

# **Gig Harbor City Council Meeting**



**April 10, 2000**

**AGENDA FOR GIG HARBOR CITY COUNCIL MEETING**  
**April 10, 2000**

**CALL TO ORDER:**

**PUBLIC HEARING:**

1. Condemnation of Property - Pump Station No. 3.
2. Appeal of Hearing Examiner's Decision - Harborwest Development.

**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 March 27, 2000.
2. Correspondence / Proclamations:
  - a. Proclamation - Earth Day.
  - b. Letter to Eagle Scout, Travis Leland.
3. Approval of Payment of Bills for April 10, 2000:  
Checks #24765 through #24873 for \$280,431.28.
4. Liquor License Application - Water to Wine.

**OLD BUSINESS:**

1. Second Reading of Ordinance - Condemnation of an Easement for Location of Pump Station No. 3.
2. Appeal of Hearing Examiner Decision - Harborwest Development.

**NEW BUSINESS:**

1. Resolution - Amendment to Interlocal Agreement that Created the Pierce County Regional Council.
2. Addendum to Expert Witness Contract.
3. Wastewater Outfall and NPDES Support Studies - Consultant Services Contract.
4. First Reading of Ordinance - Accepting a Donation from Peninsula Neighborhood Association for the Borgen Property.

**PUBLIC COMMENT/DISCUSSION:**

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

**STAFF REPORTS:**

**ANNOUNCEMENT OF OTHER MEETINGS:**

Special Presentation to City Council - Boys & Girls Club: May 8<sup>th</sup> at 6:45 p.m. before the regular meeting.

**EXECUTIVE SESSION:** For the purpose of discussing potential and pending litigation per RCW 42.30.110(i) and property acquisition per RCW 42.30.110(b). Action may be taken after the session.

**ADJOURN:**

DRAFT

**SPECIAL GIG HARBOR CITY COUNCIL MEETING OF MARCH 27, 2000**

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

**CALL TO ORDER:** 7:06 p.m.

**PUBLIC HEARING:** Formation of a Municipal Division in the District Court II.

Mayor Wilbert opened this public hearing and invited Judge Michael Dunn to address Councilmembers.

Michael Dunn, Judge for Gig Harbor Municipal Court. Judge Dunn explained that city government is formed for local control and to determine destiny, and that this local control would be lost for ten years by the formation of the Municipal Department in District Court II. He added that he had studied statutes pertaining to consolidation of the courts and that he disagreed with the analysis that the ten-year rule could be manipulated in the first four years by contract. He spoke of his concern of the transition of current cases and the follow-up requirements and the timing of his contract. Councilmember Young asked if Judge Dunn had been able to provide the examples he had requested of cases in the city's criminal code, which District Court wouldn't be able to enforce. Judge Dunn answered that they did not have the man-hours to compile such a list.

Mayor Wilbert said that she had received a prepared statement from Paul Nelson, Court Clerk, and asked Council to consider that document.

Kurt Salmon - Attorney in Gig Harbor. Mr. Salmon explained that he had been asked by Mr. Hoppen to relate the history of how the local court has evolved. He explained that when he began to practice law in 1977, there was a part-time District Court Judge who held court two afternoons a week at city hall, and who also acted as Municipal Court Judge for 1/2 of those afternoons. Mr. Salmon explained that in those days, the people coming before the Judge were locals, and court was quite informal as it was not a court of record. In approximately 1981, the District Court caseload increased, and the city had grown to the point of needing extra room and asked the District Court to relocate. At that time the city decided to form its own court, still not a court of record. He continued to say that over the years he has observed the changes in the court, and now, most of the people that come before our Municipal Court are *not* from Gig Harbor. He said that as a person who practices in both courts, he does not see a problem with the city's cases being handled by the District Court Judge. He said that from an economic standpoint, the Council should do what is best for the citizens. He then addressed Councilmember Young's question about prosecution of local ordinances and explained that when he was the city attorney in the early '80s, there was less than 10 cases of this type, and 9 out of ten were simply moorage violations.

Councilmember Dick asked Mr. Salmon if prosecution in the city court was substantially different than District Court. Mr. Salmon answered that the legislature has taken away a great deal of the Judge's discretion in many cases. He said that some sentences would be tougher in District Court due to not having to worry about jail costs.

There were no further public comments and the Mayor closed the public hearing at 7:28 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 the March 13, 2000, City Council and March 23, 2000 Special City Council Meetings.
2. Correspondence / Proclamations:
  - a. Pierce County Department of Community Services - Economic Development Efforts.
3. Kimball Drive / Pioneer Way Improvement Project - Consultant Services Contract.
4. Pt. Fosdick Improvement Project - Right of Way Donation /Temporary Construction Easement.
5. Approval of Payment of Bills for March 27, 2000:  
Checks #24649 through #24764 for \$224,636.76. Check #24648 replaced voided Check #24209.
6. Liquor License Application - Old Harbor Saloon.

**MOTION:** Move to approve the Consent Agenda as presented.  
Young/Ruffo - unanimously approved.

**OLD BUSINESS:**

1. Court Consolidation/ Formation of a Municipal Division in the District Court II. Mark Hoppen, City Administrator, gave an overview of the information that had been distributed in the council packet. He mentioned the need for consideration of the design of a new court facility for a city to serve a population of 18,000 to 24,000 people. He said that the formation of a Municipal Division of District Court II would allow the city to retain net revenues, and to not incur capital debt expense over time.

Councilmember Ruffo asked Carol Morris, Legal Counsel, for clarification of the ten-year inability to reestablish a Municipal Court. Ms. Morris replied that there had been no cases interpreting that section of the statute, so she couldn't predict how it would be handled. She then answered Councilmember Dick's questions about prosecution of city cases.

Mayor Wilbert again brought up the sharing of Council Chambers with a Court to minimize cost. Councilmember Young explained that the majority of the projected cost was not in the courtroom, but in the administrative offices for a projected eight employees and the required security measures.

Councilmember Ekberg stated that he lives in the city because he likes the city services as opposed to the County. He added that he views the Court as a responsibility of the city

that costs money. He voiced concerns about the ten-year issue and designing a new City Hall without a Court, then having to add it at a later date.

Councilmember Robinson suggested that in planning for the new facility, a contingency plan could be included for future expansion if necessary.

Councilmember Owel echoed Councilmember Ekberg's concerns. She said that Council needed to move beyond the issue of saving money and focus on the role of city government and their responsibility. She added that the Municipal Division concept addresses this issue better than having the County completely absorb the department. She said that philosophically she is opposed to moving the Municipal Court to the District Court and abandoning an entire city responsibility.

Councilmember Young said that the issue is not that the Court is not profitable or expensive to run, but that it is the only department that runs less efficiently than the County. He added that it is not that the employees do a bad job, or whether or not it turns a profit, but whether or not it is worth \$100,000 per year for the same service that can be obtained from the County.

Councilmember Dick said that it was his observation that Judges in both courts do a good job, and take their jobs seriously. He said that the real issue is prosecution. He said that his concern was whether the cases that are unique to Gig Harbor would be handled adequately, but added that he thought the Municipal Division would address this concern. He said that if cases weren't handled to the city's satisfaction, it could be dealt with by contracting for a prosecutor. He said that it would take time to assess how the system works, and four years may be an appropriate time.

Councilmember Picinich said that he has always been in favor of consolidation and that forming a Municipal Division addresses many of the concerns. He added that he would like to move forward. He said that cost is a very important issue and that the \$125,000 a year and the \$800,000 to build a new facility could be better used for the citizens of Gig Harbor.

Councilmember Ruffo said that in reviewing the pros and cons prepared by staff, it appears to be a cost benefit equation, and that forming a Municipal Division at a much lower cost for the same services was the only practical choice. He added that he was supportive of the formation.

Carol Morris addressed several of the concerns. She said that very few zoning ordinances go to Municipal Court. She said that there was optimism that the ten-year statute wouldn't preclude the city from entering into an agreement, and that the County would negotiate the term of the agreement to keep the city happy. She pointed out that throughout the process, she has had concerns about level of service and that this contract does not guarantee that they will agree to prosecute one case or one hundred. She added that the indemnification language would have to be amended.

**MOTION:** Move to go forward with the formation of a Municipal Division of the District Court and make the necessary changes to the agreement.  
Young/Ruffo -

Councilmembers continued to discuss the motion. Mark Hoppen pointed out that the agreement would be reviewed by the Redistricting Committee and return to Council. He said what he was looking for was direction from Council to work toward forming the Municipal Division within a year, or to go in a different direction and build an expensive facility and possibly have the District Court join in that facility at some future date.

Councilmember Picinich called for the question. Mayor Wilbert asked to make a comment. She said that she had observed the court for many years that they were responsible employees who had done a good job. She said that the Court Commissioner had assured her that the current way court was held in the Council Chambers was sufficient, and could continue that way in a new city hall without a separate courtroom to provide the services. Councilmember Ruffo said that it was two separate issues, and that the critical issue was how the city provides the services, not necessarily what is built. Councilmember Picinich again called for the question.

**MOTION:** All those in favor of calling for the question?  
Picinich/Young - unanimously approved.

**RESTATED MOTION:** Move to go forward with the formation of a Municipal Division of the District Court and make the necessary changes to the agreement.  
Young/Ruffo - a roll-call vote was taken with the following results.

Ekberg, neigh; Young, aye; Robinson, aye; Owel, aye; Dick, aye; Picinich, aye; Ruffo, aye. The motion was approved, six to one.

2. Second Reading of Ordinances - Planning Commission Recommendations:

- a) Vertical zoning
- b) New/revised Definitions, Chapter 17.04
- c) New C-2 (Commercial) District, Chapter 17.41
- d) Map Rezone - New C-2 District
- e) Amendments to the C-1 (Commercial) District

Ray Gilmore, Planning Director, explained that the first two ordinances were related to retail clustering and vertical zoning and ordinances c, d, and e were related to the development of a new commercial district and amending the existing C-1 district. He said that he had prepared language to address the issue that had arisen at the last meeting regarding existing uses of property in the C-1 zone at Council's request. He said that another public hearing would be required if significant changes were made to the ordinances.

Mayor Wilbert said that the first two ordinances would be considered together, then the remaining ordinances.

