



City Council Meeting Schedule June 2021

City Council temporarily designated the location for regular, special and study session meetings to a virtual location until termination of the state of emergency or until rescinded. The City broadcasts City Council meetings on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>.

June 1, 2021

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

June 8, 2021

Tuesday, 6:30 p.m.

WORKSHOP MEETING (the workshop meeting will be done via Zoom and broadcast on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>)

1. Legislative Update
2. KMC Amendments following ESB 5476
3. Planning Development Projects Update

June 15, 2021

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

June 22, 2021

Tuesday, 6:30 p.m.

WORKSHOP MEETING (the workshop meeting will be done via Zoom and broadcast on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>)

1. Mid-Columbia Libraries Update
2. Legislative - Quasi Judicial Actions
3. Development Impact Fees
4. American Rescue Plan Act Update

June 29, 2021

Tuesday, 6:30 p.m.

NO MEETING SCHEDULED

June 30, 2021

Wednesday, 6:30 p.m.

SPECIAL MEETING (This meeting will be done via Zoom and broadcast on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>)

- Council Candidate Information Meeting (No public comment will be taken at this meeting)

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

Council Workshop Coversheet



Agenda Item Number	1.	Meeting Date	06/22/2021
Agenda Item Type	Presentation		
Subject	Mid-Columbia Libraries Update		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Parks & Recreation		

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

Summary

Mid-Columbia Libraries Executive Director Kyle Cox will provide an annual update on library services and operations. The City of Kennewick and Kennewick library branches are party to a Management, Operations and Maintenance agreement for the facilities located at 1620 S.Union St and 405 S. Dayton St.

Through

Attachments: Presentation

Dept Head Approval

Emily Estes-Cross
Jun 15, 19:38:52 GMT-0700 2021

City Mgr Approval

Marie Mosley
Jun 18, 10:43:11 GMT-0700 2021



mid-columbia
LIBRARIES

City Council Workshop
June 22, 2021

THE LIBRARY IS OPEN!



¡LA BIBLIOTECA ESTÁ ABIERTA!



Our Mission

We enhance the quality of life by providing excellence in books and services for our residents and communities.





