BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of **FOSS MARITIME COMPANY AND PORT OF SEATTLE** from an interpretation issued by the Director, Department of Planning and Development	Hearing Examiner File Nos. S-15-001; S-15-002 FOSS MARITIME'S PRE-HEARING BRIEF (Code Interpretation No. 15-001)

I. INTRODUCTION

This case involves the use of Terminal 5 by Foss Maritime to load several vessels on hire to Shell Offshore Inc. ("Shell") for the loading of goods and container cargo for transportation to the Arctic. This use fits squarely within the definition of "cargo terminal," an approved use at Terminal 5, and is consistent with the Port of Seattle's ("Port's") use of its cargo terminals for decades. Nevertheless, the City of Seattle ("City") Department of Planning and Development ("DPD") issued an interpretation ("Interpretation") determining in clear error that the use is not a cargo terminal use. The Port of Seattle ("Port") and its lessee Foss Maritime Company ("Foss") appeal this decision. The Hearing Examiner should reverse the Interpretation because it is not supported by the law or the facts and is clearly erroneous. The Examiner should determine that

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the use of Terminal 5 to load and unload Shell's vessels, and to moor those vessels, is a cargo terminal use or, in the alternative, accessory to a cargo terminal use.

II. FACTS

The following facts will be established at hearing:

Pursuant to the lease between Foss and the Port, Foss intends to provide a variety of services to Shell and its contractors in support of Shell's Arctic Drilling Program.

The operations to be conducted under this lease and that are the subject of DPD's Interpretation include receiving and storing goods, cargo, equipment, supplies, stores, provisions and other materials at Terminal 5; loading and unloading goods, cargo, equipment, supplies, stores, provisions and other materials on to and off of each of the vessels associated with the operations, for those vessels to use and to transport to other locations; staging, arranging and storing on the terminal to facilitate loading the goods onto vessels; packing some of the materials into containers; temporary moorage of vessels; and other related activities, including standard routine "run and maintain" activities (collectively, "Foss Operations").

Materials to be loaded and unloaded onto vessels include, among other things, pipe, wire, food, fuel, container cargo, equipment, provisions, and other supplies. These goods and container cargo will be received by Foss at Terminal 5, then loaded onto the vessels there and transferred by the vessels to other locations.

The City has historically viewed all of this activity as well within the scope of a cargo terminal use, as reflected in the City's permitting decisions on Port projects at cargo terminals. Terminal 91, a cargo terminal, routinely hosts all types of vessels for short and long term moorage, including icebreakers, research vessels, oil spill response vessels, naval vessels (U.S. and foreign), fishing vessels, fire boats, police boats, tugs, barges, and cargo vessels, and loads and unloads all

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sorts of goods and materials onto and off of such vessels. As part of these activities, providing seasonal moorage at cargo terminals is an intrinsic and necessary aspect of the Port's mission to support maritime business in Seattle.

In addition to its historical implementation of the "Cargo Terminal" use, DPD previously agreed that the specific intended Operations are consistent with the permitted use in the context of a land use decision. Prior to taking possession of Terminal 5, Foss was required to replace bollards on the pier apron. The Port applied for, and received, a shoreline exemption for that bollard work. As part of the City's consideration of that request, the City investigated the proposed use that is currently at issue here. The Port provided information describing the intended activities (*i.e.*, the Foss Operations) and the City approved the shoreline exemption.

In the Interpretation in question, however, DPD improperly limited its inquiry to a fraction of the activities occurring pursuant to the lease on Terminal 5 – namely, the proposed overwintering moorage of a drilling rig and two accompanying tugboats – rather than considering the full scope of the Foss Operations. For this reason, among others, DPD erroneously concluded that the Foss Operations do not constitute a cargo terminal use or accessory use.

This appeal followed. The City filed a motion to dismiss a number of the claims set forth in the Notices of Appeal filed by Foss and the Port. The Hearing Examiner dismissed Foss Issues 3 (part), 5, 7, 8, 9, 11, 13, 14, 16, 17, and 19. This pre-hearing brief addresses the remaining issues in Foss's appeal, and incorporates those arguments made in the Port's pre-hearing brief.

III. EVIDENCE RELIED UPON

This pre-hearing brief relies on Foss's Amended Notice of Appeal, the Port's Notice of

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Appeal, and the pleadings and other documents on file with the Hearing Examiner.

IV. ARGUMENT

A. Standard of Review

The Seattle Municipal Code ("City Code" or "SMC") provides that for appeals of code interpretations, "[a]ppeals shall be considered de novo, and the decision of the Hearing Examiner shall be made upon the same basis as was required of the Director." SMC 23.88.020.G.5; *see also King County v. Central Puget Sound Growth Mgmt. Hearings Board*, 142 Wn.2d 543, 555, 14 P.3d 133 (2000) ("The court's interpretation of a statute is inherently a question of law, and the court reviews questions of law de novo.") "A trial or hearing 'de novo' means trying the matter anew the same as if it had not been heard before and as if no decision had been previously rendered." *In re Disciplinary Proceeding Against Deming*, 108 Wn.2d 82, 88, 736 P.2d 639 (1987). Under this standard, the Hearing Examiner must consider anew the question raised in the request for code interpretation at issue here. The evidence at hearing will show that the question raised here, whether the various uses of Terminal 5 by Foss are cargo terminal uses or accessory to such uses, must be answered "yes."

The City Code also provides that "[t]he interpretation of the Director shall be given substantial weight, and the burden of establishing the contrary shall be upon the appellant." 23.88.020.G.5. The Hearing Examiner has interpreted this standard of review to be "clearly erroneous." *See* Order on Motion to Dismiss Claims, p. 3. "An application of law to the facts is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Whatcom County Fire District No. 21 v. Whatcom County*, 171 Wn.2d 421, 427, 256 P.3d 295 (2011), *citing Norway Hill Pres. and Prot. Ass'n. v. King County Council*, 87 Wn.2d 267, 274,

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552 P.2d 674 (1976) (internal quotations omitted). Here, the evidence at hearing will show that DPD first acted in response to pressure from the Mayor's office for an interpretation that did not allow this specific use, and that DPD then made no effort to obtain all of the facts; further ignored some key facts; and then misconstrued others in the march to a predetermined decision. In addition, the evidence will show that DPD rendered a decision contrary to the plain language of the City Code and well accepted principles of statutory interpretation. The Hearing Examiner will be left with the definite and firm conviction that a mistake has been made.

Accordingly, the Hearing Examiner should reverse the Code Interpretation and determine that the Foss Operations are a cargo terminal use or accessory to such a use.

B. Statutory Interpretation

Well established principles of statutory interpretation govern DPD's decision on the Interpretation request and the Hearing Examiner's review. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 643, 151 P.3d 990 (2007) ("We interpret local ordinances the same as statutes."). Primary among these principles is that the plain language of a statute or ordinance controls.

> When interpreting a statute, we first look to its plain language. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the plain language is subject to only one interpretation, our inquiry ends because plain language does not require construction. *Id.; State v. Thornton*, 119 Wn.2d 578, 580, 835 P.2d 216 (1992). "Where statutory language is plain and unambiguous, a statute's meaning must be derived from the wording of the statute itself." *Wash. State Human Rights Comm'n v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 121, 641 P.2d 163 (1982). Absent ambiguity or a statutory definition, we give the words in a statute their common and ordinary meaning. *Garrison v. Wash. State Nursing Bd.*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976). To determine the plain meaning of an undefined term, we may look to the dictionary. *Id.* "Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency." *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005). "A statute that is clear on its face is not subject to judicial construction." *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001).

