

PORT ANGELES MUNICIPAL CODE AUDIT PHASE 1 FINAL REPORT



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Public Summary



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INTRODUCTION

The Port Angeles Municipal Code (“PAMC”) consists of 241 chapters divided among 17 titles. Many of these codes have been in existence more than fifty years or have been amended piecemeal since the City began adopting municipal ordinances in 1890. Over the past 15 years, both City staff and councils have acknowledged the need for a comprehensive review of the PAMC. This code audit project followed.

Our review of the PAMC¹ took into account the City’s desire to:

- Eliminate all provisions of the PAMC that do not readily appear to equitably benefit the health, safety, or welfare of all people of Port Angeles;
- Add provisions for the PAMC that increase public health, equity, community safety for the most vulnerable community members, and general welfare toward a resilient, vibrant, walkable, and livable city;
- Address compliance and/or conflicts with current law and eliminate outdated provisions;
- Create internal consistency and uniformity in definitions, interpretation, and syntax, reduce tentacles, and reorganize, all for a more usable and customer-friendly code;
- Incorporate graphics, where appropriate;
- Implement City Code Compliance Program (Code Portion); and
- Implement tobacco-free ordinance.

In the following pages, you will find a summary of our initial findings organized by issues relating to the code as a whole or pertaining to multiple chapters of the PAMC, and then major issues broken down by title. Also included with this report are examples from other cities’ municipal codes.²

¹ Our review of the PAMC consisted of a comprehensive review of Titles 1-13, 15, and 18. Titles 14, 16, and 17 have been reviewed as part of a separate, but related, project, utilizing grant funding.

² Exhibits A through W.

GENERAL SUGGESTIONS

SYNTAX

Good writing has a clearly defined purpose and is organized, concise, and easily understandable. In addition to those characteristics, legal writing should avoid overly long sentences, archaic language, legalese, repetition, and redundancies. This is especially true in the context of a city’s municipal code, which will be used and relied upon by laypersons, in addition to lawyers and subject matter experts. Well-written city codes not only communicate the city’s laws more efficiently; they are also more persuasive and effective, thus ensuring the provisions will be better understood—and thus followed—by the general public.

In reviewing the PAMC, we noted opportunities for revisions for clarity and syntax that will make the code easier to understand. We have included sample mock-ups of select PAMC chapters to help the City visualize how the code could be rewritten in more of a plain language style.

REFERENCES TO PAMC AND OTHER AUTHORITY

The PAMC includes citations and references throughout to itself, state laws and regulations, and other policy documents, such as the City’s Comprehensive Plan. References within the PAMC to other PAMC provisions are inconsistent, using different variations such as the “PAMC,” the “Port Angeles Municipal Code,” and simply the “Code.” The method of citation to other sections or chapters of the PAMC is also inconsistent. For instance, sometimes the words “chapter” and “section” are capitalized, sometimes they are not, and in other cases these terms are abbreviated (i.e. “Ch.”). Similarly, at times “PAMC” is specifically included in the citation (i.e. “Section _____ PAMC”), but in other cases “PAMC” is not included, making it unclear whether the citation is to the PAMC or possibly to some other body of law. No single way is correct, but we recommend the City select a consistent method of citation that clearly identifies the reference intended.

As discussed throughout this report, there are many provisions within the PAMC that are already contained in state law and regulations. Pursuant to RCW 35A.12.140, cities may adopt state statutes and regulations by reference, provided copies of the adopted laws are filed with the City Clerk and available for examination by the public. We generally recommend that the City adopt statutes by reference when possible, rather than duplicating state law within the PAMC. By explicitly stating that a regulation is adopted

along with any subsequent amendments thereto, the City will avoid potential conflicts with state law and having to amend the PAMC anytime an adopted state law is updated.

Finally, in reviewing the PAMC, we did not find an abundance of “tentacles” (i.e. references to other PAMC provisions). We have provided recommendations throughout the annotated version of the PAMC on revisions that would reduce such “tentacles.” We would also recommend that the code include hyperlinks to all PAMC, RCW, and WAC provisions, and any other policy or regulatory documents referenced so that residents and other laypersons can easily follow long. As the City drafts legislation to enact PAMC updates, it should carefully track all internal PAMC references so that they can be revised as chapters and sections are renumbered.

CODE ENFORCEMENT

Often when people hear “code enforcement,” they think of nuisance abatement. Junk cars. Unkempt yards. Dilapidated buildings. However, virtually every title of the PAMC includes an enforcement component. Furthermore, virtually every city department plays a role in enforcement, whether it be as a code enforcement officer, decisionmaker, or other person responsible for implementing the code. Thus, clear and sufficient procedures for the implementation and enforcement of a city’s municipal code are crucial. Without such procedures, the code has no teeth and no way to ensure compliance.

As part of the code audit, particular attention was given to code enforcement, reviewing both the current code and recent proposed amendments. In addition, during our review of each chapter of the PAMC, we took note of the interplay between chapter-specific enforcement provisions and the broader code enforcement policies of the City.

The City’s primary code enforcement provisions are contained in Chapter 8.30 PAMC, which regulates nuisances. We recommend further work on these chapters to address internal conflicts and inconsistencies, gaps in enforcement, appropriateness of penalties and placement of various sections (i.e., whether a particular section would be more appropriate in another chapter of the PAMC), and syntax.

We also recommend the City staff and Council do a thorough review of each and every other chapter of the PAMC to determine whether the City feels that the appropriate enforcement mechanisms are being utilized. Cities have many options for enforcement, including, but not limited to, issuance of civil fines and penalties (either as civil infractions or administrative civil code violations), prosecuting violations as misdemeanor and gross misdemeanor crimes, and filing abatement actions in Superior Court. However, each option has its pros and cons, and not all options may be appropriate depending on the violation at issue.

PENALTIES AND FEES

Penalties and fees are necessary components of enforcement and administration of the City's laws and ordinances. Currently, most of the City's civil penalties and fees are codified within the PAMC. This takes up a great deal of space in the code and also makes conducting regular updates more time and resource consuming, as they must be accomplished via formal ordinance.

We recommend that instead of codifying civil penalties and fees, they be set forth in a separate master fee schedule adopted by resolution of the City Council, as is common practice for many jurisdictions. Having all fees and penalties included in one master fee schedule also makes for a more user-friendly experience for residents, developers, and community members attempting to gauge cost.

The criminal penalties throughout the code also require significant updating and would benefit from consolidation. For instance, all references to "Class 1" or "Class 2" references should be changed to "gross misdemeanor" or "misdemeanor," respectively. We also recommend the City adopt a general criminal penalties section, stating the penalties for misdemeanor and gross misdemeanor offenses; that way it is only necessary to indicate whether a crime is a misdemeanor or gross misdemeanor, rather than restating the maximum penalties for each offense individually.

In a number of instances, the PAMC sets the maximum penalty for an offense that differs significantly from the standard maximum penalties for misdemeanors and gross misdemeanors under state law. We strongly encourage the City instead rely on the maximum penalties set forth in state law. This not only provides the judicial branch with discretion to do its job effectively but is easier for the judicial branch to track so that it can ensure any penalties are properly imposed.

ADMINISTRATIVE REVIEW AND APPEALS

The opportunity for an administrative review and/or appeal is a necessary part of implementing and enforcing the municipal code and providing persons aggrieved by City decisions with the right to seek review. Such actions include, but are not limited to, decisions on permit and licensing applications, land use actions, and code enforcement proceedings. Throughout the PAMC, various persons are identified as having administrative review or appeal authority. See, for example: PAMC 2.18.065 (administrative review of various land use matters by Director of Community and Economic Development); PAMC 18.08.130 (Urban Service Standards and Guidelines appeals by the City Manager); PAMC 12.08.040(D) (appeal of community center permit decisions to the Parks, Recreation, and Beautification Commission); PAMC 14.01.090 (construction code appeals before Construction Code Board of Appeals); PAMC 14.32.110

(appeal of building moving permit decision to Director of Public Works); PAMC 2.18.060 (administrative review and decision by the Hearing Examiner for various land use permits and other decisions, with appeals to superior court); and PAMC 5.04.200 (business license revocation appeals before the City Council). Having multiple layers of review can provide great benefit, such as potentially avoiding costly litigation, clarifying simple misunderstandings, and, in the unfortunate event that litigation does occur, providing an opportunity to build the record and learning the strengths and weaknesses of each parties' case.

