

CITY COUNCIL AGENDA
City Hall, 833 South Spruce Street
7:00 p.m. September 28, 2017

CALL TO ORDER:

Mayor Sexton
Council Members: Aslett, Bieche, J. DeGloria, R. DeGloria, Edmundson, Loving and Montgomery
Staff: Berner, Blaine, Dempsey, Erickson, Harrison, Hawes, Brad Johnson, Brittany Johnson, L. Johnson, Jongsma, Luvera, Morrison, Moser, Peterson, Pulst, Rabenstein, Schwetz, Sinclair, Toth, Ward, Yengoyan

MINUTES:

City Council Meeting September 14, 2017

AUDIT OF BILLS:

PUBLIC COMMENTS:

COUNCIL COMMENTS:

MAYOR'S UPDATE:

PROCLAMATION:

SPECIAL PRESENTATION:

OFFICERS REPORTS: TBD

UNFINISHED BUSINESS:

CONSENT AGENDA:

NEW BUSINESS:

- 1) BMC Schedule for preparation of adoption of BMW code update (Part 1 of 5)
- 2) Lexipol Quote and Contract

FUTURE WORKSHOP:

EXECUTIVE SESSION:

- An Executive Session may be held to discuss Personnel, Litigation, and/or Land Acquisition.

ADJOURNMENT:

MEETING

- | | |
|-------------------------------------------|--------------------------------------------------------------------------------------------|
| 1) <u>EDASC WORKSHOP</u> | Thursday, September 28, 2017 6:00 PM
Council Chambers, |
| 1) <u>DOWNTOWN BURLINGTON ASSOCIATION</u> | Wednesday September 27, 2017 9:00 AM
Visitor Information Center, 520 E Fairhaven |
| 2) <u>AUDIT & FINANCE:</u> | Thursday September 28, 2017 4:00 PM
Council Chambers, 833 S Spruce St |
| 4) <u>EDASC WORKSHOP:</u> | Thursday September 28, 2017 6:00 PM
Council Chambers, 833 S Spruce St |
| 5) <u>PARKS BOARD:</u> | Monday October 2, 2017 5:30 PM
Parks & Rec. Dept., 900 E Fairhaven |
| 6) <u>LIBRARY BOARD:</u> | Tuesday October 3, 2017 6:00 PM
Library, 820 E Washington |

September 2017

September 2017

October 2017

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

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug 27	28	29	30	31	Sep 1	2
3	4	5	6	7	8	9
	5:30pm Parks Board (Parks & Rec Dept) - Judy Sheahan	6:00pm Library Board (Library)				
10	11	12	13	14	15	16
		4:00pm Public Safety Committee (Public Safety Building)		4:00pm Audit & Finance Committee (City Hall) 7:00pm Council Meeting		
17	18	19	20	21	22	23
		4:00pm Public Works Committee (Engineering Conf Room)	1:00pm SKAT Board (Burlington City Hall) 7:00pm 9:00pm Planning Commission (City Council Chambers)			
24	25	26	27	28	29	30
			9:00am 10:00am Downtown Burlington Association (Visitor Information Center/Chamber of	4:00pm Audit & Finance (City Hall) 6:00pm 7:00pm EDASC Workshop (Council Meeting		

Aug 27 - Sep 2

Sep 3 - 9

Sep 10 - 16

Sep 17 - 23

Sep 24 - 30

October 2017

October 2017						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November 2017						
Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Sunday		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Oct 1	2		3	4	5	6	7
		5:30pm Parks Board (Parks & Rec Dept) - Judy Sheahan	6:00pm Library Board (Library)				
8	9		10	11	12	13	14
			4:00pm Public Safety Committee (Public Safety Building) 5:00pm 6:00pm Historical Preservation Board (4:00pm Audit & Finance Committee (City Hall) 7:00pm Council Meeting		
15	16		17	18	19	20	21
			4:00pm Public Works Committee (Engineering Conf Room)	1:00pm SKAT Board (Burlington City Hall) 7:00pm 9:00pm Planning Commission (City Council Chambers)			
22	23		24	25	26	27	28
				9:00am 10:00am Downtown Burlington Association (Visitor Information Center/Chamber of	4:00pm Audit & Finance (City Hall) 7:00pm Council Meeting		
29	30		31	Nov 1	2	3	4

Oct 1 - 7

Oct 8 - 14

Oct 15 - 21

Oct 22 - 28

Oct 29 - Nov 4

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CALL TO ORDER:

Director of Budget and Accounting/City Clerk Renee Sinclair called the meeting to order at 7:00 PM. A motion was made by **Councilors Bill Aslett/Ted Montgomery** to elect a temporary chair. All in favor; motion carried. Council unanimously elected **Councilor Bill Aslett** as Temporary Council Chair. **Council Chair Bill Aslett** opened the meeting with the Pledge of Allegiance. Council members present: Bill Aslett, Joe DeGloria, Chris Loving, and Ted Montgomery. Staff present: Jennifer Berner, Bryan Harrison, Brittany Johnson, Leif Johnson, Michael Luvera, Kristen Morrison, Marv Pulst, Renee Sinclair, and Sarah Ward.

Councilor Tonya Bieche arrived at 7:05 PM.

MINUTES:

A motion was made to approve the minutes of the August 24, 2017 council meeting by **Councilors Loving/J. DeGloria**. All in favor; motion carried.

AUDIT OF BILLS:

A motion was made by **Council Chair Aslett/Councilor J. DeGloria** to approve Accounts Payable checks numbered 5591 – 5724 in the amount of \$286,557.39; and August 31 payroll checks numbered 36994 – 337010; 5583-5590 in the amount of \$535,343.84. All in favor; motion carried.

PUBLIC COMMENTS:

Bonnie Hull – 801 Fidalgo St. Sedro Woolley discussed the Crop Hunger Walk, a charity walk, which will take place Sunday, October 1st at Mount Vernon Christian School in Mount Vernon. **Hull** stated that **Mayor Steve Sexton** has agreed to participate in the walk, and invited all to participate. **Hull** discussed the possibility of having information regarding the walk displayed on Burlington's Community reader board; directed to Parks and Recreation for this request.

COUNCIL COMMENTS:

Council Chair Aslett/Councilor Loving made a motion to excuse absent **Councilors R. DeGloria**, and **Edie Edmundson**. All in favor; motion carried.

Councilor Loving praised the new sign for the Pea Patch Community Garden, and discussed the garden's growth and value in the community. **City Administrator Bryan**

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Harrison praised the Pea Patch as a great community asset for those who may not have access to private gardening space.

Councilor Bieche discussed the observance of National Recovery Month, which is held annually in September, and spoke of an associated event, Join the Voices for Recovery, which is to be held Saturday, September 16th from 12:00-4:00 PM at First United Methodist Church in Mount Vernon. **Council Chair Aslett** added to the discussion with concerns regarding the impact of the national opioid crisis.

Council Chair Aslett discussed the Skagit Housing Trust as it relates to housing availability in Burlington, asking that it be discussed as an addition to the Mayor's budget. **Aslett** explained that several other cities are investing in this organization, and therefore would like to bring them forward to a council meeting for a 15 minute presentation.

MAYOR COMMENTS:

Council Chair Aslett noted the absence of **Mayor Steve Sexton**.

SPECIAL PRESENTATION:

No Special Presentation.

PROCLAMATION:

Council Chair Aslett read the proclamation designating September 2017 as Recovery Month. This proclamation recognizes the importance of behavioral health, healthy lifestyles, as well as appropriate treatment and recovery support services. This proclamation calls upon the people of Burlington to observe this month by supporting with appropriate activities the theme: "Join the Voices for Recovery; Strengthen Families and Communities".

Council Chair Aslett informed council of the Lunch and Learn luncheon to be held at Skagit Community Action on September 21st, from 12:00 – 1:00; the luncheon's purpose is to discuss homelessness in Skagit County.