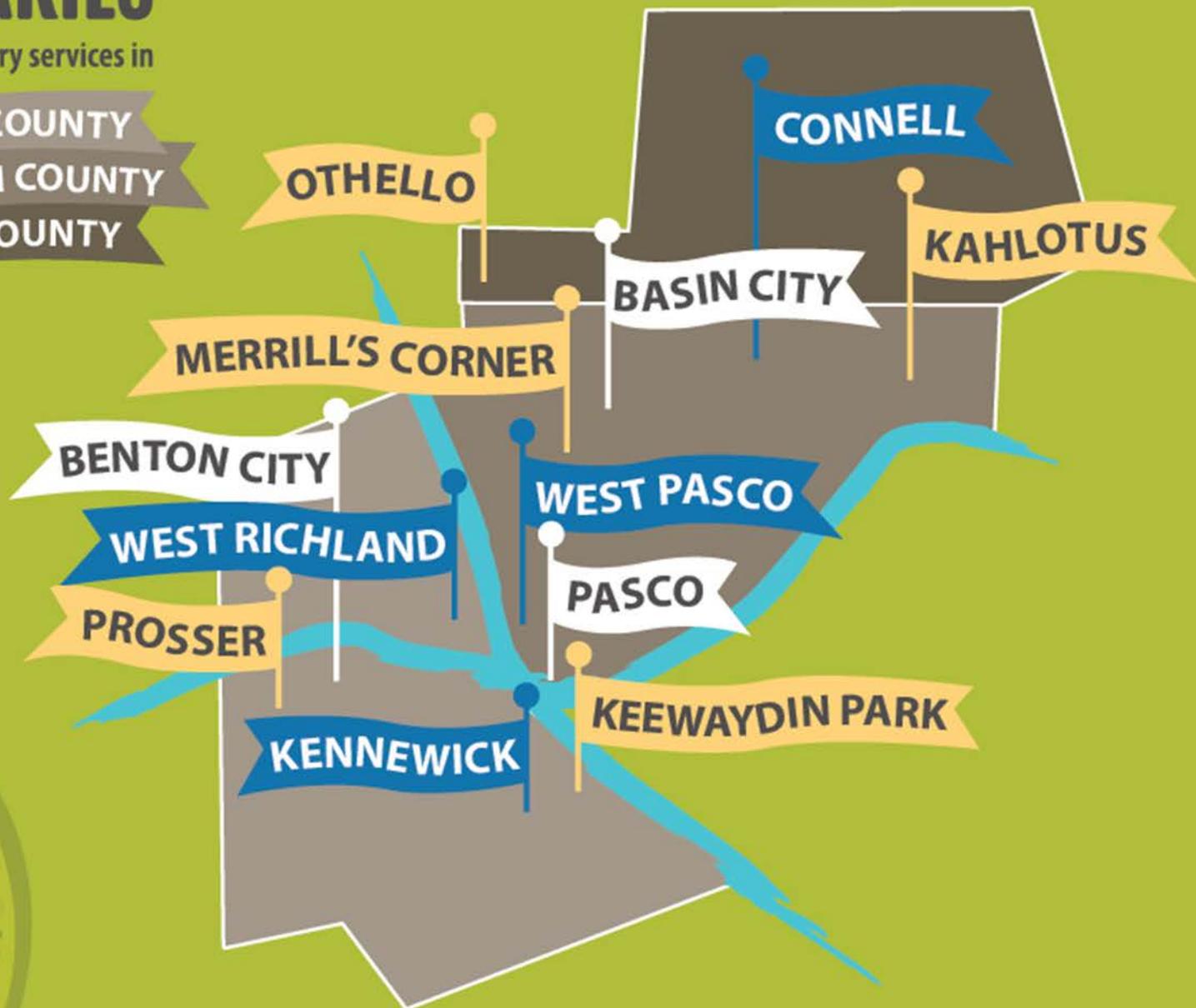
mid-columbia LIBRARIES

Providing Library services in

BENTON COUNTY

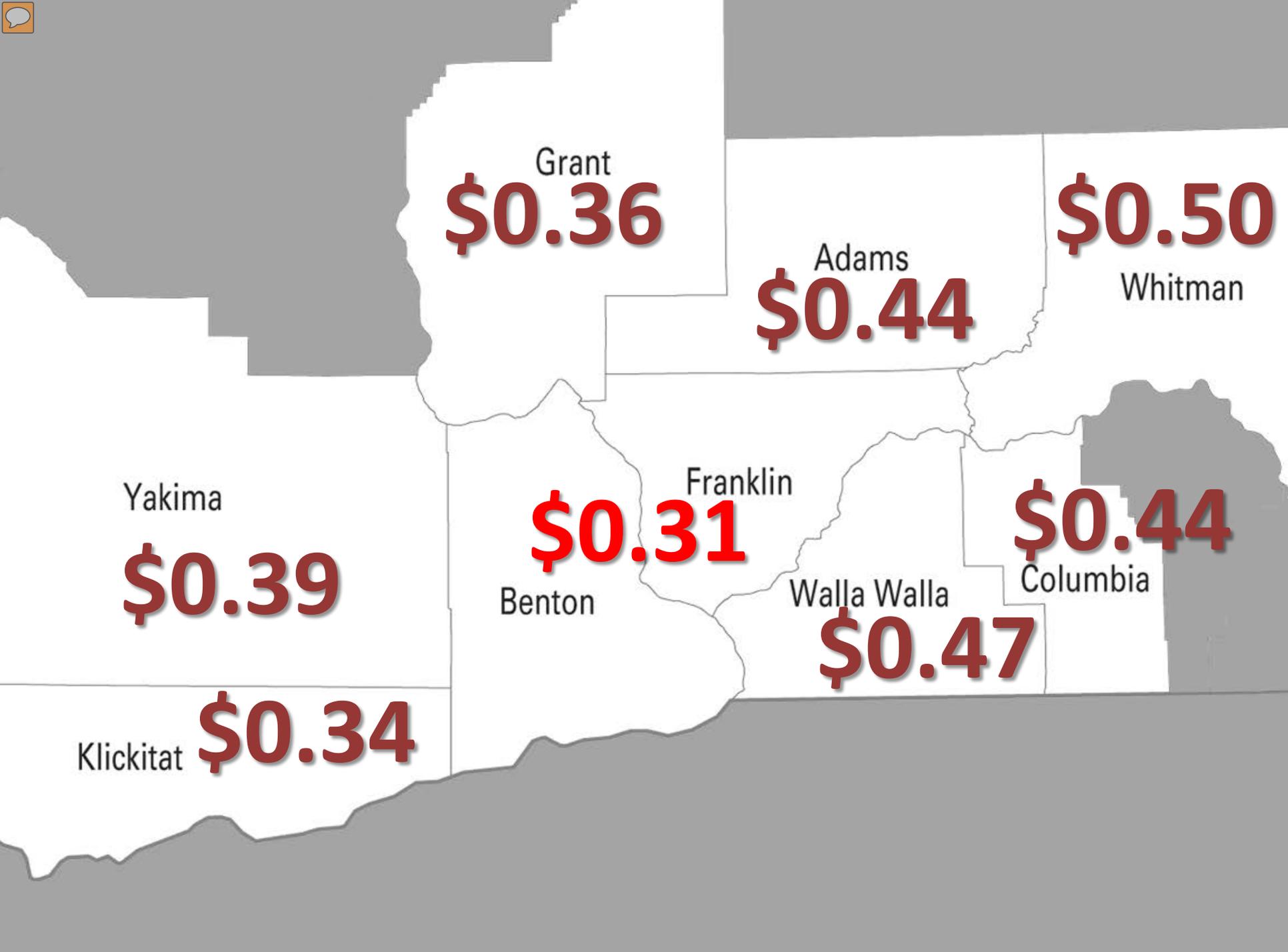
FRANKLIN COUNTY

ADAMS COUNTY



Mid-Columbia Libraries 2020 Annual Presentation





Grant

\$0.36

Adams

\$0.44

\$0.50

Whitman

Yakima

\$0.39

Franklin

\$0.31

\$0.44

Benton

Walla Walla

Columbia

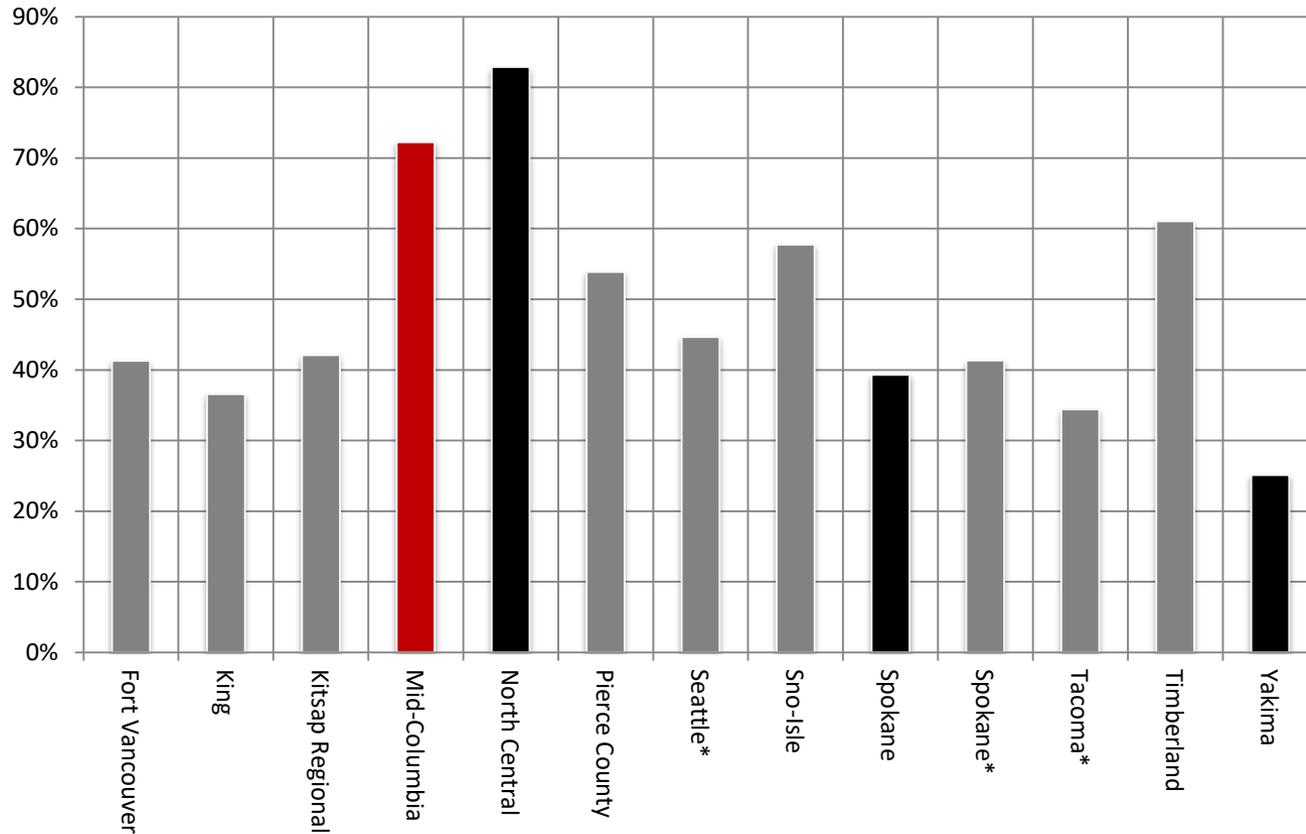
\$0.47

Klickitat

\$0.34

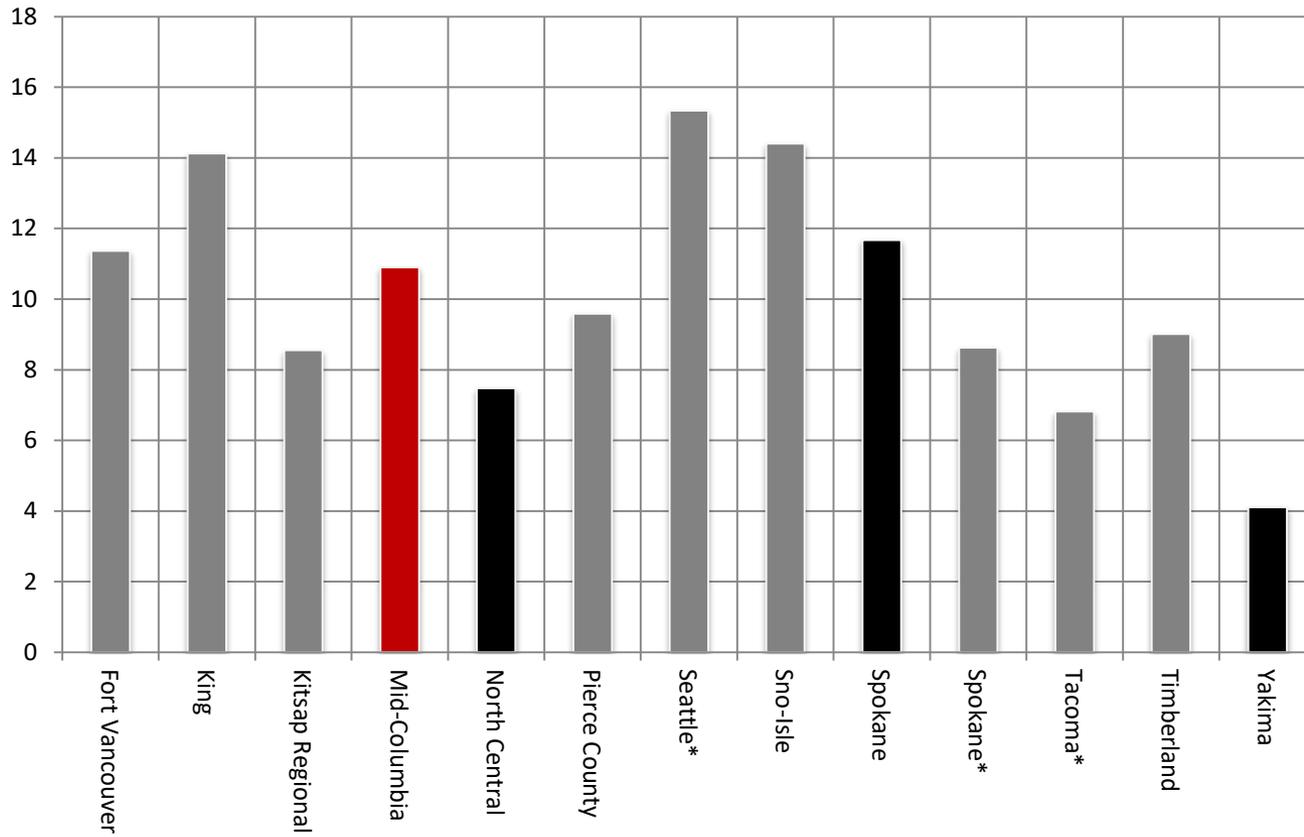
Comparable Systems

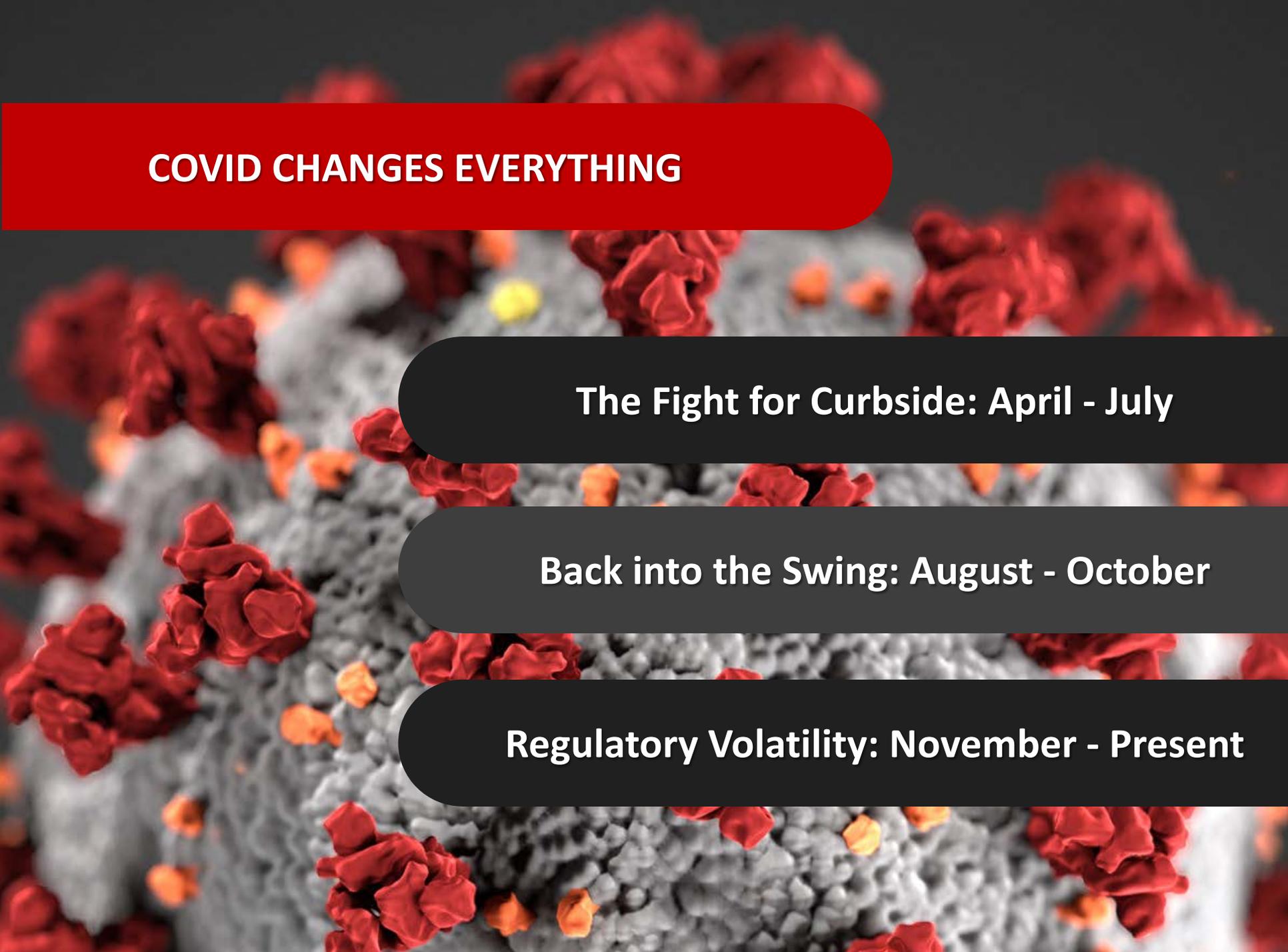
Registered cardholders per capita



Comparable Systems

Checkouts per capita





COVID CHANGES EVERYTHING

The Fight for Curbside: April - July

Back into the Swing: August - October

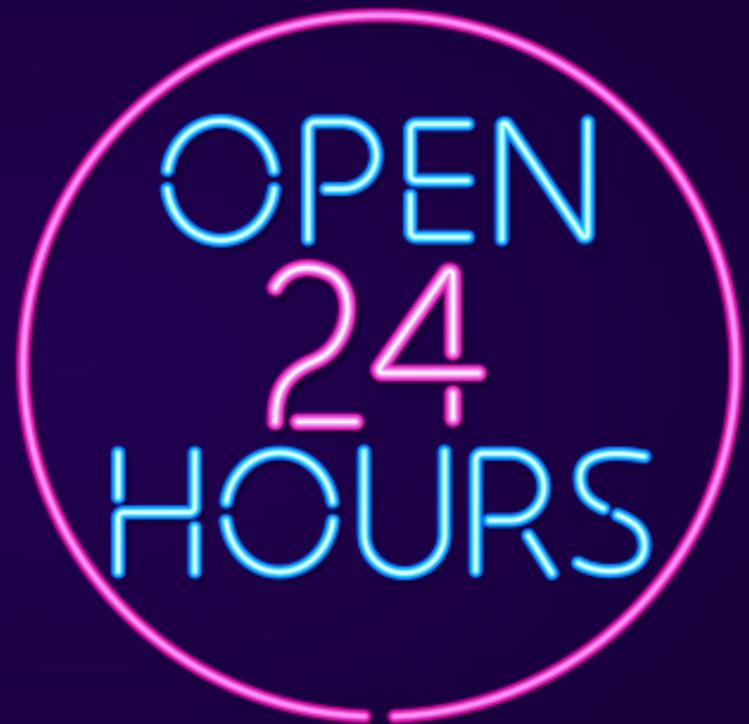
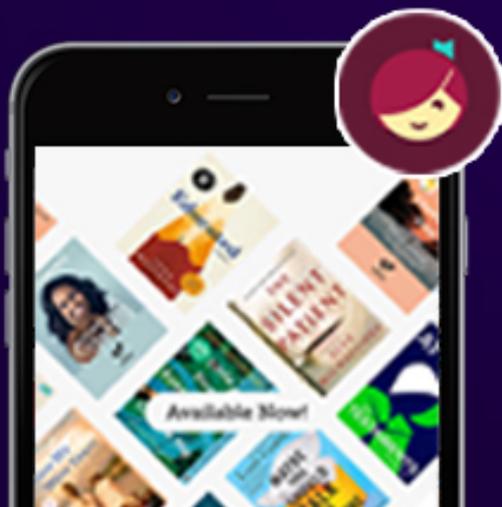
Regulatory Volatility: November - Present



The digital library
is **always open**.

Read on Libby.

The one-tap reading app from our library.





NEW WICK LIBRARY

NEW HOURS

M-F 9A-7P
SAT. 9A-5P
SUN. 1P-5P

•737-6361•

MCL CURBSIDE PICK-UP!
PARK & CALL **737-6361**
← ← MORE PARKING ← ←
PLEASE WEAR A MASK





Sora

Open a world of reading.

Find my school

LIBRARY GRAB BAGS

Do you like surprises?
Let the library pick out some new books for you!