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HomeStreet, Inc. v. Dep't. of Revenue, 166 Wn.2d 444, 451, 210 P.3d 297 (2009); *see also Sleasman v. City of Lacey*, 159 Wn.2d 639, 151 P.3d 990 (2007). An administrative interpretation will not be accorded deference if it conflicts with the relevant statute. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 815, 828 P.2d 549 (1992).

In interpreting a statute, the Director (and thus the Examiner) must take the applicable words as the City Council has enacted them, and not insert words in an attempt to give the statute some different "meaning" or "intent":

> Even if the court is fully persuaded that the legislature really meant and intended something entirely different from what is actually enacted, and that the failure to convey the real meaning was due to inadvertence or mistake in the use of language, yet, if the words chosen by the legislature are not obscure or ambiguous, but convey a precise and sensible meaning (excluding the case of obvious clerical errors or elliptical forms of expression), then the court must take the law as it finds it, and give it its literal interpretation, without being influenced by the probable legislative meaning lying back of the words.

Shelton Hotel Co. v. Bates, 4 Wash.2d 498, 508, 104 P.2d 478 (1940). A "court cannot read into a statute that which it may believe the legislature has omitted, be it an intentional or inadvertent omission." *Auto. Drivers & Demonstrators Union Local 882 v. Dep't of Ret. Sys.*, 92 Wash. 2d 415, 421, 598 P.2d 379, 382-83 (1979) (citations omitted). *See also Vita Food Prods., Inc. v. State*, 91 Wash. 2d 132, 587 P.2d 535 (1978) (court may not add words to statute even if it believes the legislature intended something else but failed to express it). This is in fact the method that is employed by the Director,[1] and thus must be applied by the Hearing Examiner.[2]

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[1] Mr. McKim testified the Director does not consider the historical context of a definition's enactment "[b]ecause when we're applying the definitions, we're applying the words that are actually into the code or in the code. I can't make assumptions that something else was intended." McKim Deposition, 54:3-6. "In interpreting the code, where we have definitions, I will apply the definitions as they are in the code. I can't make assumptions that something additional or different was intended. I can't read something else into the code." *Id.*, 54:9-13.

[2] "Appeals shall be considered de novo, and the decision of the Hearing Examiner shall be made upon the same basis as was required of the Director." SMC 23.88.020.G.5.

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In addition, absurd results must be avoided. *Post v City of Tacoma*, 167 Wn.2d 300, 310, 217 P.3d 1179 (2009) ("A reading that produces absurd results should be avoided, if possible, because we presume the legislature does not intend them.").

Finally, the Shoreline Management Act ("SMA") is liberally construed to effect its purposes. RCW 90.58.900. The purpose most relevant here is to give priority to "industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state." RCW 90.58.020. Consistent with this priority, one of the purposes of the City's Shoreline Master Program ("SMP") is to encourage water-dependent uses. SMC 23.60A.002.B.2. More specifically, the purpose of the UI environment in which Terminal 5 is located is to provide for efficient use of the shoreline by cargo terminals and other water-dependent and water–related industrial uses. SMC 23.60A.220.D.9.a.1.

Here, the evidence at hearing will show that the Foss's use of Terminal 5 is consistent with the plain language of the definition of "cargo terminal." The City's novel reading of the term "cargo terminal" in the Interpretation improperly conflicts with this plain language. The City's Interpretation also leads to absurd results, construing the term so narrowly that legal activities freely and openly conducted at cargo terminals around Seattle for decades are now transformed into unpermitted uses. The Hearing Examiner must reject the City's Interpretation.

C. The Interpretation is clearly erroneous because it is based on a set of factual assumptions that are inaccurate and/or incomplete (Foss Issues 6 and 7)

The evidence will show that City neglected to investigate the facts on which the Interpretation was based, and therefore relied on several incorrect "facts" in its Interpretation, including the following:

- The City incorrectly stated that the "drilling rig would be at Terminal 5 only for purposes of seasonal storage." As the evidence will show, the drilling rig and other vessels also have been and will be loaded and unloaded with goods or container cargo that will be

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transferred to another location. The evidence will show that the temporary moorage will be intrinsic to the cargo terminal operations.

- The City incorrectly relied on the mistaken fact that only a drilling rig and two tugs would utilize Terminal 5 in support of the Foss Operations. The evidence will show that at least eight vessels have moored or will moor at Terminal 5 in support of Foss Operations.

- The City incorrectly relied on the mistaken fact that exploratory drilling equipment is the only material that would be loaded and unloaded onto the drilling rig. The evidence will show that myriad goods and container cargo were and will be loaded and unloaded onto the various vessels that support the Foss Operations, including onto the drilling rig.

- The City further assumed that no container cargo would be loaded onto the vessels, when in fact, a substantial number of containers were loaded and will be unloaded.

- The City incorrectly relied on the mistaken fact that the goods being loaded and unloaded onto the various vessels supporting the Foss Operations would not be transferred to other locations. The evidence will show that the goods or container cargo will be transferred to the Arctic, to other vessels in the Arctic, or to a location in Alaska.

- The City ignored the various historical operations that have occurred at Terminal 5 and other cargo terminals and Port facilities in Seattle. The evidence will show that the City's fundamental misunderstanding of how the maritime business operates in Seattle and throughout the world produced an unworkable Interpretation that will undermine historical operations and have a ripple effect on other industries and maritime businesses throughout the Port of Seattle.

The evidence will show that the City had – or could have had – access to all of these facts regarding the cargo terminal use at Terminal 5, but chose either not to investigate or not to apply those facts to its Interpretation. Because the City either did not investigate or deliberately chose to ignore the Foss Operations or the breadth of cargo terminal activity occurring at Terminal 5 at the time of the Interpretation, its interpretation is clearly erroneous. *Whatcom County Fire District No. 21, supra,* 171 Wn.2d at 427 (the City's decision may be reversed if the Examiner is left with the "definite and firm conviction that a mistake has been made").

D. The Foss Operations, properly defined, fall within the plain language of the definition of cargo terminal (Foss Issues 1 and 2)

The SMP defines a cargo terminal as:

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> a "transportation facility" use in which quantities of goods or container cargo are stored without undergoing any manufacturing processes, transferred to other carriers, or stored outdoors in order to transfer them to other locations. Cargo terminals may include accessory warehouses, railroad yards, storage yards, and offices.

SMC 23.60A.906.

In interpreting a local ordinance, the ordinance's plain meaning is controlling. *Sleasman, supra,* 159 Wn.2d at 646. As described *infra,* the evidence at the hearing will show that the Foss Operations are clearly consistent with the plain meaning of cargo terminal uses. Because the plain meaning of the statute is clear and unambiguous, the inquiry into the meaning of cargo terminal must end there, as "there is no need for the agency's expertise in construing the statute." *Waste Mgmt. v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 628, 869 P.2d 1034 (1994).

