



CITY COUNCIL MEETING AGENDA
Council Chambers, 1000 Laurel Street

February 4, 2013
Monday

Study Session
7:00 p.m.

- 1. Call to Order**
- 2. Roll Call of Council Members**
- 3. Study Items**
 - a. Marijuana Regulations
 - b. Additional Water Bond Projects
 - c. Visioning Phase II
- 4. Adjournment**

If you need ADA accommodations, please contact City Hall at (253) 517-2705 prior to the meeting. Thank you.

PENDING COUNCIL AGENDA CALENDAR (Dates are Subject to Change) FOR PLANNING PURPOSES ONLY

February 2013			
Mon 02/04	7:00 pm	Study Session	A. Marijuana Regulations B. Additional Water Bond Projects C. Visioning Phase II
Mon 02/11	7:00 pm	Regular Meeting	A. Ordinance creating an Community Events Fund B. Appointing For/Against Committee for Fire Annexation C. Ordinance Amending Parks Regulations D. Porter Way – Trail Crossing Options
Tue 02/19	7:00 pm	Regular Meeting	A. Purchase of Stormwater Vactor Truck – <i>Consent Agenda</i> B. Public Hearing & Ordinance Adopting Marijuana Regulations C. Public Hearing on Sale of Property at 20 th Ave Reservoir Site
March 2013			
Sat 03/ 02	9:30 a.m. – 1:30 p.m.	Council Retreat Activities Center, Red Room	A. Discussion of Public Meeting Rules
Mon 03/4	7:00 pm	Study Session	A. Adoption of 2012 Stormwater Manual B. Streets Presentation – 15 minutes C.
Mon 03/11	7:00 pm	Regular Meeting	
Mon 03/18	7:00 pm	Regular Meeting	A.
April 2013			
Mon 04/01	7:00 pm	Study Session	A.
Mon 04/08	7:00 pm	Regular Meeting	A. Ordinance on Renewing EMS Levy
Mon 04/15	7:00 pm	Regular Meeting	A. First Quarter Financial Report
May 2013			
Mon 05/06	7:00 pm	Study Session	A. Regional Organizations
Mon 05/13	7:00 pm	Regular Meeting	
Mon 05/20	7:00 pm	Regular Meeting	
June 2013			
Mon 06/03	7:00 pm	Study Session	
Mon 06/10	7:00 pm	Regular Meeting	
Mon 06/17	7:00 pm	Regular Meeting	



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To: Mayor Perry & City Council Members
 From: City Administrator Mukerjee
 Date: February 4, 2013, Study Session
 Re: **Marijuana Regulations**

- ATTACHMENTS:**
- A. Draft Ordinance
 - B. City Attorney Memo
 - C. AWC Fact Sheet
 - D. Excerpt from Planning Commission Minutes (Draft)

TYPE OF ACTION:

Information Only Discussion Action Expenditure Required:

Recommendation/Action: Discuss the draft ordinance that has been recommended for adoption by the Planning Commission and schedule it for a public hearing and action at the February 19th 2013 council meeting.

Previous Council Review: 7/11/2011, 7/18/2011, 8/15/2011, 3/5/2012, 4/16/2012, 8/16/2012.

Issue: The current moratorium on the location, establishment, licensing, and permitting of medical marijuana collective gardens will expire in March, 2013. Also, in November 2012, Initiative 502 passed, and legalized recreational marijuana use, production, distribution, and sales, subject to state licensing. The attached ordinance would enact regulations on marijuana related uses by prohibiting medical marijuana collective gardens and permitting the production, processing and retailing of marijuana in certain zoning districts.

Background:

Medical Marijuana:

In 2011 the WA state legislature passed a bill E2SSB 5073, sections of which were vetoed by the Governor. The bill authorized “collective gardens” which allowed qualifying patients the ability to produce, grow, transport and deliver marijuana/cannabis for medical use, and further authorized cities to adopt and enforce zoning requirements regarding production and processing of medical marijuana/cannabis. The Governor vetoed the portions of E2SSB 5073 that would have provided the legal basis for legalizing and licensing medical marijuana or cannabis dispensaries, processing facilities and production facilities.

The City adopted interim regulations, but since another citizens’ initiative was being contemplated, it adopted a moratorium on March 5, 2012 and then extended the moratorium on August 16th, 2012, for an additional 6 months, until the outcome of the initiative was determined. This moratorium expires in March 2013.

Recreational Marijuana:

In November, 2012, the voters approved Initiative 502 which decriminalized the possession of less than one ounce of marijuana by an adult, and set up a system of establishing a state distribution system to be administered by the state Liquor Control Board (LCB) through the issuance of licenses. The licensing requirements will be developed by the LCB by December 1, 2013. Initiative 502 has no impact on the previous state law (E2SSB 5073) on medical marijuana collective gardens.

Discussion:

The proposed ordinance is carefully crafted to try and comply with conflicting State laws on medical and recreational marijuana, recognizing that marijuana use remains illegal under Federal Law.

Federal Law:

Possession and use of marijuana for any purpose, including medical use, remains illegal under Federal Law. Marijuana is listed as a Schedule I drug under the Federal Controlled Substance Act. Despite efforts by the Governor and the State Attorney General to get some clarity from the U.S. Attorney General, it is still unclear, how the federal government would respond to the state and local governments who issue permits in compliance with state law.

In addition to the conflicting laws, there are several law suits pending, which would eventually impact regulations related to marijuana production, distribution, sales and use.

Medical Marijuana - Collective Gardens:

The City currently has a moratorium on medical marijuana collective gardens, which expires in March, 2013. Local governments can prohibit collective gardens altogether. Several cities have taken this approach, because these gardens are not subject to state licensing requirements. Also, due to the uncertainty of the federal response, this is a more prudent path to take for local governments. The King County Superior Court has upheld a ban on collective gardens by the City of Kent. Also, if a patient can legally purchase marijuana at a state licensed retail store, there is no medical necessity for a collective garden.

The attached ordinance would prohibit medical marijuana collective gardens from all zones in the city.

Recreational Marijuana – Growers, Distributors and Retailers:

Initiative 502, gives cities the option to zone recreation marijuana establishments based on state licensing provisions. If the city chooses not to zone these locations, they would be allowed in any commercial zone, subject to state licensing.