**MOTION:** Move to allow any public testimony at this second reading.  
Dick/Picinich - unanimously approved.

Joe Sinnit - Mr. Sinnit explained that he was an attorney representing Bill Parker and Parker Service. He explained that the station had been in Gig Harbor since 1962, and that a substantial portion of the business relates to tourists. He said that the proposed changes would penalize some businesses at the benefit of others. He asked Council to consider what their citizens want and requested that Item G under 17.31.020 be retained, allowing gasoline service stations to remain, or to table this ordinance indefinitely. He said that by passing this ordinance as is, Council would be depriving various businesses of economic viable uses of their property and guaranteeing litigation.

Duane Erickson - owner of property 3016 thru 3022 Harborview Drive. Mr. Erickson explained that he agreed with Mr. Sinnit. He said that the real issue is the tradition in Gig Harbor and gave a history of the downtown buildings and their use over the years. He said that he had been practicing law in this location since 1964 and that the proposed legislation would prohibit this use. He strongly recommended that this ordinance be rejected.

Kurt Salmon - 7713 Pioneer Way. Mr. Salmon, who owns the building at 7713 Pioneer Way, explained that his father was the first to open the Arco Station in 1962. He also gave a history of the downtown area and added that he is amazed that the city would consider this zoning. He voiced his opposition to the ordinance.

Linda Gair - 9301 N. Harborview Dr. Ms. Gair said she was speaking on behalf of the Gig Harbor Waterfront Restaurant and Retail Association in favor of the ordinance. She said that the intent of the ordinance was not to put anyone out of business and has little effect on existing businesses. She agreed that the diversity of Gig Harbor is essential to the community. She talked about the limited retail space and concerns that it could be replaced by office and professional activities. She said to maintain a viable downtown, the retail clustering is essential. She urged Council to study Dr. Kadzik's report and to pass this ordinance.

Kevin Brooks - 3016 Harborview Drive. Mr. Brooks said that he was part owner of the property at 3016 - 3022 Harborview Drive. He explained that the people that come into his office also shop in the shops and eat in the restaurants downtown. He said that he felt his business was a positive influence and added that he was against this ordinance.

John Mayers - 8015 Mitts Lane. Mr. Mayers stated that the downtown buildings are old and asked about ADA requirements when there was a change in use. Ray Gilmore explained that the ADA requirements are triggered by occupancy change or expansion and would go into effect whether or not this ordinance was enacted.

Nick Tarabochia - 2788 Harborview Drive. Mr. Tarabochia explained that his family has numerous holdings in Gig Harbor that reflect retail usage. He said that retail has to stand on its

own merit, and added that sanction should not be given to any special interest groups. He said that this ordinance would harm the community and his family's holdings.

Marie Sullivan - Executive Director of the Chamber of Commerce. Ms. Sullivan explained that she understood the concept and philosophy of retail clustering, but that the Chamber members were divided on the issue. She used Poulsbo as an example and said that there is still no evidence that zoning is the reason that retail areas flourish. She encouraged Council to try to get the evidence to support retail success.

Jim Franich - 3702 Harborview Drive. Mr. Franich said that Gig Harbor is a beautiful place to live and that Council or the Planning Commission should not make decisions about the direction of the city based on any other city. He said to look back on the history of Gig Harbor and how it had grown and matured and not to try and change it into something that it is not.

Del Stutz - 3003 Harborview Drive. Mr. Stutz, owner of Stutz Fuel, said that he has a problem with the definition of retail and described several businesses that he considered to have a retail function that would not be included in this ordinance. He added that the building owners should have the flexibility to lease to other uses than just retail.

Dave Morris - PO Box 401. Mr. Morris said that he was supportive of the comments made by Marie Sullivan, and other communities should be studied before any consideration is given to the ordinance.

Walt Smith - 11302 Burnham Drive. Mr. Smith said that he did not own property in downtown Gig Harbor or was he against retail clustering, but that he believed the market place should determine what is located here. He said no one knows what the future holds, and that restricting building use could result in vacancies which would have a negative effect. He concluded that a town is more vibrant with mixed use and stated that he was opposed to the ordinance.

Councilmember Young explained that there are housekeeping items in the ordinance that need to be passed, so he wished to make a motion to remove reference to the retail clustering and leave the remainder of the ordinance intact.

**MOTION:** Move to remove, from Ordinances A and B, sections that refer to retail clustering, and bring the ordinance back for another public hearing.  
Young/Dick -

Councilmember Ekberg asked for clarification of the sections for removal mentioned by Councilmember Young, specifically in regards to gas stations. Councilmember Young said that Mr. Parker's business could remain under Section 'J'. Councilmember Ruffo asked Councilmember Young if it were his intent to table the concept of retail clustering but to take care of other items needing to be accomplished. Councilmember Young responded that the ordinance could be tabled, but he would rather it be voted upon without the retail clustering language, and not referred back to the Planning Commission. He added that it was his belief that when Government gets involved in the economy, there are unpredicted results. Councilmember Picinich asked for clarification on removing Section E, citing one-story buildings as an example,



and asked to keep Section B, "Business and Professional Office." Councilmember Young agreed and said that the whereas clauses also would need to be reworded.

Councilmember Owel asked Ray Gilmore to restate what he had said earlier about what would need to come back for a public hearing. Mr. Gilmore said that any substantial changes to the Planning Commission's recommendations, either adding or deleting language, would require another public hearing.

Councilmember Ruffo said that he would rather table the whole ordinance and bring back the housekeeping items separately from the concept of retail clustering. Councilmember explained that all the references to vertical zoning and retail clustering are stand-alone, and it wouldn't be difficult to remove these references. Ray Gilmore suggested that staff rewrite the ordinance and that a worksession be scheduled to discuss the issues, then a public hearing be held. Councilmember Young said that he didn't see the need for a worksession, but withdrew his original motion. Councilmember Dick agreed to withdraw his second to the motion.

**MOTION:** Move to refer this back to the Planning Department to bring language to be considered at a worksession.  
Young/Ruffo - unanimously approved.

Candy Carter, reporter asked for clarification. She asked if this had been remanded back to the Planning Commission and all reference to retail zoning were being removed. Mayor Wilbert said that it was being sent back to the Planning Department, but would come back for a worksession for discussion.

The Mayor called a ten-minute recess at 8:55 p.m. The session resumed at 9:09 p.m.

When Council returned, Councilmember Young said that due to the confusion surrounding the action on Ordinances A and B, that the motion be clarified. Councilmember Young said that he thought that Council no longer wanted to remove the retail clustering sections, and hold a worksession to discuss changes. Councilmembers disagreed with this interpretation. Councilmember Ruffo said that the Planning Department should start with the existing ordinance, and add the housekeeping items. Councilmember Ekberg said that he understood the original motion to be to remove all the vertical zoning and retail clustering language leaving only the housekeeping items. Councilmember Owel said that she didn't understand it that way.

**MOTION:** Motion to reconsider the last motion to refer this back to the Planning Department to bring language to be considered at a worksession.  
Young/Ruffo - unanimously approved.

**MOTION:** Move to bring the ordinance back with the housekeeping items, without the retail clustering element, and schedule a public hearing.  
Young/Ekberg - unanimously approved.

Mayor Wilbert introduced the second reading of Ordinances C, D, and E addressing Commercial District zoning. Ray Gilmore gave an overview of the proposed C-2 District and the changes to the C-1 zone, including the newly drafted definitions that had been requested.

Tom Krilich - 524 Tacoma Ave. South. Mr. Krilich said that he represented Fred Stroh, whose property was impacted by the proposed changes in the C-1 zoning. He said that it was not necessary to rezone the property as it was zoned a C-1 less than a year ago. He said that the concern that there would be more car lots on this side of Highway 16 could be addressed without this change, and that Mr. Stroh would be willing to sign concomitant agreement that would permanently restrict motor vehicle sales on his property. He continued to say that the re-definition of the C-1 zone would make the current use of the property non-conforming if the owner were to expand. He said that the new definitions do not address Mr. Stroh's problem and proceeded to explain. He said that this appears to be a spot-zone that only applies to one piece of property owned by Mr. Stroh.

Paul Cyr - Land Use Consultant. Mr. Cyr said he was representing the Stroh family. He repeated that the present C-1 zoning on this property was established less than 1-1/2 year ago, and did not need to be changed. He thanked staff for the proposed definitions, but said that they are still not sufficient. He addressed the concerns about the United Rental business and asked that Council sent ordinances C, D, and E back to the Planning Commission to rework the definitions to include what already exists on the site.

Councilmember Ruffo asked for clarification from Mr. Cyr. Councilmember Owel read a portion of Dr. Kadzik's memo dated March 27<sup>th</sup> regarding the intent of the proposed ordinances. She asked Mr. Cyr if this addressed his concerns. Mr. Cyr pointed out that the memo referred to "we" in the memo as the Planning Commission, and yet the Commission would not have had time to meet and discuss the issue before issuing these comments. He said that he would like Mr. Krilich to review and comment on this and the ordinance return to the Planning Department or Planning Commission for clarification and additional work.

Mayor Wilbert voiced concerns about the noise from the rental business and asked if any provisions for that issue had been made. Mr. Cyr answered that noise is part of this business and that the rental shop had been there long before the residences, but agreed that there are ways to mitigate the noise.

Councilmember Picinich said that he would like staff to amend the ordinance and return to the original C-1 designation. Ray Gilmore recommended that because C-2 was a new zoning designation and due to the complexity of the issue that Council remand it back to the Planning Commission. Mr. Cyr said that he felt Dr. Kadzik's letter was prejudicial and he was concerned about returning it to the Planning Commission.

**MOTION:** Move to remand this back to the Planning Commission to amend with the recommendations from the staff for new definitions and to make applicable corrections to the adult entertainment section.  
Young/Ekberg -

Councilmember Young attempted to clarify the intent of his motion. Mayor Wilbert asked Dr. Kadzik for his input. Dr. Kadzik said that he agreed with Councilmember Young.

