

# **Gig Harbor City Council Meeting**

**November 10, 2003  
7:00 p.m.**



**"THE MARITIME CITY"**

**AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
November 10, 2003 - 7:00 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**PUBLIC HEARING:**

1. 2004 Proposed Budget.
2. Zoning Text Amendments to Allow Structural Changes to Non-Conforming Signs.

**CONSENT AGENDA:**

*These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.*

1. Approval of the Minutes of City Council Meeting of October 27, 2003.
2. Correspondence / Proclamations: Veteran's Day.
3. Bremerton Motorsports Park Agreement.
4. Cushman Trailhead Park Final Design Contract.
5. Pump Station 2-A Replacement Project - Temporary Construction Easement.
6. Renewal of Interlocal Agreement – Fire Prevention Activities.
7. Liquor License Assumption: QFC #886.
8. Liquor License Renewals: The Harbor Kitchen, Marco's Restaurant, and Terracciano's Restaurant.
9. Approval of Payment of Bills for November 10, 2003.  
Checks #41604 through #41782 in the amount of \$273,577.87.
10. Approval of payroll for the month of October.  
Checks #2866 through #2913 and direct deposit entries in the amount of \$231,155.37.

**OLD BUSINESS:**

1. Second Reading of Ordinance – 2004 Property Tax Levy.

**NEW BUSINESS:**

1. Victim Advocacy Interlocal Agreement.
2. First Reading of Ordinance – 2004 Proposed Budget.
3. First Reading of Ordinance – Authorizing the Issuance and Sale of a Local Improvement District No. 99-1 Bond.
4. First Reading of Ordinance – Providing for the Issuance and Sale of a Water and Sewer Revenue and Refunding Bond.
5. First Reading of Ordinance – Zoning Text Amendments to Allow Structural Changes to Non-Conforming Signs.
6. Resolution – Adopting Amendments to the Pierce County Countywide Planning Policies.
7. Vernhardson Street Overlay Project Bid Award.

**COUNCIL COMMENTS / MAYOR'S REPORT:**

**ANNOUNCEMENT OF OTHER MEETINGS:**

Public Workshop on Building Size Analysis at the Gig Harbor Civic Center, November 17th at 6:30 P.M.

**EXECUTIVE SESSION:** For the purpose of discussing pending litigation per RCW 42.30.110(1)(i).

**ADJOURN:**

## GIG HARBOR CITY COUNCIL MEETING OF OCTOBER 27, 2003

**PRESENT:** Councilmembers Ekberg, Young, Franich, Owel, Dick, Picinich, Ruffo and Mayor Wilbert.

**CALL TO ORDER:** 7:03 p.m.

### **PLEDGE OF ALLEGIANCE**

**SWEARING IN CEREMONY:** Reserve Officers Lori Myers and Shauna Goller.

Chief Mitch Barker, assisted by Officer Dan Welch, presented a short video of the two new reserve officers during pepper-spray training. Mayor Wilbert performed the swearing in ceremony and then invited the families up for introduction.

**PUBLIC HEARING:** 2004 General Fund Revenue Sources.

Mark Hoppen, City Administrator, explained that Chapter 351 of RCW 84.55.120, requires a public hearing on revenue sources for the next year's general fund budget.

Mayor Wilbert opened the public hearing at 7:14 p.m. No one came forward to speak, and the hearing closed at 7:15 p.m.

### **CONSENT AGENDA:**

*These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.*

1. Approval of the Minutes of City Council Meeting of October 13, 2003.
2. Correspondence / Proclamations:
  - a. World Cultural Interaction Day – Takuma, Japan.
  - b. World Cultural Interaction Day – Beijing, China.
  - c. Trick or Treat for Unicef Week.
3. Interlocal Mutual Aid Agreement for Traffic Safety Emphasis Patrols.
4. Cushman Trailhead Boundary and Topographic Survey.
5. Borgen Boulevard Roundabout – Ohio Casualty Group, Release of All Claims.
6. Approval of Payment of Bills for October 27, 2003.  
Checks #41481 through #41603 in the amount of \$331,020.70.

Councilmember Franich asked that item number three be moved to new business for discussion. Mayor Wilbert gave a brief description of the three proclamations before asking for a vote to approve the amended consent agenda.

**MOTION:** Move to approve the consent agenda as amended.  
Ruffo / Picinich – unanimously approved.

**OLD BUSINESS:**

1. Second Reading of Ordinance – Vacation of Rust Street – Sorensen John Vodopich, Community Development Director, presented the second reading of an ordinance for the vacation of a portion of Rust Street.

**MOTION:** Move to adopt Ordinance No. 943, vacating a portion of Rust Street.  
Dick / Picinich – unanimously approved.

2. Revised Legal Description – North Donkey Creek Annexation (ANX 03-03). John Vodopich explained that the City Council met with the initiators of the annexation on July 28<sup>th</sup>. At that time, Council accepted the notice of intention subject to the modification of the legal description and map to reflect the removal of the parcel owned by Tacoma Power. The revised legal description and map was sent to the Pierce County Boundary Review Board for review and comment. John recommended that Council accept the corrected legal description as recommended by Pierce County.

**MOTION:** Move to accept the corrected legal description for the North Donkey Creek Annexation as recommended by Pierce County.  
Picinich / Ruffo – unanimously approved.

**NEW BUSINESS:**

1. First Reading of Ordinance – 2003 Property Tax Levy. Mark Hoppen presented this ordinance setting the 2003 property tax levy for collection in 2004. He explained that this represents a 1% property tax increase over the current levy. Seventy-five percent of the fund goes towards streets and twenty-five goes into the General Fund. This will return for a second reading at the next meeting.

2. 36<sup>th</sup> Street / Point Fosdick intersection Improvement Project – Phase I. John Vodopich explained that a budgeted objective for 2003 included planning for improvements to the intersection at 36<sup>th</sup> and Point Fosdick. He answered Council's questions regarding the completion dates for the two phases of construction.

**MOTION:** Move to approve the execution of the Consultant Services Contract with HDR Engineering, Inc. in an amount not to exceed \$21,855.80.  
Dick / Ruffo – unanimously approved.

3. Interlocal Mutual Aid Agreement for Traffic Safety Emphasis Patrols. Chief Barker explained that this contract is the same as the past several years to participate in the Pierce County's traffic emphasis patrol primarily focused on DUIs. He explained that once a month participating agencies saturate a particular area with patrol officers in an attempt to deal with unsafe driving. He said that Carol Morris has concerns with certain language in the contract and her comments were forwarded to Councilmembers before the meeting.

Chief Barker addressed Council's concerns about the comments from the City Attorney. Councilmembers discussed the liability issues surrounding the officer's participation in the process.

**MOTION:** Move to authorize the Mayor to approve the Interlocal Mutual Aid Agreement for Traffic Safety Emphasis Patrols.  
Ruffo / Dick – six voted in favor. Councilmember Franich voted no.

#### **STAFF REPORTS:**

1. David Rodenbach, Finance Director – 3<sup>rd</sup> Quarter Financial Report. In David's absence, Mark Hoppen reported that there are no surprises in the report. Councilmember Young commented that the General Fund Revenues are well ahead of the Tax Revenue base and asked for the reason. Mark said that he would review the information and get back with an answer.

2. GHPD – September Stats. Chief Barker said that he didn't have anything to add to the written report and offered to answer questions.

#### **COUNCIL COMMENTS / MAYOR'S REPORT:**

Mayor Wilbert discussed the city newsletter that was sent to all citizens, which included information on the upcoming Neighborhood Emergency Preparedness meetings. She encouraged members of the audience to attend one of the meetings.

#### **PUBLIC COMMENT:**

Charlene Sandoval – 8033 Bayridge Avenue. Ms. Sandoval passed out pictures from her property and information from other cities regarding the issue of trees growing up and blocking views. She read a statement regarding the loss of the view on their property over the past 2-1/2 years. She said that the neighbor is unwilling to maintain the scrub alders and vine maples that are growing up and blocking the view. Ms. Sandoval discussed how this is affecting the property values of homes, adding that the neighbors want their view back and want regulations to protect views. She said that the city needs to establish a code that requires the pruning or removal of all trees blocking scenic views and vistas. She concluded by saying that those who have paid for view homes want the city, which limits building heights to maintain views, to also regulate trees.

Keith Hamilton – 3205 Grandview Street. Mr. Hamilton said that he had a beautiful view when he moved here thirteen years ago, which is now blocked by a grove of trees from the west side of Soundview. He discussed the regulations to prevent blocking the neighbor's views in the Millville area and asked why this could not be case for all of Gig Harbor. He explained that the only recourse is to ask Pierce County for a property tax

reduction for the loss of view. He asked if Council would take a look at the issue to see if something could be done.

Jack Rodriguez – 2808 Harborview Drive. Mr. Rodriguez said that he and his wife, Gerda, had lived at this address for six or seven years. He passed out a picture taken by Mrs. Chapman, his neighbor, and read her letter about a 70-foot tree across the street that is blocking the view. Mr. Rodriguez said that the picture shows the view before the tree grew up and blocked the view.

Jeanne Chapman – 2808 Harborview Drive, Unit C. Ms. Chapman passed out other pictures to illustrate the view before the tree grew up and blocked the view of the harbor. She explained that she and her husband had constructed the building in 1977, and at that time, only a small home was located across the street. Since that time, another house has been built, and the tree in the picture has grown up to block the view to the entrance of the harbor. She said that several neighbors have spoken to the owner of the tree, but have been told that the view is still present in the winter when the leaves are gone.

Jim Nelson – 8103 Bayridge. Mr. Nelson said that he moved to Bayridge in 1999. At that time he had a wonderful view, but that no longer is the case. He explained that each year they are losing more of their view due to the wall of scrub alder trees that blocks the view from the lower deck, and will eventually grow up to block the view from the upper deck. He said that he understands the neighbor's right to privacy, but the neighbor doesn't seem to understand the need to preserve the view. He added that he and the other neighbors are willing to share in the expense of topping the trees or replacing them with a set-height hedge, but there has been no interest on the part of the owner of the trees. Mr. Nelson said that he wants the harbor view restored and protected. He added that there are requirements for the commercial district to preserve scenic views and vistas, which should also apply to residential areas. He suggested the adoption of an enforcement code similar to the one in Chapter 8. Mr. Nelson left a written statement and photos with Council for review.

Eric Peevy – 7315 Forest Glen Court. Mr. Peevy said that he has a view over the top of the houses on Soundview and is thrilled that this issue is coming to the attention of the Council. He said that what the city has done to regulate the buildings in the north Gig Harbor is outstanding and proves that restrictions can work. He said that he is intimidated by the idea of going to his neighbor to ask that they trim their trees. He then gave an example of what happened when a neighbor approached another regarding his trees. Mr. Peevy said that he has lost his view of Vashon Island to an apricot tree, and the other trees in that yard are growing up. He said that he hopes that something can be done by the city that would empower the private citizens to be able to go to the neighbor without fear of retaliation.

John Jurnacik 3757 – Wilkes Lane. Mr. Jurnacik said that he too is losing his view and is pleased to see that guidelines exist. He explained that it is difficult to go to a neighbor and try to get satisfaction. He stressed that this is an extremely serious issue and is

surprised that Gig Harbor has no regulations to address this concern. He said that you can't build a house over sixteen feet high, but you can plant a wall of trees that grows to 30-50-100 feet high. He said that he is glad to be talking about this and hopes that something can be done.

Mary Lou Finholm Bird. Ms. Bird explained that she lives on property that has been in the family for over 60 years and the views have come and gone. She discussed the trees at the Finholm Viewclimb, which are located on city right-of-way and progressively obscuring the view from Franklin Avenue. She said that the city crew used to top the trees, but understands that this is no longer allowed. She suggested that the trees be replaced with other types of trees that won't grow so tall, adding that the neighbors would appreciate anything that could be done.

Tony Sandoval – 8803 Bayridge Avenue. Mr. Sandoval read a statement from Tim and Ann Lovrovich, his next-door neighbors, who weren't able to attend the meeting. The letter indicates support of residential view protection and a willingness to share in the cost to have the trees topped; an option that has been allowed by the neighbors behind them on Shirley Avenue.

Mr. Sandoval continued to say that Council can't stand idly by and let this continue as it will only get worse. He said that other communities are addressing the same issue and if the city can mandate building height, it can also do the same for trees.

Mayor Wilbert said that staff will be asked to begin reviewing the issue. She thanked everyone for coming to speak on the issue.

Councilmember Ruffo said that many of the citizens have to deal with this issue. He said that he would be receptive to the idea of staff doing the research and bringing back the information.

Councilmember Owel said that this has been an on-going issue, adding that she has noticed that the trees also obstruct the light. She said that topping doesn't address the issue and she agrees that sometimes, trying to work it out with the neighbors only brings out the worst in people. She said that the city needs to address the realities.

Councilmember Picinich said that he would definitely like staff to look at the issue and find out what other municipalities are doing.

Councilmember Dick said that the city limits building heights for aesthetic reasons and should look at other things that are important to the community. He said that the city needs to stay within the boundary of the law, but to the extent that an issue causes conflict, it may be resolved by taking appropriate action. He said that he would like to see what changes could be made.

Harry Knight – 8112 Stinson Avenue. Mr. Knight explained that he has lived here for nine years and that he was asked to cut his trees. He said that he is not opposed to

helping his neighbors with the view, but he is opposed to removing the trees due to erosion concerns. He added that he is also opposed to someone coming on to his property to cut the trees without permission. He acknowledged that the cost issue had been addressed at this meeting, and invited the neighbors to come and talk to him. He continued to explain that he too has lost his view of the harbor because of the trees across the street.

John Vodopich explained that commercial developers have to submit a comprehensive landscape plan that is not required by residential builders.

Mayor Wilbert gave a brief report on the visit from both the representatives from Beijing, China and Takuma, Japan through the WCI program.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Budget Worksessions: November 3<sup>rd</sup> and 4<sup>th</sup>, 6:30 p.m.
2. Neighborhood Emergency Preparedness Meeting: October 29<sup>th</sup> at Harbor Ridge Middle School.
3. Dedication of the Harbor Ridge Middle School, November 9<sup>th</sup> 1:00 – 3:00 p.m.

**EXECUTIVE SESSION:** None required.

**ADJOURN:**

**MOTION:** Move to adjourn at 8:29 p.m.  
Ruffo / Franich – unanimously approved.

CD recorder utilized:  
Disc #1 Tracks 1 – 22.  
Disc #2 Tracks 1 – 2.

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Gretchen Wilbert, Mayor

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Molly Towslee, City Clerk



## PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

**Whereas**, the contributions and the sacrifices of the men and women who served in the Armed Forces have been vital in maintaining our freedom and way of life; and

**Whereas**, tens of millions of Americans have served in the Armed Forces of the United States during the past century; and

**Whereas**, hundreds of thousands of Americans have given their lives while serving in the Armed Forces during the past century; and

**Whereas**, our state is home to over 670,000 Veteran's and their families; and

**Whereas**, our veterans are brave and selfless individuals who, when duty called, were willing to put themselves in harm's way to defend the lives and liberty of others; and

**Whereas**, their abiding patriotism and enduring devotion to the ideals on which the United States is founded can never fail to inspire us; and

**Whereas**, these men and women understand, above all, the important task before those American service men and women now keeping watch; and

**Whereas**, all Washington must strive to ensure that ours remains a land worthy of the great love our veterans have shown for it;

**NOW, THEREFORE**, I, Gretchen A. Wilbert, Mayor of the City of Gig Harbor, hereby proclaim November 11, 2003, as

### **VETERAN'S DAY**

in the City of Gig Harbor. I urge all citizens to acknowledge and honor the contributions of our veterans to the principles of democracy, individual freedom and human rights.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 10<sup>th</sup> of November, 2003.

\_\_\_\_\_  
Mayor, City of Gig Harbor

\_\_\_\_\_  
Date



'THE MARITIME CITY'

**POLICE DEPARTMENT**

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MITCH BARKER**  
**SUBJECT: YEARLY USE AGREEMENT WITH BREMERTON MOTORSPORTS PARK**  
**DATE: OCTOBER 30, 2003**

**INFORMATION/BACKGROUND**

The police department requires all line officers to attend in-service training in an Emergency Vehicle Operator's Course (EVOC) on a regular basis. In order to conduct this training, we require a large paved area where it is safe to operate vehicles at high rates of speed. The Bremerton MotorSports Park rents a portion of the Bremerton Airport to police agencies for this purpose. In order to use the space in the past, we have entered into a short-term use agreement with the Bremerton MotorSports Park each time we wanted to use the facility.

We have now been offered an annual use agreement to simplify using the facility. As a general rule we use the facility no more than twice per year. This agreement simply means we will not be required to come to Council to have the agreement approved more than once per year.

Our legal counsel has reviewed the Short Term Use Agreement between the City and the Bremerton Motor Sports Park in the past. This new agreement is the same except for covering all of 2004. She has indicated to me she does not need to review this agreement if it is the same as the existing agreement in substance.

**FISCAL IMPACTS**

There is a use fee of \$250.00 per day to use the Bremerton facility. This cost has been anticipated and funded within the 2004 budget.

**RECOMMENDATION**

I recommend that Council authorize the Mayor to execute the attached Yearly Use Agreement that will allow the police department to perform EVOC training scheduled for 2004.

**Bremerton Motorsports Park**  
**YEARLY USE AGREEMENT**  
**2004**

IT IS HEREBY understood that this Use Agreement made this 3rd day of November, 2003, by and between **Bremerton Motorsports Park**, a Washington Not for Profit corp., hereinafter referred to as "BMP", and **City of Gig Harbor**, a Washington municipal corporation, whose address is **3510 Grandview St. Gig Harbor WA 98335**, hereinafter referred to as "User".

**WHEREAS**, the City is required to train its police personnel in emergency vehicle safety techniques, and

**WHEREAS**, BMP controls property that it is willing to make available to the City of Gig Harbor for purposes of emergency vehicle safety training, under the terms of this Short Term Use Agreement.

**NOW, THEREFORE**, BMP and the City, for an in consideration of the mutual agreements, covenants and promises set forth herein, agree as follows:

**SECTION 1. USE:** BMP hereby agrees to permit the User to utilize INACTIVE RUNWAY 16/34 at the Port of Bremerton's, Bremerton National Airport facility AKA "Bremerton Raceway" for the purpose of holding the User's **Emergency Vehicle Operators Course**, and for no other use. BMP understands that the User will be the sole occupant of the property on dates scheduled for this purpose. User shall be responsible for correction of any and all property damage which would occur as a result of User's activity...

User acknowledges that they have viewed the facilities and accept them in their current condition as appropriate for their intended use with no further modifications by BMP. The User agrees to assume full responsibility for the conduct of all User persons involved in the User's Emergency Vehicle Operator's Course use of the premises. **Should the pavement of the use area require any markings related to User's activity, User agrees to use marking material that is not of a permanent nature, i.e. chalk.**

**SECTION 2. TERM:** The term of this agreement shall be (14) fourteen months ending December 31, 2004.

**SECTION 3. ASSIGNMENT:** This agreement is not assignable or transferable in any fashion.

**SECTION 4. RENT:** The User agrees to pay BMP five (5) days in advance, a minimum of \$250.00 per day of use. A late fee of one percent (1%) per month, minimum \$3.00 will be assessed on all accounts not paid in advance.

**SECTION 5. RISK OF LOSS:** The User assumes all risks, including but not limited to, loss of or damage to equipment or property of the User or of the User participants in the Emergency Vehicle Operator's Course, or equipment or property used or stored on the premises under the terms of this agreement.

**SECTION 6. SECURITY:** Security of User's or invitees' property shall be the sole responsibility of the User. User shall prevent any user participants in the Emergency Vehicle Operator's Course from traversing or accessing any and all parts of the Port of Bremerton, Bremerton National Airport facility,

except those areas open to the public and that area designated herein for User's purpose, and specified ingress and egress thereto.

**SECTION 7. INSURANCE:** The User shall secure comprehensive general liability insurance (Form CG-001) for property damage and bodily injury at the premises in an amount of not less than \$1 million per occurrence and \$2 million aggregate. In addition, User shall keep and maintain in full force and effect during the term of this agreement fire and extended coverage insurance on all fixed improvements located or situated on or in the Premises to the full insurable value thereof. Proceeds from such insurance shall be used to restore the Premises. User shall provide the BMP with a certificate of insurance, naming BMP, Bremerton Raceway and the Port of Bremerton as an additional insureds (CG 2010 [form B]) and the premises, Bremerton Raceway, and Bremerton National Airport shall be listed as a covered site on all coverage. No occupancy or use permitted under the terms of this agreement shall commence until such evidence of insurance is presented to and approved by BMP.

**SECTION 8. INDEMNIFICATION:** The User shall release, indemnify, defend and hold BMP, its officers, officials, employees and representatives harmless from and against all losses and claims, demands, payments, suits, action, recoveries and judgments of every nature and description brought or recovered against BMP arising out of the actions of the User, its officers, officials or employees while conducting the Emergency Vehicle Operator's Course upon Port property, and for any expense incurred by BMP in connection therewith, including reasonable attorneys fees and costs attributable thereto.

In those situations in which a court of competent jurisdiction finds that BMP and the User are concurrently negligent, the indemnification contained in this agreement shall only be effective to the extent of the User's negligence. Furthermore, the indemnification contained in this agreement shall only be effective for the losses, claims, demands, payments, suits, action, recoveries and judgments arising out of the Emergency Vehicle Operator's Course conducted on any scheduled day during the contract period.

**SECTION 9. COMPLIANCE WITH LAWS AND REGULATIONS:** Users of the Bremerton National Airport facility under the terms of this agreement are subject to the rules and regulations of the Federal Aviation Administration, its agents, and/or inspectors, and all applicable Port, state, county, or federal laws, including but not limited to, those laws related to the use, handling, and disposal of oil and petroleum products. The use of the premises provided herein shall at all times be subject to suspension or cancellation for emergency air traffic situations or requirements at the sole discretion of the Port of Bremerton.

**SECTION 10. CANCELLATION:** This agreement is subject to immediate termination with or without cause by BMP. No written notice is required. If BMP exercises this cancellation provision after it has collected the rent from the User, BMP shall refund the rent within twenty (20) days after cancellation.

Signed this \_\_\_\_\_ day of \_\_\_\_\_.

USER:

Bremerton Motorsports Park

By: \_\_\_\_\_  
Mayor Gretchen Wilbert

By: \_\_\_\_\_  
Chairman Ken Mahan

ATTEST:

By: \_\_\_\_\_  
City Clerk

The City of Gig Harbor  
3510 Grandview Street  
Gig Harbor WA 98335  
253/851-8136

253/851-2399 fax

# Bremerton Motorsports Park

P.O. Box 5046 • Bremerton, WA 98312 • Message/Fax (360) 478-4067  
bremmspark@tscnet.com

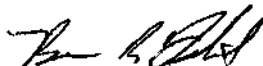
Gig Harbor Police Dept.  
3510 Grandview St.  
Gig Harbor, WA. 98335

To: Officer Ray Jahn

Re: 2004 use agreement

Dear Officer Jahn,

I have prepared a use agreement that will cover us until Dec. 31, 2004. We will still need to schedule dates, confirm insurance and handle billing for each use of the site. I hope this will make your approval process easier to deal with.



Bruce R. Fields  
BMP  
Sec/Tres



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: CUSHMAN TRAILHEAD PARK**  
**CONSULTANT SERVICES CONTRACT- FINAL DESIGN SERVICES**  
**DATE: NOVEMBER 10, 2003**

**INTRODUCTION/BACKGROUND**

Budgeted objectives for 2003 include the design and construction of the Cushman Trailhead Park, located at Hollycroft and Olympic Drive (the triangle piece of land) at the Cushman Trailhead.

After reviewing the Consultant Services Roster, the landscape architecture firm of Bradley Design Group was selected as the most qualified to perform the work. Their selection was based on their past conceptual design work, understanding of the project, familiarity with the area, and similar design work of the Rush Construction project, Park Plaza, which is providing parking and access to the Trail, across the street from this location.

**POLICY CONSIDERATIONS**

Bradley Design Group is able to meet all of the City's standard insurance provisions for professional services contracts.

**FISCAL CONSIDERATIONS**

This work was anticipated in the adopted 2003 Budget and is within the 2003 Parks budgeted allocation of \$50,000, objective #10.

**RECOMMENDATION**

I recommend that the Council move and approve execution of the Consultant Services Contract with Bradley Design Group for final design work in the amount not to exceed five thousand eight hundred ninety-five dollars and zero cents (\$5,895.00).

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
BRADLEY DESIGN GROUP**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Bradley Design Group, a corporation organized under the laws of the State of Washington, located and doing business at 4330 N. Lexington Street, Tacoma, Washington 98407, (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the design and construction of the Cushman Trailhead Park located between Hollycroft and Olympic Drives and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated October 21, 2003, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

**TERMS**

**I. Description of Work**

The Consultant shall perform all work as described in **Exhibit A**.

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Five Thousand Eight Hundred Ninety-five Dollars and zero cents (\$5,895.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.



B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

### III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

### IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by April 30, 2004; provided however, that additional time shall be granted by the City for excusable days or extra work.

### V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the

amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as Exhibit A and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

## **VI. Discrimination**

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

## **VII. Indemnification**

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

### VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig

Harbor at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

### **IX. Exchange of Information**

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

### **X. Ownership and Use of Records and Documents**

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

### **XI. City's Right of Inspection**

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

### **XII. Consultant to Maintain Records to Support Independent Contractor Status**

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

### **XIII. Work Performed at the Consultant's Risk**

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

### **XIV. Non-Waiver of Breach**

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

### **XV. Resolution of Disputes and Governing Law**

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Director of Operations determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

### **XVI. Written Notice**

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

attm. Mauer sen  
Whitaker  
853 7557

**CONSULTANT**  
Kathleen Bradley Reader  
Bradley Design Group  
4330 N. Lexington Street  
Tacoma, Washington 98407  
(253) 756-7906

David Brereton  
Director of Operations  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

**XVII. Assignment**

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

**XVIII. Modification**

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

**XIX. Entire Agreement**

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 30 day of October, 2003.

**CONSULTANT**  
By:   
Its Principal

**CITY OF GIG HARBOR**  
By: \_\_\_\_\_  
Mayor

**Notices to be sent to:**

Kathleen Bradley Reader  
Principal  
Bradley Design Group  
4330 N. Lexington  
Tacoma, Washington 98407  
(253) 756-7906

David Brereton  
Director of Operations  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(print or type name)  
**NOTARY PUBLIC** in and for the  
State of Washington, residing at:

\_\_\_\_\_  
My Commission expires: \_\_\_\_\_



STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF PIERCE                    )

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at:

My Commission expires: \_\_\_\_\_

**EXHIBIT A  
SCOPE OF SERVICES**

**BRADLEY DESIGN GROUP**  
Landscape Architecture  
Site Planning



**RECEIVED**

**OCT 24 2003**

**CITY OF GIG HARBOR  
OPERATIONS & ENGINEERING**

**21 October 2003**

**David Brereton**  
Director of Operations, City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Fax: (253) 853-7597 - 3 pages total

Dear David,

Per our discussion, I have determined Bradley Design Group's scope of services to be as follows for the final design phase of the Gateway Park:

**Project Location:**

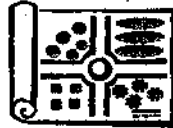
Gig Harbor Gateway Park located between Hollycroft and Olympic Drive in Gig Harbor, WA

**Scope of Services:**

- Provide final design and construction document preparation for the Gateway Park in Gig Harbor. (AutoCAD site plan and survey prepared by DEA with additional information provided by the City of Gig Harbor as needed).
- Park design elements to include:
  - Paving design, layout and materials selection for public plaza, Cushman Trail alignment, overlook area and sidewalks.
  - Design and coordination for art and design elements in the plaza and lower lawn terrace area. Elements may include placement rocks, sculpture, play structure, interpretive signage, benches, picnic tables, raised planters, etc.) These items will likely be funded in future phases with donations or public funding.
  - Locate and propose signage options for the Gig Harbor 'Welcome/Thank You' signs, information kiosk, and directional signage for the Cushman Trail.
  - Landscape and irrigation design for all lawn and planting areas.
  - Lighting design for park circulation areas and accent lighting of park elements.
  - Locate and roughly dimension a proposed info kiosk/restroom building in the plaza area with the option of the structure being developed as an information kiosk only.
  - Coordination with adjacent properties and City staff for location and placement of street trees.
  - Coordination with City staff for post selection and location of banner spanning Olympic Drive.
  - Roadway pull-out area, traffic calming elements and parking layout, design and coordination with City staff for proposed improvements along Olympic Drive and Hollycroft.
- Irrigation and lighting plans to include location of all irrigation equipment, details, notes and coordination with City Engineering for point of connection, power and meter location.
- Landscape plans to include location of proposed plantings, plant schedule identifying genus, species, size and condition of proposed plants, planting details and specifications.
- Coordination and design meetings with City of Gig Harbor for grading, location of utilities, road alignment & traffic issues, power line easements, lot line locations and any other site related elements.
- Coordination and review meetings with Pierce County Trails Coordinator & Tacoma Public Utilities for trailhead location and trail alignment, design conformance to right of way and utility corridor requirements.
- Revisions to plans per City of Gig Harbor, Pierce County Parks and Tacoma Public Utilities review meetings.
- Provide on-site construction coordination throughout the construction phase.
- Assist with construction phasing of future improvements as funds become available.

4330 N. Lexington Street office: 253.756.7906  
Tacoma, WA 98407 email: kathleen@bradtree.com  
[www.bradtree.com](http://www.bradtree.com)

**EXHIBIT A  
SCOPE OF SERVICES**



**RECEIVED**

**OCT 24 2003**

**CITY OF GIG HARBOR  
OPERATIONS & ENGINEERING**

**Notes:**

1. This proposal does not include hours for significant re-design once the work is substantially complete.
2. Fees indicated are not to exceed and based on the above outlined scope of services. Modifications to the project scope or schedule may require a revision to this scope. Additional services, if required, will be billed at the standard hourly rates only after approval by the City.
3. Terms are monthly invoicing with net due in 30 days.

**Fees:**

- The estimated fee for design and preparation of construction documents, construction assistance and project coordination is \$5,895.00.
- Reimbursable expenses will be billed as actuals. Plotting on bond for client review, submittals and construction sets will be billed at \$7.00 per sheet.

This letter serves as the Agreement to Proceed based upon the Scope of Services as outlined above and in the attached fee proposal. Work will proceed once Bradley Design Group receives your signature of acceptance and purchase order number. Terms are monthly invoicing with net due in 30 days.

If you have any questions regarding this proposal, please do not hesitate to call. Otherwise, please sign below and fax (253-276-0132) or mail a copy to our office. We look forward to working with you on the next phase of this project.

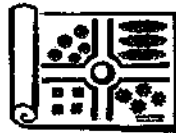
Kind regards,

A handwritten signature in black ink, appearing to read 'Kathleen Bradley Reader'.

**Kathleen Bradley Reader**  
*Principal*

**EXHIBIT B  
SCHEDULE OF RATES AND  
ESTIMATED HOURS**

Bradley Design Group



**RECEIVED**

OCT 24 2003

CITY OF GIG HARBOR  
OPERATIONS & ENGINEERING  
Date

10/23/2003

**Fee Proposal**

**Name / Address**

David Brereton  
Director of Operations  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

		<b>Project</b>	
		Gig Harbor Gateway Park-Final	
Description	Qty.	Total	
Landscape Architecture Services for final design and construction document preparation of the Gateway Park in Gig Harbor.			
Project Administration and Coordination			
Principal Meeting Attendance & Administration	6	630.00	
Construction Document Preparation			
Principal Design Fee	6	630.00	
Associate Design Fee	24	1,800.00	
Irrigation Design	9	675.00	
Construction Assistance			
Principal Meeting Attendance	12	1,260.00	
Associate Meeting Attendance	12	900.00	
Reimbursable Expenses			
Bond Sheets (will be billed as actuals at \$7.00 per bond sheet)	0	0.00	
<i>We look forward to working with you on this project!</i>		<b>Total</b>	<b>\$5,895.00</b>

4330 North Lexington Street  
Tacoma, WA 98407



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: SEWAGE PUMP STATION 2A REPLACEMENT PROJECT, CSSP-0201**  
**TEMPORARY CONSTRUCTION EASEMENT**  
**DATE: NOVEMBER 10, 2003**

**INTRODUCTION/BACKGROUND**

A temporary ingress and egress construction easement is necessary to provide construction access during construction of the replacement pump station.

Mr. Jeffrey Bucholz and Ms. Susan Jensen are the current property owners and have agreed to the conditions of the Agreement for Temporary Construction Easement to the City of Gig Harbor.

The City Attorney and staff have reviewed the agreement for City conformance and completeness.

Council approval of this easement is requested.

**FISCAL CONSIDERATIONS**

No funds will be expended for the acquisition of the described easement.

**RECOMMENDATION**

I recommend that the Council accept the attached easement agreement.

**AGREEMENT FOR TEMPORARY CONSTRUCTION EASEMENT  
TO THE CITY OF GIG HARBOR**

**THIS AGREEMENT** is made this 31<sup>th</sup> day of October, 2003 by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and Jeffrey A Bucholz and Susan M. Jensen, each as to their respective separate estates in indeterminate interests pursuant to deed recorded May 7, 1993 under Recording No. 9305070656, whose mailing address is 9805 Ridgeway Drive, Gig Harbor, Washington 98332, (hereinafter the "Owners").

**RECITALS**

**WHEREAS**, the Owners own a fee or substantial beneficial interest in the real property located at 8805 North Harborview Drive, Gig Harbor, Washington 98332, (Tax Parcel Number 4030000311) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

**WHEREAS**, the Owners have agreed to grant a temporary construction easement across a portion of the Property, which temporary construction easement is legally described in Exhibit "B" (the "Construction Easement") and shown on Exhibit "C" which are attached hereto and by this reference incorporated herein, to the City for the construction of Sewage Pump Station 2A (City of Gig Harbor project reference number C.S.S.P. 0201); and

**NOW, THEREFORE**, in consideration of the covenants and agreements contained herein, as well as ten dollars and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owners agree as follows:

**TERMS**

**Section 1. Grant of Temporary Construction Easement and Right-of-Way to the City.**

**A. Grant. Temporary Construction Easement.** The Owners hereby grant a temporary nonexclusive easement to the City of Gig Harbor for the purposes necessarily and reasonably related to the City's construction of the Sewage Pump Station 2A project across, along, in, upon, the Owners' Property, in the location set forth in the Temporary Construction Easement attached as Exhibit "B" and shown on Exhibit "C".

**B. Conditions.** Such Temporary Easement (hereinafter the "Easement") are subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully observe and perform:

1. The City shall bear all costs and expenses associated with the construction, improvement; maintenance, repair and operation of the Easement.

2. The City shall have all necessary access to the Easement without prior notification to the Owners.

3. During Pump Station construction, the City shall exercise its rights under this Agreement so as to minimize, and avoid if reasonably possible, interference with the Owners use of the Property.

4. The City agrees to defend, indemnify, and hold the Owners harmless from and against any and all loss, damage, claims, penalties, liability, suits, costs, and expenses (including, without limitation, reasonable attorney's fees and costs) suffered or incurred by the Owners arising out of or related to the City's construction, inspection, installation, maintenance, repair, replacement, operation, or use of the Temporary Construction Easement.

If a court of competent jurisdiction determines that this agreement is subject to RCW 4.24.115, then any liability caused by or resulting from the concurrent negligence of the City, its employees, contractors and agents and the Owners, its employees, contractors and agents shall only be enforceable to the extent the City's negligence.

**Section 2.** This temporary construction easement shall commence on the date of execution of this Agreement by both parties, and shall terminate on the date the City Council formally accepts the Sewage Pump Station 2A as complete or December 31, 2004, whichever is earlier.

**Section 3.** This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

**Section 4.** Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Agreement, which contains the entire understanding of the parties on the subject.

**Section 5.** Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.

**Section 6.** No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

**Section 7.** Upon completion of the project and termination of this Temporary Construction Easement, a permanent access will not be required for future maintenance in the area shown in Exhibit C of this easement agreement. Future maintenance will be performed using the City's ROW.

L:\City Projects\Projects\0201 Pump Station 2 Replacement\Right of Way\Temporary\_Construction\_Easement\_Final.doc

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

**CITY:** The City of Gig Harbor, Washington

By: \_\_\_\_\_  
Its Mayor

Address:  
3510 Grandview Street  
Gig Harbor, WA 98335  
Tel: (253) 851-8136

Fax: (253) 851-8563

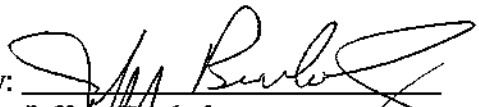
**ATTEST:**


**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Attorney

**OWNERS:**

By:   
Jeffrey Bucholz

By:   
Susan M. Jensen



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

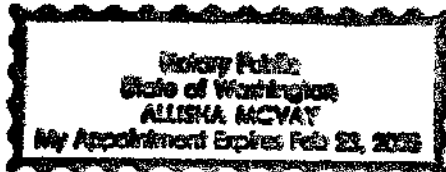
\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at

\_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Jeffrey A. Bucholz and Susan M. Jensen are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that it is the free and voluntary act of such persons for the uses and purposes mentioned in the instrument.

Dated: 10/31/03



Allisha McVay  
(Signature)

Allisha McVay  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at

Pierce  
My appointment expires: 2/23/05

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

LOT 5, BLOCK 5 OF FULLER'S ADDITION TO GIG HARBOR, WASHINGTON, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 60 AND BLOCK 7 OF EXTENSION OF THE CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON, AS PER PLAT RECORDED IN VOLUME 6 OF PLATS, PAGE 74, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH SECOND CLASS TIDE LANDS, AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON, LYING BETWEEN THE SIDE LINES OF LOT 5, BLOCK 5 OF FULLER'S ADDITION TO GIG HARBOR, WASHINGTON, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 60, RECORDS

THE SOUTHWESTERLY HALF OF LOT 4, BLOCK 5 OF FULLER'S ADDITION TO GIG HARBOR, WASHINGTON, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 60, RECORDS OF PIERCE COUNTY AUDITOR, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 4;  
THENCE NORTHEASTERLY ALONG THE EASTERLY LINE OF BURNHAM COUNTY ROAD 25 FEET;  
THENCE SOUTHEASTERLY PARALLEL WITH THE SIDE LINES OF SAID LOT 4 TO THE GOVERNMENT MEANDER LINE;  
THENCE FOLLOWING SAID MEANDER LINE SOUTHWESTERLY TO THE CORNER BETWEEN LOTS 4 AND 5;  
THENCE NORTHWESTERLY TO THE POINT OF BEGINNING;

TOGETHER WITH SECOND CLASS TIDE LANDS, AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON;

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

**TEMPORARY CONSTRUCTION EASEMENT  
LEGAL DESCRIPTION**

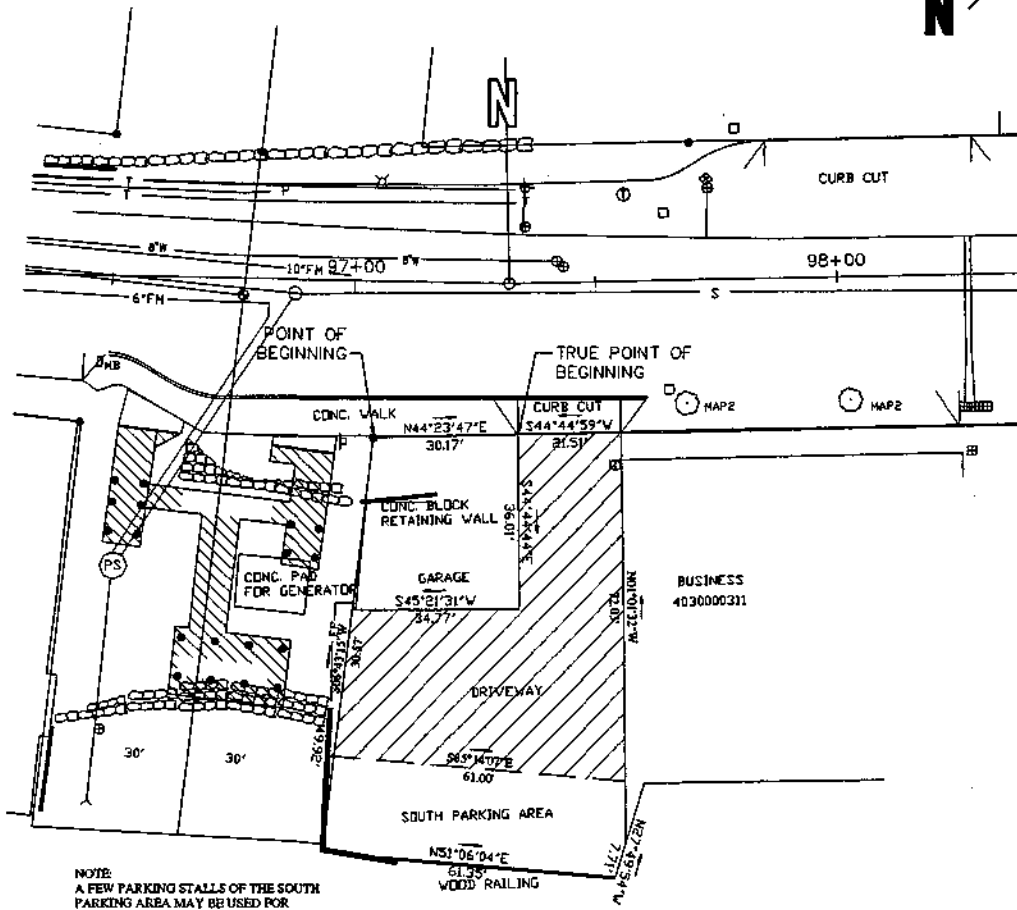
THE POINT OF BEGINNING STARTING AT THE NORTHWEST PROPERTY CORNER OF PARCEL NO. 4030000301, THENCE N44°23'47"E A DISTANCE OF 30.17' TO THE TRUE POINT OF BEGINNING, THENCE S44°44'44"E A DISTANCE OF 36.01', THENCE S45°21'31"W A DISTANCE OF 34.77', THENCE S06°43'15 A DISTANCE OF 30.57', THENCE S85°14'07"E A DISTANCE OF 61.00', THENCE N01°01'32"W A DISTANCE OF 72.03, THENCE S44°44'59"W RETURNING TO THE TRUE POINT OF BEGINNING.

**EXHIBIT B**

PUMP STATION 2 REPLACEMENT  
 TEMPORARY CONSTRUCTION EASEMENT  
 LOCATED ON PARCEL 4030000311



OCT 08, 2003 12:28:18 PM  
 DRAWING: L:\City Projects\Projects\0201 Pump Station 2 Replacement\drawings\Const\_Esmnt.dwg  
 XREFS



NOTE:  
 A FEW PARKING STALLS OF THE SOUTH  
 PARKING AREA MAY BE USED FOR  
 TEMPORARY PERIODS OF NO LONGER  
 THAN 8 TO 10 HOURS AT A TIME.

