be committed for regional tourism by each participating entity are anticipated to come from each entity’s lodging tax receipts, but the actual source and amount of funding shall be determined by each entity. More specifically; each entity may derive its funding from sources other than the lodging tax, provided the source meets all state, federal, and local legal requirements. General fund dollars, community partnership fundraising capital or lodging tax funds can be contributed either in combination or alone to meet the entities’ anticipated annual commitments. Each entity is anticipated to commit the following amounts each year for six years (2012, 2013, 2014, 2015, 2016, and 2017):

<b>Entity</b>	<b>Annual Contribution (2012 -2017)</b>
Longview	\$ 3,632
Kelso	\$ 7,625
Castle Rock	\$ 1,279
Kalama	\$ 352
Woodland	\$ 2,540
Cowlitz County	\$18,410
Total Entity Annual Contributions:	\$33,838
Cowlitz County (match)	\$33,838
Total Program Contributions	\$67,676

**C. Monetary Default.** Failure of a party to fulfill its commitments, as specified, herein, shall constitute a default under the terms of this Agreement. If the default is not cured within forty-five (45) days after the County notifies the agency in writing of such default, the voting privileges of the Directors representing such defaulting entity shall be suspended. Additionally, the entity will not qualify to receive proceeds from the “Big Idea” Fund until its regional tourism commitments have been made and the default has been cured.

**3. Distributions from Tourism Pooled “Big Idea” Fund.** The parties agree that monies for the “Big Idea” funding will be paid annually by each party on or before January 31 to support a program or project collectively approved by the parties. Each entity will be entitled to receive proceeds in accordance with this Agreement once during the initial term of this Agreement, or once every six years if the Agreement is extended.

With funds committed under the terms of this Agreement and collectively awarded by the parties, each entity agrees to design, construct and complete the approved project or program

within one year of receiving the funds. However, an entity may request approval from the parties, with the review and recommendation of the Tourism Board, for an extension of time to complete a project where it can be shown that substantial progress has been made toward implementing or completing an approved project or program especially where the recommended “Big Idea” collective funding expands activities such as marketing, promotions, and licensing. Entities may also share a portion of their lodging tax funds associated with this Agreement with another participating entity to enhance collaborative marketing and/or activities. Entities may contribute excess proceeds distributed to it to the County Department of Tourism to pursue collaborative efforts or opportunities as may be approved by the Tourism Board, or as otherwise agreed by the parties.

**PROVIDED HOWEVER**, that each entity may request approval from the parties, with the review and recommendation of the Tourism Board, to receive an amount not to exceed ten per cent (10%) or Six Thousand Seven Hundred Sixty-seven dollars and 60/100 (\$6,767.60) of its allocation prior to the year in which they would receive the annual commitment of funds. Funds advanced under this provision must be used to promote, plan, or secure contracts associated with their “Big Idea” project. Such funds will only be distributed only if all parties agree, which agreement shall not be unreasonably withheld.

**PROVIDED FURTHER**, that distribution of the “Big Idea” collective funding intended for the City of Woodland may be used for the Woodland Visitor Center and is exempt from the requirement to expend funds granted to it within the one year time frame described above. This paragraph does not preclude other entities from contributing a portion of their “Big Idea” collective fund to The Woodland Visitor’s Center. All funds distributed pursuant to this Agreement in support of The Woodland Visitor’s Center must meet the requirements of RCW 67.28 and be disclosed to the other parties for inclusion in their annual reports.

In the event that collective funds have been disbursed to the entity and the project or program does not proceed or is not completed as anticipated or redistributed as described herein, the entity hereby guarantees that it will refund all respective funds to the respective parties who contributed, together with accrued interest at the same rate as if the funds had been invested with the Washington State Local Government Investment Pool.; **PROVIDED** that the entity may deduct such amounts as it shall have applied to its project or program through the date on which a decision is made not to proceed with or to abandon the project or program. Refunded proceeds will be returned to the parties.

**4. Acquisition and Ownership of Capital Equipment, Property and Facilities.** The parties do not anticipate the joint acquisition or ownership of capital equipment, property or facilities with the monies committed for regional tourism under the provisions of this Agreement. **PROVIDED** however, should the parties determine later that such joint acquisitions should be made, this Agreement will be amended to provide for the disposition of such equipment, property or facilities upon the termination of this Agreement. For purposes of this Agreement, the term “capital equipment” shall mean expenditure for a non-recurring physical asset that is not consumed within a year, but rather has a multi-year life and a value exceeding \$5,000.00.

**5. Contract Administrator.** The County’s Finance Director shall be the administrator

of this Agreement.

**6. Effective Date/Termination.** The initial term of this Agreement shall be January 1, 2012 through December 31, 2017. The Agreement may be renewed by the parties upon such terms and conditions as the parties agree. Any party may terminate their part in this Agreement by giving written notice thereof at least 180 days before the end of any calendar year.

**7. Penalty for Early Withdrawal.** In the event that any party to this Agreement shall withdraw from further participation prior to expiration of the initial term of this Agreement, and

(a) The withdrawing party shall have received collective funding pursuant to this Agreement prior to the time of withdrawal, the withdrawing party shall either

(1) Refund all respective funds received to the respective parties who contributed, or

(2) Commit to pay to the other parties the amounts committed by the withdrawing party as specified in Paragraph 2B above. PROVIDED, that the withdrawing party shall receive as a credit against the amounts committed under this paragraph, all sums previously contributed by the withdrawing party under the terms of this Agreement.

(b) PROVIDED FURTHER, that any party that withdraws from this Agreement prior to expiration of the initial term shall NOT be entitled to a refund of any contributions made in accordance with this Agreement.

**8. Relationship of the Parties.** No agent, official, employee, servant, or representative of one party shall be deemed an officer, employee, agent, servant or representative of another party or for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, or representatives.

**9. Nonwaiver.** No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies.

**10. Interpretation and Implementation.** In the event that any dispute should arise regarding the interpretation of any term of this Agreement or the implementation of any of the provisions hereof, and such dispute is not resolved by mutual discussions within ten (10) days after a written description of such dispute is delivered by one party to the other, such dispute may

be submitted to binding arbitration in the manner described in RCW 39.34.180 as now enacted or hereafter amended. In any legal action between the parties with respect to the matters covered by this Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in such legal action, in addition to any other relief it may be awarded.

**11. Construction of Agreement.** In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.

**12. Invalidity.** Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any of the other provisions hereof and such other provisions shall remain in full force and effect despite such invalidity or illegality. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**13. Severability.** If a court of law determines any provision of the Agreement to be unenforceable or invalid, the parties hereto agree that all other portions of this Agreement shall remain valid and enforceable.

**14. Paragraphs.** The paragraph headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they appertain.

**15. Entire Agreement.** This Agreement constitutes the entire agreement between the parties for the use of funds received and projects undertaken as the result of this Agreement and it supersedes and repeals all prior interlocal agreements, communications and proposals, whether electronic, oral, or written between parties with respect to this regional tourism partnership and with respect to this Agreement. This Agreement may be amended, modified, or added to only by written instrument properly signed by all parties hereto.

**16. Supplemental Agreements.** The parties agree to complete and execute all supplemental documents necessary or appropriate to fully implement the terms of this Agreement.

**17. Assignment.** No party shall assign this Agreement, or any part hereof, without the written consent of the other parties. The Agreement shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns.

**18. No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and permitted assigns. No other person or entity shall have any right of action or interest in this Agreement based upon any provision of the Agreement.

**19. Notices.** All communications, notices and demands of any kind which any party requires or desires to give to any of the other parties shall be in writing and either served on the

following individual(s) or deposited in the U.S. Mail, certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Longview:

City Manager  
City of Longview  
1525 Broadway  
Longview, WA 98632

Copy to:  
City Attorney  
1525 Broadway  
Longview, WA 98632

If to Kelso:

City Manager  
City of Kelso  
203 S. Pacific #217  
Kelso, WA 98626

Copy to:  
City Attorney  
203 S. Pacific #216  
Kelso, WA 98626

If to Castle Rock

---

City of Castle Rock  
P.O. Box 370  
Castle Rock, WA 98611

Copy to:  
City Attorney  
P.O. Box 370  
Castle Rock, WA 98611

If to Kalama:

---

City of Kalama  
P. O. Box 1007  
Kalama, WA

Copy to  
City Attorney  
P. O. Box 1007  
Kalama, WA

If to Woodland:

---

City of Woodland  
P. O. Box 9

Woodland, WA 98674

Copy to  
City Attorney  
P. O. Box 9  
Woodland, WA 98674

If to Cowlitz County: Board of County Commissioners  
County Administration Building, Room 300  
207 North 4<sup>th</sup> Ave  
Kelso, WA 98626

Copy to:  
Chief Civil Deputy  
Cowlitz County Prosecuting Attorney  
312 South 1<sup>st</sup> Ave West  
Kelso, WA 98626

**20. Compliance with Laws.** All parties shall comply with all applicable federal, state and local laws, regulations and rules in performing this Agreement.

**21. Applicable Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to the Agreement shall be Cowlitz County, Washington.

**22. Interlocal Cooperation Act.** The performance of the obligations of this Agreement shall be in compliance with the provisions of RCW 39.34, the Interlocal Cooperation Act. The parties agree that no separate legal administrative entities are necessary in order to carry out this Agreement. For purposes of RCW 39.34.030(4)(a), the Director of the County Office of Financial Management shall serve as the administrator responsible for administering the joint and cooperative undertaking among the parties to this Agreement. There shall be no “joint board” as that term is used in RCW 39.34.030(4)(a), except as noted in 1 of this Agreement.

**23. Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart. The effective date of this Agreement shall be the last date executed by any one of the parties to this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year written below.

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

**BOARD OF COUNTY COMMISSIONERS  
OF COWLITZ COUNTY, WASHINGTON**

\_\_\_\_\_  
Mike A. Karnofski, Chairman

\_\_\_\_\_  
James R. Misner, Commissioner

\_\_\_\_\_  
Dennis P. Weber, Commissioner

Approved as to Form:

Attest:

\_\_\_\_\_  
Chief Civil Deputy Prosecuting Attorney

\_\_\_\_\_  
Tiffany Ostreim, Clerk of the Board

\_\_\_\_\_  
Date

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

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**CITY OF LONGVIEW**

\_\_\_\_\_  
Robert J. Gregory, City Manager

Attest:

\_\_\_\_\_  
Ann Davis, City Clerk

Approved as to Form:

\_\_\_\_\_  
James McNamara, City Attorney

\_\_\_\_\_  
Date

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**CITY OF KELSO**

\_\_\_\_\_  
Steve Taylor, City Manager

Attest:

\_\_\_\_\_  
Brian Butterfield, Clerk/Treasurer

Approved as to Form:

\_\_\_\_\_  
Janean Parker, City Attorney

\_\_\_\_\_  
Date

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

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**CITY OF KALAMA**

\_\_\_\_\_  
Pete Poulsen, Mayor

Attest:

\_\_\_\_\_  
Coni McMaster, Clerk/Treasurer

Approved as to Form:

\_\_\_\_\_  
Paul Brachvogel, City Attorney

\_\_\_\_\_  
Date

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Cowlitz County Regional Tourism Development Partnership**

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**CITY OF CASTLE ROCK**

\_\_\_\_\_  
Paul Helenberg, Mayor

Attest:

\_\_\_\_\_  
Ryana Covington, City Clerk/Treasurer

Approved as to Form:

\_\_\_\_\_  
Frank Randolph, City Attorney

\_\_\_\_\_  
Date

**Interlocal Agreement  
Cowlitz County Regional Tourism Development Partnership**

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**CITY OF WOODLAND**

\_\_\_\_\_  
Grover Laeske, Mayor

Attest:

\_\_\_\_\_  
Mari E. Ripp, Clerk/Treasurer

Approved as to Form:

\_\_\_\_\_  
William Eling, City Attorney

\_\_\_\_\_  
Date

# AGENDA SUMMARY SHEET

## Business of the City Council City of Kelso, Washington

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**SUBJECT TITLE:** AN ORDINANCE OF THE CITY OF KELSO REPEALING ORDINANCE NO. 3765 AND AMENDING THE KELSO MUNICIPAL CODE TO REMOVE REFERENCE TO CERTAIN CODIFIED FEES AND REPLACE WITH REFERENCE TO CITY COUNCIL FEE RESOLUTION

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** \_\_\_\_\_ City Manager \_\_\_\_\_

**For Agenda of:** March 4, 2014 \_\_\_\_\_

**Originator:** Steve Taylor \_\_\_\_\_

**City Attorney:** Janean Parker

**City Manager:** Steve Taylor

**PRESENTED BY:**

Steve Taylor

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**Agenda Item Attachments:**

Proposed Ordinance

**SUMMARY STATEMENT:**

The proposed ordinance is a housekeeping item that will repeal Ordinance No. 3765 and amend the Kelso Municipal Code to allow specific codified fees relating to business licences, animal control, and engineering review and inspection services to be incorporated into the City's Master Fee Schedule and adopted by resolution. Amendments to the fee schedule will be presented at the same meeting that this ordinance is considered for second reading, currently planned for March 18<sup>th</sup>.

**OPTIONS:**

1. Move to approve the Ordinance on first reading repealing Ordinance No. 3765 and amending the Kelso Municipal Code.
2. Do not approve the Ordinance on first reading.
3. Take no action and bring back for consideration at a future meeting.

**RECOMMENDED ACTION:**

Move to approve the ordinance on first reading repealing Ordinance 3765 and amending the Kelso Municipal Code.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO REPEALING  
ORDINANCE 3765 AND AMENDING THE KELSO MUNICIPAL CODE  
TO REMOVE REFERENCE TO CERTAIN CODIFIED FEES AND  
REPLACE WITH REFERENCE TO CITY COUNCIL FEE RESOLUTION**

WHEREAS, Title 5, Business Taxes, Licenses, and Regulations contains provisions for the licensing and regulation of several types of businesses and includes in many cases a fee for the processing of the application for such a license; and

WHEREAS, Title 3, Title 6, Title 8, Title 9, and Title 12 contain provisions imposing fees for various City services; and

WHEREAS, the City Council has created a master fee resolution with the intent to contain in one place all of the fees imposed by the City for the efficient operation of the City programs and for the convenience of citizens to be able to find in one place all applicable fees; and

WHEREAS, Ordinance 3765 provides for certain design review fees that the City wishes to incorporate into the City's Master Fee Resolution; and

WHEREAS, the City Council wishes to amend certain provisions of these Titles to make reference to the fees as provided by resolution in place of the codified fee amount;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1. AMEND KMC 3.18.** That Chapter 3.18 Motion Picture Tax, created by

Ordinance 3098 and more particularly, KMC 3.18.050 is hereby amended to provide as follows:

**3.18.050 Certificate of registration.**

Any person conducting or operating any activity for which an admission charge is made under this chapter, shall post in a conspicuous place in each ticket or box office where tickets of admission are sold, a certificate of registration to be obtained from the city clerk, ~~the fee for which shall be one dollar.~~ The certificate of registration shall be good for one calendar year

beginning on January 1st of each year and ending on the following December 31st. There shall be no proration of the certificate of registration charge. The certificate of registration shall be renewed no later than the fifteenth day of January in the year following the year of expiration

**SECTION 2. AMEND KMC 5.02.** That Chapter 5.02 Administrative Provisions for Business and Occupation Taxes, created or amended by Ordinance s 3558, 3657, and 3787 and more particularly, KMC 5.02.060, 5.02.070, and 5.02.130 are hereby amended to provide as follows:

**5.02.060 Fee.**

The fee for such registration certificate shall be ~~the sum of fifty dollars~~ for each calendar year or any part thereof in an amount set by resolution by the City Council, which fee shall be in addition to all other license fees or taxes as required by the provisions of this chapter. The fee shall be paid before any registration certificate is issued.

**5.02.070 Failure to obtain current business license—Penalty.**

Every person subject to the provisions of this section on January 1st, of any year, who fails to apply for and obtain a certificate of registration on or before the thirty-first day of January, as required by this section, and every person who shall fail to apply and obtain a certificate of registration within thirty days after the date he commences to be engaged in business within the city, shall, in addition to all other fees and sanctions provided for in this section, pay a penalty ~~of twenty-five dollars~~ in an amount set by resolution of the City Council before such certificate of registration shall issue.

[...]

**5.02.130 Payment methods—Mailing returns or remittances—Time extension—Deposits—Recording payments—Payment must accompany return—NSF checks.**

(F). Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due is received by the director along with, ~~plus~~ a “nonsufficient funds” (NSF) charge ~~of fifteen dollars~~ in an amount set by resolution of the City Council, which shall be added to the amount due, is received by the director. Any license issued upon payment with an NSF check will be considered void, and shall be returned to the director. No license shall be reissued until payment (including the ~~fifteen-dollar~~ NSF fee) is received.

**SECTION 3. AMEND KMC 5.06.** That Chapter 5.06 Public Markets, created or amended by Ordinance 3475 and more particularly, KMC 5.06.010, is hereby amended to provide as follows:

**5.06.010 Public markets—Master license.**

The operator or governing authority of a public market, as defined herein, shall obtain a master license from the city prior to opening said market. Application for said license shall be in writing on forms provided by the city. The city clerk shall impose a fee in an amount set by resolution of the City Council ~~of one hundred twenty dollars~~ for the issuance of said license.

**SECTION 4. AMEND KMC 5.08.** That Chapter 5.08 Amusement Devices created or amended by Ordinance 3019 and 3549, and more particularly, KMC 5.08.030, is hereby amended to provide as follows:

**5.08.030 License—Fee.**

The license fee shall be payable as follows: Between January 1st and June 30th or for any part thereof, the licensee shall an amount as set by resolution of the City Council ~~pay fifty-six dollars~~. Between July 1st and December 31st or any part thereof, the license fee shall be ~~thirty dollars~~ prorated in an amount set by resolution of the City Council. Any license issued pursuant to this chapter shall expire at the end of the calendar year, on December 31st. The license fee under this chapter shall be in addition to any other license fee or tax required by any ordinance of the city.

The city council reserves the right to revoke any license for any particular amusement device or any type of amusement device, or revoke the license of any person if it appears to the city council manner detrimental to the public welfare or any person is abusing the privilege granted by his license or is convicted of any violation of this chapter or other laws of the state or the city.

**SECTION 5. AMEND KMC 5.16.** That Chapter 5.16 Dances and Cabarets, created or amended by Ordinance 3009 and more particularly, KMC 5.16.020 and 5.16.040, is hereby amended to provide as follows:

**5.16.020 Public dance license—Required—Fee.**

A. It is unlawful to conduct a public dance within the city unless a public dance license is obtained. Any dance to which the public is invited or allowed to attend shall be deemed a public dance, irrespective of whether live or mechanical entertainment is used. Such license shall be required whether the sponsoring organization is for profit or charitable. “Public dances” are further defined to be dances to be held on a one-time or infrequent basis. In the event regular dances are to be held a cabaret license shall be obtained.

B. The license fee for a public dance shall be in an amount set by resolution of the City Council ~~twenty-five dollars~~ per day or night; provided, however, license fees for nonprofit or charitable organizations may be waived upon a finding of charitable or nonprofit status by the clerk-treasurer.

**5.16.040 Cabaret license—Fees.**

The following annual license fees shall be established by resolution of the City Council, ~~effective January 1, 1986, shall apply~~; provided however, such fees, at the applicant's option may be paid annually or on a quarterly basis.

A. Establishments where alcoholic beverages are served and live entertainment is provided; ~~four hundred dollars~~;

B. Establishments where alcoholic beverages are served and mechanical entertainment is provided; ~~three hundred dollars~~;

C. Establishments where no alcoholic beverages are served and live entertainment is provided; ~~two hundred fifty dollars~~;

D. Establishments where no alcoholic beverages are served and mechanical entertainment is provided; ~~two hundred dollars~~.

**SECTION 6. AMEND KMC 5.20.** That Chapter 5.20, Dance Halls, created or amended by Ordinances 3023, and more particularly, KMC 5.20.060, is hereby amended to provide as follows:

**5.20.060 License—Fee.**

The fee for a public dancehall license shall be ~~as set forth in the city's cabaret ordinance~~ in an amount as set by resolution of the City Council.

**SECTION 7. AMEND KMC 5.40.** That Chapter 5.40, Merchant Patrols, Private Detectives and Private Security Operators, created or amended by Ordinances 3008. 3563, and 3579, and more particularly, KMC 5.40.060, is hereby amended to provide as follows:

**5.40.060 Business license fees.**

Each such business described in Section 5.40.030 of this chapter shall remit to the city an annual license fee in an amount set by resolution of the City Council ~~of one hundred dollars~~ whether operated by a single individual or being an agency or business employing additional operatives. In the event the business is comprised of more than a single private security operator or private detective an additional annual fee in an amount set by resolution of the City Council shall be paid for each such individual. ~~with a maximum annual fee not to exceed two hundred dollars.~~

**SECTION 8. AMEND KMC 5.42.** That Chapter 5.42 Sexually Oriented Businesses, created or amended by Ordinance 3211, and more particularly, KMC 5.42.050 (D)(15), 5.42.080, 5.42.090 and 5.42.100, is hereby amended to provide as follows:

#### 5.42.050(D) Sexually oriented business permit required

...

(15) The applicant shall be required to pay a nonrefundable application fee ~~of one hundred dollars at~~ in an amount set by resolution of the City Council the time of filing an application under this section. Note: this is a processing fee. License fees shall also be required in the event the application is approved;

#### 5.42.080 Licenses required for sexually oriented businesses—Fees.

A. No sexually oriented business shall be operated or maintained in the city unless the owner or operator has obtained an SOB permit as set forth in this chapter and the applicable licenses from the city finance director. For adult cabarets the required license shall be the adult cabaret license with a fee in an amount set by resolution of the City Council~~set forth in subsection B of this section~~. It is unlawful for any entertainer, employee, or operator to knowingly work in or about or knowingly perform any service directly related to the operation of an unlicensed adult cabaret business.

B. The annual fee for an adult cabaret business license shall ~~be five hundred dollars. This amount shall~~ be used for the cost of administration of this chapter.

C. The annual license fee for all other sexually oriented businesses described in Section 5.42.040 above shall also be set by resolution of the City Council~~one hundred twenty five dollars~~. This amount shall be used for the cost of administration of this chapter.