**RESTATED MOTION:** Move to send this back to the Planning Commission and insert the definitions as proposed by staff, correct the adult entertainment section and bring it back to Council for consideration.  
Young/Ekberg -

Councilmember Picinich said that he would prefer to leave the C-1 zone as is. Councilmember Dick said that he agreed that the zone had been changed recently, and added that it should be sent back to the Planning Department to return with an ordinance that simply addressed the adult entertainment problem without changing the C-1 designation. He said that he also thought the city should accept the offer of the concomitant agreement to address the issue of vehicle sales and not deal with the rental equipment issue. Councilmember Picinich agreed, as did Councilmember Ruffo.

**AMENDED MOTION:** Move to send the ordinance back to the Planning Department and asked that they bring back an amendment that would only address the adult entertainment problem in the C-1 zone and have the appropriate public hearing.  
Dick/Ruffo -

Mr. Gilmore asked if a C-2 zone was being eliminated to which the Council answered in the affirmative. He continued to say that if no C-2 District was formed, there would be no adult entertainment issue. Councilmember Dick withdrew his motion and Councilmember Ruffo withdrew his second.

**ORIGINAL MOTION:** Move to send this back to the Planning Commission and insert the definitions as proposed by staff, correct the adult entertainment section and bring it back to Council for consideration.  
Young/Ekberg - a roll call was requested.

Ekberg, aye; Young, aye; Robinson, aye; Owel, aye; Dick, no; Picinich, no; Ruffo, no. The motion to remand this issue back to the Planning Commission was approved, four to three.

**NEW BUSINESS:**

1. City of Gig Harbor Civic Center Project Architectural Design and Engineering - Consultant Services Contract. David Skinner, Public Works Director, presented this contract to develop the plans for the new City of Gig Harbor Civic Center. He gave an overview of the selection process and the two-phase process. He introduced Jerry Lawrence and Tom Bates. He explained that Phase I was before Council for approval this evening.

**MOTION:** Move to approve execution of the Consultant Services Contract with Burr Lawrence Rising + Bates Architects, P.S. for the design work for Phase I

in the amount not to exceed sixty-one thousand, three hundred sixty-eight dollars and no cents (\$61,368.00).

Ekberg/Picinich - unanimously approved.

2. First Reading of Ordinance - Condemnation of an Easement for Location of Pump Station No. 3. Carol Morris explained that her memo outlined the procedure to begin the condemnation and asked that Council follow those steps during the public hearing at the next council meeting. She and David Skinner answered Council's questions about the property.

**MOTION:** Move to schedule a public hearing at the next meeting to obtain public input on this process.

Owel/Dick - unanimously approved.

3. Jerisich Park Dock - Cathodic Protection Engineering Service - Consultant Services Contract. David Skinner presented this contract to design a system to protect the galvanized steel pilings at Jerisich Park Dock and recommended approval of the contract.

**MOTION:** Move to approve execution of the Consultant Services Contract with Norton Corrosion Limited, in an amount not to exceed two thousand eight hundred forty-nine dollars and five cents (\$2,849.05).

Dick/Picinich - unanimously approved.

#### **PUBLIC COMMENT/DISCUSSION:**

John Mayers - 8015 Mitts Lane. Mr. Mayers, President of the Peninsula Neighborhood Association, presented Council with a check for \$50 to be used toward a statue of George Borgen to be placed on the Borgen property should that decision be made. He added that if a statue was not included in the plan, the money should then be placed in the general fund to be used for the Borgen site.

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

Mayor Wilbert gave a brief report on the Borgen Property Ad Hoc Committee. She explained that a summary of their comments would be presented to the Planning Commission.

#### **STAFF REPORTS:**

David Skinner gave a status report on the odor control efforts at the Wastewater Treatment Plant. He requested 1/2 hour at the next council meeting for a presentation on the options for the sewer outfall. He was advised to schedule it at another time due to the public hearings scheduled for April 10<sup>th</sup>.

#### **ANNOUNCEMENT OF OTHER MEETINGS:**

Public Hearing - Harborwest Appeal of the Hearing Examiner's Decision - April 10, 2000 at 6:00 p.m.

**EXECUTIVE SESSION:** For the purpose of discussing pending litigation per RCW 42.30.110(i) and property acquisition per RCW 42.30.110(b). Action may be taken after the session.

**MOTION:** Move to adjourn to Executive Session at 10:13 p.m. for approximately 10 minutes.  
Picinich/Ruffo - unanimously approved.

**MOTION:** Move to return to regular session at 10:23 p.m.  
Picinich/Robinson - unanimously approved.

**ADJOURN:**

**MOTION:** Move to adjourn at 10:23 p.m.  
Picinich/Young - unanimously approved.

Cassette recorder utilized.  
Tape 562 Side B 000 - end.  
Tape 563 Both Sides.  
Tape 564 Both Sides.  
Tape 565 Side A 000 - 318.

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Mayor

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City Clerk

GARY LOCKE  
Governor



RECEIVED

MAR 31 2000

STATE OF WASHINGTON CITY OF GIG HARBOR  
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • TTY/TDD (360) 753-6466

March 22, 2000

Dear Mayor:

As governor of the state of Washington, I am pleased to invite you to join me in observing Earth Day on April 22, 2000. This year's theme, "Clean Energy Now," focuses on the use of sustainable energy.

The active involvement of local communities is critical to Earth Day's success. The most important legacy of this yearly observance is the positive change it stimulates in both public policy and individual conduct. I strongly encourage you to support Earth Day events in your community and use them to promote ecologically responsible behavior.

Earth Day provides a valuable opportunity for all of us to concentrate on resolving the increasingly serious problems that now threaten our environment. The citizens of our state must cooperate to find workable solutions that will preserve our natural resources for the benefit of both present and future generations. We must do all we can to ensure that Washington continues to merit its official nickname, the Evergreen State.

On March 16, I spoke about clean energy in Vancouver. If you are interested in reading my remarks, you can access them through my official website at [www.governor.wa.gov](http://www.governor.wa.gov). Click on "Speeches and Issues" and then on "NEEA Signing Ceremony."

I hope that you will join me in celebrating Earth Day on April 22. Together, we can make Washington an even better place to live, work, and raise a family.

Sincerely,

A handwritten signature in black ink that reads "Gary Locke".

Gary Locke  
Governor

Enclosure



# PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, a natural environment is the foundation of a healthy society and a robust economy; and

WHEREAS, human activities around the globe are causing severe environmental damage that threatens human health and our planet's ability to sustain a diverse community of life; and

WHEREAS, there are currently methods and technology available to help us live in harmony with our environment; and

WHEREAS, state and local communities can help reverse environmental degradation and contribute to building a healthy society by addressing issues such as energy use, transportation, waste prevention and sprawl; and

WHEREAS, there are economic, environmental and social reasons for state and local governments to initiate energy efficiency and renewable energy practices; and

WHEREAS, the turn of the millennium is a symbolic time in which to accomplish dramatic change in our relationship with the environment; and

WHEREAS, Earth Day offers citizens an unprecedented opportunity to commit to building a healthy planet and flourishing communities;

*NOW, THEREFORE*, I, Gretchen A. Wilbert, Mayor of the City of Gig Harbor, joining with Gary Locke, Governor of the State of Washington, hereby proclaim April 22, 2000 as

*EARTH DAY*  
in Washington State, and I urge all citizens, businesses and institutions to celebrate this special observance. In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 10th day of April, 2000.

\_\_\_\_\_  
Gretchen A. Wilbert, Mayor

\_\_\_\_\_  
Date



*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

April 3, 2000

Travis W. Leland  
4701 Willow Lane NW  
Gig Harbor, WA 98335

Dear Travis:

You are to be highly praised and congratulated for your tremendous success in accomplishing the goals in the scouting program to obtain the highest honor in scouting.

The rank of Eagle Scout tells the rest of the world that you have accomplished the skills necessary to contribute leadership in the community. These skills are not commonly found in the general population.

Your citizenship and dedication to duty to God is your gift to the community as well as to yourself and your family. Thank you.

I'm impressed with your record of academic and athletic accomplishments during your school years and for the goals you have set for yourself toward the future, especially in the field of marine science. Thank you for your continued interest in the scouting program.

We offer you congratulations and wish you further success in the future.

Sincerely,

Gretchen A. Wilbert  
Mayor, City of Gig Harbor





RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD  
License Division - 3000 Pacific, P.O. Box 43075  
Olympia, WA 98504-3075  
(360) 664-1600

RECEIVED

MAR 30 2000

DATE: 3/27/00

TO: CITY OF GIG HARBOR

CITY OF GIG HARBOR

RE: CHANGE OF LOCATION APPLICATION  
from WATER TO WINE  
8811 N HARBORVIEW DR STE B1  
GIG HARBOR WA 98332

APPLICANTS:  
CRAIG C. NELSEN ENTERPRISES, L.L.C.

NELSEN, CRAIG C  
1951-09-05 544-62-0944  
NELSEN, JUDITH L  
(Spouse) 1952-04-13 542-64-5668

License: 081567 - 2F County: 27

Tradename: WATER TO WINE  
New Loc: 3028 HARBORVIEW DR  
GIG HARBOR WA 98335-1962

Mail: 3028 HARBORVIEW DR  
GIG HARBORVIW DR WA 98335-1962

Phone No.: 253-853-9463 CRAIG NELSEN

Privileges Applied For:  
BEER/WINE SPECIALTY SHOP

As required by RCW 66.24.010(8), you are notified that application has been made to the Washington State Liquor Control Board for a license to conduct business. If return of this notice is not received in this office within 20 DAYS from the date above, it will be assumed that you have no objection to the issuance of the license. If additional time is required you must submit a written request for an extension of up to 20 days. An extension of more than 20 days will be approved only under extraordinary circumstances.

- |  | YES                      | NO                       |
|--|--------------------------|--------------------------|
| 1. Do you approve of applicant ? .....   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you approve of location ? .....  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? ..... | <input type="checkbox"/> | <input type="checkbox"/> |

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: CAROL MORRIS, LEGAL COUNSEL**  
**SUBJECT: SECOND READING OF ORDINANCE - PUMP STATION NO. 3**  
**CONDEMNATION**  
**DATE: APRIL 5, 2000**

#### **INFORMATION/BACKGROUND**

The Public Works Director, Dave Skinner, informed the Mayor and Council in February of a need to condemn property near the small overflow parking lot for the Union 76 Station on the south side of Harborview Drive. In a memo dated February 23, 2000, Mr. Skinner asked the Council to provide authorization for the negotiation of a contract with a condemnation attorney for this purpose.

