



# City Council Meeting Schedule February 2020

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February 4, 2020  
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 11, 2020  
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Animal Control Update
2. Open Public Meetings Act Training
3. Public Records Act Training
4. Email Tutorial

February 18, 2020  
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 25, 2020  
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Hearing Examiner Annual Update
2. Council Roles and Responsibilities
3. Blasting Operations Emergency Moratorium

February 25, 2020  
Tuesday, TBD\*

SPECIAL COUNCIL MEETING (*\*Meeting will commence immediately following adjournment of the workshop*)

1. Call to Order/Roll Call
2. Approval of the Agenda
3. New Business
  - a. Blasting Operations Emergency Moratorium
4. Adjournment

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio and Video Taped

February 2020  
Updated 02/20/2020

## Council Workshop Coversheet



Agenda Item Number

1.

Meeting Date

02/25/2020

Agenda Item Type

Reports/Plans

Subject

Hearing Examiner Annual Report

Ordinance/Reso #

Contract #

Project #

Permit #

Department

Planning

Info Only



Policy Review



Policy DevMnt



Other



### Summary

Hearing Examiner James (Jim) Driscoll will provide the Council an overview of cases from the past year and offer comments or suggestions to consider. In the past HE Driscoll has suggested minor code changes to improve processes and other items.

Through

Dept Head Approval

Gregory McCormick

Feb 20, 11:14:20 GMT-0800 2020

City Mgr Approval

Marie Mosley

Feb 21, 12:57:46 GMT-0800 2020

Attachments:

Annual Report

## **Hearing Examiner Report**

The City of Kennewick Hearing Examiner system has been operating for approximately ten years. During that time, there have been a significant number of preliminary plats (subdivisions) and other land use matters that have been considered and decided by the City's Hearing Examiners. Most, if not all, of the approved decisions of these plats have been conditioned to remedy identifiable impacts to the proposed site and surrounding properties.

While the majority of cases are not controversial, there are development requests that require detailed review and analysis of local and state law. During 2018 and 2019 requests for developments were presented that required such analysis. Among the most contested issues presented by the Applicant and the public in those cases were:

- 1) Whether adequate and safe pedestrian walkways were provided for children attending nearby schools (*Vancouver Meadows Plat*);
- 2) Whether density standards for development of the plat were satisfied (*Edwin Contreras Plat*);
- 3) Are there limits to the jurisdictional authority of the City and the Hearing Examiner (*Appeal of Schott Ridgeway short-plat*);
- 4) At what point of the plat review can amendments to the proposal be made (*Appeal of Schott Ridgeway short-plat*);
- 5) Whether development can occur on a 15% grade (*TerrVista Heights Plat*);
- 6) Whether the City had adequate evidence to support a code violation charge (*Kurwin Gummow Jr.*)

In the attached case summary, the file number of each case is presented and the Council may request a copy of any case listed.

As the Council will note, the controversies are usually based on interpretation of ordinances and State statutes and not procedural issues. Procedures for all hearings are conducted pursuant to *RCW 36.70 (B)-the Local Regulatory Reform Act-* enacted in 1995 and the Ordinances of the City of Kirkland, in particular *KMC chapter 4.02*. In addition, the Office of Hearing Examiner has Rules of Procedure that are available on-line and at the City offices. Titled *City of Kennewick Hearing Examiner Rules of Procedure for Public Hearings on Land Use Permit Applications and Appeals*, these provide a clear and predictable process for the City, the Applicants and the Public to participate at hearings. If adhered to, there is a lesser chance that the matters will end up in court. This procedural process helps reduce time delays, expenses and other fees.

This year I do not have any recommended changes to the KMC and City land use ordinances. . For the issues that have been presented at the Kennewick land use hearings, the existing ordinances adequately provided legal direction and criteria to make a decision.

The staff is well versed with the process and often times the Applicant has been involved in previous hearings. The public has also demonstrated courteous behavior and have added very important testimony and evidence in many of the cases. I strongly urge them to continue to participate and be part of shaping the community.

The activity for 2020 has already been quite significant and I look forward to continue to serving the City in the future.

James Driscoll  
February 24, 2020

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## **CITY OF KENNEWICK HEARING EXAMINER REPORT**

### **FOR 2018 AND 2019**

#### **2018**

**Plat:** Beaucamp (Lauria Meadows)- 2262 S Vancouver Street and South of W. 22nd Avenue. This was a request for a 54-lot plat on 11.40 acres that was heard on February 12, 2018. Based on the testimony and exhibits of the public record, the proposal satisfied zoning and development standards of Kennewick. Although testimony was received from public witnesses relating to the density of the plat, the Applicant and the City Staff presented testimony and citations of the Municipal Code that proved the plat satisfied density standards. Approval was granted on February 28, 2018, subject to 23 conditions. *Preliminary Plat (PP) No. 17-06/PLN-2017-03182 & Planned Residential Development (PRD) No. 17-02/PLN-2018-03183*

**Plat:** Dean Maldonado (Grant Street Development)-west of N. Grant Street and south of Umatilla Avenue on 2.29 acres zoned RM-6000. The proposal was for the development of 14 single family lots. Subsequent to a City staff review of the Applicant's proposal, they submitted at the March 12, 2018 public hearing that all zoning and developmental standards would be satisfied. Approval of the plat was granted on March 19, 2018, subject to 16 conditions. *Preliminary Plat (PP) No. 18-02/PLN-2018-00146*