1. The definition of cargo terminal broadly allows three categories of activities

The City Council has designated three categories of cargo terminal activity:

1. Goods or container cargo are stored without undergoing any manufacturing processes
2. Goods or container cargo are transferred to other carriers
3. Goods or container cargo are stored outdoors in order to transfer them to other locations

SMC 23.60A.906.

To discern the plain meaning of the Code, courts employ traditional rules of grammar. *State v. Bunker*, 169 Wn.2d 571, 578, 238 P.3d 487 (2010). In Washington, it is well settled that, where the statute being interpreted includes a qualifying phase, the last antecedent rule applies. *Judson v. Associated Meats and Seafoods*, 32 Wn. App. 794, 801 (1982); *In re Renton*, 79 Wn.2d 374, 485 P.2d 613 (1971); *In re Estate of Kurtzman*, 65 Wn.2d 260, 396 P.2d 786 (1964).

The last antecedent rule provides that, unless contrary intention appears in a statute, a qualifying phrase only applies to the immediately preceding antecedent (instead of all phrases)

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unless the qualifying phrase is separated from the antecedents with a comma. *See In re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 781, 903 P.2d 443 (1995); *Judson*, 32 Wn. App. at 801; *see also* Office of the Code Reviser, "State of Washington Bill Drafting Guide 2015" at Part II(12)(v), (2015), *available at http://leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx* (last visited August 9, 2015). In essence, this rule disfavors an interpretation that would have words "leaping across stretches of text, defying the laws of both gravity and grammar." *Flowers v. Carville*, 310 F.3d 1118, 1124 (9th Cir. 2002).

In its final Interpretation, the City ignores this controlling rule of statutory construction and determines that the qualifying phrase at the end of the definition – "in order to transfer them to other locations" – qualifies all three preceding phrases instead of just the last phrase.[3] However, if the City Council intended for this qualifying phrase to apply to the three preceding phrases, it would have placed a comma before the qualifying phrase. *See Judson*, 32 Wn. App. at 801. As the definition is written, it is clear that the City Council intended for "in order to transfer them to other locations" to qualify only the third phrase, "or stored outdoors." This reading is particularly compelling when one considers the most recent SMP revisions, where the City Council added a comma before "or stored outdoors," but chose not to add a comma before the qualifying phrase, "in order to transfer them to other locations." *Compare* SMC 23.60A.906 *with* SMC 23.60.906. The added comma sets off the last phrase from the other two, reinforcing the last antecedent interpretation of the ordinance.

The City's conclusion that "the unifying theme is that the goods are at the cargo terminal in order to transfer them to other locations," (Interpretation, p. 4) is contrary to the SMP's intent, as evidenced by the most recent revision to the SMP, and lacks any basis in the Code itself.

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[3] The evidence will show that initial drafts of the Interpretation properly heeded the last antecedent rule.

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That conclusion elevates a proviso clearly applicable only to one antecedent to become the central "unifying theme" of the entire definition, thereby manufacturing an Interpretation in which the tail is wagging the dog. Also, as discussed in Section E.2, *infra*, the SMP takes a broad view of cargo terminal uses and the definition of cargo terminal must accordingly adhere to the last antecedent rule. As explained in section D.2.b, below, and will be demonstrated at hearing, the loaded goods are, in fact, transported to other locations, but the City committed clear error in requiring that additional conditions (specifically, that the vessel loading had to be of a certain type and have specific "principal functions") to be met in order to satisfy the definition. Because the City's Interpretation heavily and improperly relied on this qualifying phrase, the Interpretation must be reversed.

2. The activities at Terminal 5 fall within the plain language definition of a cargo terminal use

In its Interpretation, the City agrees that Terminal 5 is a transportation facility as it is defined by the Code, but, ignoring the actual activities that will and have occurred at Terminal 5, finds that drilling equipment "affixed" to the drilling rig are not "goods or container cargo." It also finds that Terminal 5 would not serve as a stop where the rig and equipment would be stored or transferred from one location to another. As the evidence will show, the City was aware, before the issuance of its Interpretation, that the activities that were to occur at Terminal 5 included receiving goods, cargo, equipment, supplies, stores, provisions and other materials; staging the materials on the terminal for loading; and loading those items onto the vessels for transportation to other locations. These are the quintessential activities that occur on cargo terminals, as contemplated by the Code's definition of a cargo terminal use.

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a. The materials being unloaded and loaded onto vessels at Terminal 5 are goods

The City's Interpretation determined that the "exploratory drilling equipment affixed to the drilling rig, however, would not fall under the definition of goods as it is used under the code." Interpretation at Conclusion 5. The evidence will show that when considering if "goods and container cargo" were being received at Terminal 5, the City inexplicably ignored many of the materials that were to be loaded and unloaded from the vessels utilizing Terminal 5, including the drilling rig. This omission was apparently based upon the City's unfounded decision not to conduct any investigation into the facts relating to the Foss Operations.

Because the City's SMP and Land Use Code do not separately define "goods," the dictionary definition applies. *Sleasman*, 159 Wn.2d. at 643. Goods, as defined by Webster's New Collegiate Dictionary (based on Webster's Third New International Dictionary) are (a) "something that has economic utility or satisfies an economic want"; (b) "personal property having intrinsic value but usu. excluding money, securities, and negotiable instruments"; (c) "cloth"; or (d) "wares, commodities, merchandise."[4] The evidence will show that the materials being loaded and unloaded onto the vessels at Terminal 5 constitute goods under Webster's definition, and that the City's witnesses conceded this point at deposition.

Tellingly, the City's Interpretation only quotes sections (b) and (d) from the definition of goods.[5] However, it is not up to the City to cherry pick parts of a definition in order to support its preferred result; the dictionary definition must be examined as a whole. *See, e.g., State v. Elgin*, 118 Wn.2d 551,556, 825 P.2d 314 (1992). The City's choice to ignore the full definition of "goods" in its final Interpretation is a consequential mistake, and one intended (as the

[4] See Attachment A for a copy of the definition of goods that the Interpretation states it relied upon.
[5] As the evidence will show, the City initially relied upon the definition found in section (a) in a draft of its Interpretation, but chose to limit that definition in the final Interpretation.

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deposition records reflect) be consistent with the intended outcome of the Interpretation. The Interpretation must accordingly be reversed. *See Moss*, 109 Wn. App. at 13.

Moreover, even if the Hearing Examiner determines that the City reasonably selected sections of the definition of goods to support its interpretation—which it did not—the evidence at the hearing will show that the types of materials being loaded and unloaded from all of the vessels, including the drilling rig, constitute goods as defined by the Code and as limited by the Interpretation.

b. The goods at Terminal 5 meet all three alternative prongs of the definition of a cargo terminal, as they are stored outdoors without undergoing manufacturing processes, they are transferred to other carriers, and they are stored outdoors in order to transfer them to other locations

The City's Interpretation improperly concludes that the "drilling rig would be at Terminal 5 only for the purposes of seasonal storage," and that "Terminal 5 would not serve as a stop where the rig or the equipment on it would be stored or transferred in the course of transit from a started location to an ultimate destination." Interpretation at Conclusion 6. The City's sole focus on moorage, or lay-berthing, represents its fundamental misunderstanding of the activities that will occur at Terminal 5. The evidence will show that the goods were, and will be, stored at Terminal 5 without undergoing any manufacturing processes; that some of the goods were, and will be, transferred to other carriers; and the goods were, and will be, stored outdoors in order to transfer them to other locations. The evidence will also show that the vessels will also moor at Terminal 5 to unload goods after their mission, and then will moor prior to the next mission, just like many other seasonal vessels mooring in Seattle in the winter, as a necessary and intrinsic aspect of a cargo terminal use. *See* discussion of accessory uses at Section F, *infra.*

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Even if the Hearing Examiner determines that all goods and container cargo must be "transferred to other locations" as interpreted by the City and discussed in Section D.1, *supra*, the evidence will show that the activities at Terminal 5 are intended to do—and in fact do—just that. Because the activities at Terminal 5 constitute a cargo terminal use, the Interpretation is mistaken and must be reversed.

