

Gig Harbor City Council Meeting

**June 22, 2009
5:30 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Monday, June 22, 2009 – 5:30 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

EXECUTIVE SESSION: To discuss property acquisition per RCW 42.10.110(c).

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of Jun. 8, 2009.
2. Receive and File: a) Operations & Public Projects Committee May 21, 2009.
3. Liquor Licenses: a) Renewals: The Keeping Room; Hunan Garden; Kinza Teriyaki; and Spiro's Bella Notte.
4. Sanitary Sewer Facilities Easement and Storm Water Facilities Maintenance Agreement and Restrictive Covenant for the Village at Holly Circle.
5. Resolution – Surplus Equipment.
6. Resolution – *ACHIEVE* Initiative.
7. Resolution - Voluntary Furlough Policy.
8. Resolution - Drug and Alcohol Testing Policy.
9. Drug and Alcohol Testing Procedures.
10. BB16 Interchange Improvements – Temporary Construction Easement.
11. Wastewater Treatment Plant Improvement Project – Surveying Services Consultant Services Contract.
12. Wastewater Treatment Plant SCADA System – On-Call Professional Services/Advanced Industrial Automation.
13. Cushman Trail Ph. 1 Improvements – State Interlocal Agreement.
14. Transportation Modeling On-Call Services for Concurrency Evaluations – Consultant Services Contract.
15. Approval of Payment of Bills for June 22, 2009: Checks #61191 through #61303 in the amount of \$822,679.69.

PRESENTATIONS:

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. First Reading of Ordinance – New Code for Illicit Discharge Detection and Elimination (IDDE).
2. First Reading of Ordinance – Code Revisions and New Code Relating to Stormwater, Grading, and Civil Permits.
3. Public Hearing and First Reading of Ordinance – Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone (ZONE 07-0006).
4. Public Hearing and First Reading of Ordinance – Height Restriction Area Criteria.

STAFF REPORT:

Planning Commission's Recommendation on Marina Parking Regulations.

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Planning / Building Committee: Mon. Jul 6th at 5:15 p.m.
2. Intergovernmental Affairs Committee: July 13th CANCELLED.

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF JUNE 8, 2009

PRESENT: Councilmembers Ekberg, Young, Franich, Conan, Malich, Payne, Kadzik and Mayor Hunter.

CALL TO ORDER: 5:30 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of May 24, 2009.
2. Receive and File: Boards and Candidate Review Committee Minutes May 26, 2009.
3. Correspondence / Proclamations: "We The People" Gig Harbor High School State Champions.
4. Appointment to the Design Review Board.
5. Appointment to the Planning Commission.
6. Liquor License Application: Gateway to India.
7. Eddon Boat Environmental Restrictive Covenant Agreement with Department of Ecology.
8. Federal Lobbyist Contract Extension.
9. Resolution for Public Hearing & Approval of Easements – Bacchus Street Vacation.
10. Resolution - Section 125 Employee Flexible Spending Account Plan Document.
11. BB16 Mitigation Improvements Project – Consultant Services Contract for Construction Survey and Professional Technical Support Services.
12. Approval of Payment of Bills for June 8, 2009: Checks #61091 through #61190 in the amount of \$1,428,333.45.
13. Approval of Payment of Payroll for the month of May: Checks #5439 through #5461 and direct deposit transactions in the total amount of \$338,261.62.

Mayor Hunter announced the appointment of Warren Balfany to the Design Review Board and the re-appointment of Jill Guernsey to the Planning Commission.

MOTION: Move to adopt the Consent Agenda as presented.
Ekberg / Young - unanimously approved.

PRESENTATIONS:

1. We The People – Ken Brown, Gig Harbor High School. Mayor Hunter presented the proclamation to Ken Brown, Student Advisory for the We The People Program at Gig Harbor High School. Mr. Brown described this program in which his U.S. Government Class competed at the National Competition. He introduced students: Claire Betterbed, Rachel Seibert, Spencer Graffe, Eli Greenfield, Danny Cobey, and Erik Lund. Coaches: Scott Smith, Larry Little, Larry Seaquist, and Tom Springer. Kathy Hand, State Coordinator for We the People was also present.

2. Pierce Stream Team – Jami Gordon. Senior Engineer Jeff Langhelm mentioned the city's well attended *Natural Yard care* and *Creation of a Rain garden* workshops this spring. He explained that the Pierce Stream Team program helps the city meet its NPDES Stormwater Permit public outreach and educational requirements. He introduced Jami Gordon who shared a short informational presentation on the Pierce Stream Team Program and all it offers to the community. She explained that their program is funded through grants and a \$5 a year property assessment from jurisdictions that participate in the Pierce Conservation District, which is authorized by the Pierce County Council. Gig Harbor is one of the few jurisdictions that are not part of the District but Unincorporated Pierce County is. Jurisdictions that are not part of the district have the opportunity to work with Pierce Stream Team through a simple contract. She continued to describe some of the work they have done on this side of the bridge and handed out some materials about the program.

Councilmember Young commented that the city has received a couple of substantial grants from the Conservation District even though we don't participate.

OLD BUSINESS:

1. Second Reading of Ordinance – Sehmel Drive Area-Wide Rezone. Tom Dolan presented the background for this ordinance to address inconsistencies between the land use designation and zoning for this recently annexed area.

Councilmember Malich asked why the four westerly properties were included in this rezone. Mr. Dolan explained it is because they had an ED designation in the comp plan and the Planning Commission looked at existing uses when they made the recommendation.

Councilmember Franich commented that he would have preferred that the last three parcels would have remained residential.

MOTION: Move to adopt Ordinance No. 1164 as presented.
Young / Kadzik – unanimously approved.

1. Second Reading of Ordinance – Special Events Permits. Molly Towslee presented this draft ordinance to update the requirement for special events.

MOTION: Move to adopt Ordinance No. 1165 as presented.
Kadzik / Franich – unanimously approved.

NEW BUSINESS:

1. Public Hearing and First Reading of Ordinance – Development Agreement Processing Amendment. Senior Planner Jennifer Kester presented information on this amendment which would differentiate the processing requirements for development agreements. She explained that currently all development agreements must be reviewed by the Planning Commission before final action by the City Council. This amendment would replace that requirement with one in which legislative agreements

would still go before the Planning Commission and development agreements related to project permit applications would be reviewed by the Hearing Examiner or city staff depending on the final decision maker for the underlying permit. The application would be held in abeyance until a recommendation from the Hearing Examiner or staff is forwarded to the City Council for final action. In addition, staff is proposing to extend the maximum term of development agreements from five to ten years.

Councilmember Young asked for further clarification on the types of development agreements that would go before the Hearing Examiner. Ms. Kester explained that one example is phasing a project; a development agreement would be used in conjunction with the binding site plan to define the project; staff is proposing that these be heard by the Hearing Examiner to allow public testimony on how timing of such a project might affect the community.