In many instances, the review systems currently in place have been used for many years, and often with little to no impact on the daily operations of the City. But as the City continues to grow and as enforcement and legal issues continue to increase in complexity, procedures that may have been sufficient in the past may no longer be adequate to meet the City's needs.

Many cities have been shifting away from the city council appeal model in favor of a hearing examiner system. State law authorizes use of a hearing examiner for various matters.³ In addition, many cities utilize hearing examiners to conduct hearings and make recommendations and decisions on other matters, such as business license appeals and decisions on ethics complaints.⁴ By divesting review and appeal authority to a hearing examiner, the city council can focus on legislating and making the policies to be implemented and carried out through the city staff and others. This can be particularly important given that many hearings and appellate proceedings are time intensive, taking the city council's time and focus away from other matters on the city council's agenda and on responsibilities that cannot be delegated to other individuals or bodies.⁵

The benefit of using a hearing examiner is that these persons are professionally trained (often hearing examiners are licensed attorneys) and can make impartial, objective decisions without political pressure from a jurisdiction's constituents. Simply put and with no disrespect intended, most city councilmembers will not have been trained in the relevant law or the handling of quasi-judicial proceedings at the time they take office. Thus, using a hearing examiner may provide less risk of a successful legal challenge against the city. Furthermore, the requirements of the Open Public Meetings Act (OPMA), Chapter 42.30 RCW, that otherwise apply to all meetings of a city council do not apply to the proceedings of a hearing examiner.⁶

³ See, for example, RCW 35A.63.110 (replacement for board of adjustment); RCW 35A.63.170 (certain zoning matters); RCW 36.70B.020(3) (open record hearings on project permit applications); RCW 43.21C.075 (hearings on SEPA appeals); RCW 46.55.240 (hearings on abatement and removal of junk vehicles from private property); RCW 58.17.330 (preliminary plat hearings and decisions).

⁴ See, for example, Exhibit B.

⁵ For example, the city council is solely vested with the authority to adopt a city budget. The budget process often takes many months and numerous workshops, hearings, and meetings before adoption.

⁶ Note that certain notice requirements still apply, and many hearing examiner matters may still be open to the public. However, because a hearing examiner is not a "governing body" as defined by the OPMA, the

To that end, we recommend that the City join in this statewide trend and remove the City Council from the review and appeal process in all decisions except those required by law to be reviewed or heard by the Council.

hearing examiner need not be concerned with many of the issues faced by a city council, such as having discussions with other a quorum of councilmembers outside of a public meeting.

NOTES AND SUGGESTIONS BY TITLE

TITLE 1 – GENERAL PROVISIONS

Title 1 sets forth the general provisions of the PAMC. In general, Title 1 would benefit from revisions for clarity and syntax as discussed previously in this report, and several provisions that could be cut entirely for conciseness.

The definitions contained in PAMC 1.04.010 are not necessary to include in the PAMC. These terms are either already defined in state law or other more appropriate sections of the PAMC, or do not require a definition. Accordingly, we recommend deletion of the definitions. The remainder of the chapter restates solidly established legal principles or rules of construction that do not have to be codified, but there is no harm in keeping them. However, if the City chooses to keep those provisions, it should review PAMC 1.04.020, “Grammatical interpretation,” to determine whether to include more gender-neutral language.

Likewise, Chapter 1.08 PAMC, “City Seal,” is unnecessary. RCW 35A.11.010 requires the City Council to approve the City’s corporate seal, but such approval does not require codification. If the City chooses to keep this provision, we would recommend moving it to another relevant chapter, rather than including as a stand-alone chapter with only one section.

Chapter 1.24 PAMC, “General Penalty,” should also be updated. The criminal penalties listed are outdated; under state law, misdemeanors are punishable by up to a \$1,000 fine and maximum of 90 days in jail, with a judge making the determination on the ultimate penalty imposed within those parameters.

Finally, we recommend that Chapter 1.28 PAMC, “Fines,” be repealed in its entirety, as most of the provisions therein are already covered in state law and court rules.

TITLE 2 – ADMINISTRATION AND PERSONNEL

Title 2 contains general provisions relating to the City’s various officers and departments, including (among other things) codes of conduct and procedures for appointments to the City’s boards and commissions. This is a lengthy title that would greatly benefit from significant clean up and reorganization. For instance, Chapter 2.44 PAMC, is entitled “City Officers,” but only one section therein (PAMC 2.44.020, setting forth the bond requirements for certain positions within the City), is truly related to City officers.

Instead, very short chapters regarding other various City officers and departments are scattered all throughout Title 2. We recommend that the chapters and sections relating to City officers and departments instead be addressed in a single chapter entitled “City Officers and Departments.” If the City would prefer to keep these as individual chapters, it should consider reorganizing this Title so that these chapters are near one another rather than dispersed throughout the title.

Additionally, we recommend that the business hours provision contained in PAMC 2.44.030 be moved to a newly created chapter in Title 1. This new chapter could be named “City Business Hours and Facilities,” and in addition to setting forth business hours, the City could add a section referencing the code of conduct for City facilities set forth in Title 12 and/or the other administratively adopted conduct policies. In the alternative, the City could eliminate the code of conduct provisions from Title 12 and instead delegate authority to the City Manager to administratively adopt such regulations.

Chapter 2.06 PAMC, “City Meeting and Customer Service Expenses,” authorizes expenditures for refreshments for the lobby of City Hall and for certain City meetings. If the City is using public funds to purchase meals and refreshments for meetings, it should have a policy in place setting forth the public benefit of doing so, as the City has done through PAMC 2.06.020. However, such policy need not be codified. Another option would be for the City Council to budget for such expenses and then to adopt an administrative policy authorizing expenditures from that budget. Nonetheless, it is our understanding that the City is no longer providing such refreshments, thus, the City may wish to consider removing this chapter in its entirety.

Chapter 2.18 PAMC, “Hearing Examiner,” establishes the Hearing Examiner system and outlines the decision-making and appellate authority for various city matters. However, this chapter concerns more than just the Hearing Examiner’s authority; it also discusses the authority of the Director of Community and Economic Development to make certain decisions. Thus, we recommend amending the title of this Chapter to “Hearing Examiner and Other Administrative Decisions.” In addition, we recommend rather than including an exhaustive list of all matters that the hearing examiner and Director are authorized to hear and decide, these section instead be revised to state that these officials are authorized and directed to decide all matters delegated to them under the PAMC. Although the City has established a Hearing Examiner system, references were not carried out in other areas of the code, thus still naming other persons as holding these responsibilities. We recommend cleaning up any inconsistencies like this regarding review and appeal authority.

State law requires cities with any paid firefighters or three or more paid police officers (including the chief) to establish civil service commissions and to promulgate civil service rules that substantially accomplish the purposes of the State’s civil service laws.⁷ The City’s civil service system, addressed in Chapter 2.22 PAMC, would benefit from updates

⁷ Chapters 41.08 and 41.12 RCW.

and simplification. The purpose of a city's civil service code is to establish its civil service commission and set the framework for its operations, such as commission membership requirements and appointment procedures, term of office, meetings, compensation (if any), general duties of commissioners, and process for adopting civil service rules and operating procedures. More specific provisions for items such as determining the qualification of applicants, appointments and promotions, probation, and grounds for discipline are generally included in the rules adopted by the civil service commission, rather than in the municipal code itself. Such rules should be consistent with Chapters 41.08 and 41.12 RCW, as well as any applicable collective bargaining agreements and/or Police Department policies.