D. The above-referenced licenses expire annually on December 31st and must be renewed by January 1st.

E. In cases where the license becomes effective on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

F. The applicant must be eighteen years of age or older.

#### 5.42.090 License for managers and entertainers of adult cabarets required—Fee.

A. No person shall work as a manager or entertainer at an adult cabaret without having first obtained an entertainer's or manager's license from the city finance director. Each such applicant shall not be required to obtain a sexually oriented business permit, but shall complete an application containing the information identified in Section 5.42.050(D) above and the same procedures shall be followed as set forth in Sections 5.42.060 and 5.42.070. A nonrefundable processing fee in an amount set by resolution of the City Council~~of twenty five dollars~~ shall accompany the application.

B. The annual fee for such a license shall be an amount set by resolution of the City Council~~one hundred dollars~~. This amount shall be used for the cost of administration of this chapter.

C. This license expires annually on December 31st and must be renewed by January 1st.

D. In cases where the license becomes effective on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

E. The applicant must be eighteen years of age or older.

**5.42.100 Licenses for models and escorts—Required.**

No person shall work as a model at a nude or semi-nude model studio or as an escort as defined herein without having first obtained a model or escort license from the city finance director.

A. Each such applicant shall not be required to obtain a sexually oriented business permit, but shall complete an application containing the information identified in Section 5.42.050(D) above and the same procedures shall be followed as set forth in Sections 5.42.060 and 5.42.070. A nonrefundable processing fee in an amount set by resolution of the City Council of twenty-five dollars shall accompany the application.

B. The annual fee for such a license shall be an amount set by resolution of the City Council ~~one hundred dollars~~. This amount shall be used for the cost of administration of this chapter.

C. This license expires annually on December 31st and must be renewed by January 1st.

D. In cases where the license becomes effective on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

E. The applicant must be eighteen years of age or older.

**SECTION 9. AMEND KMC 5.48.** That Chapter 5.48, Massage Parlors and Massage

Businesses, created or amended by Ordinance 3018, and more particularly, KMC 5.48.040 and 5.48.070, are hereby amended to provide as follows:

**5.48.040 Business license—Fee.**

The fee for a massage business license shall be an amount set by resolution of the City Council ~~is fixed at one hundred dollars per year~~, such license applying for the calendar year for which such application is made. If, pursuant to the provisions of this chapter, the applicant's request for such a license is denied, fifty percent of the fee tendered shall be refunded to the applicant, if the applicant requests such refund no later than ninety days following the license denial, otherwise such amount shall be forfeited to the city.

**5.48.070 Attendant license—Fee.**

The fee for a new massage parlor attendant license, or the renewal thereof is fixed at fifty dollars per calendar year ~~shall be an amount set by resolution of the City Council, provided, that where the application is proposing to renew an existing license, such renewal license fee shall be twenty-five dollars if such application is submitted to the clerk treasurer no later than December~~

~~15th of the year preceding the year in which the applicant intends to be licensed.~~ Each license shall expire on December 31st of the year in which it was issued.

**SECTION 10. AMEND KMC 5.52.** That Chapter 5.52, Secondhand Dealers, created or amended by Ordinance 3077 and 3166, and more particularly, KMC 5.52.060, is hereby amended to provide as follows:

**5.52.060 License—Fees—Surety bond requirements.**

**A. Pawnbrokers.**

1. The license fee for pawnbrokers ~~is fixed~~ shall be set by resolution of the City Council at the sum of one hundred twenty dollars per year.

2. In addition thereto, all persons engaged in the business of pawnbroking shall, as a condition precedent to conducting any such business, obtain a surety bond in a sum no less than five thousand dollars, approved as to form by the city attorney so as to insure the faithful performance of the provisions of this chapter.

**B. Secondhand Dealers.** ~~Effective January 1, 1986, t~~The license fee for secondhand dealers shall be set by resolution of the City Council ~~one hundred twenty dollars per year.~~

**C. Prorating of License Fees.** The licenses enumerated shall expire on December 31st of any calendar year, irrespective of when issued. In instances where the licenses described in subsections A and B of this section are issued on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

**SECTION 11. AMEND KMC 5.56.** That Chapter 5.56, Solicitors, created or amended by Ordinance 3269 and more particularly, KMC 5.56.040, is hereby amended to provide as follows:

**5.56.040 Application.**

Any person or firm desiring to secure a solicitor's license shall apply therefor to the city clerk on forms provided by the city, and such application shall state as to each solicitor: (1) name and address; (2) name and address of any employer; (3) the length of service with such employer, (4) the place of residence and nature of the employment during the last preceding year, (5) the nature and character of the goods, wares, merchandise or services to be offered; and (6) the personal description of each solicitor. The application shall be accompanied by such credentials and other evidence of good moral character and identity of each solicitor as may be reasonably required by the clerk. The application shall also be accompanied by a nonrefundable fee in an amount set by resolution of the City Council ~~of twenty-five dollars~~ for the purpose of defraying part of the cost

of the investigation and other processing of the application. Nonprofit organizations showing proof of status shall be exempt from paying the fee and from the investigation provided for below.

**SECTION 12. AMEND KMC 5.60.** That Chapter 5.60 Taxicabs, created or amended by Ordinance 3016, 3166, and 3696, and more particularly, KMC 5.60.030, 5.60.040, 5.60.070, and 5.60.090, are hereby amended to provide as follows:

**5.60.030 Vehicle—Licensing—Inspection and insurance.**

Every holder of a master taxicab license shall license each vehicle he operates pursuant to the following:

A. Each such vehicle shall be subject to an annual licensing fee in an amount set by resolution of the City Council.~~of ten dollars~~

B. Every holder of a master license shall before putting any vehicle into operation file with the clerk-treasurer a certificate of inspection showing that any such vehicle licensed pursuant to this chapter has been inspected by a reliable automotive concern approved by the chief of police and to be certified as safe for taxicab operation by the automotive concern. Each twelve months thereafter the vehicle must be reexamined by a reliable automotive concern and recertified as to safety of operation pursuant to the terms and conditions of this chapter. Every licensee shall, before commencing operation, file with the clerk-treasurer a liability and property damage insurance policy, issued by an insurance company authorized to do business in the state, providing for property damage insurance in a sum of not less than twenty-five thousand dollars and for personal liability insurance in a sum of not less than one hundred thousand dollars for the injury of one person and three hundred thousand dollars for the injuries resulting from any one accident.

C. In addition to the inspections provided in this chapter, all vehicles operating under the authority of this chapter shall be available for inspection at any time and at any place by the chief of police who shall order any taxicab to cease operation immediately if, in his determination, the vehicle is in an unsafe condition, and shall notify the operator or driver in writing thereof. It is unlawful for any operator or driver to drive or operate any taxicab without complying with the certification and insurance procedures set forth in this section, or which is in an unsafe condition or without proper equipment, as determined by the chief of police. It is further unlawful to fail to comply with any written notice by the chief of police to make certain corrections on any taxicab.

**5.60.040 Master taxicab license—Issuance conditions.**

Upon the effective date of the ordinance codified in this chapter, any person, firm, partnership or corporation which in all other respects complies with the provisions of this chapter to operate a taxicab business within the city limits may, after proper approval by the appropriate agencies of the city and after payment of a ~~one hundred twenty five dollars~~ master taxicab license fee in an amount set by resolution of the City Council (the master taxicab license fee to be renewed on an annual basis commencing January 1st of each calendar year), engage in operating a taxicab business within the city limits. ~~Thirty five dollars of~~ A portion of such fee shall be for the investigation of the applicant as an appropriate business operator. The license shall expire on

December 31st of any calendar year, irrespective of when issued. In instances where the license is issued on a date other than January 1st, the license shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

...

**5.60.070 Driver's license—Initial fee—Application investigation.**

When an application for a for hire driver's license ~~has been~~, duly signed and sworn to and accompanied by the required ~~fifty dollars~~ initial license fee in an amount set by resolution of the City Council, and, ~~—~~has been received by the clerk-treasurer, ~~the~~ ~~—with—~~application shall be forwarded to the chief of police. ~~He~~ The Chief shall investigate the statements contained therein, and may obtain such other information concerning the applicant's character, integrity, personal habits, past conduct and general qualifications showing the applicant's ability and skill as a driver of a taxicab, and his honesty, integrity and character for the purpose of determining whether the applicant is a suitable person to drive a taxicab within the city. All applications for hire driver's licenses shall become null and void after sixty days from date of filing, if the applicant for any reason fails or neglects to obtain a license. ~~Twenty-five dollars~~ A portion of such fee shall be a license fee and the remaining amount an investigation fee.

[...]

**5.60.090 Licenses—Expiration and renewal.**

All licenses issued under this chapter shall expire on December 31st of each calendar year. Master licenses may be renewed by the license holder for the succeeding year by making application thereof with the clerk-treasurer at least thirty days prior to the expiration date and by paying a ~~one hundred twenty dollar~~ renewal fee at the time application for renewal is made in an amount set by resolution of the City Council. For-hire drivers' renewal licenses may be renewed by the license holder for the succeeding year by making application therefor with the clerk-treasurer at least thirty days prior to the expiration date and by paying a ~~thirty five dollar~~ renewal fee in an amount set by resolution of the City Council for each driver at the time application for renewal is made.

**SECTION 13. AMEND KMC 5.64.** That Chapter 5.64 Utility Contractors, created or amended by Ordinance 899 and more particularly, KMC 5.64.010, is hereby amended to provide as follows:

**5.64.010 License—Required—Fee.**

A. It is unlawful for any person, firm or corporation, except plumbers, to make an opening in any public street, alley or public area, for the purpose of constructing, connecting, removing or repairing water mains, sewers, gas mains or other utilities and their connection services, without having first taken out and procured a license so to do, to be known as a “utility contractor's license.” The fee for such utility contractor's license shall be an amount set by resolution of the City Council. ~~, and the same is fixed in the sum of twenty-five dollars.~~

B. Such license shall be issued for the calendar year.

**SECTION 14. AMEND KMC 5.72.** That Chapter 5.72 Sound Trucks, created or amended by Ordinance 3138 and more particularly, KMC 5.72.030 is hereby amended to provide as follows:

**5.72.030 License—Fee.**

The license fee for the operation of any sound truck on any of the streets or public ways of the city shall be in an amount set by resolution of the City Council ~~twenty-five dollars~~ for any calendar month or portion thereof.

**SECTION 15. AMEND KMC 6.04.** That Chapter 6.04 Animal Control, created or amended by Ordinances 3704, 3483, and 3310 and more particularly, KMC 6.04.020, 6.04.040, 6.04.120, 6.04.190 and 6.04.350 are hereby amended to provide as follows:

**6.04.020 Dog license—Required—Exemptions.**

It is unlawful for any person to keep or maintain any adult dog in the city without paying the license fee and obtaining and retaining the license required by this chapter; provided, that dogs while kept in kennels, pet shops, veterinarian clinics, grooming parlors, or in the animal shelter designated as the custodian of animals impounded under this chapter shall be exempt from this license requirement; provided, any person who newly acquires an unlicensed or licensed dog, whose dog becomes an adult dog, or who moves into the city with such a dog, shall have fourteen days within which to obtain the license required by this chapter. Such license shall be transferable ~~for a fee of two dollars and fifty cents~~ upon payment of a transfer fee in an amount set by resolution of the City Council in the event a licensed dog is transferred to a different owner or custodian.

**6.04.040 Dog license—Fees—Late penalties—Replacement.**

A. The dog license shall be an annual license which shall expire at midnight December 31st of the year in which issued. The basic fee for such yearly license shall be an amount set by resolution of the City Council ~~is twenty-seven dollars for dogs that have not been neutered or spayed and ten dollars for dogs that have been neutered or spayed~~; provided, that there shall be no license fee for service dogs.

B. In the case of a dog newly acquired, brought into the city, or becoming an adult, application shall be made within fourteen days of such event. Timely applications made subsequent to July 1st of any calendar year shall be subject to one-half of the yearly dog license fee. A penalty in an amount set by resolution of the City Council ~~fee of fifteen dollars~~ shall be imposed for late application for dog license issuance or renewal.

C. Provided, however, for the purposes of this chapter, a “late application” shall be construed to mean an application submitted on or after January 1st of any calendar year.

D. The fee for replacement of lost or stolen dog licenses and tags shall be an amount set by resolution of the City Council.~~two dollars and fifty cents per replacement.~~

#### **6.04.120 Guard dog license—Fees—Term.**

A. The license fee for a license to train, use or purvey guard dogs to the public shall be as set forth by resolution of the City Council. ~~follows:~~

~~1. Guard dog trainer: fifty dollars per year;~~

~~2. Guard dog user: fifty dollars for first year and twenty five dollars for second and subsequent years;~~

~~3. Guard dog purveyor: two hundred fifty dollars per year.~~

B. Such license shall be an annual license which shall expire at midnight December 31st of the year in which issued and shall be nontransferable. Application for license renewal shall be made prior to February 1st of each year; provided, that in the case of a guard dog trainer or guard dog purveyor newly commencing business in the city or of a guard dog newly acquired, trained, brought into the city or becoming an adult, application shall be made within thirty days of such event. Timely applications made subsequent to July 1st of any calendar year shall be subject to one-half of the applicable yearly license fee. A penalty of one-half of the yearly applicable license fee shall be imposed for late application for license issuance or renewal.

#### **6.04.190 Redemption.**

Any animal impounded pursuant to the provisions of this chapter or other city animal control ordinances may be redeemed upon payment by its owner of the redemption fees set out below and upon evidence satisfactory to the animal control contractor that the violation has been corrected. The correction of a violation includes, but is not limited to, the licensing of any unlicensed animal required by this chapter. Any license fees due and owing shall be paid in addition to the redemption fee. The redemption fee shall be in an amount set by resolution of the City Council and shall include escalated fees for the following:

A. Impoundment Costs.

1. First in a twelve-month period,~~fifteen dollars~~;

2. Second in a twelve-month period,~~twenty dollars~~;

3. Subsequent in a twelve-month period,~~thirty dollars~~.

B. Daily Care. For each twenty-four-hour period, or portion thereof, from the time of impoundment:

1. Dog or cat or single litter of puppies or kittens,~~ten dollars~~;

2. Any other animal,~~ten dollars~~.

C. Veterinary Costs. Actual costs incurred for necessary medical care and such other costs as may be set by resolution of the City Council.

D. Transportation. Transportation, if provided at owner or custodian request or for livestock impounded off the property, actual costs incurred and such other costs as may be set by resolution of the City Council;~~ten dollars plus twenty cents per mile traveled to locate and transport the animal, or actual costs, whichever amount is greater.~~

E. Maximum Redemption Costs. The total redemption costs assessed against any individual shall not exceed ~~fifty four dollars exclusive of subsections C and D of this section~~the maximum cost as set forth by resolution of the City Council.

**6.04.350 Kennel or pet shop license—Fees.**

A. The application for a kennel or pet shop license and the transfer of a license to a new owner shall be accompanied by a fee as follows in an amount set forth by resolution of the City Council.:

- ~~1. Kennel, one hundred dollars;~~
- ~~2. Pet shop, one hundred dollars;~~
- ~~3. Transfer of current license to new owner, fifteen dollars.~~

B. A penalty fee of fifty percent of the license fee shall be assessed if the license is not applied for within thirty days of commencement of operation or the license renewal date. Payment of this penalty shall not preclude the imposition of any additional penalties prescribed in this chapter. Payment of any outstanding penalties imposed under this chapter shall be a prerequisite to licensing.

**SECTION 16. AMEND KMC 8.20.** That Chapter 8.20 Health and Safety, created or amended by Ordinance 3040 and more particularly, KMC 8.20.040, is hereby amended to provide as follows:

**8.20.040 Permit—Fee.**

All applications for permits pursuant to this chapter shall be accompanied by a nonrefundable permit fee in an amount set by resolution of the City Council of twenty five dollars for each fireworks stand and ~~that a one hundred dollars~~ refundable deposit also in an amount set by resolution of the City Council shall be submitted at the time application is made to insure proper cleanup of the site following the close of business. The city council finds that this charge is necessary to cover the legitimate administrative costs for permit processing and inspection.

**SECTION 17. AMEND KMC 9.44.** That Chapter 9.44 Alarm Systems, created or amended by Ordinance 3327 and more particularly, KMC 9.44.050, is hereby amended to provide as follows:

**9.44.050 False alarms—Corrective measures required—Penalties—Discontinuance of response.**

A. In the event of the occurrence of a false alarm, the fire department or police department, whichever has responded thereto, shall, in writing, notify the owner or occupier of the premises to which such response was made within five days thereafter, advising such owner or occupier that response was made to a false alarm.

B. In the event of a second occurrence of a false alarm within any period of six calendar months following a previous false alarm, the police department, fire department, whichever has responded thereto, shall notify the owner or occupant of the premises from which such false alarm originated of the fact of such false alarm, and shall further notify the owner or occupant that the device which signals such alarm may be defective and must be inspected. A report of

such inspection and any corrective action taken to avoid further false alarms shall be made by the owner or occupier to the police department or fire department, whichever has required the report of inspection, within ten days thereafter. Said report of inspection shall be delivered personally or mailed by certified mail to the police chief or fire chief, whichever is appropriate.

C. In the event of a third occurrence of a false alarm within any period of six months following two previous false alarms in the same six-month period, the owner or occupier of the premises shall be charged a false alarm response fee in an amount set by resolution of the City Council ~~of fifty dollars~~, and the written report as to the condition of the device signaling a false alarm shall be required as in subsection B of this section. In addition, the police department shall be authorized to inspect said device and prescribe corrective action to be taken to avoid further false alarms.

D. For the fourth and all subsequent false alarms within the same six month period, a fee in an amount set by resolution of the City Council ~~of one hundred dollars~~ each shall be charged and collected from the owner or occupier of the premises.

E. In the event that payment of any statements rendered to owners or occupiers for false alarms response fees shall not be paid within thirty days, the police department and fire department may decline further responses to alarms originating from such premises.

**SECTION 18. AMEND KMC 12.10.** That Chapter 12.10 Review, Administration, and Field Inspection of Construction Plans and Specifications for Public Improvements, created or amended by Ordinances 3676, 3349, and 3154 and more particularly, KMC 12.10.030, is hereby amended to provide as follows:

**12.10.030 Fees and charges.**

Fees shall be charged to the owner or developer of property for the plan and specification review, administration and field inspection of the public improvements by the engineering department of the city of Kelso. Such fees shall be in addition to any plat checking fees as may be otherwise required. All of said fees, except as hereinafter provided, may be paid in two installments. The first installment, which must be equal to one-half or more of the total fee, shall be paid prior to the issuance of a permit for construction, and the balance of such fees must be paid before the final acceptance of the completed work by the city engineer. Fees for sidewalks and driveways constructed separately, however, must be paid in full prior to the issuance of a permit for construction. The fees to be charged are as follows:

A. Street Construction. The fee for review and inspection in connection with street construction, including grading, ballasting, paving of street to the width and depth shown on plans, construction of curbs or curb and gutters, sidewalks, driveways, drainage facilities, street lighting facilities and such other work as may be necessary to complete the work in accordance with the plans and specifications, shall be an amount set by resolution of the City Council ~~based on a percentage of the construction cost as determined by the city engineer of the street project as follows:~~

~~1. Seven percent for projects costing up to twenty five thousand dollars; or six percent for projects costing in the range of twenty five thousand dollars to fifty thousand dollars; or five percent for all projects costing over fifty thousand dollars.~~

~~2. Plan check and inspection fees shall be based upon the final project cost as determined by the city engineer.~~

B. Water Main Construction. The fee for review and inspection in connection with water main construction, including trench excavation and backfill, installation of a water main the size shown on the plans, together with all necessary appurtenances, including valves, tees, fire hydrants, and service lines to the property line and such other work as may be necessary to complete the work in accordance with the plans and specifications, shall be an amount set by resolution of the City Council ~~based on the lineal feet of water main construction, not including service lines:~~

~~1. Seven percent for projects costing up to twenty five thousand dollars; or six percent for projects costing in the range of twenty five thousand dollars to fifty thousand dollars; or five percent for all projects costing over fifty thousand dollars.~~

~~2. Plan check and inspection fees shall be based upon the final project cost as determined by the city engineer.~~

C. Storm Sewer and Sanitary Sewer Construction. The fee for review and inspection in connection with sanitary sewer construction, including trench excavation and backfill, installation of a sanitary sewer of the size shown on the plans, together with all necessary appurtenances, including pumping stations, manholes, tees and side service to the property line and such other work as may be necessary to complete the work in accordance with the plans and specifications, shall be an amount set by resolution of the City Council ~~based on the lineal feet of sanitary sewer construction, not including side service:~~

~~1. Seven percent for projects costing up to twenty five thousand dollars; or six percent for projects costing in the range of twenty five thousand dollars to fifty thousand dollars; or five percent for all projects costing over fifty thousand dollars.~~

~~2. Plan check and inspection fees shall be based upon the final project cost as determined by the city engineer.~~

D. For all projects that are not otherwise set by resolution of the City Council or identified within the City's Master Fee Resolution, the fee for review and inspection shall be the actual hours required for the review multiplied by the hourly rate established within the Master Fee Resolution ~~determined by the city engineer to be over five hundred thousand dollars, the developer shall have the option to pay the percentages herein provided for or the city's actual cost of the services provided pursuant to this chapter.~~

**SECTION 19. REPEAL ORDINANCE 3765.** That Ordinance 12-3765—Engineering

Design Review Fees—is hereby repealed in its entirety.

**SECTION 20. SEVERABILITY.** The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application

thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**SECTION 21. EFFECTIVE DATE.** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

PUBLISHED:\_\_\_\_\_

**AGENDA SUMMARY SHEET**  
**Business of the City of Kelso**  
**City of Kelso, Washington**

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**SUBJECT TITLE:**

Ordinance 1<sup>st</sup> Reading. AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON AMENDING VARIOUS SECTIONS OF THE KELSO MUNICIPAL CODE RELATING TO LAND USE AND ZONING TO REGULATE MARIJUANA LAND USES, ESTABLISHING A NEW CHAPTER 17.45 OF THE KELSO MUNICIPAL CODE TO ADOPT ZONING RESTRICTIONS ON THE PRODUCTION, PROCESSING, AND RETAILING OF RECREATIONAL MARIJUANA, DESCRIBING THE LAND USE IMPACTS TRIGGERING SUCH RESTRICTIONS, IDENTIFYING THE PERMITTED ZONES FOR SUCH USES, ESTABLISHING SEPARATION AND DISTANCE REQUIREMENTS FOR SUCH USES AND ENFORCEMENT PROCEDURES FOR VIOLATIONS, AND FURTHER REPEALING THE MORATORIUM IN EFFECT ON SUCH USES.