EXHIBIT C



COMMUNITY DEVELOPMENT DEPARTMENT  
**TO: MAYOR WILBERT AND CITY COUNCIL MEMBER'S**  
**FROM: DICK J. BOWER, CBO**  
**BUILDING OFFICIAL / FIRE MARSHAL**  
**SUBJECT: RENEWAL OF INTERLOCAL AGREEMENT WITH PIERCE CO. FIRE DISTRICT 5 FOR FIRE PREVENTION ACTIVITIES**  
**DATE: NOVEMBER 10, 2003**

### **BACKGROUND**

Chapter 15 of the Gig Harbor Municipal Code adopts by reference the 1997 ed. of the Uniform Fire Code (UFC). Section 103.3.1 of the UFC prescribes a fire safety inspection program for all buildings and premises except residential structures with less than 4 dwelling units and their non-commercial accessory structures.

For the past several years the City has accomplished these inspections through an Interlocal Agreement with Fire District 5. The agreement also specifies certain public education/information functions that are provided for City residents and the business community. The current agreement has an expiration date of December 31, 2003.

The 2004 Interagency Agreement will provide the City with continued fire inspection and public education/information services with no increase in cost. Minor program changes are proposed under Exhibit "A", which will provide incentives for businesses to assure voluntary compliance and will reduce the cost of required annual fire extinguisher inspections for all occupancies regulated under the UFC. In addition, the District has agreed to provide the business community with an emergency planning and employee-training program intended to provide general compliance with requirements included in the 2003 edition of the International Fire Code, which is scheduled to become the State fire code in July 2004. Finally, minor text changes have been incorporated into Exhibit "A" that will provide the flexibility necessary to move from the Uniform Fire Code to the International Fire Code at the agreements mid term, in accordance with the Statewide adoption of the International Codes.

### **FISCAL IMPACT**

The fiscal impact of the agreement is set forth in Exhibit "B". The cost is based on the number of inspections performed by the District in the previous agreement term plus 50% of the remaining costs of the program. For the year 2004, the District has agreed to assist the City with our budgetary concerns by holding the cost at the 2003 level even though both the number of inspections and the overall costs of the program have increased. For the year 2004, the total cost to the City will be \$94,662.00. This anticipated cost has been incorporated into the proposed 2004 budget.

### **RECOMMENDATION**

I recommend that Council approve the Interlocal Agreement as presented.

**INTERLOCAL AGREEMENT  
FOR FIRE INSPECTION SERVICES  
BETWEEN THE CITY OF GIG HARBOR  
AND PIERCE COUNTY FIRE DISTRICT NO. 5**

THIS AGREEMENT is made and entered into by and between the City of Gig Harbor, Washington, a Washington municipal corporation (hereinafter the "City"), and Pierce County Fire Protection District No. 5, a Washington municipal corporation (hereinafter the "District").

**WITNESSETH:**

WHEREAS, the City has been annexed to the District, and the District provides fire protection to the City, pursuant to chapter 52.04 RCW; and

WHEREAS, the City and the District have the authority to contract for the provision of fire inspection services, pursuant to chapter 39.34 RCW and RCW 52.12.031(3); and

WHEREAS, in the District's performance of such Fire Inspection Services, the District is required to use the Uniform Fire Code, as adopted by the City of Gig Harbor (pursuant to RCW 52.12.031(6)) and Gig Harbor Municipal Code Section 15.12.015; and

WHEREAS, both the City and the District have the authority to perform fire inspections, pursuant to UFC Sec. 103.3.1.1; and

WHEREAS, the District acknowledges that nothing in this Interlocal Agreement or Title 52 RCW grants code enforcement authority to the District (see, RCW 52.12.031(6)); and

WHEREAS, the City desires to contract with the District for the provision of fire inspection services within the City, for the purpose of ascertaining and causing to be corrected any conditions which would reasonably tend to cause fire or contribute to its spread, or any violation of the purpose or provisions of the Uniform Fire Code, as adopted by the City, and of any other law or standard affecting fire safety; and

WHEREAS, the District desires to provide such fire inspection services for the consideration described herein;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Purpose. The purpose of this Interlocal Agreement is to describe the terms and conditions under which the parties will cooperate in fire inspection services within the City of Gig Harbor.

Section 2. Services to be provided by District. The District agrees to provide the following services within the City of Gig Harbor:

**A. Inspections.**

1. **Schedule.** Qualified District personnel will inspect buildings and structures in the City, in accordance with the inspection schedule attached hereto as Exhibit A, provided that all buildings except single family, up to four-plex in size with adjacent garage or other accessory structure shall be inspected at least once annually.

2. **Inspection Notices.** The District shall be responsible for issuance of inspection notices to property owners and occupants.

3. **Property Owner's Refusal to Allow Inspection.** The District shall notify the City of any response it receives from a property owner/occupant refusing to permit the necessary inspection. The District shall take no action to attempt an inspection without permission of the City, if it receives any refusal from a property owner/occupant for a building/structure inspection.

4. **Correction Notices.** If the District discovers the presence of any condition which would reasonably tend to cause fire or contribute to its spread, or any violation of the purpose or provisions of the Uniform Fire Code, as adopted by the City, or of any other law or standard affecting fire safety, the District shall issue a Correction Notice. Such Correction Notice shall be provided to the property owner in writing within seven (7) days after the inspection. If any condition exists, which in the opinion of the District inspector, warrants immediate action to protect the public health and safety, the Emergency Correction Notice shall be provided to the property owner within 24 hours of the inspection. The District agrees to provide the City with copies of all Correction Notices within five (5) days after the Correction Notice is issued to the property owner, and to notify the City Fire Marshal within 24 hours of any inspection

warranting an emergency Correction Notice.

5. Noncompliance with Correction Notice. In the event that a property owner does not comply with a Correction Notice within thirty (30) days, the District will schedule a re-inspection. If after re-inspection, compliance is still not achieved, the District shall notify the City Fire Marshal in writing of such noncompliance. In the event the District issues an Emergency Correction Notice, and a re-inspection reveals that compliance still has not been achieved, the District shall notify the City Fire Marshal in writing within 24 hours of the re-inspection. After such notification by the District, the City shall be responsible for taking any further action to enforce the City's code.

6. The City will provide the District a copy of all preliminary and final utility and street improvement plans, subdivision plans, site plans and building plans of all new construction (except single family homes up to and including four unit dwellings) for review and comment by the District at least one week, (five working days) prior to the date required for comments. The District will forward comments to the City within one week or five working days after receipt of such plans.

Section 3. Annual Reports. The District shall provide the City with an annual report of all its activities under this Agreement, on or before the first day of December. This annual report shall include the following information:

- A. Name and position of inspector(s).
- B. Identification of all properties inspected.
- C. Identification of all Correction Notices issued;
- D. Identification of all Emergency Correction Notices issued;
- E. Identification of disposition of all situations for which Correction Notices or Emergency Correction Notices were issues; and
- F. Listing of all District expenditures relating to such inspections

Section 4. Financial Consideration(s). The City has estimated that the provision of the fire inspection services by the District within the City limits will save the City approximately \$29,900 in annual wages and benefits. The District has estimated that the fire inspection services described above will cost the District a total of \$151,490.00.



Therefore, the City agrees to make payment to the District as set forth below in order to supplement the inspection program.

Section 5. Payment. The City agrees to pay an amount equivalent to the inspection fees of \$47.00 per occupancy for inspections actually performed by the District and one-half (1/2) of District's remaining actual costs relating to those inspections within the City, for the year 20034. The District shall invoice the City for this amount quarterly, and the City shall pay the invoice within 30 days after receipt thereof, unless the City disputes any amount on such invoice. If the City objects to all or any portion of any invoice, it shall so notify the District of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

Section 6. Term.

A. **Expiration.** This Interlocal Agreement shall expire on December 31, 20034.

B. **Extension of Interlocal Agreement.** Prior to December 31, 20034 the parties will review and analyze the performance, cost effectiveness and efficiency of the District's provision of fire inspection services within the City, and the parties may agree to extend this Interlocal Agreement for one or more years, under the same or different terms and conditions. This contract may be modified by either party with agreement of the other party during an annual review prior to the expiration of the term.

C. **Termination.** The parties may terminate this Interlocal Agreement for any reason, by providing the other party six (6) months prior written notice. In the event of termination, the City shall make the payment described in Section 5 for all fire inspection services satisfactorily performed by the District prior to the effective date of termination, as described in a final invoice provided to the City.

Section 7. Relationship of Parties. In contracting for the services described in this Interlocal Agreement, the District and City are deemed for all purposes to be acting within their governmental capacities. (RCW 52.12.031(3).) No agent, employee, representative, officer or official of the District shall be or shall be deemed to be the employee, agent, representative, official or officer of the City. None of the benefits the City provides to its employees, including, but not limited to, compensation, insurance

and unemployment insurance are available from the City to the employees, agents, representatives, officers or officials of the District. The District will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, officials and officers during the performance of this Agreement.

Section 8. Discrimination. In the hiring of employees for the performance of work under this Interlocal Agreement or any subcontract hereunder, the District, or any person acting on behalf of the District, shall not, by reason of race, religion, color, sex, national origin or the presence of any sensory, mental or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

Section 9. Indemnification. The District shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries or damages caused by the sole negligence of the City. In the event of liability for negligence for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the District and the City, its officers, officials, employees, agents and volunteers, the District's liability hereunder shall only be to the extent of the District's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the District's waiver of immunity under Industrial Insurance, Title 51 RCW, or any other applicable insurance available to District employees, including, but not limited to LEOFF, chapter 41.26 RCW or PERS, chapter 41.40 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The District's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the District's employees made directly against the District.

The provisions of this section shall survive the expiration or termination of this Interlocal Agreement.

Section 10. Insurance.

A. The District shall procure and maintain for the duration of this Interlocal Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the District's provision of fire inspection services, including the work of the District's employees, agents, officials and officers.

B. Before beginning work under this Interlocal Agreement, the District shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than \$1,000,000 each accident limit, and

2. Commercial General Liability insurance no less than \$500,000 per occurrence with a \$500,000 aggregate.

C. The District is responsible for the payment of any deductible or self-insured retention that is required by any of the District's insurance policies.

D. The City of Gig Harbor shall be named as an additional insured on the District's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage described in subsection B of this section. The City reserves the right to receive a certified and complete copy of the District's insurance policies.

E. It is the intent of this Interlocal Agreement for the District's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to the City. Additionally, the District's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The District shall request from its insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least thirty (30) days in advance of any cancellation, suspension, or material change in the District's coverage.

Section 11. Ownership and Use of Records. Original documents, inspection reports, correction notices, emergency correction notices and other reports developed under this Interlocal Agreement shall belong to and become the property of the District. The City shall have the right to inspect the District's records at all reasonable times, after providing the District with at least five (5) days advance notice. Copies of the documents shall be timely provided to the City as provided in this Interlocal Agreement, or if such documents are not specifically mentioned in this Interlocal Agreement, at the City's cost for such copies. City agrees to provide similar access to existing historical records on all existing occupancies to show previous agreements or violations, and otherwise assist District in performing the inspection services.

Section 12. District's Agreement to Provide Services Consistent with Law. The District agrees to comply with all federal, state and local codes and ordinances that are now effective or become applicable to the performance of the fire inspection services described in this Interlocal Agreement. The District acknowledges that it is required by law to use the Uniform Fire Code, as adopted by the City of Gig Harbor (chapter 15.12 GHMC), pursuant to RCW 52.12.013(6).

Section 13. Inspections Performed at District's Own Risk. The District shall take all precautions necessary and shall be responsible for the safety of its employees, agents, officers and officials in the performance of the work described in this Interlocal Agreement, and shall utilize all protection necessary for that purpose. All inspections shall be performed at the District's own risk.

Section 14. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

Section 15. Venue and Attorneys' Fees. Jurisdiction of any litigation brought by either party to enforce the terms of this Interlocal Agreement shall be in Pierce County Superior Court, Pierce County Washington. This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Interlocal Agreement shall

pay the other party's expenses and reasonable attorneys' and expert witness fees.

Section 16. Written Notice. All communications regarding this Interlocal Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified in writing to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addresses listed on the signature page.

Section 17. Assignment and Modification. Any assignment of this Interlocal Agreement by the District without the written consent of the City shall be void. If the City shall give its consent to any assignment, this section shall continue in full force and effect and no further assignment shall be made without the City's consent. No waiver, alteration or modification of any of the provisions of this Interlocal Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the District.

Section 18. Entire Agreement. The written provisions and terms of this Interlocal Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer, official or employee of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Interlocal Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Interlocal Agreement and any Exhibits attached hereto.

Section 19. Severability. If any section, sentence, clause or phrase of this Interlocal Agreement is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, cause or phrase of this Interlocal Agreement.

Section 20. Effective Date. This Interlocal Agreement shall not be effective until signed by the duly authorized representative of the governing body of the parties and all of the following events occur:

- A. Filing of the Interlocal Agreement with the Pierce County Auditor; and

B. Filing of the Interlocal Agreement with the Gig Harbor City Clerk.

C. Filing of the Interlocal Agreement with the District Secretary.

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement on the date below written:

**THE CITY OF GIG HARBOR**

**PIERCE COUNTY FIRE  
PROTECTION DISTRICT NO. 5**

By \_\_\_\_\_  
Gretchen A. Wilbert  
Its Mayor

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

Notice shall be sent to:

The City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335

Pierce County Fire District No. 5  
10222 Bujacich Rd. NW  
Gig Harbor, WA 98332-8540

Attn: Mark Hoppen, City Administrator

Attn: Fire Chief

ATTEST:

\_\_\_\_\_  
Molly Towslee  
City Clerk

\_\_\_\_\_  
District Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Carol A. Morris  
City Attorney

\_\_\_\_\_  
Fire District Attorney

## EXHIBIT "A"

The following is a list and frequency of inspections to be completed by the District:

<b>Building Occupancy Type:</b>	<b>Frequency:</b>
Churches	Annual
Private Schools	Annual
Daycare	Annual
Gas Stations	Annual
Grocery Stores	Annual
Retirement Homes	Annual
Apartments	Annual
Public Schools	Annual
Paint Stores & Shooting Range	Annual
Restaurants	Annual
Retail Stores	Annual
Offices	Annual

### **Other Duties:**

1. Observe School Fire Drills Annual  
(Daycare, Private & Public Schools)
2. Inspect Christmas Trees Annual  
(Within Assembly & Office Buildings)
3. Conduct Fire Flow Hydro Tests

This list is not an all-inclusive list. This list is intended to provide a guide to show the type of inspections. It is not intended to provide an all-inclusive list of all of the buildings and structures required to be inspected by the Uniform Fire Code as adopted by the City of Gig Harbor. Section 2. of this agreement states: "...all buildings except single family, up to fourplex in size with adjacent garage or other accessory structures shall be inspected at least once annually."

### **Inspection Schedule**

In accordance with this contract and under the authority of Gig Harbor Municipal Code, Title 15 Buildings and Construction, the Fire District will perform annual fire safety inspections on all buildings and occupancies except residential structures of less than 4 dwelling units (R-3 dwelling units) and their non-commercial accessory structures.

**Exception:** Any Group A or B Occupancy having, upon inspection, no noted fire code violations for a period of three years will be allowed a one year grace period prior to its next fire code inspection. They will be sent a letter expressing the District's and City's gratitude for providing a fire safe occupancy and will be placed in the next years regular rotation for inspections. Inspections for that occupancy will be scheduled on a biannual basis thereafter provided no fire code violations are noted during scheduled inspections and the occupancy does not suffer a fire incident.

**Exception:** City owned buildings and facilities. Such buildings and facilities will be inspected on an annual basis by the City fire marshal.

### **Other Duties:**

- Observe one fire drill at each licensed daycare, private school, and public school within the City limits annually.
- Inspect natural Christmas Trees located in occupancies subject to annual fire inspections and permitted by the City under GHMC Title15.
- Provide Annual Fire Extinguisher Inspection training upon request for the purpose of implementing a fire extinguisher self-inspection program beginning in January 2004. This training will be provided by the District using the Ansul Training Manual and NFPA 10 as reference materials. This training will not release the owner/occupant from other maintenance as required in NFPA 10.
- In accordance with Chapter 4 of the 2003 International Fire Code, the District will provide emergency planning assistance and employee training.



**Exhibit B**

**Cost of Inspection Program - 2003**

*Personnel*  
(Adjusted Annually)

**Prevention Chief**

Salary and Benefits \_\_\_\_\_ 24,087.00  
(Based on .25 FTE - Supervision and Plan Review)

**Secretarial Support Position**

Salary and Benefits \_\_\_\_\_ 32,671.00  
(Based on .75 FTE in Prevention Bureau)

**Subtotal \$56,758.00**

**Prevention Specialist assigned to Code Enforcement**

Salary and Benefits (1FTE) \_\_\_\_\_ 86,232.00  
Uniforms (Annual Maintenance) \_\_\_\_\_ 500.00

Office Space & Equipment \_\_\_\_\_ 2,400.00  
(Shared Office Space)

Staff Vehicle \_\_\_\_\_ 3,600.00  
(Based on \$300 per month allocation)

Annual Continued Training \_\_\_\_\_ 2,000.00

**Subtotal \$ 94,732.00**

**Total Program Costs \$151,490.00**

**Formula for Payment**

City of Gig Harbor will pay equivalency of fees that would have been collected plus 50% of remaining costs.

*City of Gig Harbor*

805 Occupancies @ 47.00 per occupancy \_\_\_\_\_ = \$37,835.00  
50% of costs minus income from fees \_\_\_\_\_ = \$56,827.00

**Total City Costs \$ 94,662.00**

**Fire District**

50% of costs minus income from fees \_\_\_\_\_ = \$56,828.00

Exhibit "B"

**Cost of Inspection Program - 2004**

**Personnel**  
**(Adjusted Annually)**

**Prevention Chief**

Salary and Benefits 24,087.00  
(Based on .25 FTE – Supervision and Plan Review)

**Secretarial Support Position**

Salary and Benefits 32,671.00  
(Based on .75 FTE in Prevention Bureau)

**Subtotal \$56,758.00**

**Prevention Specialist assigned to Code Enforcement**

Salary and Benefits (1FTE) 86,232.00  
Uniforms (Annual Maintenance) 500.00

Office Space & Equipment 2,400.00  
(Shared Office Space)

Staff Vehicle 3,600.00  
(Based on \$300 per month allocation)

Annual Continued Training 1,250.00

**Subtotal \$ 94,732.00**

**Total Program Costs \$151,490.00**

**Formula for Payment**

City of Gig Harbor will pay equivalency of fees that would have been collected plus 50% of remaining costs.

**City of Gig Harbor**

830 Occupancies @ 47.00 per occupancy = \$39,010.00  
50% of costs minus income from fees = \$56,827.00

**Total City Costs \$ 94,662.00**

**Fire District**

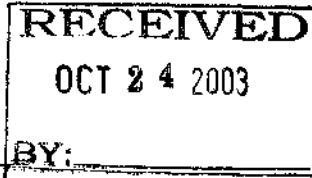
50% of costs minus income from fees = \$56,828.00



NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 10/22/03

TO: CITY OF GIG HARBOR



RE: ASSUMPTION
From KKLD, INC.
Dba UDDENBERG'S THRIFTWAY #277

APPLICANTS:

QUALITY FOOD CENTERS, INC.

GIORDANO, DONNA F

1954-05-25 524-82-6844

AALBERG, JAMES C

1949-11-21 543-54-1615

HELDMAN, PAUL W

1951-08-11 296-40-9696

License: 362719 - 1J County: 27
UBI: 601-264-128-001-0096
Tradename: QUALITY FOOD CENTER/QFC #886
Loc Addr: 3110 JUDSON AVE
GIG HARBOR WA 98335-1254

Mail Addr: PO BOX 42121
PORTLAND OR 97242-0121

Phone No.: 253-858-2400 GENNY ANDERSON

Privileges Applied For:
GROCERY STORE - BEER/WINE

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time.

- 1. Do you approve of applicant?
2. Do you approve of location?
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken?
4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based.

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR  
(BY ZIP CODE) FOR EXPIRATION DATE OF 20040229

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 DREYLING, CHERRI LYNN	THE HARBOR KITCHEN 8809 N HARBORVIEW DR GIG HARBOR WA 98332 2168	083974	BEER/WINE REST - BEER/WINE
2 WAMBOLD, MARK HENRY WAMBOLD, KYONG MI	MARCO'S RESTAURANT 7707 PIONEER WAY GIG HARBOR WA 98335 1132	074950	BEER/WINE REST - BEER/WINE OFF PREMISES
3 TERRACCIANO, MASSIMO TERRACCIANO, CINDY LOUISE	TERRACCIANO'S 3119 JUDSON ST GIG HARBOR WA 98335 1221	085087	BEER/WINE REST - BEER/WINE

RECEIVED  
NOV 4 2003  
BY: \_\_\_\_\_



**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: DAVID RODENBACH, FINANCE DIRECTOR DR**  
**DATE: NOVEMBER 3, 2003**  
**SUBJECT: SECOND READING - 2003 PROPERTY TAX LEVY ORDINANCE**

**INTRODUCTION**

This is the first reading of an ordinance setting the 2003 property tax levy for collection in 2004.

**POLICY CONSIDERATIONS**

The 2004 preliminary budget plans a 1% property tax increase over the current levy. The 2003 levy is approximately \$55,842 over the 2002 levy.

**FINANCIAL**

Property taxes are approximately 5% of the proposed 2004 General Fund revenue budget and 80% of the proposed 2004 Street Fund operating budget.

**RECOMMENDATION**

Staff recommends adoption of the ordinance.

CITY OF GIG HARBOR

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, LEVYING THE GENERAL PROPERTY TAXES FOR THE CITY OF GIG HARBOR FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2004.**

**WHEREAS**, the City Council of the City of Gig Harbor attests that the City population is 6,655; and

**WHEREAS**, the City Council of the City of Gig Harbor have properly given notice of the public hearing held October 27, 2003 to consider the City's General Fund revenue sources for the 2004 calendar year, pursuant to RCW 84.55.120; and

**WHEREAS**, the City Council of the City of Gig Harbor has considered the city's anticipated financial requirements for 2004, and the amounts necessary and available to be raised by ad valorem taxes on real and personal property,

**NOW, THEREFORE**, the City Council of the City of Gig Harbor, Washington **ORDAINS** as follows:

Section 1. The ad valorem tax general levies required to raise estimated revenues for the City of Gig Harbor for the ensuing year commencing January 1, 2004, shall be levied upon the value of real and personal property which has been set at an assessed valuation of \$925,319,569. Taxes levied upon this value shall be:

The 2003 property tax for collection in 2004 is \$1,347,650 which is an increase of \$55,842 and 1% over the 2002 levy, in addition to that resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property.

Section 2. This ordinance shall be certified by the city clerk to the clerk of the board of county council and taxes hereby levied shall be collected and paid to the Finance Director of the City of Gig Harbor at the time and in a manner provided by the laws of the state of Washington for the collection of taxes.

Section 3. This ordinance shall be published in the official newspaper of the city, and shall take effect and be in full force five (5) days after the date of its publication.

**PASSED** by the City Council of the City of Gig Harbor, Washington, and

approved by its Mayor at a regular meeting of the council held on this 10th day of November, 2003.

---

Gretchen A. Wilbert, Mayor

ATTEST:

---

Molly Towslee  
City Clerk

Filed with city clerk:  
Passed by the city council:  
Date published:  
Date effective:



**POLICE DEPARTMENT**

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MITCH BARKER** *MB*  
**SUBJECT: VICTIM ADVOCACY INTERLOCAL AGREEMENT**  
**DATE: OCTOBER 30, 2003**

**INFORMATION/BACKGROUND**

The police department wants to add the services of a Domestic Violence (DV) Victim Advocate to improve the overall investigation and prosecution of domestic violence cases as well as providing increased services to victims and potential victims of domestic violence. Pierce County has a system in place to recruit, train, and supervise DV advocates and wishes to have a shared FTE that is on-site in Gig Harbor some days of each week. To that end, we are proposing an interlocal agreement where the City would assume the costs of .5 FTE on a contract basis with the County.

The attached contract has been reviewed and approved by both the City's and the County's legal counsel.

**FISCAL IMPACTS**

The cost of .5 FTE DV Advocate is \$33,292.00 per year for 2004. This cost has been anticipated and funded within the 2004 budget.

**RECOMMENDATION**

I recommend that Council authorize the Mayor to execute the attached Victim Advocacy Interlocal Agreement.



**INTERLOCAL AGREEMENT  
BETWEEN PIERCE COUNTY AND GIG HARBOR  
VICTIM ADVOCACY – CRIMINAL JUSTICE PROGRAM**

**THIS AGREEMENT** is entered into by and between Pierce County, a political subdivision of the State of Washington (hereinafter the "COUNTY") and the City of Gig Harbor, a Washington municipal corporation (hereinafter the "CITY").

**RECITALS**

WHEREAS, the Pierce County Prosecutor's Office operates a victim advocacy program which provides the following services to a crime victim: court accompaniment, restitution determination, advocacy, referral, crisis intervention, interview support, safety planning and domestic violence education; and

WHEREAS, the CITY considers the victim advocacy program to be a valuable service to the community; and

WHEREAS, the COUNTY and the CITY may enter into interlocal agreements, pursuant to chapter 39.34 RCW; Now, Therefore,

The COUNTY and the CITY agree as follows:

**TERMS**

Section 1. Purpose. The purpose of this Agreement is to allow the COUNTY and the CITY to contract with each other, so that the COUNTY provides victim advocacy services to domestic violence victims in the CITY, and the CITY reimburses the COUNTY for such services.

Section 2. Definitions. For the purposes of this Agreement, the following definitions shall control:

A. "Domestic Violence Victims:" the Domestic Violence Victims who would receive services under this Agreement from the COUNTY are those persons who are referred to the COUNTY for Victim Advocate Services from the Gig Harbor Police Department or the Gig Harbor Municipal Court.

B. "Victim Advocate Services:" include: court accompaniment, restitution determination, advocacy, referral, crisis intervention, interview support, safety planning and domestic violence education. The type of services needed in any particular situation will be determined by the policies established by Justice Services in the Pierce County Prosecuting Attorney's Office and carried out by the criminal justice victim advocate.

Section 3. Services to be Provided by the COUNTY. The COUNTY Prosecutor's Office shall provide Victim Advocate Services to Domestic Violence Victims for the term established in this Agreement.

Section 4. CITY's Payment to COUNTY.

A. The CITY shall pay the COUNTY Thirty Three Thousand Two Hundred and Ninety-Two Dollars (\$33,292.00, hereinafter the "Annual Payment") for the Victim Advocate Services given to Domestic Violence Victims for the term established in this Agreement. The CITY shall submit payment to the COUNTY on or before January 31, 2004 for the initial term of the Agreement. If the Agreement is renewed, the CITY shall make payment to the COUNTY on January 31<sup>st</sup> for the term of the Agreement.

B. The COUNTY shall not increase the Annual Payment during any one-year Agreement term. If the COUNTY believes that an increase for a future term is warranted, the COUNTY must notify the CITY in writing at least ninety (90) days prior to November 1<sup>st</sup> prior to the term for which the COUNTY requests the increase.

Section 5. COUNTY's Hiring of Victim Advocate. The Victim Advocate providing the Victim Advocate Services shall be an employee of Pierce County. The CITY's payment under this Agreement shall cover the Victim Advocate's mileage, supervision, back-up, support staff and other administrative and office costs. The Victim Advocate shall have an office/computer/telephone at the County/City Building, and the CITY shall provide an office/telephone in the Gig Harbor Municipal Building during the hours that the Victim Advocate is providing services in the City of Gig Harbor.

The Victim Advocate shall maintain records to document the number of Domestic Violence Victims served, the type of services provided and the date of such services. These records shall be housed at the COUNTY, and shall be available for the City's review upon reasonable advance notice by the CITY, during regular working hours.

Section 6. Indemnification. The COUNTY shall indemnify, defend and hold harmless the CITY, its officers, officials, agents and employees, from and against any and all claims, actions and attorneys' fees in defense thereof, for injuries, sickness, or death of persons (including employees of the CITY), or damage to property, or the violation of any person's civil rights, which is caused by or arises out of the COUNTY's acts, errors or omissions with respect to the subject matter of this Agreement, or any act or omission of any agent retained by or contracted with by the COUNTY to provide services covered by this Agreement, provided, however, that:

- A. The COUNTY's obligation to indemnify, defend and hold harmless the CITY, shall not extend to injuries, sickness, death, damage or civil rights violations caused by or resulting from the actions or negligence of the CITY, its officers, officials, agents or employees; and

- B. The COUNTY's obligation to indemnify, defend and hold harmless the CITY, for injuries, sickness, death, damage or civil rights violations caused by or resulting from the concurrent actions or negligence of the COUNTY or its officers, agents or employees and the CITY or its officers, officials, agents or employees, shall apply only to the extent that the actions or negligence of the COUNTY, its officers, agents or employees caused or contributed thereto; and
- C. The COUNTY and the CITY each agree to defend, indemnify and hold the other party harmless for losses or injuries attributable to each party's own comparative negligence, and
- D. It is further specifically and expressly understood that the indemnification provided herein constitutes the COUNTY's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties; and
- E. The provisions of this indemnification section shall survive the expiration or termination of this Agreement.

Section 7. No Third Party Rights. The COUNTY and the CITY do not, by the execution of this Agreement, assume any contractual obligations to any one other than the CITY and COUNTY. The COUNTY and CITY expressly eliminate any third-party beneficiary to this Agreement.

Section 8. Term of Agreement. The initial term of this Agreement shall be for twelve (12) months. Thereafter, the Agreement may be renewed by the parties by notifying the other on November 31<sup>st</sup> during the Agreement term. The initial term of this Agreement shall commence on January 1, 2004 and terminate on December 31, 2004.

Section 9. Relationship of Parties. The COUNTY and CITY agree that the Victim Advocate shall be an employee of the COUNTY, and receive COUNTY benefits and insurance as determined by the COUNTY. The COUNTY shall have all hiring and supervision responsibilities for the Victim Advocate. None of the benefits the City provides to its employees, such as compensation, insurance and unemployment insurance are available from the CITY to the Victim Advocate or any other COUNTY employee or agent. The COUNTY shall be solely and entirely responsible for its acts and the acts of its officers employees, agents, consultants/subconsultants during the term of this Agreement.

Section 10. Insurance. The COUNTY shall procure and maintain, for the duration of this Agreement, insurance (or self-insurance) for injuries to persons or damage to property which may arise from or in connection with the performance of this Agreement by the COUNTY, its officers, employees, agents or consultants/subconsultants.

Section 11. Termination. The CITY may terminate this Agreement for any reason by providing the COUNTY with written notice at least ninety (90) days prior to the expiration date of the Agreement (which is December 31<sup>st</sup> annually).

Section 12. Notice. All communications regarding this Agreement shall be sent to the parties at the addresses and phone numbers listed below. Unless otherwise specified, any written notice hereunder shall become effective on the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CITY OF GIG HARBOR

Mitch Barker, Police Chief  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 851-2236

PIERCE COUNTY

Eileen O'Brien, Supervisor  
Pierce County Prosecuting Attorney's Office  
930 Tacoma Ave, Rm 946  
Tacoma, WA 98402  
(253) 798-6725

Section 13. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed as a waiver or relinquishment of said covenant, agreement or option, and the same shall be and remain in full force and effect.

Section 14. Resolution of Disputes and Governing Law. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Administrator. If any dispute arises between the CITY and COUNTY which cannot be resolved by the City Administrator's determination in a reasonable time, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington, or the U.S. District Court, Western District of Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

Section 15. Modification. No waiver, modification or alteration of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the CITY and the COUNTY.

Section 16. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of the CITY or the COUNTY, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement.

Section 17. Effective Date. This Agreement shall be effective upon the latest of the following events: execution of the Agreement by the duly authorized representatives of the parties, and filing with the CITY clerk and COUNTY auditor.

IN WITNESS WHEREOF, the parties warrant that the persons signing this Agreement below have the authority to sign on behalf of the CITY or COUNTY, and have executed this Agreement on the dates below stated:

**CITY OF GIG HARBOR**

**PIERCE COUNTY**

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Molly Towslee, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Carol A. Morris, City Attorney



**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: DAVID RODENBACH, FINANCE DIRECTOR**  
**SUBJECT: FIRST READING - 2004 BUDGET ORDINANCE**  
**DATE: NOVEMBER 5, 2003**

### **BACKGROUND**

The total 2004 proposed budget is \$20,466,513.

The General Fund accounts for 42 percent of total expenditures, while Special Revenue (Streets, Drug Investigation, Hotel - Motel, Public Art Capital Projects, Park Development, Civic Center Debt Reserve, Property Acquisition, General Government Capital Improvement, LID No. 99-1 Project, Impact Fee Trust and Lighthouse Maintenance) and Enterprise Funds (Water, Sewer and Storm Drainage) are 25 percent and 28 percent of total expenditures. General government debt service payments are 5 percent of 2004 budgeted expenditures.

The 2004 proposed budget includes two new funds. The Public Art Capital Projects Fund will accumulate unspent appropriations of the Arts Commission for future purchases of public art and the Park Development Fund will accumulate resources, mostly from General Fund transfers, for further development and enhancement of city parks. This budget also converts the General Government Capital Assets Fund into the Property Acquisition Fund. This fund has a dedicated annual revenue stream (the first one-quarter percent real estate excise tax) of approximately \$125,000.

This budget includes five additional positions; Court Clerk, Community Service Officer, Temporary Mechanic Assistant, Temporary Construction Inspector and a part-time Temporary Laborer are included in this budget.

In addition to the 2004 proposed budget ordinance, changes to the budget resulting from the November 4th and 5th study sessions are attached.

### **RECOMMENDATION**

Staff recommends adoption of the 2004 budget ordinance after a second reading.

Section 2. Estimated resources, including beginning fund balances, for each separate fund of the City of Gig Harbor, and aggregate total for all funds combined, for the year 2004 are set forth in summary form below, and are hereby appropriated for expenditure during the year 2004 as set forth below:

**2004 BUDGET APPROPRIATIONS**

<u>FUND / DEPARTMENT</u>	<u>AMOUNT</u>
001 GENERAL GOVERNMENT	
01 NON-DEPARTMENTAL	\$2,325,700
02 LEGISLATIVE	30,600
03 MUNICIPAL COURT	423,420
04 ADMINISTRATIVE/FINANCIAL	700,160
06 POLICE	<del>2,002,950</del> <u>1,963,950</u>
14 PLANNING / BUILDING	950,850
15 PARKS AND RECREATION	678,550
16 BUILDING	236,900
19 ENDING FUND BALANCE	<del>1,034,540</del> <u>1,073,540</u>
001 TOTAL GENERAL FUND	8,383,670
101 STREET FUND	2,239,377
105 DRUG INVESTIGATION FUND	287
107 HOTEL-MOTEL FUND	423,922
108 PUBLIC ART CAPITAL PROJECTS	10,250
109 PARK DEVELOPMENT FUND	122,970
110 CIVIC CENTER DEBT RESERVE	1,427,850
208 LTGO BOND REDEMPTION	918,385
209 2000 NOTE REDEMPTION	121,204
210 LID 99-1 GUARANTY	82,785
301 PROPERTY ACQUISITION FUND	339,348
305 GENERAL GOVT. CAPITAL IMPROVEMENT	413,154
309 IMPACT FEE TRUST	150,000
401 WATER OPERATING	1,103,761
402 SEWER OPERATING	1,713,315
407 UTILITY RESERVE	82,919
408 UTILITY BOND REDEMPTION FUND	648,886
410 SEWER CAPITAL CONSTRUCTION	1,352,715
411 STORM SEWER OPERATING	719,900
420 WATER CAPITAL ASSETS	210,094
605 LIGHTHOUSE MAINTENANCE TRUST	<u>1,721</u>
TOTAL ALL FUNDS	<u>\$ 20,466,513</u>

Section 3. Attachment "A" is adopted as the 2004 personnel salary schedule.

Section 4. The city clerk is directed to transmit a certified copy of the 2004 budget hereby adopted to the Division of Municipal Corporations in the Office of the State Auditor and to the Association of Washington Cities.

Section 5. This ordinance shall be in force and take effect five (5) days after its publication according to law.

**PASSED** by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the council held on this 24th day of November, 2003.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Molly Towslee, City Clerk

Filed with city clerk:  
Passed by the city council:  
Date published:  
Date effective:



## ATTACHMENT "A"

### 2004 Salary Schedule

<b>POSITION</b>	<b>Minimum</b>	<b>Maximum</b>
City Administrator	<u>\$6,986</u> 6,849	<u>\$8,733</u> 8,564
Chief of Police	<u>5,704</u> 5,592	<u>7,130</u> 6,990
Community Development Director	<u>5,688</u> 5,576	<u>7,110</u> 6,970
Finance Director	<u>5,668</u> 5,557	<u>7,085</u> 6,946
Police Lieutenant	<u>5,289</u> 5,185	<u>6,611</u> 6,484
City Engineer	<u>4,949</u> 4,854	<u>6,186</u> 6,064
Director of Operations	<u>4,949</u> 4,854	<u>6,186</u> 6,064
Information Systems Manager	<u>4,949</u> 4,854	<u>6,186</u> 6,064
Planning/Building Manager	<u>4,949</u> 4,854	<u>6,186</u> 6,064
Fire Marshall/Building Official	<u>4,685</u> 4,593	<u>5,856</u> 5,744
Police Sergeant	4,582	5,728
Senior Planner	<u>4,389</u> 4,303	<u>5,486</u> 5,379
City Clerk	<u>4,383</u> 4,297	<u>5,479</u> 5,374
Treatment Plant Supervisor	<u>4,365</u> 4,279	<u>5,456</u> 5,349
Accountant	<u>4,277</u> 4,193	<u>5,346</u> 5,244
Associate Engineer	<u>4,189</u> 4,107	<u>5,236</u> 5,134
Court Administrator	<u>4,123</u> 4,042	<u>5,154</u> 5,053
Assistant Building Official	<u>4,076</u> 3,996	<u>5,095</u> 4,995
Field Supervisor	<u>3,983</u> 3,905	<u>4,979</u> 4,884
Marketing Director	<u>3,944</u> 3,867	<u>4,930</u> 4,834
Associate Planner	<u>3,709</u> 3,636	<u>4,636</u> 4,545
Police Officer	3,596	4,495
Planning/Building Inspector	<u>3,537</u> 3,468	<u>4,421</u> 4,335
Construction Inspector	<u>3,537</u> 3,468	<u>4,421</u> 4,335
Mechanic	<u>3,496</u> 3,427	<u>4,370</u> 4,284
Treatment Plant Operator	<u>3,440</u> 3,373	<u>4,300</u> 4,216
Engineering Technician	<u>3,438</u> 3,374	<u>4,298</u> 4,214
Maintenance Worker	<u>3,342</u> 3,276	<u>4,178</u> 4,095
Assistant City Clerk	<u>3,287</u> 3,223	<u>4,109</u> 4,029
Information Systems Assistant	<u>3,118</u> 3,057	<u>3,898</u> 3,824
Finance Technician	<u>3,023</u> 2,964	<u>3,779</u> 3,705
Community Services Officer	2,954	3,693
Community Development Assistant	<u>2,890</u> 2,833	<u>3,613</u> 3,544
Court Clerk	<u>2,695</u> 2,642	<u>3,369</u> 3,303
Custodian	<u>2,684</u> 2,634	<u>3,355</u> 3,289
Laborer	<u>2,684</u> 2,634	<u>3,355</u> 3,289
Mechanic Assistant	2,684	3,355
Police Services Specialist	<u>2,569</u> 2,519	<u>3,211</u> 3,149
Community Development Clerk	<u>2,350</u> 2,304	<u>2,938</u> 2,880
Administrative Receptionist	<u>\$2,350</u> 2,304	<u>\$2,938</u> 2,880

11. **Hire a city lobbyist.** Hire someone to represent the city's policy interests as necessary. **\$10,000 - June.**

### Information Systems

1. **Bogue Volunteer Center.** The City will be reusing a surplus server at the Bogue Volunteer Center. Currently, the site has no server of any kind and a very basic workgroup (peer to peer). This means important data & database resides on only one PC (which is shared). If they lose the hard drive the data is gone. Currently they are backing up to CD but that will only last a short time until the database becomes too large for CD. The server has the disk capacity for a small agency such as the volunteer center and will provide a genuine network configuration preserving data files. It also contains a tape drive for backup operations. An additional necessity will be a few backup battery/surge suppressors to protect systems in the event of power failure. **\$250 - June.**
2. **Web council packet, ordinance and public user search & retrieval system.** In lieu of purchasing a document retrieval system priced at 15k, which the public would have no access to, we will contract for web development on a document search & retrieval tool for use internally as well as public use (externally) via the web. This saves a tremendous investment in an application and additionally city personnel and the public will use the same functional tool from the website for search capabilities. This will be a database application front-end with Adobe Acrobat formats for documentation. Additionally this will protect the City's network from public access. **\$4,500 - August.**
3. ~~**Admin Westlaw.** Install a public use access terminal & virtual law library. Provides localized legal information services to residents of Pierce County in Gig Harbor and the Key Peninsula. **\$4,000 - July.**~~

2004  
NARRATIVE OF OBJECTIVES

1. **Wilkinson Farm.** Use existing park staff to maintain and improve public access. **December.**
2. **Pedestrian facilities.** Work with Pierce Transit and Planning for design and construction of additional Gig Harbor transit/pedestrian shelters. **\$5,000 - December.**
3. ~~**Sign repairs.** Sign repairs and/or replacement(s) at the city's parks and gateways. **\$15,000 - December.**~~ **Sign placement and repair.** Provide informational signage and markers at significant locations and/or repair existing signage. **\$15,000 - December.**
4. **Holiday decorations.** Decorate streetscapes along city arterials with cedar garlands and seasonal banners throughout the winter holiday season. These would be decorated with 4" bows to bring a warm, festive look to the harbor. **\$7,500 - November.**
5. **Continue an Arts Commission Project Support Program.** Continue an Arts Commission Project Support Program to provide funding to nonprofit art and cultural arts organizations that provide benefit for city residents. The program will also fund non-profit organizations that want to do arts projects that involve city residents, such as community service organizations, civic organizations, or libraries. Projects that benefit city residents are the core focus. Project grants can include concerts, theatre productions, visual art exhibits, art festivals, or a broad range of arts-related services. **\$10,000 \$20,000 - December.**
6. ~~**Arts Program Specialist.** Work jointly with Pierce County to develop a county staff position to promote, organize and supervise community art activities. **\$10,000 - February.**~~
7. **Donkey Creek Park.** Continue to coordinate the design and construction of the Donkey Creek Park. Provide picnic tables, benches and nature interpretive center. **\$20,000 - December.**
8. **Skate Park.** Purchase and install 2 new spring toys in the play area. **\$2,500 - April.**
9. **Park restroom time locks.** Install time locks on the restroom doors at, Grandview Forest Park, City Park, and Finholm View Climb so they can be closed and opened automatically. **\$9,000 - March.**
10. **Adam Tallman Park.** Construct 2,800 lf of asphalt pathway on the existing gravel nature trail around the wetland providing a more pedestrian walkable surface. **\$35,000 - June.**

2004  
NARRATIVE OF OBJECTIVES

1. **Olympic Drive and 56th Street.** Acquire additional right of way necessary for the Olympic Drive and 56<sup>th</sup> Street Project and acquire the necessary right of way for the 56th Street/Point Fosdick Street Project. **December.**
2. **56th Street/Point Fosdick Drive.** Complete the street design for 56th Street/Point Fosdick Drive from the Olympic intersection to the 56th/Olympic intersection. The improvements include reconstruction of the roadway to provide 3 lanes with bicycle lanes, curb, gutter and sidewalk with landscape planter strip on one side. **\$175,000 - December.**
3. **Annual street rehabilitation and resurfacing.** Consistent with the city's new pavement management system, the city will perform asphalt overlays on various city streets. Roadways include sections of Point Fosdick Dr., Franklin St., Lewis St., Vernhardson St. and Harborview Drive. The city will also chip-seal up to approximately four two lane-miles of city streets in priority areas throughout the city. **\$75,000 - November.**
4. **Curbs, gutters and sidewalks.** Construct minor curb, gutter, and sidewalk and/or walkway improvements and repairs along arterials and in priority locations as identified in the sidewalk inventory program. **\$10,000 - December.**
5. **Harborview Drive crosswalk lighting system.** Design, purchase, and install in-pavement pedestrian crosswalk lighting system at Peacock Hill Ave and North Harborview Dr. including concrete crosswalk. **\$17,000 - October.**
6. **Concrete crosswalks.** Construct colored pattern cement concrete crosswalks at the intersection of Olympic Dr. and Hollycroft St. **\$15,000 - April September.**
7. **Shop improvements.** Install new light fixtures in the vehicle maintenance area to provide improved lighting for equipment repairs. **\$5,000 - September.**
8. **Pavement markings.** Install and repaint pavement markings on city streets. **\$30,000 - June.**
9. **Skansie Avenue pedestrian street improvement project.** Construct 700 linear feet (lf) of curb, gutter, sidewalk, and storm drain improvements along the western side between Rosedale Street and the new Henderson Bay Alternative High School. TIB funding assistance, \$68,000, under the Pedestrian Safety & Mobility Program will be requested. The city match will be \$30,000. **\$98,000 - September.**
10. **Edwards St.** Replace 660 lf existing rock walls that have failed with new style concrete block wall. **\$15,000 - February.**

11. **Rosedale St.** Replace the 2 streetlights at the intersection of Rosedale St and Stinson Ave with new lights that meet the lighting requirements for vehicle and pedestrian traffic. **\$10,000 - April.**
12. **Harborview Dr. sidewalk.** Replace 1,000 lf of existing sidewalk on the south side of Harborview Dr. between Stinson Ave. and Dorotich St. Coordinate with Peninsula Light Co. to install under ground utilities within this section. **\$70,000 - October.**
13. **Pioneer Way streetscape.** Construct 200 lf of sidewalk with street trees starting at the intersection of Tarabochia St. and west 200 feet. **\$5,000 - September.**
14. **45<sup>th</sup> Ave pedestrian improvements.** Design and construct curb, gutter, and sidewalk improvements along 45<sup>th</sup> Avenue between Point Fosdick Dr. to 30<sup>th</sup> Ave. **\$50,000 - October.**
15. **Interim 36<sup>th</sup>/Point Fosdick intersection improvements.** Design and construct interim intersection improvements to accommodate the new SR 16 on ramp at 36<sup>th</sup>. Interim improvements will consist of a southbound left turn lane and a northbound right turn at 36<sup>th</sup>. **\$85,000 - August.**
16. **36<sup>th</sup>/Point Fosdick intersection improvements.** Complete the design of the intersection improvements and procure right of way. **\$180,000 - December.**
17. **Stinson Ave. pedestrian improvements.** Construct phase I of the 3,600 lf of new curb, gutter, sidewalk and streetlights on the east side of Stinson Ave. between Grandview Rosedale St. and Harborview Dr. **September - \$ 100,000.**
18. **Survey monumentation.** In accordance with State Law, register recently placed survey monuments within the City. **\$10,000 - December.**
19. **Briarwood Lane.** Evaluate and install various traffic calming devices. **\$75,000 - September.**
20. **Gig Harbor/Peninsula entrance.** Develop an agreement with WSDOT, and design and construct "Welcome to the Peninsula" entrance signage, lighting, landscaping and beautification at the western bridge entrance to Gig Harbor. **\$45,000 - December. (Funding to be provided from the Hotel/Motel taxes)**

2004  
NARRATIVE OF OBJECTIVES

The following projects will be funded and managed through the Marketing Director. The Marketing Director will work directly with outside groups when necessary. Funding support may be provided for those projects approved by the Marketing Director that are in keeping with long term goals and strategic plan.