To request yours today, visit
midcolumbialibraries.org/grab-bag-request

mid-columbian
LIBRARIES

mid-columbian
LIBRARIES

Kennewick Libraries and COVID





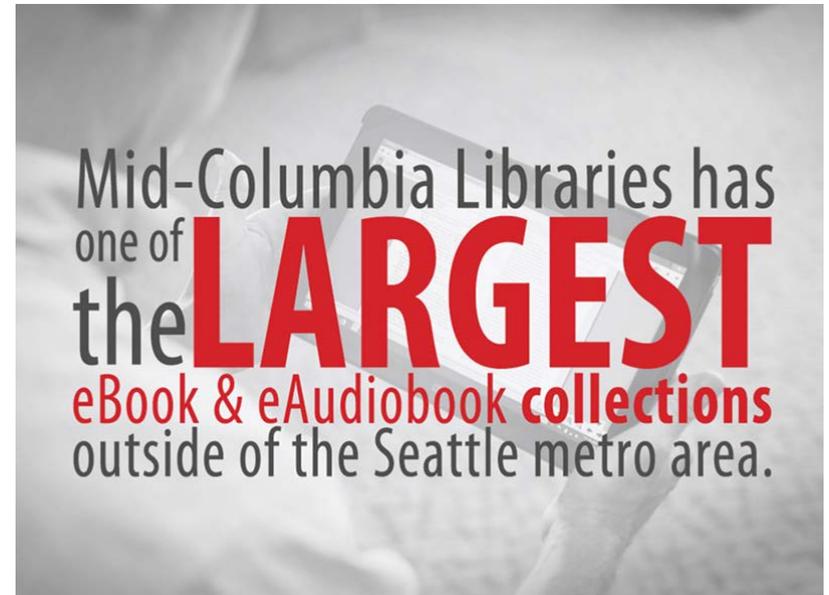
**The Collection of
Mid-Columbia Libraries**



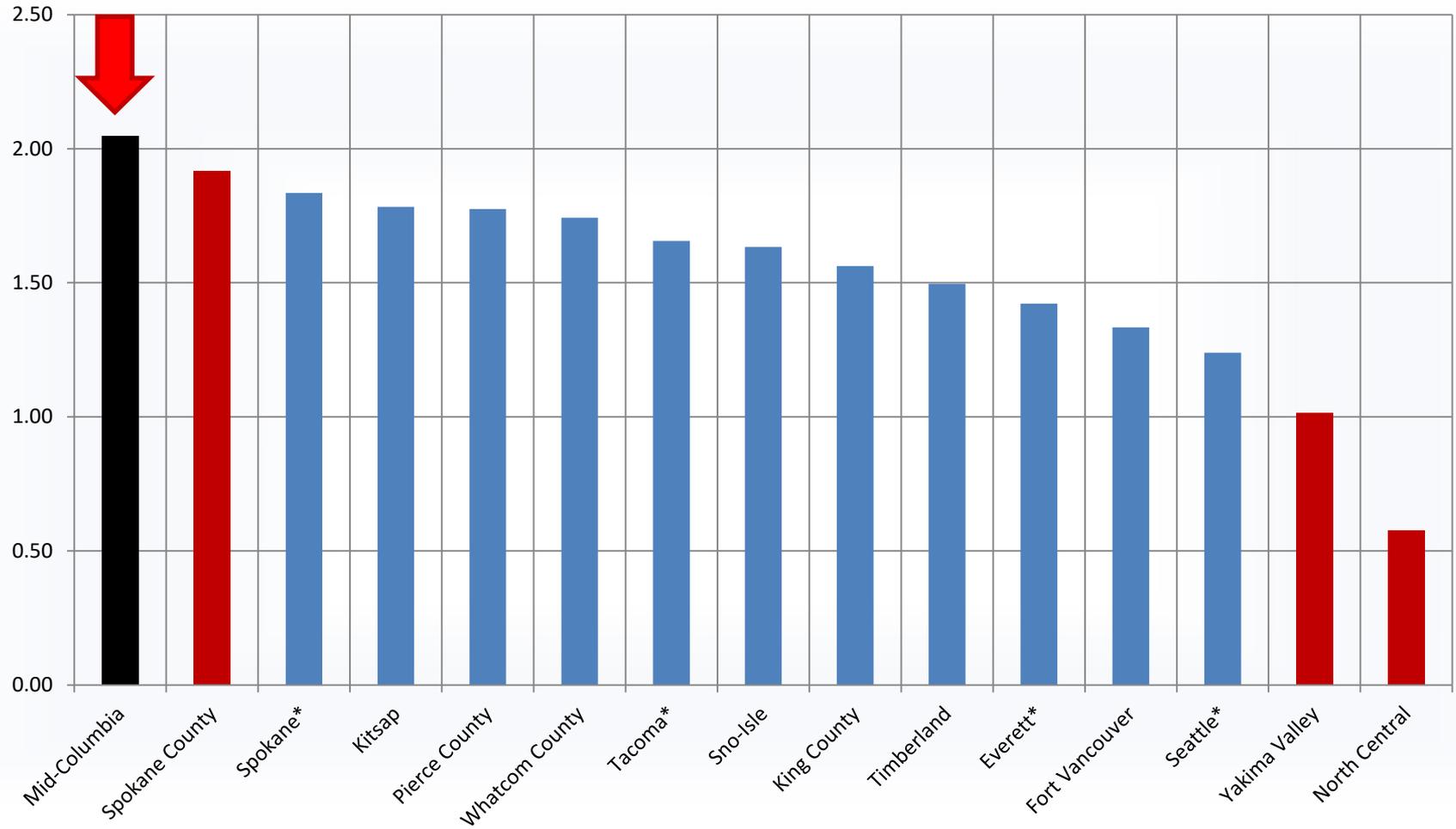
Approximately \$1.3 million of our 2020 budget was invested in materials available to all customers.

The entire Mid-Columbia Libraries collection is worth approximately **\$11.4 million**.

Mid-Columbia Libraries has the **largest Digital Spanish Language Collection** in the state of Washington and **the second largest physical collection!**



Circulation per Collection Dollar Spent



Mid-Columbia Libraries' Kennewick Branches



Kennewick Library Customer Demographics: 2020

	Kennewick Residents
# of Kennewick Resident Cardholders 12/31/20	76,426
# of Non-City Resident Cardholders 12/31/20	10,897
Average Age of Customers	40.5
% of Female Customers	53.9%
% of Male Customers	40.95%

Kennewick Libraries Usage: 2020

Over 603,200 items from Mid-Columbia Libraries' collection were checked out by Kennewick library customers.

Forty-five percent of these checkouts were digital.

More than **340 grab bags** were created by MCL staff for Kennewick customers in the last two months of 2020.

Over 10,218 items were borrowed by Kennewick School District students using the Sora platform from June to December 2020.

Customers accessed Kennewick public computers **43,072** times.



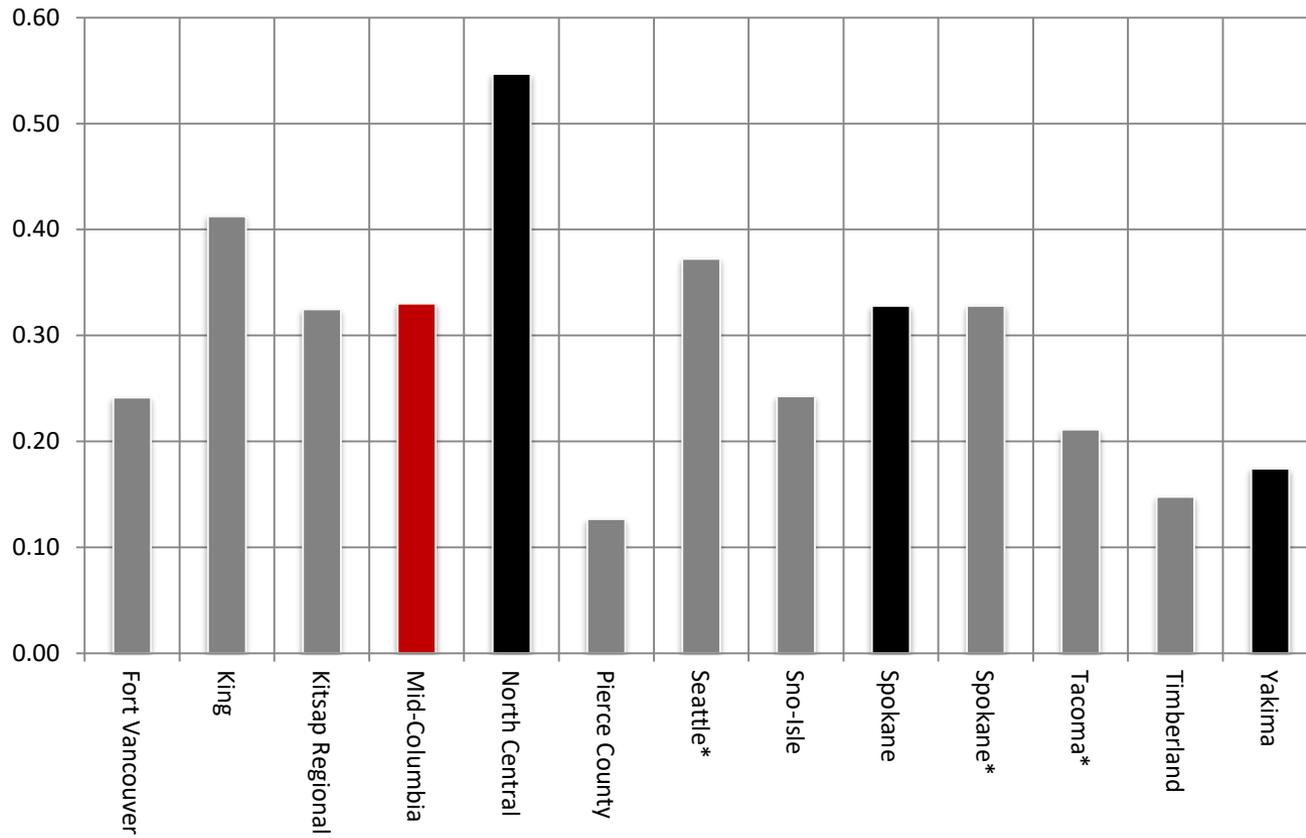
Library Programs





Comparable Systems

Program participants per capita



[Browse](#)
[New & Popular](#)
[Branches](#)
[Events](#)
[Services](#)
[About](#)
Audience

- Kids 0-5
- Kids 6-12
- Teens
- Age 13+
- Adults

Event Type

- Author Visit
- Barchitects
- Branch Closure
- E=MCL
- Elementary Programs

Location

- Basin City
- Benton City
- Rural Services
- Connell
- Kahlotus

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
30	31	1	2	3	4	5
		0-5 Preschool Storytime via Facebook 10:30 am - 11:00 am Offsite	ALL Bilingual Storytime Via Facebook with Ms. Ale 10:30 am - 11:00 am Offsite	0-5 Preschool Storytime via Facebook 10:30 am - 11:00 am Offsite	0-5 Baby Storytime via Facebook 10:30 am - 11:00 am Offsite	
6	7	8	9	10	11	12
	ALL Hora de cuentos en español con la Señorita Ale por Facebook 10:30 am - 11:00 am Offsite	0-5 Preschool Storytime via Facebook 10:30 am - 11:00 am Offsite 18+ Lecture: Let It Not Happen Again: Lessons of the Japanese American Exclusion 6:30 pm - 7:30 pm Offsite	ALL Bilingual Storytime Via Facebook with Ms. Ale 10:30 am - 11:00 am Offsite	0-5 Preschool Storytime via Facebook 10:30 am - 11:00 am Offsite ALL ZooQuartum Online Learning - Wild Cats! 4:00 pm - 4:40 pm Offsite		
13	14	15	16	17	18	19
	ALL Hora de cuentos en español con la Señorita Ale por Facebook 10:30 am - 11:00 am Offsite	0-5 Preschool Storytime via Facebook 10:30 am - 11:00 am Offsite ALL Marvel Trivia Night via Zoom 6:30 pm - 7:30 pm Offsite	ALL Bilingual Storytime Via Facebook with Ms. Ale 10:30 am - 11:00 am Offsite	0-5 Preschool Storytime via Facebook 10:30 am - 11:00 am Offsite	0-5 Baby Storytime via Facebook 10:30 am - 11:00 am Offsite	
20	21	22	23	24	25	26
	ALL Hora de cuentos en español con la Señorita Ale por Facebook 10:30 am - 11:00 am Offsite	0-5 Preschool Storytime via Facebook 10:30 am - 11:00 am Offsite	ALL Bilingual Storytime Via Facebook with Ms. Ale 10:30 am - 11:00 am Offsite ALL Virtual Planetarium: Night Sky Tonight 2:00 pm - 2:40 pm Offsite	0-5 Preschool Storytime via Facebook 10:30 am - 11:00 am Offsite	ALL Friends of Mid-Columbia Libraries Summer Book Sale 10:00 am - 6:00 pm Kennewick	ALL Friends of Mid-Columbia Libraries Summer Book Sale 10:00 am - 4:00 pm Kennewick
27	28	29	30	1	2	3
	ALL Hora de cuentos en español con la Señorita Ale por Facebook 10:30 am - 11:00 am Offsite ALL The Lucky Band Virtual Concert 2:00 pm - 2:30 pm Offsite	0-5 Preschool Storytime via Facebook 10:30 am - 11:00 am Offsite	ALL Bilingual Storytime Via Facebook with Ms. Ale 10:30 am - 11:00 am Offsite			