OFFICER REPORTS

Public Works Director Marv Pulst updated council on research regarding the survey of the Carnegie Library and the current Parks & Recreation building's usability for its occupants. **Pulst** also stated that he will be moving forward with bids, has selected an architect, and that the architect selected will be announced at a later date, once the

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parties who were not selected, are informed. The next step in the process will be to negotiate price.

Pulst informed the council of and praised the Streets Department for the prep-work involved in the sidewalk replacement on Burlington Blvd on the East side of the Cascade Mall, near Applebee's restaurant. **Pulst** stated that the work completed by the Streets Department brought the total cost of the project to \$16,581.00, which is less than the \$20,000.00 grant by which the project was funded.

Pulst updated council on the approval of the grant application which will be used to improve the West East traffic light system at the intersection of Costco Dr. and George Hopper Rd. **Pulst** stated that the \$700,000.00 grant for the signals and paving to be used in this project was awarded to the City of Burlington by the Federal Government, and that the next step in the process will be to solicit bids.

Pulst discussed the challenges in determining the amount of land to be purchased on the Northwest corner of the George Hopper exit, which may be needed in order to complete an improvement to the functions of the exit. \$1.7 million in funding has been released by the Federal Government in order to begin negotiations for property purchase. **Councilor J. DeGloria** discussed the possible negative effects to commerce if the project were to be carried out during daytime hours. **Councilor Bieche** discussed the idea of a roundabout system at this intersection. **Council Chair Aslett** praised **Pulst** for the efforts of the Street Department in improving traffic conditions in Burlington.

Parks & Recreation Director Jennifer Berner updated council on the success of the Skagit River Park improvement project, stating that the turf maintenance program has greatly improved the conditions of the fields that have received the updated method of treatments. **Berner** also informed council of the Skagit Valley Activity Guide, a publication which is widely distributed, and contains Parks and Recreation activities information.

City Administrator Bryan Harrison reminded council of the upcoming EDASC (Economic Development Association of Skagit County) meeting, to be held on September 28th from 6-7 PM. **Harrison** discussed topics to be included at this meeting: Economic Development and its new funding structure, and the possibility of forming a TPA (Tourism Promotion Area). **Harrison** informed council of the selection of Peter Browning as CEO of the Chamber of Commerce; Browning is scheduled to begin working in that role beginning September 15th. **Council Chair Aslett** discussed questions and concerns

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related to EDASC and their relationship with local hoteliers. **Harrison** stated that a thorough explanation of concerns of council was relayed to John Sternlich, CEO of EDASC, who relayed this information to hoteliers; the next step is for this feedback to be presented to staff and council.

UNFINISHED BUSINESS:

No Unfinished Business.

NEW BUSINESS:

RESOLUTION TO APPOINT MEMBERS TO THE BURLINGTON LODGING TAX ADVISORY COMMITTEE (LTAC)

City Administrator Bryan Harrison reviewed the proposed resolution, stating that there is currently one vacant position on the LTAC, due to the resignation of the Burlington Chamber of Commerce CEO. The Chamber is currently recruiting for a new CEO; however that recruitment is not anticipated to be completed in time to have the new CEO considered for potential as a committee member. As a result, staff recommends that the Interim-CEO of the Chamber, Diane Bobko, be appointed as a voting member to the LTAC during the 2018 lodging tax application.

The Mayor recommends the following appointees to the LTAC:

Committee Chair:

- Edie Edmudson, Committee Chair

Those representing businesses required to collect lodging taxes:

- Dan Mitzel, Hotel Services Group, Candlewood Suites & Hampton Inn & Suites
- Kevin Todd, Cocusa Motel
- Charlee "CeeCee" Parker, Holiday Inn Express & Suites

Those representing entities eligible to receive lodging tax grants:

- Diane Bobko
- Cate Anderson, Children's Museum of Skagit County

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- Cindy Verge, Skagit Valley Tulip Festival

Those who are nonvoting members:

- Chris Loving, City Councilmember who shall serve as an “alternate” to the Committee Chairperson.
- Chelsea Thornton, alternate representative of business required to collect the tax.
- Jon Aarstad, alternate representative of entities authorized to be funded.

A motion was made to approve the proposed resolution appointing voting and alternate members to the 2017 Burlington Lodging Tax Advisory Committee and authorize the Mayor’s signature by **Councilors Montgomery/Bieche**. All in favor; motion carried.

REQUEST FOR REFUND: CEMETERY / FUNERAL RELATED FEES:

City Administrator Bryan Harrison informed council of the request for a refund of service-related fees associated with a funeral where there was a communication error which led to a lack of proper provisions, which were to be put in place by the Parks and Recreation Department. **Harrison** summarized the contrition of the staff involved in the miscommunication and recommended to council to authorize a full refund of service-related fees, excluding the cost of goods (urn and liner). **J. DeGloria** expressed both his and the council’s condolences to the family affected. A motion was made by **Councilors J. DeGloria/Loving** to approve the refund. All in favor; motion carried.

BID AWARD: 48 INCH DRUM ROLLER – STREET DEPARTMENT

Public Works Director Marv Pulst briefed council on six bids received for a new 48” Drum Roller, and recommended the bid be awarded to Van’s Equipment, who had the lowest bid of \$41,228.68. **Pulst** also described the need for said Drum Roller, which would be used in order to increase the quality of work. A motion was made by **Councilors Bieche/Loving** to award the bid and authorize procurement of the roller from Van’s Equipment Company. All in favor; motion carried.

INTERLOCAL AGREEMENT BETWEEN SKAGIT COUNTY AND CITY OF BURLINGTON FOR LIBRARY SERVICES ALLOCATION

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Library Director Sarah Ward reviewed the Proposed Interlocal Agreement, which is for an allocation of funds in the amount of \$6,671.00 in recognition of services that the Burlington Public Library provides for all residents of Skagit County. **Councilor Bieche** questioned the frequency of the allocation of funds; **Ward** informed council that these funds would be an annual amount. A motion was made by **Councilors J. DeGloria/Montgomery** to approve the allocation of funds. All in favor; motion carried.

ACCELA SPRINGBROOK UPGRADE AND ADDITIONAL MODULES; UPGRADE TO CURRENT VERSION AND PURCHASE REQUISITION, INVENTORY CONTROL, FIXED ASSETS, AND EMPLOYEE SELF SERVICE MODULES

Director of Budget & Accounting Renee Sinclair reviewed discussions from the past 18 months, regarding the City's accounting software, Springbrook. Sinclair also reviewed the timeline of upgrades, Springbrook's ownership change, and the staffing required to add the recommended additional modules. **Councilor Bieche** requested clarification of the product breakdown and cost. **Sinclair** referred to the cost summary sheet, and reviewed the cost breakdown, stating that the recurring cost would be \$20,000.00 annually, which would be approximately a \$3,000.00 increase from current software support and maintenance costs. **Councilor J. DeGloria** expressed concern over the past issues found within the Springbrook software program , and discussed with **Sinclair** other options, including the possibility of utilizing an alternate software program. **Sinclair** stated that implementing a new system entirely would require approximately a year's time to execute, and would require a \$300-400,000.00 investment. **Council Chair Aslett** remarked on the challenges of the budgeting system within the City of Burlington, and stated that he would to see an improved breakdown of the quote. A motion was made by **Councilors Bieche/Loving** to approve the ACCELA Springbrook update and additional modules. **Councilors Aslett/Montgomery** in favor, **Councilor J. DeGloria** opposed; motion carried.

AGREEMENT WITH GRAY & OSBORNE FOR CONSTRUCTION MANAGEMENT SERVICES

Public Works Director Marv Pulst summarized the contract for Gray & Osborne, who are to provide construction management duties for the Regent Street alley project. The purpose of the project is to replace a sewer line, and has been awarded to Colacurcio Brothers Construction, who will begin pre-construction next week. A motion was made

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by **Councilors Montgomery/J. DeGloria** to approve the agreement. All in favor; motion carried. **Councilor Bieche** discussed issues with potholes in the alleyway behind Burlington Lutheran Church, stating that this street is in need of repair.