The Council decided not to enter into a contract with the selected condemnation attorney at the last regular meeting. I will be handling the condemnation proceeding, if the attached ordinance is adopted.

#### **FINDINGS TO BE MADE IN CONDEMNATION ORDINANCE:**

As stated in Mr. Skinner's memo of February 23, 2000, the City representatives have attempted to negotiate a purchase of the necessary property and/or property rights for the installation of Pump Station No. 3. These negotiations have not been successful.

As an optional code, non-charter city, the City of Gig Harbor has the authority to condemn property and property rights. RCW 35A.11.020. The City is required to exercise its rights of condemnation as set forth in chapter 8.12 and 8.28 RCW. RCW 35A.64.200.

In order for the City to condemn property, it must make a determination that the use to be made of the property is a public use. Cities are statutorily authorized to condemn property for all of the specific uses described in RCW 8.12.030. Pump Station No. 3 is a facility associated with the City's Waste Water Treatment Plant, and the City is authorized, in RCW 8.12.030, to condemn property for drains, sewers, aqueducts, reservoirs and pumping stations (this is only a partial list).

When a city decides to condemn property, the city must adopt an ordinance, and state in the ordinance that unless the improvement will be paid for wholly or in part by special assessment, compensation to the property owner shall be from the City's general funds. RCW 8.12.040.

The City must also make a finding that the public interests require the condemnation of the property for the public use. Staff has included information regarding the public need for the construction of Pump Station No. 3 in the "whereas" sections of the attached ordinance.

Finally, the City must make a finding that the amount of property described in the ordinance is necessary to accomplish the public purpose. This means that the Council must analyze whether the amount of property or the nature of the interest to be condemned will be all the City needs to construct Pump Station No. 3.

**RECOMMENDATIONS:**

- A. Findings. The staff has drafted an ordinance to guide the Council's findings in the adoption of a condemnation ordinance for Pump Station No. 3. Additional facts can be added as the Council deems appropriate, based upon additional information provided by the Public Works Director during the Council meeting. The staff recommends that the Council adopt the findings set forth in the ordinance, at a minimum.
  
- B. Procedure. Staff recommends that if the Council agrees with the staff's findings, to adopt the ordinance at its second reading after the public hearing.

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ACQUISITION OF CERTAIN REAL PROPERTY AND REAL PROPERTY INTERESTS FOR THE PURPOSE OF CONSTRUCTING THE PROJECT COMMONLY KNOWN AS THE GIG HARBOR PUMP STATION NO. 3, TOGETHER WITH ALL NECESSARY AND RELATED WORK TO MAKE A COMPLETE IMPROVEMENT IN ACCORDANCE WITH APPLICABLE CITY STANDARDS, PROVIDING FOR THE CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND OR OTHER PROPERTY NECESSARY THEREFORE, AND DIRECTING THE CITY ATTORNEY TO PROSECUTE THE APPROPRIATE ACTION AND PROCEEDINGS IN THE MANNER PROVIDED BY LAW FOR SAID CONDEMNATION.**

---

WHEREAS, Pump Station No. 3 is the final pump station prior to discharge of raw sewage in the City's wastewater treatment plant; and

WHEREAS, the National Pollutant Discharge Elimination System (NPDES) permit issued in 1997 for the City's expanded wastewater treatment plant requires that Pump Station No. 3 be upgraded to accommodate the 1.0 mgd peak flow; and

WHEREAS, the current pump station No. 3 has numerous deficiencies, including aging equipment and controls; and

WHEREAS, in 1995, the City had to abandon plans for expanding the existing pump station and connecting a pair of larger diameter pressure pipes from the existing station to the Wastewater Treatment Plant due to the discovery of contaminated soil from a leaking underground fuel storage

tank from the adjacent gas station in the immediate vicinity of the pump station. Because of the unknown limits of contamination in the vicinity of the existing pump station an alternate location for the new pump station was selected.

WHEREAS, based upon the above deficiencies and the requirements of the NPDES permit, the City has determined that a new pump station must be constructed in a different location; and

WHEREAS, the City Engineering Staff determined that the small overflow parking lot for the Union 76 station on the south side of Harborview Drive is the best location for the new pump station (as shown on Exhibit B, attached hereto and incorporated herein by this reference) because it is in the vicinity of an existing pump station and unused twin pressure lines at that pump station, it is separated from the heavily used pedestrian sidewalk on the north side of Harborview Drive; it provides better screening due to the adjoining vegetated hillside; it will have a low impact on the existing land use because the majority of the facility will be constructed underground, and it will not intrude into the view of Gig Harbor from Harborview and the adjacent sidewalk, and

WHEREAS, the City Engineering Staff determined that the area required for the new pump station is 2,631 square feet, which will include an approximate 18 foot diameter underground pump vault and a 12 foot by 16 foot underground valve vault, above ground will be an architectural concrete block well house which will house the odor controls and the pump controls for the station. The site will also include a small area for a biofilter that is essentially a bed of composite and bark that aids in the odor control process. The total facility will utilize the entire area as shown on Exhibit

B; and

WHEREAS, the City Engineering Staff recommends that the City Council condemn an easement or fee title to a portion of the 9.4 acre parcel located at approximately 3998 Harborview Drive, which is currently a gravel lot; and

WHEREAS, the City Engineering Staff have attempted to negotiate purchase of all necessary property and/or property rights for Pump Station No. 3 in the portion of the property shown on Exhibit B and legally described in Exhibit A; and

WHEREAS, the City Engineering Staff's research on the ownership of the property has disclosed uncertainty regarding the ownership of the property, which cannot easily be determined without a judicial proceeding designed to allow for the payment to all persons who can demonstrate to the Court that they have a compensable interest in the property; and

WHEREAS, in view of these difficulties, the City Council has determined to condemn the property and/or property rights necessary for completion of the Pump Station No. 3 Project; and

WHEREAS, Council has considered the condemnation during a public hearing held on Monday, April 10<sup>th</sup>, 2000; now, therefore,

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

Section 1. Declaration of Public Use. The City Council hereby finds that the construction of Pump Station No. 3, which is a necessary appurtenance to the City's Waste Water Treatment Plan, and contemplated by the City's NPDES permit for the Waste Water Treatment Plant, is a Public Use.

Section 2. Declaration that Public Interest Requires the Property. The public health, safety, necessity and convenience demand that the Pump Station No. 3 Project, including acquisition of property and/or property interests, legally described in Exhibit A, attached hereto and by this reference incorporated herein, be condemned, appropriated, taken and damaged for the construction of said Project and improvements.

Section 3. Declaration of Necessity. The City Council of the City of Gig Harbor, after hearing the report of the City Staff, and reviewing the plan for construction of the Pump Station No. 3 Project, hereby declares that all of the property described in Exhibit A, and as depicted in Exhibit B, is necessary for public use and the construction of the Pump Station No. 3 Project, to accomplish the public purpose.

Section 4. Authority of the City Attorney. The City Attorney is hereby authorized and directed to begin and prosecute the condemnation proceedings provided by law to condemn, take and appropriate the Property necessary to carry out the provisions of this ordinance, and to pay just compensation to the property owners as provided in chapter 8.12 RCW.

Section 5. Compensation to be Paid out of General Fund. The just compensation to be paid by the City to the property owners in this condemnation shall be taken from the City's General Fund.

Section 6. Effective date. This ordinance, being the exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:

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

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

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. \_\_\_\_\_

CAM157473.10/00085.050020



**SUMMARY OF ORDINANCE NO.**

of the City of Gig Harbor, Washington

On the \_\_\_\_ day of \_\_\_\_\_, 2000, the City Council of the City of Gig Harbor, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ACQUISITION OF CERTAIN REAL PROPERTY AND REAL PROPERTY INTERESTS FOR THE PURPOSE OF CONSTRUCTING THE PROJECT COMMONLY KNOWN AS THE GIG HARBOR PUMP STATION NO. 3, TOGETHER WITH ALL NECESSARY AND RELATED WORK TO MAKE A COMPLETE IMPROVEMENT IN ACCORDANCE WITH APPLICABLE CITY STANDARDS, PROVIDING FOR THE CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND OR OTHER PROPERTY THEREFORE, AND DIRECTING THE CITY ATTORNEY TO PROSECUTE THE APPROPRIATE ACTIONS AND PROCEEDINGS IN THE MANNER PROVIDED BY LAW FOR SUCH CONDEMNATION.