1. **Office administration.** This fund will provide the necessary funds for postage, supplies, software, letterhead, envelopes, phones (including toll-free number) memberships in pertinent tourism associations, attending conventions, tradeshows and meetings, receptionist support and other related administrative expenses. **\$12,500 - December.**
2. **Tacoma Regional Convention and Visitors Bureau.** Contribute to Gig Harbor's share of the overall marketing and promotion provided our community through the Tacoma Regional Convention and Visitors Bureau. **~~\$24,000~~ \$21,000 - February.**
3. **Kitsap Convention and Visitor Bureau (CVB).** In an effort to expand our marketing opportunities, a new partnership with the Kitsap CVB will provide us greater exposure on their website and in all their promotional materials. **\$5,000 - February**
4. ~~**Gig Harbor Peninsula Chamber of Commerce Welcome Center.** Continue to support the Welcome Center. The Welcome Center is co-funded by the Pierce County Lodging Tax and Chamber of Commerce Funds. **~~\$8,500 - December.~~**~~  
**Gig Harbor Peninsula Chamber of Commerce.** Contract with the Chamber for tourism support services such as maintenance of the tourism database and website support services. **\$4,000 - December.**
5. **Tourism marketing fund.** This objective continues and enhances the effective marketing and advertising campaign established over the past four years. The marketing campaign for 2004 is organized for the use of tourism dollars on projects and advertising that provide the greatest return on the dollar, keeping many of the same goals from 2003 and adding a new Public Relations focus to focus on garnering more editorial media in travel publications. **\$80,800 - December.**
6. **Gig Harbor/Peninsula entrance.** Develop an agreement with WSDOT, and design and construct "Welcome to the Peninsula" entrance signage, lighting, landscaping and beautification at the western bridge entrance to Gig Harbor. **\$45,000 - December.**
7. **Lodging tax capital reserve.** 10% of annual estimated revenues placed in existing reserve for future capital projects to benefit tourism. **\$18,000 - December. Note: With the \$18,000 placed in reserve during 2004, the balance in this account will be \$44,500. This balance will be applied to the Gig Harbor/Peninsula entrance sign.**

2004  
NARRATIVE OF OBJECTIVES

1. ~~Telemetry SCADA system.~~ Construct phase II of the Telemetry SCADA system for the city's wells and storage reservoirs to improve system reliability by reducing response time, and allowing more effective management of the city's resources. ~~\$70,000 - November.~~ (Accounted for in Water Capital Assets Fund 420)
2. **Washington Water Intertie.** Eliminate the unregulated intertie between Washington Water and the city's water system at Ringold and Peacock. Install pressure-regulating valves at the intersection of Prentice/Fennimore and Vernhardson/Peacock. **\$30,000 - July.** (Accounted for in Water Capital Assets Fund 420)
3. **Rescreen Well No. 6.** Rescreen the well to clean up the excessive sanding. **\$50,000 - October.** (Accounted for in Water Capital Assets Fund 420)
4. **Landscape improvements.** Install additional landscape screening at well and storage tank sites, and/or modify fencing at Skansie Avenue reservoir. **\$5,000 - ongoing.**
5. **Conservation program.** Conduct a comprehensive leak detection program for the water distribution system in conjunction with the city's water conservation program as recommended by the State Department of Health. **\$5,000 - December.**
6. **Source meter testing.** Testing of source meters in accordance with Comprehensive Water System Plan. **\$1,500 - July.**
7. **Newsletter.** Mail newsletter regarding water system performance in accordance with Department of Ecology requirements. **\$3,000 - October.**
8. **Backflow device testing and inventory.** Continue to develop an inventory of existing backflow devices throughout the city and conduct testing and repairs of any found defects in the devices. **\$10,000 - November.**
9. **Vulnerability Assessment.** A new Federal Law requires public water systems to evaluate the security of their system and prepare plans for action in the event of an emergency. This plan must be submitted to the U.S. Environmental Protection Agency no later than June 30<sup>th</sup> 2004. **\$35,000 - June.**

2004  
NARRATIVE OF OBJECTIVES

(These capital project objectives are also described under Fund 401 - Water Operating)

1. ~~Telemetry SCADA system.~~ Construct phase II of the Telemetry SCADA system for the city's wells and storage reservoirs to improve system reliability by reducing response time, and allowing more effective management of the city's resources. ~~\$70,000 - November.~~
2. **Washington Water Intertie.** Eliminate the unregulated intertie between Washington Water and the city's water system at Ringold and Peacock. Install pressure-regulating valves at the intersection of Prentice/Fennimore and Vernhardson/Peacock. **\$30,000 - July.**
3. **Rescreen Well No. 6.** Rescreen the well to clean up the excessive sanding. **\$50,000 - October.**





'THE MARITIME CITY'

ADMINISTRATION

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: DAVID RODENBACH, FINANCE DIRECTOR** DR  
**DATE: NOVEMBER 3, 2003**  
**SUBJECT: FIRST READING - ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND.**

**BACKGROUND**

Ordinance 934 confirmed the final assessment roll in the amount of \$1,889,492.42. Of this amount, \$807,659.10 remains unpaid.

**FISCAL CONSIDERATIONS**

The bond is due November 1, 2015 and carries an interest rate of 4.75%. Prepayments may be made without penalty, and all special assessments and related interest and penalties are pledged as security for payment of the bond.

**RECOMMENDATION**

Staff recommends adoption of the ordinance after second reading.

CITY OF GIG HARBOR, WASHINGTON

LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND, 2003

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ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND IN THE PRINCIPAL AMOUNT OF \$807,659.10; PROVIDING THE FORM, TERMS, CONDITIONS AND COVENANTS OF SAID BOND; PROVIDING FOR THE SALE THEREOF; AND PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE.

APPROVED ON NOVEMBER \_\_, 2003

PREPARED BY:

PRESTON GATES & ELLIS

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND IN THE PRINCIPAL AMOUNT OF \$807,659.10; PROVIDING THE FORM, TERMS, CONDITIONS AND COVENANTS OF SAID BOND; PROVIDING FOR THE SALE THEREOF; AND PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE.

WHEREAS, the City Council of the City of Gig Harbor, Washington (the "City"), by Ordinance No. 833, created Local Improvement District No. 99-1 (the "District"); and

WHEREAS, the assessment roll for the District has been confirmed in the manner required by law by Ordinance No. 934 in the amount of \$1,889,492.42, of which \$1,081,833.32 has been prepaid; and

WHEREAS, it is deemed necessary and desirable that the City issue its Local Improvement District No. 99-1 Bond in the amount of \$807,659.10, which is the amount of assessments unpaid; and

WHEREAS, the City has heretofore accepted the offer of Bank of America, N.A. to purchase the Bond on the terms and conditions set forth therein and herein;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN, AS FOLLOWS:

Section 1.     Definitions. As used in this ordinance the following terms shall have the following meanings, unless a different meaning clearly appears from the context:

**Assessments** means the assessments levied in Local Improvement District No. 99-1, which assessments are pledged to be paid into the LID No. 99-1 Fund, including installments thereof and any interest and penalties due or which may become due thereon.

**Bank** means Bank of America, N.A., or its successor or assigns.

**Bond** means the Local Improvement District No. 99-1 Bond authorized by this ordinance to be issued.

**Bond Register** means the books or records maintained by the Registrar containing the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond owned by such owner or nominee.

**City** means the City of Gig Harbor, Washington, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of Washington.

**Council** means the general legislative authority of the City as the same shall be duly and regularly constituted from time to time.

**District** means Local Improvement District No. 99-1 of the City.

**Government Obligations** has the meaning given such term in RCW Ch. 39.53, as such chapter may be hereafter amended or restated.

**Guaranty Fund** means the Guaranty Fund of the City authorized and maintained pursuant to Ch. 35.54 RCW.

**Improvements** means the street and drainage improvements made within the District as described in Ordinance No. 833.

**LID No. 99-1 Fund** means the Local Improvement District No. 99-1 Fund created by Ordinance No. 833 of the City.

*Registrar* means the Treasurer for the purposes of registering and authenticating the Bond, maintaining the Bond Register, and paying the principal of and interest on the Bond as the same become due and payable.

*Treasurer* means the Finance Director of the City, or other officer or officers succeeding to the duties of such office.

Section 2. Authorization of Bond. For the purpose of paying the costs of the Improvement and issuing the Bond, the City shall issue its Local Improvement District No. 99-1 Bond, 2003 (the "Bond") in the principal amount of \$807,659.10. The Bond shall be dated as of the date of its delivery to Bank of America, N.A. (the "Bank"), shall be in fully registered form, shall be numbered for the purpose of identification and control, shall be in the denomination of \$807,659.10, and shall bear interest from its date at the per annum rate of \_\_\_\_%, computed on the basis of a 360-day year of twelve 30-day months. Interest shall be payable annually beginning November 1, 2004, and thereafter on the 1<sup>st</sup> day of November of each year, and the Bond shall mature November 1, 2015. Principal on the Bond may be prepaid as provided in Section 4 hereof.

The Bond shall be an obligation only of the LID No. 99-1 Fund and the Local Improvement Guaranty Fund of the City (the "Guaranty Fund") and shall not be a general obligation of the City. All money received by the City in payment of, penalties, if any, and interest on the Assessments levied in the District shall be paid into the LID No. 99-1 Fund and used to pay the principal of and interest on the Bond, and as security for such payment the LID No. 99-1 Fund is hereby pledged.

Both the principal of and interest on the Bond shall be payable in lawful money of the United States of America. Interest on the Bond shall be paid by check or draft mailed to the

registered owner or assigns at the address appearing on the Bond Register as of the 15th day of the month prior to which an interest payment is due. All principal payments shall be paid by check or draft mailed to the Bank, as the registered owner of the Bond, and the amount of the principal paid shall be noted on the Bond,. Upon receipt of the final payment of principal and interest, the Bank shall surrender the Bond at the office of the Registrar for cancellation in accordance with law.

Section 3.     Registrar; Bond Register. The Treasurer shall serve as registrar and paying agent for the Bond (the "Registrar"). The Registrar shall keep, or cause to be kept, sufficient books or records for the registration of the Bond. The Registrar is authorized to authenticate and deliver the Bond in accordance with the provisions of this ordinance and to carry out all of the Registrar's powers and duties under this ordinance. The Bond Register shall be maintained by the Registrar, and shall contain the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond.

Section 4.     Redemption. The principal amount of the Bond shall be prepaid without penalty by application of Assessments and prepayments thereof, in whole or in part, on any interest payment date whenever there shall be sufficient money in the LID No. 99-1 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on the Bond. Prepayments of principal shall be noted on the Bond. No prepayments may be made from sources other than Assessments and prepayments thereof.

Notice of any such permitted intended prepayment of principal shall be given not less than 3 days prior to the date fixed for prepayment by telephone or in writing to the registered owner of the Bond. The requirements of this section shall be deemed to be complied with when

notice is mailed as herein provided regardless of whether or not it is actually received by the owner of the Bond.

Section 5. Payment of Assessments; Interest on Assessments. The City has heretofore levied Assessments payable into the LID No. 99-1 Fund by Ordinance No. 934 in the total amount of \$1,889,492.42, of which \$1,081,833.32 was prepaid prior to the passage of this ordinance and \$807,659.10 remains payable in annual installments together with interest and penalties thereon in the manner and at the times specified in Ordinance No. 934. The balance of Assessments remaining unpaid at the end of the thirty-day prepayment period shall bear interest at a rate of \_\_\_\_%, which is 1/2% greater than the interest rate on the Bond. Both principal of and interest on the Bond are payable solely out of the LID No. 99-1 Fund and from the Guaranty Fund.

Section 6. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. 1

\$807,659.10

STATE OF WASHINGTON

CITY OF GIG HARBOR

LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND, 2003

REGISTERED OWNER: Bank of America, N.A.

PRINCIPAL AMOUNT: EIGHT HUNDRED SEVEN THOUSAND SIX HUNDRED FIFTY NINE AND 10/100 DOLLARS

INTEREST RATE: \_\_\_\_%

MATURITY DATE: November 1, 2015

Laws of Washington 1965, Chapter 7, § 35.45.070 provides, in part, as follows:

Neither the holder nor owner of any bond, interest coupon, or warrant issued against a local improvement fund shall have any claim therefor against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the bond or warrant was issued and except also for payment from the local improvement guaranty fund of the city or town as to bonds issued after the creation of a local improvement guaranty fund of the city or town. The city or town shall not be liable to the holder or owner of any bond, interest coupon, or warrant for any loss to the local improvement guaranty fund occurring in the lawful operation thereof.

The City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, solely out of the sources referred to herein, on the Maturity Date set forth above, the Principal Amount set forth above in lawful money of the United States of America, with interest on the unpaid balance hereof from the date hereof at the Interest Rate per annum set forth above, payable November 1, 2004, and annually thereafter on November 1st of each year until payment of the principal sum has been made or duly provided for. Interest on and principal of this bond is payable by check or draft mailed on the date such interest is due to the registered owner hereof at the address appearing on the bond registration books as of the 15th day of the month prior to which an interest payment is due. Upon receipt of the final payment of principal and interest, the Registered Owner shall presentation and surrender the Bond at the office of the City's Treasurer (the "Registrar") for cancellation in accordance with law.

Principal of this bond is subject to prepayment in advance of its scheduled maturity, in whole or in part on any interest payment date whenever there shall be sufficient money in the LID No. 99-1 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on this bond. Prepayments of principal shall be entered below. Notice of any such intended prepayment shall be given by telephone or in writing to the Registered Owner not fewer than 3 days prior to such prepayment.

This bond, both principal and interest, is payable only out of the Local Improvement District No. 99-1 Fund (the "LID No. 99-1 Fund") created by Ordinance No. 833 of the City, and from the local improvement guaranty fund of the City created pursuant to Chapter 209, Session Laws, 1927, and acts amendatory thereof. The City has irrevocably obligated and bound itself to pay into the LID No. 99-1 Fund all assessments levied within LID No. 99-1. The owner of this bond shall have no claim therefor against the City except for payment from the special assessments made for the improvements for which this bond was issued, and except as against the local improvement guaranty fund of the City, and the City shall not be liable to any owner of such Bond for any loss to the guaranty fund occurring in the lawful operation thereof by the City. The remedy of the owner of this bond in case of nonpayment of either principal or interest shall be confined to the enforcement of the assessments and to the guaranty fund. The Bond is not a general obligation of the City.



The City has designated the Bond as a "qualified tax-exempt obligation" under Section 265(b) of the Internal Revenue Code of 1986, as amended.

This bond is authorized by Ordinance No. \_\_\_\_\_ of the City, passed on November \_\_, 2003 (the "Bond Ordinance"), and is issued to finance improvements in Local Improvement District No. 99-1.

The City hereby covenants and agrees with the owner of the Bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed. Reference is hereby made to the Bond Ordinance for the definitions of defined terms used herein.

Reference to the Bond Ordinance and any and all modifications and amendments thereto is made for a description of the nature and extent of the security for the Bond, the funds pledged, and the terms and conditions upon which the Bond is issued.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Washington and ordinances of the City, and that acts, conditions, and things required to be done precedent to and in the issuance of this bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of Gig Harbor, Washington, has caused this bond to be signed on behalf of the City with the manual or facsimile signature of its Mayor, to be attested by the manual or facsimile signature of its Clerk this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

CITY OF GIG HARBOR, WASHINGTON

[SEAL]

By \_\_\_\_\_ /s/ \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
/s/  
Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: \_\_\_\_\_

This bond is the bond described in the within-mentioned Bond Ordinance and is the Local Improvement District No. 99-1 Bond, 2003, of the City of Gig Harbor, Washington.

CITY OF GIG HARBOR  
City Treasurer, Registrar

By \_\_\_\_\_ /s/ \_\_\_\_\_

Principal Amount Paid	Payment Date

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

PLEASE INSERT SOCIAL SECURITY OR TAXPAYER IDENTIFICATION NUMBER OF  
TRANSFEREE

[Empty rectangular box for Social Security or Taxpayer Identification Number]

(Please print or typewrite name and address, including zip code, of Transferee) \_\_\_\_\_  
the within bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ of  
\_\_\_\_\_, or its successor, as Registrar to transfer said bond on the books  
kept for registration thereof with full power of substitution in the premises.

DATED: \_\_\_\_\_.

SIGNATURE GUARANTEED:  
\_\_\_\_\_

NOTE: The signature on this Assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Section 7. Execution of Bond. The Bond shall be signed on behalf of the City by the manual or facsimile signature of the Mayor, and shall be attested by the manual or facsimile signature of the Clerk.

Only such Bond as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bond shall cease to be such officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Registrar, or issued by the City, such Bond may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Bond may also be signed and attested on behalf of the City by such persons as at the actual date of execution of such Bond shall be the proper officers of the City although at the original date of such Bond any such person shall not have been such officer of the City.

Section 8. Defeasance. In the event that money and/or Government Obligations maturing at such time or times and bearing interest to be earned thereon in amounts (together with such money if necessary) sufficient to redeem and retire the Bond in accordance with its terms are set aside in a special account to effect such redemption or retirement and such money and/or the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the LID No. 99-1 Fund for the payment of the principal of and interest on the Bond, and the owner of the Bond shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the funds so set aside and pledged, and the Bond shall be deemed not to be outstanding hereunder.

Section 9. Sale of the Bond. The proposal of the Bank dated October 9, 2003 for sale of the Bond to the Bank, heretofore approved by the Council, is hereby ratified and confirmed, and the City agrees to pay the fees and perform the reporting requirements specified therein, and to pay a structuring fee to Banc of America Securities LLC. The appropriate City officials are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Bond and for the proper application and use of the proceeds thereof.

Section 10. Disposition of Bond Proceeds. The Bond proceeds shall be deposited into the LID No. 99-1 Fund and used to pay any remaining costs of the Improvements and pay costs of issuing the Bond.

Section 11. Bond Designated "Qualified Tax-Exempt Obligation." The Bond is hereby designated as a "qualified tax-exempt obligation" for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended (the "Code"). The City does not expect to issue more than \$10,000,000 in qualified tax exempt obligations during 2003.

Section 12. Lost or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed, the Registrar may execute and deliver a new Bond of like amount, date, and tenor to the registered owner thereof upon the owner paying the expenses and charges of the City in connection therewith and upon his/her filing with the Registrar evidence satisfactory to the Registrar that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the Registrar with indemnity satisfactory to the Registrar.

Section 13. Bond Not Arbitrage Bond; Not Private Activity Bond. The City covenants and agrees that throughout the term of the Bond no part of the proceeds of the Bond or any other money or obligations held under this ordinance shall at any time be used for any purpose or invested in such a manner, nor shall the City take any other action, that would cause the Bond to be (i) an "arbitrage bond" under the Code or (ii) a "private activity bond" under the Code.

Section 14. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 15. Prior Acts. Any act taken pursuant to the authority of this ordinance but prior to its effective date is hereby ratified and confirmed.

Section 16. Effective Date. This ordinance shall become effective five days from its passage and publication as required by law.

PASSED by the City Council at a regular meeting held this \_\_\_\_ day of November, 2003.

GIG HARBOR, WASHINGTON

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

First Reading: November \_\_, 2003

Date Adopted: November \_\_, 2003

Date of Publication: \_\_\_\_\_, 2003

Effective Date: \_\_\_\_\_, 2003

CERTIFICATE OF CLERK

I DO HEREBY CERTIFY that I am the duly chosen, qualified and acting Clerk of the City of Gig Harbor, Washington (the "City"), and keeper of the records of the City; and

I HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. \_\_\_ of the City (the "Ordinance"), as finally passed at a regular meeting of the City Council held on the \_\_\_ day of November, 2003, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_ day of November, 2003.

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Clerk



Bank of America  
WA1-501-34-03  
800 5<sup>th</sup> Avenue, Floor 34  
Seattle, WA 98104  
[Kerrin.m.gibbons@bankofamerica.com](mailto:Kerrin.m.gibbons@bankofamerica.com)

**Kerrin M. Gibbons**  
Senior Vice President  
Public Sector Banking

October 9, 2003

David Rodenbach  
Finance Director  
City of Gig Harbor  
3510 Grandview St  
Gig Harbor, WA 98335

Dear Dave:

Bank of America ("Bank") is pleased to provide the following proposal to finance the City's Local Improvement District Number 99-1. This letter is a proposal only and does not commit us to offer credit under these or any other terms or conditions. Please keep the contents of this letter confidential.

Proposed rates and terms are as follows:

<b>Borrower:</b>	City of Gig Harbor ("City")
<b>Amount:</b>	\$807,659.10
<b>Term:</b>	12 years. Final maturity November 1, 2015
<b>Form of Obligation:</b>	Local Improvement District Bond Tax Exempt, Bank Qualified
<b>Interest Rate:</b>	4.25% Rates are an indication only and are subject to changes in market conditions. Rates can be set upon credit approval and once closing date is known. Interest is calculated on a 30/360-day basis.
<b>Loan Fee:</b>	\$1,500.00. The City is responsible for bank counsel and bond counsel and BAS structuring fees.



- Repayments:** Principal and interest due annually every November 1<sup>st</sup> beginning November 1, 2004. Loan is fully amortizing.
- Financial Reporting Requirements:** State Audit Report within 10 days of publication.  
In-house financial statement or CAFR within eight months of year-end.  
City's Budget due within 90 days of the beginning of the budgeted cycle.
- Security:** Pledge of special assessments on affected properties and assignment of assessment liens, including net proceeds of liquidation of foreclosed properties on settlement of such assessments. To the extent that the assessment payments are not sufficient to pay the Bond, the city will utilize the LID Guarantee fund of the City to pay the Bond. 10% of the Bond proceeds will be deposited into the Guaranty Fund at Bond closing.
- Prepayment:** Any portion of the outstanding principal amount of the Bond may be prepaid by the City without penalty on each debt service payment date with funds generated from the local improvement district (including installment payments, assessment payments, surplus Bond proceeds, excess taxes levied to replenish the Guaranty Fund, delinquent payments, proceeds from foreclosure or balances in the LID Guaranty Fund). Such prepayments are to be applied first to interest and then to last principal payment due.

This financing is subject to satisfactory receipt and satisfactory review by Bank of all normal documents to be prepared by the City's bond counsel, including:

1. A legal opinion from the City's bond counsel stating the indebtedness is legal and valid, is a bank qualified transaction, and the interest income is tax-exempt to Bank;
2. A copy of the Ordinance passed by the City Council authorizing the issuance of debt;
3. Receipt of the registered bond at closing;
4. A copy of the IRS form evidencing the interest income as tax-exempt to Bank of America;

City of Gig Harbor  
October 9, 2003


5. Updated financial information as may be requested by Bank;

6. Documentation subject to review by Bank counsel.

Dave, as always, it's a pleasure to do business with you. I am available to answer any questions you may have regarding this proposal. Bank of America is pleased to be able to work with the City on this financing.

Again, this letter is a proposal for discussion purposes only and does not constitute a commitment. Any commitment is subject to receipt and further evaluation of the Borrower's financial information, credit history, and such other information as may be requested by the Bank. If the Bank subsequently commits credit, some terms, conditions and covenants may be different from or in addition to those that are stated in this letter.

Sincerely,



Kerrin M. Gibbons  
Senior Client Manager



Nancy Nuereberg  
Senior Credit Products Officer

cc Cynthia Weed, Preston, Gates & Ellis  
Peter Butterfield, Preston, Gates & Ellis  
Dave Trageser, Banc of America Securities

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**



"THE MARITIME CITY"

ADMINISTRATION

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: DAVID RODENBACH, FINANCE DIRECTOR** *DR*  
**DATE: NOVEMBER 3, 2003**  
**SUBJECT: FIRST READING - ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE AND REFUNDING BOND.**

**BACKGROUND**

The city sold a 3-year \$1.5 million bond July 31, 2001. The proceeds were used for construction of Pump Station 3A.

This bond, totaling \$1,825,000 will refinance the 3-year bond and refund the 1994 Water and Sewer Revenue and Refunding bonds, which have \$460,000 in principal outstanding and carry a 6% interest rate. The 1994 Water and Sewer Revenue and Refunding bonds will be refunded using \$401,000 currently in the Reserve Account and \$80,000 in bond proceeds.

**FISCAL CONSIDERATIONS**

This is a 10-year bond with an average annual debt service requirement of \$225,000. The estimated interest rate is 4.09%. The debt coverage requirement for net revenues is 1.25 times maximum annual debt service in a succeeding year. The 2004 proposed budget meets this requirement. The city must also fund the reserve account within 5 years. The reserve requirement is \$182,500; therefore, \$36,500 will be placed into the Reserve Account annually.

**RECOMMENDATION**

Staff recommends adoption of the ordinance after a second reading.

CITY OF GIG HARBOR, WASHINGTON

WATER AND SEWER REVENUE AND REFUNDING BOND, 2003

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE AND REFUNDING BOND OF THE CITY IN THE PRINCIPAL AMOUNT OF \$1,825,000 TO PROVIDE PERMANENT FINANCING FOR CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY AND TO REFUND ON A CURRENT BASIS CERTAIN OUTSTANDING WATER AND SEWER REVENUE AND REFUNDING BONDS OF THE CITY; PROVIDING THE DATE, FORM, TERMS AND MATURITY OF THE BOND; AND APPROVING THE SALE OF THE BOND.

APPROVED ON NOVEMBER \_\_, 2003

PREPARED BY:

PRESTON GATES & ELLIS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE AND REFUNDING BOND OF THE CITY IN THE PRINCIPAL AMOUNT OF \$1,825,000 TO PROVIDE PERMANENT FINANCING FOR CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY AND TO REFUND ON A CURRENT BASIS CERTAIN OUTSTANDING WATER AND SEWER REVENUE AND REFUNDING BONDS OF THE CITY; PROVIDING THE DATE, FORM, TERMS AND MATURITY OF THE BOND; AND APPROVING THE SALE OF THE BOND.

WHEREAS, the City of Gig Harbor the ("City") issued its Water and Sewer Revenue Bond Anticipation Note, 2001 (Junior Lien) in the principal amount of \$1,500,000 (the "Note") authorized by Ordinance No. 887 of the City for the purpose of providing temporary financing for certain improvement to the System (the "Improvements"); and

WHEREAS, Ordinance No. 887 authorizes prepayment of the Note on any date, subject to certain penalties specified therein; and

WHEREAS, the City has issued its Water and Sewer Revenue and Refunding Bonds, 1994 dated July 1, 1994, issued pursuant to Ordinance No. 677 in the original principal amount of \$2,995,000 and currently remaining outstanding maturing on September 1 of the following years and bearing interest at the following rates:

<u>Maturity Years (September 1)</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>
2004	\$300,000	6.00%
2005	160,000	6.10

(the "1994 Bonds")

WHEREAS, Ordinance No. 677 authorizes the defeasance and redemption on March 1, 2004 of the 1994 Bonds at a price of par plus accrued interest; and

WHEREAS, it is now deemed necessary and desirable to issue and sell a water and sewer revenue and refunding bond in order to provide permanent financing for the Improvements (by pre-paying the Note) and to refund the 1994 Bonds; and

WHEREAS, the City has received an offer from Bank of America, N.A. to purchase such revenue and refunding bond on terms and conditions that are acceptable to this Council; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON DOES ORDAIN, as follows:

Section 1.     Definitions. As used in this ordinance, unless a different meaning clearly appears from the context:

*Acquired Obligations* means the Government Obligations acquired by the City under the terms of this ordinance to effect the defeasance and refunding of the 1994 Bonds.

*Annual Debt Service* means, with respect to any issue of Parity Bonds, the amount required in a given calendar year for the payment of the principal of and interest on such Parity Bonds.

*Assessments* means any assessments levied in any utility local improvement district of the City created for the acquisition or construction of additions and improvements to and extensions of the System, if such assessments are pledged to be paid into the Bond Fund. The word *Assessments* shall also include any installments of assessments and any interest or penalties which may be due thereon.

*Assessment Income* means the principal of and interest on assessments levied in any utility local improvement district and pledged to be paid into the Bond Fund. In the case of

assessments payable in installments, Assessment Income shall be allocated to the years in which it would be received if the unpaid principal balance of each assessment roll were paid in equal principal amounts over the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming the assessment roll.

***Average Annual Debt Service*** means the average amount of annual debt service which will become due in any fiscal year hereafter on all Parity Bonds then outstanding.

***Bank*** means Bank of America, N.A., or its successor or assigns.

***Bond*** means the City of Gig Harbor, Washington Water and Sewer Revenue and Refunding Bond, 2003, issued pursuant to this ordinance.

***Bond Fund*** means the City of Gig Harbor Utility Bond Redemption Fund created in the office of the Treasurer of the City pursuant to Section 13 of Ordinance No. 468.

***Bond Register*** means the books or records maintained by the Registrar containing the name and mailing address of the owner of the Bond or nominee of the owner and the remaining principal amount of the Bond held by the owner or nominee.

***City*** means the City of Gig Harbor, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington.

***Code*** means the federal Internal Revenue Code of 1986, as the same shall be amended from time to time, and all regulations promulgated or applicable thereunder.

***Costs of Maintenance and Operation*** mean all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses with respect to the System, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the System, municipal taxes or payments to the City in lieu of taxes.

**Council** means the City Council as the general legislative authority of the City as the same shall be duly and regularly constituted from time to time.

**Debt Service Account** means the account of that name created in the Bond Fund by Ordinance No. 468.

**Future Parity Bonds** means any water and sewer revenue bonds which the City may hereafter issue having a lien upon the Revenue of the System for the payment of the principal thereof and interest thereon equal to the lien upon the Revenue of the System of the Bonds.

**Improvements** means those additions, betterments and improvements to the System authorized by Ordinance No. 667.

**Maximum Annual Debt Service** means the highest remaining Annual Debt Service Requirement for outstanding Parity Bonds.

**Net Revenue** means the Revenue of the System less the Costs of Maintenance and Operation.

**1994 Bonds** means the City's Water and Sewer Revenue and Refunding Bonds, 1994 dated July 1, 1994, issued pursuant to Ordinance No. 677 in the original principal amount of \$2,995,000 and currently remaining outstanding maturing on September 1 of the following years and bearing interest at the following rates:

<u>Maturity Years (September 1)</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>
2004	\$300,000	6.00%
2005	160,000	6.10

**1994 Bond Ordinance** means Ordinance No. 677 of the City.



**Note** means the City's Water and Sewer Revenue Bond Anticipation Notes, 2001 (Junior Lien), issued pursuant to Ordinance No. 667 under date of July 31, 2001 in the principal amount of \$1,500,000.

**Parity Bonds** means the Bond and any Future Parity Bonds.

**Refunding Account** means the account by that name established within the Bond Fund pursuant to Section 6 of this ordinance.

**Registrar** means the Treasurer of the City as registrar and paying agent for the Bond.

**Registered Owner** means the person in whose name the Bond is registered on the Bond Register.

**Reserve Account** means the account created in the Bond Fund by Section 15 of Ordinance No. 468 and shall include any subaccount created therein.

**Reserve Account Requirement** means the lesser of (A) 10% of the net proceeds of each series of Parity Bonds, (B) Maximum Annual Debt Service, (C) 1.25 times average Annual Debt Service, or (D) such amount as shall be required to maintain the exemption of interest of any series of Parity Bonds from taxation under the Code.

**Revenue Fund** means the "City of Gig Harbor Utility Revenue Fund" authorized to be created by Section 12 of Ordinance No. 468, into which fund all of the Revenue of the System is to be deposited, as collected. The Revenue Fund may be maintained as one or more separate funds of the City into which all of the Revenue of the System shall be deposited.

**Revenue of the System** means all earnings, revenue and moneys received by the City from or on account of the operation of the System, including the income from investments of money in the Revenue Fund and the Bond Fund or from any other investment thereof. "Revenue

of the System” shall also include any federal or state reimbursements of operating expenses to the extent such expenses are included as “Costs of Maintenance and Operation.”

*System* means the existing sanitary sewerage collection and treatment system of the City, as it now exists and as it may later be added to, extended and improved, and the existing water supply and distribution system of the City, as it now exists and as it may later be added to, extended and improved for as long as any Parity Bonds remain outstanding.

*Term Bonds* means any Parity Bonds identified as such in the ordinance authorizing the issuance thereof, the payment of which is provided for by a requirement for mandatory deposits of money into a “sinking fund account” in the Bond Fund.

*Treasurer* means the Finance Director of the City.

**Rules of Interpretation.** In this Ordinance, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several articles and sections of this Ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely

for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect;

(e) All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and

(f) Words importing the singular number include the plural number and vice versa.

Section 2. Authorization of the Bond. For the purpose of pre-paying the Note, refunding the 1994 Bonds and paying costs of issuance, the City Council hereby authorizes the issuance and sale of its water and sewer revenue and refunding bond (the "Bond"). The Bond shall be designated as the "City of Gig Harbor, Washington, Water and Sewer Revenue and Refunding Bond, 2003," shall be dated as of its date of delivery, shall be issued in fully registered form in the denomination of \$1,825,000, shall bear interest on unpaid principal from its date at a per annum rate of \_\_\_\_% (calculated on the basis of a 360-day year with twelve 30-day months), payable on the first days of each March and September, commencing March 1, 2004, shall mature on September 1, 2013 and shall be payable in installments of principal on September 1 of the following years in the following amounts:

<u>Year</u> <u>(September 1)</u>	<u>Principal Payment</u>
2004	\$115,000
2005	160,000
2006	165,000
2007	170,000
2008	185,000
2009	190,000
2010	200,000
2011	205,000
2012	215,000
2013	220,000

The Bond shall not be a general obligation of the City. The Bond shall be an obligation only of the Bond Fund and shall be payable and secured as provided herein. The Bond does not constitute an indebtedness of the City within the meaning of the constitutional provisions and limitations of the State of Washington.

The Treasurer shall act as transfer agent, paying agent and registrar for the Bond (the "Registrar"). Both principal of and interest on the Bond shall be payable in lawful money of the United States of America. Upon final payment of all principal and interest thereon, the Bond shall be submitted to the Registrar for cancellation and surrender.

The Bond Register shall be maintained by the Registrar, and shall contain the name and mailing address of the registered owner of the Bond or nominee of such registered owner.

The Bond may be transferred only on the Bond Register maintained by the Registrar for that purpose upon the surrender thereof by the registered owner or nominee or his duly authorized agent and only if endorsed in the manner provided thereon and thereupon a new fully registered Bond of like principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor. Such exchange or transfer shall be without cost to the owner or transferee.

Section 3. Optional Redemption. The City has reserved the right to prepay the Bond prior to its maturity in whole or in part at any time, upon at least 5 days' written notice to the Bank subject only to prepayment fees as stated in Exhibit A attached hereto.

Section 4. Priority of Payments from Revenue Fund There has heretofore been established in the office of the Treasurer a special fund of the City known as the "City of Gig Harbor Utility Revenue Fund" (the "Revenue Fund"), into which the Revenue of the System is deposited as collected. The Revenue Fund shall be held separate and apart from all other funds

and accounts of the City, and the Revenue of the System shall be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation of the System;

Second, to make all payments required to be made into the Bond Fund to pay the interest on any Parity Bonds;

Third, to make all payments required to be made into the Bond Fund to pay the maturing principal of any Parity Bonds;

Fourth, to make all payments required to be made into the Reserve Account created to secure the payment of the Parity Bonds;

Fifth, to make all payments required to be made into any other revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the City having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

Sixth, to retire by redemption or purchase any outstanding revenue bonds or revenue warrants of the City, to make necessary additions, betterments and improvements and repairs to or extensions and replacements of the System, or for any other lawful City purposes.

Section 5. Bond Fund. A special fund of the City known as the "Utility Bond Redemption Fund" (the "Bond Fund") has heretofore been created by the City for the sole purpose of paying and securing the payment of Parity Bonds.

(a) *Payments into Debt Service Account.* A special account to be known as the "Debt Service Account" has heretofore been created in the Bond Fund for the purpose of paying the principal of, premium, if any, and interest on Parity Bonds.

As long as any Parity Bonds remain outstanding, the City hereby obligates and binds itself to set aside and pay from the Bond Fund into the Debt Service Account those amounts necessary, together with such other funds as are on hand and available in the Debt Service Account, to pay the principal of and the interest on such Parity Bonds as the same respectively become due and payable. Such payments from the Bond Fund shall be made in a fixed amount without regard to any fixed proportion on or before the 20th day of each month, an amount such that, if the same amount were so set aside and paid into said Debt Service Account on the 20th day of each succeeding calendar month thereafter prior to the next date upon which an installment of interest or principal and interest falls due on the Bonds, the aggregate of the amounts so set aside and paid into the Debt Service Account will on such date be equal to the installment of interest or principal and interest.

(b) *Payments into Reserve Account.* A Utility Reserve Account has heretofore been created in the Bond Fund for the purpose of securing the payment of the principal of and the interest on all bonds payable out of such Fund.

In the event that the City issues any Term Bonds in the future and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the term Average Annual Debt Service shall be deemed to exclude from principal an amount of Term Bonds equal to such mandatory payments, and from interest, the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the dates of the respective deposits.

The City hereby further covenants and agrees that in the event it issues any Future Parity Bonds that it will provide in the ordinance authorizing the issuance of the same that it will pay

into the Reserve Account out of the Revenue of the System or Assessments (or, at the option of the City, out of any other funds on hand legally available for such purpose) not less than approximately equal additional annual payments so that by five years from the date of such Future Parity Bonds there will have been paid into the Reserve Account an amount which, with the money already on deposit therein, (or insurance policy or letter(s) of credit), will be equal to the Reserve Requirement.

The City further covenants and agrees that when the required deposits have been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Reserve Requirement. Whenever there is a sufficient amount in the Revenue Bond Fund, including the Reserve Account and the Debt Service Account, to pay the principal of, premium if any, and interest on all outstanding Parity Bonds, the money in the Reserve Account may be used to pay such principal, premium and interest. Money in the Reserve Account may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any outstanding Parity Bonds, as long as the monies left remaining on deposit in the Reserve Account are equal to the Reserve Requirement.

In the event there shall be a deficiency in the Debt Service Account to meet maturing installments of either interest on or principal of and interest on the outstanding bonds payable out of such Account, such deficiency shall be made up from the Reserve Account by the withdrawal of monies therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up out of Revenue of the System or Assessments after making necessary provision for the payments required to be made by subparagraphs First, Second, Third, Fourth and Fifth of Section 4 hereof.

(c) *Priority of Lien of Payments into Bond Fund.* The amounts so pledged to be paid into the Bond Fund are hereby declared to be a lien and charge upon the Revenue of the System junior in lien to the Costs of Maintenance and Operation, equal to the lien of the charges upon such Revenue to pay and secure the payment of the principal of and interest on any Future Parity Bonds, and prior and superior to all other charges of any kind or nature whatsoever.