**Plat:** Beaucamp (Vancouver Meadows)-west of S. Vancouver Street W. and north of 45<sup>th</sup> Ave. The request was for a 19-lot single family lot subdivision on 5.04 acres. The public hearing on the request was held on March 12, 2018. Based on the testimony and exhibits presented for the public record, the proposal satisfied all developmental and zoning standards of Kennewick. Public testimony questioned the availability of safe pedestrian access to the Horse Heaven Hills middle school. In response to the testimony the School District submitted that the proposed pedestrian access was acceptable. The plat was approved on March 29, 2018 subject to 22 conditions, which included a requirement that the Applicant work with the School District to ensure public safety. *Preliminary Plat (PP) No. 18-01/PLN-2018-00064*

**Shoreline Substantial Development Permit-** City of Kennewick, Columbia Park. The shoreline permit was for certain improvements that were part of the replacement of an existing golf course club-house. Because of the proximity to the Columbia River shoreline, these improvements, including a deck, walkways, parking area and trash enclosure, required shoreline permit review. (*Chapter 90.58 RCW, Washington State Shoreline Management Act of 1971*). A hearing was held on June 11, 2018. The City staff presented testimony and evidence supporting the issuance of the permit and no public testimony was submitted. The Shoreline approval by the City of Kennewick Hearing Examiner was issued on June 19, 2018, with seven conditions. *Substantial Development Permit (SDP) No. 18-01/PLN-2018-01228*

**Plat:** Edwin Contreras-South of E. 31<sup>st</sup> Court at 3130 Gum Street. The request was for a 12-lot single family subdivision on 3.17 acres. The City staff reviewed the submittals of the Applicant and provided testimony and exhibits of its review. At the December 10, 2018 public hearing the City staff submitted that based on the review the proposal satisfied applicable developmental and zoning standards (Residential low density). The plat was approved on December 19, 2018 subject to 14 conditions. *Preliminary Plat (PP) No. 18-03/PLN-2018-02078*

## **2019**

**Plat:** A.R. Holdings (Mid-town Village)-3908 W. 7<sup>th</sup> Avenue, Kennewick. The request was for a 30-lot plat with 32 residential units on 2.47 acres of land. The site of this project is considered an area for infill of land that is surrounded by older established development. Issues relating to traffic circulation, irrigation conformity with Kennewick Irrigation District and school bus access were resolved and presented at the hearing. Approval of the project subject to 14 conditions was made on January 24<sup>th</sup>, 2019. *Preliminary Plat (PP) No. 18-04/PLN-2018-02625*

*Appeal of Short Plat:* Scott Ridgeway (Applicant) submitted a request to the City of Kennewick (City) for approval of a short-subdivision of three lots at 5500 W. 10<sup>th</sup> Ave., Kennewick, Washington. Pursuant to a review, the Planning Department issued approval of the request subject to eleven conditions. An appeal was filed by Gilbert and Veronika Pitkoff and others that included requests: 1) to locate a utility easement and storm water easement on the plat map; 2) that a turnaround for emergency vehicles be included in a surveyor's report of the plat; 3) that a correction of a 10-inch discrepancy of proposed lot 2 be included in the surveyor's report; and 4) arguments that the proposed plat is in violation of restrictions and protective covenants. Some of the issues were denied because it was determined, based on state legal decisions, that the City and the Hearing Examiner had no jurisdictional authority to make decisions on the raised issues. The other issue of appeal was whether an Applicant could amend original applications during City review. Again, using state law, it was held by the Hearing Examiner that *Friends of the Law vs. King County* 123 Wn.2d 518, 522, 869 P.2d 1056 (1994) controls and final plat approval and conditions is what the Applicant is bound to perform. The appeal was denied. *APPEAL No. 18-01/PLN-2018-03440, an appeal of the Preliminary Short Plat approval for Short Plat (SP) No. 18-13/PLN-2018-03440*

**Plat:** Nathan Machiela (Terra Vista Heights)-south of Ridgeline Drive between Southridge Boulevard and Place Way. An applicant for an approval of a plat of 12.10 acres for 30 single family lots was submitted by the Applicant. Review of the submittals was made by the City staff. In testimony submitted at a public hearing on June 11<sup>th</sup>, 2019, and in exhibits prepared by various City agencies, the City contended that the proposed plat satisfied zoning and developmental standards. Issues of concern about a portion of the site exceeding a 15% grade

were submitted. Extensive soil and engineering studies were presented by the Applicant and the City staff determined that if conditions were applied the site could be developed. There was no comment from public witnesses. On June 24<sup>th</sup> 2019, approval was granted subject to 16 conditions that included requirements relating to the development restrictions of the site.