E. Even if there is ambiguity in the Code, the Foss Operations are cargo terminal uses under well-established principles of statutory interpretation

1. The City cannot create additional rules and code limitations through an Interpretation

In this case, the evidence at hearing will show that the Foss Operations constitute a cargo terminal use. The sole basis in the Code on which the Operations may be characterized as cargo terminal uses are whether Terminal 5 is a transportation facility where goods or container cargo are (1) stored without undergoing any manufacturing processes; (2) transferred to other carriers; or (3) stored outdoors in order to transfer them to other locations. Yet, the evidence at the hearing will show that the City, in issuing its Interpretation, intends to regulate the use of the vessel when it is no longer in Seattle's shoreline environment, exceeding the City's authority under the SMP.

Instead of looking at the uses occurring in the shoreline environment, the City claims that the SMP contains a requirement that the principal use of a vessel at sea must be to load and unload cargo in order to transfer the cargo to another location. However, that requirement is not contained in the definition of cargo terminal, and nowhere did the City Council limit the type or purpose of the vessel at its ultimate destination. Indeed, if the City had attempted to impose such an extra-territorial use requirement in the SMP, it would have violated state law and the Department of Ecology would have presumably refused to approve such a change. *See, e.g.*,

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23.60A.215 (regulating only the use of the vessel while moored); 23.60A.218 (prohibiting regulations of vessels other than while the vessels are moored).

In essence, the City's Interpretation says that a use is a not a cargo terminal use even if it stores goods or container cargo, transfers goods or container cargo, or stores goods or container cargo in order to transfer them to other locations *unless* the "primary function"[6] of the vessel when it outside of Seattle's jurisdiction is to trans-ship cargo to other cargo terminal locations. There is no Code requirement that a vessel's primary purpose outside of the jurisdictional waters be to transport cargo. The City cannot create such a limitation by interpretation. *Washington Federation of State Employees v. State Personnel Bd.*, 54 Wn. App. 305, 308, 773 P.2d 421 (1989) ("Agencies do not have the authority to make rules which amend or change legislative enactments."); *see also Auto. Drivers & Demonstrators Union Local 882*, 92 Wash. 2d at 421 (A "court cannot read into a statute that which it may believe the legislature has omitted, be it an intentional or inadvertent omission.").

While an administrative agency can interpret ambiguous statutory language, it cannot create new statutory requirements from whole cloth. Specifically, an agency cannot create a bright line rule where none exists in the statute. *Viking Properties, Inc. v. Holm*, 155 Wn.2d 129-130, 118 P.3d 322 (2005). Here, the City artificially manufactured a new standard for the sole purpose of finding a way to disallow this particular use. This factually devoid result is clearly erroneous.

2. The Interpretation is inconsistent with the SMP's intended treatment of cargo terminals

[6] Notably, the phrase "primary function" appears nowhere in the relevant portions of the SMP, having been invented by the City out of whole cloth for the purpose of the Interpretation, as discussed in the McKim Deposition.

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"The fundamental objective of statutory construction is to ascertain and carry out the intent of the Legislature." *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). In order to determine legislative intent, each statutory provision should be read by reference to the whole act. *Davis v. Dep't of Licensing*, 137 Wash. 2d 957, 970-71, 977 P.2d 554, 559-60 (1999); *Whatcom Cnty. v. Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303, 1308 (1996). In other words, the Hearing Examiner should give effect to legislative intent "within the context of the entire statute." *Elgin*, 118 Wn.2d at 556.

In this case, the evidence will also show that the Interpretation ignores SMP's treatment of cargo terminal uses in other contexts. For example, the definition of "tugboat services" states, in relevant part, that "facilities that include barge moorage and loading and unloading facilities for barges as well as tugboat moorage are not tugboat services and are classified as cargo terminals." SMC 23.60A.938. Tellingly, this definition supports a broader interpretation of "cargo terminal" that allows a range of activities and demonstrates that DPD's narrow, myopic Interpretation is clearly erroneous. It does not require the barges to load and unload in order to moor at the location; it does not require the barges to load and unload "goods," as limited by the City's definition of goods; and it does not require that the barges transfer them to other locations, as interpreted by the City's Interpretation. Instead, this definition recognizes the City Council's intent to permit a broad range of activities at cargo terminals and lends support to the conclusion that the Foss Operations are consistent with the SMP's intended cargo terminal use.

In instances where the City Council wanted to limit the type of cargo terminal uses permitted in shoreline environments, it has done so. For example, cargo terminal uses that are break bulk facilities are allowed as a conditional use in the Urban Harborfront environment, but all other cargo terminal uses are prohibited. *See* SMC 23.60A.442.M. If the City Council

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intended to limit the type of cargo terminal or type of vessels that can use a cargo terminal at Terminal 5, it would have done so.

Moreover, the Urban Industrial ("UI") environment, where Terminal 5 is located, was established to facilitate all maritime operations. Indeed, the purpose of the UI environment is to "provide for efficient use of industrial shorelines by major cargo facilities and other water-dependent and water-related industrial uses, and to allow for warehouse uses that are not water-dependent or water-related where they currently exist." SMC 23.60A.220.D.9.a.1. Contrary to the City's Interpretation, the intent of the SMP is not to impede port and maritime operations in Seattle by allowing the City to pick and choose the vessels at its shoreline based on objections to the vessel's use outside of the City's jurisdiction. *Id.*

Because the SMP takes a broad view of cargo terminal uses, the definition of cargo terminal cannot be limited on an ad hoc basis.

3. The City's Interpretation is Inconsistent with Its Past Implementation and Would Lead to Absurd Results

Statutes and ordinances must be interpreted in a manner that does not lead to absurd results in the real world. *Olympic Tug & Barge, Inc. v. Washington State Dep't of Revenue*, 163 Wn. App. 298, 307, 259 P.3d 338, 343 (2011) (internal citations omitted). Whether an interpretation leads to an "absurd result" cannot be determined in a factual vacuum: such a determination requires an inquiry into the real-world consequences of an interpretation.

The evidence at hearing will show that the Interpretation would allow only vessels whose "primary function" outside of the jurisdictional waters of Seattle is transporting cargo to moor at cargo terminals. This means that even if a vessel plans to load and unload cargo or goods, and even if it plans to transfer that cargo or those goods to other locations, it would not be allowed to moor at a cargo terminal if the vessel's primary purpose at sea is to fish, drill, conduct scientific

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research, perform a military exercise, or anything other than transporting cargo. Not only is this an unworkable construct, it is certainly not what the SMP intended. *See, e.g.,* SMC 23.60A.220.D.9.a.1 (providing for efficient use of industrial shorelines by major cargo facilities).