The attached ordinance would permit production and processing facilities in the manufacturing zone, while retailing facilities would be permitted in manufacturing and business zones; pursuant to obtaining a State license.

Initiative 502 requires the State Liquor Control Board (LCB) to develop rules and regulations by December, 2013 and determine the number of producers, processors and distributors by County. It also prohibits issuance of licenses for distribution facilities within a thousand feet of schools, parks, libraries, transit centers, and other public facilities.

Planning Commission Recommendation

The Planning Commission held a public hearing on January 23, 2013, and unanimously recommended approval of the attached ordinance.

ORDINANCE NO. XXXX-13

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON, ADOPTING ZONING REGULATIONS PURSUANT TO RCW 35A.63220 AND RCW 36.70A.390; ADOPTING REGULATIONS ON MARIJUANA RELATED USES, PROHIBITING MEDICAL CANNABIS COLLECTIVE GARDENS IN ALL ZONING DISTRICTS OF THE CITY; PERMITTING THE PRODUCTION, PROCESSING AND/OR RETAILING OF MARIJUANA AS REGULATED PURSUANT TO WASHINGTON STATE INITIATIVE NO. 502 ZONING DISTRICTS, AND ONLY AT FACILITIES THAT HAVE OBTAINED A VALID LICENSE ISSUED BY THE WASHINGTON STATE LIQUOR CONTROL BOARD; REPEALING ORDINANCE NO. 1793-12; ENTERING LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, recent amendments to Chapter 69.51A RCW, relating to the medical use of cannabis, have expanded the scope of certain activities involving the use of cannabis for medical purposes that are permitted under state law, and

WHEREAS, Section 69.51A.085 RCW allows “qualifying patients” to create and participate in “collective gardens” for the purpose of producing, processing, transporting, and delivering cannabis for medical use, subject to certain conditions, and

WHEREAS, Section 69.51A.140 RCW delegates authority to cities and towns to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes as exercises of the City’s police powers, and

WHEREAS, the City Council understands that approved medical uses of cannabis may provide relief to patients suffering from debilitating or terminal conditions, but potential secondary impacts from the establishment of facilities for the growth, production, and processing of medical cannabis are not appropriate for any zoning designation within the City, and

WHEREAS, the City Council further understands that while the medical benefits of cannabis have been recognized by the state legislature, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession and use of cannabis is still a violation of federal law. The City Council wishes to exercise the authority granted pursuant to state law in order to clarify that the establishment of a collective garden will be deemed to be a violation of city zoning ordinances, but the City Council expressly disclaims any intent to exercise authority over collective gardens in a manner that would directly conflict with the CSA, and

WHEREAS, Initiative 502 directs the State Liquor Control Board 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, while the production, processing, and retailing of marijuana remains in violation of the federal CSA, 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, and

WHEREAS, the Planning Commission has held a public hearing on January 23, 2013 and has recommended adoption of the regulations set forth below; and

WHEREAS, the City completed SEPA review on the proposed regulations, and issued a DNS on December 20, 2012; and

WHEREAS, the 60-day Dept. of Commerce review has been completed, and

WHEREAS, the City Council held a public hearing on February 18, 2013, and

WHEREAS, nothing in this Ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law; NOW THEREFORE,

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

Section 1. Findings. The recitals set forth above are hereby adopted as the Milton City Council's findings in support of the zoning regulations imposed by this ordinance.

Section 2. Ordinance No. 1793-12 extending the moratorium on the location, establishment, licensing and permitting of medical marijuana or cannabis collective gardens is hereby repealed.

Section 3. Chapter 17.08 of the Milton Municipal Code is amended to add a new Section 17.08.136 to read as follows:

17.08.136 Cannabis Related Uses: See 17.08.556: Marijuana Related Uses and 17.08.557 State licensed marijuana facilities.

Section 4. Chapter 17.08 of the Milton Municipal Code is amended to add a new Section 17.08.556 to read as follows:

17.08.556 Marijuana Related Uses:

Collective garden" means the growing, production, processing, transportation, and delivery of cannabis, by qualifying patients for medical use, as set forth in Chapter 69.51A RCW, and subject to the following conditions:

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

B. A collective garden may contain no more than twenty-four ounces of usable cannabis per patient up to a total of seventy-two ounces of usable cannabis;

C. A copy of each qualifying patient's valid documentation, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden;

D. No usable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden;

E. A collective garden may contain separate areas for growing, processing, and delivering to its qualified patients, provided that these separate areas must be physically part of the same premises, and located on the same parcel or lot. A location utilized solely for the purpose of distributing cannabis shall not be considered a collective garden; and

F. No more than one collective garden may be established on a single tax parcel.

Section 5. Chapter 17.08 of the Milton Municipal Code is amended to add a new Section 17.08.557 to read as follows:

Section 17.08.557 State-licensed marijuana facilities

A. Unless the context clearly indicates otherwise, all terms used in this section and in MMC 17.44.110 shall have the meanings established pursuant to RCW 69.50.101.

B. "Marijuana" means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than zero point three percent (0.3%) 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. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plants, 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 seeds of the plant which is incapable of germination.

C. "Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into usable 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 at wholesale to marijuana retailers.

D. "Marijuana producer" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

E. "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 usable marijuana.

F. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana infused products in a retail outlet.

G. "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include marijuana infused products.

Section 6. Chapter 17.14.010 Table of Uses of the Milton Municipal Code is hereby amended to read as follows:

17.14.010 Table of uses.

Description of Use	RS	RM	RMD	MX	B	M-1	CF	OS
Residential Use Category								
Accessory apartment	acc ¹	acc	acc	acc				
Accessory structure larger than principal building	cup							
Adult day care facility	cup	au	au	au				
Adult family home	au	au	au	au				
Adult retirement community		au	au	au				
Apartment		au	cup	au				
Assisted living facility		cup	cup	cup				
Carport	acc	acc	acc	acc				
Dwelling, multifamily		au	cup	au				
Dwelling, single-family	au	au	au	au				
Dwelling, two-family	au ²	au	au	au				
Garage, private	acc	acc	acc	acc	acc	acc		
Group homes	cup	au	cup	au				
Mobile home park	cup	cup	cup					
Parking area, private	acc	acc	acc	acc	acc	acc		
Swimming pool, private	acc	acc	acc	acc				
Commercial Use Category								