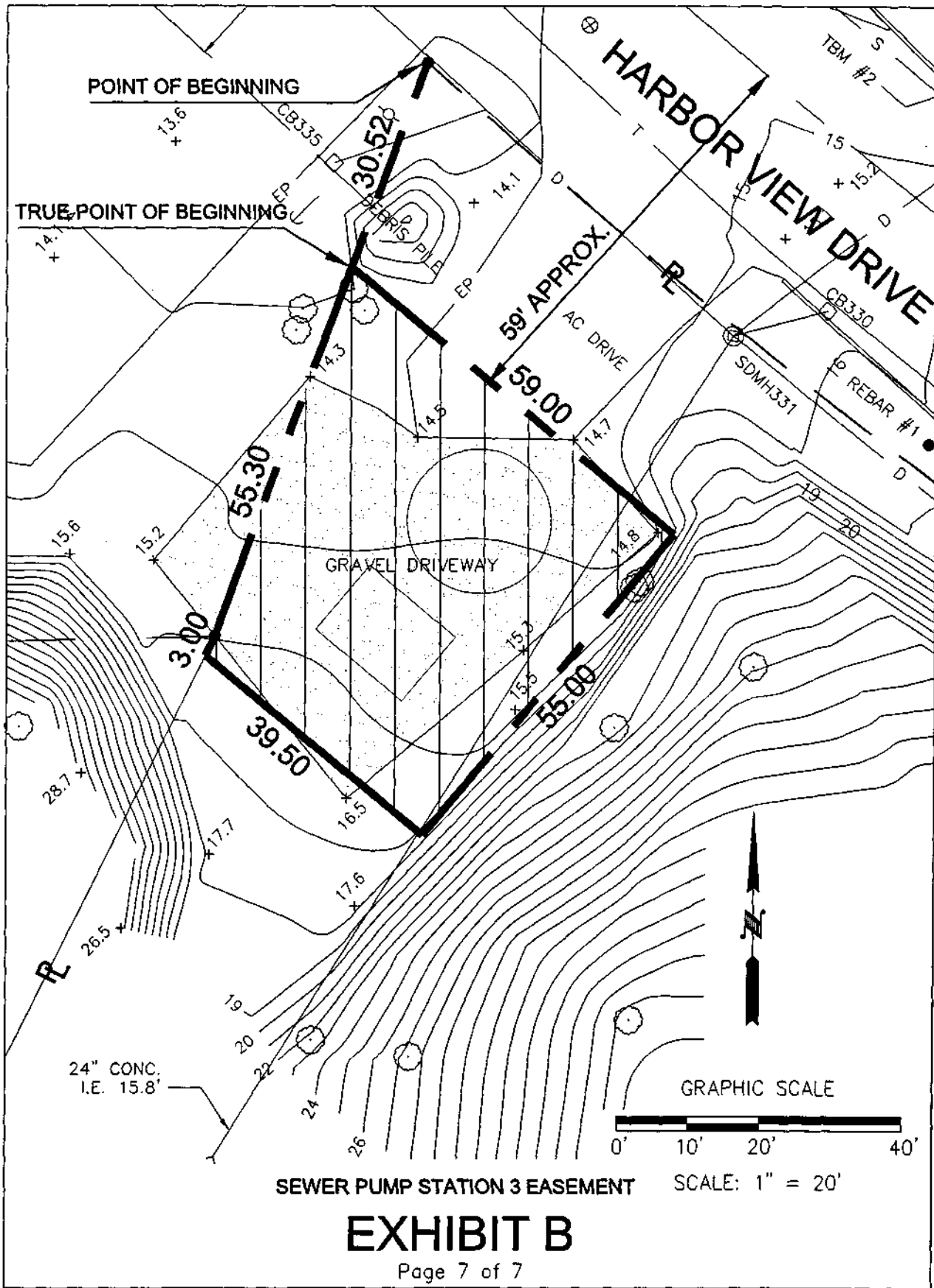
The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2000.

CITY CLERK, MOLLY TOWSLEE

EXHIBIT A  
Legal description

THE POINT OF BEGINNING, beginning at the Northwest property corner of Parcel No. 0221064154 which lies on the right of way line of Harborview Drive, thence S 20d05'08" W 30.52' to the TRUE POINT OF BEGINNING, thence S 50d17'40" E 59.00', thence S 39d53'07" W 55.00', thence N 50d23'42" W 39.00', thence N 26d06'58" E 3.00', thence N 20d05'08" E 55.30' to the TRUE POINT OF BEGINNING.



SEWER PUMP STATION 3 EASEMENT

# EXHIBIT B



*City of Gig Harbor. The "Maritime City"*

DEPARTMENT OF PLANNING & BUILDING SERVICES  
3125 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-4278

**TO:** MAYOR WILBERT AND CITY COUNCIL  
**FROM:** RAY GILMORE, DIRECTOR, PLANNING AND BUILDING  
**SUBJECT:** CLOSED RECORD APPEAL – HARBOR WEST SUBDIVISION  
(SUB98-01)  
**DATE:** MARCH 20, 2000

### **INTRODUCTION/BACKGROUND**

Council has been provided several documents relative to the above referenced application, including the availability of a complete transcript of the public hearings. In 1998, Mr. Don Huber and Mr. Clark McGowan submitted an application for a 149 lot subdivision (Harborwest). A public hearing was conducted on the application on May 5, 1999. The public hearing was consolidated with the hearing on an appeal filed on the issuance of a SEPA mitigated determination of non-significance (MDNS). Two additional hearings were conducted on May 19 and May 26. A final hearing was conducted on December 8, 1999 to accept testimony on issues limited to transportation, a habitat assessment prepared by the applicant and to permit interested parties the opportunity to submit questions to the SEPA responsible official.

### **POLICY ISSUES**

Title 19 GHMC, provides for one open record hearing and one closed record hearing of an application subject to review by the City Hearing Examiner. The Hearing Examiner issued a decision on the application on January 31, 2000. Four appeals were filed on this decision. All four appeals were filed by parties of record. Chapter 19.06.005 provides as follows:

Closed record appeals shall be on the record established at the hearing before the hearing body whose decision is appealed, which shall include the written decision of the hearing body, a transcript or tape recording of the proceedings, and copies of any exhibits admitted into the record. No new testimony or other evidence will be accepted except: (1) new information that was unknown to the parties at the time of the hearing which could not reasonably have been discovered by the parties and is necessary for a just resolution of the appeal; and (2) relevant information that, in the opinion of the council, was improperly excluded by the hearing body. Appellants who believe that information was improperly excluded

must specifically request, in writing prior to the closed record appeal, that the information be made part of the record. The request shall describe the information excluded, its relevance to the issues appealed, the reason(s) that the information was excluded by the hearing body, and why the hearing body erred in excluding the information. No reference to excluded information shall be made in any presentation to the council on the merits, written or oral, until the council has determined that the information should be admitted.

Chapter 19.06 GHMC also provides that parties to the appeal may present written and/or oral arguments to the council. Arguments shall describe the particular errors committed by the hearing body, with specific references to the appeal record. The hearing shall commence with a presentation by the director, or the director's designee, of the general background and the issues in dispute. After the director's presentation, the appellant(s), then the other parties of record shall make their arguments. Council members may question any party concerning disputed issues, but shall not request information not in the record. Staff has included a matrix which summarizes the issues in the appeals.

The council may affirm, modify, reverse, or, upon written agreement by the applicant to waive the statutory prohibition against more than one open record and one closed record hearing, and, if needed, to waive the requirement for a decision within the time periods set forth in RCW 36.70B.090, and remand the decision to the hearing body for additional information.

#### **RECOMMENDATION**

Staff has suggested that each appellant be granted 15 minutes to present arguments to the Council. At Council's direction, staff will prepare a resolution supporting the final decision of the Council.

## Harbor West Subdivision Preliminary Plat Appeal Issues

Appeal Issue	NCHOA	PNA	N. Natiello	Huber/McGowan
Density	X	X	X	
Open Space within the Plat	Table 1, page 3 appears to be new information not previously submitted.			
Impervious surface coverage	X			
Transportation Impacts/Impact Fee	X	X	X	
School Impact Fee				X
Parks and Recreation Impact Fee		X		X
Internal Road Curve Radius (standards)	X			
Road Turn Around (standards)	X			
Fire Safety/Access	X	X	X	
Storm Water Drainage Plan	X	X	X	
Wetlands (wetland category)	X	X	X	
Perimeter buffer	X			
Allow up to 4 model homes				X
25' buffer behind lots 146-149 (eliminate)				X
Staff did not read submittals			X	
Resubmit application as a PRD			X	
Illegally built road crossing wetland			X	
HE does not have authority to grant the rezone	X		X	
HE does not have authority to grant the variance	X		X	
Lots have more than 40% impervious coverage	X		X	
Incompatible with existing uses	X		X	
Pierce County should process the application, not Gig Harbor			X	
Comp plan does not allow 10 units per acre			X	
City allowed Wollochet Creek to be impounded.			X	

---

CITY OF GIG HARBOR  
PLANNING AND BUILDING DEPARTMENT  
3125 JUDSON STREET, GIG HARBOR, WA 98335  
PHONE 253-851-4278 FAX 253 858-6408

---

DATE: 03/31/00  
TO: STEVEN J. BROWN @ BROWN, DAVIS AND ROBERTS PLLC  
CC: MOLLY TOWSLEE CITY CLERK; WILLIAM LYNN, ATTORNEY FOR HUBER-MCGOWAN  
FROM: RAY GILMORE  
RE: AMENDED MATRIX

---

Thank you for your comments. Per your letter of March 29, 2000, I have amended the matrix, "Appeal Issues". I will forward the amended matrix and your letter to the Council members

**BrownDavis  
&Roberts**  
ATTORNEYS AT LAW

7525 Pioneer Way, Suite 202 • Gig Harbor WA 98335  
TELEPHONE 253.858.8606 • FACSIMILE 253.858.8646

RECEIVED  
CITY OF GIG HARBOR

MAR 31 2000

PLANNING AND BUILDING  
SERVICES

March 29, 2000

Mr. Ray Gilmore, Director of Planning  
City of Gig Harbor  
3125 Judson Street  
Gig Harbor, WA 98335

**RE: Harbor West**

Dear Mr. Gilmore,

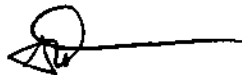
Members of the Board of the Northcreek Homeowners Association have been supplied with a copy of a matrix that you apparently prepared to assist the Council in its review of the appeals of Harbor West. The matrix lists all of the appeal issues and then puts Xs in boxes indicating which of the appellants have appealed on that issue. The following items should be listed as appeal issues under NCHOA:

HE does not have authority to grant the rezone  
HE does not have authority to grant the variance  
Lots have more than 40% impervious coverage

It is very important to Northcreek that they be included as appellants on these issues. Please give me a call if you want to discuss this, and thank you for all your assistance.

Very truly yours,

**BROWN DAVIS & ROBERTS PLLC**



Steven J. Brown  
steve@bdrllaw.com

SJB: jmm


cc: Lou Willis





*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: CITY COUNCIL**  
**FROM: MAYOR GRETCHEN WILBERT**   
**SUBJECT: AMENDMENTS TO THE INTERLOCAL AGREEMENT THAT  
CREATED THE PIERCE COUNTY REGIONAL COUNCIL (PCRC)**  
**DATE: APRIL 10, 2000**

**INFORMATION/BACKGROUND**

Attached is a resolution adopting the recommended amendments to the interlocal agreement that created the Pierce County Regional Council. On February 17, 2000, the General Assembly concurred with the changes, and amendments must be adopted through an interlocal agreement by the cities and towns and the County.

**RECOMMENDATION**

A motion authorizing the Mayor to adopt the amendments to the Interlocal Agreement that created the Pierce County Regional Council.