Councilmember Franich asked if Ms. Kester could cite a specific example of a project. She said that last year's 3700 Grandview Comprehensive Plan Amendment had an accompanying development agreement reviewed by the Planning Commission that imposed stricter setbacks and height limit size. She further explained that the Haven of Rest's comp plan amendment to change from Residential Low to Residential Medium has a development agreement that says they will limit any rezones to R-2. Costco had a development agreement that set aside ten acres for a Village Center. She said that currently the McCormick Creek project has a development agreement related to when the different lots can be platted in conjunction with road completion. Under the current code, this would go to the Planning Commission for recommendation to Council, but because they don't review project specific permits, staff would have to educate them on the specifics of the permit. If this amendment is adopted this would come directly to Council with a staff recommendation because the Hearing Examiner has already approved the plat.

Mayor Hunter opened the public hearing at 6:08 p.m.

John Chadwell, Olympic Property Group – 19245 10th Ave NE, Poulsbo, WA 98370. Mr. Chadwell commented that a development agreement can cover a wide range of issues from simple to complex and holds benefits and protections for both parties. He said that with more work this amendment could be a great change; he then used examples of how the current draft may not work. He described two scenarios: 1) a project-specific development agreement is submitted to set up ground rules but not tied to an application; and 2) an application that fits both categories. He asked which way would these be reviewed? He then explained that some issues should be allowed to come to Council before investing in large application packages, taking staff time, and moving through the Hearing Examiner process before Council ever sees it. If Council doesn't like the project, then they are back to square one depending upon the nature of the agreement. He said that from his perspective following the process for the project specific agreement is needlessly costly and cumbersome for these reasons. He suggested that the proposed ordinance include authority to modify development standards using the Grandview project as an example. He said that Council was

hesitant to grant a comp plan amendment for fear that if the development agreement expired in five years with no completed project it would take another comprehensive plan amendment to “ratchet back” the land use designation. He suggested that if Council could use a development agreement to authorize a project to go beyond current standards while leaving the comp plan designation the same, if the agreement expires before the project is constructed, the property reverts to the original comp plan designation without any further action or risk. Without that tool, Council is denying itself the ability to negotiate standards to provide greater public benefit than what could be achieved under the strict application of the land use code. This allows more control over land use changes; nine other jurisdictions use this tool to allowing exceeding the standards in a development agreement. He then said that the ordinance should include a more flexible process that allows for development agreements that don’t fit the two categories presented; routings through the Planning Commission process when appropriate but there are other times that this doesn’t make sense and should come right to Council. He suggested that some development agreements could be allowed an opportunity for the proponents to negotiate with a Council Committee to work out certain details before it comes before the full Council for review. Finally, he suggested that the term for development agreements be expanded to up to twenty years for large projects such as Microsoft or Intel who negotiate long agreements before spending any money because they have a lot at stake; again providing protection for both parties. Mr. Chadwell recommended that this ordinance go back for further work and offered to meet with staff to discuss his suggestions.

Councilmember Payne asked for the reasoning for limiting the extension to ten years. Ms. Kester responded that a lot has changed in this city over the past fifteen years and they thought ten year would allow you to catch some of the larger changes. She explained that this number was used to solicit Council direction for what would be comfortable.

Councilmember Young asked about using different expiration dates for different terms in a development agreement. Legal Counsel Angela Belbeck responded “Absolutely.” He then asked if a development agreement could be inconsistent with the Comprehensive Plan. She said that the agreement should be consistent with the Comp Plan.

Eva Jacobsen – PO Box 2314, Gig Harbor. Ms. Jacobsen thanked Council for considering these amendments, adding that as a land use planner, she thinks these have been needed for a long time. She asked staff to consider how the development agreement interlaces with the underlying permit. She asked how it would work if have a five-year development agreement on a two-year site plan.

There were no further comments and the public hearing closed at 6:20 p.m. Jennifer Kester asked for direction.

Council asked that this be added to the workstudy session scheduled for Monday, June 15th. Rob Karlinsey said that he was also proposing a discussion on the Mixed Use Development at the same meeting.

2. ~~Public Hearing and First Reading of Ordinance — Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone (ZONE 07-0006)~~ CONTINUED To June 22nd.

STAFF REPORT:

1. New Websites Presentation: Lita Dawn Stanton and Laureen Lund. Lita Dawn Stanton, Special Projects and Historical Preservation Coordinator, began the presentation on the city's new website giving an overview of site, its features and ease of navigation.

Laureen Lund, Marketing Director, continued with the Marketing website. She highlighted several features meant to draw visitors to come and stay in Gig Harbor.

Council members offered congratulations on the new sites, praising the thoughtfulness and hard work that went into the design.

2. Permit Extensions. Planning Director Tom Dolan presented the background on permit extensions for applicants willing to pay utility hook up and impact fees and whether they would be required to adhere to code changes. He noted that land use permits in Gig Harbor have relatively short expiration periods and the extension would address the current economic downturn. He explained that a request for feedback on this proposal has solicited a number of comments. Mostly, the response has been that extensions should be allowed without requiring the payment of fees or compliance with new development regulations, similar to the blanket two-year "stimulus initiative" adopted by Pierce County. He said that staff is looking for further direction from Council, and addressed questions on the city's current permit timelines and how Pierce County's extension is applied to permits.

Mayor Hunter voiced concern that if extensions aren't allowed and permits expire, the applicant will have to start over, which will be expensive and will slow the recovery period.

Councilmember Ekberg agreed and asked how many permits are close to the expiration time. Mr. Dolan said that there hasn't been an analysis done. He then addressed Councilmember Malich's question by explaining that the timeline on land-use decisions begins when the Hearing Examiner makes a decision, and providing no appeal is filed. The applicant has two years from then to apply for a building permit.

Councilmember Franich asked if a sunset clause had been considered. Mr. Dolan responded that the County's stimulus ordinance is a one-time allowance that had to be submitted by June 30, 2009.

Councilmember Payne asked about the negative impacts. Mr. Dolan said that non-compliance with any change in development regulations, using changes in the stormwater manual as an example. He added that the state would understand if the permits were vested under the old requirements. He then said that the ordinance could

be written so that if changes occurred in certain regulations, the project would have to comply which could potentially result in major modifications.

Councilmember Young commented that major pitfall is the fairness issue; there are a number of developments stopped by the city's actions, and now there is discussion of creating a "special class" of developer by granting extensions to projects that may not have to comply with new regulations. He said that equal opportunity is something that has to be considered. He continued to explain that some of the new changes such as stormwater requirements are outcome based; the city has stricter standards and if others aren't required to meet these standards, it will be more difficult for the city to do so.

Councilmember Payne asked about the possibility of obtaining the record of when this was adopted by Pierce County in order to see what issues were discussed and how they addressed concerns. Mr. Dolan said that the copy of the county's ordinance is included in the packet, and the "whereas clauses" may hold some of this information.

Councilmember Franich commented that fairness is a good point and we need to decide what new regulations would need to be met rather than allowing blanket exceptions.

Councilmember Kadzik brought up the collection of fees. Councilmember Young said that he agrees these are extraordinary times and we want to encourage development, but there is risk in development and the city shouldn't "give up the farm."