(d) *Application and Investment of Money in the Bond Fund.* Moneys in the Bond Fund shall be invested in any investments that are permitted by law for the investment of City funds. Investments in the Debt Service Account shall mature prior to the date on which such money shall be needed for required interest or principal payments. Investments in the Reserve Account shall mature not later than the last maturity of the Parity Bonds secured thereby. All interest earned and income derived by virtue of such investments shall remain in the Bond Fund and be used to meet the required deposits into any account therein.

(e) *Sufficiency of Revenues.* The Council hereby finds that in fixing the amounts to be paid into the Bond Fund out of the Revenue of the System, it has exercised due regard for the Costs of Maintenance and Operation and has not obligated the City to set aside and pay into such Fund a greater amount of such Revenue than in its judgment will be available over and above the Costs of Maintenance and Operation.

Section 6. Refunding Account. There is hereby authorized to be created in the Bond Fund an account known as the "Refunding Account" which Account is to be drawn upon for the sole purpose of paying the principal of and interest on the 1994 Bonds on their date of redemption and of paying costs related to the refunding of the 1994 Bonds.

A portion of the proceeds of sale of the Bond shall be credited to the Refunding Account, and shall be used immediately upon receipt thereof to defease the 1994 Bonds as authorized by



the 1994 Bond Ordinance and to pay a portion of the costs of issuance of the Bond. The City shall defease the 1994 Bonds and discharge such obligations by the use of money in the Refunding Account to purchase certain Government Obligations (which obligations so purchased, are herein called "Acquired Obligations"), bearing such interest and maturing as to principal and interest in such amounts and at such times which, together with any necessary beginning cash balance, will provide for the payment of:

- (a) interest on the 1994 Bonds due and payable on March 1, 2004; and
- (b) the redemption price (100% of the principal amount thereof) on March 1, 2004 of the 1994 Bonds.

Such Acquired Obligations shall be purchased at a yield not greater than the yield permitted by the Code and regulations relating to acquired obligations in connection with Bond issues.

Section 7. Call For Redemption of 1994 Bonds. The City hereby irrevocably sets aside sufficient funds out of the purchase of Acquired Obligations from proceeds of the Bond to make the payments described in Section 6 of this ordinance.

The City hereby irrevocably calls the 1994 Bonds for redemption on March 1, 2004 in accordance with the provisions of the 1994 Bond Ordinance, authorizing the redemption and retirement of the 1994 Bonds prior to their fixed maturities.

Said defeasance and call for redemption of the 1994 Bonds shall be irrevocable after the final establishment of the escrow account and delivery of the Acquired Obligations.

The Treasurer is hereby authorized and directed to provide for the giving of notice of the redemption of the 1994 Bonds in accordance with the applicable provisions of the 1994 Bond Ordinance.

Section 8. Defeasance. In the event that money and/or Government Obligations maturing or having guaranteed redemption prices at the option of the holder at such time or times and bearing interest to be earned thereon in amounts (together with such money, if any) sufficient to redeem and retire the Bond in accordance with the its terms, are hereafter irrevocably set aside in a special account and pledged to effect such redemption and retirement, then no further payments need be made into the Bond Fund or any account therein for the payment of the principal of and interest on all or any portion of the Bond, and the Bond shall then cease to be entitled to any lien, benefit or security of this ordinance, except the right to receive the funds so set aside and pledged, and such Bond shall no longer be deemed to be outstanding hereunder, or under any ordinance authorizing the issuance of bonds or other indebtedness of the City.

Section 9. Tax Covenants. The City hereby covenants that it will not make any use of the proceeds of sale of the Bond or any other funds of the City which may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code which will cause the Bond to be an "arbitrage bond" within the meaning of said section. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Bond) and the applicable Regulations thereunder throughout the term of the Bond.

The City further covenants that it will not take any action or permit any action to be taken that would cause the Bond to constitute a "private activity bonds" under Section 141 of the Code.

The Bond is hereby designated as a "qualified tax-exempt obligation" pursuant to Section 265(b) of the Code for investment by financial institutions. The City does not expect to issue more than \$10,000,000 in tax-exempt obligations during 2003.

This City Council hereby finds and determines that the refunding of the 1994 Bonds by the issuance and sale of the Bond at this time will effect savings to the City. In making such

finding and determination this City Council has given consideration to the debt service requirements of the portion of the Bond attributable to the refunding of the 1994 Bonds, the debt service requirements of the 1994 Bonds, and the costs of the issuance of the Bond attributed to the refunding of the 1994 Bonds.

Section 10. Bond Covenants.

(a) *Maintenance of System.* The City shall at all time maintain, preserve and keep the properties of the System in good repair, working order and condition and will from time to time make all necessary and proper repairs, renewals, replacements, extensions and betterments thereto, so that at all times the business carried on in connection therewith will be properly and advantageously conducted and said properties of the System and the business in connection therewith administered in an efficient manner and at a reasonable cost.

(b) *Collection and Application of Assessments.* The City will promptly collect all Assessments levied in utility local improvement districts that have been heretofore created by the City and all Assessments levied in utility local improvement districts heretofore created, and all utility local improvement districts that are hereafter created to secure the payment of the principal of and interest on Parity Bonds and will pay the same into the Bond Fund. The same may be used to meet required payments into any Account of the Bond Fund and may be used to pay the principal of and interest on any Parity Bonds without said Assessments being particularly allocated to the payment of any particular series of bonds payable out of such Fund. It is hereby further provided, however, that nothing in this ordinance or in this subsection shall be construed to prohibit the City from issuing revenue bonds having a lien on the Revenue of the System and the money in the Revenue Fund junior to the lien on such revenue and money for the payment of the principal of and interest on the Bonds and pledging as security for the payment of such junior

lien bonds assessments levied in any utility local improvement district that may have been created to pay part or all of the cost of improvements to the System for which such junior revenue bonds were specifically issued.

(c) *Rates and Charges.* The City shall fix, maintain and collect rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System, which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that:

(1) the Revenue of the System derived therefrom, together with Assessments collected, will at all times be sufficient (A) to pay the Costs of Maintenance and Operation, (B) to pay the principal of and interest on all Parity Bonds, as and when the same shall become due and payable, (C) to make adequate provision for the payment of the any Term Bonds, (D) to make when due all payments which the City is obligated to make into the Reserve Account and all other payments which the City is obligated to make pursuant to this ordinance, and (F) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the revenue therefrom or payments in lieu thereof and any and all other amounts which the City may now or hereafter become obligated to pay from the Revenue of the System by law or contract; and

(2) the Net Revenue together with Assessment Income in each calendar year will equal at least 1.25 times the maximum amount required to be paid in any succeeding calendar year for the principal of and interest on all Parity Bonds then outstanding. In the event the City issues any Term Bonds, and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the words "principal of and interest on all outstanding Parity Bonds" in the preceding sentence shall be deemed to exclude from

"principal" an amount of Term Bonds equal to such mandatory payments, and from "interest" the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the date of the respective deposits.

(d) *Net Revenue.* After making or providing for the monthly payments from the Revenue Fund as required by Section 4 hereof, there shall be maintained in the Revenue Fund sufficient moneys to enable the City to meet the Costs of Maintenance and Operation of the System on a current basis. The City shall not change any rate or charge for service of the System as now established by the existing rate ordinance or ordinances that will reduce substantially the annual Net Revenues below that which would have been obtained before such change, unless the City shall have on file a certificate from a licensed professional engineer experienced in the design, construction and operation of municipal utilities or from an independent certified public accountant stating that the rates and charges as so changed will provide Net Revenues sufficient to comply with all the covenants and requirements of this ordinance.

(e) *Sale of Properties.* The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition, provision is made for the payment into the Bond Fund of cash or Government Obligations sufficient (taking into account interest to be earned on any such Government Obligations) to pay the principal of and interest on all then outstanding Parity Bonds, nor will it sell or otherwise dispose of any part of the useful operating properties of the System unless such facilities are replaced or provision is made for payment into the Bond Fund of the greatest of the following:

(1) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of

cash and investments in the Bond Fund and Accounts therein) that the Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Revenue of the System for such period; or

(2) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and Accounts therein) that the Net Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Net Revenue of the System for such period; or

(3) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the depreciated cost value of the facilities sold or disposed of bears to the depreciated cost value of the entire System immediately prior to such sale or disposition.

The proceeds of any such sale or disposition of a portion of the properties of the System (to the extent required above) shall be paid into the Reserve Account in the Bond Fund.

Notwithstanding any other provision of this paragraph, the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund.

(f) *No Encumbrances.* The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Revenue of the System, or any part thereof, prior or superior to the lien thereon for the payment of Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for

labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, or upon any funds in the hands of the City, prior to or superior to the lien of Parity Bonds, or which might impair the security of Parity Bonds.

(g) *Insurance.* The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is usually carried by private corporations operating like properties, or will implement a self-insurance program with reserves adequate, in the judgment of the Council, to protect City and the owners of the Bonds against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance shall be paid into the Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in said Reserve Account and the balance, if any, shall at the option of the City, be used either for repairs, renewals, replacements, or capital additions to the System, for the redemption of Parity Bonds, or for deposit into the Reserve Account.

(h) *Books and Accounts.* The City shall keep proper books of account which shall be kept in accordance with any applicable rules and regulations prescribed by the State of Washington. The City shall prepare, and any owner of Parity Bonds may obtain copies of, balance sheets and profit and loss statements showing in reasonable detail the financial condition of the System as of the close of each year, and the income and expenses of such year, including the amounts paid into the Revenue Fund, the Bond Fund, and into any and all special funds or

accounts created pursuant to the provisions of this ordinance, and the amounts expended for maintenance, renewals, replacements, and capital additions to the System.

(i) *No Free Service.* The City will not furnish or supply or permit the furnishing or supplying of any commodity, service or facility furnished by or in connection with the operation of the System, free of charge to any person, firm or corporation, public or private, so long as any Bonds are outstanding and unpaid.

(j) *Sound Expenditures.* The City will not expend any of the Revenues derived by it from the operation of the System or the proceeds of any indebtedness payable from Revenue of the System for any extensions, betterments and improvements to the System which are not legally required or economically sound, and which will not properly and advantageously contribute to the conduct of the business of the System in an efficient manner.

(k) *Enforcement of Collection of Service Charges and Assessments.* The City shall promptly take action to enforce the payment of delinquent service charges and Assessments by such means as are legally available.

Section 11. Issuance of Future Parity Bonds. The City hereby further covenants and agrees with the owners of each of the Bonds for as long as any of the same remain outstanding as follows:

The City will not issue any bonds having a greater or equal priority of lien upon the Revenue of the System to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such bonds than the priority of lien created on such Revenue to pay and secure the payment of the principal of and interest on the Parity Bonds except as follows:

(a) The City reserves the right to issue Future Parity Bonds for the purposes of



First, providing funds to acquire, construct, reconstruct, install, or replace any equipment, facilities, additions, betterments, or other capital improvements to the System for which it is authorized by law to issue revenue bonds, or

Second, refunding at or prior to their maturity, any revenue bond anticipation notes, or outstanding revenue bonds or other obligations payable out of the Revenue of the System and to pledge that payments will be made out of the Revenue of the System and into the Bond Fund and the Reserve Account therein to pay and secure the payment of the principal of and interest on such Future Parity Bonds on a parity with the payments required herein to be made out of such Revenue into such Fund and Account to pay and secure the payment of the principal of and interest on any Parity Bonds then outstanding, upon compliance with the following conditions:

(1) At the time of the issuance of any Future Parity Bonds there is no deficiency in the Bond Fund or the Reserve Account.

(2) If there are Assessments levied in any utility local improvement district to pay for additions and improvements to and extensions of the System which will be constructed from the proceeds of such Future Parity Bonds, the ordinance authorizing such Future Parity Bonds shall require that such Assessments be paid into the Bond Fund.

(3) If there are Assessments pledged to be paid into a warrant or bond redemption fund for revenue bonds or warrants being refunded by Future Parity Bonds, the ordinance authorizing the Future Parity Bonds shall require such Assessments to be paid into the Bond Fund.

(4) The principal of and interest on the Future Parity Bonds shall be payable out of the Bond Fund and the requirements for Reserve Account payments in Section 14(b) hereof shall be met.

(5) Prior to the delivery of any Future Parity Bonds the City shall have on file a certificate of an independent professional engineer, certified public accountant or City representative dated not earlier than 90 days prior to the date of delivery of such Future Parity Bonds and showing that the Net Revenue determined and adjusted as hereafter provided for each calendar or fiscal year after the issuance of such Parity Bonds (the "Adjusted Net Revenue") together with Assessment Income will equal at least 1.25 times the amount required in any such year for the payment of the principal of and interest on all Parity Bonds then outstanding, including the Future Parity Bonds proposed to be issued, except that the certificate of a City representative shall be based on actual historical Net Revenue of the System and no adjustments to that revenue shall be allowed. In the event the City issues any Term Bonds, and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the words "principal of and interest on all outstanding Parity Bonds" in the preceding sentence shall be deemed to exclude from "principal" an amount of Term Bonds equal to such mandatory payments, and from "interest" the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the dates of the respective deposits.

The Adjusted Net Revenue shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Parity Bonds as adjusted by such engineer or accountant to take into consideration changes in Net

Revenue estimated to occur under one or more of the following conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, shall be outstanding:

(i) any increase or decrease in Net Revenue which would result if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of such 12-month period, had been in force during the full 12-month period;

(ii) any increase or decrease in Net Revenue estimated by such Engineer or Accountant to result from any additions, betterments and improvements to and extensions of any facilities of the System which (a) became fully operational during such 12-month period, (b) were under construction at the time of such certificate or (c) will be constructed from the proceeds of the Parity Bonds to be issued;

(iii) the additional Net Revenue which would have been received if any customers added to the System during such 12-month period were customers for the entire period;

Such Engineer or Accountant shall base his or her certification upon, and his or her certificate shall have attached thereto, financial statements of the System audited by the State Examiner (unless such an audit is not available for a 12-month period within the preceding 24 months) and certified by the City Administrator, showing income and expenses for the period upon which the same is based.

The certificate of such Engineer or Accountant shall be conclusive and the only evidence required to show compliance with the provisions and requirements of this subsection (5).

Notwithstanding the foregoing requirement, if Future Parity Bonds are to be issued for the purpose of refunding at or prior to their maturity any part or all of the then outstanding Parity

Bonds and the issuance of such refunding Parity Bonds results in a debt service savings and does not require an increase of more than \$5,000 in any year for principal and interest on such refunding Parity Bonds, the certificate required by subsection (a)(5) of this section need not be obtained.

(b) Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations which are a charge upon the Revenue of the System junior or inferior to the payments required by this ordinance to be made out of such Revenue into the Bond Fund and Reserve Account to pay and secure the payment of any outstanding Parity Bonds.

(c) Nothing herein contained shall prevent the City from issuing revenue bonds to refund maturing Parity Bonds for the payment which moneys are not otherwise available.

Section 12. Form of Bond and Certificate of Authentication. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

No. R-1

\$ \_\_\_\_\_

STATE OF WASHINGTON

CITY OF GIG HARBOR

WATER AND SEWER REVENUE AND REFUNDING BOND, 2003

INTEREST RATE: \_\_\_\_\_%

MATURITY DATE: SEPTEMBER 1, 2013

REGISTERED OWNER: BANK OF AMERICA, N.A.

PRINCIPAL AMOUNT: \_\_\_\_\_ THOUSAND DOLLARS

The City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns, but solely from the Bond Fund

(hereinafter defined) on the Maturity Date the Principal Amount specified above and to pay interest thereon from the date hereof at the rate per annum of \_\_\_\_\_% computed on a 360-day year and twelve months of 30 days each.

This bond is issued pursuant to Ordinance No. \_\_\_ of the City, adopted on November \_\_, 2003 (the "Bond Ordinance"), for the purpose of providing permanent financing various capital improvements to the City's combined system of water and sewerage and to refund certain outstanding water and revenue and refunding bonds of the City, all in conformity with the Constitution and laws of the State of Washington.

Principal and Interest on this bond shall be payable as provided in the Bond Ordinance. Upon final payment of all principal and interest thereon, this bond shall be submitted to the Finance Director of the City ("Registrar") for cancellation and surrender.

The City has reserved the right to repay the principal amount of this bond in whole or in part prior to its maturity on five days' written notice subject to prepayment fees as provided in the Bond Ordinance.

This bond is payable solely out of the Revenue of the System, and does not constitute a general obligation of the City. Both principal of and interest on this bond are payable solely out of the special fund of the City known as the Bond Fund. The City does hereby pledge and bind itself to set aside and pay into the Bond Fund the amounts required by the Bond Ordinance to be paid therein on or prior to the maturity of the Bond as the same shall become due from the proceeds of the Bonds (as authorized in the Bond Ordinance) or from the sources and in the priority specified in the Bond Ordinance.

This bond is not a "private activity bond." The City has designated this bond as a qualified tax exempt obligation for investment by financial institutions pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended.

The City hereby irrevocably covenants and agrees with the Registered Owner of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed. Reference is hereby made to the Bond Ordinance for a complete statement of such covenants and for the definition of capitalized terms used herein.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Registrar.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this bond have happened, been done and performed and that the issuance of this bond and the Bond of this issue does not violate any constitutional, statutory or other limitation upon the amount of indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Gig Harbor, Washington, has caused this bond to be signed with the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk of the City, as of this \_\_\_\_ day of \_\_\_\_\_, 2003.

CITY OF GIG HARBOR, WASHINGTON

By \_\_\_\_\_ /s/ manual or facsimile  
Mayor

ATTEST:

\_\_\_\_\_/s/ manual or facsimile  
City Clerk

\*\*\*\*\*

REGISTRATION CERTIFICATE

This bond is registered in the name of the Registered Owner on the books of the City, in the office of the Treasurer (the "Registrar"), as to both principal and interest, as noted in the registration blank below. All payments of principal of and interest on this bond shall be made by the City with full acquittance by the Registrar's wire transfer, made payable to the last Registered Owner as shown hereon and on the registration books of the Registrar at his/her address noted hereon and on the registration books of the Registrar.

<u>Date of Registration</u>	<u>Name and Address of Registered Owner</u>	<u>Signature of Registrar</u>
_____, 2003	<u>Bank of America, N.A.</u> <u>800 Fifth Avenue, Floor 34</u> <u>Seattle, WA 98104</u>	_____

Section 13. Execution and Delivery of Bond. The Bond shall be executed on behalf of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk of the City. In case any officer whose signature shall appear on any Bond shall cease to be an officer before the delivery of the Bond, such signature shall nevertheless be valid and sufficient for all purposes, and the Bond may be authenticated and delivered the same as if such officer had remained in office until such delivery.

The Bond shall not be valid for any purpose until authenticated by the Registrar.

Section 14. Sale of the Bond. The City hereby accepts the proposal of the Bank, delivered to the City Council dated October 9, 2003 in accordance with the terms contained in this ordinance and said proposal and the City agrees to pay the fees and perform the reporting requirements specified therein, and to pay a structuring fee to Banc of America Securities LLC. The City officials are hereby authorized and directed to do everything necessary to complete such sale and delivery of the Bond to the purchaser thereof upon the payment of the purchase price thereof, all in accordance with this ordinance and the proposal of the Bank

Section 15. Application of Bond Proceeds. Out of the net proceeds of the Bond received by the City \$ \_\_\_\_\_ will be deposited in the Bond Fund and used together with other funds of the City available therefor to refund the 1994 Bonds as provided in Section 6 hereof, and \$ \_\_\_\_\_ will be deposited into the \_\_\_\_\_ Fund and used to pay the Note, together with pre-payment penalties as provided in Ordinance No. 887. The remainder of the net proceeds of the Bond shall be deposited into the Bond Fund and used to pay debt service on the Bond.

Section 16. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 17. Effect of Covenants, Etc. All covenants, obligations and agreements of the City contained in this ordinance shall be deemed to be covenants, obligations and agreements of

the City to the full extent authorized by the Act and permitted by the Constitution of the State of Washington. No covenant, obligation or agreement contained herein shall be deemed to be a covenant, obligation or agreement of any present or future official, member, agent or employee of the City in his or her individual capacity, and neither the members of the Council nor any officer thereof executing the Bond shall be liable personally on the Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No member, officer, agent or employee of the City shall incur any liability in acting or proceeding or in not acting or proceeding, in good faith in accordance with the terms of this ordinance.

Section 18. Ongoing Disclosure. The City is exempt from the ongoing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 by reason of the exemption set forth in subsection (d)(i) of that rule with respect to the issuance of securities in authorized denominations of \$100,000 or more.



Section 19. Effective Date. This ordinance shall be effective five days after its passage and publication in the manner required by law.

PASSED by the Council of the City of Gig Harbor, Washington at a regular meeting held on the \_\_\_\_ day of November, 2003.

CITY OF GIG HARBOR, WASHINGTON

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

First Reading: November \_\_, 2003

Date Adopted: November \_\_, 2003

Date of Publication: \_\_\_\_\_, 2003

Effective Date: \_\_\_\_\_, 2003

CERTIFICATE

I, the undersigned, City Clerk of the City of Gig Harbor, Washington (the "City") and keeper of the records of the City Council (the "Council"), DO HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. \_\_\_\_ of the Council (the "Ordinance"), duly passed at a regular meeting thereof held on the \_\_\_\_ day of July, 2003.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of November, 2003.

---

Molly Towslee, City Clerk

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Bank of America  
WA1-501-34-03  
800 5<sup>th</sup> Avenue, Floor 34  
Seattle, WA 98104  
[Kerrin.m.gibbons@bankofamerica.com](mailto:Kerrin.m.gibbons@bankofamerica.com)

**Kerrin M. Gibbons**  
Senior Vice President  
Public Sector Banking

October 9, 2003

David Rodenbach  
Finance Director  
City of Gig Harbor  
3510 Grandview St  
Gig Harbor, WA 98335

Re: Water and Sewer Revenue Bond Financing

Dear Dave:

Bank of America ("Bank") is pleased to provide the following proposal to finance the City's Water/Sewer Revenue financing. This letter is a proposal only and does not commit us to offer credit under these or any other terms or conditions. Please keep the contents of this letter confidential.

Proposed rates and terms are as follows:

<b>Borrower:</b>	City of Gig Harbor ("City")
<b>Amount:</b>	\$1,785,000.00 (estimated)
<b>Term:</b>	10 years. Final maturity September 1, 2013 Closing date no earlier than December 2, 2003
<b>Form of Obligation:</b>	Water Sewer Revenue Bond, Parity Tax Exempt, Bank Qualified
<b>Interest Rate:</b>	4.09% Rates are an indication only and are subject to changes in market conditions. Rates can be set upon credit approval and once closing date is known. Interest is calculated on a 30/360-day basis.

**Loan Fee:** \$1,500.00. The City is responsible for bank counsel, bond counsel and BAS structuring fees.

**Repayments:** Interest due semi-annually every March 1 and September 1, beginning March 1, 2004. Principal is due annually every September 1, beginning September 1, 2004. Loan is fully amortizing.

**Security:** Debt Service coverage:  
City agrees to set rates at a level adequate to produce net revenues adequate to meet maximum annual debt service in succeeding years at 1.25x coverage on parity bonds.

Reserve Account:  
City agrees to maintain in bond fund an amount equal to IRS guidelines of the lesser of three standard IRS tests on all parity bonds. City has 5 years from date of closing to fully fund reserve account.

**Financial Reporting Requirements:** State Audit Report within 10 days of publication.  
In-house financial statement or CAFR within eight months of year-end.  
City's Budget due within 90 days of the beginning of the budgeted cycle.

**Prepayment:** Balances prepaid may be subject to penalty. See attached Exhibit I prepayment language.

This financing is subject to satisfactory receipt and satisfactory review by Bank of all normal documents to be prepared by the City's bond counsel, including:

1. A legal opinion from the City's bond counsel stating the indebtedness is legal and valid, is a bank qualified transaction, and the interest income is tax-exempt to Bank;
2. A copy of the Ordinance passed by the City Council authorizing the issuance of debt;
3. Receipt of the registered bond at closing;
4. A copy of the IRS form evidencing the interest income as tax-exempt to Bank of America;

City of Gig Harbor  
October 9, 2003

5. Updated financial information as may be requested by Bank;
6. Documentation subject to review by Bank counsel.

Dave, as always, it's a pleasure doing business with you. I am available to answer any questions you may have regarding this proposal. Bank of America is pleased to be able to work with the City on this financing.

Again, this letter is a proposal for discussion purposes only and does not constitute a commitment. Any commitment is subject to receipt and further evaluation of the Borrower's financial information, credit history, and such other information as may be requested by the Bank. If the Bank subsequently commits credit, some terms, conditions and covenants may be different from or in addition to those that are stated in this letter.

Sincerely,



Kerrin M. Gibbons  
Senior Client Manager



Nancy Nuerenberg  
Senior Credit Products Officer

cc Cynthia Weed, Preston, Gates & Ellis  
Peter Butterfield, Preston, Gates & Ellis  
Dave Trageser, Banc of America Securities

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

**Prepayment  
Exhibit I**

City may prepay the Note in whole or in part at any time by paying the principal amount thereof to be prepaid together with accrued interest on the amount prepaid to the date of prepayment. Any Fixed Interest Rate Principal that is prepaid in whole or in part prior to the last day of its Fixed Interest Rate Period, as applicable, shall be subject to a prepayment fee calculated as follows:

A. The prepayment fee will be the sum of fees calculated separately for each "Prepaid Installment," as follows, or such lesser sum to which the Bank shall agree, at its sole discretion:

(1) The Bank will first determine the amount of interest which would have accrued each month for the Prepaid Installment had it remained outstanding until the applicable Original Payment Date, using the interest rate applicable to the Prepaid Installment under the Notes;

(2) the Bank will then subtract from each monthly interest amount determined in (1), above, the amount of interest which would accrue for that Prepaid Installment if it were reinvested from the date of prepayment through the Original Payment Date, using the Treasury Rate.

(3) if (1) minus (2) for the Prepaid Installment is greater than zero, the Bank will discount the monthly differences to the date of prepayment by the Treasury Rate. The Bank will then add together all of the discounted monthly differences for the Prepaid Installment.

B. The following definitions will apply to the calculation of the prepayment fee:

(1) "Original Payment Dates" mean the dates on which the prepaid principal would have been paid if there had been no prepayment. If any of the principal would have been paid later than the end of the fixed rate interest period in effect at the time of prepayment, then the Original Payment Date for that amount will be the last day of the interest period.

(2) "Prepaid Installment" means the amount of the prepaid principal which would have been paid on a single Original Payment Date.

(3) "Treasury Rate" means the interest rate yield for U.S. Government Treasury Securities which the Bank reasonably determines could be obtained by reinvesting a specified Prepaid Installment in such securities from the date of prepayment through the Original Payment Date. The Bank may adjust the Treasury Rate to reflect the

City of Gig Harbor  
October 9, 2003

compounding, accrual basis, or other costs of the prepaid amount. Each of the rates is the Bank's estimate only and the Bank is under no obligation to actually reinvest any prepayment. The rates will be based on information from either the Telerate or Reuters information services, The Wall Street Journal, or other information sources the Bank deems appropriate.

Upon prepayment, interest on the principal amount prepaid shall cease to accrue on the date such prepayment occurs.





"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: KRISTIN RIEBLI *KMR***  
**ASSOCIATE PLANNER**  
**SUBJECT: PUBLIC HEARING AND FIRST READING OF ORDINANCE AMENDING**  
**GHMC SECTION 17.80.130, TO ALLOW STRUCTURAL CHANGES TO**  
**NONCONFORMING SIGNS. ZONING TEXT AMENDMENT #03-08**  
**DATE: NOVEMBER 4, 2003**

**INFORMATION/BACKGROUND**

Attached for the Council's consideration and for public hearing is a draft ordinance amending GHMC Section 17.80.130, which pertains to nonconforming signs. Courtesy Ford initiated this text amendment, after it requested an interpretation of GHMC Section 17.68.070 Nonconforming parking, loading, signs and other characteristics of use, to allow a change to its existing nonconforming sign. This interpretation was denied, and Courtesy Ford now seeks to make changes to an existing nonconforming pole sign, to be consistent with the latest Ford corporate signs. Courtesy Ford wants to maintain the size and height of this existing pole sign.

Under the current sign code, the only change that can be made to an existing nonconforming sign is the replacement of the plastic sign panel. This allows the owner of the sign to retain and utilize the existing sign *structure* when new text or graphics are desired. However, the changes Courtesy Ford would like to make to its existing sign will require significant structural changes. These include the replacement of the cabinet supporting the sign face and the installation of a wide stainless-steel shroud that would surround the existing pole and extend up the full height of the pole. These changes involve far more than a simple replacement of a sign panel and are therefore not permitted under the current code.

The Ford Retail Identification Catalogue does include a monument sign option, which would conform to the City's existing sign code. However, Courtesy Ford is anxious to retain its existing pole sign and has therefore proposed three alternative text amendments to GHMC Section 17.80.130 that would accommodate their desired signage. The alternative proposals have been labeled as alternatives A, B, and C and are attached for the Council's consideration.

Each of the alternatives provide exception criteria that would allow structural changes to nonconforming pole signs, with alternative C allowing structural changes to any sign. The alternatives are progressively less restrictive in terms of their criteria, with alternative A being the most restrictive and alternative C being the least restrictive.

Alternative A allows changes to a nonconforming pole sign structure if the changes are designed to conform to a national corporate logo. This criterion could be problematic because any property owner with nonconforming pole sign and a national product could allege that corporate headquarters requires a change in their sign to reflect a new corporate image. Moreover, any franchisee could simply ask its corporate headquarters to issue a directive for a sign change in order to comply with the City's code. Without detailing all of the concerns raised by the City Attorney to this approach, the major problem is that the criterion is met if some private entity requires that a change be made to a sign. This approach is unprecedented because cities adopt sign regulations by considering the same factors involved in the adoption of zoning regulations – health, safety, welfare and aesthetics. The City does not adopt sign regulations to address changes to a private entity's corporate image and logos. This does not provide a legitimate basis for the regulation.

Alternative A requires that the changes to the sign include widening of the pole by surrounding it with materials containing no sign graphics. This would accommodate the shroud that Courtesy Ford would like to place around its existing sign pole. However, as the enclosed mock-up photo of Ford's proposed sign indicates, a wider pole on a tall pole sign actually increases the visual impact of a sign without reducing any of the sign's nonconformities.

Alternatives A and B, both require removal of at least one other nonconforming sign. However, this "tradeoff" approach would likely result in applicants trading a minor inconsequential sign for an opportunity to upgrade a large prominent sign. The proposal could be amended to describe the minimum size sign to be removed or require that a nonconforming *free standing* sign be removed. However, because all structures have a useful life, it is expected that all nonconforming structures will be removed over time if nonconforming provisions are strictly applied. The staff does not recommend a tradeoff approach that extends the useful life of any nonconformity.

All proposed alternatives would allow changes to the face of the sign so long as such changes do not make the sign more non-conforming in terms of color, graphics, materials and illumination. This requirement is in direct conflict with current code provisions that allow for changes to the face of a nonconforming sign so long as the changes comply with existing color, sign graphics, materials and illumination provisions. It would also be burdensome to administer because it would be difficult to determine if the changes were more or less non-conforming than the existing sign. **City staff recommends denial of all proposed amendments because of the difficulty involved in interpretation, implementation and enforcement.**

The Planning Commission held a public hearing on the proposed amendments on October 2, 2003. Susan Drummond and John Hern, the applicants, testified at the hearing in favor of the proposed amendments. The Planning Commission held a lengthy discussion of the proposed amendments and expressed a number of concerns with the proposed text amendment. The Commission was not supportive of the

proposed amendments and therefore made no motion to recommend approval. A copy of the October 2, 2003 Planning Commission Minutes is attached.

### **POLICY CONSIDERATIONS**

Applicable land use policies and codes are as follows:

#### **a. Comprehensive plan:**

The City of Gig Harbor Comprehensive Plan Community Design Element includes the following goals and policies that relate to the proposed amendments:

Pg. 30        **SIGNAGE AND ILLUMINATION SUBSECTION.** Signs have become one of the more visual components of modern urbanscapes and are of primary concern to business owners. Clear and effective signage is essential to the operation of businesses and can facilitate vehicular and pedestrian activities. However, signage can also be the greatest contributor to visual clutter and blight. Large, garish signs designed as "attention getters" are neither necessary nor desirable in Gig Harbor's small town setting.

Pg. 34 – **GOAL: RESTRICT USE OF OFF PREMISE SIGNS** –Objective # 2 – Avoid signs designed for distant viewing.

#### **b. Zoning Code:**

Chapter 17.80 of the Gig Harbor Municipal Code regulates signs. Section 17.80.130 Nonconforming signs provides a mechanism by which the owner of a non-conforming sign may make modest changes to their sign. Changes to a sign face must conform to the city's restrictions for color, sign graphics, materials, and illumination. Signs must be brought into full compliance with the City's sign code if the owner seeks to change the structure supporting, holding, or surrounding the sign. These provisions were adopted in 1998 when the City decided to remove the amortization clause for non-conforming signs.

#### **c. Design Manual**

Both the Design Manual and the Comprehensive Plan designate SR-16 as an enhancement corridor. Page 40 of the Design Manual states that:

Development within 300 feet of SR-16 and within 100 feet of Burnham Drive ROW must either be screened or conform to all design criteria if required screening cannot be achieved within 3 years. The purpose of enhancement corridors is to maintain the scenic beauty which characterizes highway travel across the peninsula, to maintain a more distinct city "edge", to assure a stronger sense of arrival at visual interchange and activity nodes, and to provide visual separation between districts.

**ENVIRONMENTAL ANALYSIS**

A SEPA threshold Determination of Nonsignificance (DNS) was issued for the proposed amendments on August 27, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003. The deadline for appealing the determination was September 17, 2003. No appeals have been filed and, to date, no public comments have been submitted. The public was allowed to comment on the SEPA determination at the public hearing before the Planning Commission. A copy of the DNS is attached for your consideration.

**FISCAL IMPACTS**

The addition of the proposed criteria for reviewing changes to legally nonconforming signs will require additional staff time due to the ambiguity of the requirements and the research that will be required to determine compliance.

**RECOMMENDATION**

The staff recommends that the City Council conduct the public hearing. This is first reading of the ordinance only. No additional action will be taken during this meeting. **The staff recommends that the Council reject each of the proposed ordinances at the second reading.** The proposed text amendment (regardless of which alternative) would essentially give new life to existing nonconforming (pole) signs, thereby extending the life of the sign (perhaps perpetually) and thwarting the sign code.

**Attachments**

Alternative A

Alternative B

Alternative C

Photo of existing Ford sign from SR-16

Photo modified by staff to show proposed sign revision

Photo modified by staff to show face change option on existing sign.

Minutes from October 2, 2003 Planning Commission

DNS

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE SIGN CODE, SECTION 17.80.130 OF THE GIG HARBOR MUNICIPAL CODE**

---

WHEREAS, amendments were proposed to the Gig Harbor Municipal Code regarding non-conforming signs by Courtesy Ford, which owns a local business within the City; and

WHEREAS, the amendments would permit modest changes to be made to a nonconforming sign if sign face area and height are not increased, and the applicant also removes one nonconforming sign from the same property; and

WHEREAS, the Gig Harbor Comprehensive Plan encourages both the removal of non-conforming signage and the retention of local businesses;

WHEREAS, the City's SEPA Responsible Official issued a determination of non-significance on August 27, 2003;

WHEREAS, notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003, and no appeal was filed; and

WHEREAS, public notice was provided for a Planning Commission work session on September 4, 2003, a Planning Commission hearing on October 2, 2003, and a City Council hearing on October 27, 2003; and

WHEREAS, the City Planning Commission held a work session on September 4, 2003; and

WHEREAS, the City Planning Commission held a public hearing on October 2, 2003, and heard public testimony, but did not make a recommendation to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of October 27, 2003; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Section 17.80.130 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**GHMC 17.80.130 Nonconforming signs.**

A. A sign is legally nonconforming if it is out of conformance with this code, and:

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or

2. The sign was erected prior to January 1, 1992.

B. A sign must be brought into compliance with the requirements of this code unless it conforms to subsection (A) of this section.

C. Changes to the sign face and sign graphics may be made to a legally nonconforming sign except that such changes must conform to this code as to colors, sign graphics, materials, and illumination. A permit for such changes must be obtained.

D. A legal nonconforming sign shall be brought into compliance with this chapter or shall be removed if:

1. The sign is abandoned;

2. The sign is damaged in excess of 50 percent of its replacement value, unless said destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;

3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair, except that changes to the sign structure supporting, holding, or surrounding a nonconforming pole sign may be made, without bringing the legal nonconforming pole sign into compliance with this chapter and without removal, if:

a. Such changes do not increase the overall actual height of the sign or the actual area of the sign face;

b. Such changes include widening the pole or the appearance of the pole, through surrounding material containing no sign graphics;

c. Such changes are designed to conform with changes in national or international corporate logo or graphics by the manufacturer of the principal product sold on the premises of the sign;

d. Such changes do not make the sign more nonconforming to this code than the existing sign as to colors, sign graphics, materials and illumination (the size of letters may be averaged to determine whether they are not more nonconforming); and

e. At least one other nonconforming sign on the premises is removed.

4. The tenant space(s) to which the sign applies is undergoing an expansion or renovation which increases the size of the tenant space floor area or site coverage area by 20 percent or more, unless the sign is brought into conformance under the provisions of subsection (E) of this section;

5. The building to which the sign applies is demolished.

E. An owner of a nonconforming sign may, under the provisions of GHMC 17.80.140, request the design review board (DRB) to approve a design allowance deeming the sign conforming if the DRB makes all findings of fact specified for the following sign types:

1. Signs Attached to Buildings.

a. The sign is not a dominant feature on a blank wall, but is positioned within architectural features of a building specifically designed and intended for signage, such as parapets, sign bands, or fascias, or is positioned between other architectural features such as doors, windows or projections which provide architectural relief and detailing.

b. The sign is smaller than the architectural space the sign fits within so as to leave wall reveal around all sides of the sign.

c. The sign face conforms to all restrictions on background illumination and sign color.

d. The sign is consistent with the intent and general scope of the sign code and design manual standards.

2. Freestanding Signs.

a. The sign has design features which reflect design elements of surrounding structures, or the sign is incorporated into a landscaped area with large and mature plantings which provide a backdrop to the sign and which are at least as tall as the sign.

- b. The sign has the characteristics of a monument sign rather than a pole sign (e.g., the base of the sign support where it meets the ground is at least as wide as the sign face).
- c. The sign is consistent with the intent and general scope of the city's sign code and design manual standards. (Ord. 788 § 13, 1998).

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of October, 2003.

CITY OF GIG HARBOR

\_\_\_\_\_  
GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_



CAROL A. MORRIS

FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE SIGN CODE, SECTION 17.80.130 OF THE GIG HARBOR MUNICIPAL CODE**

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WHEREAS, the Gig Harbor Comprehensive Plan encourages both the removal of non-conforming signage and the retention of local businesses;

WHEREAS, the City's SEPA Responsible Official issued a determination of non-significance on August 27, 2003;

WHEREAS, notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003, and no appeal was filed; and

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WHEREAS, the City Planning Commission held a work session on September 4, 2003; and

WHEREAS, the City Planning Commission held a public hearing on October 2, 2003, and heard public testimony, but did not make a recommendation to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of October 27, 2003; Now, Therefore,

**THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:**

Section 1. Section 17.80.130 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**GHMC 17.80.130 Nonconforming signs.**

A. A sign is legally nonconforming if it is out of conformance with this code, and:

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or
2. The sign was erected prior to January 1, 1992.

B. A sign must be brought into compliance with the requirements of this code unless it conforms to subsection (A) of this section.

C. Changes to the sign face and sign graphics may be made to a legally nonconforming sign except that such changes must conform to this code as to colors, sign graphics, materials, and illumination. A permit for such changes must be obtained.

D. A legal nonconforming sign shall be brought into compliance with this chapter or shall be removed if:

1. The sign is abandoned;
2. The sign is damaged in excess of 50 percent of its replacement value, unless said destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;
3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair, except that changes to the sign structure supporting, holding, or surrounding a nonconforming pole sign may be made, without bringing the legal nonconforming pole sign into compliance with this chapter and without removal, if:
  - a. Such changes do not increase the overall actual height of the sign or the actual area of the sign face;
  - b. Such changes do not make the sign more nonconforming to this code than the existing sign as to colors, sign graphics, materials and illumination (the size of letters may be averaged to determine whether they are not more nonconforming); and
  - c. At least one other nonconforming sign on the premises is removed.

4. The tenant space(s) to which the sign applies is undergoing an expansion or renovation which increases the size of the tenant space floor area or site coverage area by 20 percent or more, unless the sign is brought into conformance under the provisions of subsection (E) of this section;

5. The building to which the sign applies is demolished.

E. An owner of a nonconforming sign may, under the provisions of GHMC 17.80.140, request the design review board (DRB) to approve a design allowance deeming the sign conforming if the DRB makes all findings of fact specified for the following sign types:

1. Signs Attached to Buildings.

- a. The sign is not a dominant feature on a blank wall, but is positioned within architectural features of a building specifically designed and intended for signage, such as parapets, sign bands, or fascias, or is positioned between other architectural features such as doors, windows or projections which provide architectural relief and detailing.
- b. The sign is smaller than the architectural space the sign fits within so as to leave wall reveal around all sides of the sign.
- c. The sign face conforms to all restrictions on background illumination and sign color.
- d. The sign is consistent with the intent and general scope of the sign code and design manual standards.

2. Freestanding Signs.

- a. The sign has design features which reflect design elements of surrounding structures, or the sign is incorporated into a landscaped area with large and mature plantings which provide a backdrop to the sign and which are at least as tall as the sign.
- b. The sign has the characteristics of a monument sign rather than a pole sign (e.g., the base of the sign support where it meets the ground is at least as wide as the sign face).
- c. The sign is consistent with the intent and general scope of the city's sign code and design manual standards. (Ord. 788 § 13, 1998).

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of October, 2003.

CITY OF GIG HARBOR

\_\_\_\_\_  
GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
CAROL A. MORRIS

FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE SIGN CODE, SECTION 17.80.130 OF THE GIG HARBOR MUNICIPAL CODE**

---

WHEREAS, amendments were proposed to the Gig Harbor Municipal Code regarding non-conforming signs by Courtesy Ford, which owns a local business within the City; and

WHEREAS, the amendments would permit modest changes to be made to a nonconforming sign if sign face area and height are not increased; and

WHEREAS, the Gig Harbor Comprehensive Plan encourages retention of local businesses;

WHEREAS, the City's SEPA Responsible Official issued a determination of non-significance on August 27, 2003;

WHEREAS, notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003, and no appeal was filed; and

WHEREAS, public notice was provided for a Planning Commission work session on September 4, 2003, a Planning Commission hearing on October 2, 2003, and a City Council hearing on October 27, 2003; and

WHEREAS, the City Planning Commission held a work session on September 4, 2003; and

WHEREAS, the City Planning Commission held a public hearing on October 2, 2003, and heard public testimony, but did not make a recommendation to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of October 27, 2003; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Section 17.80.130 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**GHMC 17.80.130 Nonconforming signs.**

A. A sign is legally nonconforming if it is out of conformance with this code, and:

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or

2. The sign was erected prior to January 1, 1992.

B. A sign must be brought into compliance with the requirements of this code unless it conforms to subsection (A) of this section.