REORGANIZATION OF INFORMATION TECHNOLOGY DEPARTMENT POSITIONS TO REFLECT EXISTING DUTIES AND RESPONSIBILITIES

City Administrator Bryan Harrison briefed council on the discussions of the Information Technology Manager, Human Resources Manager, and City Administrator in regard to a current Information Technical Assistant staff member, who is currently performing duties and responsibilities more closely associated within the Information System Technician description. **Harrison** stated that staff recommends a restructuring of the position, to include compensation in the realm of a more comparable position, effective January 1st, 2017. **Council Chair Aslett** discussed concerns with the timing of this request in its proximity to budget season, and the need to change the habits of the City's budget management system in regard to payroll. Discussion ensued regarding the need for a salary review/position analysis, with the intent to implement this structure in the spring of 2018. **Councilors Bieche/Montgomery** made a motion to approve the restructuring of the position and salary. All in favor; motion carried.

ASSOCIATION OF WASHINGTON CITIES REGIONAL MEETING: BURLINGTON CITY COUNCIL CHAMBERS, NOVEMBER 2, 2017

City Administrator Harrison informed Council of the Association of Washington Cities Regional Meeting, which is to take place in the Burlington City Council Chambers on November 2nd, 2017 at 5:45 PM. **Harrison** noted that the agenda is contained in the Council meeting packet for review.

EXECUTIVE SESSION:

No Executive Session was held.

ADJOURNMENT:

Council Chair Aslett adjourned the meeting at 8:25 PM.

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Renee Sinclair
Director of Budget & Accounting

Bill Aslett
Temporary Council Chair

DRAFT



ITEM #: 1

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: September 28, 2017 Subject: BMC schedule for preparation of adoption of BMC code update (Part 1 OF 5)

Brad Johnson, Senior Planner;

Leif Johnson, City Attorney

Attachments: Section of Code of Review Public Hearing Required: YES () NO (X)

Update Letter from Mike Connelly noting all changes

Letter from Brad Johnson regarding schedule

SUMMARY

Below, please find a proposed schedule for review and adoption of several substantial updates of the Burlington Municipal Code. A hard copy of the entire proposed changes should be in your council mailbox before the September 28th meeting.

September 28: Overview

October 12-26: Titles 1, 8 & 14A

November 9-21: Titles 14, 15 & 16

December 14-28: Title 17, then final adoption.

This schedule will also ensure that the code is adopted before the end of the year, which is necessary to work with the City's updated comprehensive plan map. The Growth Management Act only allows the City to amend the comprehensive plan once each year. By completing the adoption process by December we can ensure that we still have the ability to make comprehensive plan changes next year. This is separate from the ongoing periodic update which is not subject to the once per year limitation.

Proposed September 28th Meeting Schedule

Agenda:

- a. Discussion of project scope, objectives, and limitations
- b. Schedule a process for adopting code changes
- c. Presentation on what the code is, what it does, and how it relates to State law and the comprehensive plan
- d. Overview of major code changes; hearing examiner system, organization and structure, definitions, elimination of B-P zone, and entirely new land division title
- e. New zoning and comprehensive plan maps

Action:

Resolution expressing intent to adopt updated zoning and comprehensive plan maps

RECOMMENDATION

Proposed Motion: *"I move to begin review of the Burlington Municipal Code updates pursuant to the schedule proposed by staff with final adoption by end of December 2017."*

**ETTER, McMAHON, LAMBERSON,
VAN WERT & ORESKOVICH, P.C.**

ATTORNEYS & COUNSELORS

WILLIAM F. ETTER*
MICHAEL J. McMAHON*
STEPHEN M. LAMBERSON*
RONALD A. VAN WERT***
CARL J. ORESKOVICH**
MICHAEL F. CONNELLY
JEFFREY R. GALLOWAY*
COURTNEY A. CONKLIN
MEGAN C. CLARK*
ANDREW M. WAGLEY*

618 WEST RIVERSIDE AVENUE, SUITE 210
SPOKANE, WASHINGTON 99201
(509) 747-9100
FAX (509) 623-1439
TAX ID #91-1291936

Idaho Residents Call
(208) 667-6811
OF COUNSEL
R. MAX ETTER, SR. (1910-1993)

* Also admitted in Idaho
** Also admitted in Montana
*** Also admitted in Idaho & Arizona

July 17, 2017

(VIA EMAIL ONLY)

Leif Johnson
City Attorney
City of Burlington
833 S. Spruce Street
Burlington, WA 98233

Re: Changes to the Burlington Municipal Codes

Dear Leif:

The following is a summary of the proposed changes to Chapters 1.24, 1.34, 1.44 and 8.12, Titles 2, 14, 15, 16 and 17, as well as the new Title 14A.

Chapter 1.24

Chapter 1.24 is renamed "Violations and Penalties". Section 1.24 was modified to include all available enforcement mechanisms available including criminal violations, civil infractions that would be processed through District Court pursuant to Chapter 7.80 RCW and BMC 1.34, and civil violations and nuisances pursuant to BMC 8.12. New Sections 1.24.030, and .040 were added to include these alternatives.

New Section 1.24.060 and .070 were added moving these provisions from existing 14.806.030 (D and C). New Section 1.24.080 was added to include specific provisions that pertain to violations of the three storm water chapters. (Existing 14.806.090, .100, .110 and .150).

Chapter 1.34

The Title was changed to "Enforcement of Civil Infractions Pursuant to RCW 7.08". Section 1.34.010 was changed to identify the chapter as an alternative method of enforcement pursuant to RCW 7.80. Subsection (L) was changed to include the new title names. The word "violation" was replaced by "infraction" throughout the Chapter.

Section 1.34.070 was amended to avoid confusion between the application of alternative remedies.

Chapter 1.44

Chapter 1.44 is a new chapter consolidating the various enforcement provisions found throughout the municipal code. Specifically, it combines the enforcement provisions found in Chapter 8.12, "Nuisances", Chapter 14.806, "Enforcement", and Chapter 17.84 "Enforcement of the Zoning Code".

Chapter 1.44 then creates an enforcement process that is administrative and is subject to an appeal to the hearing examiner.

There were several different penalty schemes in the above code provisions. I used the one contained in Chapter 8.12, but could substitute the penalty provisions found in Chapter 14.806 or 17.84.

Chapter 8.12

Section 8.12.060 was amended and renamed "Compliance, Authority and Administration", which references the compliance provisions found in Chapter 1.44. Sections 8.12.070-8.12.140 were moved to Chapter 1.44.

Title 2

In existing Section 2.34.070, "board of adjustment" was replaced by "hearing examiner". Existing Section 2.24.030 was changed to add "community development director". And existing Section 2.42.060 replaced "board of adjustment" with "hearing examiner".

Title 14

Title 14 is called "Environmental Regulations." It is organized in the same manner as Title 14A, 15, 16 and 17. Its first chapter, Chapter 14.01, contains those provisions that are applicable to the entire title. Specifically, Chapter 14.01 addresses the name of the title, its application, purpose, authority, rules concerning statutes, codes or regulations identified or adopted within the title, definitions, liability, minimum requirements, violations and penalties, appeal and severability. Some of these provisions were removed from individual chapters to be placed within this introductory chapter to avoid any redundancy or confusion.

The same provisions with some minor necessary adjustments to the specific language are found at the beginning of each title.

Each Chapter within the Title begins in the same manner, i.e. identifying the Chapter's Title, Application, Purpose and Authority. All definitions have been moved from the individual chapters within this Title and placed in Chapter 14.01, definitions are listed alphabetically but are not numbered to allow insertion or deletion of terms without changing the numbering scheme.