*Preliminary Plat (PP) No. 19-02/PLN-2019-00985*

**Plat:** Matt Smith (Apple Valley phases 3 and 4(B))- land west of S. Sherman Street and south of Bob Olson Parkway at 3280 S. Van Buren Street in Kennewick, Washington. The plat application included a 31.4-acre portion of an approximate 44-acre parcel of land and an additional five lots that were part of a previously approved 93-lot single-family home subdivision that was to be developed in two phases. (Apple Valley (4B)). The total number of lots was 98 single family lots. The proposal included relocation of a previously approved storm drainage system; the review of physical features including erosion hazard and steep slope critical areas; and required improvements for infrastructure and open space. On November 14<sup>th</sup>, 2019, approval was granted subject to 14 conditions that included requirements relating to the development restrictions of the site. *Preliminary Plat Alteration (PVA) No. 19-02/PLN-2019-02525*

**Code Enforcement Appeal:** Kurwin Gummow Jr, - Code-enforcement action at 1315 S. Cascade Ave, Kennewick, Washington. This was a complicated factual appeal of a City enforcement action involving the Appellant and his wife and whether there were living in a recreational vehicle mobile home on site and whether or not it was being used as a permanent home. Collateral issues included the keeping of the couple's dogs on site, prior holding of other animals on site, and the amount and accuracy of the City's interpretation of the evidence. After review of testimony and evidence it was ruled that: 1) the City did not have sufficient evidence to prove that the Appellant and his family were in violation of the Kennewick zoning standards; 2). The City property enforced inoperable car ordinances for removal of the vehicles left on site; and 3) The Hearing Examiner did not have authority to change the fine that had been imposed. *Code Enforcement Case #19000075*

## Council Workshop Coversheet



Agenda Item Number	2.	Meeting Date	02/25/2020
Agenda Item Type	Presentation		
Subject	Council Roles and Responsibilities		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	<input checked="" type="checkbox"/>
Policy Review	<input type="checkbox"/>
Policy DevMnt	<input type="checkbox"/>
Other	<input type="checkbox"/>

### Summary

The City of Kennewick has been a member of the Washington Cities Insurance Authority (WCIA) risk pool since 2013. WCIA provides the City risk management services, as well as insurance coverage, for claims against the City. WCIA provides a number of training opportunities to the members of the risk pool to include on-site training. Through WCIA, the City has invited attorney Scott Snyder with Ogden Murphy Wallace, to provide a presentation to City Council regarding the roles and responsibilities of Council and city staff.

Through

Bonnie Lanning  
Feb 19, 13:56:03 GMT-0800 2020

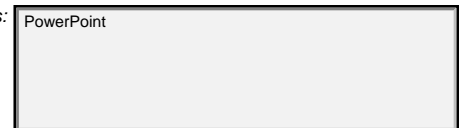
Dept Head Approval

Lisa Beaton  
Feb 20, 11:28:57 GMT-0800 2020

City Mgr Approval

Marie Mosley  
Feb 21, 13:11:39 GMT-0800 2020

Attachments: PowerPoint



# City of Kennewick February 2020

## Respecting the Roles of Policy Makers and Administrators

*By: W. Scott Snyder*  
OGDEN MURPHY WALLACE, PLLC  
[ssnyder@omwlaw.com](mailto:ssnyder@omwlaw.com)

## DISCLAIMER

*These materials are not a complete analysis of the law in this area, and represent a starting point for discussion. Specific legal problems arise in specific factual situations and require specific solutions, none of which are provided by these materials. Anyone reading or otherwise using these materials should not rely on them as a substitute for legal advice.*

**CONSULT YOUR CITY ATTORNEY !**

# *GUIDING PRINCIPLES*

*Cities exercise powers under the state constitution and within the limits established by statute and the state constitution. Power flows from the state based on*

- 1) Classification: City or Town; Classes 1, 2 or Code City*
- 2) Form of Government: Mayor/Council; City Manager or Commission*

# Common Characteristics

- Formal action must be taken in public forum
- Regular meetings
  - Time set by ordinance
  - Location
  - Rules of conduct; e.g. abstention
- Subject to Open Public Meetings Act (RCW 42.30)

# City Council Power and Authority

- 1) *Exercised by a majority of council in an open, public meeting*
- 2) *Council Members have the right to speak in accord with City Council rules and cast a vote*
- 3) *Outside of the meeting context, individual City Council Members limited to a right of inquiry and the right of any citizen*

# The City Council's Most Important Functions

## Adopting Policy

- *Councils use ideas from staff, community groups, advisory committees, chambers of commerce and others.*
- *Council's responsibility is to consider the merits of each idea and then approve, modify or reject them.*
- *In doing so, council members analyze community needs, program alternatives, and available resources.*
- *The decision often is in the form of an ordinance or resolution.*
- *The budget and comprehensive plan are powerful policy tools that are adopted by ordinance.*

## Responding to constituent complaints

1. Residents often contact a council member when they have a problem.
2. Keep in mind that you lack the authority to take action in administrative matters.
3. A Council Member may:
  - a) Refer to appropriate staff member
  - b) Raise at council meeting
  - c) Discuss complaints against public officials in executive session

# Common Characteristics

- Executive sessions (RCW 42.30.110)
  - Matters of national security
  - Relating to real estate acquisition, sale or lease
  - Negotiations on performance of publicly bid contracts
  - Receive and evaluate complaints or charges against public officer or employee
  - Evaluate qualifications of applicants or review performance of public employee
  - Evaluate qualifications of candidate for appointment to public office
  - Discussions with legal counsel on agency enforcement actions or pending or potential litigation

# Special Meetings

- Called by Mayor or majority of council members
- 24-hour written notice
- Action items limited to those listed in the notice

# Guiding Principles

- Must follow existing statutes, ordinances and resolutions until amended
- The “public’s work” must be done in public
  - Meetings
  - Record