C. Changes to the sign face and sign graphics may be made to a legally nonconforming sign except that such changes must conform to this code as to colors, sign graphics, materials, and illumination. A permit for such changes must be obtained.

D. A legal nonconforming sign shall be brought into compliance with this chapter or shall be removed if:

1. The sign is abandoned;

2. The sign is damaged in excess of 50 percent of its replacement value, unless said destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;

3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair, except that changes to the sign structure supporting, holding, or surrounding a nonconforming sign may be made, without bringing the legal nonconforming sign into compliance with this chapter and without removal, if:

a. Such changes do not increase the overall actual height of the sign or the actual area of the sign face;

b. Such changes do not make the sign more nonconforming to this code than the existing sign as to colors, sign graphics, materials and illumination (the size of letters may be averaged to determine whether they are not more nonconforming); and

4. The tenant space(s) to which the sign applies is undergoing an expansion or renovation which increases the size of the tenant space floor area or site coverage area by 20 percent or more, unless the sign is brought into conformance under the provisions of subsection (E) of this section;

5. The building to which the sign applies is demolished.

E. An owner of a nonconforming sign may, under the provisions of GHMC 17.80.140, request the design review board (DRB) to approve a design allowance deeming the sign conforming if the DRB makes all findings of fact specified for the following sign types:

1. Signs Attached to Buildings.

- a. The sign is not a dominant feature on a blank wall, but is positioned within architectural features of a building specifically designed and intended for signage, such as parapets, sign bands, or fascias, or is positioned between other architectural features such as doors, windows or projections which provide architectural relief and detailing.
- b. The sign is smaller than the architectural space the sign fits within so as to leave wall reveal around all sides of the sign.
- c. The sign face conforms to all restrictions on background illumination and sign color.
- d. The sign is consistent with the intent and general scope of the sign code and design manual standards.

2. Freestanding Signs.

- a. The sign has design features which reflect design elements of surrounding structures, or the sign is incorporated into a landscaped area with large and mature plantings which provide a backdrop to the sign and which are at least as tall as the sign.
- b. The sign has the characteristics of a monument sign rather than a pole sign (e.g., the base of the sign support where it meets the ground is at least as wide as the sign face).
- c. The sign is consistent with the intent and general scope of the city's sign code and design manual standards. (Ord. 788 § 13, 1998).

**Section 2. Severability.** If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.



Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_\_ day of October, 2003.

CITY OF GIG HARBOR

\_\_\_\_\_  
GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

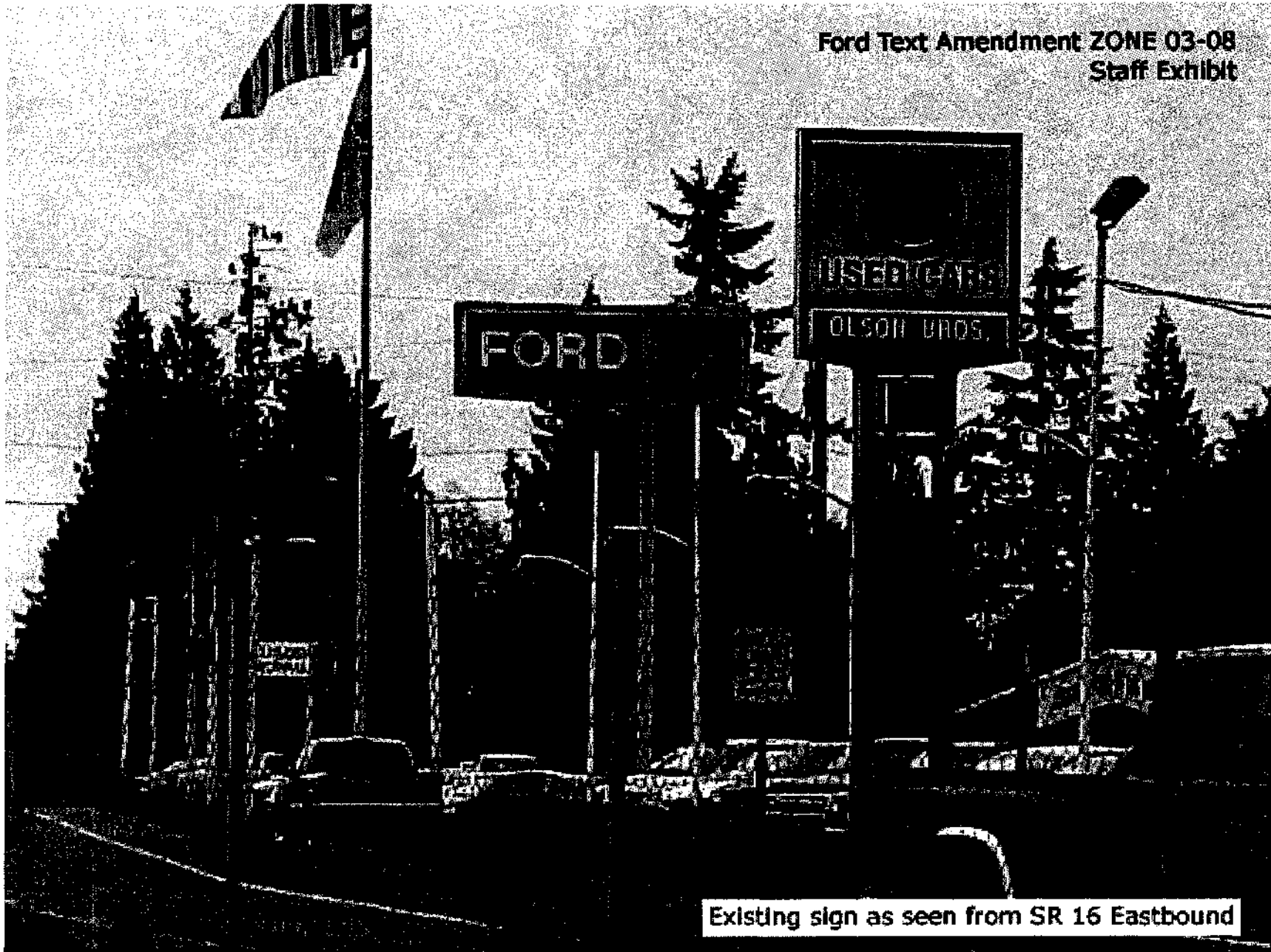
By: \_\_\_\_\_  
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
CAROL A. MORRIS

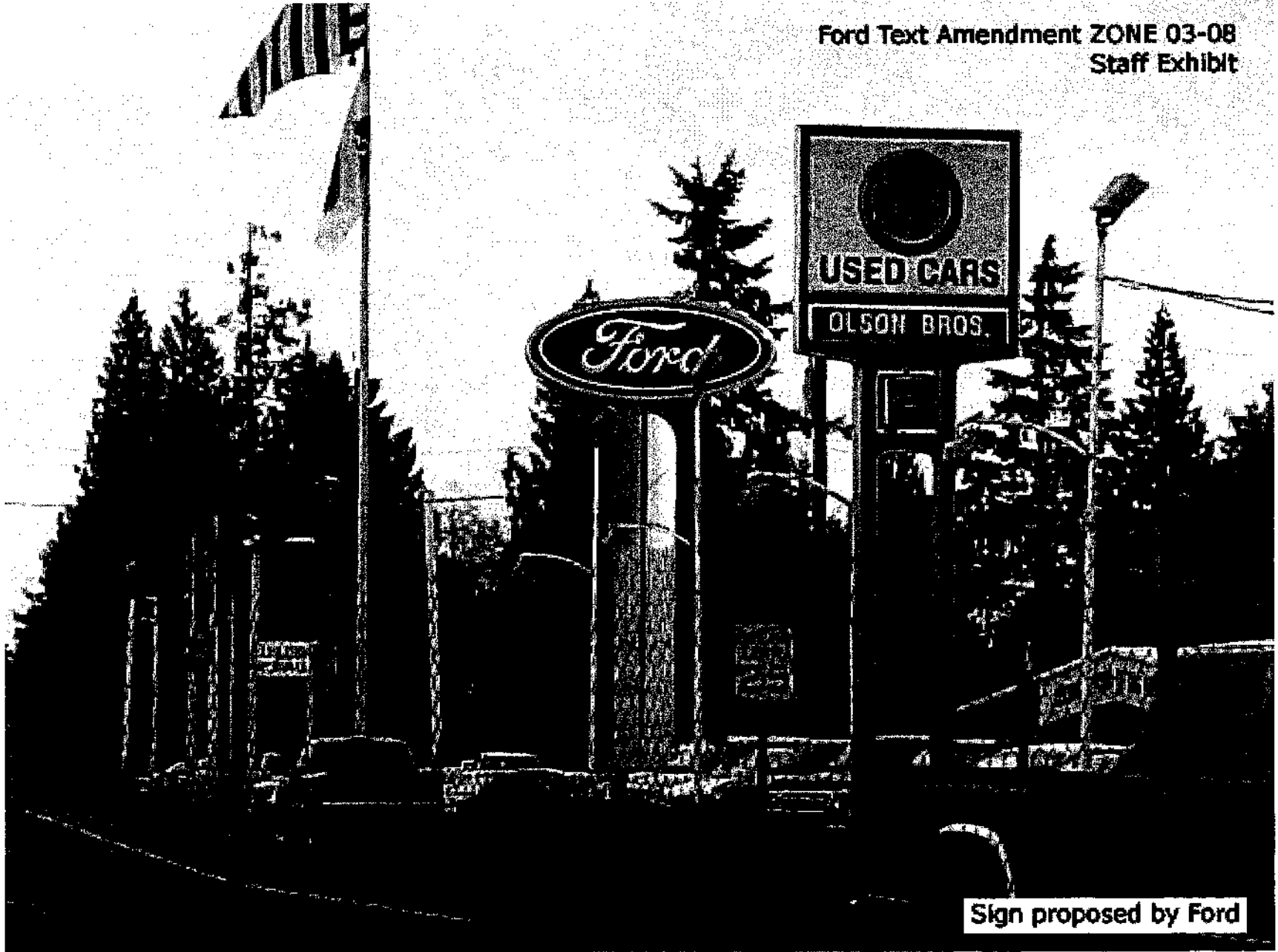
FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO: \_\_\_\_\_

Ford Text Amendment ZONE 03-08  
Staff Exhibit



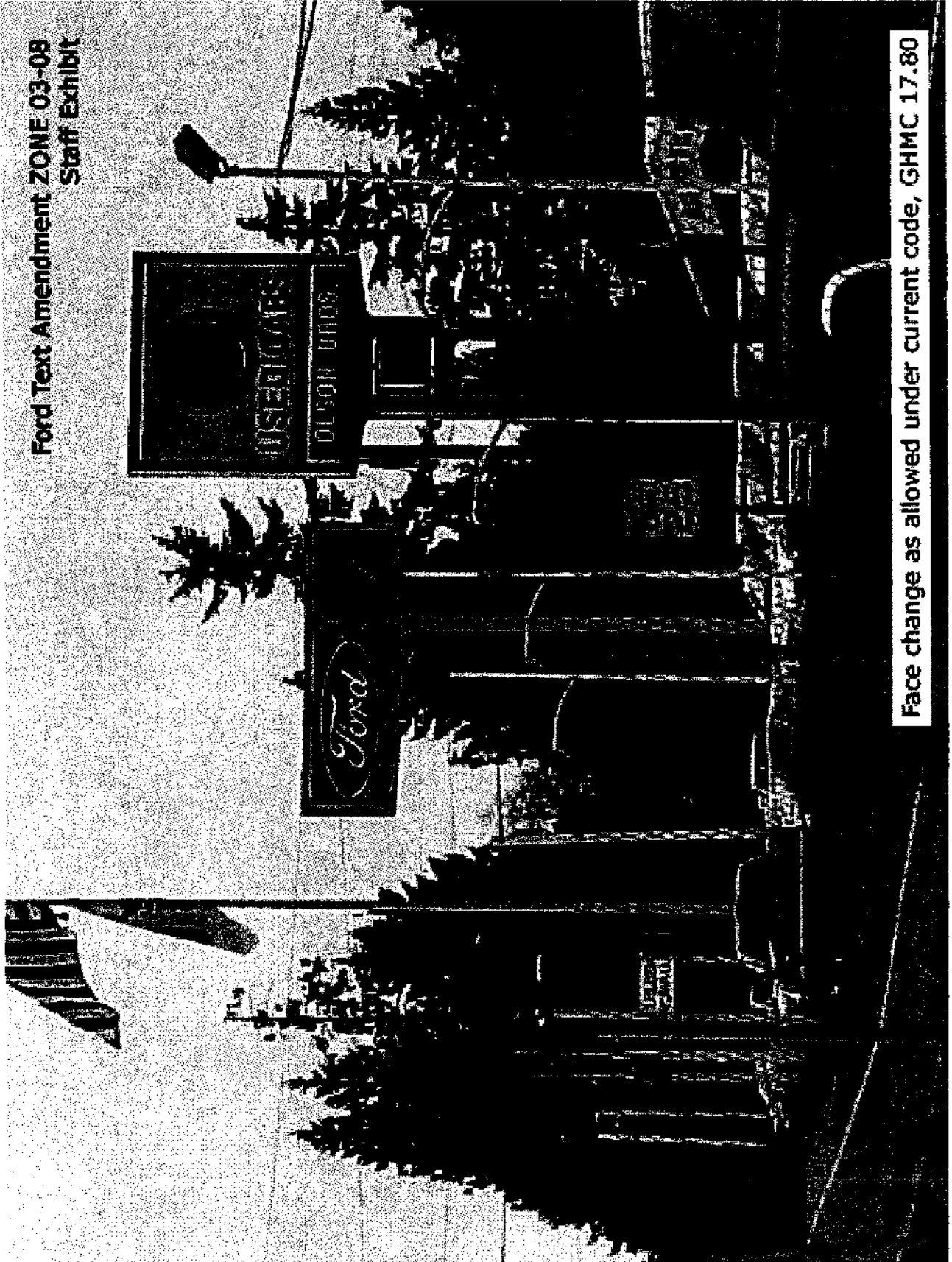
Existing sign as seen from SR 16 Eastbound

Ford Text Amendment ZONE 03-08  
Staff Exhibit



Sign proposed by Ford

Ford Text Amendment ZONE 03-08  
Staff Exhibit



Face change as allowed under current code, GHMC 17.80

**City of Gig Harbor Planning Commission  
Minutes of Public Hearing  
Thursday, October 2, 2003  
Gig Harbor Civic Center**

**PRESENT:** Commissioners Carol Johnson, Paul Conan, Kathy Franklin, Dick Allen, Theresa Malich-Mueller and Chairman Paul Kadzik. Staff present: Steve Osguthorpe, Rob White, Kristin Riebli and Diane Gagnon. Commissioner Bruce Gair was absent

**CALL TO ORDER:** 7:00 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of June 19, 2003 and September 4, 2003 as presented.  
Malich/Franklin – unanimously approved.

**PUBLIC HEARING:**

**Zoning Code Text Amendment – (ZONE 03-08) Proposed amendments to Chapter 17.80 – Non-Conforming Sign section of the Gig Harbor Municipal Code**

Chairman Paul Kadzik opened the Public Hearing on this item at 7:03 p.m.. Associate Planner Kristin Riebli read her staff report of September 25, 2003 outlining the three alternatives as proposed by the applicant. Ms. Riebli distributed photos of other areas with these types of signage along with photos of the applicants existing signs. She concluded by stating that the staff was recommending denial of this application. Additionally Ms. Riebli distributed copies of letters from John Hern dated September 25, 2003 and October 1, 2003.

**Susan Drummond, Courtesy Ford, 1111 3<sup>rd</sup> Ave #3400, Seattle WA 98101**

Ms. Drummond gave a brief history of Courtesy Ford in Gig Harbor, stating that they had been here 20-30 years and may have to leave if they can't comply with corporate signage suggestions. She further stated that the increase they wished to achieve was not an increase in height or size of sign face and that they had made these changes in other cities and had not faced these problems.

Commissioner Johnson asked if these other cities had sign codes similar to Gig Harbor's.

**John Hern, Courtesy Ford, 1111 3<sup>rd</sup> Ave #3400, Seattle WA 98101**

Mr. Hern replied to Ms. Johnson's questions by stated that they had made similar changes in Poulsbo along the Hwy 305 corridor and that Poulsbo had different regulations for their corridor and their downtown. He also stated that they had installed similar signage in Port Townsend and it was approved based on their Highway location and the installation of landscaping. He concluded by saying this was a corporate decision that they have to comply with and that 5 out of 68 dealerships have not been changed with Gig Harbor being one of the 5.

Commissioner Dick Allen asked if legislative changes were also necessary in the other cities.

Mr. Hern replied that they had received a Variance in Poulsbo.

Commission Johnson asked if the signage is an ultimatum of the corporation.

Mr. Hern stated that if the sign cannot be changed, corporate would highly suggest that a new location be found.

Planning Manager Steve Osguthorpe pointed out that in the materials provided by the applicant regarding their corporate signage options there was a monument sign option, which would comply with the code as it is written.

Commissioner Malich asked if the Ford Corporation was aware of the City of Gig Harbor's Comprehensive Plan and goals outlined for our city. Gig Harbor North thrives and does not have freeway visibility.

Mr. Hern replied that the auto business is different. Their customers need to see where auto service is available should they break down on the freeway. He further stated that the corporation is aware of the Comprehensive Plan and it's goals.

Chairman Paul Kadzik asked for a comparison of the square footage of the sign itself.

Mr. Hern replied that the new sign would be slightly smaller.

Associate Planner Kristin Riebli distributed an illustration of the sizes.

Chairman Kadzik asked staff if you can replace a non-conforming sign as the code is written now.

Ms. Riebli replied that you can re-face the sign but you cannot make any structural changes such as removing and replacing the entire cabinet. She further stated that an additional problem with their proposal was that their letters were 7' high and therefore would not be permitted to be internally illuminated.

Susan Drummond stated that she did want to point out that the changes as proposed did require removal of one non-conforming sign on site which they felt did help meet the goals of the Comprehensive Plan.

There being no further discussion Chairman Paul Kadzik closed the Public Hearing at 7:44 p.m..

Zoning Code Text Amendment (ZONE 03-09) – Proposed amendments to Chapter 17.36 – General Business District (B-2), to allow hospitals as a conditional use

Chairman Paul Kadzik opened the Public Hearing on this item at 7:45 p.m.. Senior Planner Rob White outlined his staff report of September 25, 2003. Mr. White distributed a map of existing building sizes in B-2 zones as requested by the Planning Commission.

There being no public comment, Chairman Paul Kadzik closed the Public Hearing at 7:47 p.m..

**OTHER BUSINESS**

Zoning Code Text Amendment (ZONE 03-09) – Proposed amendments to Chapter 17.36 – General Business District (B-2), to allow hospitals as a conditional use

Discussion was held on the proposed changes and the testimony heard.

Commissioner Malich stated that shed had spoken with residents of the Westside and they have a great concern about traffic, however, a hospital does have a less intense level of traffic.

Chairman Paul Kadzik stated that the Building Size Workshop held September 30<sup>th</sup> had illustrated the need for increased building sizes.

Commissioner Allen expressed that having more possible sites for a hospital to choose to locate was helpful.

Commissioner Johnson stated that she lives in the Westside and building size is a concern and the traffic it will bring. She further stated that the intersection of Pt Fosdick and Olympic can't seem to hold more traffic.

Senior Planner Rob White pointed out that some other projects in the area had SEPA mitigations, which would require money for traffic improvements at 56<sup>th</sup> and Olympic.

Dave Skinner from HDR was present as the applicant's traffic consultant and answered that if the level of service drops below a certain level the State will require road improvements, however, he believes that when the Narrows Bridge is completed the traffic flow will change.

**MOTION:** Motion to approve Zoning Code Text Amendment (ZONE 03-09) as proposed.  
Conan/Johnson – Passed unanimously

Zoning Code Text Amendment – (ZONE 03-08) Proposed amendments to Chapter 17.80 – Non-Conforming Sign section of the Gig Harbor Municipal Code

Discussion was held on the proposed amendments. Commissioner Franklin asked if

there was a way for Ford to stay in Gig Harbor without changing the sign code. Commissioner Johnson added that she felt that a company who had been in our community and been successful for over 20 years should not threaten to leave over a sign and further wished to know if the proposed sign was taller or bigger than the present sign.

Associate Planner Kristin Riebli replied to Commissioner Franklin's question and stated that Ford could install an 8' tall monument sign or change the face only of the current sign.

Planning Manager Steve Osguthorpe pointed out the City's Comprehensive Plan goals to protect the enhancement corridor. He added that more and more cities are opening up their freeways to auto dealers and we have to decide if we want to be one of those cities.

Commissioner Malich stated that she had friends that lived in Poulsbo and residents there are upset about their freeway opening up. She further added that our sign code is almost 10 years old now and it was developed in response to public input and seems to be working.

Chairman Kadzik added that the sign code was given much thought and the goal of the non-conforming section was to bring signs into compliance, not that they remain in perpetuity.

Commissioner Conan asked if the applicant could change the face of the sign and install external illumination?

Ms. Riebli replied that downward directional lights could be installed to illuminate the sign but that they would require DRB approval.

Planning Manager Steve Osguthorpe pointed out that the applicant's proposal also appeared to give special treatment to corporations. He cautioned the Commission on assuring that we treat all businesses equally.

Commissioner Malich stated that as an example the small dealership on Grandview was not allowed signs facing the freeway. She expressed that once you allow this it never stops and that she supported the staff recommendation of denial.

Commissioner Conan said that in his opinion they could be more creative and make this work, the change in the code did not seem to be a necessity.

Commissioner Malich further pointed out that communities with strict sign codes do thrive because people want to locate there.

Commissioner Johnson stated that business decisions need to be based on other things besides signs. The sense of this city is enhanced by our sign code. Additionally, these proposals as written require staff judgment on how non-conforming a sign is.



There being no further discussion, Chairman Paul Kadzik asked if there was a motion. There being none, the Planning Commission took no action to either recommend approval or denial of the application.

Planning Manager Steve Osguthorpe distributed a map of split-zoned parcels in the height restriction area as requested by Commissioner Conan at the last meeting.

**NEXT REGULAR MEETING:**

November 6th	Worksession and Public Hearing
November 20 <sup>th</sup>	Worksession

**ADJOURN:**

**MOTION:** Move to adjourn at 8:40 p.m.  
Conan/Johnson – unanimously approved

CD recorder utilized:  
Disc #1 Tracks 1-4  
Disc #2 Track 1



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT  
3510 GRANDVIEW STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-6170 • WWW.CITYOFGIGHARBOR.NET

**Determination of Nonsignificance (DNS)  
W.A.C. 197-11-970**

**Environmental Review Application No.:** SEPA #03-24

**Parcel Number:** No parcel number – Proposal is not site-specific

**Action:** Proposed Amendments to GHMC Chapter 17.80 – Sign Code

**Proposal:** Proposed Amendments to Gig Harbor Municipal Code Section 17.80.130 – nonconforming signs. Proposal would allow for structural changes to legal nonconforming signs

**Location:** Applicable to City of Gig Harbor and its urban growth area (UGA)

**Proponent:** Richard Settle of Foster Pepper and Shefelman (1111 3rd Avenue Suite 3400, Seattle WA 98101) on behalf of Courtesy Ford, located at 5404 Point Fosdick Drive.

**Lead Agency: City of Gig Harbor**

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

[x] This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for at least 14 days from the date of below. **Comments must be submitted by September 17, 2003.**

Any interested person may appeal the adequacy of this final threshold determination to the City of Gig Harbor Hearing Examiner pursuant to the procedures set forth under Title 18.04 of the Gig

Harbor Municipal Code if a written request for appeal is received within fourteen (14) days of the date of this notice, or September 17, 2003, which ever is later. The written appeal must be submitted with a filing fee of one hundred dollars (\$150).

Responsible Official: Steve Osguthorpe  
Position Title: Planning & Building Manager Phone: 851-6170

Address: City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA. 98335

Signature  Date: Aug 27, 03



ADMINISTRATION

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN CITY ADMINISTRATOR** *MH*  
**DATE: OCTOBER 22, 2003**  
**SUBJ.: INTERLOCAL AGREEMENT AMENDMENT TO THE PIERCE  
COUNTY COUNTY-WIDE PLANNING POLICIES**

#### **INFORMATION/BACKGROUND**

Attached is a proposed amendment to the Pierce County County-Wide Planning Policies (PCCWPP), as recommended by the Pierce County Regional Council. The proposed amendments are required in order to update the Centers Designations of the Urban Growth Area Section as recommended by the Pierce County Regional Council.

#### **POLICY CONSIDERATIONS**

The proposed amendments to the PCCWPP address new provisions to urban growth area policies and technical amendments to update the document with current reference information as it relates to centers designations of the Urban Growth Area.

#### **FISCAL IMPACT**

The potential for fiscal impacts to the city with respect to implementation of these amendments is unknown at this time.

#### **RECOMMENDATION**

Staff recommends passing the attached resolution authorizing the approval of these amendments to the PCCWPP.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF GIG HARBOR AUTHORIZING THE PIERCE COUNTY EXECUTIVE TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITIES AND TOWNS OF PIERCE COUNTY, THEREBY AMENDING THE PIERCE COUNTY COUNTYWIDE PLANNING POLICIES TO UPDATE THE CENTERS DESIGNATIONS OF THE URBAN GROWTH AREA SECTION AS RECOMMENDED BY THE PIERCE COUNTY REGIONAL COUNCIL.**

---

WHEREAS, On January 31, 1995, the Pierce County Council passed Resolution R95-17 affirming the commitment of the County to continue discussions with other local jurisdictions to resolve implementation of the Growth Management Act; and

WHEREAS, The Pierce County Regional Council was created in 1992 by interlocal agreement among the cities and towns of Pierce County and Pierce County, and charged with responsibilities, including: serving as a local link to the Puget Sound Regional Council, promoting intergovernmental cooperation, facilitating compliance with the coordination and consistency requirements of the Growth Management Act (Chapter 36.70A RCW) and the Regional Transportation Planning Organization (Chapter 47.80 RCW), and developing a consensus among jurisdictions regarding the development and modification of the Countywide Planning Policies; and

WHEREAS, The Pierce County Regional Council conducted negotiations in open public meetings during the months of July and August of 2003 to address the Centers Designations; and

WHEREAS, The Pierce County Regional Council subsequently recommended adoption of the proposed amendments to the Pierce County Countywide Planning Policies on August 21, 2003, which address the Centers Designations; and

WHEREAS, Amendments to the Pierce County Countywide Planning Policies must be adopted through amendment of the original interlocal agreement or by a new interlocal agreement ratified by sixty percent of the jurisdictions in Pierce County representing seventy-five percent of the total population on June 28, 1991; and

WHEREAS, The proposed amendments to the Pierce County Countywide Planning Policies are not subject to SEPA review in accordance with WAC 197-11-800(20), procedural actions; and

WHEREAS, An Interlocal Agreement entitled Amendments to the Pierce County Countywide Planning Policies, was developed for this purpose, and included the

recommended amendments to the Pierce County Countywide Planning Policies as an attachment; and

WHEREAS, These additional countywide planning policies should be incorporated into the next amendment of the Pierce County Countywide Planning Policies by ordinance of the County Council; and

WHEREAS, The Gig Harbor City Council finds that it is in the public interest to authorize the Pierce County Executive to execute the interlocal agreement, attached hereto as Exhibit "A"; NOW THEREFORE,

BE IT RESOLVED by the City Council of the City of Gig Harbor;

Section 1. The Pierce County Executive is hereby authorized to execute the Interlocal Agreement, attached hereto as Exhibit "A" and by this reference incorporated herein, thereby ratifying the attached amendments to the Pierce County Countywide Planning Policies as recommended by the Pierce County Regional Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR  
this \_\_\_\_\_ day of November, 2003.

APPROVED:

\_\_\_\_\_  
GRETCHEN A. WILBERT, MAYOR

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 10/20/03  
PASSED BY THE CITY COUNCIL:  
RESOLUTION NO.

**INTERLOCAL AGREEMENT**

**AMENDMENTS TO THE PIERCE COUNTY  
COUNTYWIDE PLANNING POLICIES**

This agreement is entered into by and among the cities and towns of Pierce County and Pierce County. This agreement is made pursuant to the provisions of the Interlocal Cooperation Act of 1967, Chapter 39.34 RCW. This agreement has been authorized by the legislative body of each jurisdiction pursuant to formal action and evidenced by execution of the signature page of this agreement.

**BACKGROUND:**

- A. The Pierce County Regional Council (PCRC) was created in 1992 by interlocal agreement among the cities and towns of Pierce County and Pierce County. The organization is charged with responsibilities, including: serving as a local link to the Puget Sound Regional Council, promoting intergovernmental cooperation, facilitating compliance with the coordination and consistency requirements of the Growth Management Act (Chapter 36.70A RCW) and the Regional Transportation Planning Organization (Chapter 47.80 RCW), and developing a consensus among jurisdictions regarding the development and modification of the Countywide Planning Policies.
- B. The Pierce County Countywide Planning Policies provide for amendments to be adopted through amendment of the original interlocal agreement or by a new interlocal agreement. The Pierce County Countywide Planning Policies may be amended upon the adoption of amendments by the Pierce County Council and ratification by 60 percent of the jurisdictions in Pierce County (13 of 20) representing 75 percent of the total population on June 28, 1991;
- C. Technical amendments are necessary to keep the document current. Substantive policy changes are not being recommended in this area.
- D. The Pierce County Regional Council conducted discussions in open public meetings in July and August of 2003 to address the amendments. The Pierce County Regional Council subsequently recommended adoption of the proposed amendments related to Centers Designation update of the Countywide Planning Policies on August 21, 2003.

**PURPOSE:**

This agreement is entered into by the cities and towns of Pierce County and Pierce County for the purpose of ratifying and approving the attached amendments to the Pierce County Countywide Planning Policies (Attachment).



**DURATION:**

This agreement shall become effective upon execution by 60 percent of the jurisdictions in Pierce County, representing 75 percent of the total population on June 28, 1991. This agreement will remain in effect until subsequently amended or repealed as provided by the Pierce County Countywide Planning Policies.

**SEVERABILITY:**

If any of the provisions of this agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**FILING:**

A copy of this agreement shall be filed with the Secretary of State, Washington Department of Community, Trade and Economic Development, the Pierce County Auditor and each city and town clerk.

IN WITNESS WHEREOF, this agreement has been executed by each member jurisdiction as evidenced by the signature page affixed to this agreement.

INTERLOCAL AGREEMENT  
AMENDMENTS TO THE PIERCE COUNTY  
COUNTYWIDE PLANNING POLICIES

Signature Page

The legislative body of the undersigned jurisdiction has authorized execution of the Interlocal Agreement, Amendments to the Pierce County Countywide Planning Policies.

IN WITNESS WHEREOF

This agreement has been executed \_\_\_\_\_  
(Name of City/Town/County)

BY:

\_\_\_\_\_  
(Mayor/Executive)

DATE:

Approved:

BY:

\_\_\_\_\_  
(Director/Manager/Chair of the Council)

Approved as to Form:

BY:

\_\_\_\_\_  
(City Attorney/Prosecutor)

Approved:

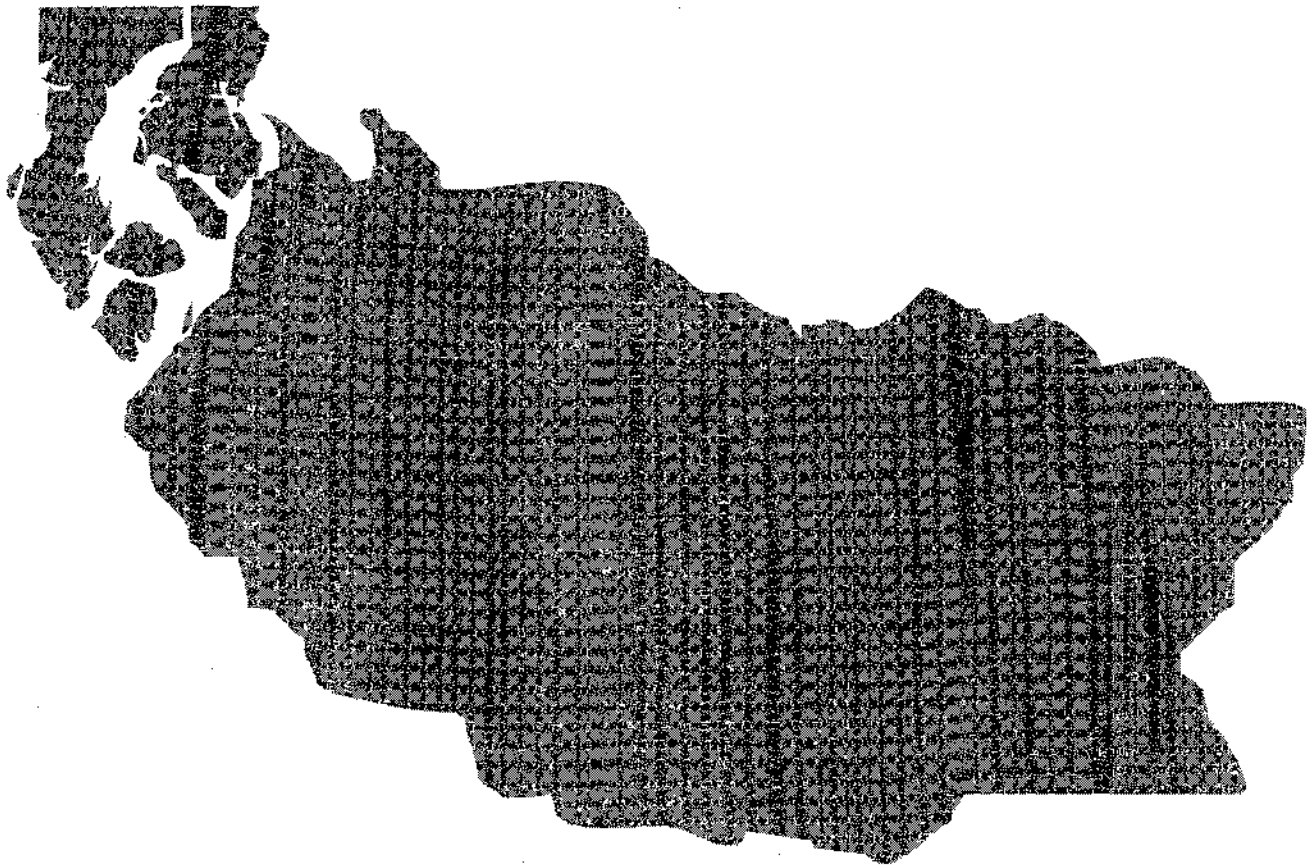
By:

\_\_\_\_\_  
(Pierce County Executive)

Proposed Amendments to the

# Countywide Planning Policies

for Pierce County, Washington



## Pierce County

Planning and Land Services

Urban Growth Area  
Centers Designations

**COUNTY-WIDE PLANNING POLICIES  
FOR  
PIERCE COUNTY, WASHINGTON**

**PIERCE COUNTY REGIONAL COUNCIL**

Councilmember Linda Bird, President, City of University Place

Councilmember Mike Connor, Vice President, City of Sumner

Councilmember Gene Cerino, City of Auburn

Mayor Bob Young, City of Bonney Lake

Councilmember Kim Walthers, City of Buckley

Mayor Richie Morgan, Town of Carbonado

Mayor Penny Drost, City of Dupont

Mayor Chelan Jarrett, Town of Eatonville

Mayor John Powers, City of Edgewood

Councilmember Barry Johnson, City of Fife

Councilmember Kathy McVay, City of Fircrest

Mayor Gretchen Wilbert, City of Gig Harbor

Mayor William Harrison, City of Lakewood

Mayor Katrina Asay, City of Milton

Mayor Dale T. Jones, City of Orting

Councilmember Richard Hildreth, City of Pacific

John Ladenburg, Pierce County Executive

Councilmember Terry Lee, Pierce County Council

Councilmember Kevin Wimsett, Pierce County Council

Councilmember Harold Moss, Pierce County Council

Councilmember Rosemary Eckerson, City of Puyallup

Councilmember Roy Hammonds, City of Roy

Councilmember Del Brewer, Town of Ruston

Mayor H. Layne Ross, Town of South Prairie

Mayor Ron Lucas, Town of Steilacoom

Mayor Bill Baarsma, City of Tacoma

Councilmember Connie Ladenburg, City of Tacoma

Councilmember Mike Lonergan, City of Tacoma

Mayor Doug A. Paulson, Town of Wilkeson

**Ex officio Members:**

Chris Picard, Office of Urban Mobility

Neel Parikh, Pierce County Library District

Kevin Desmond, Pierce Transit

J. Michael Zachary, Port of Tacoma

Norman Abbott, Puget Sound Regional Council

Recommended by the Pierce County Regional Council

August 21, 2003

**COUNTY-WIDE PLANNING POLICY ON URBAN GROWTH AREAS,  
PROMOTION OF CONTIGUOUS AND ORDERLY DEVELOPMENT  
AND PROVISION OF URBAN SERVICES TO SUCH DEVELOPMENT**

• **Background - Requirements of Growth Management Act**

The Washington Growth Management Act identifies the encouragement of development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner [RCW 36.70A.020(1)], the reduction of sprawl (*i.e.*, the inappropriate or premature conversion of undeveloped land into low-density development) [RCW 36.70A.020(2)], and the provision of adequate public facilities and services necessary to support urban development at the time the development is available for occupancy and use (without decreasing current service levels below locally established minimum standards) [RCW 36.70A.020(12)] as planning goals to guide the development and adoption of comprehensive plans and development regulations.

The Growth Management Act further requires (1) that the County designate an "urban growth area" or areas within which urban growth shall be encouraged and outside of which growth shall occur only if it is not "urban" in character; (2) that each municipality in the County be included within an urban growth area; (3) that an urban growth area include territory outside of existing municipal boundaries only if such territory is characterized by urban growth or is adjacent to territory that is already characterized by urban growth. [RCW 36.70A.110(1); for definition of "urban growth" see RCW 36.70A.030(14).]

The designated county and municipal urban growth areas shall be of adequate size and appropriate permissible densities so as to accommodate the urban growth that is projected by the State Office of Financial Management to occur in the County for the succeeding 20-year period. While each urban growth area shall permit urban densities, they shall also include greenbelt and open space areas [RCW 36.70A.110(2)].

As to the timing and sequencing of urban growth and development over the 20-year planning period, urban growth shall occur *first* in areas already characterized by urban growth that have existing public facility and service capacities to service such development, *second* in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources [RCW 36.70A.110(3)]. Urban government services shall be provided primarily by cities, and should not be provided in rural areas.

The Growth Management Act Amendments expressly require that county-wide planning policies address the implementation of urban growth area designations [RCW 36.70A.210(3)(a)], the promotion of contiguous and orderly development, the provision of urban services to such development [RCW 36.70A.210(3)(b)], and the coordination of joint county and municipal planning within urban growth areas [RCW 36.70A.210(3)(f)].

- **Principles of Understanding Between Pierce County and the Municipalities in Pierce County**

While following the goals and regulations of the Growth Management Act, Pierce County and the municipalities in Pierce County will strive to protect the individual identities and spirit of each of our cities and of the rural areas and unincorporated communities.

Further agreements will be necessary to carry out the framework of joint planning adopted herein. These agreements will be between the County and each city and between the various cities.

The services provided within our communities by special purpose districts are of vital importance to our citizens. Consistent with the adopted regional strategy, these districts will be part of future individual and group negotiations under the framework adopted by the County and municipal governments.

While the Growth Management Act defines sewer service as an urban service, Pierce County currently is a major provider of both sewer transmission and treatment services. The County and municipalities recognize that it is appropriate for the County and municipalities to continue to provide sewer transmission and treatment services.

The County recognizes that urban growth areas are often potential annexation areas for cities. These are also areas where incorporation of new cities can occur. The County will work with existing municipalities and emerging communities to make such transitions efficiently.

At the same time, annexations and incorporations have direct and significant impacts on the revenue of county government, and therefore, may affect the ability of the County to fulfill its role as a provider of certain regional services. The municipalities will work closely with the County to develop appropriate revenue sharing and contractual services arrangements that facilitate the goals of GMA.

The County-Wide Planning Policies are intended to be the consistent "theme" of growth management planning among the County and municipalities. The policies also spell out processes and mechanisms designed to foster open communication and feedback among the jurisdictions. The County and the cities and towns will adhere to the processes and mechanisms provided in the policies.

- **Centers**

Centers are intended to be areas of concentrated employment and/or housing within urban growth areas which serve as the hubs of transit and transportation systems. They are

integral to creating compact urban development that conserves resources and creates additional transportation, housing, and shopping choices. Centers are an important part of the regional strategy (VISION 2020) for urban growth and are required to be addressed in the County-Wide Planning Policies. Centers will become focal points for growth within the county and will be areas where public investment is directed.

Centers are intended to:

- be priority locations for accommodating growth;
- strengthen existing development patterns;
- promote housing opportunities close to employment;
- support development of an extensive transportation system which reduces dependency on automobiles; and
- maximize the benefit of public investment in infrastructure and services.

Vision ~~VISION~~ 2020, the adopted regional growth strategy, identifies numerous different types of Centers as an integral feature, including Urban Centers and ~~Town Centers~~, which feature a mix of land uses, and Manufacturing/~~Industrial~~ Centers, which consist primarily of manufacturing and industrial uses. Pierce County has identified ~~three types of five~~ Urban Centers and ~~one~~ Manufacturing/Industrial Centers that are applicable and consistent with the adopted regional vision. These ~~The designated~~ centers, as well as possible examples of them, are ~~within Pierce County are as follows:~~

<u>Urban Centers</u>	<u>Example</u>
<del>Metropolitan Center</del>	<del>Tacoma CBD</del>
<del>Jacoma Mall</del>	
<del>Urban Center</del>	<del>Blackwood Mall</del>
<del>Town Center</del>	<del>Sumner</del>
<del>Phyllis</del>	
<del>South Hill</del>	
 <u>Manufacturing/Industrial Centers</u>	
<del>Manufacturing Center</del>	<del>Frederickson</del>
<del>Port of Tacoma</del>	

Manufacturing Centers are areas where employee- or land-intensive uses will be located. These centers differ from Urban Centers in that they consist of an extensive land base and the exclusion of non-manufacturing uses are essential features of their character. These areas are characterized by a significant amount of manufacturing, industrial and advanced technology employment uses. Large retail and non-related office uses are discouraged. Other than caretakers' residences, housing is prohibited within Manufacturing Centers. However, these centers should be linked to high density housing areas by an efficient transportation system.