Adult entertainment business					cup			
Ambulance service				au	au	au		
Amusement parks				su2	su2	su2	su2	su2
Animal hospital					au	au		
Auction house/barn (no vehicle or livestock)					au	au		
Automobile service station				cup	au	au		
Automobile wash					au	au		
Automobile, repair					au	au		
Automobile, sales					au	au		
Banks, savings and loan association				au	au			
Beauty/barber shop			cup	au	au			
Bed and breakfast	cup	au	cup	au				
Billiard hall and pool hall				au	au	au		
Child day care, commercial	cup	cup	cup	au	au	cup	cup	
Child day care, family	au	au	au	au				
Commercial recreation < 2 ac.		cup		cup	au		au	au
Commercial recreation > 2 ac.					cup		cup	
Confectionery stores (see Retail sales)				au	au			
Convenience store				au	au			
Crematories and mausoleums					su1	su1	su1	su1
Department stores (see Retail sales)					au			
Drug stores (see Personal services)				au	au			
Dry cleaners (see Personal services)				au	au			
Electric vehicle infrastructure ⁵	acc	acc	acc	au	au	au	acc	acc
Espresso stands				au	au	au		
Flea market						cup		
Food markets and grocery stores				au	au			
Golf and athletic facilities				su1	su1	su1	su1	su1
Greenhouses, private and noncommercial	au	au	au	cup	cup			
Hardware stores < 10,000 sf				au	au	au		
Hardware stores > 10,000 sf					au	au		
Health club		acc		au	au	acc		
Home occupation	au ⁴							
Horticultural nursery, wholesale and retail					au	au		
Hotel				cup	au			
Inn		cup		au	au			
Liquor stores				au	au	au		

Locksmiths				au	au	au		
Lumber yards					au	au		
Marijuana Producers or Processors, State licensed ⁶						au		
Marijuana Retailer, State licensed ⁶					au	au		
Medical marijuana or cannabis collective gardens ⁶				Prohibited in all zoning districts				
Mortuaries					au			
Motel				cup	au			
Outdoor advertising display				cup	au	au		
Pet shop				au	au			
Photographer's studio			cup	au	au			
Radio and TV repair shops				au	au	au		
Recreational areas, commercial, including tennis clubs and similar activities				su1	su1	su1	su1	su1
Recreational areas privately operated				su1	su1	su1	su1	su1
Recycling collection points		acc		acc	acc	acc	acc	acc
Restaurant				au	au	au		
Restaurants, drive-through					cup	au		
Retail <1,000 square feet				au	au	au		
Retail >1,000 square feet					au	au		
Rodeos					su1	su1	su1	su1
Secondhand store				cup	au	au		
Self-service storage facility		acc		acc	cup	au		
Shoe stores or repair shop				au	au			
Sports arenas					su1	su1	su1	su1
Stadiums					su2	su2	su2	su2
Stationery store				au	au			
Studios (i.e., recording, artist, dancing, etc.)				au	au			
Swimming pool, commercial		cup		cup	au		au	
Taverns				au	au	au		
Theaters, enclosed				cup	au	cup		
Video store (rental, not adult) < 5,000 sf				au	au	au		
Video store (rental, not adult) > 5,000 sf					au	au		
Civic Use Category								
Ballfield				su1	su1	su1	su1	su1
Bicycle paths, walking trails	au	au	au	au	au	au	au	au

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Church	cup	au	cup	au	au	cup		
Club or lodge, private				cup	cup			
Fairgrounds					su1	su1	su1	su1
Garage, public						au		
Heliports					su2	su2	su2	su2
Hospitals and sanitariums					cup	cup		
Libraries				au	au		au	
Open-air theaters				su1	su1	su1	su1	su1
Parking area, public		acc		acc	acc	acc	acc	acc
Post office, branch or contract station				au	au			
Post office, distribution center or terminal						cup		
Public parks	cup	cup	cup	cup	cup	cup	au	au
Schools, elementary or secondary	cup	cup	cup	cup	cup		au	
Swimming pool, public	cup	cup	cup	cup	cup			
Transit facilities, bus barns, park-and-ride lots, transit stations				su1	su1	su1	su1	su1
Vocational schools/colleges				cup	cup	cup	cup	
Utilities Use Category								
Electric transmission substation	cup	cup	cup	cup	cup	au	cup	cup
Fuel storage tanks (underground, < 500 gal.)	acc	acc	acc	au	au	au		
Fuel storage tanks (underground, > 500 gal.)		cup	cup	cup	au	au		
Fuel storage tanks, above ground				au	au	au		
Public utility facilities (services)	cup	cup	cup	cup	au	au	au	
Public utility service yard						au	au	
Radio, cellular phone, microwave, and/or television transmission facilities or towers	cup							
Sewage treatment plants							cup	
Transfer station solid waste facility						cup	cup	
Industrial Use Category								
Blueprinting and photostating				au	au	au		
Buy-back recycling center						cup		
Cabinet shops (see Industry, light)					cup	au		
Cargo storage containers					acc	acc	acc	
Carpenter shops (see Industry, light)					cup	au		
Composting facilities					su2	su2	su2	su2
Contractor yards					au	au		
Distributing plants (see Industry, light)						au		

Electric/neon sign assembly, servicing repair						au			
Freight terminal, truck						cup			
Furniture repair (see Industry, light)					cup	au			
Industry, light						au			
Machine shops, punch press up to five tons (see Industry, light)						au			
Motor vehicle impound yard in enclosed building (see Industry, light)						au			
Nonautomotive, motor vehicle and related equipment sales, rental, repair and service					au	au			
Outdoor storage					cup	au			
Paint shop (see Industry, light)						au			
Parcel service delivery (see Industry, light)						au			
Pesticide application service (see Industry, light)						au			
Plumbing shop (see Industry, light)						au			
Plumbing supply yards (see Industry, light)						au			
Printing establishments					au	au			
Recycling processing centers					su2	su2	su2	su2	
Storage for transit and transportation equipment						cup			
Tool sales and rental					cup	au	au		
Trailer-mix concrete plant						cup			
Upholstering					au	au			
Warehousing						au			
Welding shops and sheets metal shops						cup			
Office/Business Use Category									
Medical-dental clinic				cup	au	au			
Professional offices				cup	au	au	au		
Resource Use Category									
Agricultural buildings	acc						acc	acc	acc
Agricultural crops; orchards	au	cup	au				acc	acc	au
Livestock	au ³								
Pasture	au								
Stable, private arena	au ³								
Surface mining						su2	su2	su2	su2
acc: Accessory Use au: Authorized or Permitted Use cup: Conditionally Permitted Use su1: Type I Special Use su2: Type II Special Use									

¹Minimum lot size 9,600 square feet.

