

GIG HARBOR CITY COUNCIL MEETING OF JULY 23, 2007

PRESENT: Councilmembers Ekberg, Young, Franich, Conan, Dick, Kadzik and Mayor Hunter. Councilmember Payne was absent.

CALL TO ORDER: 6:01 p.m.

PLEDGE OF ALLEGIANCE:

RECOGNITION CEREMONY: Reserve Officer, Ryan Menday.

Mayor Hunter announced that this would take place at the August 13th meeting.

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of July 9, 2007 and Special City Council Meeting of July 16, 2007.
2. Proclamations: Payroll Week.
3. Receive and File: City-wide Newsletter Schedule; Workstudy Session July 9, 2007 – Main Street Program.
4. Eddon Boat Park – Pedestrian Improvement Project Bid Award.
5. Eddon Boat Park – Pedestrian Improvement Project – Surveying Services Contract.
6. General Facility Charge Analysis and Rate Study – Consultant Services Contract.
7. WSDOT Interlocal Signal Assignment for Repair or Replacement.
8. Approval of Payment of Bills for July 23, 2007:
Checks #54751 through #54906 in the amount of \$490,944.95.

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

PRESENTATION: Dept. of Ecology – Presentation of 2006 “Outstanding Wastewater Treatment Plant” Award. Mike Dawda, Department of Ecology.

Mayor Hunter explained that the city had been selected to receive a 2006 “Outstanding Wastewater Treatment Plant” award from the Department of Ecology. He asked staff members Steve Misiurak, City Engineer, Darrel Winans, WWTP Supervisor, and Joe Pominville, WWTP Operator, to come forward to receive the award.

Representatives from the Department of Ecology, Karen Burgess and Mike Dawda, explained that the City of Gig Harbor Wastewater Treatment Plant Staff is being recognized with this award for their outstanding performance in 2006 for meeting stringent effluent requirements. Ms. Burgess read a letter from Kevin Fitzpatrick, Water Quality Section Manager and then presented the award.

OLD BUSINESS:

1. Second Reading of Ordinance – Skateboarding Ordinance. Mike Davis, Chief of Police, explained that the ordinance has been amended since the first reading to address Council concerns. The revision prohibits the riding of these devices on all through streets; streets which do not terminate in a dead-end or cul-de-sac. In addition, the ordinance prohibits the riding of skateboards, scooters and other similar devices at crosswalks, but exempts roller and inline skates. Chief Davis said that Ian Ward, Administrative Intern, did most of the research on this ordinance and could answer questions.

Councilmember Conan asked for clarification on how bicycles are regulated, as he wanted to ensure that all types of non-vehicular transportation are being treated the same. Mr. Ward responded that bicycles are allowed on sidewalks and are required to act as any other pedestrian. Riders are required to dismount before crossing the street. Councilmember Conan said that for safety issues, he hopes that skaters stop and look before entering into a crosswalk.

Councilmember Franich asked for the definition of a scooter, which Mr. Ward provided.

MOTION: Move to adopt Ordinance No. 1095.
Young / Kadzik –

Councilmember Dick agreed with the safety concern of skaters shooting across the street without looking. There was discussion on whether language regarding pedestrian use of crosswalks is covered in another area of the code and so Carol Morris offered to find the reference. Councilmember Ekberg said that it would be no different than a pedestrian or a jogger; a prudent person would stop.

Councilmember Kadzik said he would like further clarification on the definition of a through street. Mr. Ward explained that the intention is to classify the terminus of a street as a dead end or cul de sac. Any other segment of the street that intersects with another is considered a through street. Chief Davis agreed with this interpretation. He offered to clarify this further in the definition section of the ordinance.

Councilmember Kadzik then voiced concern with this ordinance being overly restrictive. He said that kids should be allowed to skate in a neighborhood subdivision where the streets are classified as through streets. Steve Misiurak, City Engineer, was asked how streets are defined in the Public Works Standards. He explained that there are local, residential streets, minor or major collectors and arterials.

After further discussion, Ian Ward suggested another option to address these concerns to restrict skateboards and scooters on “lined” streets. He was asked to refine this further and to bring the ordinance back for a third reading.

Councilmember Dick suggested using signage to warn people where it is too dangerous to operate these types of transportation.

Councilmember Young withdrew his motion and Councilmember Kadzik withdrew his second.

Chief Davis read from Section 46.61.230 - Pedestrian Rights and Duties, which spells out the obligation for pedestrians, bicyclist, and others to stop at a crosswalk and look before heading into the street.