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** Planning \_\_\_\_\_

**For Agenda of:** March 4, 2014 \_\_\_\_\_

**Cost of Item:** \_\_\_\_\_

**City Manager:** Stephen Taylor \_\_\_\_\_

**PRESENTED BY:**

Janean Parker, City Attorney

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**AGENDA ITEM ATTACHMENTS:**

Proposed Ordinance and Exhibits A, B, C, D  
Planning Commission Findings and Recommendation  
Map overlay showing 1000 foot buffer  
Draft Planning Commission Minutes

**SUMMARY STATEMENT:**

Initiative 502 was passed by Washington voters in 2012 to legalize the possession of small amounts of marijuana and create a state licensing program for the regulated production, processing, and retailing of marijuana. The Liquor Control Board completed its adoption of the associated regulations in October 2013 and began accepting applications for such licenses. Marijuana continues to be a controlled substance and prohibited under federal law. In response to this change in state law, the City passed a moratorium on marijuana related land uses on July 16. This moratorium was renewed on December 22, 2013 and is in effect until June 22, 2014. During the moratorium, the City Council asked the Planning Commission to study this matter and review appropriate zoning regulations for marijuana land uses within the City. The Planning Commission considered various options for regulation and held a public hearing on February 11 to take public testimony and comment. From that consideration, the Planning Commission has made a recommendation to the City Council for such regulation. The recommendation is to allow production and processing of marijuana allowed under state license within the Light Industrial and General Industrial zones and to allow retailing within the area of the Sexually Oriented

Businesses Overlay Zone, which is within the Industrial area. The Planning Commission does not recommend regulating medical marijuana collective gardens at this time. The Planning Commission would like additional time to review whether it is appropriate to have medical marijuana collective gardens within the same industrial area or a broader area. This is particularly reasonable in light of potential further state regulation of collective gardens. The attached ordinance and its exhibits reflect the Planning Commission recommendation.

**FINANCIAL SUMMARY:**

None

**OPTIONS:**

1. Adopt the ordinance incorporating the recommendations of the Planning Commission.
2. Direct staff to make changes to the ordinance.
3. Do nothing.

**RECOMMENDED ACTION:**

Move to approve on first reading the ordinance incorporating the recommendations of the Planning Commission to regulate marijuana related land uses within the City.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON AMENDING VARIOUS SECTIONS OF THE KELSO MUNICIPAL CODE RELATING TO LAND USE AND ZONING TO REGULATE MARIJUANA LAND USES, ESTABLISHING A NEW CHAPTER 17.45 OF THE KELSO MUNICIPAL CODE TO ADOPT ZONING RESTRICTIONS ON THE PRODUCTION, PROCESSING, AND RETAILING OF RECREATIONAL MARIJUANA, DESCRIBING THE LAND USE IMPACTS TRIGGERING SUCH RESTRICTIONS, IDENTIFYING THE PERMITTED ZONES FOR SUCH USES, ESTABLISHING SEPARATION AND DISTANCE REQUIREMENTS FOR SUCH USES AND ENFORCEMENT PROCEDURES FOR VIOLATIONS, AND FURTHER REPEALING THE MORATORIUM IN EFFECT ON SUCH USES**

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government’s categorization of marijuana as having a “high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment;”

WHEREAS, while the production, processing, and retailing of marijuana remains in violation of the federal law, the City Council wishes to acknowledge the will of the Washington voters and the authority exercised by the state of Washington and the State Liquor Control Board to license such facilities, leaving all issues relating to the legality, licensing, siting and permitting of such facilities to be determined by the federal and state governments in the exercise of their lawful authority, as finally determined by a court of appropriate jurisdiction,

WHEREAS, the City Council finds that potential secondary impacts from the establishment of facilities for the growth, production, and processing of marijuana are not appropriate for any zoning designation within the City, and

WHEREAS on November 6, 2012 the voters of the State of Washington approved Initiative 502 relating to the recreational use of marijuana, and providing a framework under which marijuana producers, processors and retailers can become licensed by the State of Washington; and

WHEREAS Initiative 502 directed the Washington State Liquor Control Board “WSLCB” to develop rules and regulations to 1) Determine the number of producers, processors and retailers of marijuana by county; 2) Develop licensing and other regulatory measures; 3) Issue licenses to producers, processors, and retailers at locations which comply with the Initiative’s distancing requirements prohibiting such uses within one thousand feet of schools and other designated public facilities; and 4) Establish a process for the City to comment prior to the issuance of such licenses; and

WHEREAS, the WSLCB issued these final rules and regulations, which became effective on November 21, 2013; and

WHEREAS, RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and impose business taxes on the production, processing or dispensing of marijuana or marijuana products; and

WHEREAS the City Council wishes to clarify that the manufacture, production, processing, retailing, possession, transportation, delivery, dispensing, application, or administration of marijuana must comply with all applicable City laws and that compliance with City laws does not constitute an exemption from compliance with applicable state and federal regulations; and

WHEREAS, the City Council adopted Ordinance 13-3803, imposing a moratorium on recreational marijuana land uses and medical marijuana collective gardens on July 16, 2013 and the moratorium was extended by Ordinance 13-3817.

WHEREAS, the Council has studied the land use and other secondary impacts of production, processing, and retailing of marijuana and has now drafted a zoning ordinance to address these impacts; and

WHEREAS the City Council finds that the health safety and welfare of the community is best served by excluding from certain zones any production, processing, selling, or delivery of marijuana; and

WHEREAS, Marijuana plants, whether grown indoors or outdoors, especially as they mature prior to harvest, may produce a distinctive odor that may be detectable far beyond property boundaries.

WHEREAS, where marijuana plants have been grown outdoors in other states, local authorities have received a significant number of formal complaints of odor that may be detectable far beyond property boundaries.

WHEREAS, the strong smell of marijuana may create an attractive nuisance and security risk, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery and armed robbery.

WHEREAS, the SEPA Responsible Official issued a threshold decision for this draft ordinance on January 15, 2014, which was not appealed; and

WHEREAS, on February 11, 2014, the Planning Commission held a public hearing on the draft zoning ordinance; and

WHEREAS, the Planning Commission recommended approval of the draft zoning ordinance to the Council; and

WHEREAS, on March 4, 2014, the Council considered the draft zoning ordinance during its regular meeting; and

WHEREAS, the Council has decided to adopt zoning regulations related to marijuana land uses and to formally repeal the interim zoning ordinance related to the production, processing and retail sales of recreational marijuana and medical marijuana collective gardens;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1. Repeal of Moratorium.** The moratorium imposed under Ordinance No.13-3803 and renewed under Ordinance No. 13-3817, is hereby repealed in its entirety.

**SECTION 2. Findings Adopted.** The City Council adopts all of the ‘whereas’ sections of this Ordinance as findings in support of this ordinance and further makes the following additional findings:

**SECTION 3. KMC Section 17.08 Amended.** Kelso Municipal Code Section 17.08 is hereby amended to include the definitions as set forth in Exhibit A, attached hereto and incorporated fully by this reference.

**SECTION 4. KMC Section 17.15.020 Amended.** Kelso Municipal Code Section 17.15.020 is hereby amended as set forth in Exhibit B, attached hereto and incorporated fully by this reference.

**SECTION 5. KMC Section 17.30.040 Amended.** Kelso Municipal Code Section 17.30.040 is hereby amended as set forth in Exhibit C, attached hereto and incorporated fully by this reference.

**SECTION 6. KMC Title 17 Amended to Add New Chapter.** A new Chapter to the Kelso Municipal Code, Chapter 17.45, Marijuana Related Land Uses, is hereby established as set forth in Exhibit D, attached hereto and fully incorporated by this reference.

**SECTION 7. Corrections.** Upon approval of the City Attorney, the City Clerk and code reviser are authorized to make necessary corrections to this ordinance, including without limitation the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**SECTION 8. Severability.** The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**SECTION 9. Effective Date.** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

PUBLISHED: \_\_\_\_\_

## Chapter 17.08 DEFINITIONS

Sections:

[17.08.010](#) Purpose.

[17.08.020](#) Definitions.

### **17.08.010 Purpose.**

For the purpose of this title, certain words and terms used herein, or which may be used, are defined below. Words not defined shall be known by their common meaning unless the context clearly indicates otherwise. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 6, 2003; Ord. 3075 § 2.1, 1987)

### **17.08.020 Definitions.**

“Accessory building or structure” means a subordinate building or structure that is incidental to the principal structure on the same lot. Accessory dwelling units are not considered accessory buildings or structures.

“Accessory dwelling unit” means separate living quarters contained within or detached from a single-family dwelling on a single lot, containing eight hundred square feet of floor area or less, excluding any garage area or accessory buildings and sharing a single driveway with the primary dwelling; provided, no recreational vehicle shall be an accessory dwelling unit.

“Accessory use, building or structure” means a building, part of a building or structure, or a use which is subordinate to the operation or enjoyment of a lawful use and the use of which is incidental to that of the main building, structure or use on the same lot.

“Administrative official” means the duly appointed city of Kelso community development director or the director’s designee.

“Administrative uses” means those uses set forth and defined in the text and tables of this title and are generally thought to be compatible throughout the district. However, there may be some instances where such a use may be incompatible and site plan review by the administrative official and the opportunity for public comment is required in order to ensure compatibility with the intent and character of the district.

“Adult day care home” means a regular family abode of a person or persons providing personal care or special care for less than twenty-four hours to more than one but not more than six adults who are not related by blood or marriage to the person(s) providing the services.

“Adult family home” means a residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services and are licensed by the Washington State Department of Social and Health Services..

“Agriculture” means all forms of crop-related activities, such as growing crops and processing crops as part of a farm, and animal husbandry, using best management practices. Incidental vegetable gardening, landscaping and keeping common pets are not defined as agriculture.

“Alcoholism/substance abuse treatment facility” means a private place or establishment, other than a hospital, licensed by the state and operated primarily for the inpatient treatment of alcoholism and other substance abuse problems. May include outpatient treatment.

“Alley” means a public thoroughfare or way having a width of not more than twenty feet that affords only a secondary means of access to abutting property and is not intended for general traffic circulation.

“Alteration(s)” means any change, addition or modification in construction or occupancy of a building, or any change, addition or modification to a site.

“Antique shop” means an establishment engaged in the sale of collectibles, relics or objects of an earlier period than the present.

“Apartment” means a dwelling unit in an apartment house as defined in this chapter.

“Apartment house” means a building containing five or more family dwelling units each of which, though independent of each other, is provided with joint services such as central heat, common hallways, common entrance or entrances to the building, janitor services, refuse disposal and similar services.

“Assisted living” means any group residential program that provides personal care and support services to people who need help with daily living activities as a result of physical or cognitive disability. Assisted living communities usually offer help with bathing, dressing, meals and housekeeping. The amount of help provided depends on individual needs.

“Attached structure” means any structure that is attached to another structure by a common wall, by a roof, or by structural connections that allow pedestrian access to both structures. For example, decks or stairways are attached structures when they are connected to another structure. A garage may be attached to another structure by sharing a wall or by a breezeway. Structures connected by an “I” beam or similar connections are not considered attached.

“Auto repair services” means the servicing of automobiles not owned by the property owner, for a fee, including mechanical servicing and body work. Auto repair services must take place within a building.

“Auto wrecking yard” means an area where the dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled or wrecked vehicles or their parts, exists. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“B”**

“Bed and breakfast” means a lodging where five or fewer guest rooms are provided to guests by a resident operator for a fee by pre-arrangement on a daily or short-term, temporary basis. A breakfast

and/or light snacks may be served to those renting rooms in the bed and breakfast. No cooking facilities are provided in the individual rooms.

“Boarding house” means a building with not more than five guest rooms where lodging and meals are provided for compensation for not more than ten persons, but shall not include rest homes or convalescent homes.

“Boundary line adjustment” is the adjusting of boundary lines, between platted or nonplatted lots or both, which does not create any additional lot, tract, parcel, site, or division, nor create any lot, tract, parcel, site, or division which contains insufficient area and dimensions to meet minimum requirements for width and area for a building site and may be accomplished in nonconforming situations when the degree of nonconformity is not increased. Boundary line adjustments may combine two or more platted or nonplatted lots, or both, into one lot.

“Brewery” or “winery” means an establishment primarily engaged in the production and distribution of beer, ale, or other malt beverages, or wine, and which may include accessory uses such as a tasting room and retail sales of promotional products. This classification allows a brewery/winery to sell beer/wine at retail and/or act as wholesaler for beer/wine of its own production for off-site consumption with appropriate state licenses. The tasting room and retail area can be no larger than 750 square feet combined. One-day promotional events may be held on site up to four times per year. The development may include other uses such as a standard restaurant, bar or live entertainment as otherwise permitted in the zoning district.

“Brewpub” means a restaurant, tavern, bar or nightclub that manufactures up to 1,500 barrels of fermented malt beverages per year on premises for either consumption on-premises or by hand-capped or sealed containers in quantities up to one-half barrel or 15.5 gallons sold directly to the consumer. Wholesaling shall be permitted only as otherwise permitted in the zoning district. All aspects of production, service and sales of alcohol beverages must have the appropriate Washington State permits. A brewpub is not allowed in conjunction with a restaurant that has a drive-up facility.

“Buffer” means space, either landscaped or existing or natural vegetation, intended to reduce the impact of undesirable sights, sounds, or odors; provided, that an area that was logged or clear cut within five years of submittal may not be acceptable as a buffer. Buffers protecting critical areas shall be as defined in Chapter [18.20](#).

“Building” means any structure intended for support, shelter or enclosure of persons, animals, uses or property of any kind.

“Building height” means the vertical distance above grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building.

“Building line” means the perimeter of that portion of a building or structure nearest a property line but excluding open steps, terraces, cornices, decks less than thirty inches high, and other ornamental features projecting from the walls of the building or structure.

“Building, main” means the principal building on a lot or building site, designed or used to accommodate the primary use to which the premises are devoted; where a permissible use involves more than one structure designed or used for the primary purpose, as in the case of group houses, each such permissible building on one lot as defined by this title shall be construed as constituting a main building.

“Building official” means the person or persons or firm designated by the city to ensure compliance with appropriate municipal codes related to building permits, such as administration of the International Building Codes. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

“C”

“Caliper” means a measurement of a tree’s diameter, in particular deciduous trees. Caliper of a tree trunk shall be taken six inches above the ground up to and including four-inch caliper size, and twelve inches above the ground for larger tree sizes.

“Carport” means a covered shelter for one or more vehicles that is open on at least two sides.

“Caretaker’s dwelling” means a residence located on the premises with a main nonresidential use and occupied only by a caretaker or guard employed on the premises, and his or her family. For the purposes of this definition, dwelling includes apartment, quarters, cottages, facilities and unit.

“Child Care Center” means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

“Church” means an establishment, the principal purpose of which is religious worship, and for which the principal building or other structure contains the sanctuary or principal place of worship.

“Clinic” means a building or portion of a building in which health care services are provided for treatment of human or animal outpatients.

“Club/lodge” means any kind of group for members only and who meet for a specific purpose.

“Cluster development” means the arrangement or grouping of lots to increase densities on some portions of a property to preserve the remainder for open space or other amenities.

“Community center” means a location where members of a community may gather for group activities, social support, public information, and other purposes. They may sometimes be open for the whole community or for a specialized group within the greater community.

“Conditional uses” means those uses set forth and defined in the text and tables of this title and are generally thought to be incompatible throughout the district. However, compatibility with other uses in the district may be achieved if uses are properly sited and designed. Conditional uses may be permitted by the hearings examiner when it is determined, after holding a public hearing, that difficulties related to compatibility and/or the provisions of public services have been adequately resolved.

“Condominium” means two or more units where the interior space of which are individually owned; but the balance of the property (both land and/or building) is owned in common by the collective owners of the building.

“Convalescent or nursing homes” means permitting nursing, dietary and other personal services to convalescents, invalids or other persons incapable of providing for their own care, but excluding cases of mental illness and cases of contagious or communicable disease and excluding surgery or primary treatments which are customarily provided in sanitariums or hospitals.

“Covenant” means a private legal restriction or obligation in regard to the use of land contained in the deed to a property or otherwise formally recorded.

“Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

“Cultural institution” means a building used primarily for the production, presentation, or exhibition of cultural disciplines such as music, dance, theater, literature and the visual arts, or items of scientific interest. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3568 § 1, 2005; Ord. 3508 § 7, 2003)

**“D”**

"Day care center" means a state licensed entity regularly providing care for thirteen or more children for periods of less than twenty-four hours. A day care center is not located in a private family residence unless the portion of the residence to which the children have access is used exclusively for the children during the hours the center is open or is separate from the usual quarters of the family.

“Day Care, Family Home. ”Family home day care" means an entity regularly providing care during part of the twenty-four hour day to six or fewer children in the family abode of the person(s) under whose direction the children are placed; or, a state licensed entity regularly providing care during part of the twenty-four hour day to between six and twelve children in the family abode of the person(s) under whose direction the children are placed.

“Day Care, Mini-Center~~,-~~.” “Mini-center day care" means a state licensed entity providing care during part of the twenty-four hour day period for twelve or fewer children in a facility other than the family abode of the person or persons under whose direct care the children are placed, or for the care of seven through twelve children in the family abode of such person or persons.

“Dedication” means the deliberate appropriation of land or improvements by the owner for any general or public use. Through a dedication, the owner reserves to himself no rights other than those compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.

“Deliver or Delivery” means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

“Density” is a method of describing the intensity of development patterns typically measured in dwelling units per acre. Gross density includes the entire property, whereas net density refers to the land available for development (e.g., less roads and critical areas).

“Development” means the activity or purpose for which land or structures or a combination of land and structures are designed, arranged, occupied or maintained together with any associated site improvements. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any clearing, grading, leveling, paving or excavation. Development also means any existing or proposed configuration of land, structures and site improvements, and the use thereof.

“Development rights” means the potential for the improvement of real property, measured in dwelling units or units of commercial or industrial space, existing because of the zoning classification of real property.

“Diameter breast height” means the diameter of a tree trunk measured at four feet above average grade.

“Domestic animal” means cats, dogs, rabbits and other small animals commonly kept as pets in the city.

“Drive-through business” means a business or portion of a business where customers may carry on business while seated in a motor vehicle. This definition shall include but not be limited to gas stations, car washes, and drive-in businesses and facilities such as restaurants or banks.

“Drought-resistant plants” means plant material that, once established, can survive with little or no water other than that from annual rainfall.

“Duplex” means a building that contains two primary dwelling units on one lot. The units must share a common wall or common floor/ceiling.

“Dwelling unit” means a building, or a portion of a building, that has independent living facilities including provisions for sleeping, cooking, and sanitation, and that is designed for residential occupancy by a group of people. Buildings with more than one set of cooking facilities are considered to contain multiple dwelling units or accessory dwelling units, unless the additional cooking facilities are clearly accessory to the primary use, such as an outdoor grill.

“Dwelling, multifamily” means a building arranged or designed to be occupied by more than four families, such as an apartment house or flat, but not including a trailer park.

“Dwelling, single-family” means a building arranged or designed to be occupied by not more than one family. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

“E”

“Easement” means a private agreement between parties to allow the use of the real property of another for a specific purpose, such as access, utility lines, etc. An easement is itself a real property interest, but legal title to the underlying land is retained by the original owner for all other purposes.

“Education institution” means a school or educational or training institution that offers a program of college, professional, preparatory, high school, middle school, junior high school, elementary, or kindergarten instruction, or any combination thereof, or any other program of trade, technical or artistic instruction (excluding single-day programs of instruction), together with associated staff housing and/or conference facilities and other typical educational accessory uses.

A. “Private” education institutions are privately owned and operated.

B. “Public” education institutions are operated by the Kelso School District or any other public entity.

“EIS” means an environmental impact statement prepared to Chapter 43.21C RCW and Chapter 197-10 WAC and any amendments thereof.

“Elementary School” means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

“Emergency shelter” means congregate facilities providing housing to shelter families and individuals offered on an emergency basis for a period not to exceed 90 days continuously. Shelters may offer meals, lodging and associated services on site, aimed at helping people move towards self-sufficiency.

“Entertainment facilities” includes but is not limited to movie theaters, arcades, recreation, bowling. Adult land uses and sexually oriented uses are not included.

“Establishment” means either of the following: (1) an institutional, business, commercial, or industrial activity that is the sole occupant of one or more buildings; (2) an institutional, business, commercial, or industrial activity that occupies a portion of a building that: (a) the activity is a logical and separate entity from the other activities within the building and not a department of the whole; and (b) the activity has either a separate entrance from the exterior of the building, or a separate entrance from a common and clearly defined entryway that has direct access to the exterior of the building.

“Equipment” means nonautomobile mechanisms including:

“Equipment – Heavy Duty” means self-powered, self-propelled or towed mechanical devices, equipment and vehicles of a nature customarily used for commercial purposes such as tandem axle trucks, graders, backhoes, tractor trailers, cranes and lifts but excluding automobiles, recreational vehicles and boats and their trailers.

“Equipment Light” means handheld mechanical devices of a nature typically used for landscaping or other nonindustrial scale activities.

“Equipment Mechanical” means HVAC or other mechanisms that are fixed in a location for uses associated with structures.

“Equipment storage area” means a place where two or more items of heavy and/or light equipment are stored. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“F”**

“Facade” means that exterior side of a building which faces, and is most nearly parallel to a public or private street (a building may have more than one facade). The facade shall include the entire building walls, including wall faces, parapets, fascia, windows, doors, canopies, and visible roof structures of one complete elevation.

“Factory-built home” means any building designed to be used as a dwelling, that is constructed primarily in a factory in compliance with the standards of the International Building Code, does not contain a permanent chassis, and is transported to the site for assembly and installation on a permanent foundation. Such dwellings must have the insignia of approval of the Washington State Department of Labor and Industries, in accordance with Chapter 43.22 RCW.

“Family” means an individual, or two or more persons related by blood, marriage or adoption, or a group of not more than six persons, excluding servants, who are not related by blood, marriage or adoption living together in a dwelling unit. For the purposes of this definition, persons with handicaps or otherwise protected by the Federal Fair Housing Act (42 USC 3601 et seq) shall not be counted as unrelated persons.