²Minimum lot size 12,000 square feet.

³Maximum one animal/acre.

⁴Subject to the limitations of MMC [17.44.090](#).

⁵Battery exchange stations and rapid charging stations are only allowed in the MX, B, and M-1 zones.

~~⁶Subject to limitations of MMC 17.44.120. Medical marijuana or cannabis collective gardens may be permitted pursuant to the interim regulations set forth in Ordinance No. 11-1775, which is on file with the office of the city clerk.~~

(Ord. 1775 § 5, 2011; Ord. 1769 § 3, 2011; Ord. 1586 § 1, 2003; Ord. 1579 § 4, 2003; Ord. 1578 § 2, 2003; Ord. 1405 § 2, 1999).

Section 7. Chapter 17.44 is hereby amended to add Section 17.44.120 Marijuana Relate Uses to read as follows:

Section 17.44.120 Marijuana related uses.

A. The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the City of Milton is an authorization to circumvent federal law or provide permission to any person or entity to violate federal law. Only state-licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the City of Milton and then only pursuant to a license issued by the State of Washington. The purposes of these provisions is solely to acknowledge the enactment by Washington voters of Initiative 502 and a state licensing procedure and to permit to, but only to, the extent required by state law marijuana producers, marijuana processors, and marijuana retailers to operate in designated zones of the City.

B. Marijuana producing or processing facilities may be located only in the Light Manufacturing (M-1) zone of the City. Such facilities and uses may be located only at designated sites licensed by the state of Washington and fully conforming to state law.

C. Marijuana retailers may locate only in the Light Manufacturing (M-1) and Business (B) zones, at designated sites licensed by the state of Washington and fully conforming to state law.

D. Any violation of this section is declared to be a public nuisance per se, and, in addition to any other remedy provided by law or equity, may be abated by the City Attorney under the applicable provisions of this code or state law.

Section 8. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 9. Publication. This ordinance shall be published by an approved summary consisting of the title.

Section 10. Effective Date. This ordinance shall become effective and be in full force five (5) days after passage, approval, and publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Milton, this 18th day of February, 2013.

CITY OF MILTON

Mayor Debra Perry

ATTEST/AUTHENTICATED:

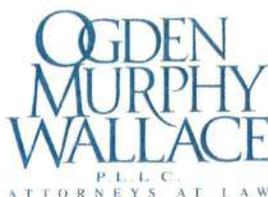
Lisa Tylor, City Clerk

APPROVED AS TO FORM:

W. Scott Snyder, City Attorney

Published:
Effective Date:

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MEMORANDUM

Date: November 30, 2012

To: All Cities:
Mayors, Administrators, City Managers, City Clerks,
Planning Directors, Human Resources

From: W. Scott Snyder, Office of the City Attorney

UPDATE ON MARIJUANA

The Impacts of Initiative 502: Zoning, Business Licensing, and Employment

CONCLUSIONS

Washington's social experiment with marijuana will continue to play out for years to come. Washington cities have some clear direction:

1. The state has taken over the licensing, regulation and location of marijuana cultivation, processing and distribution facilities. Until properly licensed, any business selling, processing or growing marijuana (other than collective gardens) is illegal and may be prohibited under local zoning and police powers.
2. The King County Superior Court has upheld a ban of collective gardens as a zoning and police power exercise by the City of Kent.
3. Cities which require business license applicants to comply with state and federal law need not issue business licenses for marijuana uses until Initiative 502 is implemented (and any federal lawsuit resolved).
4. Washington public employers may not randomly test employees for marijuana use unless there are public safety implications.

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5. Washington public employers have a strong legal basis to discipline or discharge employees who test positive for marijuana if their contracts, policies and disciplinary history are consistent with this action. Further, litigation regarding whether discharge for off-duty marijuana use violates public policy should be anticipated.

OVERVIEW

Effective December 6, 2012, Initiative 502 becomes effective. While the primary focus of the initiative is the decriminalization of marijuana and the eventual establishment of a state distribution system, its enactment impacts cities' options regarding zoning, licensing and employment.

On December 6, 2012, the possession of less than an ounce of marijuana by adults over the age of 21 will no longer be a crime. The possession of marijuana paraphernalia will similarly be decriminalized.

However, except for medical marijuana grown in accord with state law, the sale, production, and processing of marijuana as well as possession by minors and public consumption remain illegal under Washington law. The initiative anticipates the development by the State Liquor Control Board of regulations to license producers, processors and sellers of marijuana. These rules are to become effective December 1, 2013. **Only the state licensed production, processing and sale of marijuana will be decriminalized.** Given the lack of any existing licensing structure, as well as the likelihood of a lawsuit by the federal government, the sale, as well as the production, processing, and cultivation of marijuana outside of a collective garden or by a qualified patient remain illegal until at least December of next year. Absent a valid state license, marijuana cultivators, processors and distributors are in violation of state law. Even with a state license, such facilities violate federal law.

For individual citizens, the focus of law enforcement will shift from possession of marijuana (in amounts under one ounce) to a prohibition of driving under the influence. A THC concentration in the blood of more than 5.00 nanograms (for drivers over the age of 21) or 0.0 nanograms (for drivers under 21) will constitute the offence of driving while under the influence. Any person operating a motor vehicle in this state is deemed to consent to a blood test to determine THC concentration.

Much attention has been focused on the standard of 5.00 nanograms of THC concentration. THC concentration is defined as "nanograms of Delta-9 Tetrahydrocannabinol (THC). "THC ... does not include measurement of the metabolite THC-COOH, also known as carboxy-THC." Metabolite THC-COOH is the trace residue that remains in a person's system after THC has been metabolized by the body. The lack of a scientific basis for the 5.00 nanogram THC concentration level was criticized by advocates of medical marijuana. The definition appears to be an attempt to differentiate active THC -- the intoxicating element -- from previously

metabolized marijuana. Delta-9 THC is “generally accepted as the principle psycho-active ingredient in marijuana...”¹ THC-COOH is commonly isolated in urine tests such as CDL driving tests. The federal standard is 50 nanograms of metabolite THC-COOH per milliliter. Research indicates that the higher detection range at the federal level of 50 nanograms per milliliter will indicate marijuana consumption anywhere between six to 78 hours prior to testing. Detection at the 50 nanogram per milliliter cut off has been shown in research to detect use anywhere from four to 122 hours prior to a test. Therefore, a traditional urinalysis such as a CDL test may show only that an individual has utilized marijuana sometime in the last thirty days (at the extreme) and is not an accurate indicator of whether an individual is intoxicated. The distinction between active and metabolized THC will likely become part of the discussion in disciplinary actions.