# Pierce County

Department of Planning and Land Services

2401 South 35th Street  
Tacoma, Washington 98409-7460  
(253) 798-7200 • FAX (253) 798-3131

CHUCK KLEEBERG  
Director

March 22, 2000

TO: City/Town/County Clerks/Member Jurisdictions of the Pierce County Regional Council (PCRC)

SUBJECT: Amendments to the Interlocal Agreement that created the Pierce County Regional Council

The PCRC recommended the enclosed amendments to the interlocal agreement that created the Pierce County Regional Council. On February 17, 2000, the General Assembly concurred with the changes.

Amendments to the interlocal agreement must be adopted through an interlocal agreement by the cities and towns and the County. It is necessary for 60% of the jurisdictions representing 75% of the population to adopt the interlocal agreement in order for it to become effective.

Please expedite the passage of this interlocal agreement through your respective legislative bodies.

After passage, please send two signed copies of the interlocal agreement and a copy of your resolution authorizing approval to me at Pierce County Planning and Land Services, Attention: Toni Fairbanks, 2401 S. 35th Street, Room 228, Tacoma, WA 98409. One copy will be returned to your jurisdiction after all the signatures have been obtained.

A copy of a sample draft resolution is included for your convenience.

Thank you for your assistance. If you have any questions, please call me at (253) 798-3726.

Sincerely,

A handwritten signature in cursive script that reads "Toni Fairbanks".

TONI FAIRBANKS  
Clerk, Pierce County Regional Council

F:\WPFILES\LONG\ADMIN\PCRC\Amendments to Interlocal Agreement.doc

Enclosures: Explanatory Sheet/Sample Draft Resolution/Interlocal Agreement

cc: Pierce County Regional Council Representatives



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE PIERCE COUNTY EXECUTIVE TO EXECUTE AN INTERLOCAL AGREEMENT AMENDING THE INTERLOCAL AGREEMENT WHICH CREATED THE PIERCE COUNTY REGIONAL COUNCIL (PIERCE COUNTY REGIONAL COUNCIL RESOLUTIONS R92-140 AND R-95-139S).**

---

WHEREAS, In 1992, the Cities and Towns of Pierce County, and Pierce County, entered into an interlocal agreement (ILA) creating the Pierce County Regional Council (Pierce County Council Resolution No. R92-140); and

WHEREAS, In 1995, the Cities and Towns of Pierce County, and Pierce County, entered into an interlocal agreement (ILA) amending the interlocal agreement (Pierce County Council Resolution No. R95-139S);

WHEREAS, The Pierce County Regional Council serves as a multi-government forum for coordination of growth management issues, reviews and makes recommendations for funding certain transportation projects, and provides an opportunity for building consensus on issues common to the Cities and Towns and the County; and

WHEREAS, Chapter 39.34 RCW (the Interlocal Cooperation Act) authorizes jurisdictions to enter into interlocal agreement; and

WHEREAS, Pursuant to Article VII of the existing ILA, the Executive Committee of the Pierce County Regional Council has approved a series of amendments to the Interlocal Agreement and, in order for the amendments to become effective, it is necessary for the Cities and Towns and the County to execute a new interlocal agreement amending the original ILA; NOW THEREFORE,

BE IT RESOLVED by the City Council of Gig Harbor:

Section 1. The Mayor is hereby authorized to execute the Interlocal Agreement (ILA) (as shown in Exhibit "A," attached hereto and incorporated herein by reference), which amends the Interlocal Agreement creating the Pierce County Regional Council.

Section 2. The amended ILA will become effective when approved by sixty percent of the member jurisdictions representing seventy-five percent of the total population of the County. The amended ILA shall be filed with the Washington State

Department of Community Trade and Economic Development at least sixty days prior to the effective date as required by RCW 39.34.040.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR**  
this \_\_\_\_ day of \_\_\_\_\_, 2000.

APPROVED:

\_\_\_\_\_  
GRETCHEN A. WILBERT, MAYOR

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 3/28/00  
PASSED BY THE CITY COUNCIL:

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INTERLOCAL AGREEMENT

CREATION OF AN INTRACOUNTY ORGANIZATION

This agreement is entered into by and among the cities and towns of Pierce County and Pierce County. This agreement is made pursuant to provisions of the Interlocal Cooperation Act of 1967, Chapter 39.334 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.

I. NAME:

THE NAME OF THE ORGANIZATION WILL BE THE PIERCE COUNTY REGIONAL COUNCIL

II. MISSION:

The Pierce County Regional Council is created to promote intergovernmental cooperation on issues of broad concern, and to assure coordination, consistency, and compliance in the implementation of State law covering growth management,

Exhibit "A"

1 comprehensive planning, and transportation planning by county  
2 government and the cities and towns within Pierce County. It is  
3 the successor agency to the Growth Management Steering Committee  
4 and serves as the formal, multi-government link to the Puget  
5 Sound Regional Council.

6  
7 III. CREATION:

8  
9 This agreement shall become effective when sixty percent (60%) of  
10 the cities, towns and county government representing seventy-five  
11 percent (75%) of the population within Pierce County become  
12 signatories to the agreement. The agreement may be terminated  
13 vote of two or more legislative bodies collectively representing  
14 sixty percent (60%) of the population within Pierce County.

15  
16 IV. MEMBERSHIP AND REPRESENTATION:

- 17  
18 A. Membership is available to all cities and towns within  
19 Pierce County and Pierce County.  
20  
21 B. Associate membership is available to such nonmunicipal  
22 governments as transit agencies, tribes, federal agencies,  
23 state agencies, port authorities, school districts and other

1 special purpose districts as may be interested. Associate  
2 members are non-voting.

3  
4 C. The General Assembly of the organization shall be comprised  
5 of all elected officials from the legislative authorities  
6 and the chief elected executive official of the member  
7 cities, towns and county government. Associate members and  
8 staff from the various jurisdictions shall be encouraged to  
9 participate in General Assembly meetings, but without a  
10 vote.

11  
12 D. The ~~Executive Committee of the organization~~ **Council** shall be  
13 comprised of representatives from member jurisdictions as  
14 follows: four (4) representatives from Pierce County  
15 including the County Executive and three members of the  
16 County Council; three (3) representatives from the City of  
17 Tacoma; and one (1) representative from each of the  
18 remaining jurisdictions. Each representative shall have one  
19 vote.

20  
21 E. One representative from the Puyallup Tribal Council, one  
22 representative from the Port of Tacoma Commission, one  
23 representative from Pierce Transit, and one representative

1 of WSDOT District 3 will be ex officio, non-voting members  
2 of the ~~Executive Committee~~ ~~Council~~. At its discretion, the  
3 ~~Executive Committee~~ ~~Council~~ may create additional ex  
4 officio, non-voting positions from among other Associate  
5 members.

6  
7 F. Voting members of the ~~Executive Committee~~ ~~Council~~ shall be  
8 elected officials and shall be appointed by the local  
9 jurisdictions they represent. Alternate representatives to  
10 the ~~Executive Committee~~ ~~Council~~ may be designated who are  
11 elected officials and are of the same number as the  
12 authorized membership for each jurisdiction or group of  
13 jurisdictions. Other elected officials and staff from the  
14 various jurisdictions shall be encouraged to participate in  
15 ~~Executive Committee~~ ~~Council~~ discussions, but without a vote.

16  
17 V. GENERAL ORGANIZATION:

18  
19 A. Structure

20  
21 1. The organization shall consist of a General Assembly, ~~a~~  
22 ~~Council~~, an Executive Committee ~~representing of the~~ ~~State~~



1                    ~~and vice chair~~, and advisory committees and task forces  
2 as created by the Executive Committee ~~Council~~.

- 3  
4                    2. The organization will utilize a calendar year for  
5 purposes of terms of office of members of the Executive  
6 Committee and the work program.

7  
8                    B. ~~Executive Committee~~ ~~Council~~

- 9  
10                   1. The ~~Executive Committee~~ ~~Council~~ shall carry out all  
11 powers and responsibilities of the organization between  
12 meetings of the General Assembly. The ~~Executive~~  
13 ~~Committee~~ ~~Council~~ may take action when a quorum is  
14 present. One-third of the voting members shall  
15 constitute a quorum. Except as specified in the by-  
16 laws, actions voted upon shall be approved by simple  
17 majority vote of the quorum. ~~The by laws shall provide~~  
18 ~~for special voting processes and the circumstances when~~  
19 ~~such processes are to be used.~~

- 20  
21                   2. A president ~~shall~~ and vice president ~~shall~~ shall be  
22 selected by the ~~Executive Committee~~ ~~Council~~ from among

1 its voting members. The president ~~chairman~~ and vice  
2 president ~~chairman~~ shall serve for one-year terms.

3  
4 3. The ~~Executive Committee~~ ~~Council~~ shall establish a  
5 regular meeting time and place. ~~Executive Committee~~  
6 ~~Council~~ meetings shall be conducted in accordance with  
7 the Open Public Meetings Act (RCW 42.30).

8  
9 4. Committees or task forces shall be established as  
10 required and may utilize citizens, elected officials  
11 and staff from the member jurisdictions in order to  
12 enhance coordination and to provide advice and  
13 recommendations to the ~~Executive Committee~~ ~~Council~~ on  
14 matters of common interest including, but not limited  
15 to, planning, transportation, and infrastructure.

16  
17 C. General Assembly

18  
19 1. The General Assembly shall meet at least annually and  
20 may hold additional meetings as needed. The General  
21 Assembly may take action when a quorum is present.  
22 Thirty percent (30%) of the voting members representing  
23 a majority of the various jurisdictions shall

24 Exhibit "A"

1 constitute a quorum. Except as specified in the by-  
2 laws, actions voted upon shall be approved by a simple  
3 majority vote of the quorum. The by-laws shall provide  
4 for special voting processes and the circumstances when  
5 such processes are to be used.

6  
7 2. The president ~~chairman~~ and vice president ~~chairman~~ of the  
8 Executive Committee ~~Council~~ shall serve as president  
9 ~~chairman~~ and vice president ~~chairman~~ of the General Assembly.

10  
11 3. The General Assembly shall adopt an annual work  
12 program.

13  
14 4. The General Assembly meetings shall be conducted in  
15 accordance with the Open Public Meetings Act (RCW  
16 42.30).