Mayor Hunter said he agreed with the comments about the economy, adding that the city should approach solutions in a thoughtful, fair manner. He said that we want to encourage projects rather than allowing them to die. He then invited the public to speak.

Howard and Theresa Miller – 3590 SE Burley Olalla Road. Mr. Miller explained that they own a .4 acre parcel across from Gig Harbor Auto Body that is zoned light industrial; the last piece in the city zoned this way. He explained that this property squeaked through every area of compliance to achieve approval for a two-story building on the site; they have had three different architects in an attempt to obtain a permit and their site plan approval runs out in November.

Ms. Miller thanked the Mayor, Council and staff. She described their situation and how they have struggled with financing; adding that at this point the only way that they can see a way through is to sell the property so someone else can build before the site plan expires and take a loss on the money already spent. She said if they are unable to sell and their permit expires, it may become a question of letting the property go back to the bank. She added that Mayor Hunter understands the situation and staff has been very supportive.

John Chadwell – Olympic Property Group. Mr. Chadwell addressed the issue of vesting to old codes by saying the process for approval is like a house of cards and if you change or pull a couple of the cards things change very quickly. He said he appreciates

the idea of an extension as a stimulus package for certain cases, but cautioned that if the project has to meet new regulations, it's like going back to square one.

Councilmember Malich asked if an extension could be handled by resolution rather than by ordinance as a timesaving method. City Attorney Angela Belbeck explained that because it deals with timelines set forth in city code, the changes need to be made by ordinance.

Councilmember Payne said we should move forward and explore the idea of mirroring Pierce County's ordinance for a two-year extension.

Councilmember Ekberg agreed if it's an economic stimulus idea. He recommended consideration of some sort of a fee for an extension, a six-month time frame to apply, and a two-year term from the date of application as opposed to adding two years to the existing expiration date. He also said we need to look at the pros and cons and fairness of adherence to ordinance changes if the focus of the extension is economic stimulus.

Councilmember Payne asked for an inventory of "at-risk" permits.

Councilmember Young suggested an equitable solution for the timing is to choose a "date-certain" that up until that date no permits will expire rather than adding two-years to a permit. He explained that if this is indeed about the economic crisis this will allow them to get through it but not add more time to the vesting rules; this eliminates the need to track individual permit expirations. He said if the banks don't free up money in a year, then this can be addressed again.

Councilmember Kadzik said that if this is indeed a stimulus package then he would like the projects to remain vested unless it becomes a life-safety issue. He also said that it would be counter-productive if a large fee is required; as one letter stated, if they had the money they would begin the project.

Councilmember Young asked staff to identify any upcoming major code issues that may need consideration.

PUBLIC COMMENT: None.

MAYOR'S REPORT / COUNCIL COMMENTS:

Mayor Hunter commented on the successful Maritime Gig Festival. He recognized the Chamber of Commerce and the Gig Harbor Historical Waterfront Association for this well executed, fun weekend event.

Mayor Hunter reported that he took a tour of the Hope Center Boys & Girls Club last week adding that they would like to arrange a tour for the entire Council. He stressed that this is a very impressive project and will be a nice addition to the community.

Councilmember Malich asked if city staff had reviewed the permit for the new building on Sehmel Drive constructed under county permits and asked about the parking. Tom Dolan said that Building Official Dick Bower has been in contact with the county regarding final inspections. Councilmember Young said that the building shares parking with Keller Williams.

Mayor Hunter asked Councilmembers congratulate Marco Malich and the Public Works Crew for the work done before, during and after the Maritime Gig.

Councilmember Payne voiced concern with the crowds encroaching upon the parade route for safety reasons, and said he would bring this up with Chief Davis and the Chamber of Commerce. He then asked Tom Dolan about the Bonneville Project. Mr. Dolan responded that this project, a retail commercial office complex, goes before the Design Review Board this week; Peter Katich is the project planner.

Rob Karlinsey presented a proposal to cancel the July 27th and the August 24th City Council meetings for lack of issues and to save money.

Councilmember Malich asked about construction bonding . Mr. Karlinsey said that staff would be bringing that topic back in September; at this time it appears that the city will have to issue revenue bonds unless some other grant option comes available as the State Legislature “nixed” the Public Works Trust Fund Loan Program. He said that we applied for Federal Stimulus money but unless other projects fall off the list we won’t make the cut. He further explained that staff will be working with our Bond Counsel this summer to put a package together for council review.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Finance / Safety Committee: Mon. Jun 15th at 4:00 p.m.
2. City Council Budget Update / Budget Forecast Worksession: Mon. Jun 15th at 5:30 p.m.
3. Operations Committee: Thu. Jun 18th at 3:00 p.m.
4. Boards and Commissions Candidate Review Committee: Mon. Jun 22nd at 4:30 p.m.

ADJOURN:

MOTION: Move to adjourn at 7:25 p.m.
Franich / Malich – unanimously approved.

CD recorder utilized:
Tracks 1001 – 1024

Charles L. Hunter, Mayor

Molly Towslee, City Clerk



CITY OF GIG HARBOR
OPERATIONS & PUBLIC PROJECTS COMMITTEE
MINUTES

DATE of MEETING: May 21, 2009
TIME: 3:00 pm (meeting began at 3:09 pm)
LOCATION: PW Conference Room
SCRIBE: Maureen Whitaker
MEMBERS PRESENT: Councilmembers Ekberg & Franich, Angela Belbeck, John Chadwell, Budd Wagner
STAFF PRESENT: David Stubchaer, Steve Misiurak, Jeff Langhelm
EXCUSED: Councilmember Payne

1. STREET LATECOMER'S AGREEMENT

DISCUSSION POINTS

Franciscan Health System has requested the city to consider creating a street latecomer's agreement, consistent with the terms development agreement. Angela Belbeck stated that the city does not currently have an ordinance allowing a street latecomer's agreement and explained that it is a framework for collecting assessments from property owners whereby everyone pays their fair share. Once the ordinance is in place, the framework is there for developers to bring forward and City Council to approve. She stated that the creation of a latecomer's agreement is an option as shown in FHS' development agreement but is not required. Currently, city policy allows for mitigation through SEPA only. Councilmember Franich asked Budd Wagner, representative for Franciscan Health System (FHS) why an LID was not formed. Mr. Wagner stated that \$15M is a sizable amount and FHS never anticipated bearing full freight. Mr. Misiurak stated that prior to the final EIS in 2006, the estimate was at \$10M. Councilmember Franich stated that he was concerned about the financial impact to the "little guy". He asked what happens when an LID is formed up front and a latecomer's is formed on the back? He also expressed concern about the amount of staff time involved. Mr. Misiurak commented that a street latecomer's is uncharted territory for Gig Harbor. Ms. Belbeck stated that working out the agreement is where the majority of time and effort comes in. Councilmember Ekberg stated that he is not familiar with this type of latecomer's agreement and would like to review some examples from other jurisdictions and asked Mr. Wagner to provide an example of one that the hospital has used in past practices.