2. Second Reading of Ordinance – Budget Amendment: Staffing and Legal Services. David Rodenbach, Finance Director, presented this ordinance asking for seven new positions in an attempt to keep up with unprecedented development activity. He explained that the positions will be funded by revenues that have far exceeded expectations in the prior year's budget. He gave an overview of the steadily increasing revenues, adding that with the opening of the new bridge, this trend will probably continue over the next 5-7 years.

Councilmember Ekberg asked for clarification on the annual cost of these positions. Mr. Rodenbach said that the start-up costs are included in the initial estimate and so the annual cost should be closer to one-half a million.

Councilmember Dick asked about the increase in legal staffing. Mr. Rodenbach responded that legal staff isn't being increased, but the Administrative/Finance Departments budget is being amended due to an unexpected increase in legal fees. He added that all the new positions are intended to be project positions. If the revenues dry up, the positions go away.

MOTION: Move to adopt Ordinance No. 1095 amending the 2007 General Fund Budget.
Kadzik / Conan –

Councilmember Franich said that he realized that there has been an increase in projects that necessitates some of the positions, but not all. He made a motion to amend.

AMENDMENT TO MOTION: Move to eliminate the Associate Planner, Ombudsman and Community Development Assistant positions.
Franich / Ekberg –

Councilmember Young said that all the positions other than the Ombudsman are to keep up with the increase in projects. The Ombudsman is an additional position that will lend a human touch to the coordination of all different facets of a project in conjunction with the permit tracking software. This person will act as an advocate for the applicant. He suggested trying this for a year and can be readdressed during the next budget process.

Councilmember Franich responded that he thinks that the department heads should be the ones to take care of these issues.

Mayor Hunter described the loss of momentum when your work is interrupted. He said that the Ombudsmen is someone who would be able to field questions for multiple departments rather than having someone from each department having to come up to the counter making the process much more efficient. He then said that the city hadn't done the necessary long-range planning and now is short-staffed. He cited wetland requirements, traffic issues, and inadequate shoreline requirements as examples of areas that need to be addressed. He repeated that it is time to "pour the coal to it" as we owe it to the people that we serve at the counter.

Councilmember Franich said that there may be several people at the counter at once and the Ombudsman can only do so much. He acknowledged the issue of pulling someone off a project to answer questions, but added that this position isn't worth the money because it will not solve all the problems.

Councilmember Ekberg agreed that this is a major increase in personnel and credited the current employees for doing an outstanding job with the increased workload. He said that the growing salary and benefits number is difficult to get a handle on, and he is happy to hear that the new positions are being funded as project specific. He voiced concern with the proposed permit coordinator (Ombudsman) position, saying he is unsure that the level of expertise will be able to save the engineers and planners any time.

Councilmember Young clarified that the permit coordinator is more than a clerical position; it is similar to an Associate Planner with an understanding of the development process.

Mayor Hunter pointed out the increase in permits from 2005, 2006 to current year 2007. He asked Dick Bower, Building Official / Fire Marshal, to speak to the permit coordinator position.

Mr. Bower explained that in previous jobs, he has successfully worked with a permit coordinator. This position allows the opportunity for one point of contact for both the customer and for staff to coordinate a project to make sure nothing falls through the cracks. It's not a highly technical position, but they have the capability to look at the big picture across all disciplines. He used the human body as an analogy, citing the permit coordinator as the "brain" that coordinates all the rest of the systems.

Councilmember Franich called for the question.

AMENDMENT TO MOTION: Move to eliminate the Associate Planner, Ombudsman and Community Development Assistant positions.
Franich / Ekberg – Councilmember Franich voted yes. The other five Councilmembers voted no. The amendment failed.

MAIN MOTION: Move to adopt Ordinance No. 1095 amending the 2007 General Fund Budget.
Kadzik / Conan – five voted in favor. Councilmember Franich voted no.

Second Reading of Ordinance – Amending School Impact Fees. Steve Misiurak, City Engineer, said that Council had been given an e-mail from the school district addressing the unfunded need, and voicing support of this ordinance. He called upon the school district representatives to answer questions.

Councilmember Franich asked for further clarification on the amount for the unfunded need of \$2432 cited in the school district e-mail, verses the amount of \$6839 listed in Exhibit A of the Pierce County Council Ordinance. He stressed that he finds it bordering on criminal that the Pierce County Council would set a cap on what local jurisdictions can charge for school impact fees. He asked if it is true that the cap is \$2780.

Vicki Smith – Peninsula School District. Ms. Smith responded to the affirmative that the cap for this year is \$2780. She further explained that the unfunded need is contained in the PSD Capital Facilities Plan, which is listed at \$22,977,000. The County's calculation is based upon the formula for fee calculations for a single family residence contained on page 17. She said the intent is to arrive at a number which they believe reflects the need, keeping in mind that the county caps that number.