17  
18 VI. FUNCTIONS AND AUTHORITY:

19  
20 A. The Pierce County Regional Council will:

21  
22 1. Promote intergovernmental coordination within Pierce  
23 County.

1  
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- 2. Facilitate compliance with the coordination and consistency requirements of the state growth management law.
  
- 3. Provide a forum to promote cooperation among and/or between jurisdictions with respect to urban growth boundaries, comprehensive plan consistency, development regulations, siting of facilities, highway, rail, air and water transportation systems, solid waste issues and other area of mutual concern.
  
- 4. Develop consensus among jurisdictions regarding review and modification of county-wide planning policies.
  
- 5. Serve as the formal, multigovernment link to the Puget Sound Regional Council.
  
- 6. Develop recommendations, as required, for distribution of certain federal, state and regional funds.
  
- 7. Provide educational forums on regional issues.

- 1 8. Make recommendations to federal, state and regional  
2 agencies on plans, legislation, and other related  
3 matters.  
4
- 5 9. Serve as the successor organization to the Growth  
6 Management Steering Committee which developed the  
7 county-wide planning policies, and complete such tasks  
8 as may have been begun by the Steering Committee,  
9 including the following responsibilities:  
10
- 11 a. develop model implementation methodologies;
  - 12
  - 13 b. assist in the resolution of jurisdictional  
14 disputes;
  - 15
  - 16 c. provide input to joint planning issues in Urban  
17 Growth Areas;
  - 18
  - 19 d. provide input in respect to county-wide  
20 facilities;
  - 21
  - 22
  - 23

- 1 e. advise and consult on policies regarding phased  
2 development, short plats, vested right and related  
3 issues;  
4  
5 f. review and make a recommendation to Pierce County  
6 on the respective location of Urban Growth Area  
7 boundaries;  
8  
9 g. make a recommendation to Pierce County regarding  
10 dissolution of the Boundary Review Board;  
11  
12 h. monitor development, including population and  
13 employment growth; and  
14  
15 i. provide advice and consultation on population  
16 disaggregation.

17  
18 B. The organization shall adopt by-laws to govern its  
19 proceedings. By-laws shall be adopted by the Executive  
20 Committee [REDACTED] and shall be in effect unless  
21 contrary action is taken by the General Assembly.  
22  
23

1 C. Nothing in this agreement shall restrict the  
2 governmental authority of any of the individual  
3 members.  
4

5 VII. AMENDMENTS:

6  
7 Amendments to this agreement may be proposed by any member of the  
8 General Assembly and shall be adopted by affirmative resolution  
9 of the ~~Executive Committee~~ ~~Council~~ and of the individual  
10 legislative bodies of sixty percent (60%) of the member  
11 jurisdictions representing seventy-five percent (75%) of the  
12 population of Pierce County.  
13

14 VIII. SERVERABILITY:

15  
16 If any of the provisions of this agreement are held illegal,  
17 invalid or unenforceable, the remaining provisions shall remain  
18 in full force and effect.  
19

20 IX. FILING:

1 A copy of this agreement shall be filed with the County Auditor  
2 and each city/town clerk, the Secretary of State, and the  
3 Washington State Department of Community Development.

4  
5 IN WITNESS WHEREOF, this agreement has been executed by each  
6 member jurisdiction as evidence by signature pages affixed to  
7 this agreement.  
8  
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23



INTERLOCAL AGREEMENT

CREATION OF AN INTRACOUNTY ORGANIZATION

Signature Page

The legislative body of the undersigned jurisdiction has authorized execution of the Interlocal Agreement, Creation of an Intracounty Organization.

IN WITNESS WHEREOF

This agreement has been executed by \_\_\_\_\_  
(Name of City/Town/County)

BY: \_\_\_\_\_  
(Mayor/Executive)

DATE: \_\_\_\_\_

Approved:

BY: \_\_\_\_\_  
(Director/Manager/Chair of County Council)

Approved as to Form:

BY: \_\_\_\_\_  
(City Attorney/Prosecutor)

Exhibit "A"



*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: JEFF TARADAY, OGDEN MURPHY WALLACE PLLC**  
**SUBJECT: ADDENDA TO EXPERT WITNESS CONTRACT - HALSAN FREY ASSOCIATES LLC**  
**DATE: APRIL 5, 2000**

#### **INFORMATION/BACKGROUND**

Attached is an addenda to the contract for an expert witness in the condemnation of the Wilkinson Park property. The Council approved the original contract for this witness last summer. The original contract was not intended to cover the period all the way up until trial, which had been postponed until April 5, 2000. An earlier addendum to the original contract was approved by the City Council this winter. On April 12, 2000, Judge Tollefson will decide whether or not to enforce a settlement agreement that the parties had agreed to. The City needs to keep its expert witnesses under contract in the event that the Court does not enforce the settlement. Also, Mr. Halsan has used up the amount that he was authorized to bill the City primarily through his assistance during the mediation process. As a result, this second addendum is necessary to update the duration of work clause and the not to exceed amount.

#### **RECOMMENDATION**

It is recommended that the Council approve the attached addendum to the contract with Halsan Frey Associates LLC. Any questions about these addenda should be discussed in executive session as this material concerns pending litigation.

### ADDENDUM TO EXPERT WITNESS CONTRACT

THIS ADDENDUM further modifies that certain agreement entered into on \_\_\_\_\_, 1999, between the City of Gig Harbor (hereinafter referred to as the "City") and Halsan Frey Associates LLC (hereinafter referred to as the "Expert Witness") which was previously modified on \_\_\_\_\_, 2000.

WHEREAS, the City and the Expert Witness entered into the above-referenced agreement (hereinafter referred to as the "Agreement") in order for the Expert Witness to perform services in connection with the City's condemnation action to acquire property for the Wilkinson Park, and

WHEREAS, the initial Agreement was not intended to cover the full spectrum of deposition and/or trial testimony that would be required of the Expert Witness, and

WHEREAS, it is expected that the upcoming testimony would cause the Expert Witness to exceed the amount of the initial Agreement, and

WHEREAS, an Addendum should be entered into to cover the costs of the possible upcoming testimony and related services in preparation for the testimony in the event that the agreed settlement in this matter is not enforced, NOW, THEREFORE,

FOR AND IN CONSIDERATION OF THE TERMS AND CONDITIONS HEREINAFTER SET FORTH, THE PARTIES AGREE AS FOLLOWS:

1. Description of Work. The Scope of Services to be performed by the Expert Witness under Section I of the Agreement is hereby amended to add deposition and trial testimony, services related to the preparation for such testimony.
2. Duration of Work. The services contemplated by this Addendum shall be completed no later than October 31, 2000.
3. Payment. For completion of the services contemplated in this Addendum, the City shall pay the Expert Witness an amount based on time and materials, not to exceed seven thousand dollars (\$7,000). This amount is over and above the original not to exceed amount of sixteen hundred dollars (\$1,600), and the previously authorized five thousand dollar (\$5,000) addendum. The City Council hereby authorizes payment in the amount of one thousand ten dollars and eighty-nine cents (\$1,010.89) for work that was done prior to the execution of this addendum, and in excess of the original not to exceed amount. The \$1,010.89 shall be subtracted from the \$7,000.00 such that payment for work performed between April 10, 2000 and October 31, 2000 shall not exceed five thousand nine hundred eighty-nine dollars and eleven cents (\$5,989.11). All other provisions of Section II of the Agreement shall remain in effect so long as they do not conflict with this Addendum.

4. Other Terms and Conditions. Except as expressly modified herein, all other terms and conditions of the Agreement shall remain in full force and effect and be binding upon the parties.

DATED this \_\_\_\_\_ day of April, 2000.

CITY OF GIG HARBOR

HALSAN FREY ASSOCIATES LLC

\_\_\_\_\_  
Mayor Gretchen Wilbert

Carl E. Halsan  
By: CARL E. HALSAN  
Title: MEMBER

ATTEST/AUTHENTICATED:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Carol Morris, City Attorney



*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: DAVID R. SKINNER, P.E., PUBLIC WORKS DIRECTOR**  
**SUBJECT: 2000 WASTEWATER OUTFALL AND NPDES SUPPORT STUDIES**  
**- CONSULTANT SERVICES CONTRACT**  
**DATE: APRIL 4, 2000**

#### **INTRODUCTION/BACKGROUND**

Section S12 of the National Pollutant Discharge Elimination System (NPDES) permit issued August 15, 1997 requires that the City test the water quality in Gig Harbor two times per year at five separate locations.

Consultant services are needed to satisfy the 2000 conditions and requirements of the NPDES permit. The proposed scope of services include field and laboratory sampling and testing services for the 2000 receiving water quality program, and preparation of a final water quality report for submittal to the Department of Ecology, as required under Condition S12 of the NPDES permit. The scope of services also specifies optional on-call services anticipated for the predesign and permitting of the sewer outfall project. Cosmopolitan Engineering Group was selected based on their previous work for the City, familiarity with the special water sampling and testing requirements, and working relationships with Department of Ecology staff.

#### **FISCAL CONSIDERATIONS**

This work was anticipated in the approved 2000 Budget.

#### **RECOMMENDATION**

I recommend that the Council authorize execution of the Consultant Services Contract with Cosmopolitan Engineering Group for the 2000 NPDES Permit Water Quality Studies, and the optional on-call predesign and permitting services for the sewer outfall project, in an amount not to exceed thirty thousand two hundred forty dollars and no cents (\$30,240.00).

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
COSMOPOLITAN ENGINEERING GROUP**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Cosmopolitan Engineering Group organized under the laws of the State of Washington, located and doing business at 117 South 8<sup>th</sup> Street, Tacoma, Washington 98402 (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in satisfying the requirements of the City's National Pollutant Discharge Elimination System Permit (NPDES), No. WA-002395-7 condition S12 for 2000, and predesign of the sewer outfall project, 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 March 21, 2000, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, 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:

**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 thirty thousand two-hundred forty dollars and no cents (\$30,240.00) 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 B – Schedule of Rates and Estimated Hours** dated March 31, 2000. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; 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 February 15, 2001; 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 one 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 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 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.