RECOMMENDATION / ACTION / FOLLOW-UP

Ms. Belbeck will contact a few clients for examples (1 hour attorney or secretarial time). Mr. Wagner will check with his company and his traffic consultant for examples.

2. TRIP TRANSFER ORDINANCE

DISCUSSION POINTS

John Chadwell stated that when Olympic Property Group (OPG) platted the business park in GH North area, they used the highest and best use. OPG has had discussions with the city for a proposed city park.

limiting traffic generators, which could allow OPG to spread out and build less densely. This results in a net benefit for the long term fix of the BB16 Interchange, which could potentially be delayed or avoided. The proposed "transfer" is for 640 trips. There was a lengthy discussion about traffic zones and common ownership with adjacent properties.

RECOMMENDATION / ACTION / FOLLOW-UP

Councilmember Franich would like to examine actual counts. Steve Misiurak said that the developer would be required to provide actual counts. David Stubchaer suggested limiting it to mitigated trips which made sense to Mr. Chadwell who stated that they have earned those trips because they constructed the road.

3. WIRELESS FACILITIES ON CITY WATER TANKS

DISCUSSION POINTS

David Stubchaer discussed revisiting this idea as a means to generate additional revenue for the city. If council agreed, it would require an ordinance, then going out for a request for proposals. The GH North water tank access issues have been resolved. There was concern about vulnerability issues. Could a SCADA alarm be installed on the hatch?

RECOMMENDATION / ACTION / FOLLOW-UP

Councilmember Ekberg suggested staff to contact other jurisdictions. Atty. Belbeck stated that the City of Redmond already had an agreement on file. She will forward this information to Mr. Stubchaer.

4. PROPOSED PAVEMENT MAINTENANCE PLAN

DISCUSSION POINTS

There was a lengthy discussion on the recommended road rehab priority list, with a focus on slurry seal vs. chip seal. Due to budgetary constraints, overlays are not being considered this year. Mr. Stubchaer described the benefits of slurry seal and stated that it seals better, much less messy with no loose chips, has the appearance of an overlay, less labor intensive and doesn't require the road to be closed for more than 2-3 hours, and has a nice black appearance. He stressed that this is a preservation method which slows down deterioration. He said that in his prior employment, the City of Santa Barbara used slurry seal as part of their pavement management plan with very favorable results. There are only two companies that do this work in Washington; Vancouver and Yakima. There was further discussion on Uddenberg Lane and the failing portion of Grandview Street. Mr. Stubchaer proposed doing a double slurry seal on Uddenberg Lane. This would require dig outs to remove the failing pavement, build up then slurry seal over the top. Grandview would also require dig outs. The cost of doing a slurry seal vs. an overlay is about one-half cheaper and the utilities don't have to be raised afterwards.

RECOMMENDATION / ACTION / FOLLOW-UP

The council committee asked for a comparison on the longevity of slurry seal vs. chip seal and were interested in taking a look at a slurry sealed roadway. Jeff Langhelm stated that the City of Kent and a few other local jurisdictions use it, as well as some local state parks. Councilmember Franich asked if a freeze thaw would undermine the base. Councilmember Ekberg said that Grandview is essential.

5. STATE GRANT FOR CUSHMAN TRAIL IMPROVEMENTS

DISCUSSION POINTS

This Interlocal agreement between WSDOT and the city will provide funding for the design and construction of specific pedestrian and bicycle improvements along the section of the Cushman Trail between Reid Road and Kimball Drive (phase 1). The improvements that would be funded consist of way-

finding signs, monument signs, and mile markings along the trail, freshen crosswalk marking and widen the sidewalk between Hollycroft and Soundview Drive. All costs related to these improvements would be paid from WSDOT to the city on a reimbursement basis with zero out of pocket city funds. The amount of this cooperative agreement is \$96,336.50.

RECOMMENDATION / ACTION / FOLLOW-UP

Councilmember Ekberg liked the idea of a bike path on Hollycroft. Mark Connelly of PenMet Parks recommends uniform signage for the trail. Councilmember Franich stated that the city needs to be more discreet when installing more signs.

Meeting adjourned at 5:15 p.m.

Respectfully submitted:



Maureen Whitaker

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 06/06/2009

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20090930

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. THE CAPTAIN'S MATE, INC.	THE KEEPING ROOM, CANDLES & WINE 7811 PIONEER WAY GIG HARBOR WA 98335 0000	086515	BEER/WINE SPECIALTY SHOP
2. PANDA INC.	HUNAN GARDEN RESTAURANT 5500 OLYMPIC DR GIG HARBOR WA 98335 0000	076567	SPIRITS/BR/WN REST SERVICE BAR
3. JU, SUN WOO	KINZA TERIYAKI 6820 KIMBALL DR A-1 GIG HARBOR WA 98335 0000	077031	BEER/WINE REST - BEER/WINE
4. SPIRO'S BELLA NOTTE, INC.	SPIRO'S BELLA NOTTE, PIZZA & PASTA 3108 HARBOVIEW DR GIG HARBOR WA 98335 0000	363055	SPIRITS/BR/WN REST LOUNGE +



Subject: Sanitary Sewer Facilities Easement and Storm Water Facilities Maintenance Agreement and Restrictive Covenant for the Village at Holly Circle (EN-07-0086)

Proposed Council Action: Approval of the Sanitary Sewer Facilities Easement and Storm Water Facilities Maintenance Agreement and Restrictive Covenant for the Village at Holly Circle as presented.

Dept. Origin: Public Works/Engineering

Prepared by: Amy Londgren
Engineering Technician

For Agenda of: June 22, 2009

Exhibits: Sanitary Sewer Facilities Easement and Storm Water Facilities Maintenance Agreement and Restrictive Covenant

Initial & Date

Concurred by Mayor: CCH 6/16/09
Approved by City Administrator: PK
Approved as to form by City Atty: VIA EMAIL
Approved by Finance Director: NA
Approved by Department Head: AB 6/16/09

Expenditure		Amount	Appropriation	
Required	0	Budgeted	Required	0

INFORMATION / BACKGROUND

As a condition of project approval of the Village at Holly Circle project located at 2500 Hollycroft Street, Gig Harbor, Sanitary Sewer and Storm Water Facilities Maintenance Agreements are required. This will ensure that the sanitary sewer system and storm water system will be constructed, operated and maintained in accordance with all applicable rules and regulations. The sanitary sewer system and storm water system is located on private property and will be privately owned. The City will not be responsible for the operation and maintenance of these systems. These agreements allow the City a nonexclusive right-of-entry onto those portions of the property in order to access the sanitary sewer system for inspection and monitoring of the system.

FISCAL CONSIDERATION

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

RECOMMENDATION / MOTION

Move to: Approve the Sanitary Sewer and Stormwater Agreements as presented.