The City's emergency management regulations, set forth in Chapter 2.24 PAMC, are outdated and should be updated for consistency with the City's emergency management plan and current state law. In doing so, it may be possible to streamline the code by removing portions of this Chapter that are already covered in the City's adopted emergency management plan. We recommend the City conduct a careful comparison of the two and engage in a policy discussion as to which portions should be included in the PAMC and which would be better included in the comprehensive emergency management plan document only.

The City's general regulations for appointment to and operation of its boards and commissioners are set forth in Chapter 2.25 PAMC. This chapter was only adopted back in 2017 and it looks fine overall, with the exception of PAMC 2.25.090, "Utility Rate Review," which is out of place in this chapter and should probably be moved to Chapter 2.68 PAMC, "Utility Advisory Committee," instead. We also note that PAMC 2.25.040, "Terms," is duplicative to portions of Chapters 2.26, 2.36, 2.40, 2.68, and 2.70 PAMC, which also contain the terms for the City's various boards and commissions. The City should consider eliminating this redundancy, as well as whether to include a section on removal of board and commission members within Chapter 2.25 PAMC, rather than setting forth different standards for removal in the specific boards/commissions chapters. We also recommend, to the extent practicable, delegating authority to the individual boards and commissions to set their own rules of procedure, guidelines, and meeting schedules rather than dictating these rules in the code.

In Washington, lobbying activity by state and local government officials and employees is regulated by RCW 42.17A.635. Accordingly, we recommend deleting Chapter 2.56 PAMC, "Research and Legislative Representatives" in its entirety. Should the City choose to keep it, it should be updated to be consistent with state law, which has changed since this chapter was adopted in 1976.

The City's policies and procedures for disposing of surplus property are contained in Chapter 2.60 PAMC. The basic parameters of the City's authority and procedures for disposal of surplus property are contained in state law and do not require codification. But a number of jurisdictions, including Port Angeles, have chosen to delegate some of

the City Council’s authority relating to declaration of surplus, in which case codification makes sense. However, the City’s surplus provisions are quite outdated and would benefit from some updates and revisions for syntax and clarity. In the process of conducting this update, we suggest the City consider whether it would like to include provisions: authorizing donations of surplus property under certain circumstances; allowing for the City Manager or department heads to declare items valued under a certain threshold as “scrap;” and addressing surplus of property purchased with grant funds. The City should also consider whether it would like to continue requiring public hearings prior to selling or otherwise disposing of real property or personal property valued over \$25,000.00, as public hearings are only required in certain circumstances.⁸ Attached as Exhibit A are recent examples of surplus property policies from several jurisdictions. Finally, we would note that this chapter would better fit in Title 3, Revenue and Finance.

State law authorizes city officers, employees, and volunteers to request that the city indemnify them from claims for damages arising out of acts and omissions made while acting in good faith and within the scope of their employment.⁹ Little discretion is given to the City Council in determining whether to grant a request for indemnification; if the City Council finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request for indemnification and defense must be granted. The City Council may, however, identify certain exceptions, such as when the conduct is dishonest, fraudulent, criminal, or malicious, or in a lawsuit brought by or on behalf of the City.

Unfortunately, lawsuits against municipalities are not infrequent due to the inaccurate perception that they have “deep pockets.” Because of this, cities generally codify a process for determining under which circumstances employees should be indemnified, rather than the City Council hearing and deciding requests for indemnification on a case-by-case basis as contemplated in RCW 4.96.041. We recommend that a section be added to Chapter 2.64 PAMC, “Legal Representation for City Officials and Employees” setting forth the City’s specific requirements for indemnifying its officers, employees, and volunteers, as well as the exceptions thereto.

Title 2 contains two separate chapters regarding ethical conduct of city officers and officials. Chapter 2.72 PAMC, “Code of Conduct,” sets forth a very limited ethics code prohibiting officers, employees, and agents of the City from participating in the selection, award, or administration of a contract supported by Federal grant funds when such employee has a financial interest in firm selected for the award. This PAMC chapter is unnecessary because Chapter 42.23 RCW already prohibits municipal officers from participating in the award of *any* contracts in which they have a beneficial interest

⁸ RCW 35.94.040 requires a public hearing prior to disposing of property originally acquired for public utility purposes. While RCW 39.33.020 states that a public hearing must be held prior to disposal of property valued at over \$50,000, the Attorney General has opined that the public hearing requirement in RCW 39.33.020 only applies to intergovernmental transfers of property. AGO 1997 No. 5.

⁹ RCW 4.96.041.

generally, regardless of whether grant funds are involved. Chapter 2.78 PAMC “City of Port Angeles Code of Ethical Conduct” sets forth requirements for annual ethics trainings, and also adopts Chapter 42.23 RCW by reference, which is unnecessary as portions of the RCW already applies to local governments whether or not it is adopted by reference. Accordingly, we recommend deleting Chapter 2.72 PAMC in its entirety, removing the references to Chapter 42.23 RCW from Chapter 2.78 PAMC, and renaming that chapter, “Annual Ethics Training.” The City could also choose to expand its ethics code to include additional prohibitions and requirements for ethical behavior, but we recommend all provision relating to ethics be contained in a single chapter. Examples of more robust ethics codes are attached as Exhibit B.

The City’s policies and procedures relating to requests for records under Washington’s Public Records Act (“PRA”), Chapter 42.56 RCW, are contained in Chapter 2.74 PAMC, “Inspection of Public Records.” Many of the provisions contained in this Chapter are redundant to provisions of the PRA. Further, nothing contained in this Chapter is legally required to be codified, simply “published,” which could be as simple as placing this information on the agency’s website. Numerous cities do not include their public records request policies and procedures in their codes. Instead they adopt administrative policies, which are more quickly and easily updated. Given the quickly changing landscape of the PRA, we recommend the City either eliminate or significantly pare down this Chapter and instead adopt a comprehensive administrative public records policy. Additionally, we recommend that the costs for copies be included in a separate fee schedule rather than being codified. If the City would like to designate a Public Records Officer in the Code, this could be accomplished by adding a section to the “City Officers” chapter of the code (currently Chapter 2.44 PAMC). Copies of non-codified policies from other jurisdictions are attached as Exhibit C. We have also included a copy of the redaction code table that we currently use when redacting public records. While it is not an exhaustive list, it does contain the most commonly used exemptions.

Finally, we note that a number of the provisions relate to policy issues that are for the City Council to decide.

TITLE 3 – REVENUE AND FINANCE

Title 3 contains the City’s purchasing policies and procedures, establishes various funds within the City Treasury, and adopts certain taxes and fees. A number of the chapters in Title 3 could be combined for efficiency, for instance, the many various chapters establishing funds. Currently, some of these funds are combined together into single chapters and some are separate without any apparent rhyme or reason. We recommend consolidating all chapters related to funds either into one master fund chapter or several chapters based on the nature of the funds (i.e. all arts related funds in one chapter, all utility funds in another chapter, all public safety related funds in another chapter, etc.).

There are a few exceptions to this general recommendation, which are noted in the annotated version of Title 3, the primary exception being Chapter 3.30 PAMC, “Self-Insurance Fund.” That chapter, which should be updated to include the current annual appropriations thereto, is lengthy and detailed, and thus would be better suited as a standalone chapter.

Other portions of Title 3, “Revenue and Finance,” can be eliminated. For instance, the vast majority of Chapter 3.05 PAMC, “Purchasing Policies and Procedures,” is already included in state law and does not need to be adopted in the City’s code. Similarly, Chapters 3.66 (Use of Collections Agencies) and 3.68 (Action of Foreclosure of Local Improvement Assessments) PAMC are entirely duplicative of state law and can be deleted. By relying on state law rather than attempting to restate the RCWs within the PAMC, the City will avoid the hassle of having to amend the code every time state laws are changed or updated. Other chapters, sections, and portions thereof that can be eliminated are identified in the annotated version of Title 3.