Within Pierce County, a limited number of centers, both urban and manufacturing, will be



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: VERNHARDSON STREET OVERLAY PROJECT**  
**BID AWARD**  
**DATE: NOVEMBER 10, 2003**

**INTRODUCTION/BACKGROUND**

An identified street operating objective in the 2003 budget provides for the asphalt overlay on various City streets.

In accordance with the small works rooster process, the City recently contacted 3 paving companies and requested price quotations for the above-mentioned work. Three proposals were received by the city.

<u>Contractors</u>	<u>Total (including retail sales tax)</u>
Woodworth and Company	\$31,720.00
Looker and Associates	\$32,300.90
Spadoni Bros.	\$47,756.02

The apparent low respondent is Woodworth and Company. Staff recommends Council approve award of the contract to Woodworth and Company, in the amount of thirty-one thousand seven hundred twenty dollars and zero cents (\$31,720.00) including retail sales tax.

**ISSUES/FISCAL IMPACT**

Sufficient funds are available in the Street Operating Fund, Objective No. 4 (budgeted allocation of \$150,000) to cover the cost of this project.

**RECOMMENDATION**

I recommend that Council authorize the award and execution of the contract for the Vernhardson Street Overlay Project to Woodworth and Company in the amount of thirty-one thousand seven hundred twenty dollars and zero cents (\$31,720.00) including retail sales tax.



# HOGAN ENTERPRISES

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3803 Bridgeport Way West University Place, WA 98466-4415 (253) 565-8661 FAX (253) 564-1078

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November 6, 2003

Mayor Gretchen Wilbert  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Wa. 98335

RECEIVED  
CITY OF GIG HARBOR  
NOV 06 2003  
COMMUNITY  
DEVELOPMENT

Re: Gig Harbor Ford signage

Dear Mayor Wilbert:

As the Landlord of the Ford facility, we received a copy of the letter that John Hern sent to you; the City Council and the Planning Commission dated September 25, 2003.

In that letter Mr. Hern pointed out that Gig Harbor Ford has operated and paid sales tax to the City for over 25 years. I think for a lot of those years, the Ford dealership represented the largest sales tax generating business in the City.

This dealership is the only warranty and servicing destination within the greater Gig Harbor area for the many Ford product lines of cars and trucks and also employs forty to fifty people on a full time basis.

It seems logical that the City would want to retain this essential community service and should be able to come to a workable solution through a text amendment to the sign code that improves an existing sign and eliminates another non-conforming sign.

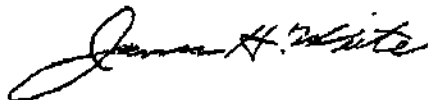
In the upcoming City Council meeting to discuss this sign issue, I hope that you

November 6, 2003  
Page Two

RECEIVED  
CITY OF GIG HARBOR  
NOV 06 2003  
COMMUNITY  
DEVELOPMENT

can find a way to accommodate some common ground that works for both the City and a business that has served Gig Harbor residents for many years.

Sincerely,



James H. White, CPM®  
Manager of Real Estate and Leasing

Cc: City Council Members, (7)

Walter N., Robert E. and Wayne V. Hogan

John M. Hern

Sent via fax and regular mail

## REQUEST FOR RESIDENTIAL VIEW PROTECTION

**We are Jim & Janet Nelson. We moved to Wollochet Bay 15 years ago, and then in 1999 to downtown Gig Harbor - 8103 Bayridge Ave. We love living here. We have had great neighbors on our street, and we enjoy the beauty of this area.**

**We had a wonderful view of the Harbor from our living room (photo (1) - until a house was built next door to us this past summer (photos (2) & (3). If we go out on our deck, we still have Harbor view - but not like we had before.**

**Although some homes in Gig Harbor have "corridor view protection," we found we did not. The new house next door was built within all the codes, but it sticks way out beyond our house and the neighbors on the other side. In other cities, this could not have happened - our view would have had some protection with a requirement that all homes to be setback on the same line. What is done is done, but we are not happy about it. Gig Harbor should offer setback view protection.**

**Now we are losing more view because the neighbors below us insist on letting a row of alder weed trees grow up to obscure our view. They want privacy - but they seem not to appreciate our desire to preserve our view. We are willing to help share the expense to thin or top the alders involved - or to help pay for a reasonable height hedge replacement - but there has been no interest by the alder owners in considering these options.**

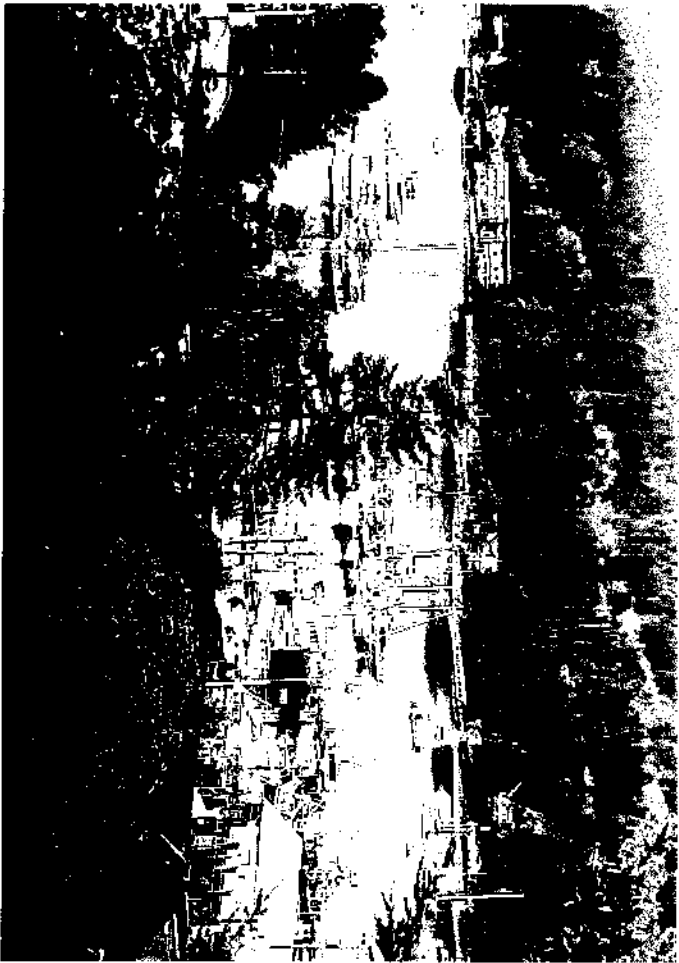
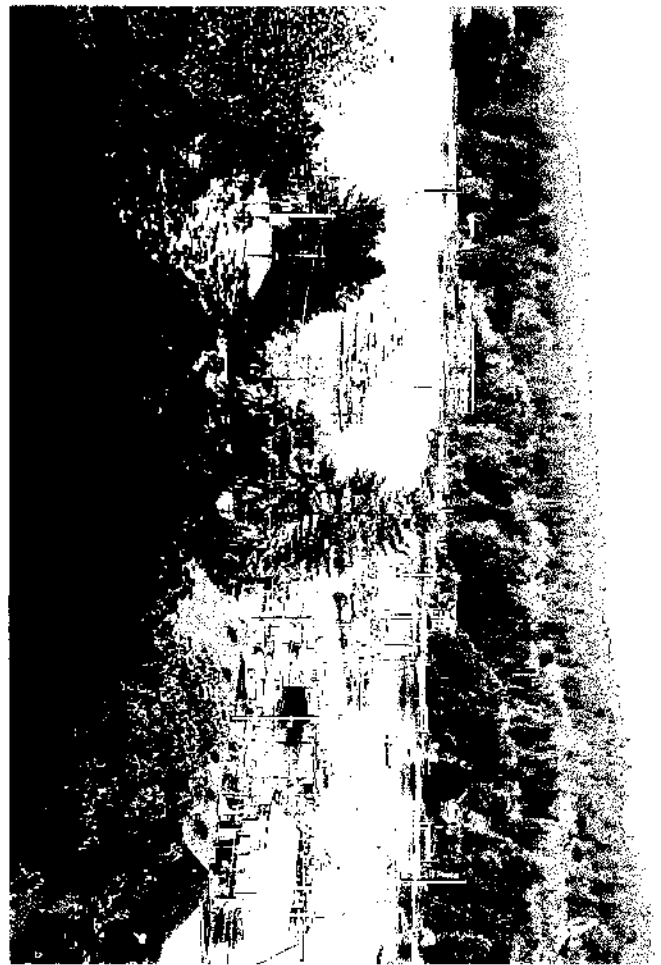
**Photo 1.A, taken from the best view spot on our upper deck, shows the alders beginning to obstruct our view. One more season of alder growth and it will be gone. Photo 2.A shows that we already have lost this view from our lower deck.**

**Photo (4) shows that those alders were under control in 2000, after we moved into our home. (New homes since have been built on either side of us.) The remaining photos show how the 20 ft. and 30 ft. high alders are growing to block our view - and the view of others on our street.**

**We want these weed alder trees topped or removed, and we want our Harbor view restored and protected.**

**The Gig Harbor Design Manual states that ". . . existing views of the water . . . should be preserved on both developed and vacant Parcels." The Manual states that "Larger tree stands which, over time, have closed off significant views may be thinned. . . ." But, we are told by Planning Staff that the homeowner rules.**

**We ask that the commercial development requirement in the Municipal Code be adopted for all residential use, requiring that ". . . trees or shrubs shall receive pruning or removal to . . . preserve a view or scenic vista." (17.78.120.B) We also ask that such a code be enforced with provisions and process similar to those for plants that are deemed a nuisance under Chapter 8.04 in the Code.**





2000 - Waterview of Beyridge Homes

(4)



2003 - Lower Deck View of Gig Harbor - 8103 Bayridge Ave  
Alder Weeds obstruct view that was like top deck  
in 2002



2.A

# Gig Harbor Municipal Code

## Chapter 17.78

Intent - 17.78.010 "trees and shrubs ..."

shall not be types and ultimate sizes  
at maturity that will ~~be~~ impair  
scenic vistas, "

Maintenance' - 17.78.020

"... If necessary, the trees or shrubs  
shall receive pruning or removal  
to avoid the creation of ...  
nuisance through excessive  
slaking, overhanging adjacent  
properties, or to preserve  
View or scenic vista,



2003 - Top Deck View of Gig Harbor - 8103 Bayridge Ave  
Alder Weeds (20+ Ft high) beginning to obstruct view.



I. A

# OUR VIEW

2 YEARS



NOV. 2001



TODAY OCT 27 2003

OUR VIEW

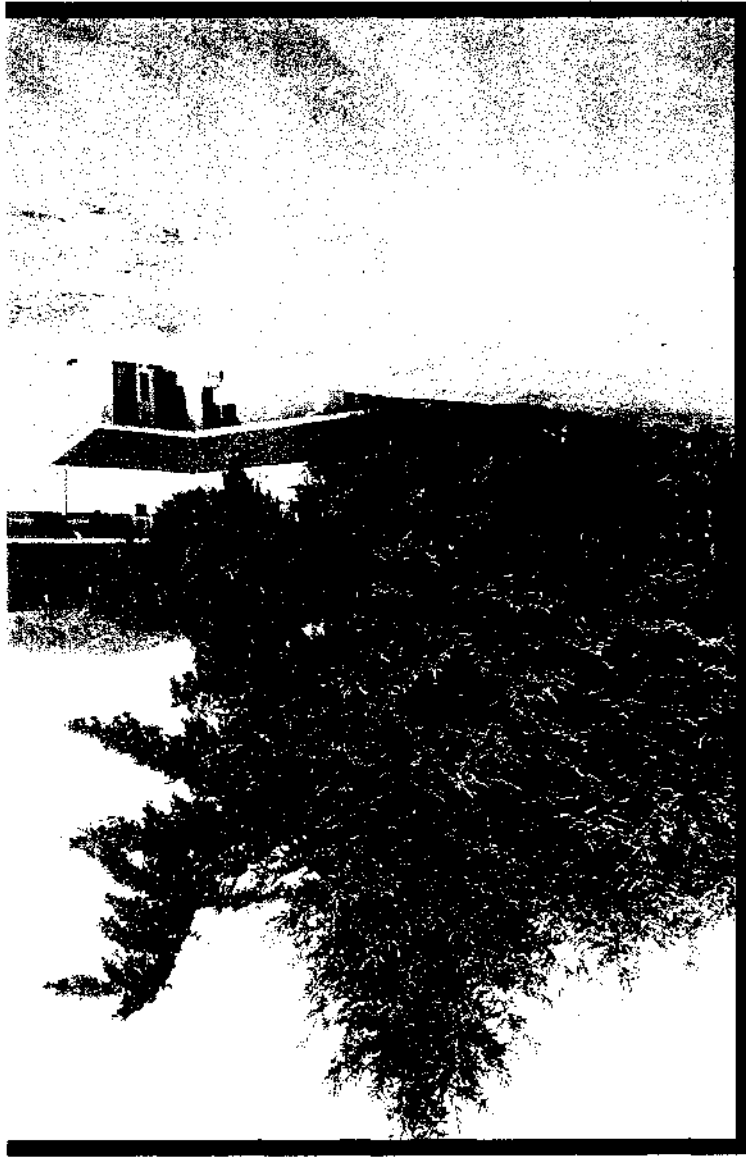
1 YEAR



DEC. 2002



TODAY OCT 27 2003



TREES THAT ONE  
DAY WILL BLOCK VIEW  
FROM THOSE ON  
SHIRLEY AVE.

2002 - Living Room View - 8105 Bayridge Ave

①



Before Construction Next Door

June 2003 - Beginning Loss of Living Room View - 8103 Bayridge Ave.

②



apt. 2003 - Living Room View GOME - 8103 Bayridge Ave



(3)



**Scenic  
America**

Home  
About Scenic America  
Join Scenic America

Billboard & Sign Control  
Community Design  
Context-Sensitive  
Highway Design  
Scenic Byways  
Smart Growth  
Tree Conservation  
Telecommunications  
Towers  
View Protection

National Policy  
Scenic America's Scenic  
Conservation Policies  
Last Chance Landscapes  
Journey Through  
Hallowed Ground  
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## View Protection

As important as scenery is to the overall quality of our communities, scenic vistas and viewsheds are often destroyed during rapid change, especially in natural or open space settings. Identification and protection of these assets is an important component of scenic conservation.

Communities are increasingly using conservation easements, overlay zoning, historic districts, design guidelines, transfer of development rights, and other measures to protect scenic areas from degradation. Protecting scenic beauty offers communities many substantial benefits, such as higher property values and increased tourism revenue. Preserving scenic vistas and viewsheds helps a community to preserve its unique charm, build civic pride, and attract positive growth.

Scenic America helps communities identify and map special places as a way to manage new development and conserve significant visual assets. Scenic America's *O Say Can You See: A Visual Awareness Toolkit for Communities* helps citizens look at their community and identify the qualities that contribute to local character.

Resources from Scenic America on view protection:

### Guides

- *O Say Can You See: A Visual Awareness Toolkit for Communities*
- *Aesthetics, Community Character and the Law*
- *Saving America's Countryside: A Guide to Rural Conservation. 2nd ed.*
- *Evaluating Scenic Resources*
- *Balancing Nature and Commerce in Gateway Communities*

### Facts for Action

- *From Sprawl to Smart Growth: Identify and Protect Scenic Vistas and Viewsheds*





# Title 24 ENVIRONMENTAL PROCEDURES

**Chapters:**

**24.02 SEPA Procedures and Policies**

**24.05 Shoreline Master Program**

**24.06 Shoreline Administration and Procedures**

## Chapter 24.02 SEPA PROCEDURES AND POLICIES

**Sections:**

### **Article I. Purpose—Authority**

**24.02.005 User guide.**

### **Article II. General Requirements**

**24.02.010 SEPA process.**

**24.02.015 Definitions.**

**24.02.020 Designation of responsible official.**

**24.02.025 Environmental coordinator.**

**24.02.030 Use of environmental documents.**

**24.02.035 SEPA timing.**

### **Article III. Categorical Exemptions and Threshold Determinations**

**24.02.040 General—Categorical exemptions and threshold determinations.**

**24.02.045 Threshold levels for categorical exemptions.**

**24.02.050 Use of exemptions.**

**24.02.055 Environmental checklist.**

**24.02.060 Mitigated DNS.**

### **Article IV. Environmental Impact Statement**

**24.02.065 General—Environmental Impact Statement.**

**24.02.070 Preparation of EIS—Additional considerations.**

### **Article V. Commenting**

**24.02.080 General—Commenting.**

**24.02.085 Public notice.**

## Article VI. Using Existing Environmental Documents

**24.02.090 General—Using existing environmental documents.**

## Article VII. SEPA and Agency Decisions

**24.02.095 General—SEPA and agency decisions.**

**24.02.100 SEPA policies.**

**24.02.105 Administrative appeals.**

**24.02.106 Repealed.**

**24.02.110 Judicial review.**

## Article VIII. Definitions

**24.02.115 General definitions.**

## Article IX. Categorical Exemptions

**24.02.120 General—Categorical exemptions.**

## Article X. Agency Compliance

**24.02.125 General—Agency compliance.**

**24.02.130 Environmentally sensitive areas map adopted by reference.**

**24.02.135 Fees.**

## Article XII. Forms

**24.02.140 General—Forms.**

## Article I. Purpose—Authority

**24.02.005 User guide.**

This chapter contains the city's laws that implement the State Environmental Policy Act (RCW 43.21C). This chapter contains several parts. These parts correspond to the parts contained in Chapter 197-11 of the Washington Administrative Code, which also implements the State Environmental Policy Act. At the beginning of each part of this chapter is a list of sections of the Washington Administrative Code, Chapter 197-11, that are adopted by reference. These WAC sections, as well as RCW 43.21C, should be consulted for complete information regarding SEPA. (Ord. 2830 Part 1, § 1 (part), 1984)

## Article II. General Requirements

**24.02.010 SEPA process.**

This article, Section 24.02.010 through Section 24.02.035, contains information on the basic requirements that apply to the SEPA process. The city adopts by reference the following sections of the WAC which contain related information:

197-11-040 Definitions;

197-11-050 Lead agency;

197-11-055 Timing of the SEPA process;

197-11-060 Content of environmental review;

197-11-070 Limitations on action during SEPA process;

197-11-080 Incomplete or unavailable information;  
 197-11-090 Supporting documents;  
 197-11-100 Information required of applicants.  
 (Ord. 2830 Part 2, § 1 (part), 1984)

#### **24.02.015 Definitions.**

(a) In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this chapter, the following terms shall have the following meanings unless the context indicates otherwise:

(1) "City department" means any department of the city established by Chapter 3.16, Kirkland Municipal Code.

(2) "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.

(3) "Complete application," for the purposes of this chapter, means an application and supporting documentation which have been reviewed by the SEPA responsible official and other appropriate department(s) of the city and found to contain all information reasonably sufficient to evaluate the environmental impact of a proposal, based on standards developed by the city consistent with SEPA rules.

(4) "City" means the city of Kirkland.

(5) "Improvement" means any structure or manmade feature.

(6) "Recognized historical significance" means listed in the state or national register of historic places, designation as an historic landmark overlay zone, inclusion in the 1983 planning and community development SEPA list of historic structures, or other formal recognition conferred by a body with authority and expertise in what might constitute historical significance; provided that inclusion in the 1992 survey of historic structures by northwest preservation resources is not considered such recognition for the purposes of this chapter or SEPA.

(b) The following abbreviations are used in this chapter:

(1) "DNS" means determination of nonsignificance.

(2) "DS" means determination of significance.

(3) "SEIS" means Supplemental Environmental Impact Statement.

(4) "WAC" means Washington Administrative Code. (Ord. 3335 § 1, 1992; Ord. 2830 Part 2, § 1 (part), 1984)

#### **24.02.020 Designation of responsible official.**

For all proposals for which the city is the lead agency, the responsible official shall be the director of the department of planning and community development, or his/her designee. For these proposals, the responsible official shall make the threshold determination, supervise scoping and preparation of any required EIS, and perform any other functions assigned to the "lead agency" or "responsible official" by this chapter. (Ord. 2830 Part 2, § 1 (part), 1984)

#### **24.02.025 Environmental coordinator.**

The city manager shall designate an employee of the city to act as environmental coordinator. It shall be the responsibility of the environmental coordinator to:

(1) Assure that all SEPA-related city ordinances and policies are in compliance with corresponding regulations and policies at the state level;

(2) Assist all city departments in the interpretation and implementation of this chapter;

(3) Coordinate the processing of appeals pursuant to Section 24.02.105 of this chapter;

(4) Assist the public with inquiries concerning environmental policy and other SEPA-related information;

(5) Maintain all public information on SEPA;

(6) Coordinate the review of and response to impact statements submitted by the city as a consulted agency by other governmental agencies;

(7) Coordinate the preparation and distribution of EIS's and SEIS's undertaken by the city or its consultant;

(8) Review each environmental checklist submitted to the city and make a recommendation to the responsible official on each action or proposal;

(9) Determine whether or not the proposal is an exempt action, make certain the proposal is properly defined and identify the governmental licenses required (WAC 197-11-060);

(10) Be responsible for preparation of written comments for the city in response to consultation requests prior to a threshold determination, participation in scoping, and reviewing a draft EIS;

(11) Be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency. The environmental coordinator is authorized to develop operating procedures that will insure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city;

(12) Perform all other activities required to implement SEPA in the city except those performed by the responsible official. (Ord. 2830 Part 2, § 1 (part), 1984)

#### **24.02.030 Use of environmental documents.**

For nonexempt proposals, the DNS or final EIS and SEIS for the proposal shall accompany the city's staff recommendation to the appropriate decision maker. (Ord. 2830 Part 2, § 1 (part), 1984)

#### **24.02.035 SEPA timing.**

(a) If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of detailed plans and specifications. A decision as to whether or not to do early environmental review, prior to receiving a complete application, shall be at the discretion of the responsible official.

(b) The responsible official may elect to do early environmental review if adequate information is available to determine the size and scope of the proposed action, including dimensions and use of all proposed improvements, project timing, and the extent of clearing and grading.

(c) The city may initiate preliminary environmental review and have informal conferences with applicants prior to receipt of a complete application. However, this review shall not be binding on the city or the applicant.

(d) Any request for early notice of whether or not a DS is likely under WAC 197-11-350 shall be in writing.

(e) The city may, pursuant to WAC 197-11-355, use a single, integrated comment period to obtain comments on a notice of application and the likely threshold determination for the proposal if the responsible official has a reasonable basis for determining that significant environmental impacts are unlikely. (Ord. 3690 § 1, 1999; Ord. 2830 Part 2, § 1 (part), 1984)

### **Article III. Categorical Exemptions And Threshold Determinations**

#### **24.02.040 General—Categorical exemptions and threshold determinations.**

This article, Section 24.02.040 through Section 24.02.060, contains information for deciding whether or not a proposal has a "probable significant, adverse, environmental impact," and for evaluating the impact of proposals not requiring an EIS. The city adopts by reference the following sections of the WAC which contain related information:

197-11-300 Purpose of this part;

197-11-305 Categorical exemptions;  
197-11-310 Threshold determination required;  
197-11-315 Environmental checklist;  
197-11-330 Threshold determination process;  
197-11-335 Additional information;  
197-11-340 Determination of nonsignificance (DNS);  
197-11-350 Mitigated DNS;  
197-11-355 Optional DNS process;  
197-11-360 Determination of significance (DS)/initiation of scoping;  
197-11-390 Effect of threshold determination.  
(Ord. 3690 § 2, 1999; Ord. 2830 Part 3, § 1 (part), 1984)

#### **24.02.045 Threshold levels for categorical exemptions.**

WAC 197-11-800 establishes certain actions as exempt from SEPA. Under (1)(c) of that section, the city establishes raised levels of exemptions for the following types of actions as exempt from SEPA except as provided in WAC 197-11-305 and WAC 197-11-800(1)(a):

- (1) The construction or location of any residential structures of nine or fewer dwelling units (WAC 197-11-800(1)(b)(i));
- (2) Any landfill or excavation of five hundred or fewer cubic yards throughout the total lifetime of the fill or excavation, and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder (WAC 197-11-800(1)(b)(v)). (Ord. 2830 Part 3, § 1 (part), 1984)

#### **24.02.050 Use of exemptions.**

Each city department receiving an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt shall be subject to review by the environmental coordinator. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. (Ord. 2830 Part 3, § 1 (part), 1984)

#### **24.02.055 Environmental checklist.**

For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city-initiated proposals, the department initiating the proposal shall complete the environmental checklist for that proposal. (Ord. 2830 Part 3, § 1 (part), 1984)

#### **24.02.060 Mitigated DNS.**

(a) For a mitigated DNS, the applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibels" or "construct a 200-foot storm water retention pond at Y location" are adequate.

(b) Mitigation measures incorporated in the mitigated DNS are deemed conditions of approval of the permit decision and shall be enforced in the same manner as any term or condition of the permit, or enforced in any manner available to the city.

(c) If the city's final decision on a proposed action does not include the mitigation measures that were incorporated in a mitigated DNS for the proposal, the city shall reevaluate the threshold determination to insure that the DNS is still valid or determine if it should be withdrawn under WAC 197-11-340(3)(a). (Ord. 2830 Part 3, § 1 (part), 1984)

### **Article IV. Environmental Impact Statement**

**24.02.065 General—Environmental Impact Statement.**

This article, Section 24.02.065 through Section 24.02.075, contains information on the rules for preparing EIS's. The city adopts by reference the following sections of the WAC which contain related information:

197-11-400 Purpose of EIS;  
197-11-402 General requirements;  
197-11-405 EIS types;  
197-11-406 EIS timing;  
197-11-408 Scoping;  
197-11-410 Expanded scoping;  
197-11-420 EIS preparation;  
197-11-425 Style and size;  
197-11-430 Format;  
197-11-435 Cover letter or memo;  
197-11-440 EIS contents;  
197-11-442 Contents of EIS on Nonproject Proposals;  
197-11-443 EIS contents when prior Nonproject EIS;  
197-11-444 Elements of the environment;  
197-11-448 Relationship of EIS to other considerations;  
197-11-450 Cost-benefit analysis;  
197-11-455 Issuance of DEIS;  
197-11-460 Issuance of FEIS.  
(Ord. 2830 Part 3, § 1 (part), 1984)

**24.02.070 Preparation of EIS—Additional considerations.**

(a) The responsible official shall determine whether the draft, or final EIS, or SEIS will be prepared by the city or by a private consultant. If the action for which the EIS or SEIS is being prepared is one proposed by a private applicant, and if the responsible official determines that the draft and final EIS or SEIS will be prepared by a private consultant, that consultant shall be selected in the manner prescribed by subsection (c) of this section.

(b) Regardless of who prepares the EIS, the responsible official shall insure that the EIS or SEIS is prepared in accordance with all applicable laws, regulations, and ordinances. The responsible official shall determine the elements of the environment to be included in the document through the scoping process described in this section.

(1) Whenever the city issues a DS under WAC 197-11-360(3), the city shall provide notice as prescribed in subsection (b) of Section 24.02.085 of this chapter and shall circulate copies of the DS to the applicant; agencies with jurisdiction and expertise, if any; affected tribes and the public.

(2) All comments on a DS and scoping notices must be in writing and received within twenty-one days from the date of issuance of the DS, except where a public meeting on EIS scoping occurs, pursuant to WAC 197-11-410(1)(b).

(c) If the responsible official determines that the EIS or SEIS is to be prepared by a consultant, the city shall enter into any necessary agreements with the applicant and the consultant in conformance with this chapter. The responsible official shall review the consultants recommended by the applicant and, if the responsible official finds one of the consultants suitable to prepare the EIS or SEIS, shall select that consultant for the preparation of the EIS or SEIS. In the event the responsible official does not find one of the consultants suitable to prepare the EIS or SEIS, he/she shall request the applicant to provide the names of additional consultants and/or interview additional consultants of the city's choosing.

(d) A consultant who prepares an EIS or SEIS for a proposal by a private applicant shall have no involvement in the proposed project other than the preparation of the EIS or SEIS.

(e) Cost of preparation of EIS:

(1) The applicant shall deposit with the city, the entire estimated cost of preparation of a draft and final EIS determined by the selected consultant within ten days of signing the agreement for preparation of those documents with the city and the consultant.

(2) If the city requires additional work beyond the terms of the agreement in order to complete the draft or final EIS or SEIS, the applicant shall deposit, with the city, the entire estimated cost of the additional work within ten days of signing an addendum to the agreement.

(3) The city will not authorize work on the draft or final EIS or SEIS until the applicant has made the required deposits.

(f) City review and processing:

(1) The applicant shall deposit with the city an amount for review and processing of the Environmental Impact Statement or SEIS as required by Ordinance No. 2776, as amended.

(2) The city will not begin to review and process any EIS or SEIS until this deposit is received by the city.

(3) The city will send the applicant a monthly itemized billing for costs incurred in review and processing of an EIS or SEIS.

(4) If the amount deposited exceeds the cost of review and processing, the city will refund the excess to the applicant following issuance of the final EIS or SEIS.

(5) If the cost of review and processing exceeds the amount deposited, the applicant shall pay the full amount due within 30 days of receipt of an itemized billing by the city.

(6) The city will cease all work on the proposal, including review and processing of the EIS or SEIS, if the amounts due to the city have not been paid in full in the manner specified in this section.

(g) Before the city issues an EIS or SEIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC. (Ord. 2830 Part 4, § 1 (part), 1984)

## **Article V. Commenting**

### **24.02.080 General—Commenting.**

This article, Section 24.02.080 and Section 24.02.085, contains rules for consulting, commenting and responding to environmental documents including rules for public notices and hearings. The city adopts by reference the following sections of the WAC which contain related information:

- 197-11-500 Purpose of this part;
  - 197-11-502 Inviting comment;
  - 197-11-504 Availability and cost of environmental documents;
  - 197-11-508 SEPA register;
  - 197-11-535 Public hearings and meetings;
  - 197-11-545 Effect of no comment;
  - 197-11-550 Specificity of comments;
  - 197-11-560 FEIS response to comments;
  - 197-11-570 Consultant agency costs to assist lead agency.
- (Ord. 2830 Part 5, § 1 (part), 1984)

### **24.02.085 Public notice.**

(a) Whenever the city issues a DNS under WAC 197-11-340(2), or DS under WAC 197-11-360(3), the city shall give public notice by publishing notice in a newspaper of general circulation in the city where the proposal is located.

(b) Whenever the city issues a mitigated DNS for Process IIA, IIB, and III zoning and subdivision applications, the city shall give public notice by publishing notice in a newspaper of general circulation in the city where the proposal is located, by providing that the applicant erect public notice signs on or near the subject property

facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property, and by mailing notice to owners of all property within three hundred feet and all residents adjacent to or directly across the street from the subject property.

(c) The responsible official may require notice by alternative methods, as specified in WAC 197-11-510, if deemed necessary to provide public notice of impending action.

(d) Whenever the city issues a draft EIS or SEIS under WAC 197-11-455(5) or WAC 197-11-620, notice of availability of those documents shall be given by:

(1) Posting the property for site-specific proposals, pursuant to the guidelines in (b) above; and

(2) Publishing notice in a newspaper of general circulation in the city; and

(3) Mailing notice for site specific proposals, pursuant to the guidelines in (b) above. (Ord. 3420 § 1(part), 1994; Ord. 2830 Part 5, § 1 (part), 1984)

## **Article VI. Using Existing Environmental Documents**

### **24.02.090 General—Using existing environmental documents.**

This article, Section 24.02.090 contains information on using and supplementing the existing environmental documents prepared under SEPA or NEPA for the city's own environmental compliance. The city adopts by reference the following sections of the WAC which contain related information:

197-11-600 When to use existing environmental documents;

197-11-610 Use of NEPA;

197-11-620 Supplemental Environmental Impact Statement—Procedures;

197-11-625 Addenda procedures;

197-11-630 Adoption procedures;

197-11-635 Incorporation by reference procedures;

197-11-640 Combining documents.

(Ord. 2830 Part 6, § 1 (part), 1984)

## **Article VII. SEPA And Agency Decisions**

### **24.02.095 General—SEPA and agency decisions.**

This article, Section 24.02.095 through Section 24.02.105, contains information on SEPA's substantive authority and procedures for appealing SEPA determinations to agencies or the courts. The city adopts by reference the following sections of the WAC which contain related information:

197-11-650 Purpose of this part;

197-11-655 Implementation;

197-11-660 Substantive authority and mitigation;

197-11-680 Appeals.

(Ord. 2830 Part 7, § 1 (part), 1984)

### **24.02.100 SEPA policies.**

The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this chapter:

(1) The policies of the State Environmental Policy Act—RCW 43.21C;

(2) Ordinance No. 3481—Comprehensive plan;

(3) Ordinance No. 2740, as amended—Zoning code;

(4) Ordinance No. 2699, as amended—The zoning map;

(5) Ordinance No. 2766, as amended—Subdivision ordinance;

(6) The city of Kirkland Shoreline Master Program—Ordinance 2256 as well as the Shoreline Policies adopted in Kirkland Municipal Code Chapter 24.04;



- (7) Building and Construction—Title 21 of the Kirkland Municipal Code;
- (8) The perpetual six-year transportation improvement program established by Section 19.08.051, Kirkland Municipal Code, including annual amendments (Resolution R-3106 or its successor);
- (9) Park and open space plan—Ordinance No. 2117, as amended;
- (10) East planning area comprehensive sewer plan—Ordinance No. 2796, as amended;
- (11) Flood protection—Kirkland Municipal Code, Chapter 21.56;
- (12) Policies and regulations relating to water and sewer extensions established in Title 15, Kirkland Municipal Code. (Ord. 3530 § 1, 1996; Ord. 2830 Part 7, § 1 (part), 1984)

#### **24.02.105 Administrative appeals.**

(a) **Appealable Decisions.** Only the following decisions of the city are appealable under this section:

(1) The issuance of a determination of nonsignificance, including mitigation measures and conditions that are required as part of that determination of nonsignificance;

(2) The issuance of a determination of significance.

(b) **Who May Appeal.** Only the following may appeal:

(1) The applicant or proponent;

(2) Any agency with jurisdiction;

(3) Any individual or other entity who is specifically and directly affected by the proposed action.

(c) **Time to Appeal.**

(1) An appeal of a DNS must be filed with the environmental coordinator within fourteen days of the date the determination is issued by the responsible official.

(2) An appeal of a DS must be filed within seven days of the date it is published under Section 24.02.085 of this chapter.

(d) **How to Appeal.** The appeal must be in the form of a written notice of appeal, and must contain a brief and concise statement of the matter being appealed, the specific components or aspects that are being appealed, the appellant's basic rationale or contentions on appeal, and a statement demonstrating standing to appeal. The appeal may also contain whatever supplemental information the appellant wishes to include.

(e) **Fees.** The person filing the appeal shall include with the letter of appeal the fee as established by ordinance.

(f) **Who Will Hear and Decide Upon the Appeal.** Appeals of DNS's and DS's will be heard at the open record hearing for the underlying project permit and decided upon by the hearing body hearing the underlying project permit using the provisions of subsections (g), (h) and (i) of this section. In the event that a project permit does not include an open record public hearing, the SEPA appeal will be heard and decided upon by the hearing examiner using the provisions of subsections (g), (h) and (i) of this section unless the underlying project permit is a short subdivision that has been appealed to the city council pursuant to Section 22.20.245 of the Kirkland Municipal Code, in which case, the city council shall hear both the SEPA appeal and the appeal of the underlying project permit.

(g) **Procedures for the Appeal.**

(1) **Notice of the Appeal Hearing.**

(A) **Content.** The planning official shall prepare a notice of the appeal containing the following:

(i) The file number and a brief written description of the matter being appealed.

(ii) A statement of the scope of the appeal including a summary of the specific factual findings and conclusions disputed in the letter of appeal.

(iii) The time and place of the public hearing on the appeal.

(iv) A statement of who may participate in the appeal.

(v) A statement of how to participate in the appeal.

(B) Distribution. At least fourteen calendar days before the hearing on the appeal, the planning official shall send a copy of this notice to each person who received a copy of the threshold determination and any person who submitted written comments on, or an appeal of, the threshold determination.

(C) The notice of appeal may be combined with the hearing notice for the underlying project permit, if applicable.

(2) Participation in the Appeal. Only those persons entitled to appeal the threshold determination under subsection (b) of this section may participate in the appeal. These persons may participate in the appeal in either or both of the following ways:

(A) By submitting written testimony to the planning department within the timeline established by subsection (c) above.

(B) By appearing in person, or through a representative, at the hearing and submitting oral or written testimony directly to the hearing body. The hearing body may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

(3) Staff Report on the Appeal.

(A) Content. The planning official shall prepare a staff report containing the following:

(i) The SEPA threshold determination.

(ii) All written comments submitted to the responsible official.

(iii) The letter of appeal.

(iv) All written comments on the appeal received by the planning department from persons entitled to participate in the appeal and within the scope of the appeal.

(v) An analysis of the specific factual findings and conclusions disputed in the letter of appeal.

(B) This report may be combined with the staff report on the underlying project permit, if applicable.

(C) Distribution. At least seven calendar days before the hearing, the planning official shall distribute copies of the staff report as follows:

(i) A copy will be sent to the hearing body hearing the appeal as specified under subsection (f) above.

(ii) A copy will be sent to the applicant.

(iii) A copy will be sent to the person who filed the appeal.

(iv) A copy will be sent to any person or agency who received a copy of the threshold determination or submitted comments on the threshold determination.

(4) Public Hearing on the Appeal.

(A) Hearing in General. The hearing body shall hold a public hearing on the appeal.

(B) Hearing Declared Open. The hearings of the hearing body are open to the public.

(5) Electronic Sound Recordings. The hearing body shall make a complete electronic sound recording of each hearing.

(6) Continuation of the Hearing. The hearing body may continue the hearing if, for any reason, it is unable to hear all of the public comments on the appeal or if it determines that it needs more information within the scope of the appeal. If, during the hearing, the hearing body announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

(h) Decision on the Appeal.

(1) General. The hearing body shall consider all information and material within the scope of the appeal submitted by persons entitled to participate in the appeal. The hearing body shall either affirm or change the findings and conclusions of the responsible official that were appealed. Based on the hearing body's findings and conclusions, it shall either:

(A) Affirm the decision being appealed; or

- (B) Reverse the decision being appealed; or
- (C) Modify the decision being appealed.
- (2) Issuance of Written Decision. Within eight calendar days after the public hearing, the hearing body shall issue a written decision on the appeal. Within four calendar days after it is issued, the hearing body shall distribute the decision as follows:
  - (A) A copy will be mailed to the applicant.
  - (B) A copy will be mailed to the person who filed the appeal.
  - (C) A copy will be mailed to all other persons or agencies who participated in the appeal.
- (i) Additional Appeal Procedures.
  - (1) The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.
  - (2) The decision of the responsible official shall be accorded substantial weight.
  - (3) All testimony will be taken under oath.
  - (4) The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a mitigated determination of nonsignificance. (Ord. 3690 § 3, 1999; Ord. 3530 § 2, 1996; Ord. 3420 § 1 (part), 1994; Ord. 3056 § 1, 1987; Ord. 2962 § 1, 1986; Ord. 2830 Part 7, § 1 (part), 1984)

**24.02.106 Special procedures for SEPA appeals on specified projects.**

*Repealed by Ord. 3530. (Ord. 3424 § 1, 1994)*

**24.02.110 Judicial review.**

Judicial review of SEPA determinations are by RCW 43.21C.075 required to be heard only at the time of judicial review of the underlying action, i.e. approval or disapproval of the proposal for which SEPA review was required. For rules on perfecting and timing of the SEPA determination and judicial appeal, see RCW 43.21C.075 and WAC 197-11-680(4). The notice required by WAC 197-11-680(5) shall be appended to the permit or "notice of appeal" at the time of final city action. (Ord. 2830 Part 7, § 1 (part), 1984)

**Article VIII. Definitions**

**24.02.115 General definitions.**

This article, Section 24.02.115, contains information on the usage and definition of terms under SEPA. The city adopts the following sections by reference as supplemented by Section 24.02.015 of this chapter:

- 197-11-700 Definitions;
- 197-11-702 Act;
- 197-11-704 Action;
- 197-11-706 Addendum;
- 197-11-708 Adoption;
- 197-11-710 Affected tribe;
- 197-11-712 Affecting;
- 197-11-714 Agency;
- 197-11-716 Applicant;
- 197-11-718 Built environment;
- 197-11-720 Categorical exemption;
- 197-11-721 Closed record appeal;
- 197-11-722 Consolidated appeal;
- 197-11-724 Consulted agency;
- 197-11-726 Cost-benefit analysis;
- 197-11-728 County/city;

197-11-730 Decision maker;  
 197-11-732 Department;  
 197-11-734 Determination of nonsignificance (DNS);  
 197-11-736 Determination of significance (DS);  
 197-11-738 EIS;  
 197-11-740 Environment;  
 197-11-742 Environmental checklist;  
 197-11-744 Environmental document;  
 197-11-746 Environmental review;  
 197-11-748 Environmentally sensitive area;  
 197-11-750 Expanded scoping;  
 197-11-752 Impacts;  
 197-11-754 Incorporation by reference;  
 197-11-756 Lands covered by water;  
 197-11-758 Lead agency;  
 197-11-760 License;  
 197-11-762 Local agency;  
 197-11-764 Major action;  
 197-11-766 Mitigated DNS;  
 197-11-768 Mitigation;  
 197-11-770 Natural environment;  
 197-11-772 NEPA;  
 197-11-774 Nonproject;  
 197-11-775 Open record hearing;  
 197-11-776 Phased review;  
 197-11-778 Preparation;  
 197-11-780 Private project;  
 197-11-782 Probable;  
 197-11-784 Proposal;  
 197-11-786 Reasonable alternative;  
 197-11-788 Responsible official;  
 197-11-790 SEPA;  
 197-11-792 Scope;  
 197-11-793 Scoping;  
 197-11-794 Significant;  
 197-11-796 State agency;  
 197-11-797 Threshold determination;  
 197-11-799 Underlying governmental action.  
 (Ord. 3690 § 4, 1999; Ord. 2830 Part 8, § 1 (part), 1984)

### **Article IX. Categorical Exemptions**

#### **24.02.120 General—Categorical exemptions.**

This article, Section 24.02.120, contains information on the rules for categorical exemptions. The city adopts by reference the following sections of the WAC which contain related information:

197-11-800 Categorical exemptions;  
 197-11-880 Emergencies;  
 197-11-890 Petitioning DOE to change exemptions.  
 (Ord. 2830 Part 9, § 1 (part), 1984)

### **Article X. Agency Compliance**

#### **24.02.125 General—Agency compliance.**

This article, Section 24.02.125 through Section 24.02.135, contains information

on rules for charging fees under the SEPA process, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city adopts by reference the following sections of the WAC which contain related information:

- 197-11-900 Purpose of this part;
  - 197-11-902 Agency SEPA policies;
  - 197-11-908 Environmentally sensitive areas;
  - 197-11-916 Application to ongoing action;
  - 197-11-920 Agencies with environmental expertise;
  - 197-11-922 Lead agency rules;
  - 197-11-924 Determining lead agency;
  - 197-11-926 Lead agency for governmental proposals;
  - 197-11-928 Lead agency for public and private proposals;
  - 197-11-930 Lead agency for private projects with one-agency jurisdiction;
  - 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city;
  - 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city; and one or more state agencies;
  - 197-11-936 Lead agency for private projects requiring licenses from more than one state agency;
  - 197-11-938 Lead agencies for specific proposals;
  - 197-11-940 Transfer lead agency status to a state agency;
  - 197-11-942 Agreements on lead agency status;
  - 197-11-944 Agreements on division of lead agency duties;
  - 197-11-946 DOE resolution of lead agency disputes;
  - 197-11-948 Assumption of lead agency status.
- (Ord. 2830 Part 10, § 1 (part), 1984)

#### **24.02.130 Environmentally sensitive areas map adopted by reference.**

The map entitled "Kirkland Sensitive Areas" prepared for the city by King County environmental division and dated December, 1991, and bearing the signatures of the mayor and the director of the department of planning and community development as of February 4, 1992, is adopted by reference as though fully set forth herein, except that the map pages entitled "Wetlands, Streams and 100 Year Floodplains" are replaced with the map entitled "Interim Sensitive Areas Map" and dated July, 1998. The remaining pages of the Kirkland Sensitive Areas Map dated 1991, together with the Interim Sensitive Areas Map dated July, 1998, depict the sensitive areas of the city and surrounding areas and replace the maps adopted by the city as sensitive areas maps dated August 4, 1980, and December 4, 1987. The exemptions from SEPA that do not apply to each sensitive area have been added to the map adopted by reference as Exhibit A and are included as a part of the map adoption. (Ord. 3659 § 1, 1998; Ord. 3309 § 1, 1992; Ord. 3068 § 1, 1987; Ord. 2830 Part 10, § 1 (part), 1984)

#### **24.02.135 Fees.**

The city shall require fees as set forth in KMC Section 5.74.080 for its activities in accordance with provisions of this chapter. (Ord. 3345 § 1, 1993; Ord. 2830 Part 10, § 1 (part), 1984)

### **Article XII. Forms**

#### **24.02.140 General—Forms.**

This article, Section 24.02.140, contains information on forms. The city adopts by reference the following sections of the WAC which contain related information:

- 197-11-960 Environmental checklist;

197-11-965 Adoption notice;  
197-11-970 Determination of nonsignificance (DNS);  
197-11-980 Determination of significance and scoping notice (DS);  
197-11-985 Notice of assumption of lead agency status;  
197-11-990 Notice of action.  
(Ord. 2830 Part 11, § 1 (part), 1984)

## Chapter 24.05 SHORELINE MASTER PROGRAM

### Sections:

**24.05.001 Organization of chapter.**

#### Part I—Introduction

**24.05.005 User guide.**  
**24.05.010 Adoption authority.**  
**24.05.015 Applicability.**  
**24.05.020 Relationship to other codes and ordinances.**  
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#### Part II—Goals and Policies

**24.05.040 User guide.**  
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#### Part III—Environmental Designations

**24.05.090 User guide.**  
**24.05.095 Adoption criteria.**  
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#### Part IV—Use Regulations

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- 24.05.170 Use regulations—Public parks.**
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- 24.05.200 Special regulations—Authority of the city.**
- 24.05.205 Special regulations—Mixed use development in Urban Mixed Use 2 Shoreline Environment.**
- 24.05.210 Special regulations—Nonconformance.**

### **Part V—Reserved**

#### **24.05.001 Organization of chapter.**

This chapter is divided into the following four parts, consistent with the material to be included within a master program as established in WAC Ch. 173-16:

- (1) Part I, Sections 24.05.005 through 24.05.035, contains basic and general information regarding the shoreline master program.
- (2) Part II, Sections 24.05.040 through 24.05.085, contains the city's goals and policies with respect to the seven program elements established in WAC Ch. 173-16.
- (3) Part III, Sections 24.05.090 through 24.05.100, contains information regarding the different shoreline environments to be found within the city.
- (4) Part IV, Sections 24.05.105 through 24.05.210, contains regulations that apply to the various uses, developments and activities that are regulated under the shoreline master program.
- (5) Part V, Section 24.05.215 through the end of this chapter, contains appendices pertaining to this chapter. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

### **Part I—Introduction**

#### **24.05.005 User guide.**

This part, Sections 24.05.005 through 24.05.035, contains basic information regarding the applicability of the shoreline master program, the relationship of the shoreline master program to other documents, and how to use the shoreline master program. It also contains the definitions that will be used throughout the shoreline master program. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.010 Adoption authority.**

This chapter is adopted as the shoreline master program for the city. It is adopted under the authority of RCW Chapter 90.58 and WAC Chapter 173-16. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.015 Applicability.**

The regulations of this chapter apply to all shorelines within the city and to the waters and underlying land of Lake Washington within the city. These regulations do not apply to any portion of a one-hundred-year floodplain in the city that does not otherwise meet the definition of "shoreline." (Ord. 3153 § 1 (part), 1989; Ord.