# Guiding Principles

- Revenues and expenditures are strictly regulated
  - Costs of services – tax vs fee
  - Gifts of public funds
- Expenditures must conform to the budget
- City Manager may move funds within a Fund (General Fund, Utility Fund for example) subject to limitations established by the City Council

# Guiding Principles

- In Washington, City Councils in code cities are granted the right to write and adopt their own rules of process and procedure
- Follow your own rules
- The Chair of the meeting (Mayor) is responsible to enforce those rules

# Guiding Principles

- Public Works projects require a public bidding process
  - ✓ Small works roster
  - ✓ Prevailing wage
- Limited ability to use volunteers
  - ✓ Collective bargaining issues
  - ✓ Public works limitations

# Guiding Principles

- Conflicts of interest (RCW 42.23)
  - ✓ Financial and/or employment interests
  - ✓ Gifts
  - ✓ Confidential information
- Appearance of impropriety – maintaining public confidence
  - ✓ Reveal relationships
  - ✓ Council rules and votes of censure

# Guiding Principles

A criminal justice system insulated from political influence:

- Civil Service: Hiring based on merit and removal of Police and Fire only in good for cause
- Municipal Court: Judge with four-year term
- Public Defense: Constitutional requirement with termination only for cause
- Charging and prosecutorial discretion

# Guiding Principles

- Immunity from Tort Liability
  - ✓ Act in good faith
  - ✓ Action objectively legally reasonable
  - ✓ Liability insurance provided by municipality
  - ✓ Indemnity for actions within Scope of Authority

# RCW 35A.13.120

## City Manager

### Interference by Councilmembers.

Neither the council, nor any of its committees or members, shall direct the appointment of any person to, or his or her removal from, office by the city manager or any of his or her subordinates. **Except for the purpose of inquiry**, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately. The provisions of this section **do not prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs.**

# Labor and Personnel



## City Manager

### Hire & fire subject to:

- 1) Civil Service System
- 2) Collective Bargaining Agreement and employment contracts
- 3) Within the budget
- 4) Council confirmation when required

### Direct employees within

- 1) Budget
- 2) Job descriptions
- 3) Ordinance structures

## City Council at public meetings and by ordinance when required

- 1) Create Civil Service System
- 2) Direct negotiation of and approve all Collective Bargaining Agreements and employment contracts
- 3) Approve budget, provide for salaries and benefits through annual salary ordinance
- 4) May establish departments, positions, job descriptions and confirmation of key positions

AND SELECT, APPOINT  
AND REMOVE CITY  
MANAGER

**Note:** City Council has sole authority to fill council vacancies and may provide for mayoral appointment to City Boards and Commissions with Council Confirmation. Source: RCW 35A.13.080; 35A.11.020; 35A.33.105

# Selecting, Hiring and Removing City Manager

## A. Statutory Process

1. City Manager serves “indefinite term”
2. City Council may remove by majority vote
  - a. Council passes Resolution - Intent to Remove (majority) at least 30 days prior to removal stating Council’s intent and its reasons.
  - b. May suspend City Manager in interim but City must pay salary until removed.
  - c. City Manager may file Reply. If he/she does so, Council must hold public hearing prior to vote on Resolution of Removal. Majority vote, not subject to review **BUT** see below

# Selecting, Hiring and Removing City Manager (cont'd)

- d. No reply by City Manager, termination effective as provided.*
- B. Know your contract. Many cities use a contract modeled as the ICMA standard: 1) Severance Pay; 2) Removal for Cause.*
- C. Discrimination laws apply – state valid reasons and consult with City Attorney or your counsel.*
- D. Provide meaningful annual feedback from City Council as a whole.*

# Budget



## City Manager

- 1) Prepare and present preliminary budget
  - a) Staff prepares budget estimates and requests on or before October's first business date submit preliminary budget proposal.
  - b) On or before November 1<sup>st</sup>, Executive presents budget to City Council with budget message,
- 2) Administer budget
  - a) Make intrafund transfers (within General Fund and Utility Funds) unless limited by ordinance
  - b) Request council authorization for amendments for unforeseen situations or use contingency funds

Sources: Chapter 35A.33

## City Council

- 1) Hold public hearing(s), adopt budget
- 2) Establish tax rates, fee schedules
- 3) Set salaries and benefits (CBA limits)
- 4) May establish
  - a) limits on intrafund transfers
  - b) contingency funds
- 5) Amend budget
  - a) "wages, hours and conditions of employment" by ordinance at any time: RCW 35A.33.105
  - b) Majority Plus One – Super Majority.
    - i) "Revoke or recall" expenditures and reappropriate. Annual true-up.
    - ii) Emergencies – Foreseeable and unforeseen.