Chapter 3.70 PAMC is a lengthy chapter containing some, but not all, of the fees charged by the City. As discussed previously in this Report, including all fees in the municipal code takes up a great deal of space and makes conducting regular updates more challenging. Consequently, we recommend eliminating Chapter 3.70 PAMC and instead including such fees in a master fee schedule to be adopted by the City Council via resolution. We also recommend reviewing the “money back guarantee” program established in PAMC 3.70.905; processing permits and applications is very time and resource consuming and the City expends those resources regardless of the time it takes.

We would also recommend reorganizing Title 3 so that related chapters are near one another. For example, all chapters imposing a tax would be contiguous to one another, as would all chapters creating funds. This makes for a much more user-friendly code. Finally, we would note that the City has chosen to codify some tax ordinance (see Chapters 3.12, 3.14, 3.48, 3.52, 3.56, and 3.60 PAMC), but not other (for example, the recent affordable housing sales tax legislation). We recommend that all tax ordinances be codified so that they are easily accessible to the business and the public.

TITLE 4 – CORPORATIONS

Title 4 contains only one chapter, Chapter 4.04 PAMC, “Public Corporations.” This chapter authorizes the establishment and chartering of “public corporations,” pursuant to RCW 35.21.730 through RCW 35.21.755.¹⁰ This chapter is not legally required to be codified; in the alternative the City can simply refer to state law and ensure that the provisions that are currently set forth in Chapter 4.04 PAMC are addressed in charter of

¹⁰ PAMC 4.04.0101 currently refers to RCW 35.21.725 through RCW 35.21.755, but RCW 35.21.725 is no longer in effect.

any public corporations that are formed. That said, there is no harm in including these provisions in the code, but we would recommend that they be updated for consistency with RCW 35.21.730 through RCW 35.21.755, which have changed slightly since adoption of this chapter. We would also recommend including this chapter in another title rather than having a title with only a single chapter.

TITLE 5 – BUSINESS LICENSES AND REGULATIONS

General vs. Regulatory Business Licensing

RCW 35A.82.020 authorizes code cities to require a license to engage in business within the city limits, including businesses physically located within the city and businesses physically located elsewhere. Cities can do so by requiring a general business license, a regulatory business license, or both. RCW 35.90.010(4) defines a "general business license" as "a license, not including a regulatory license or a temporary license, that a city requires all or most businesses to obtain to conduct business within that city." A "regulatory business license" is "a license, other than a general business license, required for certain types of businesses that a city has determined warrants additional regulation..." RCW 35.90.010(6). Common examples of regulatory business licenses are adult entertainment businesses, mobile food vendors, short-term rentals,¹¹ rental housing licensing programs,¹² and towing companies.

Some cities currently issue their own business licenses directly, but that process is changing. Now, Chapter 35.90 RCW requires all cities and towns that issue general business licenses to partner with one of two licensing portals: the Business Licensing Service (BLS, part of the state Department of Revenue) or FileLocal (a public entity created by an interlocal agreement between several larger cities in the Puget Sound region¹³). The transition is currently underway in phases, but once fully implemented, businesses will be able to obtain local business licenses for any city in the state through BLS and/or FileLocal.

All cities and towns with general business licensing requirements must adopt a uniform "model ordinance"¹⁴ identifying the types of commercial activity subject to the licensing requirements. In addition, for businesses that engage in business within the city but are not physically located within the city, the ordinance establishes a minimum dollar threshold below which the businesses must be partially or fully exempted from licensing

¹¹ The City Council and staff has expressed interest in regulating short-term rentals. Pursuant to the City's general business licensing authority, it can certainly do so. How the City wants to regulate such uses, whether through a business license or some other permitting authority, is up to the City. Cities across the state regulate short-term rentals in a variety of ways. See examples at Exhibit D.

¹² See Exhibit E for examples.

¹³ A city or town need not be located within the Puget Sound region to partner with FileLocal. Partnering cities and towns instead must enter into an ILA if they want to be a "principal" city (have a vote on the board) or a subscriber agreement (if they just want to use the service).

¹⁴ The required text of the model ordinance may be found at Exhibit F.

requirements. The minimum threshold of business activity in the ordinance is \$2,000, although cities may adopt a higher threshold if desired. Below this threshold, cities must either exempt these businesses from the licensing requirements entirely, or require licensing, but at no cost to the businesses.

The provisions of the model ordinance only address general business licensing; they do not address temporary licenses (such as seasonal businesses or special event permits), regulatory licenses, or local business and occupation (B&O) taxes. In addition, cities and towns that implement a general business licensing requirement may still adopt other business license provisions as necessary (and so long as they are consistent with any requirements of the model ordinance), such as fees and thresholds, approval process and conditions, terms and expiration dates, exemptions, and enforcement options.¹⁵

Port Angeles has opted not to require a general business license, but instead only issues certain “regulatory business licenses” on the following types of businesses:¹⁶ ambulance services (Chapter 5.08 PAMC); charitable solicitors (Chapter 5.16 PAMC); public dances (Chapter 5.20 PAMC); dancehalls where alcohol is sold or served (Chapter 5.24 PAMC); for-hire vehicles (Chapter 5.36 PAMC); horse taxis (Chapter 5.37 PAMC); hotels and motels (Chapter 5.40 PAMC); junk dealers, secondhand dealers and pawnbrokers (Chapter 5.44 PAMC); adult entertainment businesses (Chapter 5.52 PAMC); outdoor music festivals (Chapter 5.52 PAMC); peddlers and hawkers (Chapter 5.56 PAMC); transient merchants (Chapter 5.58 PAMC); religious solicitors (Chapter 5.64 PAMC); tattoo parlors (Chapter 5.70 PAMC); telecommunications services (Chapter 5.80 PAMC); and fire extinguisher services (Chapter 5.90 PAMC).¹⁷

During discussions with the City Council and City staff, there was some interest in requiring general business licenses in Port Angeles. Staff did raise concern regarding the time and costs associated with administering a general business license program. There was also little desire in charging substantial fees. However, given the transition to using BLS or FileLocal for all businesses in the state, ultimately the City would not oversee administration of a license program once partnered with BLS or FileLocal. Furthermore, the City could still set a license fee as it sees fit. If the City were to move toward a general business license requirement, it must provide written notice to the Department of Revenue at least ninety days before the requirement takes effect, adopt the provisions in the model ordinance, and, ultimately, partner with either BLS or FileLocal.¹⁸

¹⁵ See Exhibit G for samples of other municipal codes for cities that have adopted a general business license requirement.

¹⁶ Note, Chapter 5.80 PAMC, Public Utility Tax, lies within the business licensing title. However, this chapter deals primarily with taxing public utilities.

¹⁷ Discussion on these specific chapters follows.

¹⁸ RCW 35.90.020(2)(a):

(2)(a) A city that did not require a general business license as of July 1, 2017, but imposes a new general business license requirement after that date must advise the department in writing of its intent to do so at least ninety days before the requirement takes effect.

(b) If a city subject to (a) of this subsection (2) imposes a new general business license requirement after July 1, 2017, the department, in its sole discretion, may adjust resources to partner with the imposing city as of the date that the new general business licensing requirement takes effect. If the department cannot

Licensing Procedures Generally

Chapter 5.04 PAMC provides that business licenses are administered by the City Clerk and includes general application procedures. Such procedures include general details about the application materials to be submitted, the approval, denial, revocation, and appeal process, and fees. The remaining chapters in Title 5 *also* include procedures for licensing. However, many of the procedural aspects in Chapters 5.08 through 5.90 are redundant. Thus, for a streamlined approach to business license processing, we recommend including all application procedures in Chapter 5.04 along with a statement that, “Except where a more specific provision applies, these procedures apply to all businesses required to obtain a license pursuant to this Title.”

In addition, the City may wish to consider elaborating on some of the procedures. For example, the City might want to provide for license suspensions as an enforcement option, or additional reasons that might warrant revocation of a license, such as submitting false information to procure a license. Also, the City might want to impose a penalty for late applications or include provisions authorizing various means to collect fees and penalties. Finally, the City may wish to expressly prohibit persons from reapplying for a license after a denial or revocation simply by renaming the business or changing ownership or management.