“Family home- Foster” means a dwelling unit in which foster care is provided on a twenty-four-hour basis for not more than six unrelated children, or expectant mothers for persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother or disabled person is placed as part of the family, and the dwelling unit is governed by the state foster care home licensing provisions and conducted in accordance with state requirements.

“Farmer’s market” means an open-air temporary grouping of vendors in a common location, usually selling produce, freshly prepared foods, handmade crafts or other unique, agriculturally related goods.

“Final plat” is a map or representation of a subdivision (excluding a short subdivision), showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications, meeting the requirements of the platting regulations of the city, and filed for record in the office of the auditor of Cowlitz County.

“Flag lot” means a lot of a panhandle configuration where the panhandle connects the main body of the lot to a road or street. A lot generally in the shape of a flag where access is typically by a narrow, private right-of-way or driveway.

“Floor area ratio” represents the gross floor area of all buildings or structures on a lot divided by the total lot area.

“Food vending cart” means a vending container equipped with wheels and used to serve food items, prepared remotely and stored within the cart for sale on a sidewalk to pedestrians. The cart may be outfitted to keep prepared food hot or cold.

“Footprint” means the area at the ground plane of a building, structure, or other element, bounded by the outside of the exterior walls and including stairs, porches, decks, upper story overhangs, canopies, and other appurtenances over three feet in height above the grade, except not including roof overhangs.

“Formula take-out food restaurant” means a restaurant or establishment that (1) is contractually required to offer standardized menus, ingredients and interior or exterior design, and (2) serves or delivers its food or beverages in disposable containers.

“Fourplex” means a building containing four dwelling units, designed for occupancy by not more than four families living independently from each other.

“Frontage” means that distance where a property line is common with a street right-of-way line.

“Funeral home,” “funeral chapel” or “mortuary” means a facility designed for preparing human remains for burial or cremation and/or for holding services related to the burial of human remains. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

## “G”

“Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

“Garage” means an accessory building or an accessory portion of a primary building designed or used primarily for the shelter or storage of automobiles, boats and/or any other vehicles.

“Garage/estate sale” means the sale of used household or personal goods on a residential parcel owned by the owner or occupant of the principal dwelling and/or other participants in the case of a multiple-residence sales event.

“Grade” (adjacent ground elevation) is the computed average of the lowest and the highest points of elevation of the original surface of the ground, or existing paving or sidewalk within the area between the building and property line, or, when the property line is more than five feet from the building, between the

building and a line five feet from the building. On waterfront parcels as defined in the shoreline master program, the definition of grade from the shoreline master program shall be used (WAC 173-14-030(3)).

“Gross density” means the total number of dwelling units divided by the total project area, without subtracting areas devoted to open space, roadways, parks or similar public use and infrastructure areas.

“Group home” means an ADSA licensed adult family home or boarding home contracted and certified by ADSA to provide residential services and support to adults with developmental disabilities. “ADSA” means the aging and disability services administration, an administration within the Washington State Department of Social and Health Services. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“H”**

“Halfway house” means a home for juvenile delinquents, adult offenders, or those leaving correctional institutions providing residentially oriented facilities which allow rehabilitation or social adjustment for persons who are in need for supervision or assistance in becoming socially reoriented but not in need of institutional care. Such facility provides a reintroduction of residents into a normal community life by providing a stable living situation rather than incarceration or a reintroduction without home, job or social reinforcement.

“Hazardous waste” means and includes all dangerous and extremely hazardous waste as specified in RCW 70.105.010.

“Hazardous waste storage” means the holding of dangerous waste for a temporary period. Accumulation of hazardous waste is not storage as long as the accumulation is in compliance with applicable requirements of WAC 173-303-200 and 173-303-201.

“Hazardous waste treatment” means the physical, chemical, or biological processing of hazardous waste to make such wastes nonhazardous or less hazardous, safer for transport, amenable for energy or material resource recovery, amenable for storage or reduced in volume.

“Health care facility” includes the terms “alcoholism/substance abuse treatment facility,” “hospice care,” “hospital,” “psychiatric hospital,” “convalescent or nursing home,” “ambulatory surgical facility,” and “sanitarium.”

“Hospice care” means palliative care provided to a terminally ill person in a place of temporary or permanent residence that alleviates physical symptoms, including pain, as well as alleviating the emotional and spiritual discomfort associated with dying.

“Hospital” means an institution specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons and licensed by state law to provide facilities and services in surgery and obstetrics and general medical practice.

“Home occupation” means an accessory use of a dwelling unit for gainful employment involving the manufacture, provision, or sale of goods and/or services.

“Home occupation – Major” includes any occupation which is clearly secondary to the main use of the premises as a dwelling place, and does not change the character thereof or have any exterior evidence of such secondary use (e.g., outward physical appearance, outdoor storage of materials, supplies or vehicles, noise, electrical interference, lighting, vibrations) other than signing as permitted in the zoning district in which it is situated. Major home occupations may be conducted within the dwelling unit, attached garage, or accessory structure, by members of a family residing in the dwelling, and nonresident individuals, when authorized;

“Home occupation – Minor” are compatible with the neighborhoods in which they are located and cause no impact greater than that generally associated with a single residence. Bed and breakfast establishments that contain no more than two rooms shall be considered a minor home occupation.

“Hotel/motel/inn” means a building or group of buildings containing guest rooms, where, for compensation, lodging is provided for transient visitors. Hotels, motels and inns typically provide such things as restaurants, meeting rooms and/or other auxiliary facilities and services. A hotel, motel or inn is not a bed and breakfast lodging as defined and regulated elsewhere in this title. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

“I”

“Impervious surface” means surface area that does not allow for water infiltration, or has a runoff coefficient of 0.90 or more (e.g., nonpermeable pavement, solid rock, roofs, foundations, underground tanks and vaults, and similar areas).

“Improvements” means structures, works or components thereof, including but not limited to streets, curbs, sidewalks, water and sanitary sewer systems, levee and drainage systems, street light systems, landscaping and electric, gas, telephone and television lines and cables and appurtenant equipment.

“Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

“J”

“Junk or salvage yard” means any area where junk or salvage is bought, sold, exchanged, baled or packed, disassembled, kept, stored or handled. This definition shall also include auto or other vehicle or machinery wrecking or dismantling activities. This definition shall not include the processing of used, discarded or salvaged materials as part of a manufacturing operation located on the same property, and

contractors' storage yards. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“K”**

“Kennel” means a building, enclosure or portion of any premises in or at which dogs, cats or other domesticated animals are boarded or kept for hire, or in or at which dogs, cats or other domesticated animals are kept or maintained by any person than the owner thereof, or in or at which six or more cats or four or more dogs over the age of four months are kept or maintained. This definition shall include boarding kennels, but not pet shops, animal hospitals or zoos.

“Kiosk” means a small structure with one or more open sides that is used to vend merchandise (as newspapers) or services (as film developing).

“Kitchen” means any room or part of a room that is designed, built, used or intended to be used for cooking or preparation of food, including the term “kitchenette,” but not including a bar or butler’s pantry. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“L”**

“Landscaping” means the placement, preservation, and the replacement of trees, shrubs, plants and other vegetative materials in accordance with an approved landscaping plan meeting the requirements set forth in this title for open space and planting requirements.

“Level of service (LOS)” means a quantitative standard for transportation facilities describing operational conditions. Level of service may be described for intersections (signalized or unsignalized) or street segments (between signalized intersections).

“Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

“Livestock” for the purposes of this title, “livestock” means horses, cows, llamas, sheep, goats, chickens, and pigeons.

“Lot area” means the total horizontal area within the lot lines, excluding any area seaward of the line of the ordinary high water mark, and excluding private streets and lot area in panhandles or flag lots narrower than thirty feet.

“Lot, corner” means a lot bounded on adjoining sides by streets.

“Lot coverage” means that portion of the total lot area covered by buildings, structures, and other impervious surfaces such as sidewalks and driveways.

“Lot depth” means the perpendicular distance measured from the midpoint of the front lot line to the rear lot line or, if necessary, to the extension of the rear lot line.

"Lot frontage" means the lot or parcel side where it adjoins a street, boulevard or access way.

"Lot, interior" means any lot other than a corner lot.

"Lot lines" means the property lines bounding the lot.

"Lot, through" means a lot having frontage on two streets that do not intersect at a lot line.

"Lot line, front" means a lot line, or segment of a lot line, that abuts a street. On a corner lot, the front lot line is the shortest of the lot lines that abut a street. If two or more street lot lines are of equal length, then the applicant or property owner can choose which lot line is to be the front lot line. However, a through lot has two front lot lines regardless of whether the street lot lines are of equal or unequal length.

"Lot line, rear" means a lot line that is opposite a front lot line. A triangular lot has two side lot lines but no rear lot line. For other irregularly shaped lots, the rear lot line is all lot lines that are most nearly opposite the front lot line.

"Lot line, side" means a lot line that is neither a front or rear lot line.

"Lot line, side street" means a lot line that is neither a front or rear lot line and abuts a street.

"Lot width" means the horizontal distance measured at the building setback line between the two opposite side lot lines. Average lot width shall be the average of the front and rear lot lines. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

## **"M"**

"Manufactured home" means a structure, built to conform to national standards embodied in the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC 5401, et seq., administered by the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is twelve body feet or more in width or thirty-six body feet or more in length, or when erected on the site is eight hundred and sixty-four or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation as defined within the International Residential Code (IRC), connected to the required utilities, and includes mandatory plumbing, heating, air conditioning and electrical systems contained therein. A manufactured home displays a certificate from the United States Department of Housing and Urban Development.

"Manufactured home, new" means a manufactured home that has not been previously occupied. The most commonly accepted definition of a "new manufactured home" also recognizes manufactured homes used as model homes as new.

"Manufactured home site" means a parcel of land within a manufactured home subdivision park or lot of record, for the accommodation of one manufactured home, its accessory buildings or structures and

accessory equipment for the exclusive use of the occupants. In the case of a manufactured home park, the boundaries of a manufactured home site are established on the approved plot plan. In the case of a manufactured home subdivision, the boundaries of the manufactured home site are the platted lot lines as established by the recorded subdivision. In the case of a lot of record, means a lot shown on an officially recorded plat or short plat or parcel of land officially recorded or registered as a unit of property and is described by metes and bounds, and lawfully established on the date of recording of the instrument first referencing the lot.

“Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater the 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

“Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.

“Marijuana, Usable” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.

“Medical clinic” means a building or portion of a building containing offices or facilities for providing medical, dental, or psychiatric services for outpatients only.

“Meeting hall” means a building, public or private, used for large gatherings of people.

“Microbrewery” or “microwinery” means the same as “brewery/winery” except for the following: a microbrewery shall have a capacity of not more than 15,000 barrels a year and a microwinery no more than 3,000 cases of wine per year. Per RCW 66.24.244(3), a microbrewery may also sell beer produced by another microbrewery or a domestic brewery for on- and off-premises consumption from its premises as long as the other breweries’ brands do not exceed 25 percent of the microbrewery’s on-tap offering of its own brands.

“Mobile home” means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States Department of Housing and Urban Development Code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States Department of Housing and Urban Development Manufactured Home Construction and Safety Act.

“Modular home” means a factory-assembled structure, meeting Washington State Uniform Building Code Standards, and Title 14 of this code, designed primarily for use as a dwelling when connected to the required utilities that include plumbing, heating and electrical systems contained therein, does not contain

its own running gear, and must be mounted on a permanent foundation. A modular home does not include a mobile home or manufactured home.

"Mortuary": See "funeral home," "funeral chapel" or "mortuary."

"Motel" means a building or group of buildings that contain individual sleeping quarters or dwelling units which are occupied, or intended to be occupied, for compensation. Motels typically do not provide such things as restaurants, meeting rooms, and/or other auxiliary facilities and services. This definition includes auto cabins, auto courts, tourist courts, and motor hotels, but does not include hotels.

"Museum" means a building devoted to the care, study and display of objects of lasting historic interest. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

## **"N"**

"Native species" means tree, shrub, or ground cover plant species that occur or live naturally in the Columbia River region.

"Nonconforming building or structure" means a legally established building or structure that was constructed prior to adoption of the ordinance codified in this title, or applicable amendments thereto, and that does not conform to present setback, lot coverage or other development requirements of this title.

"Nonconforming lot" means a lot that was lawfully created but does not conform to the lot requirements of the zone in which it is located.

"Nonconforming use" means any preexisting structure or a legally established use of land that has been continued, but does not conform to the regulations of the zone in which it is located as determined by this title, or amendments thereto.

"Nuisance" means any use, activity or structure that interferes with the enjoyment and use of one's property by endangering personal health or safety, offending human senses and/or failing to conform with the provisions, intent or standards of the district in which the use, activity or structure occurs. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

## **"O"**

"Office" means a room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, and communication equipment.

"Off-street parking" means all off-street areas designed, used, required or intended to be used for the parking of motor vehicles. See Chapter 17.40 KMC for parking standards.

"On-street parking" means parking in the street right-of-way, typically in parking lanes or bays. Parking may be parallel or angled in relation to the edge of the right-of-way or curb.

“Open space” means land and/or water area that is predominantly undeveloped, and is set aside to serve the purposes of providing park and recreation opportunities, conserving critical areas and character. Open space excludes tidelands, shorelands, yards required by this title, areas occupied by dwellings, impervious surfaces not incidental to open space purposes, individual lots or land regulated under provisions of Chapter [16.20](#), and areas that were clear cut or extensively logged within five years of submittal.

“Ordinary high water mark” means the mark on all lakes, streams and tidal water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation. If the ordinary high water line cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water.

“Outdoors” means any location that is not “indoors” within a fully enclosed and secure structure as defined herein.

“Outdoor storage” means the outdoor storage of goods for more than seventy-two hours. Outdoor storage includes, but is not limited to, sales or storage yards for automobiles, trailers, moving equipment boats, construction equipment and materials, items used for manufacture, and auto wrecking yards. Temporary outdoor sales displays less than one hundred square feet in ground area per business establishment parking lots, moorage areas in marinas, and outdoor sales and storage areas of commercial nurseries are not defined as outdoor storage.

“Overlay district” means a geographic area that constitutes a mapped district superimposed over the underlying zone on the official zoning map. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

“Owner” means the owner of the title to real property or the contract purchaser of real property of record, as shown on the latest assessment records in the office of the county assessor. “Owner” also includes a deed holder or contract purchaser whose name does not appear in the latest assessment records, but who presents to the city a copy of a deed or contract of sale showing date, book, and page of recording.

**“P”**

“Park and ride lot” means an area intended to accommodate parked vehicles during normal commuting hours where commuters park their vehicles and continue travel to another destination.

“Park and ride lot, shared-use” means a parking lot that was originally developed for a limited, nonresidential use, such as a church or theater, and serves the same function as a park and ride lot. A shared-use park and ride lot requires no expansion of existing parking area or number of spaces or any other development beyond maintenance, signage and striping normally conducted for this purpose.

“Parking lot” means an area intended to accommodate parked vehicles and is not accessory to a single-family residence.

"Parking space" means a space within a parking lot, exclusive of access drives, used to park a vehicle and having access to a public street.

"Passive recreational facilities or uses" means recreational facilities or uses that do not involve or allow motorized vehicles such as trails and wildlife and nature preserves.

"Pawnshop" means establishments who lend money on goods deposited until redeemed.

"Pedestrian orientation" means that the location and access to structures, site configuration and elements, types of uses permitted at street level, building front design, and location of signs are based on the needs of persons on foot.

"Permitted uses" means those uses set forth and defined in the text and tables of this title and are permitted on any site in a zoning district provided district standards are met. In some cases a permitted use may require review by the administrative official.

"Performance bond" means a form of security executed by a surety company authorized to transact business in the state of Washington, securing to the city the satisfactory completion of required improvements and fulfilling the requirements of this chapter.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

"Personal services" means uses that offer specialized goods and services including barbershops, beauty shops, dry cleaning, tanning salons, tattoo parlors, clothing repair or tailoring and other similar establishments.

"Pet shop" means establishments engaged in the retail sale of pets, pet food, supplies and the grooming of pets and other small animals.

"Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

"Political signs" means signs about nonpartisan elections, bond measures, initiatives, and similar matters and the customary, partisan politics. Political signs do not include permanent outdoor advertising structures or billboards, which are regulated by the other sections of this chapter, despite whether political advertising is carried on such outdoor advertising structures or billboards.

"Process" means to handle or process cannabis in preparation for medical use.

"Processor, Marijuana" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

“Producer, Marijuana” means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

“Produce or Production” means to manufacture, plant, grown or harvest cannabis or marijuana.

“Produce stand” means a temporary building, structure, or land area used for the sale of fresh whole fruits, vegetables, grains, seeds, and/or nuts. A produce stand may include, as incidental and accessory to the principal use, some limited nonfood items, and these products shall consist of no more than 15 percent of the gross sales area. A temporary building or structure shall not be permanently affixed to the ground and shall be readily removable in its entirety.

“Professional services” means uses such as accounting firms, credit bureaus, collection agencies, advertising agencies, contractor’s offices, ambulance service companies, employment agencies, finance companies, insurance agents, income tax return preparers, investment counseling firms, lawyer’s offices, or real estate companies.

“Protection zone” means the zone at grade level located directly below the canopy and within the drip line. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

“Public Park” means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

“Public place” includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

“Public Transit Center” means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

“Q”

(Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“R”**

“Recreation center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city county, state or federal government.

“Recreation facilities, active” refers to a mix of uses in a neighborhood park that may include facilities or facility types such as athletic fields, buildings or structures for recreational activities, concessions, community garden, courses or courts, children’s play area, dog play area, or a bike path.

“Recreational facilities, passive” refers to a mix of uses in a neighborhood park, undeveloped land or minimally improved lands such as landscaped areas, natural area or sensitive areas, ornamental gardens, nonlandscaped green space, stairways, decorative fountains, picnic areas, water bodies, or trails without recreational staffing.

“Recreational vehicle” means a vehicle, such as a motor home, travel trailer, recreational park model, truck/camper combination or camper trailer, that is designed for human habitation for recreational or emergency purposes and that may be moved on public highways without any special permit for long, wide or heavy loads.

“Recycling center” means a collection point for small refuse items, including, but not limited to, bottles and newspapers, located either in a container or a small structure.

“Religious facility” means a facility in which the primary focus is religious worship. A religious facility may also include related activities including religious education, counseling, assembly rooms, kitchen, and a rectory or parsonage.

“Replat” means the division of a lot(s) or parcel(s) of land that is already a part of an existing subdivision. The term “replat” shall be regarded as synonymous with the terms “resubdivison” and “resegregation.”

“Residential treatment facility” means a residential building that is licensed by the state to provide residential and domiciliary care to five or more individuals, or to provide rehabilitative treatment or services to individuals. Residential treatment facilities generally provide a limited-term living arrangement for their residents in a family-like setting. Such facilities also provide rehabilitative services other than basic living skills training, often intended to provide residents with the future ability to live independently. Such facilities may provide medical treatment as an integral part of a rehabilitative program.

“Retail” means the selling of goods, wares, or merchandise directly to the ultimate consumer or persons without a resale license.

“Retailer, Marijuana” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

“Retail outlet - Marijuana” means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana and marijuana-infused products.

“Right-of-way, public” means the property held by the city or other governmental jurisdiction for existing and/or future public access including land occupied or intended to be occupied by a street, crosswalk, pedestrian and bike paths, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, street trees or other special use. The usage of the term “right-of-way” for land division purposes shall mean that every right-of-way hereafter established and shown on a plat or map is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels.

“Roadside produce stand” means an establishment engaged in the retail sale of local fresh fruits and vegetables and having permanent or semi-permanent structures associated with such use. No roadside stand, building or structure shall be more than 750 square feet in ground floor area. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“S”**

“Sanitarium” or “sanatorium” means a health station or retreat or other place where resident patients are kept, and which specializes in giving clinical, temporary and emergency services of a medical or surgical nature to patients and injured persons and is licensed by state agencies under provision of law to provide facilities and services in surgery, obstetrics and general medical practice, as distinguished from treatment of mental and nervous disorders.

“Screen” means a system of vegetation located within the perimeter landscape to provide varying degrees of visual separation between land uses and site development.

“Second-hand/consignment store” means an establishment engaged in the retail sale of used clothing, sports equipment, appliances and other merchandise.

“Secondary School” means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington State Superintendent of Public Instruction.

“Self-service storage facility” means an establishment containing separate storage spaces that are leased or rented as individual units for the storage of household or business goods.

“Setback” means the minimum allowable horizontal distance from a given point or line of reference, such as a street right-of-way, to the nearest vertical wall or other element of a building or structure as defined in this chapter.

“Sexually oriented business” means those businesses defined as follows;

A. “Adult arcade” means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image-producing machines, for

viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

B. "Adult bookstore," "adult novelty store" or "adult video store" means a commercial establishment which has a significant or substantial portion of its interior business or advertising to the sale or rental, for any form of consideration, of any one or more of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations, which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

2. An establishment may have another significant or substantial portion of its stock-in-trade that does not involve the offering for sale or rental of materials depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe specified anatomical areas or specified sexual activities. Therefore, any establishment having twenty percent or more of its stock-in-trade or revenues that come from trading in material depicting or describing specified sexual activities or specified anatomical areas shall be categorized as an adult bookstore, an adult novelty store, or an adult video store.

C. "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment, whether or not alcoholic beverages are served, which features:

1. Persons who appear nude or semi-nude;

2. Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities;

3. Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

D. "Adult motel" means a hotel, motel, or similar commercial establishment which:

1. Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas, and which has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

2. Offers a sleeping room for rent for a period of time that is less than twenty hours; or

3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty hours.

E. "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions characterized by the depiction or description of specified anatomical areas or specified sexual activities are regularly shown for any form of consideration.

F. "Adult theater" means a concert hall, theater, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear nude or semi-nude, or live performances which are characterized by exposure of specified anatomical areas or specified sexual activities.

G. "Nude or semi-nude model studio" means any place where a person who appears nude or semi-nude or displays specified anatomical areas is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

H. "Specified anatomical areas" means and includes any of the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

I. "Specified sexual activities" means and includes any of the following:

1. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; or
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
3. Masturbation, actual or simulated; or
4. Human genitals in a state of sexual stimulation, arousal or tumescence; or
5. Excretory functions as part of or in connection with any of the activities set forth in subsections 11 through 4 of this definition.