Title 14 consists of:

- (1) General Provisions (14.01);
- (2) "Surface Water Management" (formerly 14.802 Storm Water, Drainage and Erosion control, 14.803 Storm water and Surface Water Inspection and Maintenance, 14.804, Public Storm Sewers (14.804). (Chapter 14.805 Storm Water and Surface Water Utility Code has been moved to Title 13 Public Services, and designated as Chapter 13.14. Chapter 14.806 has been removed and portions incorporated into Chapter 1.24 and Chapter 8.12. Duplicative sections were deleted.);
- (3) 14.10 "Environmental Policy" (formerly Chapter 15.12); and
- (4) 14.15 "Critical Area Regulations" (formerly Chapter 15.15 Regulations for Critical Areas).

Chapter 14.01 – This is a new chapter including provisions found throughout Title 14.

Sections 14.01.010, "Title"; 14.020, "Application", 14.030, "Purpose"; and 14.040 "Authority", were all added.

Section 14.01.090 was modified to include all alternative methods of enforcement resulting from a violation of the provisions of the code, i.e. civil violations, nuisance and abatement pursuant to Chapter 8.12 BMC, civil infraction pursuant to Chapter 7.80 RCW and Chapter 1.34 BMC, and a criminal violation pursuant to Chapter 1.24 BMC.

Section 14.01.100 was modified to reference the appeal process set forth in Title 14A.

Chapter 14.05 Includes Chapters 14.802, 14.803 and 14.804 with minor modifications as indicated. It is broken into three parts:

- Part One: Storm Water Drainage and Erosion Control;
- Part Two: Storm Water and Surface Water Inspection and Maintenance; and
- Part Three: Public Storm Sewers.

Substantive changes made include the following:

- (1) In Section 14.05.080 the words "commercial and industrial" were removed from subsection B; the word "sediment" was added to subsection E.
- (2) In Section 14.05.090 subsection (B)(3) the words, "site assessment and analysis along with a" were added. In subsection G it was added that: "The city requires a site analysis and technical evaluation to ensure that all sites meeting the

minimum qualifications shall utilize" along with the words "are required when such protections are feasible".

(3) Existing 14.806.010 was moved to 14.05.210.

All other changes reflected attempt to clarify the intent of the ordinance or amend the ordinance to reflect existing authority and responsibilities.

Chapter 14.10

Chapter 14.10 (formally Chapter 15.12 BMC) was originally based upon the model code adopted by rule by the Department of Ecology. It was compared to the most recent version of that code and changes made accordingly. It also was modified to contain the initial sections now found in all chapters and renumbered. Specific substantive changes include:

- Existing Section 15.12.010 was removed. It is not contained within the model ordinance and referenced the review processes that are now set forth in Title 14A.
- Additional language contained in the model code was added to new Section 14.10.080 concerning determination of the responsible official.
- An additional section, also contained within the model ordinance was added at new Section 14.10.090 concerning the possible transfer of lead agency status to a state agency. This is an option the City could choose to implement.
- New Section 14.10.130 (C) (3) was added allowing the City to withhold approval of exempt actions in certain circumstances. This section is included within the model code.
- Additional language was also added to Section 14.10.140 to be consistent with the amendments to Section 14.10.080. Section 14.10.240 was amended to more clearly reference subsection D of this provision and references to the general authority of Chapter 43.21C RCW and Chapter 197-11 WAC was added. In Section 14.10.240 (5) the words "and cited in the license or other decision document" were added to be consistent with the model ordinance.
- Section 14.10.250 was amended by adding a reference to WAC 197-11-680, identifying the "adopted Fee Ordinance or applicable resolution" and directing the referenced appeal to the Hearing Examiner. Subsection (D)(2) was amended to include language from the Model Ordinance and to reference new Title 14A. Other changes were made to clarify the intent of the listed sections and to allow for appeals to a body other than the Council.

Chapter 14.15

Chapter 14.15 (formally chapter 15.15 BMC) was amended to include the same initial sections and renumbered. Substantive changes were made to incorporate recent statutory provisions. A number of sections were moved to maintain a consistent chapter structure. Definitions were moved to chapter 14.01. References to director, planning director, or public works director were modified to conform to current practices and minor changes were made to individual section headings to be consistent with the substance of that section. References to other code provisions were changed to be consistent with the new code provisions. A number of substantive changes were made by the Planning Director to comply with current laws and regulations. These substantive changes deleted existing language and added new language to the following sections:

Section 14.15.180 Wetlands

Section 14.15.185 Wetland buffers, including Tables 14.15.200-1, 14.15.200-2

Section 14.15.200 (C) and (D)

Section 14.15.220 Wetland mitigation standards

In Section 14.15.310, "Geological hazardous area initial project review", the number of feet within which the provisions are applicable was changed from 200 to 300'.

In Section 14.15.410, "Development in special flood risk zone", subsection E was changed as follows: The following criteria shall be met in order to approve a proposed structure exceeding \$250,000 in value.

Existing Section 15.15.760 has been deleted. Enforcement is consolidated in chapters 1.24, 1.34 and 8.12.

Existing Chapter 14.805, "Strom Water and Surface Utility Code", has been moved to Title 13, Chapter 13.14.

Existing Chapter 14.806 has been incorporated into Chapters 1.24 and 8.12 and portions were deleted that were duplicative.

Title 14A

Title 14A is a new title applicable to all project permit review and decisions made under the authority of Titles 14, 15, 16, 17 and 18. It incorporates changes with the existing Section 15.16.020 and Chapter 17.68.

Title 15

Two chapters were removed from Title 15, existing Chapter 15.12, "Environmental Policy", and Chapter 15.15 "Critical Areas" which were placed in Title 14. Chapter 15.18, "School District Impact Fees", was removed. Additionally, a portion of existing Chapter 15.16 concerning Land Use Permit applications was moved to Title 14A.

Chapter 15.01 is a new chapter containing the four introductory paragraphs found at the beginning of each chapter (Title, Application, Purpose and Authority) as well as sections applicable to all chapters within this Title. Changes were made to Section 15.01.090 to set forth the enforcement alternative listed in Chapter 1.24. Definitions from all chapters contained within this Title are also placed in this Chapter. Changes were made to various position titles and procedures to conform to current practices.

Chapter 15.04 was amended to include the four introductory sections mentioned above and was renumbered. Changes were also made to the description of documents adopted by reference to include updated titles.

Existing Section 15.04.070 was amended to include city council authorization. Subsection (D) was also amended to remove a notification requirement to conform to current practices.

Existing Section 15.04.060 was amended to remove the definition of mobile home" which is defined in Chapter 15.01.

Existing Section 15.04.110 was amended to identify the enforcement alternative identified in Chapter 1.24.

Chapter 15.06, "Requirements for Building Permit Applications", (existing Chapter 15.16) was amended to remove language concerning "permit application" now discussed in Title 14A limiting the language to building permit applications.

Chapter 15.08, "Fire Code", was amended to identify position titles to reflect current practices.

Existing Section 15.08.030, "New materials, processes or occupancies which may require permits", was removed.

Existing Sections 15.08.090 and .100 were revised to identify the approved enforcement alternatives identified in Title 14A and Chapter 1.24.

Chapter 15.10, "Addresses," was amended to include the four introductory paragraphs found in each chapter; definitions were moved to Chapter 15.01 and specific grants of authority changed to reflect current practices.

Existing Section 15.10.070 was amended to be consistent with the enforcement alternatives identified in Chapter 1.24.

Existing Chapter 15.12, "Environmental Policy", was moved to Title 14.

Chapter 15.13, "Impact Fees", was renamed Chapter 15.12 "Transportation, Park and Fire Impact Fees". Definitions were moved to Chapter 15.01.

Existing Section 15.13.030, "Findings of adequacy", was removed.