The evidence will also show that the City's Interpretation not only limits use of a cargo terminal to vessels whose "primary function" is transporting cargo, but would only allow such vessels to use the cargo terminal only if the vessel was also unloading or loading at that terminal. Such an interpretation leads to the conclusion that a fishing boat, which typically loads and unloads fish, cannot dock at a cargo terminal if it off-loaded its fish in Bellingham or Everett or even at some other cold storage in Seattle – even if one concludes, as the City has suggested, that its "primary function" is to transport cargo as opposed to catching fish. Such a result flies in the face of decades of accepted practice and makes no sense whatsoever.

The Interpretation results in a finding that the many other kinds of vessels that moor at the Port's cargo terminals, including NOAA and University of Washington research vessels, fishing vessels, Navy and Coast Guard vessels, oil spill response vessels, ships of state, tug boats, and construction vessels, are mooring unlawfully. These results obviously were not intended in the enactment of the SMP. *See, e.g., Knappett v. Locke*, 92 Wash.2d 643, 645, 600 P.2d 1257 (1979).[7]

4. The Interpretation conflicts with the principle that the legislative body is presumed to know how its legislation has been interpreted and applied.

In its recent revision of the SMP, the City was required to conduct an inventory of shoreline uses. Here, the City inventoried, among other things, the maritime business and Port uses occurring at Seattle's waterfront. The evidence at hearing will show that the City

[7] The City's statement that it does not intend to enforce the Interpretation against such vessels illustrates how result-oriented the Interpretation is, and is incorrect as any citizen can request an interpretation that applies to such vessels, forcing the City's hand.

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understood the wide variety of vessels and activity that occur at the shoreline, and, understanding much of this activity occurs at cargo terminals, did not seek to limit the definition of cargo terminal to exclude those vessels that are not specifically loading and unloading at the terminal itself. The evidence at the hearing will show that many vessels moor at cargo terminals, even though the vessel may have offloaded its goods or container cargo elsewhere. The evidence at the hearing will demonstrate that the City either had or should have had an understanding of Port operations, and chose not to limit the definition of cargo terminal uses. Instead, the City only clarified that there are three separate types of activities that occur at cargo terminals, and added a comma to the definition which more clearly separated the last antecedent from the prior phrases in the definition.

By analogy to the legislature's presumed awareness of an interpretation of a statute by the courts, the City Council is presumed to know how DPD has interpreted the Code. If the City Council has declined to amend the Code, under a well-established canon of statutory interpretation, this indicates agreement with the historic interpretation. *See Broom v. Morgan Stanley D.W., Inc.*, 169 Wn.2d 231, 238, 236 P.3d 182 (2010) ("'[t]he Legislature is presumed to be aware of judicial interpretation of its enactments,' and where statutory language remains unchanged after a court decision the court will not overrule clear precedent interpreting the same statutory language."); *City of Federal Way v Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009) ("This court presumes that the legislature is aware of judicial interpretations of its enactments and takes its failure to amend a statute following a judicial decision interpreting that statute to indicate legislative acquiescence in that decision."). Accordingly, DPD's Interpretation that all goods or container cargo must be transferred to other locations in order to be consistent with a cargo terminal use is in error.

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5. The revisions to the SMP in the recent SMP update contradict the Interpretation.

In the City's latest SMP, adopted in 2015, the City Council added a comma to the definition of a cargo terminal use. The addition of this comma clarifies that there are three specific activities that constitute a cargo terminal use: goods or container cargo must be (1) stored without undergoing any manufacturing processes; (2) transferred to other carriers; or (3) stored outdoors in order to transfer them to other locations.

It is a long-recognized principle of statutory interpretation that a legislative body's subsequent amendment to a statute should be considered as evidence of legislative intent when interpreting the prior statute. *See, e.g., Rozner*, 116 Wn.2d at 347-48 ("[W]hile the views of subsequent Congresses cannot override the unmistakable intent of the enacting one, such views are entitled to significant weight, and particularly so when the precise intent of the enacting Congress is obscure.") (quoting *Seatrain Shipbuilding Corp. v. Shell Oil Co.*, 444 U.S. 572, 596 (1980)); *Carr v. Blue Cross of Washington and Alaska*, 93 Wn. App. 941, 950, 971 P.2d 102 (1999) (noting principle of statutory construction of "looking to the content of subsequent amendments to the statute in question and related statutes" when terms are ambiguous).

Accordingly, the insertion of the comma provides further clarification that that last clause, "or stored outdoors in order to transfer them to other locations" is independent of the other two clauses. Moreover, as discussed in Section D.1, *supra,* the fact that the City Council chose not to add a comma before "in order to transfer them to other locations" is further evidence that the City Council intended this qualifier to modify only the last antecedent. *See State v. Baldwin*, 109 Wn. App. 516, 527, 37 P.3d 1220 (2001) (holding that "when a former statute is amended, or an uncertainty is clarified by subsequent legislation, the amendment is strong evidence of what the Legislature intended in the first statute") (citation omitted). To the extent

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that the Hearing Examiner determines that all goods and container cargo must be transferred to other locations in order to constitute a cargo terminal use, the evidence will show that the Foss Operations continue to be consistent with a cargo terminal use.

F. The Interpretation misconstrues the allowable scope and nature of accessory uses and improperly determines the Foss Operations are not an accessory use (Foss Issues 4 and 5).

The Code Interpretation erroneously concludes that moorage is not "accessory" to the established cargo terminal use of Terminal 5. This conclusion is inconsistent with the law and facts to be shown at hearing. The Hearing Examiner should reverse the City's decision.

City Code 23.84A.040 defines "accessory use" as "a use that is incidental to a principal use." In addition, City Code 23.60A.940 defines "accessory use" as "a use that is incidental and intrinsic to the function of a principal use and is not a separate business establishment unless a home occupation." SMC 23.60A.900 states that the definitions of Chapter 23.60A apply when they differ from the definitions in the rest of the Land Use Code.

The Code Interpretation relies solely on SMC 23.60A.940, asserting that the word "intrinsic" makes this definition more stringent than the one appearing in SMC 23.84A.040. However, the City provides no support for its bare assertion that the term "intrinsic" somehow yields a more narrow definition that would exclude the moorage of the drilling rig. The weight that the City places on the word "intrinsic" renders meaningless the preceding use of the word "incidental." To the contrary, under the plain meaning of these terms, moorage is both incidental and intrinsic to the cargo terminal use. The City is bound by standards of statutory interpretation.

Where a term is not defined by code, the dictionary definition applies. *HomeStreet, Inc., supra*, 166 Wn.2d at 451. According to Webster's New World College Dictionary online,

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"incidental" means (among other things) being secondary or minor, but usually associated.[8] "Intrinsic" means (among other things) "inherent."[9] Here, vessel moorage is incidental to cargo terminal use. Under the plain language of the definition, a cargo terminal use involves either storage or transfer of goods or container cargo. Moorage is incidental to these uses in that vessels must moor in order to deliver goods or cargo for storage or transfer. In addition, moorage is intrinsic: while the definition focuses on what happens to the goods or cargo (storage or transfer), vessels must moor at the terminal in order to deliver or (as here) be loaded with the goods or cargo. The undisputed evidence that will be presented at the hearing will make this clear.