Online Children's Library Programs



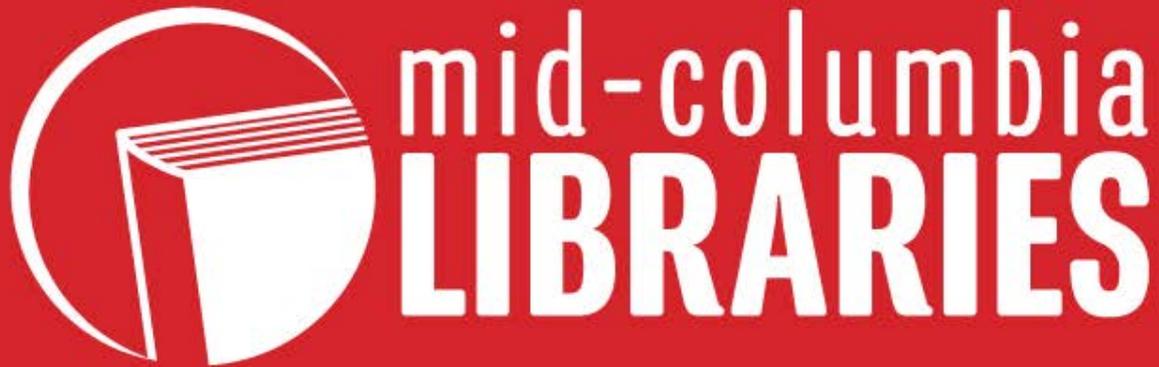
Providing Value to the Residents of Kennewick



Providing Value to the Residents of Kennewick







midcolumbialibraries.org

**Council Workshop
Coversheet**



Agenda Item Number	2.	Meeting Date	06/22/2021
Agenda Item Type	Presentation		
Subject	Legislative - Quasi Judicial Actions		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Planning		

Info Only

Policy Review

Policy DevMnt

Other

Summary

Staff will providing City Council with a brief review of legislative land use actions versus quasi-judicial land use actions. This overview will include the appeal provisions for each type of action and what jurisdiction reviews the various types of appeals. Attached is an article that goes into some detail and provides a summary of two related court decisions on these types of land use decisions.

Through

Attachments:

Article
Presentation

Dept Head Approval

Gregory McCormick
Jun 16, 16:08:38 GMT-0700 2021

City Mgr Approval

Marie Mosley
Jun 18, 10:50:46 GMT-0700 2021



The Unassailable Right to Make Any Decision You Want: Avoiding Judicial Intervention in Local Land Use Decision Making

May 31, 2012 by [Phil Olbrechts](#)

Category: [Land Use Administration](#), [Planning Advisor](#), [Administrative and Elected Officials](#)

By [Phil Olbrechts, Attorney, Olbrechts and Associates, PLLC](#)

You are an elected councilmember, chosen by your community to make decisions on its behalf. People like you. Yet any superior court judge in your county can single-handedly toss out a decision of your entire city council if the judge decrees your council violated the constitution or some state or federal law. Are there any decisions out of reach of your local superior court judge?

In a word, yes! Some city council decisions are a matter of "legislative discretion" and superior court judges can't touch them. Specifically, if you deny a request to amend your comprehensive plan, in most cases NOBODY, including superior court judges, can reverse your decision. In a couple recent State Supreme Court decisions, the Supreme Court has drawn a line that judges can't cross to rule on local land use decision making. Understanding that line is critical to setting up a decision making process that minimizes judicial intervention in land use decision making.

The two Court decisions that "draw the line" address two sometimes very similar city council decisions: (1) whether to amend your comprehensive plan; and (2) whether to approve a site specific rezone. In some cases these two types of decisions are so similar they border on the identical. As many of you already know, your city is required^[1] to have a map in your comprehensive plan (often called a "future land use map") and a map in your zoning code (usually called the "zoning map") that designates land uses for the various portions of your city. Many cities and counties make the maps identical^[2], so that the uses designated in the comprehensive plan map are exactly the same as those designated in the zoning map. Amendments to these comprehensive plan and zoning maps are often processed concurrently in the same hearings, and the public and the city council itself is only marginally aware that not one but two maps are actually subject to revision.

Despite the similarities in decision making for comprehensive plans and zoning maps, the authority of judges to intervene in those decisions is markedly different. If you make a decision on a site specific amendment to a zoning map and someone appeals the decision to superior court, a judge can reverse your decision. If you approve an amendment to your comprehensive plan, including an amendment to your comprehensive plan map, a judge can't alter or reverse your decision. However, your decision can still be appealed to one of the Growth Management Hearings Boards, a group of people appointed by the governor who have the authority to reverse your approval^[3]. Note that so far I've only addressed the approval of a comprehensive plan amendment.

The best part is saved for last: who gets a shot at your decision to *NOT* amend your comprehensive plan? If someone walks into City Hall and demands that the city council amend the residential comprehensive plan map designation for their property, what can that person do if you simply say "take a hike"? The amazing answer is usually, NOTHING! If you say no to that person, in the vast majority of cases there is no one that has the authority to reverse your decision. No one is entitled to a comprehensive plan amendment. That is legislative discretion in its absolute purist form!

The "draw the line" cases have some practical application that can be used to structure your decision making process in a manner that minimizes judicial intervention. If you're a practical minded person who just wants to know what to do and don't get excited by the legal basis for this strange situation, skip over the next section to "Practical Stuff." Otherwise read on for a legal treat[4].

The Two Amazingly Fascinating Land Use Court Cases

Let's start with the bad news first, *Phoenix Development, Inc. v. Woodinville*, 171 Wn.2d 820 (2011). *Phoenix* involved an upzone of a couple parcels totaling 55 acres from a zoning map designation of one dwelling unit per acre (R-1) to four units per acre (R-4) in the City of Woodinville. For those of you who are familiar with Woodinville, you know that it is uniquely characterized by low density development. Nestled amongst its beautiful vineyards are upscale residences woven into a tapestry of horse pastures, sprawling lawns and thousands of acres of trees. So a developer proposal to build a Spielberg neighborhood of urban density homes cascading in neat rows as far as the eyes can see was bound to generate some controversy.

The battle for the rezone before the Woodinville City Council was ferocious. As part of its undoing, Woodinville had adopted detailed standards for the approval of site specific rezones. Most notably a rezone applicant had to establish a "demonstrated need" for a rezone in order to secure approval. This criterion in turn invoked the principles of the Growth Management Act, Chapter 36.70A RCW ("GMA"), most significant that cities should accommodate urban growth and a variety of urban densities. So the developer hires an army of experts who produce an arsenal of studies establishing that the upzone is necessary to accommodate Woodinville's share of urban growth and to provide a variety of urban densities. The besieged planning staff fortifies their position with a wall of their own studies arguing the opposite. The citizens pack the Council chambers demanding denial. The City Council acts for their constituency and denies the upzone.

The City Attorney was tasked with writing up the findings of fact and conclusions of law supporting the denial. The City Attorney cleverly characterized the decision in the written conclusions as an exercise of "legislative capacity." Why? Because the separation of powers doctrine[5] prohibits, to a certain extent, the courts from exercising legislative powers. The City Attorney had good reason to invoke the "legislative capacity" card. Unlike most other land use permitting decisions, such as conditional use permits, variances and subdivisions, a city council is required to make the final decision on a rezone and it must do so by ordinance. These are all the hallmarks of a legislative act. Courts try not to interfere with legislative acts. In writing that the Council was acting in its "legislative capacity," the City Attorney was hoping to prevent judicial intervention. It didn't work. Not only did Division I of the Washington State Court of Appeals fail to give any significance to the "legislative capacity" card, it actually ruled that it was error to characterize it that way. The fact that an ordinance was involved and that the City Council was required to make the final decision did not impress the Court of Appeals. What made the difference was the Land Use Petition Act ("LUPA"), Chapter 36.70C RCW. LUPA governs the judicial appeal of land use decisions made by cities and counties. LUPA is the exclusive means of judicial review of "land use decisions", which is defined to include final decisions on "project permit applications", which in turn is defined to include site specific rezone applications. See RCW 36.70C.030; 36.70C.020(1)(a) and 36.70B.020(4). LUPA sets judicial standards for the review of land use decisions.

It expressly provides that a superior court may reverse a land use decision if the decision fails to satisfy those standards. As a project permit application, a rezone is subject to reversal by a superior court just like any other project permit application.

And, almost forgot to mention, the Court of Appeals reversed the city council denial of the rezone application. The Court concluded that "*[b]ecause the proposed rezones meet all statutory and common law requirements for rezones, we reverse the denial of the rezones...*"

Fortunately for Woodinville, the State Supreme Court was more charitable in its review of the denial. It agreed that a rezone can be reversed on judicial appeal, but didn't find reversal justified in the case before it. A primary difference between the Court of Appeals and Supreme Court levels of review was that the Supreme Court reasoned that a court has to give deference to a city's decision making when addressing policy issues governed by the GMA, as well as its findings of fact and its interpretation of its own ordinances. With this deference weighing in, the scales of justice tipped in favor of Woodinville. This deference creates a substantial obstacle to anyone desiring to challenge a rezone decision. The deference on GMA policy choices is also a partial acknowledgment that a site specific rezone has the attributes of a legislative act. Nonetheless, the most significant part of the Court of Appeals decision remains intact: a rezone decision can be reversed by a superior court.

Now on to the good news, *Stafne v. Snohomish County*, 174 Wn.2d 24 (2012). In *Stafne*, Mr. Stafne asked the Snohomish County Council to place a comprehensive plan map amendment he was proposing onto the County's yearly comprehensive plan amendment docket. With a boundary line adjustment, Mr. Stafne had added some adjoining property to his lot that he had purchased from the Washington State Department of Natural Resources ("DNR"). His lot (prior to the addition of the DNR property) was designated Low Density Rural Residential and the adjoining property he purchased from DNR was designated Commercial Forest Land and Forest Transition Area. He wanted the designations on the DNR property to match up with the Low Density Rural Residential designation of the rest of his lot. The Snohomish County Council declined to add his requested amendment to the yearly docket. Mr. Stafne appealed the denial to superior court under LUPA. The superior court tossed his appeal out, ruling that comprehensive plan amendments, even site specific comprehensive plan amendments, aren't land use decisions subject to LUPA.

Mr. Stafne went all the way to the State Supreme Court with his appeals, arguing that his only other avenue would have been to appeal the County Council's refusal to consider his amendment to the Puget Sound Growth Management Hearings Board. He pointed out that such an appeal would have been futile since the Board has ruled it has no jurisdiction to consider the local denial of a requested comprehensive plan amendment. The State Supreme Court noted that the Board would still retain jurisdiction if some law mandated a comprehensive plan amendment, and that if there were no such mandate there would simply be no appeal available:

We agree with the board's determinations in cases like Cole and SR 9/US 2 LLC. County and city councils have legislative discretion in deciding to amend or not amend their comprehensive plans. Absent a duty to adopt a comprehensive plan amendment pursuant to the GMA or other law, neither the board nor a court can grant relief (that is, order a legislative discretionary act). In other words, any remedy is not through the judicial branch. Instead, the remedy is to file a proposal at the County's next annual docketing cycle or mandatory review or through the political or election process. (174 Wn.2d at 37.)

Be sure you understand the quoted language above. In most cases a citizen will not be able to point to a statute requiring the city council to amend its comprehensive plan. It is difficult to conceive of any set of circumstances where a citizen could truthfully tell a city council "*you are required by state law to amend your comprehensive plan*

as I've requested, right now." [6] This means that in most cases where the city council refuses to amend its comprehensive plan, that private citizen will have nowhere to appeal the council decision except the court of public opinion at the next election.