Existing Section 15.13.040 was rewritten to clarify the process to be followed and the exceptions to be granted as well as adding Section 15.12.060 allowing deferral of payment pursuant to recently adopted state law.

Existing Section 15.13.050, "Exemptions", (now Section 15.12.070) was rewritten to clarify the scope of exemptions. Section 15.12.070 (A)(7)-(11) was added and subsection (B) deleted. New Subsection (B) was added to clarify when an exemption will be requested and Subsection (C) was amended to provide authority to the Community Development Director instead of the Planning Director.

Existing Section 15.13.060, "Credits", was amended to clarify the process to be followed giving the City Council the final say on granting such credits.

Existing Section 15.13.070, "Tax adjustments", (now Section 15.12.090) was amended to clarify the processes followed.

Existing Section 15.13.080, "Appeals", (now Section 15.12.090) was amended to clarify procedures to be followed.

New Section 15.12.120 was previously codified as Section 15.13.130 with minor modifications.

Existing Section 15.13.090, .100, and .120 (now Section 15.12.110, .130 and .150 respectfully) had minor modification amending position titles and references.

Existing Section 15.13.140 (now Section 15.12.160) was amended to clarify its terms and establish the authority and responsibility of the Community Development Director, Public Works Director and City Engineer as well as the role of the city council. Review costs were also clarified to be actual costs up to \$500.00 and not a flat fee.

Title 16

Title 16 is called "Land Divisions and Adjustments". It is organized in the same manner as Title 14A, Title 14, Title 15 and Title 17. Chapters within this title include 16.01, "General provisions", as well as "Preliminary Plat Review" (16.10), "Final Plat Review" (16.20), "Binding Site Plans" (16.30), "Survey and Design Standards" (16.40), "Alterations and Vacations" (16.50), and "Boundary Line Adjustments" (16.50).

Chapter 16.01, "General Provisions", contains those provisions that are applicable to all chapters within this Title. Specifically, Chapter 16.01 addresses the name of the title, its

application, purpose, authority, exemptions from platting review, definitions, the effect of non-compliance, liability, violations and penalties, appeals and severability. Some of these provisions were removed from individual chapters to be placed within this introductory chapter to avoid any redundancy or confusion. Exemptions from platting were rewritten to add clarity and be consistent with state law. Definitions were removed from all chapters within this title and placed in Chapter 16.01, the same approach as was used in other titles. Many of the definitions were shortened and clarified removing regulatory language which was moved to the appropriate chapter. The language found in Section 16.01.090 is consistent with all other titles and addresses all enforcement options available to the City, including but clarifying provisions found in existing Section 16.04.

Chapter 16.10, "Preliminary Plat Review", (existing Chapter 16.08) was reorganized to include the same introductory headings, i.e. Title, Application, Purpose, and Authority. Sections of Chapter 16.10 were revised to reference the new provisions found in Title 14A, to organize the verbiage to match the section headings, and to incorporate the role of the Hearing Examiner in the approval process. Critical areas and natural hazard requirements were specified in Section 16.10.090, the process and consequences of preliminary approval is clarified in Section 16.10.110, and amendments to preliminary plats are addressed in Section 16.10.120, including and clarifying provisions of existing Chapter 16.08 and 16.12.

Chapter 16.20, "Final Plat Review" contains the same introductory heading and includes language removed from other sections as well as additional language concerning the application and approval process for final plats, including but clarifying provisions of existing 16.08 and 16.12.

Chapter 16.30, "Binding Site Plans", contains the same introductory headings and organizes the application and approval process in a manner similar to Chapter 16.10 and 20, including but clarifying the provisions in existing Chapter 16.20.

Chapter 16.40 contains the same introductory headings. It collects in one chapter the survey and design standards applicable to all subdivisions and binding site plans. It includes provisions from several existing chapters.

Chapter 16.50, "Alterations and Vacations", contains the same introductory headings and sets forth the process for modifying, vacating or altering any recorded plat or binding site plan. It includes new provisions as well as provisions from several chapters and sections of existing Title 16.

Chapter 16.60, "Boundary Line Adjustments", contains the same introductory headings and reorganizes and clarifies the provisions of existing Chapter 16.16. It is organized in the same manner as prior chapters.

Title 17

Title 17 is called "Comprehensive Zoning Ordinance". It is organized in the same manner as Titles 14, 14A, 15 and 16.

Chapters within this Title include Chapter 17.01, "General Provisions" (which include definitions); Chapter 17.0, "District Establishment, Maps & Boundaries"; Chapters 17.15-17.65 are chapters devoted to each specific zoning classification; Chapter 17.70, "Supplemental Development Standards"; Chapter 17.80, "Landscaping"; Chapter 17.85, "Access, Parking and Loading"; Chapter 17.90 "Public Utilities"; Chapter 17.95 "Signs"; Chapter 17.100, "Nonconforming Structures, Land and Uses"; Chapter 17.105, "Essential Public Facilities"; Chapter 17.115 "Planning Commission"; Chapter 17.120, "Hearing Examiner"; and Chapter 17.125, "Amendments to Comprehensive Plan and Development Regulations".

Chapters deleted or moved include: 1) existing Chapter 17.68, "The Land Use Permit Process – Framework for Decisionmaking", has now been incorporated into Title 14A; 2) existing Chapter 17.69, "Design Review Board" has been eliminated; and 3) existing Chapter 17.70, "Agricultural Heritage Credit Program" has also been eliminated.

Changes made throughout this Title include amending the designation of "Planning Director" throughout the development code to "Community Development Director or designee". This position is defined throughout the Code as the City Administrator or designee. Low Impact Development techniques are also incorporated.

Chapter 17.01, "General Provisions", contains the same structure and organization as the other revised Titles. All definitions from the individual chapters have been moved to this chapter. Definitions are entered alphabetically, but not numbered, to facilitate the existing and deletion of specific defined words when required. A minor change for zoning property being annexed requires that the land be zoned in a manner consistent with the Comprehensive Plan instead of using a catch-all "RA" zoning classification. The section concerning violations and penalties is the same as that contained in the general chapter of each applicable title identifying all enforcement alternatives available to the City Attorney.

The process for appeals references Title 14A in a manner similar to the other titles.

Existing Chapter 17.09, now Chapter 17.05, "District Establishment, Maps & Boundaries", contains the provisions concerning the creation of zoning districts, rules of interpretation, conformity requirements and the adoption of special planning areas map. The zoning districts are intended to conform with those created by the Comprehensive Plan. Additional language concerning boundary interpretations is found at Section 17.05.080 (C), and conformity requirements at Section 17.05.090 (A) and (E).

Chapters 17.15 – 17.65 contained the specific controls for each zone located within the city. Each chapter has been reorganized to reflect the same structure used throughout the

code. Language has been modified to add clarity and remove both inconsistencies and repetition and to conform to existing state laws, including language defining accessory uses, adult family homes, foster homes and other group living arrangements, conditional use permits, day care facilities, and manufactured housing. Religious institutions were generally joined with uses of similar impact such as fraternal organizations.

Significant deletions were made to existing Chapter 17.43, now Chapter 17.65, "BP Business Park District", concerning specific design alternatives. This Chapter continues to address permitted and conditional uses.

Chapter 17.70, "Supplemental Development Standards", (existing Chapter 17.45) has been amended for clarity and to eliminate inconsistencies. Language concerning lot sizes and mini-lots has been removed and incorporated when necessary in other chapters. Language concerning design review guidelines has been eliminated. This Chapter also has been amended to include the provisions of existing Chapter 17.48 Performance Standards, now found at Section 17.70.110. Sections concerning solar access and performance standards for urban residential density have been eliminated.

Chapter 17.80, "Landscaping", has been amended for clarity and to eliminate inconsistencies. Planning commission review of landscaping plans has been removed. Language concerning minor modification has been removed.

Chapter 17.85, "Access, Parking and Loading" has been amended for clarity and to eliminate consistencies.