Councilmember Franich again asked what the unfunded amount is without the cap. She deferred this question to Jeff Green.

Jeff Green - 6219 Reid Drive. Mr. Green, Planning Consultant to the Peninsula School District, explained that the calculation for single-family and multi-family residences in the table reflects the need without the cap. Single family is \$4398 and multi-family is \$2188.

Councilmember Franich stated that the County has mandated the capped amount of \$2870 if the unfunded need is larger. He asked if it is the school district's intent to adopt the \$2780 rather than the \$2432 mentioned in the e-mail. Mr. Green clarified that the number \$2432 is calculated per student. What they are asking for is per residential unit, \$2780.

MOTION: Move to adopt Ordinance No. 1096.
Conan / Young – unanimously approved.

NEW BUSINESS:

1. Public Hearing and First Reading of Ordinance – Lighted Materials Ban in City Parks. Chief Davis introduced this ordinance that came about as a recommendation from the Gig Harbor Parks Commission. He said that Ian Ward, Administrative Intern, did the research to put together this proposed ordinance and would address questions.

Councilmember Dick said that it was unclear whether you could use a match to light a fire or barbeque in designated, approved areas because section 9.24.020 prohibits the lighting of matches.

Councilmember Kadzik asked about fireworks. Carol Morris, City Attorney, explained that fireworks were taken out because state law requires that any fireworks ordinance be implemented one year after adoption. It was decided to include an amendment to the existing fireworks regulations at a later date.

Councilmember Ekberg said that this proposed ordinance references “or to throw other lighted materials” which could refer to fireworks. Chief Davis suggested that it does. Mr. Ward further clarified that fireworks are banned in the city between June 26th and July 6th.

Councilmember Franich asked why we are doing this and if this shouldn't have been brought to Council for discussion before staff time was expended. Several Councilmembers said that this was brought to them at a joint worksession in which staff was directed to bring forward an ordinance for consideration.

Mr. Ward cited public health and safety as the reasoning behind the ordinance. Because smoking has been prohibited indoors in public places, it was suggested that it would also be in the best interest of the public to ban smoking in public parks.

Councilmember Young asked if a member of the Parks Commission could address this ordinance.

Mayor Hunter opened the public hearing at 7:07 p.m.

Michael Perrow – PO Box 1266, Gig Harbor. Mr. Perrow said the Parks Commission began this discussion a year ago in relation to problems at the Skatepark. Lt. Colberg attended one of their meetings in which this idea was discussed, and he suggested that although enforcement would be difficult, it would be another tool to help them deal with problems. Mr. Perrow said that several other members of the Parks Commission agree that smoking should be banned in the parks; one an oral surgeon who sees the results of smoking, and another who is a mother who doesn't like taking her child to the Skatepark because of the smoking. He stressed that he has witnessed what a burning cigarette did to the park at Pt. Defiance; another reason to be concerned.

Councilmember Franich said that smoking is a legal activity and he can't remember any fires in the park caused by smoking. Chief Davis said that there haven't been any.

Councilmember Franich continued with the health concerns brought up by Mr. Ward. Mr. Perrow responded to this by saying that this perspective came from Peter Hampl, retired oral surgeon now serving as a Park Commissioner. Mr. Perrow then said that smoking is incompatible with a positive environment for youth, as are alcoholic beverages. He thanked Council for considering this ordinance that would enhance the parks.

Mayor Hunter closed the public hearing at 7:12 p.m.

Councilmember Franich said that the indoor smoking ban was enacted due to the unhealthy effects of second hand smoke. He asked Mr. Ward if he had studies to show that second hand smoke is dangerous outdoors. Mr. Ward said that he couldn't cite a specific study, but said that smoking doesn't encourage families with children to use the parks.

Councilmember Franich asked who wrote the policy paper. Mr. Ward said that he had written the paper, and it was reviewed by Mr. Karlinsey.

Councilmember Young interjected that Mr. Ward did a good job of writing the policy paper in response to a request from the Planning Commission.

Councilmember Conan stressed that even though there may be a lack of statistics, he can personally testify to the negative effects of being near someone smoking outdoors.

Councilmember Franich then said that it isn't right for cities to enact ordinances against legal activities.

Councilmember Ekberg thanked the Parks Commission for bringing this forward. He said that it is a two-pronged approach: first, it makes the parks safer and healthier for all citizens; and second, it limits the potential for a fire. He added that he looks toward the second reading.