"Sign" means any communication device, structure, placard or fixture that is visible from any public right-of-way or pedestrian path or sidewalk and is intended to aid in promoting the sale of products, goods, services or events or to identify a building using graphics, letters, figures, symbols, trademarks or written copy. Painted wall designs or patterns that do not represent a product, service or trademark or that do not

identify the user are not considered signs; only that part of the design or pattern that cannot be distinguished from the sign shall be considered part of the sign. The different types of signs addressed in this chapter are defined as follows:

”Sign - Billboard” means an off-premises freestanding sign.

“Sign - ~~“Business”~~” means a freestanding sign that is intended to provide for the advertising and identification of multiple businesses located on a single parcel.

“Sign - Directional” means a sign that contains specific directional information and whose primary purpose is directional.

“Sign - Electric” means any sign that is illuminated by an artificial light source either internally or outside of the sign.

“Sign - Fascia” means a sign attached or erected parallel to and not extending more than eighteen inches from the facade or face of any building to which it is attached and supported throughout its entire length with the exposed face of the sign parallel to the plane of the wall or facade. Signs on awnings or exterior windows and murals that include copy will be regulated as wall signs.

“Sign - Flashing” means any sign that, by movement or by other method or manner of illumination, flashes on or off, winks, blinks with varying light intensity, shows motion, or creates the illusion of motion or revolves in a manner to create the illusion of being on or off or that rotates or turns. This definition does include electronic reader board signs and barber poles.

“Sign - For sale/lease/rent” means a sign advertising the availability of real property for lease, rent or sale.

“Sign - Freestanding” means a sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or structure.

“Sign - Freeway” means a sign situated within a radius of one thousand feet from a freeway entry/exit point, but not separated by a physical barrier from the entry/exit intersection. A freeway sign is primarily oriented to the passing motorist on the adjacent freeway, and shall identify businesses such as regional shopping malls, eating, lodging or service station facilities that serve the traveling public. No wall-mounted sign can be classified as a freeway sign.

“Sign - Message board” means a sign with manual or electronic changing type that can display letters and numbers to depict a message. Message board signs must include the time and temperature in their display.

"Sign - Monument" is a sign not attached to a building, not more than five feet in height or twenty feet in length, which is attached to the ground by means of a wide base of solid appearance. Monument signs must be designed so as to be compatible with adjacent architecture and landscaping, and must be constructed with materials conducive to abutting structures and the surrounding area. They may not be constructed from fabric or banner material.

"Sign - Off-premises" means any sign that advertises an establishment, merchandise, services, goods or entertainment that is sold, produced, manufactured or furnished at a location other than on the property on which the sign is located and that does not relate strictly to the lawful use of the premises on which it is located. Lawful use is defined as a sign which indicates the business transacted, services rendered, goods sold or produced on the premises, name of the business and/or name of the person, firm or corporation occupying the premises.

"Sign - Political" means a sign related to nonpartisan elections, bond measures, initiatives, and similar matters and to the customary partisan politics. Political signs do not include permanent outdoor advertising structures or billboards.

"Sign - Projecting" means a sign that is affixed to a building or wall and projects horizontally from the surface of such a building or wall face further than eighteen inches.

"Sign - Rooftop" means any sign that is located on a roof of a building or structure.

"Sign - Rotating" means any sign that spins, rotates, moves up and down or otherwise moves in any other fashion to give an illusion of movement, not including barber poles.

"Sign - Sandwich board" means a portable sign, typically in the shape of an inverted V, with two sign boards attached to each other at the top of the sign; also known as a sandwich board or A-frame sign. Each board shall be considered a separate sign face for purposes of determining allowable area of sign.

"Sign - Special service" means a guide sign located within the public right-of-way that provides road users with business identification and directional information for services and for eligible attractions.

"Sign - Temporary" means any sign or advertising display constructed of cloth, wood, canvas, light fabric, paper or other light materials with or without frames intended to be displayed for a limited time only as determined by the planning director, and not permanently mounted.

"Sign - Wall" is any permanent sign that is attached parallel to and extending not more than ten inches from the wall of a building. This includes painted, individual letter, cabinet signs and signs attached to a mansard roof (if constructed at an angle of seventy-five degrees or more from horizontal). No more than two wall signs are permitted per building face, and in combination with all other permitted signs shall not exceed ten percent of wall area.

“Significant tree” means any living woody perennial plant characterized by a main stem or trunk having many branches, including the following:

1. Evergreen tree ten inches in diameter or greater, measured four feet above existing grade; or
2. Deciduous tree twelve inches in diameter or greater, measured four feet above existing grade; or
3. All trees located within a required critical area buffer as defined in Title [18](#).

“Stormwater management” means the collecting, conveyance, channeling, holding, retaining, detaining, infiltrating, diverting, treating, or filtering of surface water, ground water, and/or runoff, together with applicable managerial measures.

“Street” means a public way that provides vehicular circulation or primary access to abutting properties, inclusive of arterials, collector streets and local streets and exclusive of alleys. Physically, a street is the improved and maintained portion of a right-of-way that is designated for vehicular use.

“Street-facing facade/wall” means all the wall planes of a structure as seen from one side or view that are at an angle of 45 degrees or less from a street lot line.

“Structure” means any manmade assemblage of materials extending above or below the surface of the earth and affixed or attached thereto.

“Structure height” means the highest point above grade of a structure other than a building, except as otherwise provided by this code. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

“T”.

“Tent” means any structure, enclosure or shelter constructed of canvas, plastic or other pliable material supported in any manner except by air or the contents it protects.

“Temporary use” means a use of property intended for a limited period of time and does not involve the construction or alteration of any permanent structure.

“Townhouse” means a form of attached housing comprised of a single building where dwelling units are separated by vertical fire walls. Each unit is located on its own individual legal lot of record, has its own independent access and its own front and rear yard.

“Transitional housing facility” means a project that has as its purpose facilitating the movement of homeless individuals and families to permanent housing within a reasonable amount of time (usually 24 months). Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children.

“Tree canopy” means the total area of the tree or trees where the leaves and outermost branches extend, also known as the “drip line.”

“Tree stand” means at least five or more existing trees forming a continuous canopy, each having a six-inch diameter or greater, measured four feet above existing grade. Trees may be evergreen or deciduous varieties. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

“Triplex” means a building containing three dwelling units, designed for occupancy by not more than three families living independently from each other.

**“U”**

“Use” means the purpose which land, buildings, or structures now serve or for which such are occupied, arranged, designed, or intended.

“Use, change of” means the change of a use within the classified use of any structure, portion thereof or premises which is permitted in a particular zoning district. A change within the same category of permitted uses (for example, a change from one restaurant to another, or a change from one retail store to another) shall not be considered to be a change of use. A change in use from a vacant structure to an occupied structure shall be considered a change of use, unless the use is a resumption of a prior use. For the purposes of this section, the prior use includes the last occupied use of the vacant structure; provided, that such vacancy has occurred for a duration of less than twelve consecutive months.

“Use, primary” means the purpose for which land or a building is designed, arranged or intended, or for which it is occupied, maintained, let or leased.

“Use, secondary” means a minor or secondary function for which a lot, building or structure is used in conjunction with, but subordinate and incidental to, its primary use.

“Useable cannabis or usable marijuana” means dried flowers of the Cannabis plant. The term “usable cannabis or usable marijuana” does not include marijuana – infused products or cannabis products.

“Utility services” means electric substations, gas metering stations, sewer lift stations, telephone and communications relay or switching stations, municipal/public water works (including pumping stations and reservoirs), power booster or conversion plants, and similar utility facilities, all with their necessary buildings, apparatus or appurtenances thereto. For purposes of this title, “utility services” does not include local transmission and collection lines, pipes, conductors, or utilities located underground. Utility services are not subject to the minimum lot size requirements of the zoning district in which they are located (except as required for domestic water, sewage disposal and soil percolation rates); provided, that they meet all other requirements of the zoning district in which they are located. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“V”**

“Variance” means a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property that are not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

“Veterinarian clinic” means a building or portion of a building used for animal health care. A veterinarian clinic may include the incidental boarding of animals undergoing treatment.

“View” means the ability to observe an expanse of open space, including the Cowlitz or Columbia River corridor or the cityscape, from the ground floor level of an existing residence. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“W”**

“Wholesale trade” means establishments or places of business primarily engaged in selling merchandise to other businesses, including retailers, industrial, commercial, institutional, or professional business users, other wholesalers, or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

“Wireless communication facility” means an unstaffed facility for the transmission and reception of low-power radio signals consisting of an equipment shelter or cabinet, a support structure, antennas (e.g., omni-directional, panel/directional or parabolic) and related equipment.

“Wireless communication facility category 1” is a wireless communication facility that consists of antennas equal to or less than four feet in height with an area of not more than five hundred eighty square inches in the aggregate (e.g., fourteen-inch-diameter parabola or 2.6-foot by 1.5-foot panel) that is affixed to an existing structure that is not considered a component of the facility.

“Wireless communication facility category 2” is an attached wireless communication facility that consists of antennas equal to or less than ten feet in height or up to one meter (39.37 inches) in diameter and with an area not more than thirty square feet in the aggregate that is affixed to an existing structure that is not considered a component of the facility.

“Wireless communication facility category 3” is an attached wireless communication facility that consists of antennas equal to or less than fifteen feet in height or up to one meter (39.37 inches) in diameter and with an area not more than one hundred square feet in the aggregate that is affixed to an existing structure that is not considered a component of the facility.

“Wireless communication facility lattice tower” is a wireless communication support structure that consists of metal crossed strips or bars to support antennas and related equipment.

“Wireless communication facility monopole” is a wireless communication facility that consists of a support structure, the height of which shall not exceed one hundred twenty feet in height not including antennas. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“X”**

Reserved. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“Y”**

“Yard” means an open space on a lot or parcel that is required by this title to be unoccupied and unobstructed from the ground upward, except as otherwise provided in this title.

“Yard, front” means an open space extending from a building to the front lot line.

“Yard, rear” means an open space extending from a building to the rear lot line.

“Yard, side” means an open space extending from a building to the side lot line. When a parcel has two or more front yards, the remaining yards are to be considered side yards.

“Youth-oriented business or activity” means a business utilizing a permanent building or facility where children under the age of eighteen years are invited onto the business premises in conjunction with such business activity and at least fifty percent of the business revenue is generated from their patronage. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**“Z”**

“Zero lot line” means a form of residential development in which individual dwelling units are placed on separately platted lots with a zero setback to one property line. They may be attached to each other but not necessarily.

“Zone” means one of the classifications of permitted uses into which the land area of the city is divided.

“Zoning map” means the official map that identifies and delineates boundaries of the city’s zoning classifications. (Ord. 3745 § 1 (Att. A), 2011; Ord. 3699 § 1 (Att. B), 2009; Ord. 3508 § 7, 2003)

**Chapter 17.15**  
**PERMITTED, ADMINISTRATIVE AND CONDITIONAL USES**

Sections:

- 17.15.010 Designations.
- 17.15.015 Similar Uses
- 17.15.020 Land Use Table
- 17.15.030 Footnotes.
- 17.15.040 Use Performance Standards

**17.15.010 Designations.**

- A. Type I uses listed in Table 17.15 shall be reviewed in accordance with the review process described with Section 17.10.035, Title 18B, and the applicable standards of this title.
- B. The Type II and Type III uses listed in Table 17.15, and all matters directly related thereto shall be reviewed in accordance with the review process described in Section 17.10.040, Title 18B, and the applicable standards of this title to ensure:
  - 1. Consistency with the city comprehensive plan goals, objectives, policies and development criteria;
  - 2. The intent, character and development standards appropriate to the zoning district within which it is to be located;
  - 3. Compatibility with other uses; and
  - 4. Other relevant requirements of state or county law.
- C. If a proposed use is to be situated on property within the jurisdictional boundaries of the Kelso Critical Areas Ordinance/Shoreline Master Program, it shall be subject to the permits and procedural requirements thereof in addition to all applicable standards of this title. If a conflict exists between the standards of the Kelso Critical Areas Ordinance/Shoreline Master Program and this title, the more restrictive provisions shall apply.

**17.15.015 Similar Uses.**

- A. When a proposed use is not classified within any of the categories of Table 17.15, but appears to be similar in character and consistent with the purpose of the zoning district, the matter may be referred to the administrative official to determine whether or not the unclassified use is similar to a use currently listed as a Type I, II or III use for the zoning district.
- B. Similar use requests may be initiated by written application and accompanying fee, or directly by the Administrative official. Each request shall set forth the specific basis for the request and its compliance with subsection D. below.
- C. The administrative official may consult with any interested, affected or concerned agencies or persons before making a similar use determination.
- D. The administrative official shall not approve a similar use determination request unless evidence is presented to demonstrate that the proposed use will comply with the purpose, intent, goals, objectives and policies of the Comprehensive Plan and the zoning district in which it is proposed to be located. The administrative official shall state the reasons upon which the determination is based.
- E. If the administrative official finds that the proposed use is similar, he shall also establish whether the proposed use shall be processed as a Type I, II or III use according to Chapter 17.10. If a proposed

use is not determined to be similar, it shall not be considered an allowable use. Similar use determinations may be appealed to the Hearing Examiner as provided in Chapter 17.10 and Title 18B.

**17.15.020 Land Use Table.**

The following Table 17.15 indicates those uses which may be permitted through Type I, II or III review in the various zoning districts defined in this title. In addition to Table 17.15, reference to the individual zoning districts and, where indicated, the regulatory notes of Section 17.15.030 (footnotes) and definitions of Chapter 17.08, is necessary in order to determine if any specific requirements apply to the listed use.

- A. If no symbol appears in the box at the intersection of the column and row, the land use is not allowed in that district.
- B. Use classifications are listed on the vertical axis and City of Kelso zoning districts are shown on the horizontal access.
- C. If a number appears next to the review classification symbol at the intersection of the column and row than that use is subject to special standards listed as footnotes following Table 17.15 in Section 17.15.030.
- D. If a letter appears adjacent to the use classification that land use is subject to performance standards listed in Section 17.15.040. These standards are in addition to other applicable standards of the Kelso Municipal Code.

**Table 17.15**

<p style="text-align: center;"><b>Table 17.15 Allowable Land Uses</b></p>	Residential Single-Family	Residential Multi-family	Open Space	Commercial - Town Center	Commercial - West Kelso	Commercial Neighborhood Service Center	Commercial Specialty Retail & Services	Commercial - Major Retail	Industrial Light Manufacturing	Industrial General Manufacturing
	<b>RSF</b>	<b>RMF</b>	<b>OPN</b>	<b>CTC</b>	<b>CWK</b>	<b>CNH</b>	<b>CSR</b>	<b>CMR</b>	<b>ILM</b>	<b>IGM</b>
<b>RESIDENTIAL</b>										
Single-family Residence (A)(L)	I	I <sub>1</sub>		I <sub>1</sub>	I <sub>1</sub>	I <sub>1</sub>	I <sub>1</sub>	I <sub>1</sub>		
Duplex (L)	I <sub>2</sub>	I <sub>3</sub>		I	I					
Multiple-family dwellings, including rooming & boarding houses, triplexes, 4 plexes, condominiums, apartment houses and apartment courts		I		I <sub>4</sub>	I <sub>4</sub>	I <sub>4</sub>	I <sub>4</sub>	I <sub>4</sub>		
Day Care Family home*	I	I								
Day Care Mini-center*		I								
Day Care-Adult*	II	II								
Adult Family home	II	II		I <sub>1</sub>	I <sub>1</sub>	I <sub>1</sub>	I <sub>1</sub>	I <sub>1</sub>		
Expansion and/or reconstruction of a residence	I	I	III							

Mobile Home Parks & Subdivisions (B)		II								
Livestock* (R)	I <sub>16</sub>									
Accessory Apartment* (T)	II									
Temp Mfg Home for Aged Relative (U)	II									
	<b>RSF</b>	<b>RMF</b>	<b>OPN</b>	<b>CTC</b>	<b>CWK</b>	<b>CNH</b>	<b>CSR</b>	<b>CMR</b>	<b>ILM</b>	<b>IGM</b>
<b>AMUSEMENT AND RECREATION</b>										
Recreation Facilities, Active*	II	II	III <sub>18</sub>	I <sub>5</sub>	I	I	I	I	II	II
Recreation Facilities, Passive*	I	I	I							
Participant sports and recreation—indoor				III <sub>5</sub>	I	I / II <sub>7</sub>	I	I	II	
Participant sports and recreation—outdoor			III <sub>18</sub>		II		II	I		
Trails			I							
Wildlife and Nature Preserves			I							
	<b>RSF</b>	<b>RMF</b>	<b>OPN</b>	<b>CTC</b>	<b>CWK</b>	<b>CNH</b>	<b>CSR</b>	<b>CMR</b>	<b>ILM</b>	<b>IGM</b>
<b>COMMUNITY SERVICES</b>										
Art Galleries, Non-commercial	II	II								
Auditoriums, clubhouses, meeting halls				II <sub>5</sub>	I		I	I		
Community Centers	II	II		II <sub>5</sub>	I	I	I	I	I	I
Educational, cultural, or governmental	II	II		II	I	III	I	I	II	I
Health Care Facilities*	III	III		II	I	I <sub>7</sub>	I	I		
Clinics walk in*				II	II	I	I	I		
Hospital	III	III				III				
Marinas, boardwalks, public piers				I	I		I	I		
Museums	III	III		II	II					
Assisted Living Home*	II	II				II				
Post Office				I						
Religious Facilities	II	II		II <sub>5</sub>	II	II <sub>7</sub>	II	II	II	II
Social and fraternal clubs and lodges		II <sub>6</sub>		II	II					
Group Home*	II	II								
Halfway House*	II	II		II <sub>5</sub>						
Day Care Center*	II	II		I <sub>5</sub>	II	II	II	II	II	
Transitional Housing*	II	II		II <sub>5</sub>						
	<b>RSF</b>	<b>RMF</b>	<b>OPN</b>	<b>CTC</b>	<b>CWK</b>	<b>CNH</b>	<b>CSR</b>	<b>CMR</b>	<b>ILM</b>	<b>IGM</b>
<b>MANUFACTURING</b>										
Agriculture* including agricultural processing									II	I
Fabrication, manufacture, assembly, processing, packaging, repair, servicing of goods.									I <sub>9</sub>	I <sub>9</sub>
Any principally permitted use whose operations are predominantly out-of-doors rather than completely enclosed within a building									II	I
Aquaculture			II							
Commercial Indoor Storage									I	I
Commercial moving and freight terminals									II	I
Computer and electronic equipment and products									I	I
Food Products									I	I
Furniture and Fixtures									I	I
Junk or Salvage Yards										I

Laboratories for scientific research, testing and experimental development that can be performed with minimal adverse impact on, and pose no special hazard to, the environment and the community									I	I
<u>Marjuana Producer, Processor</u>									<u>I<sub>20</sub></u>	<u>I<sub>20</sub></u>
Mechanical, automotive, trucking, agricultural/forestry and contractors' or builders' equipment and supplies									I	I
Marine oriented commercial and industrial activities.									II <sub>10</sub>	II <sub>10</sub>
Micro Brewery*				II <sub>5,7</sub>			II	II	II	II
Printing and Publishing									I	I
Recycling centers						II	II		I	I
Sales of items manufactured on-site									II	II
Skating rink - indoor								II	III	III
Vehicle towing and storage services									II	II
Vocational Schools									I	I
Winery/brewery									I	I
Wood Products									I	I
	<b>RSF</b>	<b>RMF</b>	<b>OPN</b>	<b>CTC</b>	<b>CWK</b>	<b>CNH</b>	<b>CSR</b>	<b>CMR</b>	<b>ILM</b>	<b>IGM</b>
<b>RETAIL TRADE AND SERVICE</b>										
Automobile sales—new or used					I		I	I	II	
Bed and Breakfast*	II	II		II <sub>1</sub>	I	I	I	I		
Brew/Pub				I	I	I	I	I		
Cart vendors				I	II	II	II	I	I	II
	<b>RSF</b>	<b>RMF</b>	<b>OPN</b>	<b>CTC</b>	<b>CWK</b>	<b>CNH</b>	<b>CSR</b>	<b>CMR</b>	<b>ILM</b>	<b>IGM</b>
Cemeteries, Mausoleums and Columbaria	III	III								
Convenience stores including gasoline sales and/or a car wash facility					II	II	I			
Crematorium	III	III								
Entertainment (e.g., theaters, video game arcades, etc., except adult motion picture theaters and other uses as described in Chapter 17.30.040, Sexually Oriented Business (SOB) Overlay Zone) (O)				I <sub>7</sub>	I	II	I	I		
Farmer's Market				I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>		
Fitness Center/Sports Club				II	II	II	I	I	II	
Formula take-out food restaurant with drive-through					I		I	I		
Formula take-out food restaurant <b>without</b> drive-through				I <sub>7</sub>	I		I	I		
Hotels, Motels, Inns*				I <sub>7</sub>	I		I	I		
Home Occupation, Major* (G, H)	II	II								
Home Occupation, Minor* (F, H)	I	I								
Kennels* (V)					II		II	II	II	
Minor Vessel Repair Shop						I	I		I	I
Mixed Commercial/Residential		III		I <sub>4,7</sub>	I <sub>4</sub>	I <sub>4</sub>	I <sub>4</sub>	I <sub>4</sub>		
Mortuaries, Funeral Homes and Funeral Chapels	III	III		II <sub>5,7</sub>	II		II			
Personal services*				I <sub>5,7</sub>	I	I	I	I		
Pet Shop*				I	I	I	I	I		

Professional Offices		III		I <sub>7</sub>	I	I	I	I	II <sub>8</sub>	I <sub>8</sub>
Restaurants				I <sub>7</sub>	I		I	I	II <sub>11</sub>	II <sub>11</sub>
<u>Retail sales Marijuana</u>									<u>I<sub>20</sub></u>	<u>I<sub>20</sub></u>
Retail sales and services <b>with</b> drive-through businesses* (I)					I		I	I	II	
Retail sales and services <b>without</b> drive-through businesses				I <sub>7,12</sub>	I	I <sub>7</sub>	I	I		
Retail Sales & Services with screened outdoor storage				II <sub>5,7</sub>	II		II	II	I	I
Roadside Stands				I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>		
RV sales, storage and repair									I	I
Second Hand/Consignment Stores				I <sub>7,12</sub>	I	I <sub>7</sub>	I	I		
Sexually Oriented Business* (E)										
Small engine repair						I	I		I	
Taverns				I <sub>7</sub>	I		I	I		
Uses which service the automobile (e.g., gasoline service station, car wash, minor/major vehicle repair shops)					II	I <sub>13</sub>	I	I	I	
Veterinarian clinics* (V)						I <sub>7</sub>	II	II		
Caretaker Residence (K)									I	I
Temporary Uses (S)	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>	I <sub>17</sub>
Wholesale Sales with Limited Retail Sales							II	II	II	
	<b>RSF</b>	<b>RMF</b>	<b>OPN</b>	<b>CTC</b>	<b>CWK</b>	<b>CNH</b>	<b>CSR</b>	<b>CMR</b>	<b>ILM</b>	<b>IGM</b>
<b>TRANSPORTATION</b>										
Park and ride lots*					II	II	I	II		
Park and ride lots, Shared Use*	II	II							II	I
Parking as principal use				II	I		I	I	II	I
Transit Facilities				I <sub>14</sub>						
	<b>RSF</b>	<b>RMF</b>	<b>OPN</b>	<b>CTC</b>	<b>CWK</b>	<b>CNH</b>	<b>CSR</b>	<b>CMR</b>	<b>ILM</b>	<b>IGM</b>
<b>UTILITIES</b>										
Public and private utility buildings and structures (L)	II	II	II	II	II	II	II	II	II	II
Communication Antennas, Cat 1 (N)	I	I	I	I	I	I	I	I	I	I
Communication Antennas, Cat 2 (O)	II		II	I	I	I	I	I	I	I
Communication Antennas, Cat 3 (P)			II		II		II	II	I	I
Communication Towers and Monopoles (Q)			II <sub>19</sub>		II <sub>19</sub>		II <sub>19</sub>	II <sub>19</sub>	II <sub>19</sub>	II <sub>19</sub>
	<b>RSF</b>	<b>RMF</b>	<b>OPN</b>	<b>CTC</b>	<b>CWK</b>	<b>CNH</b>	<b>CSR</b>	<b>CMR</b>	<b>ILM</b>	<b>IGM</b>
<b>WHOLESALE TRADE-STORAGE</b>										
Self-service storage facilities; provided, that no outside storage is visible from adjoining properties and public rights-of-way						III			I	
Warehousing (wholesale, bulk retail and trade)								III		

- I = Type I Permitted Use  
 II = Type II Administrative Use  
 III = Type III Conditional Use  
 \* = Defined Term

Letters and numbers refer to footnotes and regulatory notes within sections 17.15.030 and 17.15.040.