Keep in mind that although the *Stafne* decision only applied to a docketing request, its reasoning applies to any request to amend a comprehensive plan, not just the comprehensive plan map. Almost any time the city council decides to deny a request to amend its comprehensive plan, there's no appeal right to that decision. Don't get confused though. The Snohomish County decision only applies in situations where the city council decides to NOT amend its comprehensive plan. If the council approves an amendment, it will be subject to appeal to a GMA Hearings Board, which does have the authority to reverse the decision if it fails to comply with the requirements of the GMA.

The Practical Stuff

Beyond being legally fascinating, the *Phoenix* and *Stafne* cases highlight what you can do to your land use regulations if you want to minimize judicial meddling. A couple options:

1. *Make your comprehensive plan map identical to your zoning map.* One of the most significant results of the *Phoenix* and *Stafne* cases is that there is now a compelling reason to make your comprehensive plan maps identical to your zoning maps. If the two maps are identical, an applicant can't get a zoning map amendment approved without having the comprehensive plan map amendment approved first. This is because any amendment to the zoning map must be consistent with the comprehensive plan map. See RCW 36.70A.120. So in the identical map situation you can deny a requested comprehensive plan map amendment for practically any reason you want and the applicant has no right of appeal. The applicant does have a right of appeal to a denial of the same change to the zoning map, but you have no trouble defending that denial on the grounds that the zoning map amendment must be consistent with the comprehensive plan map (an example that clarifies this is coming up).

Contrast the above-scenario with a comprehensive plan that isn't identical with the zoning map. Say that your city has a comprehensive plan map designation of "single-family residential" and that this designation in turns allows zoning map designations of R-1, R-2 and R-4, with each designation allowing densities of one dwelling unit, two dwelling units and four dwelling units per acre respectively. If an applicant wants to change a designation from R-1 to R-4, no comprehensive plan map amendment would be necessary since the comprehensive plan map authorizes both zoning designations for the applicant's property. The applicant just has to apply for a rezone from R-1 to R-4 and the applicant can appeal to superior court if his request is denied. This is probably what happened in the *Phoenix* case. If Woodinville had a comprehensive plan map that only allowed R-1 zoning, the City Council could have denied a request to change the comprehensive plan map to R-4 and there's nothing the applicant could have done about it. With the comprehensive plan set at R-1 with no right of appeal, the applicant couldn't request a zoning map change to R-4 because the zoning map has to be consistent with the comprehensive plan R-1 designation.

Note that I didn't say in the preceding paragraph that the *Phoenix* and *Stafne* cases make it imperative for your zoning maps to be identical to your comprehensive plan maps. There's still also a good reason to keep them different - flexibility. The GMA only allows comprehensive plan map amendments once per year, subject to a few exceptions. See RCW 36.70A.130(2)(a). So if your maps are identical and you have a situation where you need to amend your zoning map ASAP (e.g. Microsoft wants to build a multimillion dollar complex in your industrial zone and it needs a rezone amendment NOW), you have to wait until the next comprehensive plan amendment cycle

to do the amendment. As a city attorney I don't know how many times I've had to justify some debatable "emergency" (one of the exceptions to the once per year rule) to support a comprehensive plan amendment outside the yearly amendment cycle. Theoretically, a comprehensive plan should be a general policy document that is implemented in more detail in the zoning code and other development regulations. A comprehensive plan map that is more general than a zoning map fits this paradigm well and provides for the flexibility that's necessary to respond to those Microsoft opportunities. Personally, I vote for flexibility over obstructing judicial review, but which factor takes precedence is dependent upon the political and legal climate of your jurisdiction.

2. *Keep your decision making criteria broad for legislative (or legislative-type^[7]) decisions.* Another practical consideration resulting from the *Phoenix* and *Stafne* cases is the importance of keeping your standards broad for legislative or legislative-type decisions such as site specific rezones and comprehensive plan amendments. Woodinville wasn't required to adopt any standards for the review of its site specific rezones and indeed many jurisdictions don't have any. The courts themselves have made up their own standards, requiring that for a rezone to be approved: (1) There is no presumption of validity favoring the action of rezoning; (2) the proponents of the rezone have the burden of proof in demonstrating that conditions have changed since the original zoning; and (3) the rezone must bear a substantial relationship to the public health, safety, morals or welfare. As an alternative to the "changed circumstances" criterion, an applicant may demonstrate that the proposed rezone implements the comprehensive plan. *Citizens v. Mount Vernon*, 133 Wn.2d 861, 875 (1997); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 845 (1995). If you choose to make your standards more specific, you're just asking for trouble. You may box yourself into a corner where you have no option but to approve. It's relatively easy to come up with a conclusion that a proposed rezone fails to bear a substantial relationship to public health, safety and welfare under the judicial rezone standard. Even if there are reasons that support a contrary conclusion, a court will defer to your findings and conclusions and often sustain your decision. However, if you adopt specific criteria such as Woodinville's "demonstrated need" for a rezone, this gives the applicant an opportunity to establish compliance through fairly objective population projections and other statistical analysis. Once you go down that path it becomes more difficult to come up with a defensible counter-argument.

Similar reasoning applies to comprehensive plan amendments. Any amendments you approve will have to be consistent with the GMA in order to survive an appeal to a GMA hearings board, so you will want to assure that your approvals are supported by detailed findings of fact and conclusions of law that establish that compliance. However, as previously discussed you can deny an application for a comprehensive plan amendment for practically any reason you want. So why bog yourself down with detailed standards for denial that take up a lot of staff resources and council time? There's also still room to argue that a denial could be overturned, or result in liability, because it violates a constitutional right^[8]. A detailed set of standards simply creates more opportunities for a permit applicant to argue that they meet the rare circumstances where they can have a denial reversed on appeal. Some attorneys may disagree with this position, but it does appear that the best local standards for comprehensive plan amendment review require detailed findings and conclusions establishing consistency with the GMA for approval, but correspondingly minimal standards and summary findings and conclusions or none at all for denial.

[1] That's assuming your city is subject to all of the planning requirements of the Growth Management Act, Chapter 36.70A RCW ("GMA"). RCW 36.70A.040(1) identifies what cities are subject to the GMA, based upon population growth rates. Many cities not subject to GMA choose to have comprehensive plan and zoning maps anyway. For those of you looking for the specific map requirements, the introduction to RCW 36.70A.070 requires the

comprehensive plan to include "a map or maps" with RCW 36.70A.070(1) requiring a land use element that designates land uses. RCW 36.70A.040(3) requires GMA cities to adopt development regulations that are consistent with and implement the comprehensive plan.

[2] I know of at least one jurisdiction that doesn't even bother to have two separate maps. Technically I would argue that the maps should be separate, and technically no one else would care.

[3] Which, admittedly, can in turn be appealed to a Court of Appeals judge.

[4] Ok, I'm taking some liberties here. Those of you who have been involved in the legal system know there's no such thing as a "legal treat" unless you get paid \$350 per hour. Most notably, if you're the person paying the person who gets paid \$350 an hour you can no longer afford a treat of any kind and your PTSD would prevent you from enjoying a treat even if it were gifted to you in a brightly colored package.

[5] The powers of local government, like for state and federal, are divided into the legislative, executive and judicial branch.

[6] Throughout the years, the state legislature has added requirements to the GMA that cities and counties must incorporate into their comprehensive plans. However, none of these GMA amendments empowered citizens to run to their city council to demand an immediate amendment to the city's comprehensive plan. Rather, the cities have been required to incorporate the GMA amendments into their comprehensive plans in the periodic GMA "updates" mandated by the GMA every seven or so years. *See* RCW 36.70A.130. Citizens could appeal the updates for not incorporating the GMA amendments, but outside of the GMA update cycle citizens had no authority to demand an amendment.

[7] For the attorneys out there I know full well there's no such thing as a "legislative-type" decision and that the *Phoenix* case expressly categorized a site specific rezone as quasi-judicial. However, a site specific rezone still has some legislative features and in order to distinguish it from other types of land use decisions where specific permit criteria should be adopted, I'm calling a rezone a "legislative-type" decision.

[8] It would take another article to address that issue and is not worth the effort because it's unlikely that any council would make a legislative decision so terrible that a judge would find it necessary to invoke jurisdiction

MRSC is a private nonprofit organization serving local governments in Washington State. Eligible government agencies in Washington State may use our free, one-on-one [Ask MRSC service](#) to get answers to legal, policy, or financial questions.

About Phil Olbrechts

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City of Kennewick

City Council Workshop

JUNE 22, 2021





GMA Planning Requirements

- **Critical areas & resource lands ordinances**
- **Countywide Planning Policies (CWPP)**
- **Comprehensive Plan**
- **Development Regulations**
- **Periodic Review and Update**

Required Comprehensive Plan Elements

- **Land Use**
- **Housing**
- **Capital Facilities**
- **Transportation**
- **Utilities**
- **Economic Development***
- **Parks & Recreation***

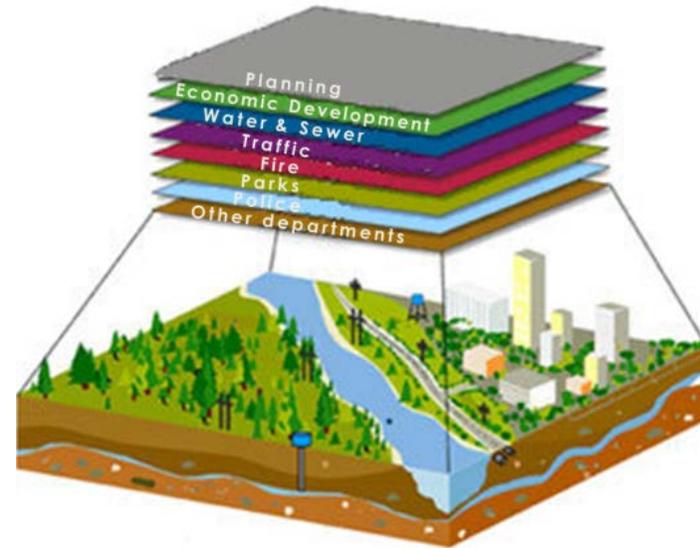
* Added in 2002 and only required if state funding becomes available.

Comprehensive Plan

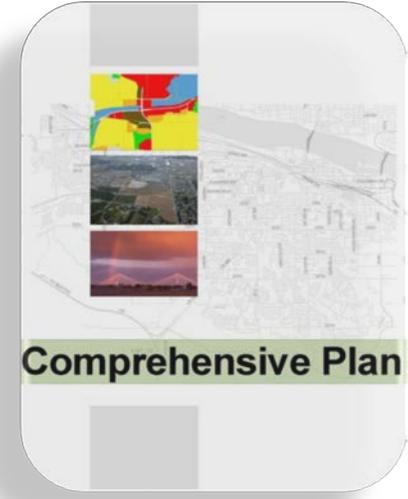
The Comprehensive Plan is the basic foundation for local government planning

The Comprehensive Plan expresses a long-range course of action guiding the growth of the community in an orderly fashion

The plan coordinates many diverse activities of City departments by providing a common vision in one comprehensive document

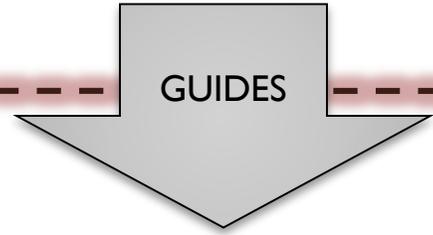
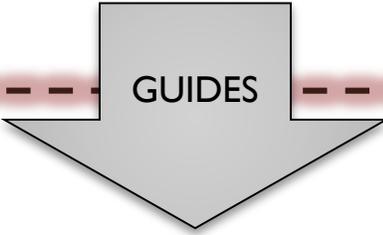
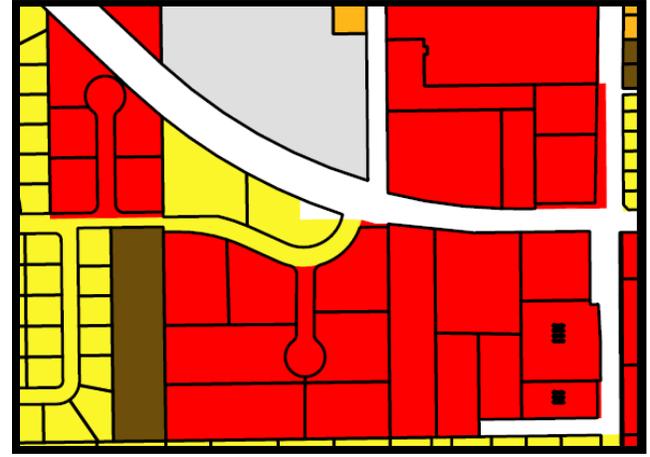