Councilmember Young asked if the city could enact a ban in one park and not the others. Carol Morris responded affirmatively. He then said that his biggest concern is the incompatibility of smoking in areas that children gather but not so much in the larger open areas.

Councilmember Ekberg said that it would be easier to enforce if you consider all the parks as a whole. Mr. Ward added that other cities have been successful in enforcing their ban because as a general rule, it is voluntary compliance. The public accepts and adheres to it.

Councilmember Kadzik said that he shares the concern about government intervention, and that several of the ordinances on this agenda make the city appear “grumpy,” but there is a very good argument for banning smoking in parks. He said that a smoking a cigar early in the morning while sitting on the bench at Jerisich Dock may not be offensive, but when the parks are crowded during event, the advantages to banning smoking outweigh the disadvantages.

Councilmember Franich said that he can see passing the ordinance for this reason, but no other. He said that smoking has become unpopular, however, it is still a legal activity and the city should not be passing ordinance restricting legal activities.

Councilmember Dick stressed that the only reason to have a City Council is to determine if there are situations that aren’t prohibited to everyone, but may be unsafe to our own citizens. The Council is here is to exercise discretion for the needs of our neighborhoods.

Councilmember Franich said that fire danger doesn’t pass the test and that he hopes that before the second reading, Councilmembers supporting this can come up with some good reasons.

Mayor Hunter recommended moving to the next agenda item.

2. Public Hearing and First Reading of Ordinance – Three Ordinances Adopting Text Amendments Recommended in Phase 1c of the Design Review Process Improvements Initiative (ZONE 07-0026, 07-0027 and 07-0028). Jennifer Kester, Senior Planner, presented these final ordinances in Phase 1c, which will address the following items: define a quorum for Design Review Board meetings; zone transition dense vegetation buffers; calculating the average building height for zone transition standards; and long, low wall planes and horizontal wall shifts to apply to prominent facades only.

Councilmember Dick asked for clarification on requiring a zone transition buffer to be entirely located on the developing parcel. Ms. Kester explained that each zone transition is different depending on which use triggers the requirement. She said that the most likely situation is a 40 foot buffer on one parcel and a 25 foot buffer on the adjoining parcel.

Mayor Hunter opened the public hearing at 7:30 p.m.

Jack Bujacich – 3607 Ross Avenue. Mr. Bujacich suggested that it would be better to have a buffer of low vegetation rather than a narrow strip of tall trees. He cited the damage caused by falling trees during windstorms as the reason.

Mayor Hunter said that the issue of vegetation in buffers came up in the recent joint Planning Commission / Design Review Board meeting. Some plantings in buffers are beginning to mature and are blocking views. These issues will be considered further.

No one else came forward to speak and the public hearing closed at 7:32 p.m.

Councilmember Young agreed with Mr. Bujacich and added that he would like to see the issue of buffers in general addressed. Ms. Kester said that the Planning Commission and Design Review Board will be looking at a clustering concept rather than strip buffering in some situations.

This will return for a second reading at the next meeting.

3. First Reading of Ordinance – Non-motorized Vehicle Safety and Helmets. Ian Ward, Administrative Intern, said that currently, the city code requires bicyclist to wear helmets, and it was suggested to expand this to all unmotorized vehicles. He suggested that a helmet ordinance might help protect the city from a liability claim.

Councilmember Kadzik asked for clarification on whether this could protect the city from a lawsuit. Ms. Morris responded that a helmet law wouldn't help to the extent that it is necessary to adopt an ordinance. Councilmember Kadzik then asked if helmets could be required at a specific site such as the Skatepark. Ms. Morris said that you could make a case for the additional need for helmets at the Skatepark given the intense use at that site.

Councilmember Young asked if a helmet law would pierce the statute of immunity for public park use. Ms. Morris responded that the recreational immunity statute doesn't address posted rules. It gives immunity if the park is open to public use at no charge. She said that she would look into that before the next reading.

Councilmember Franich said that here again, we are talking about exercising authority of the City of Gig Harbor for the public safety health and welfare of the public. He voiced concern with language in 10.22.010 (C), citing enforcement as "discretionary."

Ms. Morris responded that the city has no duty to enforce ordinances and so enforcement is "discretionary." Mr. Franich asked if this is true of all ordinances, and whether this language is typical of all ordinances. Ms. Morris said that this is typical language, and it is contained here so that people will understand that if the city has an ordinance that requires people to wear a helmet, yet someone doesn't do so and are injured, they cannot come back on the city and say "You require that I wear a helmet and I wasn't wearing one, and so therefore, my injuries are your fault because you didn't enforce your ordinance." She said that this language also appears in the Building Code, all the Uniform Residential Building Codes, and several times in the Zoning Code.