**Table 17.15.030 Footnotes**

The following numbers correspond to the numbers identified at the intersection of land use and use district lines in Table 17.15.

1. Only existing residential uses are permitted. Standards applicable to the RSF-5 zoning district shall apply to such single-family dwellings.
2. Only existing duplex dwelling units are permitted.
3. Only one duplex unit allowed per legal parcel.
4. Commercial/residential mixed use developments; provided, that the residential units are located above the ground floor.
5. Not permitted on the ground floor on Pacific Avenue South between Oak and Maple Street.
6. Social and fraternal clubs and lodges the principal activity of which is a service customarily carried on as a business is not permitted.
7. Building footprints not exceeding five thousand square feet are permitted; provided, that facilities shall screen all outdoor storage except for outdoor storage for agricultural produce sales, or landscaping retail sales. Buildings of a footprint greater than five thousand square feet, but less than ten thousand square feet may be allowed through administrative review.
8. Use is limited to a shared-use in the same structure as a permitted use.
9. Such goods or products include:
  - a. Mechanical, automotive, marine, trucking, agricultural/forestry and contractors' or builders' equipment and supplies
  - b. Winery/brewery
  - c. Printing and publishing
  - d. Wood products
  - e. Furniture and fixtures
  - f. Computer and electronic equipment and products
  - g. Food products
10. Water dependent uses shall be confined to the designated Shoreline areas.
11. Food service is allowed as an administrative use for the convenience of employees and clearly subordinate to the primary use of the property. In reviewing the administrative use application for a food service use, the following standards shall apply:
  - a. The use is limited in size so that it functions as a service intended for the convenience of employees;
  - b. The use is located in the interior of the site and is fully screened from public streets;
  - c. No additional parking shall be allowed;
  - d. No additional signage is authorized;
12. In the Downtown Design Overlay District (DDO), retail use up to five-thousand-square-foot building footprint is permitted and between five-thousand-square-foot and fifteen-thousand-square-foot building footprint per building may be permitted through administrative review.
13. Use is restricted to minor auto repair services (lubrication and oil change, tune up). Any vehicles remaining on site for more than seventy-two hours shall be screened in accordance with outdoor storage development standards.
14. All public transportation stations shall be located at the city of Kelso multi-modal transportation facility.
15. Limited to no more than one sale for each quarter of the year and no sales event shall last more than two consecutive days.
16. Allowed in the RSF-15 zone only.
17. Requires a Temporary Use permit.
18. Active recreation facilities shall only be considered for location in designated city parks as listed in the adopted Park Plan.
19. Height up to a maximum 75', depending on coverage objectives.
20. All such uses are further limited and regulated as provided in Chapter 17.45.

### **17.15.040 Regulatory Notes**

The following regulatory notes apply to the corresponding uses listed in Table 17.15:

- A. Single-family dwellings shall be constructed consistent with the following standards:
  1. Only one dwelling unit allowed per legal parcel.
  2. Shall have a width of not less than 14 feet at the narrowest point of the first story (excluding architecturally designed entrance ways);
  3. Trailers, recreational vehicles or tents may not be used for human habitation or dwelling purposes
  4. Attached garages shall be placed in the rear of the lot if at all possible.
  
- B. Mobile Home Parks and Subdivisions are subject to following standards.
  1. The minimum site requirements for expansion of existing and proposed mobile home subdivisions are as follows:
    - a. Minimum zoning area: Three acres;
    - b. Density: As determined by the underlying zoning density requirement;
  2. No building or structure in a mobile home park or subdivision shall exceed the building height restrictions set forth for single-family residential dwelling units.
  3. Every mobile home park and subdivision locating within the city shall be connected to city sanitary sewers. This standard applies to any expansion of existing parks or subdivisions and to all proposed mobile home parks and subdivisions.
  4. Every mobile home park and subdivision, and/or expansion of the same, locating within the city shall be connected to the city water supply system.
  5. Every mobile home park and subdivision, and/or expansion of the same, locating within the city shall supply the necessary public power utilities to each and every unit proposed therein. Such utilities shall be placed underground except in those situations where this could be proven to be dangerous to humans and animals.
  6. All mobile home parks and subdivisions, and/or expansion of the same, shall submit, along with accompanying site development plans, proof of compliance with provisions for flood hazard protection as set forth in KMC 18.12.210 through 18.12.310.
  7. Not less than ten percent of the total gross buildable area of the park or subdivision shall be designed and maintained as a recreational area for the occupants of the park or subdivision. The location of the recreation area will be in a safe and secure area of the park or subdivision and separated from passing automobile traffic by a cyclone fence not less than four feet in height as measured from ground level.
  8. Setbacks in all mobile home parks and subdivisions shall be as follows:
    - a. Mobile home parks:
      - i. Front setback: Ten feet from front property line;
      - ii. Side setback: Five feet, including carports, garages and accessory buildings;
      - iii. Rear setback: Ten feet from rear property line.
    - b. Mobile home subdivisions:
      - i. Front setback: Twenty-five feet from front property line or fifty-five feet from street centerline, whichever is greater;
      - ii. Side setback: Five feet from each side property line;
      - iii. Rear setback: Fifteen feet from rear property line.
    - c. All setbacks shall be measured from the nearest corner or wall to the appropriate property or site line.
  9. Permanent structures located within any mobile home space shall be used for storage only, have a maximum area of thirty-five square feet, and shall be located not less than six feet from any mobile home.
  10. All mobile home park and subdivision streets and rights-of-way shall conform to the standards set forth in Title 16 of this code.

11. Access driveways shall be provided to each mobile home space and shall have a minimum width established by the city engineer;
    - a. No access driveway or curb cut providing ingress or egress to a mobile home park or subdivision shall be located closer than fifty feet from any public street intersection, as measured from the street right-of-way lines at the nearest side of the intersection;
    - b. Access drives and walkways within the park or subdivision shall be hard surfaced according to the specifications established by the city engineer.
- C. Halfway houses, Group homes and Transitional housing are subject to the following standards
1. One off-street parking space is required for each on-shift, nonresidential employee in addition to the residential parking requirements. Residential driveways are acceptable access ways.
  2. Access streets, parking and/or loading areas shall be sufficient to safely accommodate the number of estimated vehicle trips generated by the use.
  3. No structured area for active play or play structures may be located in the front yard. In the event of double frontage or similar situations, the director or designee shall determine which yard would have the least visual impact to the neighborhood.
  4. The site shall conform to the lot size, building size, setback and lot coverage requirements of the zoning district.
  5. Provide an off-street drop-off/pick-up area;
  6. Comply with all business licensing requirements;
  7. No structural or decorative alteration is permitted in a residential zone if that alteration changes the residential character of an existing residential structure or is incompatible with surrounding residences;
  8. An on-site vehicle turnaround, or separate entrance and exit points, and passenger loading area must be developed for review and approval by the city engineer;
  9. The site must be landscaped in a manner compatible with adjacent residences in residential zone according to a plan approved by the community development department.
- D. Day Care Centers (all types) shall meet the following standards:
1. Within Residential districts a sight-obscuring fence of at least four feet in height as approved by the review authority shall be provided to separate any outdoor play area from adjoining lots.
  2. Structure(s) shall meet building, sanitation, health, traffic safety and fire code requirements.
  3. A minimum of one off-street parking space shall be provided for each on-shift employee plus one space per twelve persons served.
  4. An on-site vehicle turnaround, or separate entrance and exit points, and passenger loading area must be provided. The city shall specifically consider the location and appearance of the proposed turnaround or access in determining compatibility with surrounding uses.
  5. A day care center shall not be located within three hundred feet of another day care center, except for any day care center that is an accessory use in a community service facility, as described in subsection g of this section.
  6. No day care center shall be located in a private family residence unless the portion of the residence where the children have access is used exclusively for the children during the hours the center is in operation, or is separate from the usual living quarters of the family.
  7. A day care center, if sited on the premises of an operating community service facility, such as a private or public school, place of worship, community center or library, and is associated with that activity, shall be considered accessory to the principal use of the property concerned.
- E. Sexually Oriented Businesses are only permitted in accordance with the provisions of KMC 17.30.
- F. Minor home occupations shall meet all of the following criteria:

1. Minor home occupations are limited to those of a service character, but may include limited retail sales directly related to the home occupation.
2. Minor home occupations shall be conducted within the dwelling unit and/or attached garage by members of the family residing in the dwelling only.
3. There shall be no outside storage of materials, supplies, or display of goods or equipment of any kind related to the minor home occupation, except for one commercial vehicle as it pertains to the home occupation.
4. Any need for any customer parking created by the home occupation shall be provided off street, in a location other than the required front yard setback.
5. No on street parking of commercial vehicles is allowed and adequate driveway parking space or abutting on street parking shall be required to accommodate peak traffic expectancy.
6. With the exception of existing driveways, no parking shall be allowed in setbacks or buffers.
7. Hours of operation shall occur between 7:00 a.m. and 10:00 p.m.
8. There shall be no exterior evidence of the home occupation other than a permitted sign, that would cause the premises to differ from its residential character (e.g., outward physical appearance; lighting; the generation/emission of noise, fumes, or vibrations as determined by the administrative official using normal senses and from any lot line; create visible or audible interference in radio or television reception or cause fluctuations in line voltage outside the home occupation; or on average increase vehicular traffic by more than two additional vehicles at any given time).

G. Major home occupations shall meet the following requirements:

1. Major home occupations may include services, small-scale retail sales of products, mail order businesses and storage of materials associated therewith.
2. Major home occupations shall be conducted by members of a family residing in the dwelling, except the administrative official may authorize the family to employ a limited number of non-resident individuals to assist with the home occupation on case by case basis.
3. A major home occupation may be conducted within the dwelling unit, attached garage, or a detached garage only. The outward appearance shall be secondary and subordinate to the primary use of the property and the purpose of the zoning district. There shall be no exterior evidence of the home occupation other than a permitted sign, that would cause the premises to differ from its residential character: (e.g., lighting; the generation/emission of noise, fumes, or vibrations as determined by the administrative official using normal senses and from any lot line; create visible or audible interference in radio or television reception or cause fluctuations in line voltage outside the home occupation; or on average increase vehicular traffic by more than two additional vehicles at any given time).
4. There shall be no outside storage of materials, supplies, or display of goods or equipment of any kind related to the home occupation, except one commercial vehicle as it pertains to the home occupation and employee parking.
5. Any need for customer or employee parking created by the home occupation shall be provided off street, in a location other than the required front yard setback.
6. No on street parking of commercial vehicles is allowed and adequate driveway parking space or abutting on street parking shall be required to accommodate peak traffic expectancy.
7. With the exception of existing driveways, no parking shall be allowed in setbacks or buffers.
8. Hours of operation shall occur between 7:00 a.m. and 10:00 p.m.

H. Uses not permitted as home occupations. The following uses, by the nature of their operation or investment, have a pronounced tendency, once started, to increase beyond the limits permitted for home occupations, interfere with or impair the use and value of adjoining properties, or violate the restriction of no exterior evidence (e.g., outward physical appearance; outside storage of materials,

supplies or vehicles; generate noise, dust, fumes, odors, electrical interference, vibrations, excessive traffic, etc.). Therefore, the uses listed below shall not be permitted as home occupations:

1. Beauty salons and barber shops with more than one chair;
2. Gift, craft, second hand stores;
3. Kennel;
4. Large item repair, including stoves, refrigerators, washers and dryers, etc.;
5. Towing services;
6. Trucking businesses or storage, except for the parking or storage of one commercial vehicle used solely by the owner/operator residing on the premises;
7. Veterinary clinic.
8. Cabinet making, woodworking or carpentry shops;
9. Antique shops;
10. Health salons, spas, gymnasiums, martial arts schools, dance studios, aerobic exercise studios;
11. Machine and sheet metal shops;
12. Motor vehicle, trailer or boat maintenance, repair, detailing, paint, and body shops;
13. Taxidermist;
14. Upholstering
15. Taxi Services

I. Drive-in business require a minimum number of off-street queuing spaces to minimize traffic hazards, pedestrian-vehicle conflicts, and the disruption of the commercial area street front.

1. Drive-in businesses shall provide queuing spaces according to the following requirements:
  - a. Banks with drive-in facilities shall provide a minimum of five queuing spaces per lane when the number of lanes does not exceed two.
  - b. Banks with three or more drive-in lanes shall provide a minimum of three queuing spaces per lane.
  - c. Car washes shall provide a minimum of six queuing spaces.
2. If the drive-in bank or car wash is located along either a principal arterial, a minor arterial or along a street with only one lane for moving traffic in each direction, the city engineer shall determine whether additional queuing spaces are necessary or whether access should be restricted.
3. The city engineer shall establish the minimum number of queuing spaces needed for similar uses that are not listed above, using the quantities of subsection G1 as a guide

J. Public utility buildings, sewage pumping stations, electrical distribution substations and similar developments necessary for the operation of utilities shall comply with the following requirements:

1. If the installation is housed in a building, the building shall conform architecturally with surrounding buildings or the type of buildings that are likely to develop in the use district;
2. Any un-housed installation on the ground, or housed installation that does not conform to the architectural requirements of subsection J(1) of this section, shall be surrounded by sight-obscuring plantings;
3. An un-housed installation of a dangerous nature, such as an electrical distribution substation, shall be enclosed by a cyclone security fence at least six feet in height;
4. All buildings, installations and fences shall observe the yard requirements for buildings in the district in which they are located, except that in residential use districts, the side yards shall each be not less than twenty-five feet in width.

K. Caretakers' and/or owners, operators residences are limited to one per parcel and are only permitted where there is a principal use on the subject parcel.

- L. Accessory buildings and structures shall not occupy any lot independent of the main building or structure. No permits will be issued for detached accessory buildings or structures unless a permit is also issued at the same time for the main building on the lot. No manufactured home, mobile home, trailer, bus, shipping container or railroad car may be stored, or converted to or used as a storage building, accessory building or for any other nonresidential use. No detached accessory building or structure may occupy the front of any lot.
- M. Social Card Rooms: The location of any licensed gambling activity authorized by RCW 9.46.0282 as it now exists or is hereafter amended is prohibited within three thousand five hundred feet of the location of any other such gambling activity. Likewise, no such gambling activity shall be located on the same arterial street as any other such gambling activity. In addition to the foregoing, any establishment where such gambling activity is to be engaged in shall be subject to the issuance of a conditional use permit in accordance with established procedures.
- N. Wireless Communication Facility Category 1 is subject to the following standards:
1. The use shall be located on buildings or other structures. The Facility Category 1 may be located on buildings and structures that contain mixed uses.
  2. Antennas equal to or less than four feet in height and with an area of not more than five hundred eighty square inches in the aggregate (e.g., fourteen-inch diameter parabola or 2.6-foot by 1.5-foot panel) are exempt from the height limitation of the zone in which they are located. (For example, in some zones the maximum height of a building is thirty-five feet. A Facility I can go up to thirty-nine feet and still be within the height limit.) Placement of a Facility Category 1 antenna or related components on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
  3. The shelter or cabinet used to house radio electronics equipment must be concealed from view and/or camouflaged. This can be accomplished through landscaping or other screening and through the use of compatible building materials.
  4. In single-family residential areas, a Facility I shall be separated from any other Facility I by a distance equal to or greater than five hundred linear feet.
  5. The Facility Category 1 antenna and components shall be the same color as the existing building, pole or support structure on which it is to be located.
  6. A building permit shall be required to construct a Facility I.
  7. Roof-mounted facilities must be set back a minimum of ten feet from the edge of the roof.
- O. Wireless Communication Facility Category 2 is subject to the following standards:
1. The Facility Category 2 antenna may be located on buildings and other structures.
  2. The shelter or cabinet used to house radio electronics equipment must be concealed from view and/or camouflaged. This can be accomplished through landscaping, fencing or other architectural screening by using compatible building materials.
  3. A Facility Category 2 antenna shall comply with the height limitation specified for all zones, except omni-directional antennas may exceed the height limitation by twelve feet. The permitted antenna height includes the wireless communication support structure. Placement of a Facility II antenna or related components on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
  4. The Facility Category 2 antenna and components shall be the same color as the existing building, pole or support structure on which it is to be located.
  5. A building permit shall be required to construct a Facility 2.
  6. Roof-mounted facilities must be set back a minimum of ten feet from the edge of the roof.
  7. Category 2 facilities may be allowed in Residential zones through Type II review on buildings on lots used for non-residential purposes.

- P. Wireless Communication Facility Category 3 is subject to the following standards:
1. The shelter or cabinet used to house radio electronics equipment must be concealed and/or camouflaged.
  2. Facility Category 3 shall comply with the height limitation specified for all zones, except as follows: Omni-directional antennas may exceed the height limitation by fifteen feet. Placement of a Facility 3 antenna or related components on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
  3. The Facility Category 3 antenna and components shall be the same color as the existing building, pole or support structure on which it is to be located.
  4. A building permit shall be required to construct a Facility Category 3.
  5. Roof-mounted facilities must be set back a minimum of ten feet from the edge of the roof.
- Q. Wireless Communication Facility Monopoles and Lattice Towers shall comply with the following performance standards:
1. The maximum height of a monopole or lattice tower is sixty feet for one carrier or one hundred twenty feet if two or more carriers are located on the monopole or lattice tower. A permitted co-location monopole or lattice tower that does not have two or more carriers located on it for a period of one year or more shall be modified to conform to the single carrier height of sixty feet.
  2. The lot on which the monopole or lattice tower is to be constructed must be legally conforming.
  3. The facility must be screened in accordance with KMC 17.40
  4. Monopoles and lattice towers located in the light manufacturing (ILM) zone must be set back a minimum of one hundred feet from any residentially zoned property. The minimum setback along I-5 and/or SR-432 is one hundred feet.
  5. Antennas that extend above the wireless communications support structure shall not be calculated as part of the height of a monopole or lattice tower.
  6. Co-location on an existing support structure is to be permitted. A Facility 3 is the largest wireless communication facility allowed on a monopole or lattice tower.
  7. The shelter or cabinet used to house radio electronics equipment and the associated cabling connecting the equipment shelter or cabinet to the monopole or lattice tower must be concealed and/or camouflaged through landscaping, fencing, or other screening using compatible building materials and colors.
  8. A building permit shall be required to construct a monopole or lattice tower. (Ord. 3533 § 9, 2004)
  9. Antennas may not extend more than fifteen feet above their supporting structure, monopole, lattice tower, building or other structure. Site location and development shall preserve the pre-existing character of the site as much as possible. Wireless communication towers and accessory equipment (equipment shelters and cabinets) shall be integrated through location, design, and color to blend in with the existing site characteristics to the extent practical. Existing vegetation around the facility shall be preserved or improved upon to provide vegetative screening. In the RSF-E zone, a minimum of two-thirds of the height of the monopole or lattice tower must be screened by existing vegetation when possible. Additional screening may be required by the community development director to mitigate visual impacts to adjacent properties or public rights-of-way as determined by site-specific conditions.
  10. No equipment shall be operated above forty-five dba as measured from the nearest property line on which the attached wireless communication facility is located.
- R. Livestock are allowed within the RSF-15 zone subject to the following densities and standards:
1. Horses: One per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of two horses per lot; or

2. Cows: One per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of two cows per lot; or
3. Llamas: Two per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of four llamas per lot; or
4. Sheep: Four per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of eight sheep per lot; or
5. Goats: Four per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of eight goats per lot; or
6. Chickens: One rooster/six hens per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of one rooster/six hens per lot; or
7. Pigeons: Twelve pigeons per twenty-one thousand seven hundred eighty square feet of lot area to a maximum of twenty-four pigeons per lot;
8. There must be a minimum distance of not less than forty feet between a building for human habitation and a structure housing livestock or poultry;
9. Livestock and poultry shall not be located any closer than one hundred feet from any residential building on an adjacent lot and no less than 50 feet from the property line of an adjacent vacant parcel capable of development. Confined feeding areas or structures to house livestock or poultry shall not be located closer than two hundred feet to any pre-existing residence on adjacent properties;

S Temporary Uses.