## 2938 § 1 (part), 1986)

**24.05.020 Relationship to other codes and ordinances.**

(a) General. Most of the uses, developments and activities regulated in this chapter are also covered by the Kirkland comprehensive plan, the Kirkland zoning code, the Kirkland building codes and various other provisions of city, state and federal laws. The applicant must comply with all applicable laws prior to commencing any use, development or activity.

(b) Relationship to the Kirkland Zoning Code. The Kirkland zoning code, Ordinance 2740, as amended, establishes specific and detailed regulations for most of the uses, development and activities regulated in this chapter. The Kirkland zoning code and this chapter are intended to operate together to produce coherent and thorough shoreline regulations. In all cases, uses, developments and activities must comply with both the Kirkland zoning code and the shoreline master program. If there is a conflict between the two, the more restrictive applies.

(c) Relationship to Lake Washington Regional Shoreline Goals and Policies. It is the intent of this shoreline master program to be consistent with the Lake Washington Regional Shoreline Goals and Policies as promulgated October 31, 1973 pursuant to WAC Chapter 173-28 which established Lake Washington as a region pursuant to the state Shoreline Management Act. However, if there is a conflict between the two, this shoreline master program applies. (Refer to complete text in Part V, Section 24.05.230.) (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.05.025 Procedures.**

Please see Chapter 24.06 for the procedures that the city will use to administer, implement and enforce the shoreline master program within the city, including the procedures that apply to substantial development permits, shoreline conditional use permits, and shoreline variances. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.05.030 Policies and regulations.**

It is the intent of the city that regulations contained within Part IV of this chapter are mandatory in nature and that a use, development or activity is not allowable unless it specifically complies with each applicable provision within Part IV. The goals and policies in Part II of this chapter are intended to form the policy for shoreline uses, developments and activities, as the basis of the regulations in Part IV and to assist the city in determining whether to grant, modify and grant, or deny each proposed use, development and activity. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.05.035 Definitions.**

(a) Adoption by Reference. The definitions in RCW Chapter 90.58 and WAC Chapters 173-14 and 173-16 as now or hereafter established are adopted by reference and apply to this chapter and Chapter 24.06 unless, from the context, another meaning is clearly intended.

(b) Additional Definitions. In addition to the definitions adopted by reference above, the following definitions apply throughout this chapter and Chapter 24.06 unless, from the context, another meaning is clearly intended:

(1) "Abandoned" means knowing relinquishment of right or claim to the subject property or structure on that property.

(2) "Accessory" means a use, activity, structure or part of a structure which is subordinate and incidental to the main activity or structure on the subject property.

(3) "Alteration" means a change or rearrangement of the structural members or exits in a building; an increase in the height or length or depth of the exterior walls



of a building; the movement of a structure from one location to another; or, for office or commercial buildings, the changing by the use of partitions of more than one-third of the gross floor area of a single floor.

(4) "Applicant" means a person who applies for any permit or approval to do anything governed by this code, and who is the owner of the subject property; the authorized agent of the owner, or the city.

(5) "Average grade level" means the average elevation of the topography prior to any development activity, at the center of all exterior walls of a building or structure.

Formula:

Average Grade Level =  
(Midpoint Elevation) x (Length of Wall Segment)  
+ (Midpoint Elevation) x (Length of Wall Segment)  
(Length of Segment) + (Length of Segment)  
(See Part V, Section 24.05.220)

(6) "Average parcel depth" means the average of the distance from the high waterline to the street providing direct access to the subject property, as measured along the side property lines or the extension of those lines where the water frontage of the subject property ends, the center of the high waterline of the subject property and the quarter points of the high waterline of the subject property. See Part V, Section 24.05.225.

(7) "Average parcel width" means the average of the distance between side property lines as measured along the high waterline and the front property line.

(8) "Backfill" means material placed into an excavated area, pit, trench or behind a constructed retaining wall or foundation.

(9) "Building" means a roofed structure used for or intended for human occupancy.

(10) "Bulkhead" means a wall or embankment used for retaining earth.

(11) "City" means the city of Kirkland, a municipal corporation.

(12) "Comprehensive plan" means the land use policies plan of the city.

(13) "Contour line" means the interconnection of points having the same height above sea level.

(14) "Cross section (drawing)" means a visual representation of a vertical cut through a structure or any other three-dimensional form.

(15) "Dedication" means the deliberate appropriation of land by an owner for public use or purpose, reserving no other rights than those that are compatible with the full exercise and enjoyment of the public uses or purpose to which the property has been devoted.

(16) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling, dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.

(17) "Development permit" means any permit or approval under this code or the Uniform Building Code that must be issued before initiating a use or development activity.

(18) "Dredging" means removal of earth and other materials from the bottom of a body of water or from a wetland.

(19) "Dredging spoils" means the earth and other materials removed from the floor of a body of water or a wetland by the dredging process.

(20) "Dry land" means the area of the subject property landward of the high waterline.

(21) " Dwelling unit" means one or more rooms providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, cooking and sanitation.

(22) " Dwelling unit, attached" means a dwelling unit that has one or more vertical

walls in common with or attached to one or more other dwelling units or other uses and does not have other dwelling units or uses above or below it.

(23) "Dwelling unit, detached" means a dwelling unit that is not attached or physically connected to any other dwelling unit or other use.

(24) "Dwelling units, stacked" means a dwelling unit that has one or more horizontal walls in common with or adjacent to one or more other dwelling units or other uses and may have one or more vertical walls in common with or adjacent to one or more other dwelling units or other uses.

(25) "Easement" means land which has specific air, surface or subsurface rights conveyed for use by someone other than the owner of the subject property or to benefit some property other than the subject property.

(26) "Erosion and deposition" means the removal of soils and the placement of these removed soils elsewhere by the natural forces of wind or water.

(27) "Excavate" or "excavation" means the mechanical removal of soils and/or underlying strata.

(28) "Exempt from substantial development permit" means developments set forth in WAC 173-14-040 which do not meet the definition of substantial development under RCW 90.58.030(3)(e) (see subsection (75) of this section).

(29) "Fill material" means dirt, structural rock or gravel, broken concrete and similar structural substances customarily used to raise the level of the ground, but excluding topsoil, bark, ornamental rocks or gravel placed on the surface of the ground.

(30) "Government facility" means a use consisting of services and facilities operated by any level of government, excluding those uses listed separately in this code.

(31) "High waterline" means, where the ordinary high water mark cannot be found, the line where the water meets the land when the water level of Lake Washington is 21.8 feet above mean sea level based on the Corps of Engineers Datum Point. High waterline shall be construed to be the same as Ordinary High Water Mark (OHWM), as defined in WAC 173-22-030(6).

(32) "Hotel" or "motel" means a single building or a group of buildings containing individual sleeping units intended for transient occupancy.

(33) "Improvement" means any structure or manmade feature.

(34) "Inner harbor line" means the line designated as such by the State Harbor Line Commission pursuant to Article XV, Washington State Constitution (see Part V, Section 24.05.215).

(35) "Land surface modification" means the clearing or removal of trees, shrubs, ground cover and other vegetation, and all grading, excavation and filling of materials. The removal of overhanging vegetation and fire hazards as specified in Chapter 9.12 of this code shall not be deemed to be land surface modifications.

(36) "Land use policies plan" means Ordinance 2346 as amended or, if repealed, its successor document, listing the goals and policies regarding land use within the city.

(37) "Landscaping" means the planting, removal and maintenance of vegetation along with the movement and displacement of earth, topsoil, rock, bark and similar substances done in conjunction with the planting, removal and maintenance of vegetation.

(38) "Landward" means toward dry land.

(39) "Lot" means a fractional part of subdivided land, or a parcel of unsubdivided land having common ownership that has fixed boundaries and is not divided by an existing right-of-way.

(40) "Master plan" means a complete development plan for the subject property, showing placement, dimensions and uses of all structures as well as streets and other areas used for vehicular circulation.

(41) "Mean sea level" means the level of Puget Sound at zero tide as established by the US Army Corps of Engineers.

(42) "Moorage facility" means a pier, dock, buoy or other structure providing docking or moorage space for waterborne craft.

(43) "Nonconformance" means any use, structure, lot, condition, activity or any other feature or element of private property, or the use or utilization of private property that does not conform to any of the provisions of this code or that was not approved by the city through the appropriate decisionmaking process required under this code.

(44) "Office use" means a place of employment providing services other than production, distribution or sale or repair of goods or commodities. The following is a nonexclusive list of office uses: medical, dental or other health care; veterinary, accounting, architectural, engineering, consulting or other similar professional services; management, administrative, secretarial, marketing, advertising, personnel or other similar personnel services; sales offices where no inventories or goods are available on the premises, real estate, insurance, travel agent, brokerage or other similar services. The following uses are specifically excluded from the definition of "office": banks, loan companies and similar financial institutions.

(45) "Official newspaper of the city" means the publication designated by ordinance or resolution to contain official newspaper publications for city government.

(46) "Official notification boards of the city" means the bulletin boards in the public areas of City Hall and the Kirkland Public Library.

(47) "Open space" means land not covered by buildings, roadways, parking areas or surfaces through which water cannot percolate into the underlying soils.

(48) "Ordinary high waterline" means the same as "high waterline."

(49) "Oriented" means facing or directed toward.

(50) "Outer harbor line" means the line designated as such by the State Harbor Line Commission pursuant to Article XV, Washington State Constitution (see Part V, Section 24.05.215).

(51) "Parking area" means any area designated and/or used for parking vehicles.

(52) "Parking space" means an area which is improved, maintained and used for the sole purpose of temporarily accommodating a motor vehicle that is not in use.

(53) "Pedestrian orientation" pertains to facilities which encourage pedestrian movement and are designed and oriented toward use by pedestrians.

(54) "Planning department" means the department of community development of the city of Kirkland.

(55) "Planning director" means the director of the department of community development of the city of Kirkland or the acting director of that department.

(56) "Planning official" means the director of the department of community development or his/her designee.

(57) "Property lines" means those lines enclosing a lot and those lines defining a recorded vehicular access easement. The following are categories of property lines:

(A) "Front property line" is any property line that is adjacent to a street or easement more than twenty feet in width, except that neither Burlington Northern right-of-way nor the I-405 right-of-way shall be considered front property lines.

(B) "Rear property line" is any property line that is farther from and essentially parallel to a front property line except on a lot which contains two or more front property lines; or any property line that is adjacent to a street, alley or easement twenty feet or less in width.

(C) "Side property line" is any property line other than a front property line or a rear property line.

(D) "High waterline" is defined separately in this chapter.

(58) "Public access" means a portion of private property subject to an easement giving the public the right to stand on or traverse this portion of the property.

(59) "Public access pier" or "boardwalk" means an elevated structure which is

constructed waterward of the high waterline and intended for public use.

(60) "Public park" means a natural or landscaped area, provided by a unit of government, to meet the active or passive recreational needs of people.

(61) "Public use area" means a portion of private property that is dedicated to public use and which contains one or more of the following elements: benches, tables, lawns, gardens, piers, exercise or play equipment or similar improvements or features. These elements are to provide the public with recreational opportunities in addition to the right to traverse or stand in this area.

(62) "Public utility" means a private business organization such as a public service corporation, including physical plant facilities, performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services include, but are not limited to, water supply, electric power, telephone, cablevision, gas and transportation for persons and freight.

(63) "Required yard" means those areas adjacent to and interior from the property lines and involving the following designations (if two required yards are coincidental, the yard with the greater dimensions shall predominate):

(A) Front: that portion of a lot adjacent to and parallel with any front property lines and at a distance therefrom equal to the required front yard depth.

(B) Rear: that portion of a lot adjacent to and parallel with the rear property line and at a distance therefrom equal to the required rear yard depth.

(C) Side: that portion of a lot adjacent to and parallel with the side property line and at a distance therefrom equal to the required side yard depth. All yards not otherwise categorized shall be designated side yards.

(D) High waterline yard: that portion of a lot adjacent to and parallel with the high waterline and at a distance landward therefrom equal to the required high waterline yard depth.

(64) "Restaurant" or "tavern" means a commercial use (excluding fast food restaurants) which sells prepared food or beverages and generally offers accommodations for consuming the food or beverage on the premises.

(65) "Retail establishment" means a commercial enterprise which provides goods or services directly to the consumer and whose goods are available for immediate purchase and removal from the premises by the purchaser or whose services are traditionally not permitted within an office use.

(66) "Right-of-way" means land dedicated primarily to the movement of vehicles and pedestrians and providing for primary access to adjacent parcels. Secondly, the land provides space for utility lines and appurtenances and other publicly owned devices.

(67) "Shoreline conditional use" means a use or development which is specifically listed by this master program as a conditional use within a particular shoreline environment or a use which is not addressed by this master program within any shoreline environment.

(68) "Shoreline master program" means the ordinance adopted under the authority of RCW Chapter 90.58 and codified in this chapter.

(69) "Shoreline variance" means a procedure to grant relief from the specific bulk, dimensional or performance standards set forth in this master program, and not a means to allow a use not otherwise permitted within a shoreline environment.

(70) "Silt" or "sediment" means the soil particles mobilized and deposited by the processes of erosion and deposition.

(71) "Street" means a right-of-way or a private roadway.

(72) "Structure" means anything which is built or constructed, an edifice or building of any kind, or any piece of work artificially built-up or composed of parts joined together in some definite manner.

(73) "Structural alterations" means any change in the supporting member of a building or structure.

(74) "Subject property" means the entire lot, series of lots or parcels on which a development or use is located or will locate and that is otherwise subject to the provisions of this code.

(75) "Substantial development" means any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this master program:

(A) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements;

(B) Construction of the normal protective bulkhead common to single-family residences;

(C) Emergency construction necessary to protect property from damage by the elements;

(D) Construction and practices normal or necessary for farming, irrigation and ranching activities, including agriculture service roads and utilities on wetlands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities and irrigation channels; provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, and alteration of the contour of the wetlands by leveling or filling, other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(E) Construction or modification of navigational aids such as channel markers and anchor buoys;

(F) Construction on wetlands by an owner, lessee or contract purchaser of a single-family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(G) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences, the cost of which does not exceed two thousand five hundred dollars;

(H) Operation, maintenance or construction of canals, waterways, drains, reservoirs or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;

(I) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(J) Operation and maintenance of any system of dikes, ditches, drains or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.

(76) "Use, development and/or activity" means "development" as that term is defined in RCW Chapter 90.58. "Use" also means the nature of the activities taking place on private property or within structures thereon.

(77) "Waterward" means toward the body of water.

(78) "Wetlands" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all marshes, bogs, swamps and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of this chapter;

the same to be designated as to location by the Department of Ecology; provided, that any county or city may determine that portion of a one-hundred-year flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom. "Wetlands" also includes associated wetlands as defined in WAC 173-22-030.

(79) "Zoning code" means Ordinance 2740, Title 23 of this Kirkland Municipal Code, as amended or, if repealed, its successor document. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

## **Part II—Goals and Policies**

### **24.05.040 User guide.**

This part, Sections 24.05.040 through 24.05.085, establishes goals and policies for uses, developments and activities on the shorelines of the city. These goals and policies are categorized under the topic headings established in WAC Ch. 173-16. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

### **24.05.045 Adoption by reference.**

The city adopts the policies enunciated in RCW 90.58.020. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

### **24.05.050 Shoreline use element goal and policies.**

(a) Goal. It is the goal of the city to allow for a diversity of uses within the shoreline area consistent with the dramatically different character of the various shorelines within the city, and to preserve and enhance the natural and aesthetic quality of important shoreline areas while allowing for reasonable development to meet the needs of the city and its residents.

(b) Policies.

(1) Environmentally sensitive areas should be strictly protected and use of these areas should be prohibited or severely limited.

(2) New uses and developments in shoreline areas that have established and desirable development patterns should be consistent and compatible with what presently exists.

(3) Areas of the shoreline without established development patterns and which are not unique or fragile should allow for a wide range of development options consistent with the Kirkland zoning code within established limits to protect the public interest.

(4) Over-water structures other than docks, piers, breakwaters and other similar structures should be prohibited. Water-dependent uses should have priority over non-water-dependent uses in the shoreline area. Nonetheless, uses such as drydocks, boat yards and similar marine enterprises are incompatible with the character of the shoreline area and should not be permitted.

(5) Uses in shoreline areas should not degrade water quality nor disrupt any more than is essential the land covered by water and the land area adjacent to the high water line. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

### **24.05.055 Economic development element goal and policies.**

(a) Goal. It is a goal of the city to allow for commercial development in specific and limited shoreline areas. The nature of this economic development should attract, and be open to, the general public and should not unduly interfere with the character of the shoreline area or with nearby shoreline and upland uses.

(b) Policies.

(1) Commercial uses in shoreline areas should only be permitted where compatible with existing shoreline and upland development or where land can be

aggregated to minimize the impacts from the commercial use.

(2) Commercial uses should only be permitted where the infrastructure, particularly the roadway system, is presently adequate or is made adequate to accommodate the demands generated by commercial development.

(3) The nature of commercial development which is permitted in shoreline areas should enhance the opportunity for the public to take advantage of shoreline amenities. Uses that support or enhance the opportunity for public access to the shoreline should be encouraged. This might include uses wherein the public can view and enjoy the aesthetic qualities of the shoreline, lake and vista beyond.

(4) Commercial uses should not be permitted in any unique or fragile area, unless the impacts to this area are mitigated.

(5) In shoreline areas where large amount of land can be aggregated, some degree of flexibility is appropriate to allow for innovative and planned site design within parameters established by the city. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.060 Circulation element goal and policies.**

(a) Goal. It is the goal of the city to provide for the safe and efficient movement of vehicles and pedestrians within the shoreline area while recognizing and enhancing the unique, fragile and scenic character of the shoreline area.

(b) Policies.

(1) Lake Washington Boulevard and Lake Street South, which provide access to and through much of the city's shoreline area, should be designed and regulated to safely accommodate the vehicular and pedestrian traffic using this corridor, as well as to facilitate egress and ingress from adjacent properties and to enhance the scenic character and recreational use of this corridor, while recognizing that shoreline uses should have primary access to Lake Washington Boulevard and Lake Street South.

(2) Pedestrian and bicycle movement on and off roadways in the shoreline area should be encouraged wherever feasible.

(3) Many shoreline areas of the city are served only by minor roadways providing access to a small number of uses, and not allowing for through traffic. This present pattern should continue.

(4) Where new roadways are needed to serve uses in the shoreline area, these roadways should be the minimum necessary to provide safe and efficient access, including access for emergency vehicles, to the properties to be served.

(5) Moorage or parking for float planes or helicopters should not be permitted in the shoreline area.

(6) Priority consideration of the use of Lake Washington Boulevard and Lake Street South should be given to those uses which are adjacent to Lake Washington Boulevard and Lake Street South. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.065 Public access element goal and policies.**

(a) Goal. It is a goal of the city to provide the maximum reasonable opportunity for the public to view and enjoy the amenities of the shoreline area.

(b) Policies.

(1) Public pedestrian access along the water's edge of all shoreline development, other than single-family residential or where unique and fragile shoreline areas would be adversely affected, should be required of all developments.

(2) All developments required to provide public pedestrian access along the water's edge should connect this access to the right-of-way unless access to the water's edge can easily be gained via existing access points.

(3) All developments required to provide public pedestrian access should be designed to visually and physically separate the public pedestrian access from adjacent private spaces. The separation may be accomplished vertically,

horizontally, or by placing an intervening structural or landscape buffer.

(4) In shoreline areas south of the Urban Mixed I Shoreline Environment, development should be controlled to allow for or enhance substantial visual openness from the frontage road to and beyond Lake Washington.

(5) The city should use street ends and other publicly owned or controlled land within the shoreline area as a means of providing additional public access to shoreline areas.

(6) South of the Urban Mixed I Shoreline Environment, the public right-of-way of Lake Street South and Lake Washington Boulevard should be developed to accommodate a pedestrian promenade. The promenade should consist of widened sidewalks, amenities such as benches or shelters and public sign systems identifying crosswalks, historic or scenic features, jogging trails, public parks and access easements.

(7) The city may establish or permit the establishment of reasonable limitations on the time, extent, and nature of public access in order to protect the natural environment and the rights of others.

(8) The city should seek to complete a public pedestrian walkway along the shoreline from Juanita Bay Park to Juanita Beach Park. This walkway should be a required condition of all development, other than single-family residential; or, where appropriate, the city may utilize public funds to complete improvements within the public pedestrian walkway. The walkway should consist of the continuance of the existing causeway. It should be designed so as to cause the least impact to these environmentally sensitive wetland areas and to private property. Their design may include portions elevated over wetlands or extended over the water. The walkway should include amenities such as benches or shelters, public sign systems, and information kiosks identifying the two public parks, historic or scenic features, jogging and bicycle trails, and access easements. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.070 Recreational element goal and policies.**

(a) Goal. It is a goal of the city to provide substantial recreational opportunities for the public in shoreline areas.

(b) Policies.

(1) The city should continue its aggressive program to acquire and develop park land within shoreline areas. The city should also, where feasible, develop street ends within the shoreline area to provide for public recreation. The nature and extent of the recreation opportunities provided within the various lands in the shoreline area owned or controlled by the city depends on the nature of the area involved, the amenities and natural resources to be found in that area, the location of the area and the needs of the community.

(2) Large or intensive private developments within the shoreline area should be required to provide some public recreation amenities, beyond public pedestrian access along the water's edge. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.075 Conservation element goal and policies.**

(a) Goal. It is a goal of the city to protect and enhance unique and fragile areas of flora and fauna and scenic vistas to help assure the continued availability of these resources for future generations.

(b) Policies.

(1) Large, relatively undisturbed areas of wetland are located at the north and south ends of the city. The city should, through acquisition and regulatory means, work to maintain these environmentally sensitive areas for present and future generations.

(2) Development in shoreline areas should be managed so that impacts on aquatic and land plants and animals are minimized.



(3) Where possible, steps should be taken to enhance the shoreline area as a spawning ground for salmon and other species of fish and aquatic life. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.05.080 Historical/cultural element goal and policies.**

(a) Goal. It is a goal of the city to identify and preserve those areas of the shoreline that are of scientific, educational or historic value.

(b) Policies.

(1) There are strong indications that a Native American village may have existed, perhaps even as late as the early part of the twentieth century, somewhere in the Yarrow Bay area. Steps should be taken to identify, recover and preserve any artifacts or other resources that may exist in this area.

(2) Wherever feasible, shoreline development should recognize the former use of much of the city's shoreline area for such uses as boat yards, ferry landings and industrial sites.

(3) The large, relatively undisturbed areas of Yarrow Bay and Juanita Bay should be preserved for, amongst other reasons, their educational and scientific value. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.05.085 Urban design element goal and policies.**

(a) Goal. It is a goal of the city to encourage development within the shoreline area that is visually coherent, provides visual and physical linkage to the shoreline, and enhances the waterfront.

(b) Policies.

(1) The shoreline area within and south of the Urban Mixed I Shoreline Environment is one of the most scenic areas of the city. It also, to a large extent, establishes the visual identity of Kirkland. As such, both public and private development in these areas should be controlled and regulated to provide an urban environment which preserves or enhances the opportunity of the public to enjoy the scenic quality of the shoreline.

(2) Projects should be encouraged to provide "street furniture," landscaping and other amenities within or adjacent to the right-of-way of Lake Street South and Lake Washington Boulevard to complement the pedestrian promenade along the shoreline. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

### **Part III—Environmental Designations**

**24.05.090 User guide.**

This part, Sections 24.05.090 through 24.05.100, establishes the different environmental designations for the various shoreline areas of the city. Part IV of this chapter then establishes different regulations that apply in these different environmental designations. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.05.095 Adoption criteria.**

(a) General. Different areas of the city's shoreline have radically different natural characteristics and development patterns. As a result, different environmental designations are needed to properly regulate shoreline uses, developments and activities.

(b) Environmental Designations. The city establishes the following environmental designations based on the characteristics and factors listed.

(1) Conservancy Environment. These are characteristically large undeveloped or sparsely developed areas exhibiting some natural constraints such as wetland conditions, frequently containing a variety of flora and fauna and in a natural or seminatural state.

(2) Suburban Residential Environment. These are areas typified by single-family residential development medium sized or larger lots in areas where topography, transportation systems and development patterns make it extremely unlikely that more intensive use would be appropriate.

(3) Urban Residential Environment. These are areas containing, for the most part, single-family residential uses on small lots and multifamily residential developments, with some land being used for restaurants, marinas, and other commercial uses which depend on or benefit from a shoreline location.

(4) Urban Mixed Use Environment. The two types of areas which are appropriate for this classification are as follows:

(A) Areas which have been intensively developed with a mix of residential and commercial uses;

(B) Large mostly undeveloped areas without serious environmental constraint and with good access which will allow for more intensive mixed use development.

(Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.100 Map adopted by reference.**

The map identified in Part V, Section 24.05.215, is adopted as the official map of the city designating the various shoreline environments within the city. These designations may be changed, from time to time, by city council, with the approval of the Department of Ecology in a manner consistent with other amendments to a shoreline master program. This map also generally shows the landward limit of the area within the city that is subject to the jurisdiction of the Shoreline Management Act and this chapter; provided, however that this map in no way increases or decreases the areas subject to the Shoreline Management Act and this chapter which are:

- (1) All lands covered by Lake Washington; and
- (2) All lands within two hundred feet of the ordinary high waterline of Lake Washington, and
- (3) All marshes, bogs and swamps as designated and mapped by the Department of Ecology using the provisions of RCW 34.04.025. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

### **Part IV—Use Regulations**

#### **24.05.105 User guide.**

This part, Sections 24.05.105 through 24.05.210, contains regulations that apply to all uses, developments and activities in the shoreline area. This part also establishes which uses, developments and activities are permitted in which shoreline environments. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.110 Shoreline uses, developments and activities.**

(a) General. The chart referenced in subsection (b) of this section establishes which uses, developments, and activities are permitted in which of the shoreline environments. This chart also establishes which uses, developments and activities require the issuance of a conditional use permit.

(b) Chart. Chart 24.05.110 establishes the uses, developments and activities which may take place or be conducted within the various shoreline environments as well as the required permit for each. Those uses, developments and activities listed are allowed only if consistent with all pertinent provisions of this part. If a use, development or activity is not listed in Chart 24.05.110, it is not permitted, except as provided in Sections 24.05.115 through 24.05.210 or as provided in RCW 90.58.030. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.115 Flexibility with a conditional use permit.**

In addition to the uses, developments and activities listed in Section 24.05.110 as permitted in the various shoreline environments, any uses, developments or activities may be approved through the issuance of a conditional use permit if all the following conditions are met:

- (1) The use, development or activity is compatible with existing and permitted uses, developments or activities within the same shoreline environment.
- (2) No increase in structure height is approved under this section.
- (3) No industrial use is approved under this section.
- (4) Complies with the criteria set forth in Section 173-14-140(1)(a-e) of the Washington Administrative Code. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.120 General regulations—Environmentally sensitive areas.**

(a) Location. Environmentally sensitive areas include steep slopes; marshes, bogs and swamps; floodplains; streams; spawning beaches; and other areas exhibiting serious constraints on development and/or significant possibility of biotic productivity.

(b) Development Limitations. All uses, developments and activities on sites containing environmentally sensitive areas must comply with all applicable local, state and federal laws pertaining to development in these areas. In addition, the site must be specifically designed so that the hazards from or impact on the environmentally sensitive area will be mitigated.

(c) Additional Authority. In addition to any other authority the city may have, the city is authorized to condition or deny a proposed use, development or activity or to require site redesign because of hazards associated with the use, development or activity on or near an environmentally sensitive area and/or the effect of the proposal on the environmentally sensitive area. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.125 General regulations—Historic and archeological resources.**

(a) General. Uses, developments and activities on sites of historic or archeological significance or sites containing things of historic or archeological significance must not unreasonably disrupt or destroy the historic or archeological resource.

(b) Resource Recovery. Wherever possible, things of historic or archeological significance should be properly explored, cataloged and recovered by qualified individuals prior to any disruptive development, use or activity occurring on the subject property. If items of historic or archeological significance are discovered after a use, development or activity has commenced, all activity must cease until proper disposition, including resource recovery, can be made of the significant items.

(c) Site Design. The city may require that a site be redesigned or that development be postponed for a definite or indefinite period if this is reasonably necessary to protect a historic site or items of historic, archeological or cultural significance. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.130 General regulations—Parking.**

(a) Off-Street Parking Required. All uses must provide sufficient off-street parking spaces in order to accommodate the reasonably anticipated number of vehicles that will be coming to the subject property.

(b) Access. The city will determine the number, location and design of all curb cuts and other points of ingress and egress between the subject property and public rights-of-way.

(c) Design and Layout. Parking layouts must be designed efficiently to use the minimum amount of space necessary to provide the required parking and safe and reasonable access. Wherever possible, parking should be located out of the

shoreline area and should not be located between the building or buildings on the subject property and Lake Washington. Exterior parking areas, other than for detached dwelling units, must be attractively landscaped with vegetation that will not obstruct views of the lake from the public right-of-way. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.135 General regulations—Public access.**

(a) General. Except as listed in subsection (b) of this section, all uses, developments and activities must provide public pedestrian access from the right-of-way to and along the entire waterfront of the subject property at or close to the high waterline. Developments required to provide public access should be designed to visually and physically separate the public pedestrian access from adjacent private spaces. Access to the waterfront may be waived by the city if public access along the waterfront of the subject property can be reached from adjoining property.

(b) Exceptions. The following uses, developments and activities are exempt from providing public pedestrian access under this section:

(1) The construction, repair, remodeling and use of one detached dwelling unit, as well as the construction, remodeling, repair and use of bulkheads, docks, and other uses, developments and activities incidental to the use of the subject property as habitation for one family.

(2) All uses, development and activity in conservancy environments, or environmentally sensitive areas where the city determines that access would create distinct and unavoidable hazards to human safety or be contrary to city policies regarding the protection of unique and fragile environments.

(c) Special Provisions for Plats and Short Plats. Except in the suburban residential shoreline environment, all plats and short plats must be designed to provide public pedestrian access as stated in subsection (a) of this section.

(d) Public Use Facilities.

(1) In addition to the public pedestrian areas required by subsection (a) of this section, the applicant may propose and/or the city may require that benches, picnic tables, a public access pier or boardwalk, or other public use facilities be constructed on the subject property.

(2) If public use facilities are required or proposed, the city will determine the size, location and other regulations for it on a case-by-case basis.

(e) Timing. The public pedestrian access required by this section must be completed and available at the time of occupancy or completion of work; provided, however, that the city may on a case-by-case basis defer the physical availability of public access in the following cases:

(1) If shoreline development without public pedestrian access exists on both sides of the subject property and the city determines that the size, location and topography of the subject property does not warrant making public waterfront access available until additional adjacent waterfront access can be obtained.

(2) If preexisting improvements on the subject property physically preclude the provision of public waterfront access within a reasonable period of time.

(f) Easements Recorded. In each case where public pedestrian access is required, whether it is physically available at the end of development or deferred until a later date, all owners of the subject property must record an appropriate easement approved by the city attorney establishing the right of the public to this access.

(g) Signs and Regulations. The city shall require the posting of signs, obtained from the city, designating public pedestrian access. The director of the department of planning and community development is authorized to establish reasonable rules and regulations governing the public's use of public pedestrian access and use areas under this chapter. Where appropriate, these rules and regulations shall be included within the documents recorded under subsection (f) of this section. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

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**24.05.140 General regulations—Land surface modification.**

(a) General. The regulations of this section apply to proposed land surface modifications landward of the high waterline. See Sections 24.05.185 and 24.05.195 of this chapter for regulations that apply to land surface modification waterward of the high waterline (dredging and filling) and Section 24.05.180 of this chapter regarding land surface modification incidental to the construction of a bulkhead or other shoreline protective structures.

(b) Land Surface Modification Within the High Waterline Yard. Land surface and modifications within the high waterline yard may be permitted only if no unique or significant natural area of flora or fauna will be destroyed and only for the following purposes:

(1) The land surface modification is proposed by a public agency to improve public safety, recreation or access.

(2) The land surface modification is part of a development on the subject property and is to improve access to a pier, dock or beach.

(3) The land surface modification is necessary to provide public pedestrian access or a public use area.

(4) The land surface modification is necessary for the structural safety of a structure.

(5) There has been severe and unusual erosion within the one year immediately preceding the application and the land surface modification is to restore the shoreline to its configuration prior to this erosion.

(c) Land Surface Modification Landward of the High Waterline Yard. Land surface modification landward of the high waterline yard is only permitted if it is necessary for an approved development or use of the subject property or if it is incidental to landscaping for an existing use on the subject property.

(d) Additional Regulations. All land surface modifications landward of the high waterline must comply with the following requirements:

(1) The land surface modification must be the minimum necessary to accomplish the underlying reason for the land surface modification.

(2) Care must be taken to not create any direct or indirect adverse impacts on any adjoining property or Lake Washington.

(3) All surfaces exposed during land surface modification must be revegetated or otherwise covered as quickly as possible to minimize erosion.

(4) During land surface modification activities techniques should be employed to prevent erosion and runoff onto adjacent properties or into Lake Washington.

(5) Except as is necessary during construction, dirt, rocks and similar materials may not be stockpiled on the subject property. If stockpiling is necessary during construction, it must be located as far as possible from the lake and strictly contained to prevent erosion and runoff.

(6) Material that will be deposited on the subject property must be clean and not contain organic or inorganic substances that could pollute Lake Washington or otherwise be detrimental to water quality or aquatic or shoreline habitats.

(7) The city may require that land surface modifications be engineered and/or supervised by an engineer or similarly qualified professional.

(e) Land Surface Modifications in Conservancy Shoreline Environments. Notwithstanding any other provision of this section, land surface modification in Conservancy Shoreline Environments should not be allowed unless:

(1) It is necessary to rehabilitate a stream or otherwise improve or enhance the natural environment; or

(2) It is proposed by a public agency as part of development or use of the subject property. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.05.145 Use regulations—Detached dwelling units.**

(a) General. This section contains regulations pertinent to the development and use of a detached dwelling unit. These regulations are founded on the goals and

policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 of this chapter to determine in which shoreline environments detached dwelling units are permitted.

(b) Permitted Use.

(1) The principal use permitted in this section is the use of the subject property and dwelling as a place of habitation for one family.

(2) In addition to the principal use listed above, accessory uses, developments and activities normally associated with a detached dwelling unit and residential occupancy are also permitted. This chapter contains specific regulations on bulkheads and other shoreline protective structures, moorage facilities, and other uses, developments and activities which may be conducted accessory to the principal use.

(c) Lot Size.

(1) The minimum lot sizes established below are based on the entire area of the subject property landward of the high waterline, not just the portion of the subject project within the jurisdiction of the Shoreline Management Act and this chapter.

(2) Except for preexisting lots, the minimum lot size for a detached dwelling unit is as follows:

(A) In the Suburban Residential Shoreline Environment, the minimum lot size is twelve thousand five hundred square feet of lot area landward of the high waterline.

(B) In the Conservancy 1 and 2 Shoreline Environments, the minimum lot size is thirty-five thousand square feet of lot area landward of the high waterline.

(C) In all other shoreline environments where detached dwelling units are permitted, the minimum lot size is three thousand six hundred square feet of lot area landward of the high waterline.

(d) Required Yards — Over Water Structures Prohibited. The regulations of this subsection establish the required yards for all buildings and other major structures associated with this use. No building or other major structure may be located within the following required yards:

(1) In the Suburban Residential Shoreline Environment the required yards are as follows:

(A) The front yard is twenty feet.

(B) The high waterline yard is the greater of either fifteen feet or fifteen percent of the average parcel depth.

(C) Notwithstanding any of the regulations in this subparagraph (d)(1), if dwelling units exist immediately adjacent both to the north and south of the subject property, the high waterline yard of the subject property is increased or decreased to be the average of the high waterline yards of these adjacent dwelling units. If the high waterline yard is increased as a result of these adjacent dwelling units, the required yard opposite the high waterline yard may be decreased to be the average of the yards of the properties immediately adjacent to the subject property on the north and south.

(D) The minimum dimension of any required yard other than listed above is five feet.

(2) In the Conservancy 2 Shoreline Environment the required yards are as follows:

(A) The front yard is twenty feet.

(B) The side yard is five feet, but two yards must equal at least fifteen feet.

(C) The rear yard is ten feet.

(D) The high waterline yard is one hundred feet from Lake Washington and fifty feet from the canal.

(3) In all other shoreline environments where detached dwelling units are permitted the required yards are as follows:

(A) The front yard for properties lying waterward of Lake Washington Boulevard, Lake Street South, 98th Avenue NE, or Juanita Drive is thirty feet; provided, however, that this distance may be reduced one foot for each one foot of this yard

that is developed as a public use area if:

(i) Any portion of a structure that is within thirty feet of the front property line, is set back from the front property line by a distance greater than or equal to the height of that portion of the structure above the front property line; and

(ii) Substantially the entire width of this yard is developed as a public use area; and

(iii) The design of the public use area is specifically approved by the city.

(B) The front yard for properties lying east of Lake Washington Boulevard, Lake Street South, or 98th Avenue NE is twenty feet.

(C) The high waterline yard is the greater of fifteen feet or fifteen percent of the average parcel depth.

(D) The minimum dimension of any required yard other than as listed above is five feet.

(4) No structure regulated under this section may be located waterward of the high waterline. This chapter contains regulations on bulkheads and other shoreline protective structures, moorage facilities and other components which may be accessory to this use located waterward of the high waterline. In addition, floating homes are not permitted, nor may boats or other water craft be used as dwelling units.

(e) Minimum View Corridor Required. For properties lying waterward of Lake Washington Boulevard or Lake Street South, a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.

(f) Height.

(1) In the Suburban Residential and Conservancy I Shoreline Environments, the height of a structure associated with this use may not exceed twenty-five feet above average grade level.

(2) In all other shoreline environments wherein detached dwelling units are permitted, the height of structures associated with this use may not exceed thirty feet above average grade level. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.150 Use regulations—Attached and stacked dwelling units.**

(a) General. This section contains regulations pertinent to the development and use of attached and stacked dwelling units. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 of this chapter to determine in which shoreline environments attached and stacked dwelling units are permitted.

(b) Permitted Use.

(1) The principal use permitted under this section is as dwelling units that are physically connected or attached to each other.

(2) In addition to the principal use listed above, accessory uses, developments and activities normally associated with residential development and use are also permitted. This chapter contains specific regulations on bulkheads and other shoreline protective structures, moorage facilities, and other uses, developments and activities which may be conducted accessory to the principal use.