POLICY



Comprehensive Plan

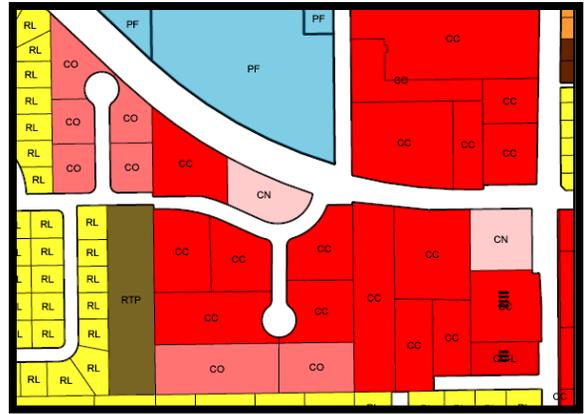
LAND USE



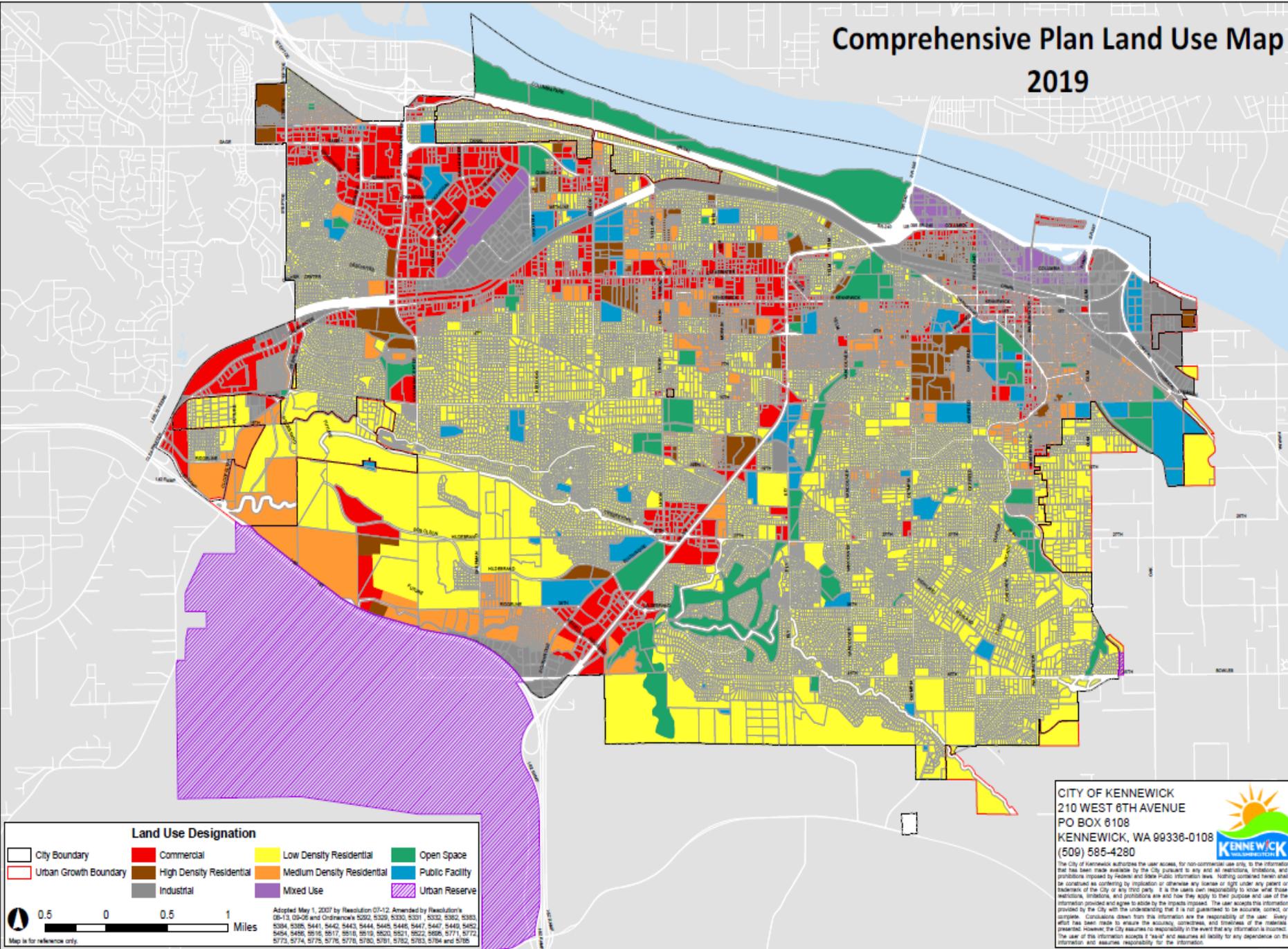
LAW



ZONING



Comprehensive Plan Land Use Map 2019



Land Use Designation

City Boundary	Commercial	Low Density Residential	Open Space
Urban Growth Boundary	High Density Residential	Medium Density Residential	Public Facility
Industrial	Mixed Use	Urban Reserve	

Map is for reference only.

0.5 0 0.5 1 Miles

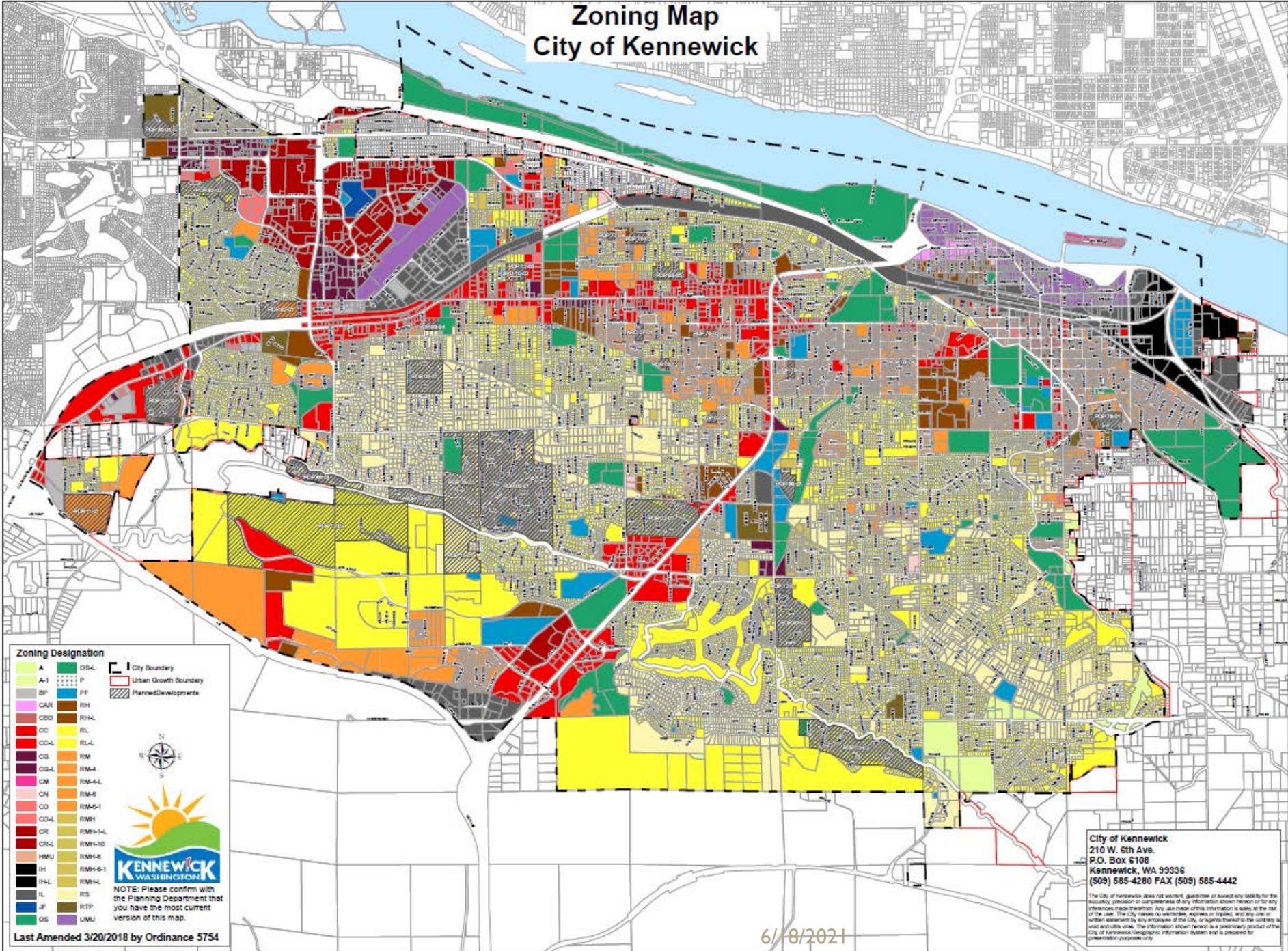
Adopted May 1, 2007 by Resolution 07-12, Amended by Resolution's 08-13, 09-05 and Ordinance's 2002, 2008, 2030, 2031, 2032, 2082, 2083, 2084, 2085, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2447, 2448, 2452, 2454, 2455, 2515, 2517, 2518, 2519, 2520, 2521, 2522, 2525, 2771, 2772, 2773, 2774, 2775, 2776, 2778, 2780, 2781, 2782, 2783, 2784 and 2785.

CITY OF KENNEWICK
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 KENNEWICK, WA 99336-0108
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Zoning Map City of Kennewick



Zoning Designation

A	OS-L	City Boundary
A-1	P	Urban Growth Boundary
BP	PF	Planned Developments
CAR	RH	
CBD	RH-L	
CC	RL	
CC-L	RL-L	
CG	RM	
CG-L	RM-4	
CM	RM-4-L	
CN	RM-8	
CO	RM-8-1	
CO-L	RMH	
CR	RMH-1-L	
CR-L	RMH-10	
RMU	RMH-40	
IH	RMH-60	
IH-L	RMH-L	
IL	RS	
JF	RTP	
OS	UMU	

NOTE: Please confirm with the Planning Department that you have the most current version of this map.

KENNEWICK WASHINGTON

Last Amended 3/20/2018 by Ordinance 5754

City of Kennewick
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6/18/2021

Comprehensive Plan Land Use Map Amendment vs. Change of Zone

- KMC 18.51.100(2) Comprehensive Plan text and map amendments processed pursuant to KMC 4.12.110.
- Comprehensive Plan land use map amendments are legislative and within Council's discretion to approve or deny.
- Per KMC 18.51.070(2)(a) in order to amend the zoning map, the City Council must find that the proposed amendment conforms with the comprehensive plan.
- If a change of zone request does not conform to the comprehensive plan land use map designation, the property owner must first amend the comprehensive plan before applying for the change of zone.



Comprehensive Plan Land Use Map Amendment vs. Change of Zone

- Comprehensive Plan Land Use Map Amendment requests are legislative; if approved the appeal is submitted to the Growth Management Hearings Board, RCW 36.70A.280.
- A Change of Zone request is quasi-judicial; if approved or denied, the appeal is submitted to Superior Court through the Land Use Petition Act process, RCW 36.70C.030.
- The City code separates the two actions to avoid conflicting appeals and confusing the roles of council as between legislative and quasi-judicial decisions.

Questions?



**Council Workshop
Coversheet**



Agenda Item Number	3.	Meeting Date	06/22/2021
Agenda Item Type	Presentation		
Subject	Development Impact Fees		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Public Works		

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

Summary

Presentation and information regarding Development Impact Fees for Transportation and Parks.

Through	Bruce Mills Jun 17, 13:41:02 GMT-0700 2021	Attachments: <input type="text" value="Presentation"/>
Dept Head Approval	Cary Roe Jun 17, 14:03:01 GMT-0700 2021	
City Mgr Approval	Marie Mosley Jun 18, 10:57:37 GMT-0700 2021	

Development Impact Fees

Council Workshop Presentation

June 22, 2021

Cary M. Roe, PE, Public Works Director

Outline

Transportation Impact Fees

- Residential
- Commercial

Park Impact Fees

- Residential Only

Why Impact Fees?