For this reason, in the alternative, the Hearing Examiner should determine that the current and proposed use of Terminal 5 is accessory to the permitted cargo terminal use.

V. CONCLUSION

For the reasons stated above, Foss respectfully requests that the City's motion to dismiss be denied.

[signatures on the next page]

[8] The dictionary used by the City to determine the definition of "goods" is not readily accessible. Accordingly, the definition of "incidental" is available at: http://www.yourdictionary.com/incidental#websters (last visited August 11, 2015).

[9] The definition of intrinsic is available at: http://www.yourdictionary.com/intrinsic (last visited August 11, 2015).

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Respectfully submitted this 11th day of August, 2015.

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ATTACHMENT A

WEBSTER'S New Collegiate Dictionary

Library of Congress Cataloging in Publication Data
Main entry under title:

Webster's new collegiate dictionary.

"Based on Webster's third new international dictionary."
"A Merriam-Webster."
Editions for 1898–1948 have title: Webster's collegiate dictionary;
1949–61 and 1973– editions have title: Webster's new collegiate dictionary;
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Made in the United States of America

10

The En

Dictiona

ıä-jər\ *n* : an elderly and often retired
club activities
al-ig-'zan-dərz, -el-\ *n pl but sing or pl in*
. alexandrum] : a showy No. American
il herb (*Zizia aurea*) of the carrot family
ods and meadows; *also* : any of several

rican aquatic plant (*Orontium aquaticum*)
a spadix of minute yellow flowers
: eagle (*Aquila chrysaëtos*) of the northern
h yellow tips on the head and neck feathers
\ *n* 1 *a* : a large-headed swift-flying
(*Bucephala clangula*) having the male
ck and white *b* : a closely related duck
:hrysopidae) with yellow eyes
ece of gold placed by the king of Colchis
.ve and recovered by the Argonauts
l branching composite herb (*Rudbeckia*
showy yellow much-doubled flower heads
nall tawny hamster (*Mesocricetus auratus*)
t kept as a pet in many parts of the world
golden tent of the Mongol ruler] : a body
verran eastern Europe in the 13th century
ıntil 1486
.edium between extremes : MODERATION
a small yellowish Old World nematode
chiensis) established locally as a pest of
America
lən-'rān-\ *n* : a round-headed tree (*Koel-*
e family Sapindaceae) that has very long
· flowers
a medium-sized golden-coated retriever
ling Russian shepherd dogs with blood-

lid\ *n* : any of numerous chiefly No.
nnial or perennial plants (esp. of the genus
embling wands and heads of small yellow
ers often clustered in panicles — compare

le of ethical conduct referring to Mt 7:12
that one should do to others as he would
2 : a guiding principle
dil\ *n* : a perennial American herb (*Hy-*
crowfoot family with large rounded leaves
ow rootstock sometimes used in pharmacy

vision of a line or the proportion of a
hat the smaller dimension is to the greater
whole
mmon cyprinid fish (*Notemigonus crysoleu-*
rica having silvery sides with bright golden

, vivid or light yellow 2 : a moderate to

n : a gold-mining district
: covered with a layer of gold so as to
~ bracelet>
1 : a small largely red, black, and yellow
lis carduelis) often kept as a cage bird 2
American finches (genus *Spinus*) typically
mer plumage variably yellow with black

small usu. golden yellow or orange cyprinid
much used as an aquarium and pond fish
eeping of goldfish in transparent bowls]
ew <had patiently endured this ~ life

gold ordinarily varying from four to five
thickness that is used esp. for gilding
urce of something desired (as information)
nual herb (*Camelina sativa*) of the mustard
for its oil-rich seeds
: to newly discovered goldfields in pursuit
ong pursuit of sudden wealth in a new or

th\ *n* : one who makes or deals in articles

netary standard under which the basic unit
a stated quantity of gold and which is usu.
nage and circulation of gold, unrestricted
money into gold, and the free export and
settlement of international obligations
\ *n* : aventurine glass spangled close and
ıld-colored material
'gä-\ *n* [Yiddish *goylem*, fr. Heb *gōlem*
artificial human being of Hebrew folklore
: something resembling a golem: as a
CKHEAD
ōf\ *n, often attrib* [ME (Sc)] : a game in
cial clubs attempts to sink a ball into each
e holes on a course with as few strokes as

ns code word for the letter *g*
ubular bag with outside pockets that is
equipment (as clubs, balls, and clothing)
cart for wheeling a golf bag around a golf
l cart for carrying a golfer and his equip-
: — called also *golf car*
of land laid out for the game of golf with
s each including tee, fairway, and putting
more natural or artificial hazards — called

ys golf
r practice of playing golf

golf widow *n* : a woman whose husband spends much time on the golf course
Gol·gi \'gōl-(,)jē\ *adj* : of or relating to the Golgi apparatus, Golgi bodies, or a method of staining for them <~ vesicles>
Golgi apparatus *n* [Camillo *Golgi*] : a cytoplasmic component that prob. plays a part in elaboration and secretion of cell products and appears in electron microscopy as a series of parallel sometimes vesicular membranes without ribosomes — called also *Golgi complex*
Golgi body *n* : a discrete particle of the Golgi apparatus as observed in a stained preparation
go·liard \'gōl-yərd, -,yärd\ *n* [F] : a wandering student of the 12th or 13th century given to the writing of satiric Latin verse and to convivial living and minstrelsy — go·liar·die \'gōl-'yärd-ik\ *adj*
Go·li·ath \gə-'lī-əth\ *n* [Heb *Golyath*] 1 : a Philistine champion who in I Samuel 17 is killed by David in single combat 2 : GIANT <slug it out with business ~s —Warner Olivier>
gol·li·wog *or* **gol·li·wogg** \'gäl-ē-,wäg\ *n* [*Golliwogg*, an animated doll in children's fiction by Bertha Upton] 1 : a grotesque black doll 2 : a grotesque person
gom·er·al *or* **gom·er·il** \'gäm-(ə-)rəl\ *n* [origin unknown] *Scot* : SIMPLETON, FOOL
gom·pho·sis \gäm-'fō-səs\ *n, pl* **-pho·ses** [NL, fr. Gk *gomphōsis*, lit., a bolting together] : an immovable articulation in which a hard part is received into a bone cavity (as the teeth into the jaws)
gon- *or* **gono-** *comb form* [Gk, fr. *gonas* procreation, seed, fr. *gignesthai* to be born — more at KIN] : sexual : generative : semen : seed <*gon*oduct>
-gon \,gän *also* -gən\ *n comb form* [NL *-gonum*, fr. Gk *-gōnon*, fr. *gōnia* angle; akin to Gk *gony* knee — more at KNEE] : figure having (so many) angles <*deca*gon>
go·nad \'gō-,nad\ *n* [NL *gonad-*, *gonas*, fr. Gk *gonos*] : one of the primary sex glands that include the ovaries and testes — **go·nad·al** \gō-'nad-ᵊl\ *adj*
go·nad·ec·to·my \,gō-nə-'dek-tə-mē\ *n, pl* **-mies** : surgical removal of an ovary or testis — **go·nad·ec·to·mized** \-,mīzd\ *adj*
go·nad·o·tro·phic \gō-,nad-ə-'trō-fik, -'träf-ik\ *or* **go·nad·o·trop·ic** \-'träp-ik\ *adj* [ISV] : acting on or stimulating the gonads
go·nad·o·tro·phin \-'trō-fən\ *or* **go·nad·o·tro·pin** \-pən\ *n* : a gonadotrophic hormone (as follicle-stimulating hormone)
Gond \gänd\ *n* : a member of a Dravidian or pre-Dravidian people of central India
Gondi \'gän-dē\ *n* : the Dravidian language of the Gonds
gon·do·la \'gän-də-lə *(usual for sense 1)*, gän-'dō-\ *n* [It, fr. ML *gondula*, dim. of (assumed) VL *condua*] 1 : a long narrow flat-bottomed boat with a high prow and stern used on the canals of Venice 2 : a heavy flat-bottomed boat used on New England rivers and on the Ohio and Mississippi rivers 3 : a railroad car with no top, a flat bottom, and fixed sides that is used chiefly for hauling heavy bulk commodities 4 *a* : an elongated car attached to the underside of an airship *b* : an often spherical airtight enclosure suspended from a balloon for carrying passengers or instruments *c* : an enclosed car suspended from a cable and used for transporting passengers; *esp* : one used as a ski lift 5 : an upholstered chair whose back curves forward at both sides to form the arms 6 : a fixture approachable from all sides used in self-service retail stores to display merchandise 7 : a motortruck or trailer having a large hopper-shaped container for transporting mixed concrete