ZONING IMPLICATIONS:

Many cities still struggle with the imposition of zoning regulations governing medical marijuana and collective gardens. Recent litigation in King County Court level involving the City of Kent upheld the City’s ban on distributorships and collective gardens prior to the passage of Initiative 502. While the *Kent* plaintiffs proceeded pro se (without legal counsel), the City’s briefing and the Superior Court’s ruling carefully examined issues such as federal pre-emption, local zoning authority and potential constitutional challenges. While no appellate precedent has been established, the *Kent* decision affirmed a city’s ability to prohibit collective gardens under zoning and police powers.

Now that Initiative 502 has passed, cities have an additional option to zone based upon state licensing provisions. Under the initiative, the State Liquor Control Board will license producers, processors and distributors. One zoning option for communities would be to prohibit any marijuana production, processing or distribution business or facility that does not have a valid state license. As noted previously, no licenses will be issued before December of 2013. Given the likelihood of a federal lawsuit, licensing on that date is unlikely.

Under this approach, a city could permit marijuana production and processing facilities (other collective gardens) in appropriate industrial zones when licensed by the state. Distribution facilities, again when licensed by the state, could be permitted in appropriate retail zones. Initiative 502 prohibits the issuance of licenses for distribution facilities within a thousand feet of schools, parks, libraries, transit centers, and other public facilities. Initiative 502 does not specifically preempt local regulation but the explicit structure implies state preemption and is likely to be a basis for legal challenge to local site regulation.

Under the initiative, all facilities other than those licensed by the state are illegal.

¹ Sterling Reference Laboratories, *Understanding THC and Detection Times*.

SIGNAGE

Signage visible from the public right-of-way is limited to one 1600 square inch sign -- approximately the size of a political yard sign. Please note that the state limitation is not applicable to “non-commercial messages.” As you review your zoning codes, you should consider both the commercial identification of the marijuana outlet as well as the implication of signage for “non-commercial messages.” The total signage permitted on the site should be consistent with your regulation of reader boards and other non-commercial messages under your ordinances.

ZONING SUMMARY

Given that the probability of litigation between the state and federal government is likely, many issues will likely remain unresolved for years. Cities do have some guidance:

1. Based on the continuing illegality of marijuana under federal law, cities may choose to follow the approach pioneered by the City of Kent and prohibit collective gardens.
2. Cities considering permissive zoning for marijuana production, processing and distribution facilities should consider limiting zoning to those facilities licensed under state law. Given that no such licenses can be issued until at least December of 2013 and highly unlikely at that date, this may be an attractive option for many communities.

BUSINESS LICENSES

If your city licenses businesses, you should consider limiting the issuance of business licenses to uses which “comply with state and federal law.” Given the repeated federal threats to prosecute government employees who facilitate marijuana production, cities should approach licensing with caution. No license for production, processing and distribution could be issued under state law until at least December 2013. Complying with federal law will be impossible until either Congress amends the Controlled Substances Act or the US Supreme Court rules on likely litigation regarding the Washington and Colorado initiatives. Prior Supreme Court decisions such as *Raich v. Gonzales*² provide a strong precedent for federal preemption of the issue of marijuana regulation.

LABOR AND EMPLOYMENT

In June 2011, the Washington State Supreme Court gave guidance to employers regarding whether the Washington Medical Use of Marijuana Act (MUMA) prohibited an employee from being discharged because of authorized medical marijuana use.

² 545 US 1, 125 S.Ct. 2195 (2005)

The Washington State Supreme Court's decision in *Roe* found that MUMA did not create a public policy relating to employment. Like Initiative 502, MUMA created a defense to criminal prosecution. Unlike 502, however, MUMA contains a direct reference to employment:

Nothing in this chapter requires any accommodation of any on-site medical use of marijuana on any place of employment...³

The Washington Supreme Court rejected arguments that employment is one of the "privileges" protected by MUMA. The court held, however, that "the statute's explicit statement against an obligation to accommodate on-site use does not require reading into MUMA an implicit obligation to accommodate off-site medical marijuana use. The language of MUMA is unambiguous -- it does not regulate the conduct of a private employer or protect an employer from being discharged because of authorized medical marijuana use."⁴

The court also held that MUMA did not create a separate cause of action nor a "sufficient public policy to support a cause of action for wrongful termination."

While *Roe v. Teletech* appears to offer strong precedent allowing employers to discharge an employee who violates its drug policies, employers should anticipate future litigation after Initiative 502 and an attempt to find a "public policy" supporting employment protections for marijuana users. To date, decisions in California, Michigan and Oregon as well as ADA claims at the federal level have all supported an employer's right to maintain a drug free workplace.

ARBITRATION AND COLLECTIVE BARGAINING AGREEMENTS

Arbitration awards have focused on the specific language of collective bargaining agreements. In *Freightliner LLC v. Teamsters Local 305*, an employer brought an action to vacate an arbitrator's decision reinstating an employee terminated for medical marijuana use.⁵

The collective bargaining agreement in that case stated that "reporting for duty while under the influence of any drug or alcohol (whether or not legally intoxicated) is specifically prohibited and will be cause for suspension without pay or discharge, depending on the circumstances." The collective bargaining agreement (CBA) defined "under the influence" in two ways:

1. "Behavior that adversely affects job performance, mobility, safety, or speech with evidence of drug or alcohol usage."

³ RCW 69.51.060(4)

⁴ B

⁵ 336 F.Supp 2nd 1118 (2004).

2. “Drug or alcohol usage resulting in a positive drug screen.”

As earlier discussed, a urinalysis tests not for an individual’s marijuana intoxication, but whether the residue of metabolized THC remains in the employee’s system. Failure of a urinalysis will show only that an employee has used marijuana in the preceding days or weeks, not whether an individual is intoxicated.