Chapter 17.90, "Public Utilities", has been amended for clarity and to eliminate inconsistencies.

Chapter 17.95, "Signs", has been amended for clarity and to eliminate inconsistencies. Additional changes have been made to provisions governing temporary signs to ensure compliance with recent U.S. Supreme Court decisions. These changes can be found in Section 17.95.070 Exceptions and Sections 17.95.100 (G) Permitted Temporary and Portable Signs, and also Section 17.95.125.

Chapter 17.100, "Nonconforming Structures, Lots and Uses", has been amended for clarity and to eliminate inconsistencies. Existing Section 17.66.070 Amortization and abatement of outdoor storage has been eliminated.

Chapter 17.105, "Essential Public Facilities", has been amended for clarity and to eliminate inconsistencies.

Leif Johnson
July 17, 2017
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Chapter 17.115 has been amended for clarity and to eliminate inconsistencies. It has also been changed to be consistent with Title 14A. The section concerning the appeal to city council has been eliminated and is addressed in Title 14A.

Very truly yours,

ETTER, McMAHON, LAMBERSON,
VAN WERT & ORESKOVICH, P.C.



Michael F. Connelly


MFC:km

cc: Shelley Acero



PLANNING DEPARTMENT STAFF REPORT

To: City of Burlington; Planning Commission

From: Brad Johnson, Senior Planner 

Date: September 13, 2017

Subject: Comprehensive Municipal Code Update and Reorganization – Adoption Schedule and Map Updates

Summary

For the past several years a consultant retained by the City has been working to reorganize and update the Burlington Municipal Code. This work has been a collaborative process between the consultant and the City's Planning, Legal, Public Works, Building, and Administrative divisions. This work has now been completed and is being presented to the Planning Commission and City Council for review and approval. The purpose of this report is to summarize the proposed changes, describe the scope and limitations of the project, and establish a schedule for adopting the updated code.

The code update project is only intended to change the way the code is written and organized. Major policy changes, or changes to more substantive aspects of the code, will be addressed through the ongoing comprehensive plan update effort. Specifically, the updated code language prepared by the City's consultant is intended to eliminate outdated language, contradictory requirements, and unused definitions, and to organize the various code sections in a more logical fashion. In addition the City has prepared updated zoning and comprehensive plan maps to address mapping errors and to make future changes easier by converting the mapping data into a GIS format. Significant changes were also made to the code enforcement and administration provisions. Specifically the proposed update:

- Eliminates the Board of Adjustment
- Adopts a Hearing Examiner System for processing complex permits and appeals
- Expands the enforcement options available to City Attorney and Community Development Department

- Unifies and streamlines the permit review functions of the City's Planning, Building, and Fire Marshall departments and codifies the concept of a Community Development Department
- Establishes a new chapter on platting which clarifies the manner in which various land divisions and adjustments are processed

The Planning Department believes these changes will improve the effectiveness of the code, streamline review procedures, and provide additional clarity to property owners and permit applicants.

Adoption Schedule

Because the proposed code update involves hundreds of pages of code changes, it is being presented to the Planning Commission and City Council several sections at a time in order to allow for a meaningful review and deliberation process. The schedule developed by the Planning Department will require special Planning Commission meetings in order to process the entire update in a timely fashion, and to ensure that adequate time remains for the Planning Commission's regular responsibilities.

The draft schedule calls for the Planning Commission to meet twice a month, on the first and third Wednesday of each month. At the end of each meeting the Planning Commission will advance a recommendation to the City Council; then, the following week, the Council will consider the Commission's recommendation. The Council will take action on each section of the update by adopting a resolution in support of the changes. All of the changes will then be adopted by a single ordinance at the Council's last meeting in December. An outline of the proposed schedule is provided below.

1. Project Overview and Schedule

Dates:

- a. Planning Commission – 9/13/2017
- b. City Council – 9/28/2017

Agenda:

- a. Discussion of project scope, objectives, and limitations
- b. Schedule and process for adopting code changes
- c. Presentation on what the code is, what it does, and how it relates to State law and the comprehensive plan
- d. Overview of major code changes; hearing examiner system, organization and structure, definitions, elimination of B-P zone, and entirely new land division title
- e. New zoning and comprehensive plan maps

Action:

- a. **Planning Commission: (1) statement of support for schedule and process, (2) Recommendation that City Council adopt revised zoning and comprehensive plan maps**
- b. **City Council: Resolution expressing intent to adopt updated zoning and comprehensive plan maps**

2. Code Enforcement and Permit Procedures

Dates:

- a. **Planning Commission: 10/4/2017 (primary) - 10/18/2017 (backup)**
- b. **City Council: 10/12/2017 (primary) – 10/26/2017 (backup)**

Agenda:

- a. **Review and discuss changes to Title 1**
- b. **Review and discuss changes to Title 8**
- c. **Review and discuss changes to Title 14A**

Action:

- a. **Planning Commission: Recommend adoption of amendments to Titles 1, 8, and 14A BMC**
- b. **City Council: Resolution expressing Intent to adopt Titles 1, 8, and 14A BMC**

3. Critical Areas, Uniform Codes, and Platting

Dates:

- a. **Planning Commission: 11/1/2017 (primary) - 11/15/2017 (backup)**
- b. **City Council: 11/9/2017 (primary) – 11/21/2017 (backup)**

Agenda:

- a. **Review and discuss changes to Title 14**
- b. **Review and discuss changes to Title 15**
- c. **Review and discuss changes to Title 16**

Action:

- a. **Planning Commission: Recommend adoption of amendments to Titles 14, 15, and 16 BMC**
- b. **City Council: Resolution expressing intent to adopt Titles 14, 15, and 16 BMC**

4. Zoning and General Development Regulations

Dates:

- a. **Planning Commission: 12/6/2017 (primary) - 12/20/2017 (backup)**

- b. City Council: 12/14/2017 (primary) – 12/28/2017 (backup)

Agenda:

- a. Review and discuss changes to Title 17

Action:

- c. Planning Commission: Recommend adoption of amendments to Title 17 BMC
- a. City Council: Resolution expressing intent to adopt Title 17

5. Final Adoption

Date:

- a. Planning Commission (no action required)
- b. City Council 12/28/2017

Agenda:

- a. Discussion of final action

Action:

- a. Ordinance adopting revisions to Burlington Municipal Code, adopting and updated zoning and comprehensive plan maps

Updated Zoning and Comprehensive Plan Maps

As part of the code update effort the City commissioned Skagit County GIS to produce new zoning and comprehensive plan maps. The City's previous maps were drawn in CAD and had not been updated in several years. The maps contained numerous errors, references to zoning changes which had expired, and required access to CAD software to update. By converting these maps to GIS they can be quickly updated in the future. In addition, the GIS format makes land use analysis work, such as the City's ongoing buildable lands analysis, much easier. The changes to the maps did not change the zoning of any parcel, but rather clarified overlapping zones and ensured that all zoning designations were consistent with adopted ordinances and zoning code requirements.

Future Work

As previously noted, this code update effort was not intended to make major policy changes. If, through the process of reviewing this work, the Planning Commission or City Council identifies policy changes they would like to make, the Planning Department would advise that these changes be cataloged and considered in a consolidated fashion during the comprehensive plan update. The code update work presented here is intended to be the beginning of a process and to establish a foundation for future changes, both through the comprehensive plan update and through future amendments and revisions.

Going forward, the Planning Department recommends that the code be audited for non-substantive matters such as clarity, grammar, spelling, organization, and consistency on an annual basis.