AFTER RECORDING RETURN TO:

The City of Gig Harbor
Attn: City Clerk
3510 Grandview St.
Gig Harbor, WA 98335

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Document Title(s) (or transactions contained therein):
Sanitary Sewer Facilities Easement and Maintenance Agreement

Grantor(s) (Last name first, then first name and initials)
HDC Holly Circle, LLC

Grantee(s) (Last name first, then first name and initials)
City of Gig Harbor

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)
Section 17, Township 21, Range 02, Quarter 14

Assessor's Property Tax Parcel or Account number: 7580000516

Reference number(s) of documents assigned or released: _____

**SANITARY SEWER FACILITIES EASEMENT
AND MAINTENANCE AGREEMENT**

This Sanitary Sewer Facilities Easement and Maintenance Agreement is made this _____ day of _____, 200__, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and HDC Holly Circle, LLC, a Limited Liability Company, organized under the laws of the State of Washington, located and doing business at 5821 Reid Drive, Gig Harbor, WA 98335-1342 (hereinafter the "Owner").

RECITALS

WHEREAS, Owner is the owner of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as The Village At Holly Circle located at the 2500 block of Hollycroft Street NW, (hereinafter the "Property") and legally described in **Exhibit A**, which is attached hereto and incorporated herein by this reference; and

WHEREAS, in connection with the Owner's proposed development of the Property, the City has required and the Owner has constructed a private sanitary sewer system on the Property; and

WHEREAS, such sanitary sewer system is described and shown on a construction drawing(s) prepared by the engineering firm of West Sound Engineering, dated _____ (hereinafter the "Plans"), for the Owner's Property, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference; and

WHEREAS, as a condition of project approval, and/or due to the nature of the development, the sanitary sewer system on the Property is private, and will not be the responsibility of nor owned, operated or maintained by the City; and

WHEREAS, the private sanitary sewer will eventually be connected to the City's sanitary sewer system and the City desires an easement to definitively establish the permissible location of the City's access on the Property described in **Exhibit A**, for the purposes described in this Agreement; and

WHEREAS, as a result of said private ownership and responsibility for operation and maintenance, including repair, rehabilitation, replacement, alterations and/or modifications, the parties have entered in to this Easement and Maintenance Agreement, in order to ensure that the sanitary sewer system will be constructed, operated and maintained in accordance with the approved Plans and all applicable rules and regulations;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City hereby agree as follows:

TERMS

Section 1. Affected Property. The real property subject to this Agreement is legally described in **Exhibit A**.

Section 2. Definitions. As used in this instrument:

A. The word "plat" refers to the Plat of The Village At Hollycroft Circle, and any other plat or plats, including short plats, covering all real property which may hereafter be made subject to the provisions of this instrument by a written instrument signed by the Owner, its successors and assigns, in accordance with this Agreement.

B. The word "lot" refers to a lot shown on any plat defined herein, but shall not include any parcel designated as a "tract" on a plat. "Lot" shall include any parcel of land that is separately subjected to this instrument without having been subdivided into two or more parcels by a plat recorded subsequent to the recording of this instrument.

C. The word "Owner" or "Owners" refers to the entity, whether an individual, corporation, joint venture or partnership which is an owner in fee simple or of a substantial beneficial interest (except for mineral estate) in all or any portion of the property in the Plat or the Property. A "substantial beneficial interest" shall include both legal and equitable interests in the Property.

D. The words "Owners' Association" refer to a nonprofit corporation which may be formed for the purpose of operating and maintaining the facilities described in **Exhibit B** on the Property, which may be independently conveyed by the Owner or its successors and assigns to an Owners' Association, and to which the Owners' Association may provide other services in order to benefit the owners of property within the plat or the Property.

Section 3. Maintenance Obligations. The Owner, its successors, assigns and/or owners of an after-acquired interest in the Property, hereby covenant and agree that they are jointly and severally responsible for the installation, operation, perpetual maintenance, of a sanitary sewer system on the Property, as shown on the Plans attached hereto as **Exhibit B**. The sanitary sewer system shall be operated, maintained and preserved by the Owner in accordance with the Plans and all applicable ordinances, codes, rules and regulations. The sanitary sewer system shall be preserved in conformance with the Plans until such time as all parties to this Agreement, including the City, agree in writing that the sanitary sewer system should be altered in some manner or eliminated. In the event the sanitary sewer system is eliminated as provided hereinabove, the Owner shall be relieved of operation and maintenance responsibilities.

No such elimination of the sanitary sewer system will be allowed prior to the Public Works Director's written approval.

Section 4. Notice to City. The Owner shall obtain written approval from the Director prior to performing any alterations or modifications to the sanitary sewer system located on the Property described in Exhibit A. No part of the sanitary sewer system shall be dismantled, revised, altered or removed, except as provided hereinabove, and except as necessary for maintenance, including repair, rehabilitation, replacement, alterations, and/or other modifications.

Section 5. Easement for Access. The Owner hereby grants and conveys to the City a perpetual, non-exclusive easement, under, over, along, through and in the Property, as such Easement is legally described in **Exhibit C**, attached hereto and incorporated herein by this reference. This Easement is granted to the City for the purpose of providing the City with ingress and egress in order to access the sanitary sewer system on the Property for inspection, and to reasonably monitor the system for performance, operational flows, defects, and/or conformance with applicable rules and regulations. In addition, the City may use this Easement to exercise its rights as described in Section 8 herein.

Section 6. Assignment to an Owners' Association. In the event that an Owners' Association is formed under a Declaration of Covenants, Conditions and Restrictions which includes all of the Property in **Exhibit A**, the Owner may assign responsibility for installation and perpetual maintenance of the sanitary sewer system to such Owners' Association for so long as the Owners' Association remains in existence and upon the conditions that the Owners' Association assumes all of the obligations, liabilities, covenants and agreements of the Owner under this Agreement. Such assignment of the Owner's obligations shall be in a duly executed instrument in recordable form, and for so long as such assignment remains effective, the Owner shall have no further responsibility or liability under this Agreement.

Section 7. Conveyances. In the event the Owner shall convey its substantial beneficial or fee interest in any property in the Plat, any lot, or the Property, the conveying Owner shall be free from all liabilities respecting the performance of the restrictions, covenants and conditions in this Agreement; PROVIDED, HOWEVER, that the conveying Owner shall remain liable for any acts or omissions during such Owner's period of ownership of such Property.

Section 8. Rights of the City of Gig Harbor.

A. Execution of this Agreement shall not affect the City of Gig Harbor's present or future interest or use of any public or private sanitary sewer system. If the City determines that maintenance is required for the sanitary sewer system, and/or there is/are illegal connection(s) to or discharges into the sanitary sewer system, the Public Works Director or his/her designee shall give notice to the Owner(s) of the

specific maintenance and/or changes required, and the basis for said required maintenance and/or changes. The Director shall also set a reasonable time in which the Owner(s) shall perform such work. If the maintenance required by the Director is not completed within the time set by the Director, the City may perform the required maintenance. Written notice will be sent to the Owner(s), stating the City's intention to perform such maintenance, and such work will not commence until at least five (5) days after such notice is mailed, except in situations of emergency. If, at the sole discretion of the Director, there exists an imminent or present danger to the sanitary sewer system, the City's facilities or the public health and safety, such five (5) day period will be waived, and the necessary maintenance will begin immediately.