What they pay for:

- Capital infrastructure to increase capacity of the transportation system (e.g. additional lanes, traffic signals)

What they don't pay for:

- Pre-existing over-capacity system needs
- Maintenance & Operation costs

Without impact fees, taxpayers would have to fully shoulder the costs of needed capital infrastructure to mitigate impacts from new development.

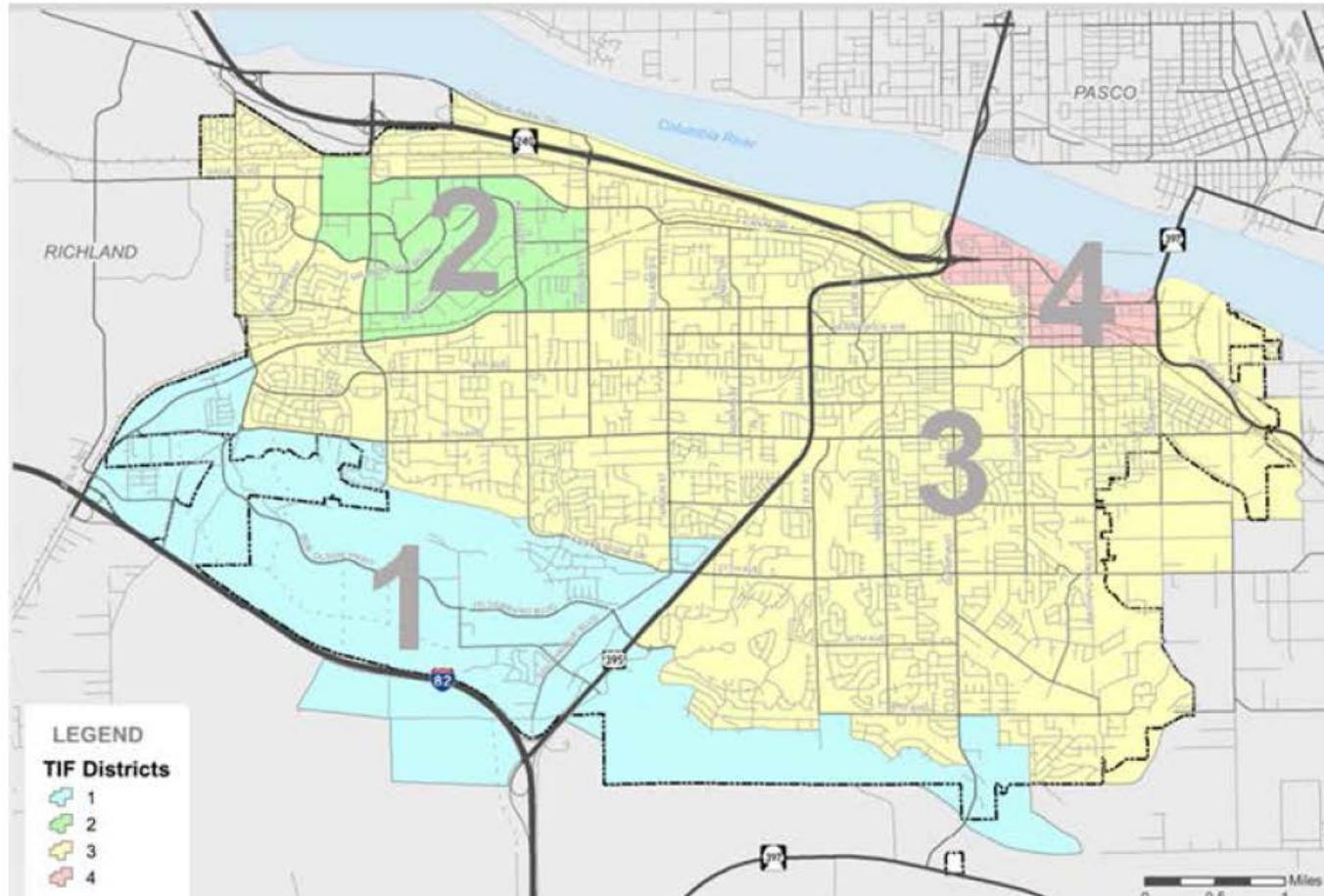
Transportation Impact Fees

Transportation Impact Fees pay for a **portion** of the capital costs for infrastructure improvements needed to address impacts created by new development.

TIFs can be used as a **credit** for developers towards TIF-eligible projects.

In 2018, Kennewick updated transportation impact fees to pay for **40%** of development's proportionate share of costs to address impacts from new growth.

Kennewick Transportation Impact Fee Districts



1. Southridge Area
2. Vista Field Area
3. All Other Areas
4. Downtown Area

Residential TIF Comparison

Tri-City Impact Fees – Residential Single Family Home

City/District	Traffic Impact Fee	Comment
Kennewick District 1 (Southridge)	\$1,392	
Kennewick District 2 (Vista Village)	\$913	
Kennewick District 3 (Other Citywide)	\$1,043	
Kennewick District 4 (Downtown)	\$357	
Richland Zone 1 (Queensgate)	\$1,971	
Richland Zone 2 (North towards Hanford)	\$846	
Richland Zone 3 (Dalles Road area)	\$2,207	
Pasco	\$706	No impact fees imposed east of 20 th Avenue. Pasco also has a \$4700 school impact fee.
West Richland	\$1,539	City-wide

Commercial TIF Example

Fast Food Restaurant with Drive-Thru

Fast Food Restaurants with Drive-Through are the 2nd highest commercial traffic generators

(Convenience Store is #1)

Example: Chick-Fil-A Restaurant



Restaurants with Drive-Through Service

- High traffic generators

Chick-Fil-A Restaurant Size

Varies: 4350 – 5400 square feet

Average size (per web page): 4500 square feet



Popularity/Impacts

- Significant traffic congestion
- Impacts adjacent streets
- Impacts nearby business access



Spokane: Opening Day

Washington Chick-Fil-A's

- **19 current restaurants**
 - **17 in Puget Sound (other two: Vancouver & Spokane)**

Example of Impact fees (when constructed)

Kirkland	195,390
Puyallup	350,910
Covington	131,076
Bothell	275,625
Federal Way	166,500
Bellevue	299,430
Lynnwood	159,210

Comparison Tri-City TIFs

Tri-City Impact Fees – Restaurants with Drive-Through Based on 4500 square feet

City/District	Traffic Impact Fee	Rate	Comment
Kennewick District 1 (Southridge)	103,352	\$22,967/1,000 sq ft GFA	GFA = gross footage area
Kennewick District 2 (Vista Field)	67,775	\$15,061/1,000 sq ft GFA	Near mall – prime location
Kennewick District 3 (All Other)	77,477	\$17,217/1,000 sq ft GFA	
Kennewick District 4 (Downtown)	26,537	\$5,897/1,000 sq ft GFA	
Richland Zone 1 (Queensgate)	146,372	\$32,527/1,000 sq ft GFA	
Richland Zone 2 (North towards Hanford)	63,834	\$13,963/1,000 sq ft GFA	
Richland Zone 3 (Dalles Road area)	163,854	\$36,412/1,000 sq ft GFA	
Pasco (west of 20 th Avenue)	91,129	\$43/daily trip	No impact fees imposed east of 20 th Avenue
West Richland	56,238	\$12,497.26/1,000 sq ft GFA	Commercial TIFs intentionally lowered

Recent Example: Chipotle Restaurant (Southridge)

Restaurant Size: 2,718 square feet

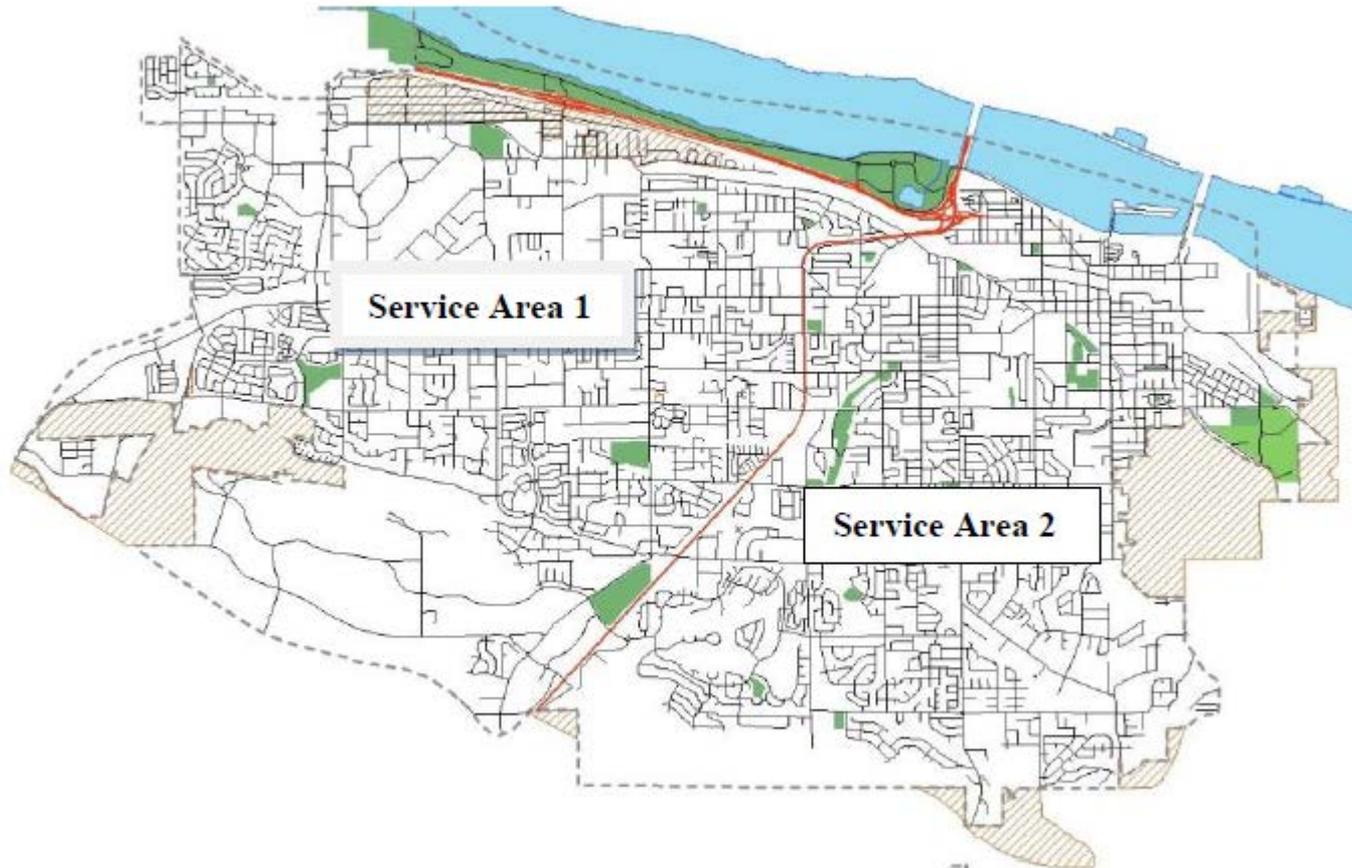
Traffic Impact Fee: \$62,425

Fast Food Restaurant TIFs - Conclusions

- Not a deterrent for Development in general, and in particular Restaurants with Drive-Through
- High volume of customers generates traffic impacts, but also income

Park Impact Fees

Pay for new capital facilities to accommodate growth from impacts of new development



Park Impact Fees Comparison

2021 Impact Fee Comparison

Kennewick's park impact fees for Service Area 1 and Service Area 2 are less than park impact fees in neighboring cities. The following table shows the individual park impact fees imposed by city by unit type. Pasco has the highest park impact fee at \$1,466 per unit; Pasco does not apply a different rate for different types of units. Park impact fees in Kennewick's Service Area 2 would be lower than any other park impact fee in the Tri-Cities region.