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. It is the intent of this contract for the Consultant'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 in respect to the City. 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 notification will be given to the City of Gig Harbor for 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 Public Works Director and the City shall determine the term or provision's true intent or meaning. The City Public Works Director 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 Public Works Director's 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:

William Fox, P.E.  
Cosmopolitan Engineering Group  
117 South 8<sup>th</sup> Street  
Tacoma, Washington 98402

David R. Skinner, P.E.  
Director of Public Works  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

**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 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

By: William Fox  
Its Principal

The City of Gig Harbor  
By: \_\_\_\_\_  
Mayor

Notices to be sent to:

CONSULTANT  
William Fox, P.E.  
Cosmopolitan Engineering Group  
117 South 8<sup>th</sup> Street  
Tacoma, Washington 98402

David R. Skinner, P.E.  
Director of Public Works  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

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

ATTEST:

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

**EXHIBIT A  
SCOPE OF SERVICES**

**City of Gig Harbor  
2000 Wastewater Outfall and NPDES Support Studies**

The following tasks will be conducted to satisfy the requirements of Gig Harbor's NPDES permit condition S12 for 2000, and support the City in preparing for outfall improvement permitting and predesign scheduled for 2001.

*Task 1 – Outfall Extension On-call Support Services*

The City of Gig Harbor is anticipating proceeding with a project in 2001 to extend the wastewater outfall out to Colvos Passage. This task will provide the City with miscellaneous support in the year 2000 in preparation for the predesign and permitting which will occur in 2001. Support activities are anticipated to consist of participation in public and agency meetings, updating design criteria and cost estimates, etc. These services will be only as directed by the City Public Works Director.

*Task 2 – Water Quality Sampling Mobilization*

This task will include up-front planning and mobilization expenses to prepare for the field sampling, including:

- Update sampling plan and scheduling criteria for the two water quality sampling events
- Establish agreements with laboratories
- Prepare field equipment

*Task 3 – Weekly Temperature Sampling*

Water temperature profiles and surface pH sampling shall be conducted by the City of Gig Harbor. Stations, depths, parameters, equipment and reporting shall be as established for the sampling conducted in 1998-99. Results will be faxed to Cosmopolitan each following day.

*Task 4 – Water Quality Sampling*

The weekly sampling results shall be used to establish the date for the "critical conditions" sampling event specified in the permit. The sampling plan update in Task 2 will establish the criteria that trigger the sampling event, including tidal conditions and time of day.

Water samples shall be obtained at the same five sample locations, depths and in the same manner as was performed in the 1997-99 water quality monitoring. Stations 1 through 3 are marine stations in Gig Harbor and the Narrows, Station 4 is Crescent Creek, and Station 5 is the WWTP effluent. The city shall collect and analyze the fecal coliform sample for Station 5.

There will be two sampling events. The first will be the "critical conditions" event, which will be scheduled from the results of weekly temperature sampling. The second event will occur in the last week of October 2000.

EXHIBIT A  
SCOPE OF SERVICES

Stations 1 through 3 shall be sampled in each event for the field and laboratory analytes specified in Section S12.C.1 of the NPDES permit, including metals. Conductivity, temperature and depth profiles will be obtained with a Sea-Bird Model SBE-19 Seacat Profiler. Stations 4 and 5 shall be sampled for the analytes specified in Section S12.C.2. PSEP protocol shall be followed in the collection and handling of water samples. The same analytical laboratories from 1997-99 are anticipated to be used again in 2000.

Task 5 -- Report

The results of all field studies will be prepared for submittal to Ecology as specified in the permit. The weekly monitoring data furnished by the City shall be presented as a series of temperature profiles. A narrative section will summarize the temperature and pH trends and justify the identified critical condition for the water quality sampling.

The 2000 water quality sampling results for conventional parameters shall be presented in the same table format as the 1997-99 results. Figures showing the 2000 results in a timeline with past data shall also be presented. The metals data will be presented in separate tables with no trend analysis or graphical presentation. QA/QC for the metals data shall be presented.

The report shall be prepared as a draft for review by the City of Gig Harbor prior to January 15, 2001. Following comments by the City, five copies of the final report will be provided to the City for transmittal to Ecology by February 15, 2001.

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

**SCHEDULE OF RATES AND ESTIMATED HOURS**

**NPDES Permit Section S12 Water Quality Sampling - Year 2000**

**LABOR**

Task	Name: Rate: Hrs	Principal \$	Name: Rate: Hrs	Engineer II \$	Name: Rate: Hrs	Tech/CAD \$	Task Subtotal
1. Outfall Extension On-call Services	80	\$2,960	40	\$1,053	40	\$620	\$4,833
2. Mobilization	4	\$148	8	\$211		\$0	\$359
3. Weekly Temperature Sampling	4	\$0	32	\$843	48	\$0	\$0
4. Water Quality Sampling~	4	\$148	24	\$632	12	\$984	\$1,975
5. Report Preparation	4	\$148	104	\$2,738	100	\$2,050	\$1,026
<b>Subtotal</b>	<b>92</b>	<b>\$3,404</b>	<b>104</b>	<b>\$2,738</b>	<b>100</b>	<b>\$2,050</b>	<b>\$8,192</b>

**DIRECT LABOR SUBTOTAL:** \$8,192  
**INDIRECT LABOR AND OVERHEAD @ 173%:** \$14,173  
**SUBTOTAL:** \$22,365  
**PROFIT @ 15%:** \$3,355  
**TOTAL DIRECT, INDIRECT AND PROFIT:** \$25,720

**DIRECT COSTS**

Item	Quantity	Unit	Unit Cost	\$
Boat and Operator	2	events	\$750	\$1,500
Sample Equipment (bottles, GPS, CTD, etc.)	2	events	\$170	\$340
Oceanography Lab - UW	2	events	\$280	\$560
Metals Lab - Columbia Analytical	2	events	\$840	\$1,680
Conventionals Lab - ARI	2	events	\$140	\$280
Mileage	500	miles	\$0.320	\$160

**DIRECT SUBTOTAL:** \$4,520  
**PART II COST:** \$30,240



*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: DAVID RODENBACH, FINANCE DIRECTOR** DR  
**SUBJECT: FIRST READING OF ORDINANCE - ACCEPTING A DONATION FROM**  
**PENINSULA NEIGHBORHOOD ASSOCIATION FOR THE BORGEN**  
**PROPERTY**  
**DATE: APRIL 5, 2000**

**INFORMATION/BACKGROUND**

The Peninsula Neighborhood Association has donated \$50.00 to the City to be placed in the general fund for the Borgen site, and applied toward a statue of George Borgen to be placed on the site, if one is included in the future plans for the property. In order to accept a donation, the City must pass an ordinance accepting the donation and terms and conditions. This ordinance accepts the donation, with the condition that the funds be used for the Borgen property.

The donation has been receipted and placed in the General Fund.

**RECOMMENDATION**

Staff recommends adoption of the ordinance at its second reading.

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ACCEPTING A DONATION OF FIFTY DOLLAR (\$50.00) FROM THE PENINSULA NEIGHBORHOOD ASSOCIATION AS A CONTRIBUTION FOR THE FUTURE DEVELOPMENT OF THE BORGEN PROPERTY.**

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WHEREAS, pursuant to RCW 35.21.100, the City of Gig Harbor may accept any donations of money by ordinance, and may carry out the terms of the donation, if the same are within the powers granted to the City by law; and

WHEREAS, the City has received cash in the amount of fifty dollars (\$50.00) from the Peninsula Neighborhood Association, to be used for the purpose of future development of the Borgen Property; now, therefore,

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

Section 1. Acceptance of Donation. The City Council hereby accepts the fifty dollar (\$50.00) donation from the Peninsula Neighborhood Association.

Section 2. Finance Director to Receipt Funds. The Finance Director shall deposit the donation in the City's General Fund, and shall earmark the funds to be used for the purposes described in this ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.



APPROVED:

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MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

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CITY CLERK, MOLLY TOWSLEE

FILED WITH THE CITY CLERK: 3/29/00

PASSED BY THE CITY COUNCIL:

PUBLISHED:

EFFECTIVE DATE:

**SUMMARY OF ORDINANCE NO.  
of the City of Gig Harbor, Washington**

On \_\_\_\_\_, 2000, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. \_\_\_\_\_,  
the summary of text of which is as follows:

**AN ORDINANCE OF THE CITY OF GIG HARBOR,  
WASHINGTON, ACCEPTING A DONATION OF FIFTY  
DOLLAR (\$50.00) FROM THE PENINSULA  
NEIGHBORHOOD ASSOCIATION AS A CONTRIBUTION  
FOR THE FUTURE DEVELOPMENT OF THE BORGEN  
PROPERTY.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting of \_\_\_\_\_, 2000.

BY: \_\_\_\_\_  
Molly M. Towslee, City Clerk



**Peninsula Neighborhood Association**  
P.O. Box 507, Gig Harbor, WA 98335 (206) 858-3400

MAR-29-2000 11:11 AM  
PWA BIRKEN SITE DEVELOPMENT

March 27, 2000

**RE: Borgen Site Check Donation**

Dear Mayor Wilbert and City Councilmembers:

The Peninsula Neighborhood Association (PNA) congratulates the Gig Harbor City Council for the purchase and future development of the George Borgen property.

As a sign of PNA's support, I would like to present this check to the City Council for \$50.00. PNA would like this gift to be applied toward the proposed statue of George Borgen to be placed on the property. If the statue is not constructed, please apply the donation to a general fund for the Borgen site.

George Borgen typified the friendly warmth that makes Gig Harbor such a pleasant community. PNA is proud to be part of perpetuating this kind of community spirit. It makes the Gig Harbor area a truly personal place in which to live.

Sincerely,

John S. Mayers  
President



**PENINSULA NEIGHBORHOOD ASSOCIATION**

P.O. BOX 507 253-858-3400  
GIG HARBOR, WA 98335

2826

DATE March 27, 2000

98-841/1251

PAY TO THE ORDER OF City of Gig Harbor

\$ \*50.00

Fifty & no/100-----

DOLLARS



**HARBOR BANK**  
7022 PIONEER WAY  
P.O. BOX 2329  
GIG HARBOR, WA 98335  
206-853-5000

FOR Borgen Property -statue

*[Signature]*  
*Carmela Micheli*

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