B. In order to assure the proper maintenance of the Owner's sanitary sewer system, and to ensure there will be no damage to the City's sanitary sewer system, the City of Gig Harbor shall have the right, but not the obligation, to inspect and monitor the Owner's system. In addition, the City shall have the right as provided below, but not the obligation, to maintain the system, if the Owner(s) fail to do so, and such failure continues for more than five (5)-days after written notice of the failure is sent to the responsible parties. However, no notice shall be required in the event that the City of Gig Harbor determines that an emergency situation exists in which damage to person or property may result if the situation is not remedied prior to the time required for notice.

C. If the City provides notice in writing, but the Owner or Owners' Association fails or refuses to perform any maintenance or operational duties as requested by the City, the City's employees, officials, agents or representatives may enter the Property and undertake the necessary maintenance, repair or operational duties to the City's satisfaction. The City's ability to enforce this provision is subject further to the City's right to impose materialmen's and/or laborer's liens and to foreclose upon any and all properties owned by the Owner(s).

D. If the City exercises its rights under this Section, then the Owner(s) or Owners' Association shall reimburse the City on demand for all reasonable and necessary expenses incurred incident thereto. In addition, the City is hereby given the right, power and authority acting in the name of the Owner's Association to exercise and enforce on behalf of the Association and at the Association's cost, the assessment of dues and charges for such costs and to enforce the Association's lien right for any assessments, dues and charges as herein specified. The City shall also be permitted to collect the costs of administration and enforcement through the lien attachment and collection process as is permitted under chapter 35.67 RCW, or any other applicable law.

E. In addition to or in lieu of the remedies listed in this Section, if the Owners or Owner's Association, after the written notice described in Section 8A above, fails or refuses to perform the necessary maintenance, repair, replacement or modifications, the City may enjoin, abate or remedy such breach or continuation of such breach by

appropriate proceedings, and may bring an action against the violator for penalties under the Gig Harbor Municipal Code.

Section 9. Indemnification of City. The Owner(s) agree to defend, indemnify and hold harmless the City of Gig Harbor, its officials, officers, employees and agents, for any and all claims, demands, actions, injuries, losses, damages, costs or liabilities of any kind or amount whatsoever, whether known or unknown, foreseen or unforeseen, fixed or contingent, liquidated or unliquidated, arising from an alleged defect in the design of the sanitary sewer system as installed by the Owner(s), or arising by reason of any omission or performance under this Agreement by the Owner(s), its successors and assigns, and/or Owners' Association, of any of the obligations hereunder.

Section 10. Rights Subject to Permits and Approvals. The rights granted herein are subject to permits and approvals granted by the City affecting the Property subject to this Easement and Maintenance Agreement.

Section 11. Terms Run with the Property. The terms of this Easement and Maintenance Agreement are intended to be and shall constitute a covenant running with the Property and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

Section 12. Notice. All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified U.S. Mail, return-receipt requested, and shall be deemed delivered on the sooner of actual receipt or three (3) days after deposit in the mail, postage prepaid, addressed to the City or the Owner at the addresses set forth below:

To the City:

City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

To the Owner:

HDC Holly Circle, LLC
5821 Reid Drive
Gig Harbor, WA 98335-1341

Section 13. Severability. Any invalidity, in whole or in part, of any provision of this Easement and Maintenance Agreement shall not affect the validity of any other provision.

Section 14. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

Section 15. Governing Law, Disputes. Jurisdiction of any dispute over this Easement and Maintenance Agreement shall be solely with Pierce County Superior Court, Pierce County, Washington. This Easement and Maintenance Agreement shall be interpreted under the laws of the State of Washington. The prevailing party in any litigation arising out of this Easement and Maintenance Agreement shall be entitled to its reasonable attorneys' fees, costs, expenses and expert witness fees.

Section 16. Integration. This Easement and Maintenance Agreement constitutes the entire agreement between the parties on this subject matter, and supersedes all prior discussions, negotiations, and all other agreements on the same subject matter, whether oral or written.

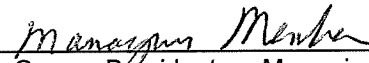
IN WITNESS WHEREOF, the parties have caused this Easement and Maintenance Agreement be executed this _____ day of _____, 200__.

THE CITY OF GIG HARBOR

OWNER

By: _____
Its Mayor

By:  _____

Its:  _____
Owner, President, or Managing Member

Print Name: David Hopkins

APPROVED AS TO FORM:

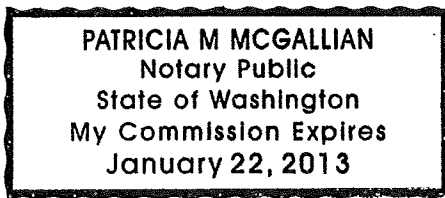
ATTEST:

City Attorney

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

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



DATED: 6-16-2009
Patricia M. McGallian
Notary Public in and for the
State of Washington,
Title: Notary Public Permit Coordinator
My appointment expires: 1-22-2013

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

DATED: _____

Notary Public in and for the
State of Washington,
Title: _____
My appointment expires: _____

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

LOT 4, PIERCE COUNTY SHORT PLAT NO. 80-297, ACCORDING TO THE SHORT PLAT THEREOF RECORDED IN VOLUME 42 OF SHORT PLATS, PAGE 60, IN PIERCE COUNTY, WASHINGTON.