With respect to appeals and revocations, in addition to having a decisionmaker other than the Council hear appeals (as discussed in detail above), we recommend elaborating on the information required to submit an appeal and requiring an appeal fee.

Elimination of Unnecessary or Rarely Use Provisions

As mentioned above, Port Angeles regulates only certain types of businesses through licensing and other requirements, each with a dedicated chapter in the PAMC. However, based on discussions with City staff and review of relevant RCWs, it appears many of these chapters can be eliminated or significantly pared down, as several of these chapters are rarely used or already covered by state law.

For example, Chapter 5.08 PAMC requires a business license to operate an ambulance within the City. Such licenses are provided at no charge. However, Chapter 18.73 RCW supersedes any city ordinances or regulations pertaining to emergency ambulance services that do not exceed the provisions of state law, and expressly supersedes any licensing fees.¹⁹ Likewise, tattoo business and tattoo artists, as regulated by the City per Chapter 5.70 PAMC, are already licensed and regulated by the state in Chapter 18.300 RCW. Junk dealers and secondhand dealers and pawnbrokers are regulated by the City

reallocate resources, the city may issue and renew its general business license until the department is able to partner with the city.

¹⁹ RCW 18.73.020.

in Chapter 5.44 PAMC. However, these businesses are also regulated by state law, Chapter 19.60 RCW. We recommend either repealing these chapters and adopting the relevant RCW provisions by reference or amending these chapters to update them to current RCWs.

Next, the City regulates public dances through Chapter 5.20 PAMC (adult and teenage public dances without alcohol) and Chapter 5.24 PAMC (public dancehalls where alcohol is served²⁰). According to City staff, these chapters are rarely, if ever, used. Further, these chapters, adopted in 1980, contain many of the exact same licensing regulations. While they could likely be repealed in their entirety, at the very least, these chapters could be combined to remove redundant language applicable to both types of dances, and only differentiating between requirements that are specific to one or the other. Nonetheless, if the City's intent is to regulate dances as special events, it may be more appropriate not to require a *business* license, but rather a special event permit. In a similar vein, Chapter 5.52 PAMC, related to outdoor music festivals, could also be regulated through special event permits, unless the intent is that the holder of the event need obtain a business license.²¹ The City should consider whether it is the *business* that it intends to regulate, or the *activity*, particularly giving thought to whether the business/activity is in a stationary place or if it may move around. If the latter, special event permits might be a more appropriate solution.²²

Chapter 5.37 PAMC concerning licenses for horse taxis and Chapter 5.90 PAMC concerning fire extinguisher services are other chapters that appear to be rarely used, if ever, and can likely be deleted unless there is a specific rationale for keeping them. Finally, much of Chapter 5.80 PAMC relating to telecommunications services pertains to taxing authority and may be better suited for inclusion in Title 3.

Regulating Solicitors

The PAMC contains multiple chapters that regulate soliciting and other transient activities—Chapter 5.16 PAMC, Charitable Solicitations; 5.56 PAMC, Peddlers and Hawkers; 5.58 PAMC, Transient Merchants; Chapter 5.64 PAMC, Religious Solicitation; and Chapter 11.18 PAMC, Interference with Pedestrians on Public Sidewalks (which includes provisions related to begging).²³ State law regulates many of these activities, such as peddling and hawking (Chapter 36.71 RCW) and charitable soliciting (Chapter 19.09 RCW). Because of the many overlapping provisions, we recommend combining

²⁰ It is unclear whether this chapter was intended to regulate bars in which people *can* dance, but where the focus is not specifically on dancing. Such establishments would technically meet the definition of a “public dancehall where intoxicating liquor is sold” found in PAMC Section 5.24.010. If so, it does not appear that the City has been applying the code this way.

²¹ Also note, Chapter 70.108 RCW provides permit and other regulations specific to outdoor music festivals but does not preempt local ordinance and regulations on this topic.

²² See examples of other cities' special use permit codes in Exhibit H.

²³ Chapter 11.18 PAMC is discussed further below.

relevant provisions into a single chapter dealing with peddlers, solicitors, and other itinerant and mobile vendors, as is common in many other jurisdictions.²⁴

Furthermore, while local jurisdictions may set reasonable time, place, and manner regulations restricting such activities under its general police powers, cities cannot completely ban such activities.²⁵ Thus, we recommend the City evaluate the goals and purposes desired to be achieved through its soliciting provisions to determine whether the least restrictive methods of regulation are being utilized.

Regulating Adult Entertainment

Regulation of adult entertainment has been heavily litigated, often implicating First Amendment concerns. In order to regulate such businesses, local jurisdictions must create a record to support the regulations and adopt findings. Adult entertainment businesses are not prolific in Port Angeles, but the City's regulations found in Chapter 5.50 PAMC would benefit from updating. We recommend the City thoroughly review the adult entertainment chapter and amend it as necessary.

Preemptions to Retail Bag Ordinance

In 2018, Port Angeles adopted Chapter 5.95 PAMC instituting a bag requirement on local retailers. However, recognizing the need to reduce solid waste and the harmful effects of plastic bags, the Washington State Legislature adopted a new chapter 70A.530 RCW that institutes a plastic bag ban and imposes a mandatory pass-through charge on consumers. Local ordinances adopted prior to April 1, 2020 are preempted by the new law as of January 1, 2021.²⁶ Therefore, this chapter should be repealed in its entirety.

TITLE 7 – ANIMALS

Cities in Washington State handle animal control in a variety of ways, such as through an internal animal control or police department, or externally through contracts with other government agencies or animal service entities. In Port Angeles, animal control is handled by police patrol officers. The City also contracts for animal shelter services.

Generally, Title 7 could benefit from general cleanup—revising to use plain language and to remove redundancies, unnecessary words and phrases, and inconsistencies

²⁴ See Exhibit I.

²⁵ *Town of Green River, Wyoming v. Fuller Brush Co.*, 65 F.2d 112 (10th Cir. 1933).

²⁶ There are exceptions for ordinance that were in effect prior to April 1, 2020 that impose a \$0.10 pass-through charge, not applicable here.

throughout; consolidating shorter chapters into the general provisions (i.e. Chapter 7.08 PAMC, “Leash Control,” and Chapter 7.11 PAMC, “Hunting”); and consolidating all enforcement and penalty provisions in a single chapter rather than scattered throughout the Title.

In speaking with City staff, we identified several instances where the PAMC could be better aligned to best practices as determined by staff. For example, PAMC Section 7.01.025(B) requires a monthly report of animal complaints, but this requirement is unfeasible due to staffing and resource constraints. PAMC Section 7.02.025(A)(4) does not permit dog-friendly patios at restaurants, which is not consistent with current allowances and demands of the community for dog-friendly dining. Furthermore, due to lack of resources and other job responsibilities, patrol officers are often only able to respond to the most egregious animal control complaints, which can result in unhappy residents.

In addition, procedures for dangerous and potentially dangerous dog declarations should be updated and expanded upon, such as amending the definition of “dangerous dog” in PAMC Section 7.01.030(P) to include a dog that severely injures (not just kills) other animals, and elaborating on how to request a hearing in PAMC Section 7.03.030(B). Alternatively, the City may wish to model its code after Chapter 16.08 RCW pertaining to dangerous dogs.²⁷ Furthermore, certain impound provisions in Chapter 7.06 conflict with the impound procedures pertaining to dangerous and potentially dangerous dogs in Chapter 7.03 PAMC. A third option would be to ban dangerous dogs within the City all together.²⁸ Few jurisdictions appear to take this approach, instead relying on the dangerous dogs provisions in state law, which allow dangerous dogs provided certain permitting requirements are met, such as providing proof of liability insurance and adequate confinement. If the City wishes to ban dangerous dogs all together, we recommend reviewing the provisions of the Buckley Municipal Code relating to dangerous dogs, attached hereto as Exhibit J. Buckley prohibits possession of dangerous dogs outright; there is no process for registering or permitting them to live within city limits.²⁹

²⁷ RCW 16.08.080(9) authorizes local authorities to place additional restrictions on ownership of dangerous dogs and does not prohibit local authorities from banning dangerous dogs within their jurisdictions.