The district court vacated the arbitrator’s ruling, a rarity, finding that the arbitrator’s interpretation of the contract was “not even plausible.” The court found that neither the anti-discrimination clause nor the severability clause of the contract were sufficient to incorporate the state’s (Oregon’s) medical marijuana act into the contract.

The *Freightliner* decision also is interesting in that the CBA in question contained a prescription drug provision which permitted disciplinary action with regard to an employee who failed to report that he or she was taking a prescription drug. The arbitrator’s decision did not rely on the prescription drug provision, choosing to rely on Oregon law. The court’s decision notes that this ground was abandoned but the argument potentially is available for an employee depending upon the wording of an employer’s policy or contract

PUBLIC EMPLOYER DRUG TESTING

In Washington, the Washington State Constitution, Article I Section 7 prohibits Washington public employers from conducting suspicionless drug tests of employees and employee applicants except where a clear public safety issue is presented.⁶ Unless a Washington public employer has a reasonable, articulable suspicion that an employee is under the influence of drugs or alcohol, the employer may not conduct random drug tests nor may it require pre-employment testing. Public safety employees and those employees who are required to maintain a commercial driver’s license under federal transportation commission requirements are held to a different standard.

CDL REQUIREMENTS

Under federal law, marijuana is classified as a Schedule I substance, “...based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment.”⁷

Accordingly, the US Department of Transportation CDL regulations specifically instruct medical review officers (MROS), professionals who review drug test results and provide verifications to employers, to ignore claims of medical marijuana usage:

⁶ *Robinson v. Seattle*, 102 Wash. App. 795 P.3d 452 (2000).

⁷ Comprehensive Drug Abuse Prevention and Control Act of 1970 21 USC, §1812(b)(1).

(e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed n Schedule I of the Controlled Substances Act. (e.g., under state law that purports to authorize such recommendations, such as the medical marijuana laws, that some states have adopted.”⁸

Similarly, substance abuse professionals engaged in the return to work process may not take medical marijuana authorization into account.⁹

DRUG FREE WORKPLACE ACT

The federal Drug Free Workplace Act, 41 USC § 701, *et seq* requires any federal contractor or grant recipient to maintain a drug-free workplace. Entities seeking a contract or a grant must certify that they are maintaining a drug-free workplace.¹⁰ Employers are required to adopt policies which:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against an employee for violation;
2. Establish a drug-free awareness program to inform employees about the dangers of drug abuse, the employer’s policy of maintaining a drug-free workplace, available drug counseling, rehab and employee assistance programs, and the penalties which may be imposed;
3. Require each employee to be engaged in the performance of a grant or contract to be given a copy of the statement. [Many employers seeking to obtain federal grants or federal contracts may have enacted a policy applicable throughout their workplace to enable future grants.];
4. Notify the employee that “as a condition of employment,” the employee will be required to abide by the terms of this statement and notify the employer of any criminal drug statute conviction within five (5) days of conviction;
5. Notify the granting or contracting agency within ten (10) days of notification of such a notification;

⁸ 49 CFR 40.151(E)

⁹ 49 CFR 40.293.

¹⁰ 41 USC § 701 and 702.

6. Impose a sanction or require the satisfactory participation of a drug abuse assistance or rehabilitation program; and
7. Make a good faith effort to maintain a drug-free workplace.

Note that while the Drug-Free Workplace Act does not clearly require termination in every instance, a history of drug violations can result in an employer losing its ability to contract with or obtain grants from the federal government. Within thirty (30) days after notification that an employee has been convicted of a drug offense, the employer must take “appropriate personnel action against such employee up to and including termination...”¹¹ [emphasis added].

Accordingly, while Washington employers who seek to contract with the federal government or obtain grant funds must maintain a drug-free workplace, termination is not mandated under the Drug-Free Workplace Act. An employer who wishes to cite the Drug-Free Workplace Act as a justification for a “business necessity” with regard to a charge of disability discrimination (based on medical marijuana use) or as “just cause” in an arbitration proceeding should be careful that it has fully implemented the Act’s provisions and that any discipline imposed is consistent with past disciplinary practice. As a federal enactment, the federal statutory determination that medical marijuana is a Schedule I illegal drug can be taken into consideration. While the ability to use progressive discipline is acknowledged under the Act and other circumstances may be taken into consideration, employers should also consider that federal regulations provide:

Drug-free workplace means a site for the performance of work done in conjunction with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.¹²

“Unlawful” under a federal regulatory scheme means unlawful under federal law. State law is not recognized as an exception to federal regulations.

WSS/gjz

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¹¹ 41 USC § 703.

¹² 2 CFR 182.635, emphasis added.



I-502: Marijuana Initiative

Washington State voters passed Initiative 502 on election night, legalizing marijuana use.

What does the initiative do?

The initiative legalizes marijuana use for persons over 21. Private stores, producers and processors are allowed to be licensed to sell marijuana and marijuana infused products. The Washington State Liquor Control Board (LCB) is tasked with regulating and taxing marijuana. Portions decriminalizing the possession of marijuana take effect Dec. 6, 2012. Rules regarding licensing and sales are set to occur no later than Dec. 1, 2013.

Who can sell marijuana?

The initiative provides for licensed retail locations. Marijuana stores can only sell marijuana, marijuana-infused products, and paraphernalia.

Stores are allowed to sell to an individual any combination of the following: one ounce of useable marijuana, 16 ounces of marijuana-infused product in solid form, or 72 ounces of marijuana-infused product in liquid form. Stores may not allow on-premises consumption.

Stores are prohibited from advertising or showing product visible from outside the store.

No one under the age of 21 may enter marijuana stores, and store owners and employees also must be over 21.

What are the rules for users?

In addition to being over 21, marijuana cannot be opened or consumed in public. The initiative also establishes a presumptive standard for driving under the influence of marijuana-similar to standards for alcohol- but only available as a blood test.

How is marijuana going to be regulated?

The LCB is tasked with regulating and licensing marijuana producers, processors, and retailers. The maximum number of retailers per county, the maximum amount of marijuana a retailer and producer have on premises, how and when marijuana could be transported, and product labeling requirements become responsibilities of the LCB. Rules about security requirements, employee training and supervision, and locations and hours of retail operations are also the LCB's tasks.