EXHIBIT B

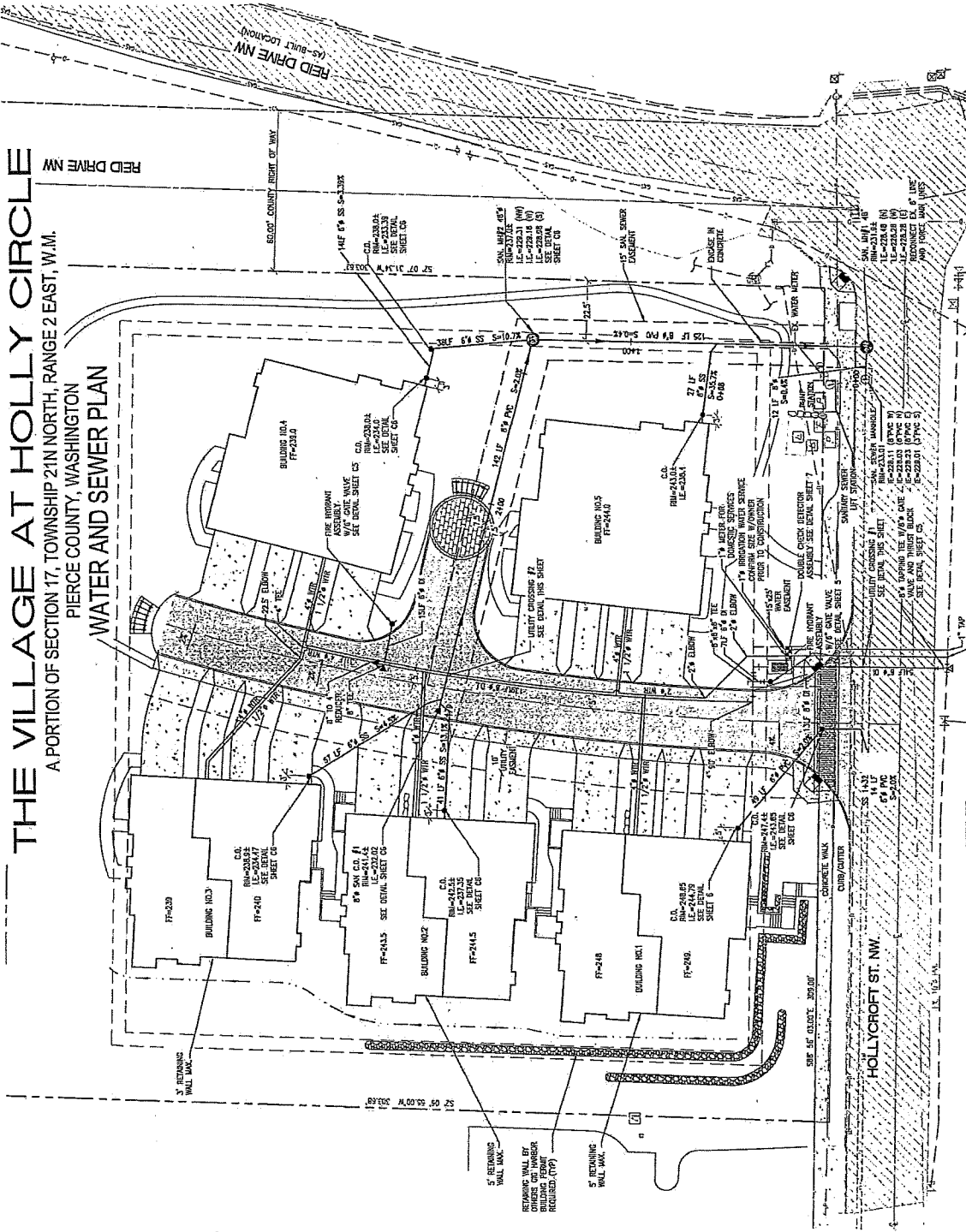


EXHIBIT C
EASEMENT LEGAL DESCRIPTION

LOT 4, PIERCE COUNTY SHORT PLAT NO. 80-297, ACCORDING TO THE SHORT PLAT THEREOF RECORDED IN VOLUME 42 OF SHORT PLATS, PAGE 60, IN PIERCE COUNTY, WASHINGTON.

AFTER RECORDING RETURN TO:

The City of Gig Harbor
Attn: City Clerk
3510 Grandview St.
Gig Harbor, WA 98335

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Document Title(s) (or transactions contained therein):

Storm Water Facilities Maintenance Agreement and Restrictive Covenant

Grantor(s) (Last name first, then first name and initials)

HDC Holly Circle, LLC

Grantee(s) (Last name first, then first name and initials)

City of Gig Harbor

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Section 17, Township 21, Range 02, Quarter 14

Assessor's Property Tax Parcel or Account Number: 7580000516

Reference Number(s) of Documents assigned or released:

STORM WATER FACILITIES MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT

This Storm Water Facilities Maintenance Agreement and Restrictive Covenant is made this ____ day of _____, 200__, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and HDC Holly Circle, LLC, a Limited Liability Company, organized under the laws of the State of Washington, located and doing business at 5821 Reid Drive, Gig Harbor, WA 98335-1342 (hereinafter the "Owner").

RECITALS

WHEREAS, Owner is the owner of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as The Village At Holly Circle located at the 2500 block of Hollycroft Street NW (hereinafter the "Property") and legally described in **Exhibit A**, which is attached hereto and incorporated herein by this reference; and

WHEREAS, in connection with the Owner's proposed development of the Property, the City has required and the Owner has agreed to construct a storm water collection and detention system; and

WHEREAS, such drainage system is described and shown on a construction drawing prepared by the engineering firm of West Sound Engineering, dated _____, 200__ (hereinafter the "Drainage System Drawing"), for the Owner's Property, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference; and

WHEREAS, as a condition of project approval and/or as a condition of the City's utilization of the Owner's storm drainage system, the parties have entered into this Maintenance Agreement and Restrictive Covenant, in order to ensure that the drainage system will be constructed and maintained in accordance with the approved plans and the City's development standards;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City hereby agree as follows:

T E R M S

Section 1. Construction and Maintenance. Owner agrees to construct and maintain a drainage system on its Property, as shown on the Drainage System Drawing, **Exhibit B**. The drainage system shall be maintained and preserved by the Owner until such time as the City, its successors or assigns, agree that the system should be altered in some manner or eliminated.

Section 2. No Removal. No part of the drainage system shall be dismantled, revised, altered or removed, except as necessary for maintenance, repair or replacement.

Section 3. Access. The City shall have the right to ingress and egress over those portions of the Property described in **Exhibit A** in order to access the drainage system for inspection and to reasonably monitor the system for performance, operational flows or defects. Nothing herein creates an obligation of the City to inspect or monitor the drainage system.

Section 4. Repairs, Failure of Owner to Maintain. If the City determines that maintenance or repair work is required to be performed on the system, the City Engineer or his/her designee shall give notice to the Owner of the noted deficiency. The Engineer shall also set a reasonable time in which the Owner shall perform such work. If the repair or maintenance required by the Engineer is not completed within the time set by the Engineer, the City may perform the required maintenance and/or repair. Written notice will be sent to the Owner, stating the City's intention to perform such repair or maintenance, and such work will not commence until at least 15 days after such notice is mailed, except in situations of emergency. If, within the sole discretion of the Engineer, there exists an imminent or present danger to the system, the City's facilities or the public health and safety, such 15 day period will be waived and maintenance and/or repair work will begin immediately.

Section 5. Cost of Repairs and/or Maintenance. The Owner shall assume all responsibility for the cost of any maintenance and for repairs to the drainage system. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City. Overdue payments will require payment of interest by the Owner at the current legal rate as liquidated damages.

Section 6. Notice to City of Repairs and/or Maintenance. The Owner is hereby required to obtain written approval from the City Engineer prior to filling, piping, cutting or removing vegetation (except in routine landscape maintenance) in open vegetated drainage facilities (such as swales, channels, ditches, ponds, etc.), or performing any alterations or modifications to the drainage system.

Section 7. Rights Subject to Permits and Approvals. The rights granted herein are subject to permits and approvals granted by the City affecting the Property subject to this Maintenance Agreement and Covenant.