²⁸ Dogs are considered property under the law; accordingly, due process requires that owners be afforded the opportunity to appeal any dangerous dog designation.

²⁹ Buckley defines “dangerous dog” to include dogs of certain breeds, regardless of their behavior history. Because of this, their code includes an exemption for dogs who can meet a canine behavioral test, as required by RCW 16.08.110. This exemption would arguably not be necessary if the City were to simply ban dangerous dogs, without declaring that certain breeds were de facto dangerous.

TITLE 8 – HEALTH AND SANITATION

Like many cities’ municipal codes, Title 8 of the Port Angeles Municipal Code contains the City’s health and sanitation regulations. There are only four chapters within this title: Chapter 8.05 PAMC concerning abatement of junk vehicles, which conforms to state law requirements found in Chapter 46.55 RCW; Chapter 8.08 PAMC concerning food and food establishments, which is largely outdated and does not fully reflect the City’s current practices; Chapter 8.24 PAMC concerning disposal of dead animals, which consists of a single section that may be more appropriate, and already covered, in the animal code; and Chapter 8.30 PAMC concerning nuisances, which is discussed in the Code Enforcement section above.

In addition to these chapters, other cities will often include provisions related to trash and litter³⁰, fireworks³¹, false alarms, unfit buildings, noise³², rodent control, tobacco-free ordinances³³, and others specific to their jurisdictions within the Health and Sanitation title of the code.

TITLE 9 – PUBLIC PEACE, MORALS, AND SAFETY

Title 9, “Public Peace, Morals, and Safety,” contains the City’s criminal code. Most of the crimes and other related provisions outlined in Title 9 are duplicative of state law. RCW 35A.13.180 authorizes the City to adopt state statutes by reference; thus, those provisions of Title 9 that are already contained in state law can simply be adopted by reference, rather than setting forth the elements of each of these crimes in the PAMC. If the City adopt the relevant titles, chapters, and sections of the RCW by reference instead, it will reduce the length and complexity of this Title. Adopting portions of the RCW by chapter, or even title, instead of section by section will not only save space, it will ensure that the City has covered its bases and is authorized to enforce any such laws without having to pass additional legislation. To give the City an idea of what this approach would look like, we have attached as Exhibit L a copy of the cities of Bellevue and Steilacoom’s criminal codes. Bellevue’s in particular is quite impressive, as it contains hyperlinks to each of the RCWs adopted by reference for ease of use.

In conducting meetings with staff, we learned that the City, like many jurisdictions, receives a large number of complaints regarding fireworks in July of each year. Fireworks

³⁰ Port Angeles regulates garbage in Chapter 13.54 PAMC, and provides for other solid waste regulations throughout Title 13.

³¹ Port Angeles regulates the sale and discharge of fireworks in Chapter 9.20 PAMC.

³² Port Angeles regulates noise in numerous locations of the PAMC, such as Titles 8, 9, 10, 11, 15, and 17. For consistency and ease of use, the City may wish to consolidate all noise regulations into a single noise chapter.

³³ Port Angeles specifically requested examples for a tobacco-free ordinance. Please find examples of other cities’ tobacco-free ordinances in Exhibit K.

legislation is notoriously difficult to enforce, as most of the time fireworks are used in private areas of a person's property (like a backyard) that are out of plain sight of officers. Thus, the Port Angeles Police Department prefers criminalizing such offenses to allow them access to search warrants when necessary. Currently, only "reckless" discharge of fireworks is a criminal offense under the PAMC. For maximum enforcement capability, the City may want to consider establishing "reckless discharge" as a gross misdemeanor and regular discharge as a simple misdemeanor. We also note that PAMC 9.20.020(F) functions essentially as a "lesser included" infraction, as any discharge of fireworks would also include the possession of said fireworks. This provides prosecutors with the flexibility to "plead down" any fireworks discharge violations that they do not feel are strong enough to warrant criminal charges.

Further, RCW 70.77.260 requires anyone desiring to engage in a public firework display to obtain a permit from the local fire official. Upon receipt of the application, the local fire official must investigate the application and then issue a recommendation for or against issuance of the permit to the city council.³⁴ We recommend the City develop a process that is consistent with RCW 70.77.260. This could be a simple process, such as requiring the applicant to submit a copy of their application and approval from WSP to the City, which the Fire Chief could then review to verify and issue a recommendation for or against approval to the City Council. Or the City could instead create its own process similar to that of WSP. A copy of WSP's fireworks display license application is attached hereto as Exhibit M.

RCW 71.24.575 expressly prohibits cities from adopting laws that include drinking or being intoxicated as one of the elements of an offense giving rise to a criminal or civil penalty. Thus, any City-specific code provision penalizing drinking or being intoxicated, in public or private, is invalid as preempted by state law and should be removed from the PAMC. The City may only enforce those offenses adopted by the state, such as RCW 66.44.250, prohibiting and criminally penalizing drinking while on a public conveyance.

TITLE 10 – VEHICLES AND TRAFFIC

Title 10, "Vehicles and Traffic," sets forth the City's regulations for both motorized and nonmotorized vehicles and parking. This Title can be greatly simplified by eliminating a number of code provisions that are duplicative of provisions contained in the Washington Model Traffic Ordinance ("MTO"), Chapter 308-330 WAC, which the City has already adopted pursuant to PAMC 10.04.010. We recommend the City carefully review the MTO to determine which, if any, provisions it would like to exclude from adoption, then compare the remaining provisions to those currently contained in Title 10 to identify those that are specific to the City and not included in the MTO. The City could then adopt a new Title 10 that adopts the MTO, identifying any exceptions thereto, and includes any

³⁴ See RCW 70.77.265 and RCW 70.77.280.

City-specific provisions not included in the MTO. Examples of more streamlined and up to date traffic codes are attached as Exhibit N.

In meeting with staff, we learned that the police department lacks the resources to enforce Chapter 10.06 PAMC, “Bicycle Helmets.” If this chapter is not being used, the City may want to consider eliminating it. Since the City is a major tourism destination, it could instead consider adopting regulations requiring businesses that rent bicycles, nonmotorized scooters, and similar devices to provide helmets to its customers. The City could also adopt updated provisions and an increased penalty for noncompliance (currently set at only \$15). A copy of the City of Vancouver’s expansive helmet law, which includes provisions requiring business to provide helmets, is attached as Exhibit O.

RCW 46.61.400 establishes general maximum speed limits for travel on city streets, county roads, and highways, but local jurisdictions may alter these limits under certain conditions.³⁵ The City has done so with adoption of PAMC 10.16.020, which specifies which city streets, or portions thereof, that have reduced speed limits. This is the most common manner by which city-specific speed limits are adopted. However, some cities, such as Spokane Valley, have taken an even more streamlined approach by adopting code provisions allowing speeds to be set through a master speed limit schedule adopted by resolution.³⁶

The City was an early adopter of regulations governing the use of motorized foot scooters and similar devices, which have become extremely popular over the past decade. State law is only just beginning to catch up. In 2019, the Washington State Legislature passed ESHB 1772, updating the relatively new state guidelines for the operation of motorized foot scooters. The new law expressly provides cities with the power to regulate the use of motorized foot scooters within their jurisdictions. We recommend the City review Chapter 10.24 PAMC, “Motorized Foot Scooters and Similar Devices,” in light of this new legislation, and RCW 46.61.715 in particular, as there may be other regulations the City is interested in adopting.

RCW 46.63.170 authorizes cities to use automated traffic safety cameras to detect violations: (1) at intersections of two or more arterials with traffic control signals that have yellow change interval durations; (2) at railroad crossings; or (3) within school speed zones. The cameras may only take pictures of the vehicle and the vehicle’s license plate and only while the infraction is occurring; the photos must not reveal the face of the driver or passengers, and cities must consider installing the cameras in a manner that minimizes impacts of the camera flash on drivers. Infractions issued pursuant to automated traffic safety camera programs are processed as non-moving parking violations. Automated traffic infractions are processed in the same manner as parking infractions. The statute lays out additional procedural requirements, including signage, public records considerations, and notices of infractions. When we met with staff, they expressed

³⁵ RCW 46.61.415.