# **Roles of the Executive & City Council**

## **Land Use and Planning**

### **Executive**

- Supervise planning staff, who make recommendations to the Planning Commission and City Council
- Supervise staff who enforce building codes and other development regulations
- Supervise permit process

### **City Council**

- Policy - Adopt and amend zoning, development regulations, and comprehensive plan after receiving input from staff, residents, Planning Commission, and others
- GMA – Public participation plan quasi-judicial
- Act in quasi-judicial capacity to decide certain land use issues (hearing examiner system)

# **Roles of the Executive & City Council**

## **City Expenditures and Contracts**

### **Executive**

- Sign contracts, supervise contract performance & enforce contracts

### **City Council**

- Approve contracts and all city expenditures

# **Roles of the City Manager & City Council**

## **Relationships with Other Entities**

### **City Manager Form**

Mayor RCW 35A.13.030

- Preside at meetings
- Ceremonial lead
- Governor and military law
- All rights, privileges of City Councilmember

### **City Council**

- Decide whether city will participate in optional government organizations; provide guidance to City Manager or other city representatives
- May serve as city representative on certain intergovernmental bodies where Mayor is not designated member

# Best Practices: Actions that enhance trust and effectiveness

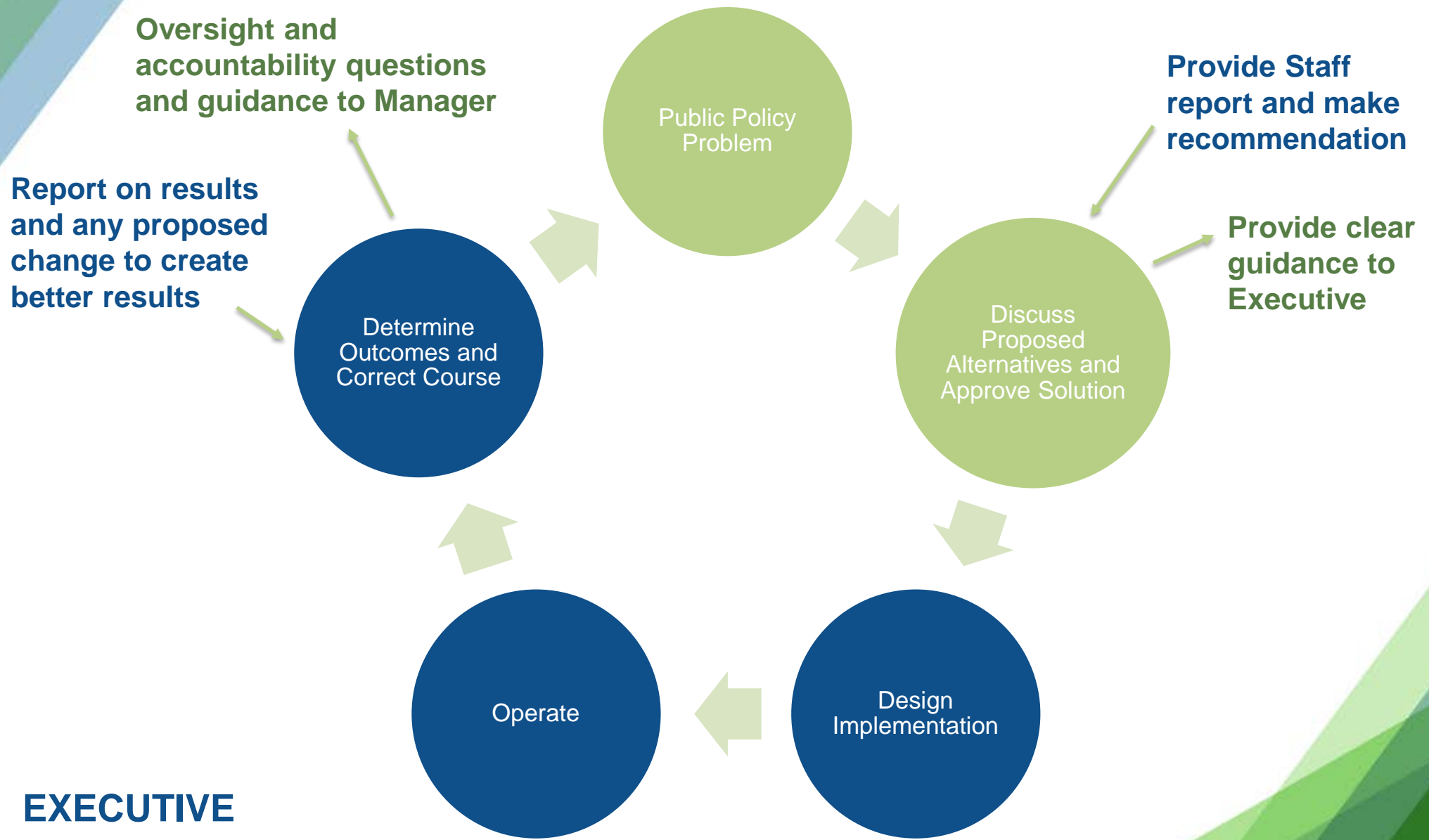
## Executive Support of City Council

- Provide well prepared, clear, thoughtful recommendations – provide policy advise not advocacy
- Honor the “No Surprise Rule” early City Council notice
- Point out policy alternatives and opportunities for community engagement
- Not playing favorites among CC
- Being responsive to citizen requests forwarded by CC
- Keeping the CC informed with timely information
- Direct public recognition to the CC for its community leadership
- Provide training and group development time