gondola 1

gon·do·lier \,gän-də-'li(ə)r\ *n* : the boatman who propels a gondola
Gon·dwa·na·an \gän-'dwän-ē-ən\ *adj* : of or relating to the hypothetical prehistoric landmass Gondwana
gone \'gȯn *also* 'gän\ *adj* [fr. pp. of *go*] 1 : PAST <memories of ~ summers —John Cheever> 2 *a* : INVOLVED, ABSORBED <far ~ in hysteria> *b* : possessed with a strong attachment or a foolish or unreasoning love or desire : INFATUATED — often used with *on* <was real ~ on that man —Pete Martin> *c* : PREGNANT <she's six months ~> 3 *a* : DEAD *b* : LOST, RUINED <unless you're prepared to scuffle . . . you're a ~ goose —Warren Burnett> *c* : characterized by sinking or dropping <the empty or ~ feeling in the abdomen so common in elevators —H. G. Armstrong> 4 *slang* : GREAT <a real ~ fashion reporter —Inez Robb>
gon·or \'gȯn-ər *also* 'gän-ər\ *n* : one whose case is hopeless <if you fall behind . . . you're ~s —Kenneth Roberts>
gon·fa·lon \'gän-fə-,län, -lən\ *n* [It *gonfalone*] 1 : the ensign of certain princes or states (as the medieval republics of Italy) 2 : a flag that hangs from a crosspiece or frame
gon·fa·lon·ier \,gän-fə-,lä-'ni(ə)r, -lō-\ *n* : one who bears a gonfalon
gong \'gäŋ, 'gȯŋ\ *n* [Malay & Jav. of imit. origin] 1 : a disk-shaped percussion instrument that produces a resounding tone when struck with a usu. padded hammer 2 *a* : a flat saucer-shaped bell *b* : a wire rod wound in a flat spiral for sounding the time or chime or alarm (as in a clock) — **gong** *vi*
Gon·go·rism \'gäŋ-gə-,riz-əm\ *n* [Sp *gongorismo*, fr. Luis de *Góngora* y Argote †1627 Sp poet] : a literary style characterized by studied obscurity and by the use of various ornate devices — **gon·go·ris·tic** \,gäŋ-gə-'ris-tik\ *adj*
goni- *or* **gonio-** *comb form* [Gk *gōnia*] : corner : angle <*gonio*meter>
go·nid·i·al \gō-'nid-ē-əl\ *adj* : of or relating to a gonidium
go·nid·i·um \-ē-əm\ *n, pl* **-ia** \-ē-ə\ [NL, fr. *gon-* + *-idium*] 1 : an asexual reproductive cell or group of cells in or on a gametophyte 2 : a green chlorophyll-bearing cell within the thallus of a lichen
go·ni·om·e·ter \,gō-nē-'äm-ət-ər\ *n* 1 : an instrument for measuring angles 2 : DIRECTION FINDER — **go·nio·met·ric** \-nē-ə-'me-trik\ *adj* — **go·ni·om·e·try** \-nē-'äm-ə-trē\ *n*