Cities and counties must be notified of any applications in their jurisdiction and may object under a process similar to liquor license objections. No license can be approved for locations within 1,000 feet of elementary or secondary schools, playgrounds, recreation centers, day cares, parks, transit centers, libraries, and arcades.

Will the initiative impose taxes on marijuana?

Yes. At each transaction point (producer to processor, processor to retailer, and retailer to consumer) a 25% excise tax would be levied. Local and state sales tax will also be levied on retail sales.

The excise taxes are to be placed in a dedicated marijuana fund and are to be primarily distributed to the state's Basic Health Plan, the state general fund, health-related programs, and the LCB for administrative costs. Local governments do not get a share of the excise tax.

Does the initiative address medical marijuana?

The initiative is silent on medical marijuana. However, I-502 may impact medical users as marijuana could be purchased at retail stores. Furthermore, state and local criminal penalties for possession and use are eliminated.

And what about federal law?

The initiative does not change federal law, and the federal government could continue to arrest marijuana producers, processors, retailers, and users.

AWC contact

Candice Bock, candiceb@awcnet.org
Legislative & Policy Advocate

Brittany Sill, brittanys@awcnet.org
Legislative & Policy Analyst

AWC has not taken a position for or against this ballot initiative. AWC's role is to provide its members with educational materials that can be shared with elected officials, staff and the community. In addition, please review the PDC's guidelines for elected and appointed officials' participation in ballot proposition activity.

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**EXCERPT
PLANNING COMMISSION MINUTES
(DRAFT)**

**January 23, 2013
Wednesday, 7:00 p.m.**

**Council Chambers
1000 Laurel Street**

PUBLIC HEARING

a. Marijuana Regulations

Chair Wilson opened the Public Hearing at 7:17 p.m.

Mr. Sanderson addressed the Commission to state how unfortunate he finds it for Milton to be caught in the conflict between state and federal government legislation, and he urged the City to stay out of the middle of it.

Chair Wilson closed the Public Hearing at 7:19 p.m.

2. ACTION ITEM

a. Marijuana Regulations

City Administrator Mukerjee introduced this item, explaining the legal advice the City has been given to carefully craft legislation that meets state requirements without adding anything specific for Milton. This approach will leave interpretations with the state level and keep Milton in the most advantageous position regarding the conflict at the federal level.

Planner Larson further explained the two branches being regulated:

1. Medical Use – the City’s proposed ordinance defines collective gardens and then prohibits them in all zones within Milton.
2. Recreational Use as mandated by the recently passed Initiative 50) – this legislation requires that cities provide for marijuana producers, processors, and retailers somewhere in the city’s zoning. The proposed ordinance allows for producers and processors in the M1 (industrial) zone, and retailers in B (Business) and M1 zones.

Discussion ensued regarding tax revenue, distance measurements from and definition of public facilities, reasoning for not extending the moratorium again, and conditional vs. authorized uses.

Commissioner Anderson moved, seconded by Commissioner Kleine, to recommend approval of the attached ordinance regarding regulations of marijuana related uses.
Passed 6/0.



To: Mayor Perry and City Council Members
From: City Administrator, Mukerjee
Public Works Director, Neal
Date: February 4, 2013 Study Session
Re: **Milton Vision – Next Steps**

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ATTACHMENTS: A. Planning Commission 2013-2014 Work Plan – DRAFT

TYPE OF ACTION:

Information Only Discussion Action Expenditure Required:

Recommendation/Action: Discuss scope of work and timeline.

Fiscal Impact/Source of Funds: The fiscal impact will depend on the scope of work, timing, availability of State grants and developer participation.

Previous Council Review: On July 16, 2012, Council approved the funding for a City-wide visioning process. The one-week visioning charrette occurred during the last week of October and first week of November. On November 19, 2012, Council formally accepted the visioning process recommendations through passage of Resolution 12-1826.

Issue: The next step in the visioning process is to incorporate the recommendations into the city’s comprehensive plan and develop a form based code.

Discussion: The initial visioning process presented visual renderings and described development possibilities for various sections of the city, namely:

1. Annexation area along Hwy 99 (*Milltown District*),
2. Milton Way/Meridian area (*Uptown District*),
3. Lloyd’s property (*Quarry Site*),
4. Triangle Park & Simmons Building area (*Midtown Village*),
5. Meridian/Military Rd area (*Gateway Site*), and
6. Possible single-family residential development layouts using traditional streets and alleys (*Neighborhood Infill*).

Council has accepted these recommendations as a guide to future amendments to the comprehensive plan.

State law requires that the comprehensive plan be amended by the end of 2014. The process involves a public process, environmental review along with review and recommendations from the planning commission and finally adoption by the City Council.

The Planning Commission will be starting work on the comprehensive plan update this year and into the following year. A draft of the Planning Commission 2013-2014 Work Plan is attached for your reference. Beyond the Planning Commission's work, however, there will also be significant public and agency outreach to introduce the City's vision to a wider audience, including key property stakeholders, and development of specific regulations and comprehensive plan components for each of the areas identified in the visioning process. Also, market analyses for the Lloyds and Meridian/Milton Way areas are recommended in order to ensure that the proposed developments are deemed as financially feasible by prospective developers. The end product will include a form-based comprehensive plan and development code.

This work effort will need additional resources. Staff will research the possibility of obtaining any planning grant funds from the State, but this seems unlikely given the budget deficits faced by the legislature. Some of the elements of the work plan that will need additional resources include update of maps, graphic elements of the form-based code, and market analyses.