## City Council Support of Executive

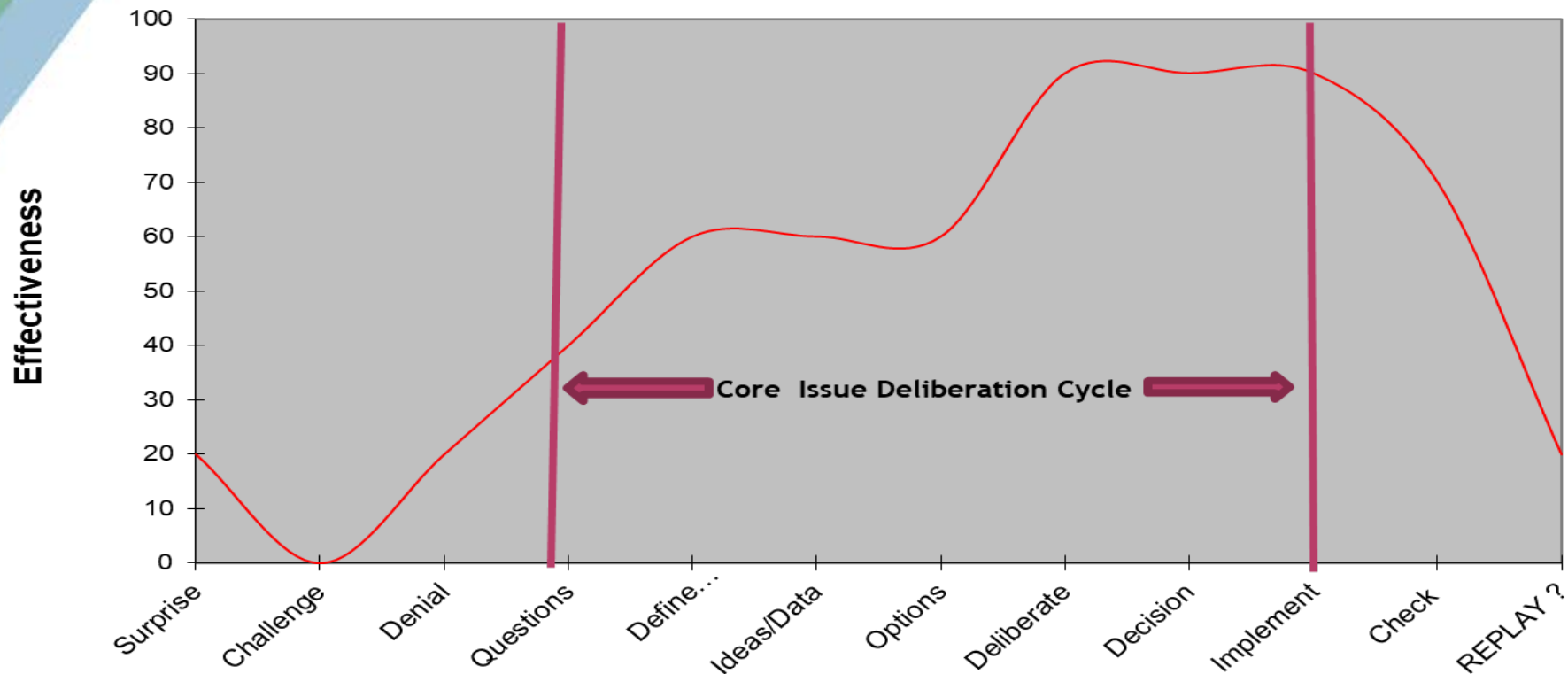
- Provide clear direction on policy decisions
- Provide direction on priorities, goals, annual legislative agenda, values and mission
- Provide timely evaluation of performance -- emphasize what is done well and what could be better
- Contribute information about your constituent's needs and/or your interests to policy discussions
- Respect the Executive's areas of responsibility and authority
- Do not jump to conclusions about staff regarding citizen complaints
- Reserve criticism of the Executive or staff to outside the public arena
- Set reasonable expectations for goals and projects based on available resources
- It is the Council's job to address its own members behavior and ethics

# Public Policy Process



# One Big Policy Issue

## Three Key Governing Board Discussions



### 1<sup>st</sup> Discussion Outcome:

Define decision question; confirm desired decision process and stakeholder involvement; explore information needs to reach decision.

### 2<sup>nd</sup> Discussion Outcome:

Explore ideas for decision alternatives; receive/refine information needs; gather or receive stakeholder input; determine decision criteria or concerns that should be addressed in final decision.

### 3<sup>rd</sup> Discussion Outcome:

Receive recommendation of staff and other advisors; Receive any final stakeholder input; Deliberation; Decision on preferred outcome and statements of reasoning and how stakeholder input was considered.

# City Council Right of Inquiry: Striking an Appropriate Balance

- Obtaining necessary information without impairing established priorities and within budget
- Follow path set by City Manager
- Do not approach employees directly
- Use AWC and MRSC resources

**BUT INFORM YOUR CITY ATTORNEY !**

# Using An Executive Session

- 1) *Performance of public official or qualifications of applicant*
- 2) *Complaints against public official or employee*
  - A) *One opportunity to discuss*
  - B) *Right to hearing*
  - C) *Name clearing hearing*

*RCW 42.30.11*

# The Budget as a Living Document

- Role of intrafund transfers
- Appropriate use of contingency funds
  - ✓ National standards
  - ✓ Cumulative totals
- Interim approvals and annual budget amendments

# **BUILD ON POLICY AND PROCESS**

The City's main arterial street needs to be improved, including acquisition of additional right-of-way.