Meeting Times

Currently the Municipal Code requires that Planning Commission meetings be held at 7:00 on the third Wednesday of each month (BMC 17.76.020). A number of Planning Commission members have proposed holding the Commission's monthly meeting at 5:30 rather than 7:00. The Planning Department believes changing the Commission's meeting time to 5:30 will make it easier for staff and members of the public to attend meetings. Also, large projects, such as the code update and comprehensive plan update may require additional meetings in order to provide adequate time for public comment, staff presentations, and Planning Commission deliberations. In order to address these issues the Planning Department recommends that BMC 17.76.020 be amended to allow the Planning Commission to establish its own meeting times.

Conclusion

The Planning Department has attached the following documents to this report:

- A draft recommendation for the Planning Commission's consideration.
- Code update schedule
- Updated zoning map
- Updated comprehensive plan map
- Suggested language to amend BMC 17.76.020 to allow the Planning Commission to schedule their own meetings

The Planning Department recommends the Planning Commission sign the draft recommendation attached to this report approving the schedule, proposed code changes, and updated zoning and comprehensive plan maps.

Move to approve the contract with Lexipol and authorize the Mayor's signature.



AGREEMENT FOR USE OF SUBSCRIPTION MATERIAL

Agency's Name: Burlington Police Department
Agency's Address: 311 Cedar Street, Suite 311
Burlington, WA 98233
Attention: Chief Michael Luvera

Lexipol's Address: 16755 Von Karman Avenue, Suite 250
Irvine CA 92606-4918
Attention: Martin Fromme

Effective Date: _____
(to be completed by Lexipol upon receipt of signed Agreement)

The Agreement for Use of Subscription Material is between Lexipol, LLC, a Delaware limited liability company ("Lexipol"), and the Agency identified above. The Agreement consists of (a) this cover sheet; (b) *Exhibit A* (Subscriptions Being Purchased and Subscription Fees) attached to this cover sheet (consisting of 1 page), and (c) *Exhibit B* (General Terms and Conditions) attached to this cover sheet (consisting of 5 pages). Capitalized terms that are used in Exhibit A and not defined therein shall have the respective meanings given to them in Exhibit B.

AGENCY

LEXIPOL, LLC

Signature: _____
Print Name: _____
Title: _____
Date Signed: _____

Signature: _____
Print Name: Van Holland
Title: Chief Financial Officer
Date Signed: _____

EXHIBIT B

GENERAL TERMS AND CONDITIONS

1. **Definitions.** For purposes of this Agreement, each of the following terms will have the meaning indicated in this Section:

1.1 **Agency's Account.** "*Agency's Account*" means the account by which Agency accesses the Subscription Materials.

1.2 **Agreement.** "*Agreement*" means (a) the cover sheet to which these General Terms and Conditions are attached, (b) Exhibit A (Subscriptions Being Purchased and Subscription Fees) attached to that cover sheet, and (c) these General Terms and Conditions.

1.3 **Initial Term/Contract Year.** "*Initial Term*" means the twelve-month period commencing on the Effective Date and "*Contract Year*" means each twelve-month period commencing on each anniversary of the Effective Date, except as may otherwise be modified by Section 2.1 Term below.

1.4 **Derivative Work.** "*Derivative Work*" means a work that is based on the Subscription Material or any portion thereof, such as a revision, modification, abridgement, condensation, expansion, or any other form in which the Subscription Material or any portion thereof may be recast, transformed, or adapted. For purposes of this Agreement, a Derivative Work also includes any compilation that incorporates any portion of the Subscription Material. Further, "*Derivative Work*" includes any work considered a "derivative work" under United States copyright law.

1.5 **Effective Date.** "*Effective Date*" means the date specified on the cover sheet to which these General Terms and Conditions are attached.

1.6 **Subscription Materials.** "*Subscription Materials*" means the policy manuals, supplemental policy publications, daily training bulletins and other materials provided by Lexipol to Agency from time to time during the term of this Agreement under the subscriptions purchased by Agency as specified in Exhibit A.

2. **Term and Termination.**

2.1 **Term.** This Agreement is effective upon the execution and delivery of this Agreement by both Lexipol and Agency, and shall continue in effect until the expiration of the Initial Term; provided, however, that the term of this Agreement will automatically be extended for successive one-year periods thereafter (each a Contract Year), unless either party gives written notice to the other party to the contrary not less than thirty (30) days prior to the expiration of the Initial Term or the then current Contract Year, as the case may be. Notwithstanding the foregoing, however, this Agreement will be subject to termination as provided in Section 2.2 below.

2.2 **Termination.** This Agreement may be terminated by either party, effective immediately, (a) in the event that the other party fails to discharge any obligation or remedy any default under this Agreement for a period of more than thirty (30) calendar days after it has been given written notice of such failure or default; or (b) in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy laws of any applicable jurisdiction.

2.3 **Effect of Expiration or Termination.** Upon the expiration or termination of this Agreement, all of the rights granted to Agency by this Agreement to the subscriptions identified on Exhibit

A shall automatically terminate. The termination or expiration of this Agreement shall not, however, relieve either party from any obligation or liability that has accrued under this Agreement prior to the date of such termination or expiration. The right to terminate this Agreement pursuant to Section 2.2 above shall be in addition to, and not in lieu of, any other remedy, legal or equitable, to which the terminating party shall be entitled at law or in equity. The provisions of Sections 1 (Definitions), 4 (Copyright; Derivative Works; Lexipol's Ownership), 5 (Right to Use; Limitations on Use of Subscription Material and Derivative Works), 7 (Privacy Policy), 8 (Policy Adoption), 9 (Disclaimer of Liability), 10 (Limitation of Liability), 13 (Miscellaneous), and this Section 2.3 shall survive the expiration or termination of this Agreement for any reason whatsoever.

3. Subscription Fees, Etc.

3.1 Subscription Fee/Invoicing. Lexipol will invoice Agency at the commencement of the Subscription Service (Initial Term) and thirty (30) days prior to the date for each Contract Year (refer to 2.1 above). Agency will pay to Lexipol the subscription fee specified on Exhibit A within thirty (30) days following Agency's receipt of the invoice for such subscription and renewal fees. All invoices will be sent to Agency at the address for Agency specified on the cover sheet to which these General Terms and Conditions are attached. All payments will be made to Lexipol at the address for Lexipol specified on the cover sheet to which these General Terms and Conditions are attached. Lexipol reserves the right to increase pricing for subsequent Contract Years.

3.2 Taxes; Past Due Amounts. All amounts required to be paid under this Agreement, unless otherwise stated on Exhibit A, are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the subscriptions purchased by Agency under this Agreement and/or delivery by Lexipol to Agency of Subscription Material, all of which Agency will be responsible for and will pay in full, except for taxes based on Lexipol's net income. In the event any amount owed by Agency is not paid when due, and such failure is not cured within ten (10) days after written notice thereof from Lexipol, then in addition to any other amount due, Agency shall pay a late payment charge on the overdue amount at a rate equal to the lower of (a) one percent (1%) per month, or (b) the highest rate permitted by applicable law.

4. Copyright; Derivative Works; Lexipol's Ownership. Agency acknowledges and agrees that the Subscription Material is a proprietary product of Lexipol, protected under U.S. copyright law, and that Lexipol reserves all rights not expressly granted in this Agreement. Subject to the terms and conditions contained in this Agreement, Lexipol hereby grants Agency the right to prepare Derivative Works, except as limited by the terms of this agreement; provided, however, that Agency acknowledges and agrees that Lexipol will be the sole owner of all right, title and interest in and to all Derivative Works prepared by or for Agency, including all copyrights and other intellectual property and proprietary rights therein or pertaining thereto, and Agency hereby assigns and transfers to Lexipol all right, title and interest in and to all Derivative Works prepared by or for Agency, including all copyrights and other intellectual property and proprietary rights therein or pertaining thereto. Agency will not remove from any copies of the Subscription Material provided by Lexipol to Agency any copyright notice or other proprietary notice of Lexipol appearing thereon, and shall include such copyright and other notices at the appropriate place on each copy of the Subscription Material and each copy of any Derivative Work made by or for Agency, in any form.