Unit Type	Kennewick		Richland	West Richland	Pasco
	Service Area 1	Service Area 2			
All units					\$1,466
Single Family Residential Unit	\$977	\$807	\$1,415	\$1,395	
Multifamily Residential Unit	\$574	\$477		\$700	
Townhomes and Duplexes			\$1,265		
Apartments 3-4 Units			\$1,095		
Apartments > 5 Units			\$890		
Mobile Homes	\$701	\$584	\$1,005		



QUESTIONS?

Council Workshop Coversheet



Agenda Item Number	4.	Meeting Date	06/22/2021
Agenda Item Type	Presentation		
Subject	American Rescue Plan Act Update		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Finance		

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

Summary

As previously discussed with City Council, the City of Kennewick, as well as other cities and counties in the broader Tri-Cities region, will receive a significant allocation of Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) as authorized under the federal American Rescue Plan Act that was approved in March. At the June 22nd workshop, staff will provide City Council with an update on Kennewick's CSLFRF allocation, including the latest guidance from U.S. Treasury on eligible uses for the funding.

Through

Attachments: PowerPoint

Dept Head Approval

Dan Legard
Jun 16, 09:47:27 GMT-0700 2021

City Mgr Approval

Marie Mosley
Jun 18, 11:00:55 GMT-0700 2021

American Rescue Plan Act

Kennewick City Council Workshop

June 22, 2021



American Rescue Plan Act

- \$1.9 Trillion Total
- \$350 Billion to states and local governments
 - \$195.3B to states
 - \$1.25B minimum to 50 states & District of Columbia
 - Remainder using formula based on unemployed individuals
 - \$10B for Coronavirus Capital Projects Fund & \$20B Tribal Governments
 - \$130.2B to local governments split equally between cities and counties
 - County share based on greater of population share or CDBG formula
 - For cities, \$45.5B to metro cities (pop > 50K) using CDBG formula
 - Kennewick's allocation is \$16,062,005
 - \$19.6B to "small" cities based on population
 - Payments in 2 tranches – first ½ within 60 days, second ½ one year later



American Rescue Plan Act

- Eligible uses include:

- (A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- (B) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the State, territory, or Tribal / local government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- (C) for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal / local government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency; or
- (D) to make necessary investments in water, sewer, or broadband infrastructure.



American Rescue Plan Act

- Other guidance on eligible uses:
 - Covered period is 3/3/21 - 12/31/24
 - Costs can be *incurred* by 12/31/24 but must be expended by 12/31/26
 - Cannot spend funds on pension deposits
 - States and territories cannot spend the funds to reduce taxes or delay a tax increase
 - May not be used as non-Federal Match for other Federal Programs



ARPA Guiding Principles

- Avoid creating new programs or add-ons to existing programs that require an ongoing financial commitment
- Use of ARPA funds to cover operating deficits caused by COVID-19 should be considered temporary; other actions may be necessary to achieve/maintain structural balance in future budgets
- Investment in critical infrastructure is particularly well suited use of ARPA funds because it is a non-recurring expenditure that can be targeted to strategically important long- term assets that provide benefits over many years



ARPA Guiding Principles

- Take a methodical approach:
 - Leverage other dedicated grants and programs first and save ARPA funds for priorities not eligible for other federal and state assistance programs
 - Ensure regional initiatives are complimentary
 - Spread use of funds over the qualifying period (through December 31, 2024) to enhance budgetary and financial stability
 - Allow time for further federal guidance on eligible uses



A) COVID-19 Eligible Expenditures

Eligible Uses	Details
Containing/Mitigating Covid-19	<ul style="list-style-type: none">• Vaccine programs, PPE, medical expenses• Enhancing public health data systems• Capital investments in public facilities to meet pandemic operational needs etc.
Behavioral Healthcare Needs	<ul style="list-style-type: none">• Mental health/substance abuse treatment• Crisis intervention/hotlines• Services to promote access to social services
Payroll/Benefits for: Public health/safety Human services Similar employees	<ul style="list-style-type: none">• Eligible to the extent that the work completed was for COVID-19 response/mitigation.• For administrative convenience, public health/safety workers, recipients can use funds to cover the full payroll and covered benefits costs for employees or operating units or divisions primarily dedicated to the COVID-19 response.• Payroll and covered benefits can also be used for an employee's pension benefits as part of their payroll contribution to their pensions (FAQ 43).

A) Negative Economic Impacts

Eligible Uses	Details
Impacted Industries (Tourism/Travel/Hospitality etc.)	<ul style="list-style-type: none">• Implement COVID-19 mitigation/prevention measures to enable safe resumption of tourism, travel, and hospitality services<ul style="list-style-type: none">• E.g. improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans
Rebuilding Public Sector Capacity to Pre-Pandemic Levels	<ul style="list-style-type: none">• Payroll Benefits• Rehiring public-sector staff• Replenishing unemployment trust funds
Small Business support	<ul style="list-style-type: none">• Loans, grants, in-kind assistance for operation continuity, mitigation/prevention, and counseling programs to rebound from the downturn
Hardest-hit Communities	<ul style="list-style-type: none">• Investing in socioeconomic disparities, housing/communities• Addressing disparities in education



B) Premium Pay

- Can be used retroactively
- Employees of the jurisdiction designated by executive as essential
- Can be provided directly, or through grants to private employers to public health/safety staff and essential workers outside the public sector:
 - **Constitutionality of retroactive premium pay to public employees in Washington State has not been resolved**
 - Workers at food production facilities, grocery stores, and restaurants, janitors/sanitation workers, truck drivers, and warehouse workers etc.
 - Contact workers performing essential work also eligible
 - *E.g. If a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.*

C) Provision of Government Services

- To the extent of revenue losses, ARPA funding may be used for the provision of government services:
 - Directly provide services or aid to citizens
 - Pay as you go capital projects
 - Can use it on a capital project together with bond financed portion
 - You can start a project and you finish it with future revenues / bonds
 - Cybersecurity, Healthcare service, School or education services, Police, Fire or Public Safety
- NOT ALLOWED:
 - NOT ON principal or interest of debt service (or settlement agreement)
 - NOT ON reserves or rainy day funds

Process for Revenue Replacement

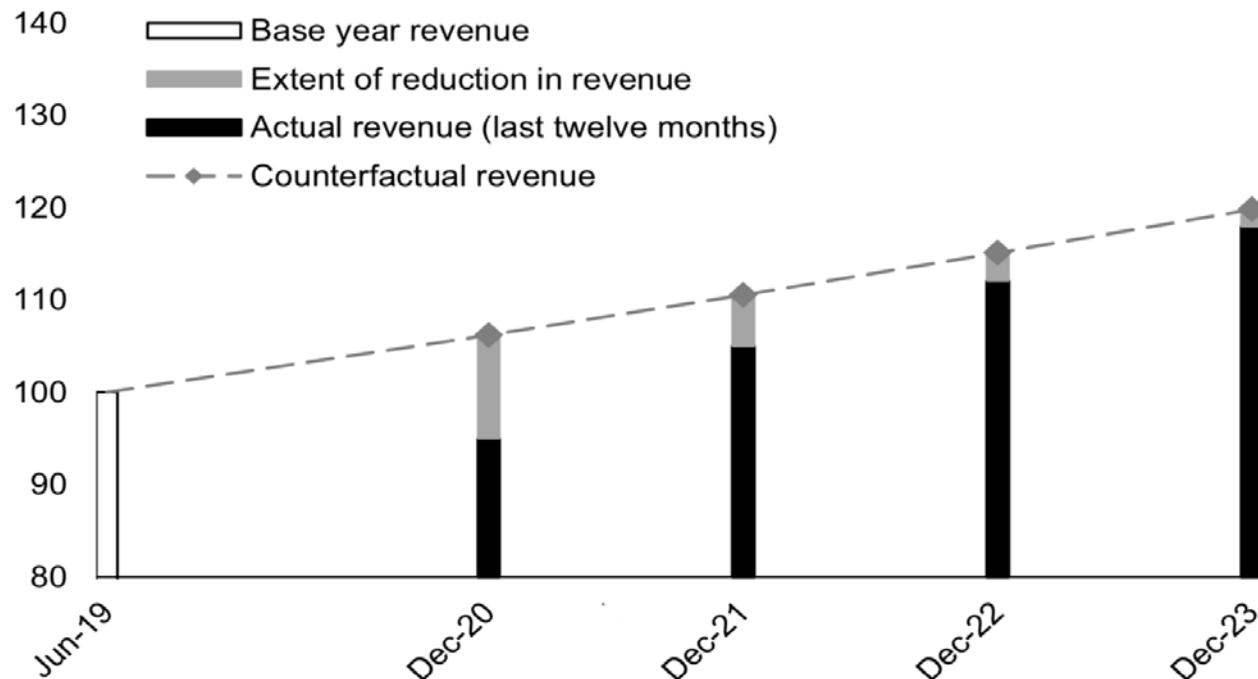
- Begin with 2019 base year (pre-pandemic) revenue
 - Calculate average annual growth of the past three fiscal years
 - Percentage increase in 2017 relative to 2016
 - Percentage increase in 2018 relative to 2017
 - Percentage increase in 2019 relative to 2018
 - Apply **greater** of average actual annual growth or 4.1% to 2019 base year revenue to determine “projected revenue”
 - Multiplier is cumulative for all years
 - Compare to actual revenues collected in 2020-2023 to “projected revenue”
 - Amounts less than “projected revenue” represent lost revenue; amount may be used for the provision of government services
 - If actual revenues exceed projected revenue, lost revenue is zero for that year

Revenue Calculation

- What is OUT of the revenue calculation?
 - Federal transfers (even those flowing through the State)
 - Intergovernmental transfers from your entity to your entity
 - Revenues from utilities (water supply, electric power, gas supply, and public mass transit systems)
 - Refunds and other correcting transactions
 - Proceeds from the issuance of debt
 - Liquor store revenues
- What is IN?
 - Everything not listed above
 - Taxes, fees and other revenues to support public services
 - Including Fees generated by the underlying economy
 - Component units and enterprise funds
 - Toyota Center & Arena, Three Rivers Convention Center

Illustrative Example

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:





D) Water/Sewer Infrastructure

- Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds
- Uses aligned with Environmental Protection Agency's Clean Water Revolving Fund and Drinking Water State Revolving Fund to expedite project identification
 - Building/upgrading facilities and transmission, distribution, and storage systems, including the replacement of lead service lines.
 - Invest in wastewater infrastructure projects
 - E.g. constructing publicly-owned treatment infrastructure, managing and treating stormwater or subsurface drainage water, facilitating water reuse, and securing publicly-owned treatment works
- Recipients retain substantial flexibility to identify those water and sewer infrastructure investments that are of the highest priority for their own communities

D) Broadband Infrastructure

- Build broadband infrastructure with modern technologies in mind, specifically projects that deliver services offering:
 - reliable 100 Mbps download and 100 Mbps upload speeds, unless impracticable due to topography, geography, or financial cost.
- Assisting households to support internet access or digital literacy is an eligible use.



Potential Uses for Kennewick

- Negative Economic Impacts of COVID-19
 - Support for Visit Tri-Cities regional recovery campaign
- Provision of government services (up to revenue loss):
 - One-time or non-recurring public safety costs:
 - KPD and KFD small tools & equipment needs
 - Capital Projects or Significant Capital Repairs:
 - Citywide aging facility needs/repairs & maintenance
 - One-time infusion to pavement preservation program
 - Citywide tree pruning/maintenance program
 - Toyota Center Improvements
- Water and sewer infrastructure projects



Audit/Reporting Requirements

- Subject to ongoing reporting requirements
 - Interim report – activity through 7/31/21
 - Quarterly Project/Expenditure reports
 - Annual Recovery Plan Performance Reports
- Funding will be subject to Single Audit Act
 - Monitoring requirements for sub-recipients



Questions?





City Council Meeting Schedule July 2021

City Council temporarily designated the location for regular, special and study session meetings to a virtual location until termination of the state of emergency or until rescinded. The City broadcasts City Council meetings on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>.

July 6, 2021

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

July 13, 2021

Tuesday, 6:30 p.m.

WORKSHOP MEETING (the workshop meeting will be done via Zoom and broadcast on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>)

1. Micromobility Update
2. Current City-Wide Projects Update

July 20, 2021

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

July 27, 2021

Tuesday, 6:30 p.m.

WORKSHOP MEETING (the workshop meeting will be done via Zoom and broadcast on the City's website <https://www.go2kennewick.com/CouncilMeetingBroadcasts>)

1. Development Related Code Amendments
2. Transportation System Overview

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