(c) Lot Size.

(1) The minimum lot sizes established below are based on the entire area of the subject project landward of the high waterline, not just the portion of the subject property within the jurisdiction of the Shoreline Management Act and this chapter.

(2) Minimum lot size in the Urban Mixed Use 1 Shoreline Environment is seven thousand two hundred square feet of lot area landward of the high waterline, with at least one thousand eight hundred square feet of lot area landward of the high waterline per dwelling unit.



(3) Minimum lot size in the Urban Mixed Use 2 Shoreline Environment is seven thousand two hundred square feet of lot area landward of the high waterline, with at least three thousand six hundred square feet of lot area landward of the high waterline per dwelling unit.

(4) Minimum lot size in the Conservancy 2 Shoreline Environment is thirty-five thousand square feet of lot area landward of the high waterline, with at least thirty-five thousand square feet of lot area landward of the high waterline per dwelling unit.

(5) The minimum lot size for this use in all other shoreline environments where stacked and attached dwelling units are permitted is three thousand six hundred square feet of lot area landward of the high waterline with at least three thousand six hundred square feet of lot area landward of the high waterline per dwelling unit.

(d) Required Yards — Over Water Structures Prohibited. The regulations of this subsection establish the required yards for all buildings and other major structures associated with this use. No building or other major structure may be located within the following required yards:

(1) The required yards in the Urban Mixed Use 1 Shoreline Environment are as follows:

(A) The front property line yard is zero; provided, however, that any portion of a structure that exceeds a height of thirty feet above average grade level must be set back from the front property line one foot for each five feet that portion exceeds thirty feet in height above average grade level.

(B) The high waterline yard is the greater of fifteen feet or fifteen percent of the average parcel depth; provided, however, balconies at least fifteen feet above finished grade may extend up to four feet into the high waterline yard.

(C) The minimum dimension of any required yard other than as listed above is zero.

(2) In the Conservancy 2 Shoreline Environment the required yards are as follows:

(A) The front yard is twenty feet.

(B) The side yard is five feet, but two yards must equal at least fifteen feet.

(C) The rear yard is ten feet.

(D) The high waterline is one hundred feet from Lake Washington, and fifty feet from the canal.

(3) In all other shoreline environments where stacked and attached dwelling units are permitted, the required yards are as follows:

(A) The front yard for properties lying waterward of Lake Washington Boulevard, Lake Street South, 98th Avenue Northeast, or Juanita Drive is thirty feet; provided, however, that this distance may be reduced one foot for each one foot of this yard that is developed as a public use area if:

(i) Any portion of a structure that is within thirty feet of the front property line is set back from the front property line by a distance greater than or equal to the height of that portion of the structure above the front property line;

(ii) Substantially the entire width of this yard (from north to south property lines) is developed as a public use area; and

(iii) The design of the public use area is specifically approved by the city.

(B) The front yard for properties east of Lake Washington Boulevard, Lake Street South, or 98th Avenue NE is twenty feet.

(C) The high waterline yard is the greater of fifteen feet or fifteen percent of the average parcel depth.

(D) The minimum dimension of any required yard other than as listed above is five feet.

(4) No structure regulated under this section may be located waterward of the high waterline. This chapter contains regulations on bulkheads and other shoreline protective structures, moorage facilities and other components which may be accessory to this use located waterward of the high waterline. In addition, floating

homes are not permitted, nor may boats or other water craft be used as dwelling units.

(e) **Minimum View Corridor Required.** For properties lying waterward of Lake Washington Boulevard, Lake Street South, 98th Avenue NE, or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.

(f) **Height.**

(1) In the Urban Mixed Use 1 Shoreline Environment, structures may not exceed forty-one feet in height above average grade level.

(2) In the Conservancy 2 Shoreline Environment, structures may not exceed twenty-five feet above average grade level, except that the height of a structure may extend up to sixty feet above average grade if the structure does not exceed a plane that starts 3.5 feet above the outside westbound lane of SR-520 and ends at the high waterline of Lake Washington, excluding the canal, and, pursuant to RCW 90.58.320, an overriding public interest will be served.

(3) In all other shoreline environments where stacked and attached dwelling units are permitted, structures may not exceed thirty feet in height above average grade level; provided, however, the height of a structure may be increased to thirty-five feet above average grade level if the increase does not impair the views of the lake from properties east of Lake Street South and Lake Washington Boulevard. The height of a structure which is part of a mixed use development in the Urban Mixed Use 2 Environment shall be subject to the requirements of Section 24.05.205(e). (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.155 Use regulations—Restaurants.**

(a) **General.** This section contains regulations pertinent to the development and use of restaurants. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 of this chapter to determine in which shoreline environments restaurants are permitted.

(b) **Permitted Use.**

(1) The principal use permitted in this section is a retail establishment which sells prepared food and beverages, generally with accommodations for consuming the food and beverage on the premises. Drive-through and drive-in facilities are not permitted.

(2) In addition to the principal use listed above, accessory uses, developments and activities normally associated with restaurant uses are also permitted. This chapter contains regulations on bulkheads and other shoreline protective structures, moorage facilities, and other uses, developments and activities which may be conducted accessory to the principal use.

(c) **Lot Size.**

(1) In Urban Mixed Use 1 Shoreline Environment there is no minimum lot size for this use.

(2) In Urban Mixed Use 2 Shoreline Environment see Section 24.05.205 of this chapter.

(3) In Urban Residential 1 Shoreline Environment the minimum lot size for this use is seven thousand two hundred square feet of lot area landward of the high waterline. This lot size is computed by using the entire area of the subject property landward of the high waterline, not just the portion of the subject property within the jurisdiction of the Shoreline Management Act and this chapter.

(d) **Required Yards — Over Water Structures Prohibited.** The regulations of this subsection establish the required yards for all buildings and other major structures associated with this use. No building or other major structure may be located within

the following required yards:

(1) In the Urban Mixed Use 1 Shoreline Environment, the following required yards apply:

(A) There is no required front yard; provided, however, that any portion of the structure that exceeds a height of thirty feet above average grade level must be set back from the front property line one foot for each five feet that portion of the structure exceeds a height of thirty feet above average grade level.

(B) The high waterline yard is the greater of fifteen feet or fifteen percent of the average parcel depth; provided, however, that balconies that are at least fifteen feet above finished grade may extend up to four feet into the high waterline yard.

(C) The minimum dimension of any required yard other than as listed above is zero feet.

(2) In Urban Mixed Use 2 Shoreline Environment, see Section 24.05.205 of this chapter.

(3) In Urban Residential 1 Shoreline Environment the required yards are as follows:

(A) The front yard for properties lying waterward of Lake Washington Boulevard, Lake Street South, 98th Avenue NE, or Juanita Drive is thirty feet; provided, however, that this distance may be reduced one foot for each one foot of this yard that is developed as a public use area, if:

(i) Each portion of a structure within thirty feet of the front property line is set back from the front property line by a distance greater than or equal to the height of that portion of the structure above the front property line;

(ii) Substantially the entire width of this yard is developed as a public use area; and

(iii) The design of the public use area is specifically approved by the city.

(B) The front property line for properties lying east of Lake Washington Boulevard, Lake Street South, or 98th Avenue NE is twenty feet.

(C) The high waterline yard is the greater of fifteen feet or fifteen percent of the average parcel depth.

(D) The minimum dimension of any required yard other than as listed above is five feet.

(4) No structure regulated under this section may be located waterward of the high waterline. This chapter contains regulations on bulkheads and other shoreline protective structures, moorage facilities and other components which may be accessory to this use located waterward of the high waterline.

(e) Minimum View Corridor Required. For properties lying waterward of Lake Washington Boulevard, Lake Street South, 98th Avenue NE or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.

(f) Height.

(1) In the Urban Mixed Use 1 Shoreline Environment, structures may not exceed a height of forty-one feet above average grade level.

(2) In the Urban Mixed Use 2 Shoreline Environment, see Section 24.05.205 of this chapter.

(3) In the Urban Residential 1 Shoreline Environment, structures may not exceed a height of thirty feet above average grade level; provided, however, that the height of a structure may be increased to thirty-five feet above average grade level if the increase does not impair the views of the lake from upland properties. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.160 Use regulations—Retail and office use.**

(a) General. This section contains regulations pertinent to the development and

use of retail and office uses. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 of this chapter to determine in which shoreline environments retail and office uses are permitted.

(b) Permitted Use.

(1) The principal uses permitted in this section are retail establishments providing goods, services and lodging directly to the public; and places of employment providing professional, administrative and similar service functions.

(2) In addition to the principal uses listed above, accessory uses, developments and activities normally associated with retail and office uses are also permitted. This chapter contains regulations on bulkheads and other shoreline protective structures, moorage facilities, and other uses, developments and activities which may be conducted accessory to the principal use.

(c) Lot Size.

(1) In the Urban Mixed Use 1 Shoreline Environment, there is no minimum lot size for this use.

(2) In the Urban Mixed Use 2 Shoreline Environment, see Section 24.05.205 of this chapter.

(d) Required Yards — Over Water Structures Prohibited. The regulations of this subsection establish the required yards for all buildings and other major structures associated with this use. No building or other major structure may be located within the following required yards:

(1) In the Urban Mixed Use 1 Shoreline Environment, the required yards are as follows:

(A) The front yard is zero feet; provided, however, any portion of the structure that exceed a height of thirty feet above average grade level must be set back from the property line one foot for each five feet that portion of the structure exceeds thirty feet above average grade level.

(B) The high waterline yard is the greater of fifteen feet or fifteen percent of the average parcel depth; provided, however, that balconies that are at least fifteen feet above finished grade may extend up to four feet into the high waterline yard.

(C) The minimum dimension of any required yard other than as listed above is zero feet.

(2) In the Urban Mixed Use 2 Shoreline Environment, see Section 24.05.205 of this chapter.

(3) No structure regulated under this section may be located waterward of the high waterline. This chapter contains regulations on bulkheads and other shoreline protective structures, moorage facilities and other components which may be accessory to this use located waterward of the high waterline.

(e) Minimum View Corridor Required. For properties lying waterward of Lake Washington Boulevard, Lake Street South, 98th Avenue NE or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.

(f) ~~Height~~

(1) In the Urban Mixed Use 1 Shoreline Environment, structures may not exceed forty-one feet above average grade level.

(2) In Urban Mixed Use 2 Shoreline Environment, see Section 24.05.205 of this chapter. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.05.165 Use regulations—Moorage structures and facilities.**

(a) General. This section contains regulations pertinent to the development and use of moorage structures and facilities. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart

contained in Section 24.05.110 of this chapter to determine in which shoreline environments moorage structures and facilities are permitted.

(b) Permitted Use.

(1) The principal use permitted in this section is moorage of private pleasure watercraft.

(2) In the suburban residential shoreline environment, accessory uses, structures and facilities are not permitted as part of this use.

(3) In shoreline environments where this use is permitted, other than as specified above, the following accessory uses, developments and facilities are permitted as part of this use:

(A) Boat and motor sales and leasing;

(B) Boat and motor repair and service, if:

(i) This activity is conducted on dry land and either totally within a building or totally sight-screened from adjoining property and the right-of-way; and

(ii) All dry land motor testing is conducted within a building.

(C) Pumping facilities to remove effluent from boat holding tanks.

(D) Dry land boat storage; provided, however, that stacked storage is not permitted.

(E) Meeting and special event rooms.

(F) Gas and oil sales for boats, if:

(i) All storage tanks are underground and on dry land; and

(ii) The use has facilities to contain and clean up gas and oil spills.

This accessory use (gas and oil sales) may be conducted within an over water shed that is not more than fifty square feet in area and ten feet high as measured from the deck.

(G) Boat launch ramps that meet the following requirements:

(i) The ramp is paved with concrete.

(ii) There is sufficient room on the subject property for maneuvering and parking so that traffic impact on the frontage road will not be significant.

(iii) Access to the ramp is not directly from the frontage road.

(iv) The design of the site is specifically approved by the city.

(4) Other sections in this chapter contain regulations on bulkheads and other shoreline protective structures and other uses, developments and activities which may be conducted accessory to the principal use.

(c) Minimum Lot Size. There is no minimum lot size for this use; provided, however, that the subject property must be large enough and be of sufficient dimensions to comply with the site design and other requirements of this chapter.

(d) Limitation on Uses in the Suburban Residential Shoreline Environment.

(1) In the suburban residential shoreline environment, moorage structures and facilities may only be developed and used accessory to detached dwelling units on waterfront lots. Use of moorage structures and facilities in the suburban residential shoreline environment is limited to the residents and guests of the waterfront lots to which the moorage is accessory. Moorage space may not be leased, rented, sold or otherwise made available to other than the residents and guests of the waterfront lots to which the moorage is accessory.

(2) In the suburban residential shoreline environment, moorage structures and facilities may not provide moorage for more than two boats; provided, however, that waterfront lots in this environment are encouraged to develop joint or shared moorage facilities. If this occurs, the joint or shared moorage facility may contain up to two moorages for each waterfront lot participating in the joint or shared moorage facility.

(e) Size of Moorage Structures. Moorage structures may not be larger than is necessary to provide safe and reasonable moorage for the boats to be moored. The city will specifically review the size and configuration of each proposed moorage structure to help ensure that:

(1) The moorage structure does not extend waterward beyond the point

necessary to provide reasonable draft for the boats to be moored, but not beyond the outer harbor line;

(2) The moorage structure is not larger than is necessary to moor the specified number of boats; and

(3) The moorage structure will not interfere with the public use and enjoyment of the water or create a hazard to navigation; and

(4) The moorage structure will not adversely affect nearby uses; and

(5) The moorage structure will not have a significant long-term adverse effect on aquatic habitats.

(f) Over Water Structures — Required Yards.

(1) No structures regulated under this section, other than moorage structures and sheds associated with gas and oil sales for boats, may be located waterward of the high waterline. Other sections of this chapter contain regulations on bulkheads and other shoreline protective structures and breakwaters which may be accessory to this use and located waterward of the high waterline.

(2) The required yards for structures landward of the high waterline are as established in the various shoreline environments by Section 24.05.150 regarding attached and stacked dwelling units.

(3) Waterward of the high waterline, the required setbacks in the suburban residential shoreline environment are as follows:

(A) No moorage structure on private property may be within twenty-five feet of a public park.

(B) No moorage structure may be within twenty-five feet of another moorage structure not on the subject property.

(C) The side property line setback is ten feet.

(4) Waterward of the high waterline, the required setbacks in the Urban Mixed Use 1 Shoreline Environment are as follows:

(A) If the subject property provides moorage for not more than two boats, the following setbacks apply:

(i) No moorage structure may be within twenty-five feet of another moorage structure not on the subject property.

(ii) The side property line setback is ten feet.

(B) If the subject property provides moorage for more than two boats, the following setbacks apply:

(i) No moorage structure on private property may be within one hundred feet of a public park.

(ii) No moorage structure may be within fifty feet of an abutting lot that contains a detached dwelling unit.

(iii) No moorage structure may be within twenty-five feet of another moorage structure not on the subject property.

(5) The side property line setback is ten feet.

(6) Waterward of the high waterline, the required setbacks in shoreline environments other than as listed above, wherein this use is permitted, are as follows:

(A) If the subject property provides moorage for not more than two boats, the following setbacks apply:

(i) No moorage structure on private property may be within twenty-five feet of a public park.

(ii) No moorage structure may be within twenty-five feet of another moorage structure not on the subject property.

(iii) The side property line setback is ten feet.

(B) If the subject property provides moorage for more than two boats, the following setbacks apply:

(i) No moorage structure on private property may be within one hundred feet of a public park.

(ii) No moorage structure on private property may be closer to a public park than

a line that starts where the high waterline of the park intersects with the side property line of the park closest to the moorage structure and runs waterward toward the moorage structure at a forty-five-degree angle from that side property line. This setback applies whether or not the subject property abuts the park, but does not extend beyond any intervening over-water structures.

(iii) No moorage structure on private property may be closer to a lot containing a detached dwelling unit than a line that starts where the high waterline of the lot intersects with the side property line of that lot closest to the moorage structure and runs waterward towards the moorage structure at a thirty-degree angle from that side property line. This setback applies whether or not the subject property abuts the lot containing the detached dwelling unit, but does not extend beyond any intervening over-water structures.

(iv) No moorage structure may be within twenty-five feet of another moorage structure not on the subject property.

(v) The side property line setback is ten feet.

(g) Height of Structures.

(1) Landward of the high waterline, the maximum permitted height of structures is as follows:

(A) In the Suburban Residential Shoreline Environment, the maximum height of structures landward of the high waterline is as established for detached dwelling units in that shoreline environment. See Section 24.05.145 of this chapter.

(B) In all other shoreline environments where this use is permitted, the maximum height of structures landward of the high waterline is as established in each of those shoreline environments for stacked and attached dwelling units. See Section 24.05.150 of this chapter.

(2) Waterward of the high waterline, pier and dock decks may not exceed a height of twenty-four feet above mean sea level.

(h) Moorage Structures Waterward of the Inner Harbor Line. If the moorage structure will extend waterward of the inner harbor line, the applicant must obtain a lease from the Department of Natural Resources prior to proposing this use.

(i) Certain Substances Prohibited. No part of moorage structures or other components that may come into contact with the lake may be treated with or consist of creosote, oil base, toxic or other substances that would be harmful to the aquatic environment.

(j) Certain Moorages Prohibited. Covered moorage is prohibited. Aircraft moorage is prohibited. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.170 Use regulations—Public parks.**

(a) General. This section contains regulations pertinent to the development and use of public parks. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 of this chapter to determine in which shoreline environments public parks are permitted.

(b) Permitted Uses. This section allows for the development and use of a broad range of public parks. The level and scope of development, nature and extent of amenities, and type and intensity of activities in and of each park will be determined by the city based on the physical environment, location, surroundings and needs and demands of the community.

(c) Height. The maximum height of structures is as follows:

(1) In the Suburban Residential Shoreline Environment, structures may not exceed a height of twenty-five feet above average grade level.

(2) In the Urban Mixed Use 1 Shoreline Environment, structures may not exceed a height of forty-one feet above average grade level.

(3) In all other shoreline environments where parks are permitted, structures may not exceed a height of thirty-five feet above average grade level.

(d) Lot Size and Dimensions. The city will determine the required minimum lot

size as well as the maximum bulk and dimensions of buildings and other site components on a case-by-case basis consistent with other provisions of this section.

(e) Special Considerations in Conservancy Shoreline Environments. In the Conservancy Shoreline Environments, park development must be sensitive to and protective of the unique or fragile natural systems found in these areas. Development of park facilities in these environments must be the minimum necessary in order to support low intensity passive use and enjoyment of these areas. Physical access to these areas must be limited to boardwalks, public access piers or other similar components which define the nature and extent of physical intrusion and are less disruptive to the natural environment. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.172 Use regulations—Public access pier or boardwalk.**

(a) General. This section contains regulations pertinent to the development and use of public access piers or boardwalks along the shoreline or through wetlands. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 of this chapter to determine in which shoreline environments public access piers or boardwalks are permitted.

(b) Permitted Uses. This section allows for the development and use of public access piers or boardwalks to provide public access to the shoreline.

(c) Minimum Lot Size. There is no minimum lot size for this use; provided, however, that the subject property must be large enough and be of sufficient dimensions to comply with the site design and other requirements of this chapter.

(d) Over Water Structures — Required Yards. Side property line yards are ten feet, unless the structure is designed to connect with waterfront public access on adjacent property.

(e) Height of Structures. Waterward of the high waterline, pier and boardwalk decks may not exceed a height of twenty-four feet above mean sea level.

(f) Certain Substances Prohibited. No part of a public access pier or boardwalk or other component that may come into contact with the lake may be treated with or consist of creosote, oil base, toxic or other substances, that would be harmful to the aquatic environment.

(g) Special Considerations in Conservancy Shoreline Environments. In the Conservancy Shoreline Environments, public access pier or boardwalk development must be sensitive to and protective of the unique or fragile natural systems found in these areas. Physical access must be limited to these structures by use of railings and similar devices which define intrusion into the natural environment. (Ord. 3153 § 1 (part), 1989)

#### **24.05.175 Use regulations—Utilities, government facilities and transportation systems.**

(a) General. This section contains regulations pertinent to the development and use of utilities, government facilities and transportation systems. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 to determine in which shoreline environments utilities, government facilities and transportation systems are permitted.

(b) Permitted Uses.

(1) Except as specified in this section, this section allows for the development and use of various structures, components and facilities necessary or convenient to the use and operation of a wide range of quasi-public and public utilities, government services and facilities and roadways and other transportation systems.

(2) Public parks are regulated separately in this chapter and are not regulated under this section.



(3) Maintenance, storage and production facilities are not permitted in shoreline areas.

(c) Limitations on Location.

(1) Except for public pedestrian access mandated or permitted by this chapter and utility lines, infrastructure, roadways and similar components necessary to serve development within the shoreline area, utilities, government services and facilities, and transportation systems may not be located within shoreline areas unless this location is reasonably necessary for the efficient operation of the utility, government facility or services or transportation system.

(2) Utilities, government facilities and transportation systems may not be located waterward of the high waterline or anywhere in conservancy shoreline environments unless no alternative exists and this location is essential to the operation of the utility, government service or facility or transportation system.

(d) Placement and Design.

(1) When permitted within shoreline areas, utilities, government services and facilities and transportation systems must be placed and designed to minimize negative aesthetic impacts upon shoreline areas.

(2) Except where this would not be feasible, all utility lines, pipes, conduits, meters, vaults, and similar infrastructure and appurtenances must be placed underground consistent with the standards of the serving utility.

(e) Certain Pipelines Prohibited. Except for gas or oil pipelines otherwise permitted in this section, no pipeline for the transmission of any substance that would be hazardous to the aquatic environment may be constructed within the shoreline area.

(f) Height, Bulk, Lot Size, and Dimensional Requirements. The permitted height, bulk, lot size and other dimensional requirements for utilities, government facilities and services, and transportation systems will be made by the city on a case-by-case basis based on the following factors as applicable:

(1) The standards established by the serving utility.

(2) The standards established by the city for the structure or component in question.

(3) The impact of the structure or component on the shoreline area.

(4) The height, bulk and other dimensional requirements established for other uses in the various shoreline environments by this chapter. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.180 Use regulations—Bulkheads and other shoreline protective structures.**

(a) General. This section contains regulations pertinent to the development and use of bulkheads and other shoreline protective structures. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 to determine in which shoreline environments bulkheads and other shoreline protective structures are permitted.

(b) Permitted Uses. This section allows for the construction and use of walls, rockeries and similar structures that are constructed essentially parallel to the shoreline at the water's edge to prevent erosion of the shoreline.

(c) Allowable Reasons. A bulkhead or other shoreline protective structure may be constructed only if:

(1) It is needed to prevent significant erosion of the shoreline; and

(2) The use of vegetation will not sufficiently stabilize the shoreline to prevent significant erosion.

(d) Prohibited Locations. Bulkheads and other shoreline protective structures may not be constructed within a marsh, bog or swamp or between a marsh, bog or swamp and the lake.

(e) Design Considerations. Bulkheads and other shoreline protective structures must be designed to minimize the transmittal of wave energy to other properties.

(f) Placement. Bulkheads and other shoreline protective structure may not be placed waterward of the high waterline, unless:

- (1) It is to stabilize a fill approved under Section 24.05.195; or
- (2) There has been severe and unusual erosion within one year immediately preceding the application for the bulkhead or other similar protective structure. In this event, the city may allow the placement of the bulkhead or other similar protective structure to recover the dry land area lost by this erosion.

(g) Change in Configuration of the Land. Except as otherwise specifically permitted in this chapter, alteration of the horizontal or vertical configuration of the land must be kept to a minimum.

(h) Backfill. The extent and nature of any backfill proposed landward of a bulkhead or other shoreline protective structure must be approved by the city. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.185 Use regulations—Breakwaters.**

(a) General. This section contains regulations pertinent to the development and use of breakwaters. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 to determine in which shoreline environments breakwaters are permitted.

(b) Permitted Uses. This section allows for the construction and use of offshore structures used to inhibit wave action to create safe boat moorage. Only floating or open pile breakwaters are permitted.

(c) Allowable Reasons. The city will permit the construction and use of a breakwater only if:

- (1) The breakwater is essential to the safe operation of a moorage facility;
- (2) The city determines that the location, size, design, and accessory components of the moorage facility to be protected by the breakwater are distinctly desirable and within the public interest; and
- (3) Any undesirable effects or adverse impacts upon the environment or upon nearby waterfront properties from the breakwater are clearly outweighed by the benefits to the public provided by the moorage facility to be protected by the breakwater.

(d) Professional Design and Supervision Required. All breakwaters must be designed and constructed under the supervision of a civil engineer or similarly qualified professional. As part of the application, the engineer or other professional designing the breakwater must certify that it is the smallest possible breakwater to meet the requirements of this chapter and accomplish the purpose of the breakwater and also is designed to have the minimum possible adverse impacts upon the environment, nearby waterfront properties and navigation.

(e) Public Use Required. Unless physically infeasible, public access to and along, and public use of (e.g. sitting, picnicking, fishing, etc.), the breakwater must be provided.

(f) Certain Substances Prohibited. No part of the breakwater may be treated with or consist of creosote, oil base, toxic or other substances that would be harmful to the aquatic environment. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.190 Use regulations—Dredging.**

(a) General. This section contains regulations pertinent to dredging activities. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 to determine in which shoreline environments dredging is permitted.

(b) Permitted Uses. This section allows for the displacement and removal of materials from the bottom of the lake.

(c) Allowable Reasons. The city will permit dredging only if:

- (1) No unique or significant natural area of flora or fauna will be destroyed; and
- (2) The dredging will not result in erosion of the shoreline or undermine the

stability of neighboring properties; and

(3) Either:

(A) The application for the dredging is filed by a public agency to improve navigability, public recreation or public safety; or

(B) The application is to create a public use or recreation area; or

(C) The application is for dredging to remove silt or sediment deposited because of severe and unusual erosion or resulting from the existence of a bulkhead on nearby property; or

(D) The application is to provide sufficient draft for boat moorage.

(d) Disposition of Dredging Spoils. Dredging spoils may not be deposited into the lake. Dredging spoils may not be deposited onto shoreline areas, except as follows:

(1) Dredging spoils may be used as fill or landscape material for a development in the shoreline area that is otherwise approved by the city under this chapter. This fill material must be of such a type and nature that it will provide proper structural stability and will not create any undesirable effects or adverse impacts upon the environment or neighboring properties.

(2) The city may permit dredging spoils to be temporarily deposited in the shoreline area for transfer and removal to an approved disposal site. The dredging spoils may not be stored in the shoreline area longer than is reasonably necessary and must be stored in a manner that will protect the environment and neighboring properties from undesirable effects and adverse impacts.

(e) Revegetation. The applicant must reestablish any beneficial vegetation that is disrupted or destroyed during dredging.

(f) Minimum Dredging Necessary. The extent of the dredging must be the minimum necessary to reasonably accomplish the purpose for the dredging under subsection (c)(3) of this section. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.195 Use regulations—Fill.**

(a) General. This section contains regulations pertinent to the use of fill. These regulations are founded on the goals and policies established in Part II of this chapter. Please see the chart contained in Section 24.05.110 to determine in which shoreline environments fill is permitted.

(b) Permitted Uses. This section allows for the creation of dry upland areas by the deposition of sand, silt, gravel or other materials onto areas waterward of the high waterline.

(c) Allowable Reasons. The city may permit filling only if:

(1) No unique or significant natural area of flora or fauna will be destroyed;

(2) The fill will not result in erosion of the shoreline or undermine stability of neighboring properties; and

(3) Either:

(A) The application is filed by a public agency to improve navigability, public recreation, or public safety; or

(B) The application is to create a public use or recreation area.

(d) Fill Material. The fill material must be nondissolving and nondecomposing. The fill material must not contain organic or inorganic materials that would be detrimental to water quality or the existing habitat.

(e) Use of Vegetation. The applicant must stabilize exposed fill areas with vegetation.

(f) Minimum Fill Necessary. The extent of the fill must be the minimum necessary to reasonably accomplish the purpose for the fill under subsection (c)(3) of this section.

(g) Professional Design and Supervision. The city may require that the fill be designed and supervised by a civil engineer or similarly qualified professional. The city may require this professional to certify that the fill meets the following requirements:

(1) The fill is designed and executed to create the least possible undesirable effects and adverse impacts on neighboring properties and the environment.

(2) The fill is designed and executed to provide permanent structural integrity for the fill and surrounding areas. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.200 Special regulations—Authority of the city.**

(a) General. In granting any permit under Chapter 24.06 of the Kirkland Municipal Code or the Shoreline Management Act, the city may impose any conditions or restrictions that the city determines are necessary to eliminate or minimize any undesirable effects of granting the permit.

(b) Land Outside the Jurisdiction of the Shoreline Management Act. In addition to the authority described above, if a proposed use, development or activity includes areas both inside and outside the jurisdiction of the Shoreline Management Act, the city may impose conditions or restrictions on use, development or activity outside the jurisdiction of the Shoreline Management Act if necessary to eliminate or minimize any undesirable effects on areas within the jurisdiction of the Shoreline Management Act. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.205 Special regulations—Mixed use development in Urban Mixed Use 2 Shoreline Environment.**

(a) General. This section establishes special regulations under which a mixed use development may be permitted in the Urban Mixed Use 2 Shoreline Environment. If the provisions of this section are specifically inconsistent with any other provisions of this chapter, the provisions of this section will apply. The provisions of this chapter which are not specifically inconsistent with the provisions of this section apply to development permitted under this section.

(b) Permitted Uses.

(1) A development permitted under this section must contain the following uses:

- (A) Attached or stacked dwelling units;
- (B) A restaurant or tavern;
- (C) Moorage structures and facilities.

(2) The applicant may propose and/or the city may require or allow the mixed use development to contain the following uses:

- (A) Retail uses;
- (B) Office uses;
- (C) Hotels;
- (D) The accessory uses listed in subsection (f) of Section 24.05.165.

(c) Minimum Lot Size. The development must be approved as part of a master plan which encompasses the entire contiguous ownership of the applicant.

(d) Number of Dwelling Units. There may not be more than one dwelling unit for each three thousand one hundred square feet of land area landward of the high waterline, computed using the entire area of the subject property between the high waterline and Lake Washington Boulevard.

(e) Bulk and Site Design Requirements. The city will determine setbacks, lot coverage, structure heights, landscaping and all other bulk and site design elements of the development based on the compatibility of the development with adjacent uses and the degree to which public access, use and views are provided in the proposed development.

(f) Public Access, Use and Views. The proposed development must provide substantial opportunities for public access to, use of and views of the waterfront:

(1) A public pedestrian access trail along the entire waterfront of the subject property with connections to Lake Washington Boulevard at or near both the north end and south end of the subject property.

(2) Waterfront areas developed and open for public use.

(3) Improvements to and adjacent to Lake Washington Boulevard which are open

for public use.

(4) Corridors which allow unobstructed views of Lake Washington from Lake Washington Boulevard. In addition, obstruction of the views from existing developments lying east of Lake Washington Boulevard must be minimized.

(g) Waterfront Orientation and Accessibility. All nonresidential uses, except office uses, must be located and designed to have substantial waterfront orientation and accessibility from waterfront public use areas.

(h) Vehicular Circulation. Vehicular circulation on the subject property must be designed to mitigate traffic impacts on Lake Washington Boulevard and Lake View Drive. Access points must be limited, with primary access located at the intersection of Lake Washington Boulevard and Lake View Drive. The city may require traffic control devices and right-of-way realignment and/or limit development if necessary to further reduce traffic impacts. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.05.210 Special regulations—Nonconformance.**

Where nonconforming development exists, the following definitions and standards shall apply:

(1) "Nonconforming development" means a shoreline use or structure which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program or policies of the act.

(2) Nonconforming development may be continued provided that it is not enlarged, intensified, increased or altered in any way which increases its nonconformity.

(3) A nonconforming development which is moved any distance must be brought into conformance with the applicable master program and the act.

(4) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage.

(5) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, any subsequent use shall be conforming. It shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire.

(6) A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed.

(7) An undeveloped lot, tract, parcel, site or division which was established prior to the effective date of the act or the applicable master program but which does not conform to the present lot size or density standards may be developed so long as such development conforms to other requirements of the applicable master program and the act. (Ord. 3153 § 1 (part), 1989; Ord. 2938 § 1 (part), 1986)

### **Part V—Reserved\***

\* Editor's note: Part V contains Sections 24.05.215, Map of shoreline environments and jurisdictions, 24.05.220, Calculating average grade level, 24.05.225, Calculating average parcel depth, and 24.05.230, Lake Washington regional shorelines goals and policies. These appendices are on file in the city clerk's office.

## **Chapter 24.06 SHORELINE ADMINISTRATION AND PROCEDURES**

### **Sections:**

- 24.06.001 User guide.**
- 24.06.005 Administrative responsibilities in general.**
- 24.06.010 Applicability of the shoreline master program.**
- 24.06.015 Exemption from permit requirements.**
- 24.06.020 Letter of exemption issued in certain cases.**
- 24.06.025 Prior review of exempt actions.**
- 24.06.030 Application materials to be adopted.**
- 24.06.035 Notice of applications and hearings.**
- 24.06.040 Substantial development permits.**
- 24.06.045 Conditional use permits.**
- 24.06.050 Variances.**
- 24.06.055 Permits.**
- 24.06.060 Filing with Department of Ecology and Attorney General.**
- 24.06.065 Requests for review.**
- 24.06.070 Time to commence and complete development.**
- 24.06.075 Revision to issued permits.**
- 24.06.080 Enforcement authority.**
- 24.06.085 Additional authorities and responsibilities.**

**24.06.001 User guide.**

This chapter contains the provisions regarding the city's administration and enforcement of the Shoreline Management Act and the Kirkland shoreline master program (Chapter 24.05 of the Kirkland Municipal Code), as well as the permit system applicable to the Shoreline Management Act and shoreline master program of the city. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.06.005 Administrative responsibilities in general.**

Except as otherwise specifically established in this chapter or Chapter 24.05 of the Kirkland Municipal Code, the department of planning and community development of the city is responsible for the administration of the Shoreline Management Act and the shoreline master program of the city. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.06.010 Applicability of the shoreline master program.**

The shoreline master program applies to all development as that term is defined in RCW 90.58.030, whether or not that development is exempt from the requirements of obtaining a permit under this chapter. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.06.015 Exemption from permit requirements.**

All development, except as specified in RCW 98.58.030(3)(e), must obtain a permit prior to commencement. Chapter 24.05 and this chapter specify which permit is required. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.06.020 Letter of exemption issued in certain cases.**

WAC Section 173-14-115 establishes the circumstances under which the city will issue a letter stating that a proposed development is exempt from the permit requirements of the Shoreline Management Act and this chapter. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

**24.06.025 Prior review of exempt actions.**

Applicants are encouraged to consult with the city prior to commencing any work on a development which the applicant feels is exempt from the permit requirements of the Shoreline Management Act and this chapter. The city will review these proposed developments for consistency with the requirements of the Shoreline

Management Act and the shoreline master program to determine whether the city concurs that the development is exempt from permit requirements. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.06.030 Application materials to be adopted.**

The department of planning and community development of the city is directed to adopt and publish application forms and materials for permits required under this chapter. At a minimum, these application forms and materials will require the information specified in WAC 173-14-110. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.06.035 Notice of applications and hearings.**

(a) Contents. Public notices of pending applications and hearings on permits under the Shoreline Management Act, including substantial development permits, conditional use permits, and variances, will, at a minimum, contain the information specified in WAC 173-14-070.

(b) Distribution. Notice of all pending applications for permits under the Shoreline Management Act and this chapter will be distributed as follows:

(1) Notice will be published in the official newspaper of the city at least thirty days prior to the date of any public hearing on the permit or, if no public hearing is to be held, thirty days before the city makes any decision on the application. The published notice does not require a vicinity map.

(2) At least sixteen days prior to the date of any public hearing on the permit, or, if no public hearing will be held, at least sixteen days before the city makes any decision on the application, the applicant shall provide for and erect public notice signs as follows:

(A) The signs shall be designed and constructed to city standards. A copy of the notice described in subparagraph (1) of this subsection and a vicinity map shall be attached to each sign.

(B) The department of planning and community development is authorized to develop the standards for the public notice signs necessary for implementation of this section.

(C) One sign shall be erected on or near the subject property facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property. The department of planning and community development shall approve the location of each sign.

(D) The applicant shall post a bond pursuant to Chapter 175, Ordinance 2740, as amended (the Kirkland zoning code) to ensure proper maintenance and removal of the signs. The bond shall be posted prior to erection of the sign.

(E) The signs shall be removed and returned to the department of planning and community development within seven calendar days after the final public hearing.

(3) If a public hearing is required, at least fourteen days before the hearing a copy of the notice, including a vicinity map, will be sent to the owners of all property within three hundred feet of any boundary of the subject property and to the residents of each piece of property adjacent to or directly across the street from the subject property.

(4) At least fourteen days prior to the date of any public hearing on the permit, or, if no public hearing will be held, at least fourteen days before the city makes any decision on the application, the city will distribute the notice of the application, including a vicinity map, by posting a copy of the notice on each of the official notification boards of the city. (Ord. 3531 § 1, 1996; Ord. 3217 § 1, 1990; Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.06.040 Substantial development permits.**

(a) General. This section establishes the procedures and criteria that the city will

use to review and decide upon each application for a substantial development permit under the Shoreline Management Act and the shoreline master program.

(b) Procedures.

(1) If the proposal that requires a substantial development permit also requires approval through Chapters 145, 150, 152, or 155 of Ordinance 2740, as amended (the Kirkland zoning code), the substantial development permit will be heard and decided upon using the provisions of whichever of the above listed chapters of Ordinance 2740 applies; provided, however, that if the provisions of this chapter conflict with the provisions of the applicable chapters of Ordinance 2740, the provisions of this chapter will be followed.

(2) If the provisions of subdivision (1) of this subsection do not apply, the substantial development permit will be reviewed and decided upon using the provisions of Chapter 145 of Ordinance 2740, as amended (the Kirkland zoning code), to the extent that those provisions do not conflict with the provisions of this chapter. If a conflict exists, the provisions of this chapter will be followed.

(c) Criteria. WAC 173-14-100 establishes that a substantial development permit may only be granted when the proposed development is consistent with all of the following:

- (1) The policies and procedures of the Shoreline Management Act;
- (2) The provisions of Chapter 173-14 WAC;
- (3) Chapter 24.05 of the Kirkland Municipal Code. (Ord. 3153 § 2 (part), 1989; Ord. 2992 § 1, 1986; Ord. 2972 § 1, 1986; Ord. 2938 § 1 (part), 1986)

#### **24.06.045 Conditional use permits.**

(a) General. This section establishes the procedures and criteria that the city will use to review and decide upon each application for a conditional use permit under the Shoreline Management Act and the shoreline master program. Sections 24.05.110 and 24.05.115 of the Kirkland Municipal Code establish what uses, developments and activities require the issuance of a conditional use permit.

(b) Procedures. The city will review and decide upon each application for a conditional use permit under the Shoreline Management Act and the shoreline master program using the provisions of Chapter 150 of Ordinance 2740, as amended (the Kirkland zoning code), to the extent that those provisions do not conflict with the provisions of this chapter. Where a conflict exists, the provisions of this chapter will be followed.

(c) Criteria. WAC 173-14-150 establishes the criteria under which the city may issue a conditional use permit. In addition, the city will not issue a conditional use permit for a use which is not listed as allowable in the shoreline master program unless the applicant can demonstrate that the proposed use has impacts on nearby uses and the environment essentially the same as the impacts that would result from a use allowed by the shoreline master program in that shoreline environment.

(d) Approval by Department of Ecology. Once the city has approved a conditional use permit it will be forwarded to the State Department of Ecology for its review and approval/disapproval jurisdiction under WAC 173-14-130. (Ord. 3530 § 2, 1996; Ord. 3153 § 2 (part), 1989; Ord. 3131 § 1, 1988; Ord. 2938 § 1 (part), 1986)

#### **24.06.050 Variances.**

(a) General. This section establishes the procedures and criteria that the city will use to review and decide upon each application for a variance under the Shoreline Management Act.

(b) Purpose of a Variance. Under WAC 173-14-150, the purpose of a variance is strictly limited to granting relief to specific bulk, dimensional or performance standards of the shoreline master program where there are extraordinary or unique circumstances relating to the subject property such that the strict implementation of the shoreline master program would impose unnecessary hardship on the applicant or thwart the policies set forth in RCW 90.58.020.



(c) Procedures. The city will review and decide upon each application for a variance under the Shoreline Management Act using the provisions of Chapter 150 of Ordinance 2740, as amended (the Kirkland zoning code), to the extent that those provisions do not conflict with the provisions of this chapter. Where a conflict exists, the provisions of this chapter will be followed.

(d) Criteria. WAC 173-14-150 establishes the criteria under which the city may grant a variance.

(e) Approval by Department of Ecology. Once the city has approved a variance, it will be forwarded to the State Department of Ecology for its review and approval/disapproval jurisdiction under WAC 173-14-130. (Ord. 3153 § 2 (part), 1989; Ord. 2999 § 1, 1986; Ord. 2938 § 1 (part), 1986)

#### **24.06.055 Permits.**

After approving a substantial development permit, conditional use permit or variance under the Shoreline Management Act and the shoreline master program, the city will issue a permit containing, at a minimum, the information specified in WAC 173-14-120. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.06.060 Filing with Department of Ecology and Attorney General.**

WAC 173-14-090 establishes the requirements and procedures for filing decisions on permits with the Department of Ecology and the office of Attorney General. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.06.065 Requests for review.**

WAC 173-14-170 and 173-14-174 establish the procedures and time periods for requesting review of decisions on substantial development permits, conditional use permits and variances and other decisions under the Shoreline Management Act and the shoreline master program. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.06.070 Time to commence and complete development.**

WAC 173-14-060 and 173-14-061 establishes time requirements for commencing and completing work authorized by a permit under the Shoreline Management Act and the shoreline master program. The city may, on a case-by-case basis, issue permits for a fixed time period as authorized in WAC 173-14-060. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.06.075 Revision to issued permits.**

WAC 173-14-064 establishes the procedure and criteria under which the city may approve a revision to a permit issued under the Shoreline Management Act and the shoreline master program. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.06.080 Enforcement authority.**

WAC Chapter 173-17 contains enforcement regulations, including authority for the city to issue regulatory orders to enforce the Shoreline Management Act and the shoreline master program. In addition, the city shall have any and all other powers and authority granted to or devolving upon municipal corporations to enforce ordinances, resolutions, regulations, and other laws within its territorial limits. (Ord. 3153 § 2 (part), 1989; Ord. 2938 § 1 (part), 1986)

#### **24.06.085 Additional authorities and responsibilities.**

The city shall have any and all additional authority and perform any and all additional responsibilities now or hereafter granted to or devolving upon municipal corporations with respect to the administration and enforcement of the Shoreline

Management Act and shoreline master program. (Ord. 3153 § 2 (part), 1989;  
Ord. 2938 § 1 (part), 1986)

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