What are the opportunities for public input?

What are the roles of the City Manager and City Council?

# The Public

- Transportation Improvement Plan  
Annual Process – Public Hearing
- Capital Facilities Plan  
Annual Process – Public Hearing
- Budget – Public Hearing
- Public Comment
- Individual Council Contacts
- Public Hearing - Condemnation

# City Manager

- Staff Development of TIP and CFP
- Recommendations and Council Briefing
- Budget Projections
- Bid Process – Public Works
- Negotiate for ROW
- Council Reports
- Use of Executive Sessions

# City Council

## Long Term Policy:

- Adopt TIP and CFP
- Comprehensive Plan

## Mid-Term – Budget and Potential Budget Amendments

## Short Term:

- Approve Public Works Contracts Sessions
- Set Negotiation Parameters for Acquisition
- Accept Deed
- Condemnation Approval

## Bids for the Project came in at 15% Above Engineer Estimate

- What does City Council expect from the City Manager and Staff?
- What does City Manager expect from City Council?

# Questions?



## Council Workshop Coversheet



Agenda Item Number	3.	Meeting Date	02/25/2020
Agenda Item Type	Ordinance		
Subject	Blasting Operations Emergency Moratorium		
Ordinance/Reso #	5862	Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	<input type="checkbox"/>
Policy Review	<input type="checkbox"/>
Policy DevMnt	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

### Summary

There is a blasting operation occurring on property located in the South Hills Estates Phase II development which is adjacent to the Heights at Canyon Lakes and Canyon Lakes neighborhoods. The City has received multiple complaints from a number of concerned citizens that they have experienced cracked drywall and cracked foundations as a result of the blasting. At the last City Council meeting on February 18th, City Council directed staff to provide Council with options to address these issues.

For Council's review, is a proposed ordinance adopting an emergency moratorium to halt all blasting activity until the Council can review proposed local regulations and a permitting process.

Through

Bonnie Lanning  
Feb 21, 12:06:25 GMT-0800 2020

Dept Head Approval

Lisa Beaton  
Feb 21, 12:21:17 GMT-0800 2020

City Mgr Approval

Marie Mosley  
Feb 21, 13:22:04 GMT-0800 2020

Attachments:

Memorandum  
Ordinance  
Blasting Zone Map

February 21, 2020

MEMORANDUM

TO: Kennewick City Council

FROM: Lisa Beaton, City Attorney

RE: Blasting Operations Emergency Moratorium

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The City has received multiple complaints regarding blasting operations which are occurring on property located in the South Hills Estates Phase II development which is adjacent to the Heights at Canyon Lakes and Canyon Lakes neighborhoods. A number of concerned citizens have commented during recent Council meetings that they have experienced cracked drywall and cracked foundations as a result of the blasting. City staff have met with the developer and the contractor working at the site as well as attended a public information meeting with the property owners adjacent to the blasting site. While the City has adopted the International Fire Code which contains provisions related to blasting, the City has not adopted more stringent local regulations or a formal permitting process. The developer for South Hills Estates Phase II has indicated the need to perform additional blasting on the property so that utilities may be installed to support the development. It is anticipated that blasting may occur for an additional two to three weeks on the property. The property owners have requested the City adopt a moratorium to halt the blasting activity. At the last City Council meeting on February 18<sup>th</sup>, City Council directed staff to provide Council with options to address these issues.

For Council's review, is a proposed ordinance adopting an emergency moratorium to halt all blasting activity until the Council can review proposed local regulations and a permitting process. Per RCW 35A.11.020, City Council has all the powers possible for a city or town to have under the Constitution of this state, assuming the authority has not been specifically denied to the City by state law. In this case, RCW 70.74.201 specifically states that it does not preempt local authority to adopt more stringent regulations regarding the use of explosives in the City. RCW 35A.63.220 and RCW 36.70A.390 allow for the adoption of an emergency moratorium without holding a public hearing, so long as the City Council holds a public hearing on the ordinance within 60 days of the date of the adoption of the moratorium. The moratorium may have a duration of up to six months. At the close of the public hearing, the Council may maintain the moratorium, adopt interim regulations, repeal the moratorium, or extend the moratorium for up to 12 months with the adoption of a work plan.

Council is under no obligation to adopt the emergency moratorium. In lieu of adopting the ordinance, Council may direct staff to prepare draft regulations to be presented at a future workshop. Local regulations could touch upon more than one title or chapter in the KMC, depending upon how Council wants to treat blasting. Several cities in Washington have codes specific to blasting, some require a special use permit similar to other land use permits, some cities require a public works civil permit and some have a permit process in their fire code. Based upon the complaints received from the Canyon Lakes neighborhoods, Council may want to consider additional distance restrictions when blasting occurs adjacent to developed residential neighborhoods.