5. Right to Use; Limitations on Use of Subscription Material and Derivative Works. Subject to the terms and conditions contained in this Agreement, Lexipol hereby grants to Agency a perpetual, personal, fully paid-up, right to use, except as limited by the terms of this agreement the Subscription Material and any Derivative Works prepared by or for Agency, solely for the Agency's internal purposes. Agency will not use, copy, republish, lend, distribute, post on servers, transmit, redistribute, display, in whole or in part, by any means or medium, electronic or mechanical, or by any information storage and retrieval system, any Subscription Material or any Derivative Work prepared by or for Agency other than as expressly authorized by the immediately preceding sentence. Without limiting

the generality of the foregoing, Agency will not import, upload, or otherwise make available any Subscription Material or any Derivative Work prepared by or for Agency into or onto any third party knowledge, document, or other content management system or service without Lexipol's prior written consent. The foregoing does not, however, prohibit or restrict Agency from providing Subscription Material or Derivative Works prepared by or for Agency pursuant to an order from a court or other governmental agency or other legal process, or Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request, nor does it prohibit or restrict Agency from displaying the adopted/approved final policy document on a publicly accessible website for official Agency purposes, so long as Agency includes the appropriate copyright and other proprietary notices on such final policy document as required by Section 4 above.

6. **Account Security.** Agency is solely responsible for maintaining the confidentiality of Agency's user name(s) and password(s) and the security of Agency's Account. Agency will not permit access to Agency's Account, or use of Agency's user name(s) and/or password(s) by any person or entity other than authorized Agency personnel. Agency will immediately notify Lexipol in writing if Agency becomes aware that any person or entity other than authorized Agency personnel has used Agency's Account or Agency's user name(s) and/or password(s).

7. **Privacy Policy.** Lexipol will hold all information Agency provides in confidence unless required to provide information in accordance with an order from a court or other governmental agency or other legal process such as a Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request. Lexipol will use commercially reasonable efforts to ensure the security of information provided by Agency. Lexipol's system also uses Secure Socket Layer (SSL) Protocol for browsers supported by Lexipol application(s). SSL encrypts information as it travels between the Agency and Lexipol. However, Agency acknowledges and agrees that Internet data transmission is not always 100% secure and Lexipol does not warrant or guaranty that information Agency transmits utilizing the Lexipol system or online platform is 100% secure.

Agency acknowledges that Lexipol may provide view-only access and summary information (including but not limited to, status of number of policies developed or in development, percentage of staff reviews of developed policies, and percentage of DTBs taken) to the Agency's affiliated Risk Management Authority, Insurance Pool or Group, or Sponsoring Association, if they are actively funding their member Agencies' Subscription Fees.

8. **Policy Adoption.** Agency hereby acknowledges and agrees that any and all policies and Daily Training Bulletins (DTBs) included in the Subscription Material provided by Lexipol have been individually reviewed, customized and adopted by Agency for use by Agency. Agency further acknowledges and agrees that neither Lexipol nor any of its agents, employees or representatives shall be considered "policy makers" in any legal or other sense and that the chief executive of Agency will, for all purposes, be considered the "policy maker" with regard to each and every such policy and DTB.

9. **Disclaimer of Liability.** In developing the Subscription Materials, Lexipol has made a good faith effort to comply with all applicable statutes, case law and industry standards in effect at the time such Subscription Materials are provided to Agency. While Lexipol has made such a good faith effort, Agency acknowledges and agrees that Lexipol its officers, agents, managers, and employees will have no liability to Agency or any other person or entity arising from or related to the Subscription Materials, or any act or omission by Agency or its personnel pursuant to, or in reliance on, any of the Subscription Materials.

10. **Limitation of Liability.** Lexipol's cumulative liability to Agency and any other person or entity for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement or the use of any Subscription Materials shall not exceed the subscription fees actually paid to Lexipol for the use of the Subscription Materials under this Agreement during the twelve-month period immediately prior to the assertion of such claim, demand or action. In no event shall Lexipol be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if Lexipol has

been advised of the possibility of such damages. The limitations set forth in this Section shall apply whether Agency's claim is based on breach of contract, tort, strict liability, product liability or any other theory or cause of action.

11. Non-Transferability. The subscriptions and rights to use the Subscription Material granted by this Agreement are personal to Agency and Agency shall not assign or otherwise transfer the same to any other person or entity.

12. Confidentiality. From time to time during the term of this Agreement, a party may be required to disclose information to the other party that is marked "confidential" or the like, or that is of such a type that the confidentiality thereof is reasonably apparent ("Confidential Information"). The receiving party will: (a) limit disclosure of any Confidential Information of the other party to the receiving party's directors, officers, employees, agents and other representatives (collectively "Representatives") who have a need to know such Confidential Information in connection with the business relationship between the parties to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the confidential nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential and to use it only as permitted by this Agreement; (c) keep all Confidential Information confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third party (except as otherwise provided for herein). Notwithstanding the foregoing, however, a party may disclose Confidential Information of the other party pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request, or Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request, or similar method, provided that the party proposing to make any such disclosure will promptly notify, to the extent practicable, the other party in writing of such demand for disclosure so that the other party may, at its sole expense, seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. Each party shall be responsible for any breach of this Section by any of such party's Representatives.

Miscellaneous.

13.1 Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply.

13.2 Entire Agreement. This Agreement embodies the entire agreement and understanding of the parties hereto and hereby expressly supersedes any and all prior written and oral agreements and understandings with respect to the subject matter hereof, including without limitation any and all agreements and understandings pertaining to the use of the Subscription Materials by Agency. No representation, promise, inducement, or statement of intention has been made by any party hereto that is not embodied in this Agreement. Terms and conditions set forth in any purchase order, or any other form or document of Agency, which are inconsistent with, or in addition to, the terms and conditions set forth in this Agreement, are hereby objected to and rejected in their entirety, regardless of when received, without further action or notification by Lexipol, and shall not be considered binding on Lexipol unless specifically agreed to in writing by it.

13.3 Headings. The captions and other headings contained in this Agreement are for convenience only and shall not be considered a part of or affect the construction and interpretation of any provision of this Agreement.

13.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

13.5 Amendment. No amendment, modification, or supplement to this Agreement shall be binding unless it is in writing and signed by the party sought to be bound thereby.

13.6 Attorneys' Fees. If any action is brought by either party to this Agreement against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees and expenses of litigation.

13.7 General Interpretation. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any person or entity.

13.8 Notices. Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given by personal delivery, by certified mail, postage prepaid, or by recognized overnight delivery service to the appropriate party at the address of such party stated on the cover sheet to which these General Terms and Conditions are attached, or such other address as such party may indicate by a notice delivered to the other party in accordance with the terms of this Section. Alternatively, electronic mail or facsimile notice is acceptable when acknowledged by the receiving party.

13.9 Invalidity of Provisions. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Further, if a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable, then the parties agree that the court should endeavor to give effect to the parties' intention as reflected in such provision to the maximum extent possible.

13.10 Waiver. Lexipol's failure to exercise, or delay in exercising, any right or remedy under any provision of this Agreement shall not constitute a waiver of such right or remedy.

End of General Terms and Conditions

EXHIBIT A

SUBSCRIPTIONS BEING PURCHASED AND SUBSCRIPTION FEES

Agency is purchasing the following:

PRODUCT	TERM	PRICE
Annual Subscription:		
Washington Law Enforcement Policy Tools & Daily Training Bulletins Subscription	ANNUAL	\$10,981.00
Washington Law Enforcement Supplemental Publishing Shell (SPS)	ANNUAL	\$1,194.00
Total To Be Invoiced Upon Execution of the Agreement		\$12,175.00

Pricing is based on

☒ Law Enforcement - No. of Authorized Sworn Officers 27
(insert #)☐ Custody - No. of Beds
(insert #)☐ Fire - No. of Authorized Staff
(insert #)