1. There are two (2) types of temporary uses, seasonal and emergencies:
  - a. Seasonal uses are directed towards a special event or holiday such as:
    - i. Carnivals
    - ii. Christmas Tree Sales
    - iii. Farmer's Markets
    - iv. Festival or Street Fairs
    - v. Parking Lot/Outdoor Sales Events
    - vi. Seasonal sale of agricultural products grown off-premise
    - vii. A temporary sales office or mobile home in conjunction with a construction project;and
    - viii. Temporary fund-raising and other civic activities in commercial zoning districts
  - b. Emergency uses are occasioned by an unforeseen event, such as fire, windstorm or flood including:
    - i. A mobile home, recreational vehicle or other temporary structure for a residential purpose in a residential zone, or;
    - ii. A mobile office or other temporary structure for a business purpose in a commercial or industrial zone;
2. Nothing within this section is intended to circumvent the strict application of those permitted uses within the underlying zoning districts. Time limits shall be strictly enforced.
3. All temporary uses addressed in this section shall be located on private property and not in the public rights-of-way.
4. Approval Criteria.
  - a. Seasonal and special events. The administrative official shall approve, approve with conditions or deny a request for approval of a special event subject to compliance with all of the following criteria:
    - i. The event occurs for no longer than 45 days in a calendar year on the approved event site;
    - ii. The event is permitted in the underlying zoning district or within the approved event site;
    - iii. The applicant has proof of the property owner's permission to place the event on his/her property;
    - iv. There will be no parking utilized by the customers and employees of the temporary event which is needed by the property owner to meet his/her minimum parking requirements;

- v. The event does not interfere with adequate vision clearance, and shall not obstruct pedestrian access on public rights-of-way;
  - vi. Conditions as may be required by the building official and/or Fire Marshal to determine compliance with minimum building, fire and life safety codes; and
  - vii. Adequate provisions for trash disposal and sanitary facilities shall be provided.
- b. Unforeseen emergencies. The administrative official shall approve, approve with conditions or deny a request of an unforeseen/emergency situation(s) subject to compliance with of all of the following criteria:
- i. The need for the use is the direct result of a casualty loss such as fire, windstorm, flood or other severe damage by the elements of a pre-existing structure or facility previously occupied by the applicant on the premises for which the permit is sought;
  - ii. There exists adequate and safe vehicular ingress and egress when combined with the other uses of the property;
  - iii. There exists adequate parking for the temporary use;
  - iv. The use will pose no hazard to pedestrians in the area of the use;
  - v. The use will not create adverse off-site impacts including noise, odors, vibrations, glare or lights which will affect adjoining uses;
  - vi. The use can be adequately served by sewer or septic system and water, if applicable; and
  - vii. The length of time that the temporary building will be used is the maximum needed to address the hardship but no longer than one year. With the exception that a temporary use approval may be renewed once by the Administrative Official for a period not to exceed one year.
4. The regulations in this section shall not apply to:
- a. Garage/estate sales conducted on private residential properties subject to the following criteria:
    - i. Sales last no longer than three (3) consecutive days; and
    - ii. Sales are held no more than four (4) times in a calendar year; and
    - iii. Sales are conducted on the owner's property. Multiple-family sales are permitted if they are held on the property of one of the participants.
    - iv. No garage sale signage is allowed within the public right-of-way. Signs on private property must have the written permission of the property owner.
  - b. On-site construction office during the period of construction, but no longer than six months. A single six month extension may be granted upon written request, provided the applicant shows good cause for granting the extension. The approved extension shall be the minimum necessary to achieve completion of the project.
- T. Not more than one accessory apartment, as defined, may be allowed on a parcel. The following criteria shall apply:
- 1. The accessory apartment shall be located within an owner-occupied, site-built single-family dwelling or its accessory garage within 50 feet of the primary residence.
  - 2. The accessory apartment shall not exceed 800 square feet and shall be reviewed to ensure compatibility with surrounding uses.
  - 3. One additional paved, off-street parking space is required.
  - 4. The accessory apartment shall share access with the primary dwelling.
  - 5. Adequate utility service shall be confirmed.
  - 6. A restrictive covenant shall be recorded on the property to preclude the separate sale or division of the accessory apartment from the single-family dwelling.
- U. The following criteria shall govern the review and approval of a temporary manufactured home, or park model (defined in 17.08.140), for occupancy by an aged, infirmed or incapacitated relative or by

one or more relatives (by blood or marriage) engaged in care giving for the aged, infirmed or incapacitated person:

1. Such temporary home shall only be considered on residential properties of two acres or greater.
  2. Such home shall be for temporary placement for a period of one year, subject to review prior to renewal by the Administrative Official;
  3. The aged, infirmed or incapacitated person must be related by blood or marriage to the caregiver;
  4. The property must be owned by either the caregiver or the aged, infirmed or incapacitated relative;
  5. Such temporary permit shall be issued only for the purpose of providing one temporary housing unit on the same lot as the existing residence, in reasonably close proximity to each other, with the intent of sharing utility systems and to minimize negative effects on adjacent uses;
  6. If more than one residence already exists on the property, the Reviewing Official shall not issue a permit for a temporary unit under this section;
  7. Seventy-five (75) years of age is considered aged for purposes of this section. Individuals less than 75 years of age shall be required to furnish a written statement by a licensed medical doctor or osteopath, indicating that the patient is not physically or mentally capable of independent living and is dependent on a relative being close by for personal physical care assistance;
  8. The caregiver shall be physically capable of providing the needed personal physical care;
  9. Financial hardships, taking care of the property and other convenience arrangements not relating to age or infirmity shall not be considered grounds for which a permit can be issued;
  10. Sewage disposal shall be by connection to the existing sanitary sewer outlet located on the property. No additional side-sewer connections to the collector line shall be permitted, unless required otherwise by the City Engineer.
  11. The temporary unit shall conform to setback requirements of Kelso Municipal Code, and shall not be permitted within the 100-year floodplain or other critical area;
  12. Temporary manufactured homes shall meet the following siting requirements:
    - a. Have permanent steps or inclined planes affixed to all entrances;
    - b. Maintain a minimum eighteen inch crawl space under the entire unit;
    - c. Have permanent skirting or sidewalls installed to enclose all areas between the lower edge of the outside walls and the ground;
    - d. Be placed and anchored per the manufacturer's installation instructions or per the design of a professional engineer or architect licensed in Washington {WAC 296-150M-610 (1) (C)};
  13. If the placement of the temporary home would violate the provisions of any deed restriction or subdivision covenant for the property, the application shall be returned or denied without prejudice until the covenant issue is resolved;
  14. No additional road approaches, access roads or accessory structures to serve the temporary residence shall be permitted, unless determined to be acceptable by the City Engineer, as appropriate. The temporary unit shall be located within one hundred feet of the existing residence on the property unless this would conflict with subsection (11) above, or if other bonafide physical site constraints would prohibit compliance;
  15. A covenant, to which the City is a party, shall be recorded with the County Auditor stating that the temporary dwelling and any related improvements do not vest the property with any right to subdivide or convert the temporary dwelling to a permanent dwelling, except in conformance with the Kelso Municipal Code;
  16. The temporary unit shall be removed within 90 days if the temporary unit is no longer occupied by the person(s) for which the permit was issued, or the permit has expired and was not renewed.
- V. All kennels (as described in Section 17.08.120) and veterinarian clinics (as described in Section 17.08.230) shall be provided with indoor sleeping areas, in order to minimize nighttime noise impacts to neighboring properties.

**17.30.040 Sexually oriented business and marijuana retail business overlay**

A. The purpose of the sexually oriented business and marijuana retail business overlay is to regulate the location, permitting and operation of sexually oriented businesses and marijuana retail business in order to promote the health, safety and welfare of all city of Kelso citizens and in order to preserve and protect the quality of, and the quality of life in and around, all city of Kelso neighborhoods through effective land use planning and reasonable regulation in light of the findings adopted by the city council and to regulate the display of adult materials by other commercial establishments.

B. There is hereby created a sexually oriented business and marijuana retail business overlay zone within such geographic areas of the city as is identified on the official city zoning map of the city. Sexually oriented businesses and marijuana retail business may only locate within the sexually oriented business and marijuana retail business overlay zone.

**C. Sexually Oriented Business Restrictions.**

1. For the reasons stated in the recitals in the ordinance codified in this chapter, a person shall not use any property or premises for a sexually oriented business within the city except and only subject to all regulations, conditions, and within such geographical locations as are enumerated in the ordinance codified in this chapter.

2. No sexually oriented business shall locate within a distance of six hundred feet of an existing youth-oriented business or activity. Such distance shall be measured in a straight line from the nearest property line of the existing youth-oriented business to the nearest property line of the site upon which the proposed sexually oriented business proposes to locate.

**D. Marijuana Retail Business Restrictions.**

In addition to the zoning restrictions set forth in this Chapter, any marijuana retail business or land use shall further comply with the provisions of KMC 17.45.

**E. Regulated Uses.**

The following sexually oriented businesses and marijuana retail businesses as defined in this Title are subject to the provisions and regulations contained in this chapter:

1. Adult arcade;
2. Adult bookstore, adult novelty store or adult video store;
3. Adult cabaret;
4. Adult motion picture theater;

- 5. Adult theater;
- 6. Nude/semi-nude model studio;
- 7. Adult motels/hotels.

8. Marijuana Retailer

**F.** Adult Bookstores Not Incorporating Arcade Uses—Requirements. Adult bookstores, adult novelty stores or adult video stores not including or incorporating into the business conduct those activities described in the definition of adult arcade may locate or continue to operate within commercial zones of the city, as well as the sexually oriented business overlay zone; provided, however, such businesses locating within a commercial zone shall be subject to the following additional requirements: No building or structure used for an adult bookstore, adult novelty store or adult video store as defined in this chapter shall locate closer than one thousand two hundred feet from any other building or structure used for such purpose, nor shall such a business locate within six hundred feet of an existing church or school building, as measured in all compass directions from the exterior wall of the existing building to the closest property line of the subject building.

**G.** Building Facades. All sexually oriented business building facades, exteriors, and exits must be indistinguishable from surrounding buildings; illustrations depicting partially or totally nude males and/or females shall not be posted or painted on any exterior wall of a building used for a sexually oriented business, or on any door or apparatus attached to such building.

**H.** Signs for sexually oriented businesses shall be permitted as allowed in accordance with Chapter [17.62](#).

**I.** Parking and Lighting Regulations for sexually oriented businesses. On-site parking shall be required and regulated in accordance with Section [17.40.060](#), and in addition shall meet the following requirements:

1. All on-site parking areas and premises entries of sexually oriented businesses shall be illuminated from dusk until one hour past closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot-candle of light on the parking surface and/or walkways. An on-premises exterior lighting plan shall be presented to the city building department for approval prior to the operation of any sexually oriented business.

2. All parking must be visible from the fronting street. Access to the exterior rear of the building shall be denied to any persons other than employees and public officials during the performance of their respective duties and tasks by means of a fence, wall or other device as approved by the city building department.

J. Number of Permitted Uses per Structure. There shall be no more than one sexually oriented business operating in the same building, structure or portion thereof. In addition, there shall be no other nonsexually oriented business operating in the same building, structure or portion thereof in which a sexually oriented business is currently operating.

K. Violation—Penalty. Any person violating any provision(s) of this chapter shall be guilty of a misdemeanor. Any person convicted of such a violation shall be punished by a fine of not more than one thousand dollars or a jail term of not more than one year, or both. Each such person is guilty of a separate misdemeanor for each and every day which any violation of this chapter is committed, continued or permitted by any such person and said person shall be punished accordingly.

L. Public Nuisance—Injunctions. Any sexually oriented businesses or marijuana retail business in violation of this chapter shall be deemed a public nuisance, which, in addition to all other remedies, may be abated by injunctive relief.

**Chapter 17.45**  
**MARIJUANA RELATED LAND USES**

Sections:

- 17.45.010 Purpose.
- 17.45.020 Location Criteria for Marijuana Land Uses.
- 17.45.030 Business License.
- 17.45.040 Recreational Marijuana Land Uses Allowed in Identified Zones.
- 17.45.050 Signs and Advertising.
- 17.45.060 Security Requirements.
- 17.45.070 Report of Disturbances and Unlawful Activity.
- 17.45.080 No Non-conforming Uses
- 17.45.090 Enforcement

**17.45.010 Purpose.**

- A. The purpose of this Ordinance is to establish where recreational marijuana producers, processors and retail outlets may locate in the City, and to describe the restrictions upon such uses.
  
- B. The production, processing and retailing of marijuana remains illegal under federal law. The purposes of this Chapter is solely to acknowledge the enactment by Washington voters of Initiative 502 and Initiative 692 and a state licensing procedure; and to permit, but only to the extent required by state law, marijuana producers, processors, retailers, to operate in designated zones of the City. No part of this Ordinance is intended to or shall be deemed to conflict with federal law, in accordance with U.S. Department of Justice enforcement guidelines, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana in any manner not authorized by Chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Ordinance be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

**17.45.020 Location Criteria for Recreational Marijuana Land Uses.**

- A. No recreational marijuana producer, processor or retail outlet may located within one thousand (1,000) feet of any of the following:
  - 1. Elementary or secondary school;
  - 2. Playground;
  - 3. Recreation 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).

The distances described above shall be computed by direct measurement as follows: 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 above listed facility or facilities.

- B. No recreational marijuana producer, processor or retail outlet may locate within two hundred and fifty (250) feet of any of the following;
  1. Any residential zone.
  2. Any mobile home or RV park.
- C. The distances described in sections A and B above shall be computed by direct measurement as follows: 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 above listed facility or facilities.
- D. No recreational marijuana producer, processor or retail outlet may locate within any residential unit in the City and such uses are expressly prohibited in all zones except those specifically designated in 17.45.040.

**17.45.030 Business License.**

- A. A valid, current license is required from the Washington State Liquor Control Board for operation of any recreational marijuana, producer, processor or retail outlet.
- B. A business license is required from the City for operation of any recreational marijuana producer, processor or retail outlet.

**17.45.040 Recreational Marijuana Land Uses Allowed in Identified Zones.**

- A. Recreational marijuana production is a permitted use for those properties in the ILM (Industrial Light Manufacturing) and the IGM (Industrial General Manufacturing) zoning districts, subject to compliance with this chapter and all other applicable requirements of the Kelso Municipal Code.
- B. Recreational marijuana processing is a permitted use in the ILM (Industrial Light Manufacturing) and the IGM (Industrial General Manufacturing) zoning districts, subject to compliance with this chapter and all other applicable requirements of the Kelso Municipal Code.
- C. Recreational marijuana retail outlets or retail uses are a permitted use in the Sexually Oriented Business and Marijuana Retail Business Overlay zoning district, subject to compliance with this chapter, Chapter 17.30.040, and all other applicable requirements of the Kelso Municipal Code.

- D. All marijuana grow operations shall be located indoors. Outdoor grow operations are prohibited.

**17.45.050 Signs and Advertising.**

- A. All signage and advertising for a recreational marijuana processor, producer or retail outlet shall comply with the applicable provisions of the Code, the Sign Code, Zoning Code and WAC 314-55-155 (and all applicable rules for city, state, and federal regulations).

**17.45.060 Security Requirements.** Security measures at all licensed premises shall comply with the requirements of WAC 314-55-083 (and all applicable rules for city, state and federal regulations).

**17.45.070 Report of Disturbances and Unlawful Activity.**

- A. All licensees and any agent, manager or employee thereof shall immediately report to the City Police Department any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed and permitted premises, including, but not limited to any unlawful resale of marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.
- B. Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches with each letter to be a minimum of one-half (1/2) inch in height, which shall read as follows:

**WARNING:**

The City of Kelso Police Department must be notified of all  
Disorderly acts, conduct or disturbances and  
All unlawful activities which occur on or within the premises  
Of this licensed establishment.

- B. It shall not be a defense to a prosecution of a civil infraction under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed.

**17.45.080. No Non-conforming Uses.**

No use that constitutes or purports to be a marijuana producer, marijuana processor, marijuana retailer, or collective garden, as those terms are defined in this Chapter, that was engaged in that activity prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of the Kelso Municipal Code, and that use shall not be entitled to claim legal non-conforming status.

**17.45.090. Enforcement.**

- A. Violations of the Section including the Sign Code or Zoning Code shall result in a Class 1 Civil Infraction as defined by RCW 7.80.120, with each day of violation being a separate infraction. The City may enforce this section pursuant to RCW 7.80. For violations of WAC 314-55-155 and 314-55-525, the City may report the violation to the State Liquor Control Board.
  
- B. In addition to any other applicable remedy and/or penalty, any violation of this section is declared to be a public nuisance per se, and may be abated by the city under the applicable provisions of the Kelso Municipal Code or state law
  
- C. Nothing in this Chapter shall be construed as a limitation on the City's authority to abate any violation which may exist from the cultivation of marijuana from any location, including from within a fully enclosed and secure building.

**City of Kelso Planning Commission  
Findings of Fact and Recommendation  
February 11, 2014**

IN THE MATTER OF CONSIDERING	)	FINDINGS OF FACT AND
TEXT AMENDMENTS TO THE ZONING	)	RECOMMENDATION
ORDINANCE	)	
	)	ZON 13-002

City of Kelso submitted an application for a Zoning Text Amendment to update the Kelso Municipal Code by adding a new chapter 17.45, as well as updates as follows; Chapter 17.45 Marijuana Related Land Uses; update Chapter 17.08, update Chapter 17.15 (land uses) update Chapter 17.30 (overlay districts);

Kelso Planning Commission held a duly advertised open record public hearing on February 11, 2014, to hear testimony on the proposed amendments: and

Kelso Planning Commission, having carefully considered the applicant's justification, the staff recommendation, and the written and/or oral testimony in its deliberations, moved to forward to the City Council proposed amendments for Zoning Text Amendment to the City of Kelso's Municipal Code, and;

**NOW, THEREFORE**, be it resolved that the Kelso Planning Commission hereby makes and enters the following Reasons for Action, Findings of Fact and Recommendations:

**I. REASONS FOR ACTION**

The purpose of the new chapter is to establish where recreational marijuana producers, processors and retail establishments may locate in the city, and to describe the restrictions upon such uses. It also prohibits recreational marijuana uses in residentially zoned areas or in structures used residentially.

**II. FINDINGS OF FACT**

-1-

November 6, 2012 the voters of the State of Washington approved Initiative 502 relating to the recreational use of marijuana, and providing a framework under which marijuana producers, processors and retailers can become licensed by the State of Washington;

-2-

Initiative 502 directed the Washington State Liquor Control Board "WSLCB" to develop rules and regulations to 1) Determine the number of producers, processors and retailers of marijuana by county; 2) Develop licensing and other regulatory measures; 3) Issue licenses to producers, processors, and retailers at locations which comply with the Initiative's distancing requirements prohibiting such uses within one thousand feet of schools, playgrounds, recreation facility/center, child care center, public park, public transit centers, libraries or game arcades that allow minors to enter; 4) prohibited in any residentially zoned

area or within any residentially used structure; and 5) Establish a process for the City to comment prior to the issuance of such licenses;

-3-

RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and impose business taxes on the production, processing or dispensing of marijuana or marijuana products;

-4-

Planning Commission conducted a study session in order to identify areas that can meet the WSLCB distancing requirements, identifying both the light and general industrial zones as those zoning districts meeting the distancing requirements; new and revised code language, siting criteria, etc., were reviewed thus requiring the following revisions: New Chapter 17.45 Marijuana Related Land Use; Update to Land Use Table 17.15; Update to definitions 17.08; Update to the Overlay zoning districts 17.30;

-5-

In reviewing the regulations as set forth by the WSLCB; it was determined that new uses would be added to the Industrial zoning districts, which will meet all requirements as set forth by the City and WSLCB.

-6-

Planning Commission proposes locating Recreational Marijuana producers and processors within both the ILM (Industrial Light Manufacturing) and IGM (Industrial General Manufacturing) zoning districts; Marijuana Retail Sales to be allowed in the Sexually Oriented Business Overlay Zone which is located in the ILM (Industrial Light Manufacturing) zoning district.

-7-

Kelso city staff prepared a SEPA Determination of Non-Significance (DNS) which was issued on January 15, 2014 under the authority provided within WAC 197-11-600.

-8-

On January 29, 2014 notice of the public hearing scheduled for February 11, 2014 was mailed to agencies and those commenting on the applications. Notice was published in the Longview Daily News.

-9-

The Planning Commission conducted the public hearing on the proposed text amendments on February 11, 2014. Minutes of the hearings were taken and are on file.

### III. RECOMMENDATION

By motion and vote and described Findings of Fact, the Planning Commission recommends locating recreational marijuana producers and processors within the ILM (Industrial Light Manufacturing) and IGM (Industrial General Manufacturing) zoning districts and marijuana retail sales in the Sexually Oriented Business overlay zone, located within the Industrial Light Manufacturing zoning district and that a new Chapter 17.45 be added further regulating such uses.

*Nancy Malone*

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Nancy Malone  
Planning Manager

Dated: February 11, 2014





## Kelso Planning Commission Meeting Minutes Tuesday, February 11, 2014 6:00pm – 7:57pm

**Commissioners Present:** Clark Hislop, Rick VonRock, Jared Wade, James Webb, Toby Tabor (arrived 6:04pm)

**Commissioners Absent:** Vacant Position No. 5, Dan Jones

**Staff Present:** Nancy Malone, Planning Manager; Stephanie Helem, Recording Secretary; Janean Parker, City Attorney; Steve Taylor, City Manager

**Call to Order:**

Chair Rick VonRock called the meeting to order at 6:00pm.

**Minutes:**

Commissioner VonRock. Under item 1(n) remove Rick VonRock's name from Option 2 and add to Option 1. This item was a tie.

**MOTION:** Commissioner VonRock made the motion, seconded by Commissioner Webb to 'approve the minutes as adjusted' for January 14, 2014 meeting. **Motion carried, all in favor.**

**Introduction to Public Hearing.** Janean Parker, City Attorney

At the last study session the Commission asked for a map view of 250 foot buffer to see what it would look like in the commercial town center zone. To the Planning Commission for hearing tonight is the zoning regulations proposed for marijuana land uses within the city of Kelso. At the last study session we discussed the proposed regulations and several different options of different zones. There are three different licenses allowed; the production, processing, and retailing. All require a license from the State Liquor Control Board (LCB). Discussed where the processing and production uses might go, proposed light industrial and heavy industrial. Retail for both heavy and light industrial. Sexually oriented business overlay zone amend to include marijuana related retail uses. Another issue raised was commercial town center and commercial specialty retail zones, whether appropriate for marijuana retailing. The ordinance also addresses medical marijuana collective garden uses that were not previously regulated. The proposal looked at heavy and light industrial zones for locations of collective gardens.