CITY OF KENNEWICK  
ORDINANCE NO. 5862

AN ORDINANCE DECLARING A MORATORIUM PROHIBITING BLASTING  
OPERATIONS WITHIN THE CITY AND SETTING A PUBLIC HEARING  
THEREON

WHEREAS, the City of Kennewick is a non-charter code city; and

WHEREAS, RCW 35A.11.020 declares that the legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law; and

WHEREAS, RCW 70.74.201 of the State Explosives Act states that it does not affect, modify or limit the power of a city, municipality or county in this state to make an ordinance that is more stringent than the state statute which is applicable within its respective corporate limits or boundaries; and

WHEREAS, on or about January 20, 2020, the City began receiving complaints regarding blasting occurring on property located in the South Hills Estates Phase II development which is located adjacent to the Heights and Canyon Lakes, and Canyon Lakes neighborhoods in Kennewick; and

WHEREAS, the blasting at this location has taken place on the following dates, 01-24-2020, 02-05-2020, 02-07-2020, 02-12-2020, 02-14-2020, and 02-19-2020; and

WHEREAS, the City has received complaints from several property owners adjacent to the blasting regarding cracked drywall in their homes, complaints regarding cracked foundations, as well as nuisance complaints regarding the noise and vibration caused by the blasting; and

WHEREAS, property owners have attended two separate City Council meetings and commented at the visitor's section of the meeting, asserting they have damage to their homes as a result of the blasting and have requested the City Council to review the situation and consider adopting legislation to protect the public health and safety concerns of the adjacent neighborhoods affected by the blasting; and

WHEREAS, the City of Kennewick has not adopted local regulations or a formal permitting process to address the public health and safety issues involved with blasting, and as a result, the blasting activity in South Hills Estates Phase II is occurring without formal review by the City; and

WHEREAS, the developer for South Hills Estates Phase II has indicated their intent to continue the blasting operations for two to three weeks, for a total of possibly six or more additional blasting events; and

WHEREAS, blasting is an inherently dangerous activity and the City of Kennewick Council is concerned about ongoing blasting adjacent to residential neighborhoods, and discussion regarding the establishment of local regulations both with the City Council and the public could take weeks to reach policy decision; and

WHEREAS, Washington laws RCW 35A.63.220 and RCW 36.70A.390 allow for the immediate adoption of a moratorium or interim official control without holding a public hearing, so long as the City Council holds a public hearing on the ordinance within sixty (60) days of the date of the adoption of a moratorium; and

WHEREAS, the City Council adopts the foregoing as its findings of fact justifying the adoption of this moratorium to protect public health, safety and welfare of the residents of Kennewick; and

WHEREAS, the City Council has determined that it is in the best interest of the City that a moratorium be established to provide the City an opportunity to establish local regulations and a permit process for blasting operations within the City of Kennewick; NOW THEREFORE,

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

**Section 1. Moratorium Established.** An emergency moratorium is imposed prohibiting all use of explosives and blasting operations as defined under RCW 70.74 within the City of Kennewick; and the moratorium is imposed on the licensing, location and permitting, as well as the filing with the City, any applications for licenses, permits, or other approvals for permitting the use of explosives or blasting operations during the term of this moratorium.

**Section 2. Term of Moratorium.** The moratorium imposed by this Ordinance shall become effective on the date hereof, and shall continue in effect for an initial period of six (6) months, unless repealed, extended, or modified by the City Council after a public hearing and entry of appropriate findings of fact as required by RCW 35A.63.200, provided, however, that the moratorium shall automatically expire upon local regulations and a permit process being adopted for allowing blasting operations within the City of Kennewick.

**Section 3. Public Hearing.** A public hearing shall be scheduled for 6:30 p.m., or as soon thereafter as the matter may be heard, on the 21<sup>st</sup> day of April, 2020, at the City Council Chambers of the Kennewick City Hall, where it will hear evidence and consider comments and testimony of those wishing to speak at such public hearing regarding the moratorium.

**Section 4. Preliminary Findings.** Following the public hearing, the City Council shall adopt Findings of Fact and determine whether a work plan is necessary to address the issues involving the blasting operations within the City and if appropriate, extending the moratorium to complete a work plan and implementation of appropriate regulations.

**Section 5. Effective Date.** This Ordinance shall be in full force and effect upon its passage and signature below.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, this 25<sup>th</sup> day of February, 2020, and signed in authentication of its passage this 25<sup>th</sup> day of February, 2020.

Attest:

\_\_\_\_\_  
DON BRITAIN, Mayor

\_\_\_\_\_  
TERRI L. WRIGHT, City Clerk

ORDINANCE NO. 5862 filed and recorded  
in the office of the City Clerk of the City of  
Kennewick, Washington this 26<sup>th</sup> day of  
February, 2020.

Approved as to Form:

\_\_\_\_\_  
LISA BEATON, City Attorney

\_\_\_\_\_  
TERRI L. WRIGHT, City Clerk

DATE OF PUBLICATION\_\_\_\_\_

Blasting zone:



The following sign will be posted at each access point to the blasting area.

# DANGER

BLASTING AREA  
SIGNALS

3 LONG WHISTLES  
5 MINUTES TO BLAST

A SERIES OF SHORT WHISTLES  
ONE MINUTE TO BLAST

# BLAST

1 LONG WHISTLE  
ALL CLEAR



# City Council Meeting Schedule March 2020

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March 3, 2020  
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

March 10, 2020  
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Workplace Safety Update
2. Citizen Budget Survey
3. Closed Session – RCW 42.30.140(4)(b) Collective Bargaining

March 17, 2020  
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

March 24, 2020  
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Visit Tri-Cities Annual Update
2. Committee Update

March 31, 2020  
Tuesday, 6:30 p.m.

NO MEETING SCHEDULED

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio and Video Taped

March 2020  
Updated 02/18/2020