Councilmember Franich asked if this also applies to law enforcement powers. Ms. Morris said that she wasn't prepared for that question but would be willing to look it up before the next meeting. She asked if his question is specifically whether the city is required to enforce police ordinances. Councilmember Franich said that he wants to

know if that language is included in ordinances that refer to law enforcement to see if we are being consistent.

Councilmember Kadzik commented that he doesn't see the purpose of having the City Attorney spend time on researching this, as the question is whether this language is appropriate in this particular ordinance. Councilmember Ekberg agreed that it would be an inappropriate expenditure of city funds.

Councilmember Dick shared that he couldn't understand how this type of research could aid the public interest in any way. The law has always been that you adopt ordinances to prescribe the necessary conduct to protect the public health and welfare. There is no liability on government for failure to enforce, and it is no less applicable if the language is included in a few or all ordinances. He agreed that it is the law whether the language is there or not. The expenditure of staff time doesn't change that.

Councilmember Franich withdrew his request to have this researched. He said that he hasn't seen this language in previous ordinances, adding that it was his belief that when a city enacts a law, it is mandatory and should be enforced.

Ms. Morris explained further that this language appears in ordinances in which the issue has been litigated.

This ordinance will return for a second reading.

Mayor Hunter announced that the agenda had been previously amended to remove request for a Water Utility Extension Agreement.

STAFF REPORT:

Gig Harbor Police Department – June Report. Chief Davis pointed out that the calls for service have increased, infractions are up, and accidents are down. He gave a quick overview of the multi-jurisdictional "Bridge to Bridge to Bridge" Emphasis Patrol held over the weekend. He said that this is an effort to recognize the families of victims through the reduction of impaired drivers.

Chief Davis then reported on the recent drug paraphernalia sting. He passed around some of the items confiscated from a local tobacco shop, adding that some of the more unique items will be placed on display.

PUBLIC COMMENT:

Donna Slayback – 7412 Northcreek Loop.

Mayor Hunter advised Ms. Slayback that her letter had been received earlier and that this matter was going to be discussed in Executive Session later this evening.

Councilmembers assured her that they had received her letter and Ms. Morris added that the letter is part of the public record.

Ms. Slayback continued to read the letter citing the city's selective enforcement of the building code in regards to problems resulting from surface water runoff from their neighbor's property, and requesting City Council to direct staff to continue with enforcement action.

MAYOR'S REPORT / COUNCIL COMMENTS / COUNCIL COMMITTEE REPORTS:

Mayor Hunter asked Councilmembers to review the proposed agenda for the upcoming Budget Retreat. He asked them to look it over, rank any important topics, and forward changes to the City Clerk.

Skansie Netshed Update. Mayor Hunter narrated a PowerPoint presentation illustrating the deteriorating condition of the pilings under the Skansie Netshed. He explained that the city's insurance had recommended canceling coverage until he sent a letter to the effect that the building is secure from the public and repairs are being made. He further explained that the occupancy has to be determined before the engineering can be done due to the historic nature of the building. He said that a recommendation has been made to reduce the occupancy to 10-12 people and to repair the building to this minimum load. Mayor Hunter advised Council that a contract to engineer these repairs will be coming in the near future.

Jack Bujacich. Mr. Bujacich said that when he inspected the netshed last year, he was amazed at how people could have survived working in this place. He recommended that the first thing that should be done is to sack and pour concrete around each piling using a 50 gallon drum as a form.

Mayor Hunter said that he was amazed at how straight the roof and eave-lines are considering the poor condition of the supports.

ANNOUNCEMENT OF OTHER MEETINGS:

1. GH North Traffic Options Committee – Wednesday, September 12th, at 9:00 a.m. in Community Rooms A & B.
2. Council Budget Retreat – Monday, July 30th at 6:00 p.m.
3. Cancellation: August 27th City Council Meeting.

EXECUTIVE SESSION: For the purpose of discuss potential litigation per RCW 42.30.110(1)(i).

MOTION: Move to adjourn to Executive Session at 8:15 p.m. for the purpose of discussing potential litigation for approximately 45 minutes.
Dick / Conan – unanimously approved.

MOTION: Move to return to regular session at 9:03 p.m.
Dick / Conan - unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 9:03 p.m.
Dick / Conan – unanimously approved.

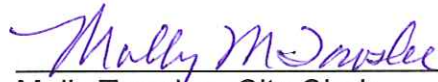
CD recorder utilized:

Disk #1 Tracks 1- 31

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Charles L. Hunter, Mayor



Molly Towslee, City Clerk