³⁶ See Exhibit N.

interest in adopting a school zone and/or red light camera enforcement program, so we have included in Exhibit P a 2019 ordinance and from Tukwila adopting an automated traffic safety camera program for school speed zones,³⁷ as well as the City of Kent’s code establishing both red light and school speed zone camera programs.

TITLE 11 – STREETS AND SIDEWALKS

Cities have broad authority to regulate their rights-of-way, including the classification, use of, and work within them. Generally, the PAMC includes provisions like those found in other cities’ codes. As with other Titles in the PAMC, Title 11 could benefit from general cleanup and overhaul of the syntax. For example, Chapter 11.08 PAMC, “Construction or Excavation Work within Rights-of-Way,” and Chapter 11.12 PAMC, “Right-of-Way Use,” are used to regulate situations where a person is disturbing or using the right-of-way. Generally, no major issues were identified in this chapter. However, overall Chapters 11.08 and 11.12 PAMC contains many redundancies and superfluous words. In addition, many sections could be combined for conciseness. Chapter 11.20 PAMC concerning the Port Angeles Transportation Benefit District could also be condensed for a more streamlined chapter.

In addition to reviewing the general language in each chapter of Title 11, we also noted substantive issues in several chapters. For example, in Chapter 11.13 PAMC, Street Trees, consideration should be given as to whether the City intends to adopt and incorporate the entirety of the City of Port Angeles Urban Services Standards and Guidelines Manual and in the American National Standards Institute's Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices, A300 Parts 1, 2, and 3, or simply sections specifically adopted by reference.

With respect to Chapter 11.14 PAMC, “Telecommunications Facilities Within Rights-of-Way,” we recommend separating out wireless from cable franchising as many of the provisions do not, and should not, apply interchangeably.³⁸ Furthermore, many of the provisions in this chapter are more appropriate for inclusion in the franchise agreement itself (such as insurance provisions, indemnification, etc.) and can be omitted from the code. The City could also review the definition of “gross revenues,” as gross revenues are a crucial component in ensuring the City is receiving all legally permissible franchise fee revenue,³⁹ and pay particular attention to the delegation of authority to control the right-of-way and other public property from the Council to others, which may inadvertently circumvent procedural requirements for franchises.

³⁷ Included with the Tukwila ordinance is the traffic study data relied upon by the City, as well as public outreach materials that Port Angeles may find useful.

³⁸ For example, the definitions cite to federal cable franchise definitions, that are not applicable to wireless facilities. See PAMC 11.14.020.

³⁹ PAMC 11.14.020(FF).

Finally, the soliciting provisions of Chapter 11.18, Interference with Pedestrians on Public Sidewalks, can likely be combined with other soliciting. See discussion on Title 5, above. In addition, this Chapter may be viewed as criminalizing poverty, which does not align with the Council’s goals of having a code that is equitable and that increases public health, equity, community safety for the most vulnerable community members. Thus, we recommend either eliminating provisions regulating “begging” or providing for a civil penalty for such violations. By eliminating the “begging” component of this chapter, the City can focus on the crux of the issue—street and sidewalk interference from a safety standpoint. Examples of how other jurisdictions have regulated such conduct are included in Exhibit Q.

TITLE 12 – PUBLIC PLACES

General Comments

Through Title 12, the City has adopted various rules and procedures related to City-owned property, such as parks, community centers, and City Hall. In addition to this title and in accordance with the authority granted pursuant to PAMC Sections 12.04.050 and 12.04.060, the City has also adopted numerous—and voluminous—non-codified policies concerning use of city-owned property, including, but not limited to, facility rentals, codes of conduct, and use of ballfields. Some of these policies may differ from what is contained in the PAMC or would be of value to include within the PAMC itself, rather than a separate administrative policy.

Clarification would also be helpful regarding the application of Chapters 12.04, 12.08, and 12.10. With respect to Chapter 12.04, while the title of the chapter is “Parks,” it is clear from the provisions therein that the chapter applies to *all* city-owned facilities. In addition, Chapters 12.08 and 12.10 contain provisions that are almost verbatim to one another. Because they both apply to use of city facilities, we recommend combining these two chapters into a single “Facility Use” chapter that notes specific requirements unique to each facility, where appropriate.

We also recommend adding new procedures for permit revocations specific to Chapters 12.08, 12.10, and 12.12 PAMC, as these chapters cite to revocation in accordance with Chapter 5.04, which applies to business licenses, not permits.

Camping

There has been interest expressed in having more robust camping regulations. Currently, PAMC Section 12.04.080 prohibits camping “in any City park, City facility, or City-owned

property without prior authorization from the Director.”⁴⁰ Parks and Recreation Policy PR-0405, Camping on City Owned Property, describes the process for obtaining such approval, and the circumstances under which camping on city-owned property will be allowed. Violations of chapter 12.04 are deemed misdemeanors punishable by a fine of up to \$500.00 and imprisonment for up to 30 days, or both, for a first offense, with fines and jail time increasing for subsequent offenses.⁴¹

In 2018, the Ninth Circuit Federal Court of Appeals ruled that city camping ordinances that imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them is unconstitutional, in violation of the Eighth Amendment.⁴² There are limits to the application of this holding, however.⁴³ For example, it does not cover individuals with access to adequate temporary shelter but choose not to use it. Cities may also permissibly prohibit sitting, lying, or sleeping outside at certain times or in certain locations, and may prohibit right-of-way obstructions and erecting certain types of structures. Finally, whether such ordinances are consistent with the Eighth Amendment will depend on “whether it punishes a person for lacking the means to live out the ‘universal and unavoidable consequences of being human...’” It is our understanding that in compliance with *Martin v. Boise*, the City is not arresting homeless individuals pursuant to PAMC 12.04.080 when there is no adequate shelter space available. We recommend the code be updated to match this practice. Ultimately the extent to which the City wants to regulate camping will need to be determined. For examples on how other cities regulate camping, please see Exhibit R.

Enforcement and Trespass

Port Angeles’s code makes violations of Chapter 12.04 misdemeanors, but would benefit from more detailed procedures regarding enforcement and penalties. Thus, City may wish to review the current enforcement provisions and determine penalties appropriate based on the particular violations.

In addition, many cities have adopted provisions as an additional enforcement mechanism to be used to trespass people from city parks and other city facilities for engaging in dangerous, illegal, or unreasonably disruptive conduct. Such regulations outline a process for issuing trespass warnings and must allow for prompt appeals, balancing the city’s interests in protecting and preserving the public health, safety and welfare, while recognizing the rights of individuals to engage in legitimate activities that may occur on city property. See examples of trespass codes from other cities, such as the city of Edgewood, in Exhibit S.

⁴⁰ Note, this section is contained in Chapter 12.04, entitled “Parks,” yet this section applies more broadly to any City-owned property.

⁴¹ PAMC Section 12.04.130.

⁴² See *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019).

⁴³ See footnote 8 of decision.

TITLE 13 – PUBLIC UTILITIES

Title 13, “Public Utilities,” one of the lengthier Titles of the PAMC, in part because it contains a number of service rate schedules. Such rates could instead be set in a separate rate or fee schedule to better allow for regular and more efficient rate updates. We have identified which portions of this Title could be adopted in a separate fee or rate schedule in the annotated version of Title 3.

Chapter 13.06 PAMC, “Industrial Wastewater Pretreatment,” provides uniform requirements for dischargers into the City’s public owned treatment works (“POTW”), enabling the City to protect public health and to ensure compliance with applicable state and federal law. The standards and requirements set forth in Chapter 13.06 PAMC are lengthy and technical. Accordingly, some jurisdictions choose to delegate authority to their Public Works departments to adopt such standards administratively, thus making it easier to update the regulations as state and federal laws and scientific best practices change. These regulations were last reviewed in 2019. We recommend that the City continue to conduct regular updates of this Chapter utilizing the assistance of a technical consultant when necessary, as the best practices and science in this area changes rapidly.