gono·coc·cus \,gän-ə-'käk-əs\ *n, pl* **-coc·ci** \-'käk-,(s)ī, -'kük-,(s)ē\ [NL] : a pus-producing bacterium (*Neisseria gonorrhoeae*) that causes gonorrhea — **gono·coc·cal** \-'käk-əl\ *or* **gono·coc·cic** \-'käk-(s)ik\ *adj*
gono·cyte \'gän-ə-,sīt\ *n* [ISV] : a cell that produces gametes; *esp* : GAMETOCYTE
gono·gen·e·sis \,gän-ə-'jen-ə-səs\ *n* [NL] : maturation of germ cells that includes oogenesis and spermatogenesis
gon·oph \'gän-ə[\ *var of* GANEF
gono·phore \'gän-ə-,fō(ə)r, -,fō(ə)r\ *n* [ISV] 1 : a sporophyll-bearing prolongation of a plant axis 2 : an attached reproductive zooid of a hydroid colony — **gono·phor·ic** \,gän-ə-'fȯr-ik, -'fär-\ *adj* — **go·noph·o·rous** \gə-'näf-ə-rəs, gä-\ *adj*
gono·pore \'gän-ə-,pō(ə)r, -,pȯ(ə)r\ *n* : a genital pore
gon·or·rhea \,gän-ə-'rē-ə\ *n* [NL, fr. LL, morbid loss of semen, fr. Gk *gonorrhoia*, fr. *gon-* + *-rrhoia* -rrhea] : a contagious inflammation of the genital mucous membrane caused by the gonococcus — called also *clap* — **gon·or·rhe·al** \-'rē-əl\ *adj*
-gon·y \-gə-nē\ *n comb form* [L *-gonia*, fr. Gk, fr. *gonos*] : generation : reproduction : manner of coming into being <sporo*gony*>
goo \'gü\ *n* [perh. alter. of *glue*] 1 : a viscid or sticky substance 2 : cloying sentimentality — **goo·ey** \-ē\ *adj*
goo·ber \'gü-bər, 'gůb-ər\ *n* [of African origin; akin to Kongo *nguba* peanut] *South & Midland* : PEANUT
¹good \'gůd\ *adj* **bet·ter** \'bet-ər\; **best** \'best\ [ME, fr. OE *gōd*; akin to OHG *guot* good, Skt *gadh* to hold fast] 1 *a* (1) : of a favorable character or tendency <~ news> (2) : BOUNTIFUL, FERTILE <~ land> (3) : HANDSOME, ATTRACTIVE <~ looks> *b* (1) : SUITABLE, FIT <~ to eat> (2) : free from injury or disease : WHOLE <one ~ arm> (3) : not depreciated <bad money drives out ~> (4) : commercially sound <a ~ risk> (5) : certain to last or live <~ for another year> (6) : certain to pay or contribute <~ for a hundred dollars> (7) : certain to elicit a specified result <always ~ for a laugh> (8) : PROFITABLE, ADVANTAGEOUS <made a very ~ deal> *c* (1) : AGREEABLE, PLEASANT (2) : SALUTARY, WHOLESOME <~ for a cold> (3) : AMUSING, CLEVER <a ~ joke> *d* (1) : CONSIDERABLE, AMPLE <a ~ margin> (2) : FULL <weighs a ~ 200 pounds —*Current Biog.*> *e* (1) : WELL-FOUNDED, COGENT <~ reasons> (2) : TRUE <holds ~ for society at large> (3) : REAL, ACTUALIZED <made ~ his promises> (4) : deserving of respect : HONORABLE <in ~ standing> (5) : legally valid or effectual <~ title> *f* (1) : ADEQUATE, SATISFACTORY <~ care> (2) : conforming to a standard <~ English> (3) : CHOICE, DISCRIMINATING <~ taste> (4) : containing less fat and being less tender than higher grades — used of meat and esp. of beef 2 *a* (1) : VIRTUOUS, JUST, COMMENDABLE <a ~ man> (2) : RIGHT <~ conduct> (3) : KIND, BENEVOLENT <~ intentions> *b* : UPPER-CLASS <a ~ family> *c* : COMPETENT, SKILLFUL <a ~ doctor> *d* : LOYAL <a ~ party man> <a ~ Catholic> — **good·ish** \'gůd-ish\ *adj* — **as good as** : in effect : VIRTUALLY <*as good as* dead> — **as good as gold** 1 : of the highest worth or reliability <his promise is *as good as gold*> 2 : well-behaved <the child was *as good as gold*> — **good and** \,gůd-ᵊn\ : VERY, ENTIRELY <was *good and* mad>
²good *n* 1 *a* : something that is good *b* (1) : something conforming to the moral order of the universe (2) : praiseworthy character : GOODNESS *c* : a good element or portion 2 : PROSPERITY, BENEFIT <for the ~ of the community> 3 *a* : something that has economic utility or satisfies an economic want *b pl* : personal property having intrinsic value but usu. excluding money, securities, and negotiable instruments *c pl* : CLOTH *d pl* : WARES, COMMODITIES, MERCHANDISE <canned ~s> 4 : good persons — used with *the* <the ~ die young> 5 *pl* : proof of wrongdoing <didn't have the ~s on him —T. G. Cooke> — **for good** : FOREVER, PERMANENTLY — **in good with** : in a favored or preferred position with — **to the good** 1 : for the best : BENEFICIAL <the government's efforts to restrict credit were all *to the good* — *Time*> 2 : in a position of net gain or profit <he wound up the game $10 *to the good*>
³good *adv* : WELL <he showed me how ~ I was doing —Herbert Gold>
good book *n, often cap G&B* : BIBLE
good-bye *or* **good-by** \,gůd-'bī, gə(d)-\ *n* [alter. of *God be with you*] : a concluding remark or gesture at parting
good fellow *n* : an affable companionable person — **good-fellow·ship** \'gůd-'fel-ō-,ship, -'fel-ə-\ *n*
¹good-for-noth·ing \'gůd-fər-,nəth-iŋ\ *adj* : of no value : USELESS, WORTHLESS <he was fat, lazy, ~ —C. G. Norris>
²good-for-nothing *n* : an idle worthless person
Good Friday *n* [fr. its special sanctity] : the Friday before Easter observed in churches as the anniversary of the crucifixion of Christ and in some states of the U.S. as a legal holiday
good-heart·ed \'gůd-'härt-əd\ *adj* : having a kindly generous disposition — **good-heart·ed·ly** *adv* — **good-heart·ed·ness** *n*
good-hu·mored \'(h)yü-mərd\ *adj* : GOOD-NATURED, CHEERFUL — **good-hu·mored·ly** *adv* — **good-hu·mored·ness** *n*
good life *n* 1 : a virtuous life 2 : a life marked by a high standard of living
good-look·ing \'gůd-'lůk-iŋ\ *adj* : having a pleasing or attractive appearance — **good-look·er** \-'lůk-ər\ *n*
good·ly \'gůd-lē\ *adj* **good·li·er; -est** 1 : pleasantly attractive : HANDSOME 2 : significantly large : CONSIDERABLE <a ~ number>
good·man \'gůd-mən\ *n* 1 *archaic* : the master of a household 2 *archaic* : MR.

: AMUSING, CLEVER <a ~ joke> d (1) : CONSIDERABLE, AMPLE <a ~ margin> (2) : FULL <weighs a ~ 200 pounds —*Current Biog.*> e (1) : WELL-FOUNDED, COGENT <~ reasons> (2) : TRUE <holds ~ for society at large> (3) : REAL, ACTUALIZED <made ~ his promises> (4) : deserving of respect : HONORABLE <in ~ standing> (5) : legally valid or effectual <~ title> f (1) : ADEQUATE, SATISFACTORY <~ care> (2) : conforming to a standard <~ English> (3) : CHOICE, DISCRIMINATING <~ taste> (4) : containing less fat and being less tender than higher grades — used of meat and esp. of beef **2 a** (1) : VIRTUOUS, JUST, COMMENDABLE <a ~ man> (2) : RIGHT <~ conduct> (3) : KIND, BENEVOLENT <~ intentions> b : UPPER-CLASS <a ~ family> c : COMPETENT, SKILLFUL <a ~ doctor> d : LOYAL <a ~ party man> <a ~ Catholic> — **good-ish** \'gůd-ish\ *adj* — **as good as** : in effect : VIRTUALLY <*as good as* dead> — **as good as gold** 1 : of the highest worth or reliability <his promise is *as good as gold*> 2 : well-behaved <the child was *as good as gold*> — **good and** \,gůd-ᵊn\ : VERY, ENTIRELY <was *good and* mad>

²**good** *n* **1 a** : something that is good b (1) : something conforming to the moral order of the universe (2) : praiseworthy character : GOODNESS c : a good element or portion **2** : PROSPERITY, BENEFIT <for the ~ of the community> **3 a** : something that has economic utility or satisfies an economic want b *pl* : personal property having intrinsic value but usu. excluding money, securities, and negotiable instruments c *pl* : CLOTH d *pl* : WARES, COMMODITIES, MERCHANDISE <canned ~*s*> **4** : good persons — used with *the* <the ~ die young> **5** *pl* : proof of wrongdoing <didn't have the ~*s* on him —T. G. Cooke> — **for good** : FOREVER, PERMANENTLY — **in good with** : in a favored or preferred position with — **to the good** 1 : for the best : BENEFICIAL <the government's efforts to restrict credit were all *to the good* — *Time*> 2 : in a position of net gain or profit <he wound up the game $10 *to the good*>

³**good** *adv* : WELL <he showed me how ~ I was doing —Herbert Gold>

good book *n, often cap G&B* : BIBLE

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