Milton Planning Commission

2013-2014 Work Plan (Draft)

Item	Description	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Jan '13			April '13	May '13	June '13	July '13	Aug '13	Sept '13	Oct '13	Nov '13	Dec '13	Jan '14			April '14	May '14	June '14	July '14	Aug '14	Sept '14	Oct '14	Nov '14	Dec '14
#1 Medical & Recreational Marijuana Regulations	Review of permanent regulations for Medical Cannabis facilities authorized under RCW 69.51a. Also consideration of the impacts to Land Use regulations from the passage of I-502	X	PH																						
#2 Comprehensive Plan Update																									
Staff to meet with property owners		X	X																						
Sub-Area Components (PI = Meeting held in sub-area to receive Public Input. X = Planning Commission regular meeting)																									
	Quarry Site				PI			X																	
	Uptown District					PI			X																
	Mill Town District						PI			X															
	Midtown Village							PI			X														
Sub-Area Specific Regulations																									
	Quarry Site							X				X	X												
	Uptown District								X			X	X												
	Mill Town District									X		X	X												
	Midtown Village										X	X	X												
Comprehensive Plan Elements																									
Intro to Comprehensive Plan elements																	X								
	Land Use																X	X							
	Housing																		X	X					
	Capital Facilities																		X						
	Utilities																				X	X			
	Transportation																				X	X			
	Economic Development																						X	X	
	Parks																			X					
	Shoreline																X								

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To: Mayor Perry and City Councilmembers
From: Public Works Director Neal
Date: February 4, 2013 Study Session
Re: Water Revenue Bonds – Additional Project

-
- ATTACHMENTS:**
- A. Water Revenue Bond Project status sheet**
 - B. Figure 12 – Potential Drilling Site Location Map**

TYPE OF ACTION:

Information Only Discussion Action Expenditure Required:

Recommendation/Action: Staff recommends that the remaining revenue bond money be utilized to complete the first steps of constructing an additional source by performing exploratory test drilling at one of three sites identified by the City’s hydrogeologic consultants. With Council consent, staff will bring back a contract with scope and fee to move forward with this project.

Fiscal Impact/Source of Funds: Although this project was not included in the adopted 2013 budget, it is anticipated that this project would be almost entirely funded with revenue bond money. If there is any overage, it would come out of the water utility fund.

Previous Council Review: The City Council last looked at the status of the water revenue bond projects when it approved using revenue bond money for the Porter Way Watermain Project at the May 7, 2012 meeting.

Issue: Attached is an accounting of expenditures to date for the Water Revenue Bond projects (Attachment A). We are currently projecting that there will be \$208,111 remaining from the original amount of revenue bond proceeds, once all of the currently approved projects are completed.

Discussion: Chapter 8 of the adopted Water System Plan describes 38 projects vital to our water system, many of which are projected for completion beyond 2015. With the assistance of the revenue bond funds, we will have successfully completed seven (7) priority water utility capital improvement projects in the last 3 years as follows:

1. Corridor Wells Treatment Facility - completed
2. 15th Avenue Booster Station Upgrades - completed
3. 1 MG Reservoir Booster Station Upgrades – completed
4. 15th Avenue Tank Painting – completed
5. Birch Street Crossing – under construction
6. 434 Zone Modifications – under construction
7. Porter Way Watermain Project – under construction

From the remaining projects listed in the Water System Plan, staff has identified three (3) projects that should be considered for construction with the remaining revenue fund money.

1. WS-2: Phase 1 Additional Source: Exploratory Drilling and Land Acquisition

Although the total cost of this project (\$1.26M) is well beyond the scope of the remaining revenue bond money, the cost of the exploratory test drilling portion is estimated at \$250,000. Well #5 has continued to deteriorate over the past 3 years. Despite investing in various repairs and rehab work, Well #5 was taken off line last year due to further decreases in pumping capacity. Although it was not a large water producer for the City, its failure has increased the need for finding another site for future development as a water source. Future growth in the City will demand additional water resources, and the remaining revenue bond funds will allow us to identify the site, depth, and pumping capacity of a future source of water so we can plan and budget future costs accordingly. We believe this is a strategic investment for the future of the city. Options for test drilling sites are shown on Attachment B, which is a map from the 2008 memorandum by Robinson & Noble and included in the Water System Plan in Appendix R.

2. D-21: Milton Way and 13th Avenue

This project would replace 1150 lineal feet of aging 6-inch pipe along Milton Way from 15th Avenue to 13th Avenue and along 13th Avenue north of Milton Way, and increase fire flow availability. With an estimated project cost of \$260,000 this project is a good match for the remaining revenue bond money.

3. D-13: 19th Avenue

This project would replace 1300 lineal feet of aging 4-inch pipe along 19th Avenue from Milton Way to Emerald Street and increase fire flow availability. This section of roadway is eligible for several grants, due to its proximity to the school, and it would be advisable to complete any watermain upgrade prior to constructing pedestrian improvements; \$295,000 may be difficult to contribute for this work in the future if a grant for the street work is obtained.

Staff recommends proceeding with WS-2: Test Drilling.

REVENUE BOND PROJECT STATUS/SUMMARY

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Project	Revenue Bond Planning Cost Estimates			Actual or Updated Estimated Cost					Surplus/ (Deficit) to Bond Cost Estimates	
	Construction	Eng & Admin	Total (Rounded)	Construction Estimate	Bid/Actual Const. Cost	Materials Acquired by City	Design Contract	CM		Total
Corridor Wells Fe & Mn Treatment	\$579,000	\$76,000	\$655,000	NA	\$435,176	\$150,000	\$71,545	\$25,850	\$682,571	(27,571)
15th Ave. Booster Station	\$241,900	\$58,100	\$300,000	NA	\$315,073	\$44,879	\$50,000	\$5,000	\$460,752	114,248
1 MG Reservoir Booster Station	\$206,250	\$68,750	\$275,000	NA			\$45,800			
15th Ave. Tank Painting	\$93,750	\$31,250	\$125,000	NA	\$114,675	NA	\$8,100	\$24,000	\$146,775	(21,775)
Birch St. Crossing	\$519,000	\$130,000	\$650,000	\$666,000	\$536,579	NA	\$60,400	\$10,000	\$606,979	NA
434 Zone Modifications	\$82,300	\$20,600	\$105,000	\$82,300	NA	\$44,826	\$12,300	\$0	\$57,126	47,874
SUBTOTAL	\$1,722,200	\$384,700	\$2,110,000	\$748,300	\$1,401,502	\$239,705	\$248,145	\$64,850	\$1,954,202	155,798
Porter Way Watermain Project	\$349,041	\$69,800	\$418,841	\$414,247	\$384,444	N/A	\$29,800	\$6,000	\$420,244	(\$1,403)

ADDED on May 7, 2012 by Council Action

TOTAL	\$2,071,241	\$454,500	\$2,528,841	\$1,162,547	\$1,401,502	\$239,705	\$277,945	\$70,850	\$2,374,446	\$154,395
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Actual Revenue Bond Funds Received \$2,582,557
 Costs incurred to date (or estimated) \$2,374,446

Funds Remaining \$208,111