Chapters 13.10 and 13.13 PAMC contain regulations relating to the City’s electric utility, including provisions for electricity service, access, connections, metering, and charges. These code provisions could be streamlined by adopting rate schedules separately via a master rate schedule, rather than codifying all of the rates. This alone would reduce the length of Title 13 by almost twenty pages and would also make regular rate adjustments easier. A number of other instances throughout this Title where rates or fees would be better addressed by adoption of a separate fee or rate schedules have been identified in the annotated version of Title 13.

Chapter 13.16 PAMC, “Utility Accounts,” sets forth the City’s general regulations relating to electric, water, sewer, and solid waste utility accounts, including procedures and requirements for creating accounts, billing, payment plans, and service disconnection and liens. We recommend this chapter be updated to provide greater policy direction to staff and to better align with current practices.

The City’s telecommunication facility regulations are contained in Chapters 13.14 (“Pole Attachments”), 13.53 (“Telecommunications Services”), and 11.14 (“Telecommunications Facilities Within Right-of-Ways”)⁴⁴ PAMC. A number of the provisions contained in these three chapters are duplicative of one another. Further, this is an area where both the technology and the law are rapidly changing, and the City’s regulations were last reviewed in 2014. Since that time, the FCC has issued numerous regulations that may affect the

⁴⁴ Additional discussion concerning Chapter 11.14 PAMC is included in the Title 11 section above.

City's regulations. Given the advent of small cell technology and the recent 5G deployments, we would recommend these three chapters be updated and modernized. Examples of well-written and more recent telecommunications codes are attached as Exhibit T.

Chapter 13.46 PAMC, "Water Shortage Response," contains regulations allowing for conservation of the City's water supply during water shortage emergencies and penalties for non-compliance. We recommend an update to the penalties. Another option would be to strike Chapter 13.46 PAMC and instead adopt a more detailed water shortage response plan by resolution. Attached as Exhibit U is a copy of such a plan.

Chapters 13.66, 13.67, 13.70, and 13.72 PAMC all adopt sewer connection fees for particular areas of the City. We recommend that these chapters be combined into one for efficiency. Since the PAMC provides that affected property owners will receive notice of the charges, alternatively, the City could pass sewer connection ordinances as sewer connection becomes available but not to codify such ordinances.

Chapter 13.68 PAMC, "Developer Reimbursement," sets forth the City's requirements and procedures for requesting and executing contracts between the City and developers for partial cost recovery of the private construction of municipal water, sewer, storm sewer, and street system improvements from later users of the systems who did not contribute to the cost of system construction. General requirements and procedures for developer reimbursement agreements, also known as "latecomers agreements," are already set in state law.⁴⁵ Thus, Chapter 13.68 PAMC should focus on requirements and procedures that are unique to the City. A copy of the City of Renton's latecomer/developer reimbursement agreement regulations, which were last revised in 2014, are attached as Exhibit V.

TITLE 15 – ENVIRONMENT

Federal and State laws, such as State Environmental Policy Act ("SEPA")⁴⁶, Shoreline Management Act ("SMA")⁴⁷, and the Growth Management Act ("GMA")⁴⁸ provide the legal framework for environmental regulation in Washington. Adoption of and amendments to a city's environmental regulations involves a considerable amount of policy direction, scientific analysis, and public process in accordance with statutorily set timeframes. To that end, the City undertook its periodic updates to its environmental development regulations (including environmentally sensitive areas regulations, wetland regulations, and clear and grade provisions) and its Shoreline Master Program⁴⁹ in 2016

⁴⁵ See Chapters 35.72 and 35.91 RCW.

⁴⁶ Chapter 43.21C RCW.

⁴⁷ Chapter 90.58 RCW.

⁴⁸ Chapter 36.70A RCW.

⁴⁹ Review of the Shoreline Master Program is beyond the scope of this Code Audit project. Shoreline master programs establish goals and policies that are implemented through use regulations. While use regulations

and 2014, respectively. Thus, review of Title 15 was focused on syntax, consistencies, and conflicts with law, and not the underlying policies therein.

Title 15 should be revised address any potential inconsistencies with state law and state regulations, redundant language (particularly where a state regulation is adopted by reference but then also laid out in full in the code⁵⁰), and creating additional responsibilities on behalf the City that are not required by state law. In addition, as previously noted in other sections, provisions that require an appeal to the City Council, rather than to some other hearing officer such as the Hearing Examiner, should be reviewed and considered for amendment.⁵¹ Enforcement provisions should also be reviewed throughout.

With respect to Chapter 15.12 PAMC, Flood Damage Prevention, the Legislature of the State of Washington has delegated the responsibility to local communities to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry. Participation in the National Flood Insurance Program (“NFIP”) requires the adoption of floodplain management regulations that comply with federal requirements. The Federal Emergency Management Agency (“FEMA”) and the Washington Department of Ecology (“Ecology”) released a revised model flood damage prevention ordinance for Washington cities in December of 2019. Because Port Angeles participates in the NFIP, we recommend ensuring that the City is current on these regulations.

Finally, decibel-based noise control is often difficult to enforce, particularly if the jurisdiction does not have appropriate decibel-reading equipment. However, a benefit of using decibel-based noise control is that you have a bright line standard for impermissible conduct, rather than a more subjective standard that could be employed using other noise control mechanisms. By adopting this chapter, however, the City is not prohibited from adopting and enforcing noise through other codes, such as a public disturbance noise chapter. If the City desires to enforce noise through decibel-based and other options, consider combining this section with other noise provisions in a single “Noise” chapter of the PAMC, such as in Title 8.

and procedures are often outlined in a municipal code, the SMP itself typically a standalone document that is not incorporated directly into the code, as done here. See, for example, the City of Tukwila’s code at Exhibit W.

⁵⁰ See, for example, PAMC 15.04.045(B)-(C) and WAC 197-11-310.

⁵¹ See, for example, DNS appeals in section 15.04.280(A), shoreline permit appeals per section 15.08.100.

TITLE 18 – GROWTH MANAGEMENT

With respect to Title 18, no major issues were noted. However, we recommend including citations in Title 15 to clarify that the procedural sections in Title 18 apply in conjunction with the procedures in Title 15.⁵²

⁵² We also recommend reviewing relevant provisions in Titles 14, 16, and 17 to ensure consistency with Title 18.

CONCLUSION

Municipal codes are not, and should not be, static documents. Cities and their codes must adjust as laws and policies change, as jurisdictions grow, and as the needs of the municipality and its residents, visitors, and workforce evolve. Because those needs are specific to each jurisdiction, however, there is no “right answer” when it comes to what should be included in a city’s code. As discussed in preceding pages, the City has various options available to update and improve the PAMC that would ultimately result in a more user-friendly and equitable code for the people of Port Angeles. Some of the recommendations involve little or no policy consideration, such as reorganizing chapters and titles, eliminating redundancies and inconsistencies, and revising language for clarity and syntax. Other recommendations may involve significant policy review and direction. Regardless of the ultimate direction, a thorough update of the code—while a huge undertaking—will provide great benefit to the City.

We hope this Report and exhibits will provide the City with a solid starting point as you move forward with the next phase of the municipal code update. It is important to note, however, that recommendations provided herein are not all inclusive. Furthermore, the samples provided might not be without their own challenges and weaknesses. Thus, while our review and analysis of the PAMC was intended to be comprehensive, we note that not all possible items may have been addressed. In addition to the quickly changing legal landscape and the volume and complexity of the code, ultimately the City Council and City Administration are in the best position to know the needs of the City. As such, we recommend that the City work with legal counsel and subject matter experts as it advances into the next stage of this project.

Please let us know if you have any questions or need any further assistance as you move forward with the PAMC update.