A current zoning map was provided on the projector screen for the Commission and audience.

There are bills before the legislature right now to amend the medical marijuana. We are proposing that there be regulation put in place. With the understanding that in the event the legislature makes changes to that regulatory scheme that would necessitate further amendment to our code.

Chapter 17.45 New. This mirrored the 1000 foot buffer that is in the State Liquor Board initiative. In addition, we looked at other local jurisdictions and we paralleled the Longview code which was a 250 foot buffer from a residential zone or mobile home or RV park. That 250 foot buffer is not in the state law but is proposed in the new chapter 17.45. Collective gardens may not locate within 500 feet of one another.

Proposal and recommendation of staff, that production be in the light industrial areas. Processing be in both industrial areas. Retail commercial town center, commercial specialty retail and the sexually oriented business overlay. Collective gardens in the industrial zones. Requires all signing and advertising be consistent with the city's sign code and State Liquor Control Board rules. There are security requirements. Discussion followed.

Chapter 17.08 Definitions. Proposing to amend to include state definitions for marijuana.

Chapter 17.15 Use Table. Types of uses for zones. Redlines for production, processing and collective gardens to be included in industrial zones. Retail redlined.

Chapter 17.30 Overlay District. Proposing this district for retail because it is a larger area and accounts for some of the buffering discussed. Recommending that be changed to sexually oriented business and marijuana retail business overlay zone.

**PUBLIC HEARING.** Commissioner VonRock opened the Public Hearing at 6:30pm.

**Amendments to the City's Zoning Ordinance, Title 17, by adding a new Chapter 17.45 Marijuana Related Land Uses. Amendments to Chapter 17.08 (definitions), Chapter 17.15 (land use table) and Chapter 17.30 (overlay zone).**

**Public Comments:**

- 1. Tina Cox, 144 Morgan Rd., Toutle, WA.** With the onset of 502 a year ago she has been going to forums and to training and following rules and guidelines and staying informed in the LCB's rules and regulations as they were developing. What she found that she is as educated with the rules and regulations with the LCB Board as she is confused. She voted for 502 because they said they would not be touching medical. She has agriculturally zoned property also unzoned property. She has spent a lot of money that is not refundable. A moratorium was put in place after she applied for licensing that opened up on November 18<sup>th</sup>. This is a plant this is not an indoor industrial area type of industry. It is an agricultural industry. Highly expensive profession to be a producer. Everything she has spent and all the time has been for nothing she has been forced to go into a different area when she has property situated to be in production and processing of cannabis. There are very few people that have applied for licenses in the entire county. Will cost tax payers a lot of money to develop these rules and regulations for just a small amount of people who want to be legal. Making it harder for those who want to abide by the rules to grow cannabis legally. How many buildings are available for the amount of applicants that can afford to rent industrial space? Not enough buildings in area proposed. Could not find availability. There is plenty of office space for retail stores all over Longview and Kelso, but not for producers and processors. Where am I going to go? A lot of revenue to be brought into county and city but hurting the residents here by making it so expensive and difficult to be able to follow the rules. Will end up passing this community down and we aren't going to get any of it. There is an opportunity here to help your citizens get into the ground level and make money for your cities, communities, counties, schools, mental health, police departments all across the board.
- 2. Janean Parker.** This is a small community and there is not any agriculturally zoned land. We have commercial, industrial and residential in various forms. Somewhat limited. That is why we came up with industrial because it is most compatible with that use.
- 3. Ron Poffenbarger, 126 S. Vista Way, Kelso, WA.** I understand that I am in residential but I am on the out skirts of that residential. My lot is 1/3 acre at the top of hill. Could be some consideration for certain areas like that. There are no agricultural areas to use, it's all industrial. Could not find an affordable big building to switch over to. He is in mid process of getting license. When he first applied for a license and Misty Jones, Marijuana Licensing Investigator, questioned him thoroughly where he was growing. Didn't have a problem with him being residential. Not understanding why we can't open up for consideration certain areas. Not all residential but for some of us on the outskirts. Spent a lot of money in non-refundable funds.

4. **Laura Pippen, Vista Way, Kelso, WA.** We did go through everything with the state licensing. Only a handful of recipients in this area applied. Its closed no one else can apply. To create regulations for this few of people, when the state is regulating and approving according to their criteria, which isn't much different than yours. You're saying there is no agricultural area. On Vista Way there are farms. We are not trying to grow in a suburban area. We have spent our savings and retirement that is nonrefundable. We have a date that we have to finish applying and pay more money. We are being told we can't by the city of Kelso. We have been trying to abide by all these regulations. Can't understand why you're saying no to the people when they are already being regulated.
5. **Janean Parker.** Received notice from the Liquor Control Board, just one applicant in the City of Kelso.
6. **Andy Neely, 144 Morgan Rd., Toutle, WA.** With regards to outdoor growing I recognize the value of odor control and public consensus to zoning. We are talking about an agricultural process. From a technical prospective there are three phases to the growing of this plant. Starts with propagation, goes to vegetation, and finishes with flowering. The flowering phase is where the odor will be noticeable and where the damage from an odor perspective is most likely to be recognized by a neighbor or someone else in the community. I would suggest for purposes of zoning, that you consider allowing propagation and vegetation to remain an option from an outdoor prospective, if not only to recognize and acknowledge that we are talking about a plant. One of the most efficient ways to propagate and vegetate a plant is outdoors because sunlight is provided.

**Commissioner VonRock closed the Public Hearing at 6:51pm.**

**Commission Business:**

1. Janean Parker. The staff's recommendation is that you adopt the new Chapter 17.45. You limit the production and processing uses to the industrial zones, both the heavy and light. Retail to be in the sexually oriented business overlay zone. Collective gardens be limited to the industrial zones. There be a new Chapter 17.45 with the amendments to the overlay district, Chapter 17.15 and definitions in Chapter 17.08.
2. Proposed Finding of Fact in support of staff's recommendation.
  - a. I. Reasons for Action. Last sentence 'It also prohibits recreational marijuana uses in residentially zoned areas or in structures used residentially.' Commissioner VonRock suggested sentence should be stricken or reworded. Currently reads as it is restricting use in residence. Preference to add land use language? Discussion followed.
  - b. II. Findings of Fact. Initiative 692 RCW 69.51A. Commissioner VonRock. We haven't addressed this much and feels uncomfortable to try to push this forward. Commissioner Webb stated that originally with 502 the regulations were going to address strictly recreational use and not medical and now their starting to cross those lines and gray that area. Discussion needs to be had on how that is going to be handled in the city of Kelso. Discussion followed.
3. Marijuana related land use on 17.45 included medical marijuana. Discussion followed.
4. Janean Parker. She suspects there will be legislature addressing the medical marijuana in the coming year. Suggests these three options.
  - a. Recommend council wait on medical marijuana provisions until we find out what the state does. Adjust to address the recreational.
  - b. Discuss and work a different set of zoning for medical marijuana and break them into two ordinances.
  - c. Try to change current proposed code. Discussion followed.
5. Steve Taylor. The direction that Council gave was to bring this in front of Planning Commission to be vetted and go through process. The intent of Council was to establish moratorium because

- none of these uses have been allowed in the city of Kelso. Get regulations in place that can be consistent with other communities in area and get moratorium lifted. Discussion followed.
6. Collective gardens cannot get permit. Use is not currently allowed. If there are collective gardens going on they are not sanctioned. They are not legal. Medical marijuana discussion followed.
  7. **MOTION:** Commission Wade made the motion seconded by Commissioner Webb to ‘suspend the rules to have further public comment’. **Motion carried, all in favor.**
  8. Steve Taylor. Clarification. Staff has brought forward to the Planning Commission a structure of how marijuana related uses would be allowed within the city and in what zones. If there are not certain components brought forward to Council you would likely not see those item’s use allowed through council action. Trying to bring this together as a packet to address all these issues to run through the Planning Commission at one time.
  9. **Ron Poffenbarger, 126 S. Vista Way, Kelso, WA.** Would like to add to the medical marijuana card. He has friends that grow medical marijuana for the outlets and the way it is read and presented to them they can have their own card, maybe it’s a husband and wife and they can have other card to grow for somebody. They are not being told that they need to file for group growing license of any sort.
  10. **Tina Cox, 144 Morgan Rd., Toutle, WA.** Clarity of what a collective is and medical card. Go to reputable doctor or someone who is allowed to give recommendations after they have received medical records on certain conditions that are allowed for medical cannabis use. Most people a collective is up to 10 people and a maximum of 45 plants and 15 per person per card holder. Originally a collective garden was established to grow for people that have a medical card that cannot grow their own. Discussion followed.
  11. **Chris Bornstedt, 119 N. Maple St., Kelso, WA.** Medical cannabis patient. Olympia is trying to combine recreational marijuana with medical cannabis. We are fighting them on that. That you want to hold off on zoning for collective gardens is a wonderful thing. He grows for himself and two other people. Is not a 502 supporter. 502 has caused headaches for a lot of people.
  12. **Tina Cox, 144 Morgan Rd., Toutle, WA.** Up in Olympia with the LCB they made 8 recommendations to legislation to do away with medical. There is an oversight committee that has been developed by Ann Rivers and a few other senators to oversee the under table stuff the LCB has been doing to try to get rid of medical so they can make more money on the 502 recreational side of it. There are several serious federal lawsuits going against the LCB and they are under investigation.
  13. Janean Parker. If collective gardens are operating within the city they are operating illegally under city ordinances. We are trying to open that up as part of this package and have an area for a collective garden to be. With the understanding that there probably is going to be changes coming down and amending this ordinance. Right now it is not allowed. By continuing the moratorium it would continue to not be allowed. By opening up for this particular zone to start with, this will be an improvement of the current status quo. Discussion followed.
  14. Commissioner Hislop. Received no input or clarity from public regarding retail outlet. Discussion followed.
  15. Growing and processing indoor vs. outdoor primary concern is security. Discussion followed.
  16. Commissioner Webb. Complex issues. 502 vs. 692 two separate issues. Big driving force is tax revenue. We should focus more on recreational use. Medical use has to be dealt with on a different set of rules. Discussion followed.
  17. Commissioner VonRock. Opinion. Submit back to council on recreation use and end the moratorium and address recreational use according to our Fact and Findings excluding last sentence in number 1 and eliminate 692.
  18. Janean Parker. Clarify recommendation. Planning Commission would like to recommend to council to adopt 17.45 without references to medical marijuana. Allow it in both industrial zones for production and processing. Indoor grow for recreation. Sexually oriented business

- overlay zone for retail. What would you like to recommend back to council for medical marijuana? Moratorium continues in place and we evaluation the pending state legislation?
19. Commissioner VonRock. Recommend back with what state guidelines are at for medical marijuana. Discussion followed.
  20. Commissioner Webb. Should deal with the recreational use and bring medical back for more discussion. Discussion followed.
  21. Steve Taylor. Collective gardens are not currently allowed. The purpose of this packet was to get it through Planning Commission get it to Council. Have another moratorium deadline coming up. Discussion followed.
  22. **MOTION:** Commissioner Webb made a motion, seconded by Commissioner Wade 'to exclude collective gardening for now for further discussion'. **Motion carried, all in favor.**
  23. **MOTION:** Commissioner Webb made a motion, seconded by Commissioner Wade 'we accept the recommendation as far as recreational marijuana production'.
    - a. Janean Parker. Make a friendly proposal for amendment to include the Findings and Fact with the changes discussed.
    - b. Commissioner Webb. 'Add that to the amendment', seconded by Commissioner Wade. **Motion carried, all in favor.**
  24. Moratorium discussion.
  25. **MOTION:** Commissioner Webb made a motion, seconded by Commissioner Wade, 'we recommend to council that the moratorium be lifted and follow state guidelines until further guidelines are developed on medical marijuana.' **Motion carried, all in favor.**
    - a. Steve Taylor. The state guidelines allow the cities to zone it. If it is not an allowed use in the zone it is prohibited. Our zoning currently prohibits it. Discussion allowed.
  26. **MOTION:** Commissioner Wade made a motion 'to make a recommendation to city council to lift the moratorium on collective gardening while we are excepting the state provisions and make an ordinance that recognizes collective gardens as a separate entity with its own state regulated provisions without restrictions to zoning'. **Motion carried, all in favor.** Discussion followed.
  27. Commissioner Webb wanted it to be reiterated that collective gardens need more discussion.

**Other Business.** Nancy Malone.

1. Low Barrier Housing. There is a moratorium that went into effect as of last week. We have been directed by city council to put together code language regarding low barrier housing, low barrier shelter and urban rest stops.
2. Suggested we start meeting two nights a month. This won't be a public hearing it will be a workshop. This will help everyone understand what is being presented for future. Suggested February 27<sup>th</sup>. Consensus was this would work at 6:00pm.
3. Received revised building plans for the regal cinemas building.
4. Started construction on retail building off Minor Rd. Part of it will be Verizon. Car wash will be on the other lot behind Jack in the Box.

**Adjournment:**

There being no further business, Commissioner Wade made the motion seconded by Commissioner Hislop to adjourn at 7:57pm.

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Rick VonRock, Planning Commission Chair

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Respectfully submitted: Stephanie L. Helem, Recording Secretary

**AGENDA SUMMARY SHEET**  
**Business of the City of Kelso**  
**City of Kelso, Washington**

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**SUBJECT TITLE:**

Move to approve on first reading

**AN ORDINANCE OF THE CITY OF KELSO AMENDING THE KELSO MUNICIPAL CODE TO REPEAL CHAPTER 9.20 DRUG PARAPHERNALIA AND CHAPTER 9.24 MARIJUANA AND AMEND CHAPTER 9.04 STATE CRIMINAL STATUTES ADOPTED, TO BRING THE MUNICIPAL CODE INTO CONFORMANCE WITH CURRENT STATE MARIJUANA AND DRUG PARAPHERNALIA STATUTES**

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** City Attorney

**For Agenda of:** March 4, 2014

**Cost of Item:** \_\_\_\_\_

**City Manager:** Stephen Taylor

**PRESENTED BY:** Janean Parker

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**AGENDA ITEM ATTACHMENTS:**

Proposed Ordinance

**SUMMARY STATEMENT:**

During a review of the code as a part of the zoning code changes, staff determined that another provision of the code, at Title 9, contained regulations related to possession of marijuana and drug paraphernalia. Title 9 contains Chapter 9.24 prohibiting the possession of marijuana and Chapter 9.20 prohibiting drug paraphernalia. In light of recent state initiatives and statutory changes, these Chapters are no longer consistent with State law. The proposed ordinance repeals these chapters of the municipal code and in their place makes references to the current state law for prohibited activities related to possession of marijuana and drug paraphernalia. These changes have been reviewed and are recommended by the City Attorney and the City Prosecutor.

**FINANCIAL SUMMARY:**

**OPTIONS:**

Do nothing—existing code provisions would remain, but be in conflict with State law

Pass the proposed ordinance

Direct staff to bring back further changes.

**RECOMMENDED ACTION:**

Move to approve on first reading an ordinance amending Title 9 of the municipal code related to marijuana and drug paraphernalia possession.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO AMENDING THE KELSO MUNICIPAL CODE TO REPEAL CHAPTER 9.20 DRUG PARAPHERNALIA AND CHAPTER 9.24 MARIJUANA AND AMEND CHAPTER 9.04 STATE CRIMINAL STATUTES ADOPTED, TO BRING THE MUNICIPAL CODE INTO CONFORMANCE WITH CURRENT STATE MARIJUANA AND DRUG PARAPHERNALIA STATUTES**

WHEREAS, the voters of the State of Washington approved Initiative 692 relating to the medical use of marijuana, and Initiative 502 relating to the recreational use of marijuana, providing a framework under which marijuana producers, processors and retailers can become licensed by the State of Washington; and

WHEREAS, these initiatives have been codified under state law, in part at RCW 69.50; and

WHEREAS, the regulation of marijuana and drug paraphernalia are governed by the Uniform Controlled Substances Act at RCW 69.50; and

WHEREAS, Kelso Municipal Code Chapter 9.20 Drug Paraphernalia does not reflect current State law related to the regulation of drug paraphernalia; and

WHEREAS, the Kelso Municipal Code 9.24 Marijuana does not currently reflect current State law related to the possession of marijuana; and

WHEREAS, the City Council wishes to repeal Chapters 9.20 and 9.24 and amend Chapter 9.04 to refer to the Uniform Controlled Substances Act of RCW 69.50 to bring municipal regulations into conformance with current State law;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1. Repealing Chapter 9.20 Drug Paraphernalia.** That Kelso Municipal Code Chapter 9.20 Drug Paraphernalia is hereby repealed.

**SECTION 2. Repealing Chapter 9.24 Marijuana.** That Kelso Municipal Code

Chapter 9.24 Marijuana is hereby repealed.

**SECTION 3. Amending Chapter 9.04 State Criminal Statutes Adopted.**

That Kelso Municipal Code Chapter 9.04, Section 9.04.010 is hereby amended as set forth below:

Pursuant to the authority contained in RCW 35A.13.180, there is hereby adopted by this reference the following Washington State statutes as though each was set forth in full herein, together with any and all amendments hereafter made to said statutes by the Legislature:

- 7.80.160 Notice, failure to sign, nonappearance—Failure to satisfy penalty.
- 9.03.010 Abandoning, discarding refrigeration equipment.
- 9.03.020 Permitting unused equipment to remain on premises.
- 9.03.040 Keeping or storing equipment for sale—Defense.
- 9.40.100(1) Tampering with fire alarm or equipment—False alarm.
- 9.41.180 Setting spring trap.
- 9.41.230 Aiming or discharging firearms.
- 9.41.250 Dangerous weapons.
- 9.41.260 Dangerous exhibitions.
- 9.41.270 Carry or exhibit dangerous weapon.
- 9.41.280 Carrying dangerous weapons on school facilities.
- 9.45.062 Failure to deliver leased personal property.
- 9.45.240 Fraud—Telephone service.
- 9.46.170 Gambling commission—False entries or refusal to produce records.
- 9.46.185 Aid and abet gambling violation.
- 9.46.190 Fraud or deceit—Gambling.
- 9.46.195 Obstruction of public servant—Gambling.
- 9.46.196 Cheating other participant—Gambling.
- 9.46.198 Working in gambling activity without license.
- 9.46.240 Gambling information, transmitting or receiving.
- 9.61.230 Telephone calls to harass.
- 9.61.240 Permit telephone calls to harass.
- 9.61.250 Where deemed committed.
- 9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated.
- 9.91.025 Unlawful bus conduct.
- 9.91.060 Leaving children unattended in parked automobile.
- 9A.36.041 Assault in the fourth degree.
- 9A.36.050 Reckless endangerment.
- 9A.36.070 Coercion.
- 9A.36.150 Interfering with the reporting of domestic violence.
- 9A.40.070 Custodial interference—Second degree.
- 9A.44.130 Sex offender—Fail to register.
- 9A.46.020 Harassment definition.
- 9A.46.030 Place where committed.

9A.46.040 Court-ordered requirements upon person charged.  
9A.46.060 Crimes included in harassment.  
9A.46.080 Order restricting contact—Violation.  
9A.46.110 Stalking.  
9A.48.050 Reckless burning in the second degree.  
9A.48.090 Malicious mischief in the third degree.  
9A.50.020 Interfere with health care facility.  
9A.50.030 --- Penalty.  
9A.52.060 Burglar tools.  
9A.52.070 Criminal trespass—First degree.  
9A.52.080 Criminal trespass—Second degree.  
9A.52.100 Vehicle prowling—Second degree.  
9A.56.010 and  
9A.56.020 Theft—Definitions and defense.  
9A.56.050 Theft—Third degree.  
9A.56.060 Unlawful issuance of bank checks.  
9A.56.170 Possessing stolen property—Third degree.  
9A.56.180 Obscuring identification of machine.  
9A.56.220 Theft of cable television services.  
9A.60.040 Criminal impersonation.  
9A.72.040 False swearing.  
9A.72.150 Tampering with physical evidence.  
9A.76.020 Obstructing a public servant.  
9A.76.030 Refusing to summon aid for a peace officer.  
9A.76.040 Resisting arrest.  
9A.76.050 Rendering criminal assistance—Definition.  
9A.76.060 Rendering criminal assistance—Relative.  
9A.76.070 Rendering criminal assistance—First degree.  
9A.76.080 Rendering criminal assistance—Second degree.  
9A.76.090 Rendering criminal assistance—Third degree.  
9A.76.100 Compounding.  
9A.76.130 Escape—Third degree.  
9A.76.160 Introducing contraband.  
9A.76.175 Making false or misleading statement to a public servant.  
9A.84.010 Riot.  
9A.84.020 Failure to disperse.  
9A.84.030 Disorderly conduct.  
9A.84.040 False reporting.  
9A.88.010 Indecent exposure.  
9A.88.030 Prostitution.  
9.68A.090 Communication with minor for immoral purposes.  
10.14.120 Anti-harassment—Civil temporary order.  
10.14.170 Civil anti-harassment.  
10.99.040 District court protection order.  
10.99.050 Violation—Condition of sentence.  
26.28.080 Selling or giving tobacco to minors.  
26.28.085 Applying tattoo to a minor.  
26.50.110 Superior court—Protection order—Violation.  
13.32A.080 Harboring runaway.

- 46.16.010(2) Trip permit violation.
- 66.44.200 Selling liquor to intoxicated person.
- 66.44.270 Furnish, possess, use alcohol—Minor.
- 69.50.4013 Possession of a controlled substance—Penalty—Possession of useable marijuana or marijuana infused product
- 69.50.4014 Possession of forty grams or less of marijuana—Penalty
- 69.50.412 Prohibited acts: E--Penalties
- 69.50.420 Violation—Juvenile driving privileges
- 69.50.425 Misdemeanor violations – Minimum penalties
- 69.50.445 Opening a package of or consuming marijuana, useable marijuana, or marijuana-infused product in view of general public--Penalty
- 70.155.080 Possession of tobacco by minors.

**SECTION 4. Severability.** The provisions of these Ordinances are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**SECTION 5. Effective Date.** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

PUBLISHED:\_\_\_\_\_