Section 8. Terms Run with the Property. The terms of this Maintenance Agreement and Covenant are intended to be and shall constitute a covenant running with the Property and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

Section 9. Notice. All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified U.S. Mail, return-receipt requested, and shall be deemed delivered on the sooner of actual receipt or three (3) days after deposit in the mail, postage prepaid, addressed to the City or the Owner at the addresses set forth below:

To the City:
City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

To the Owner:
HDC Holly Circle, LLC
5821 Reid Drive
Gig Harbor, WA 98335-1341

Section 10. Severability. Any invalidity, in whole or in part, of any provision of this Maintenance Agreement and Covenant shall not affect the validity of any other provision.

Section 11. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

Section 12. Governing Law, Disputes. Jurisdiction of any dispute over this Maintenance Agreement and Covenant shall be solely with Pierce County Superior Court, Pierce County, Washington. This Maintenance Agreement and Covenant shall be interpreted under the laws of the State of Washington. The prevailing party in any litigation arising out of this Maintenance Agreement and Covenant shall be entitled to its reasonable attorneys' fees, costs, expenses and expert witness fees.


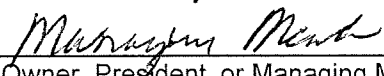
Section 13. Integration. This Maintenance Agreement and Covenant constitutes the entire agreement between the parties on this subject matter, and supersedes all prior discussions, negotiations, and all other agreements on the same subject matter, whether oral or written.

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement and Covenant to be executed this _____ day of _____, 200 ____.

THE CITY OF GIG HARBOR

By: _____
Its Mayor

OWNER

By:  _____
Its:  _____
Owner, President, or Managing Member

Print Name: David Hopkins

ATTEST:

City Clerk

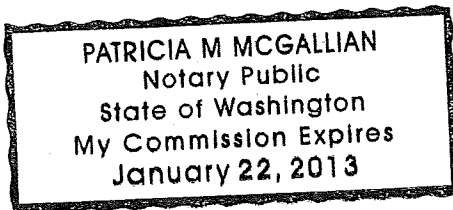
APPROVED AS TO FORM:

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

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

DATED: 6-16-2009



Patricia M. McGallian
Notary Public in and for the
State of Washington,
Title: Notary Public Permit Coordinator
My appointment expires: 1-22-2013

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

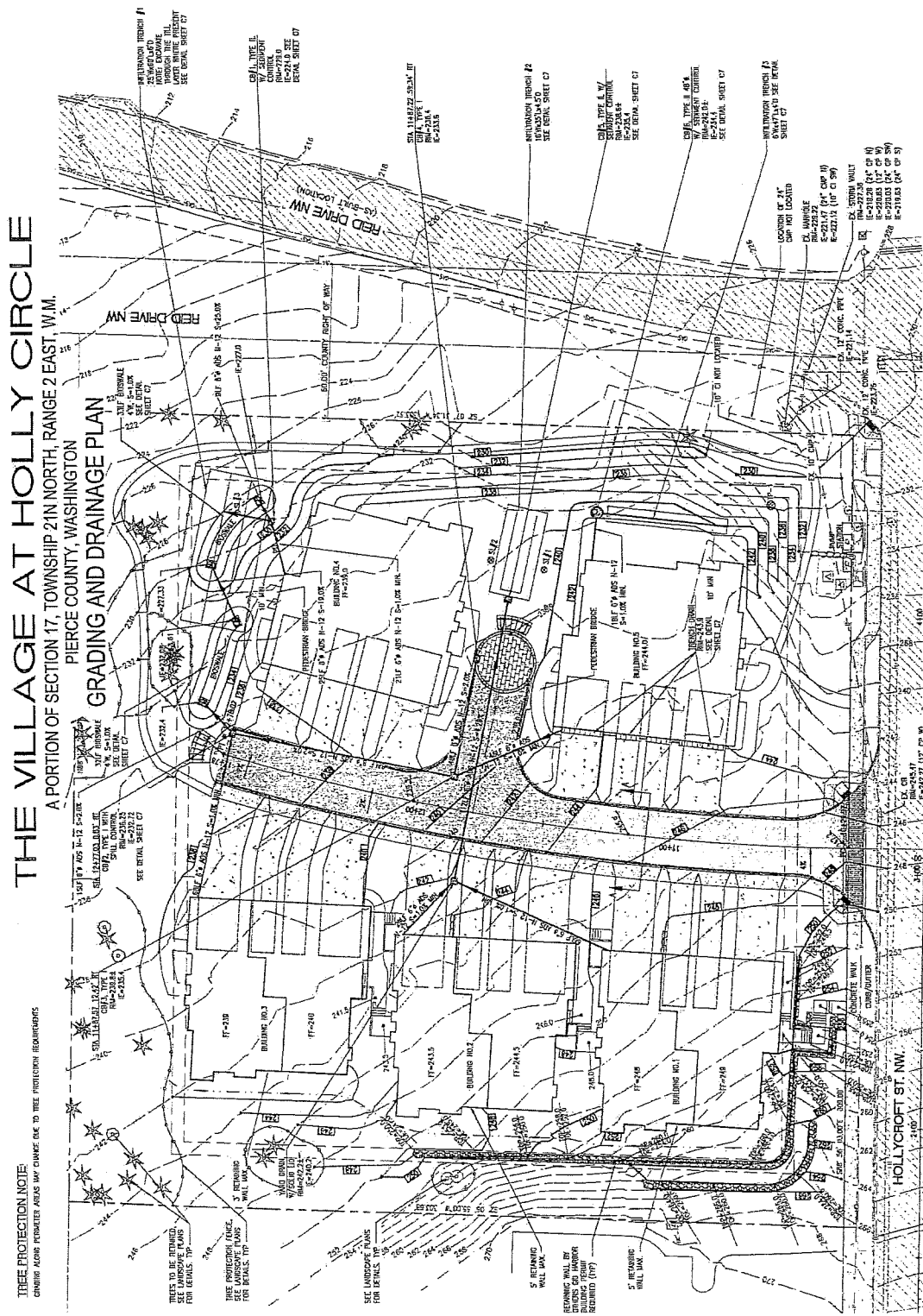
DATED: _____

Notary Public in and for the
State of Washington,
Title: _____
My appointment expires: _____

**EXHIBIT A
PROPERTY LEGAL DESCRIPTION**

LOT 4, PIERCE COUNTY SHORT PLAT NO. 80-297, ACCORDING TO THE SHORT PLAT THEREOF RECORDED IN VOLUME 42 OF SHORT PLATS, PAGE 60, IN PIERCE COUNTY, WASHINGTON.

EXHIBIT B DRAINAGE SYSTEM DRAWING



TERRAIN PROTECTION NOTE:
GRADING ALONG PERMEABLE AREAS MAY CHANGE DUE TO THESE PROTECTIVE RECOMMENDATIONS.



Subject: Resolution – Surplus Equipment

Dept. Origin: Public Works-Operations

Proposed Council Action:

Adopt Resolution No. 793 declaring the specified equipment surplus and eligible for sale.

Prepared by: David Stubchaer, P.E.
Public Works Director

For Agenda of: June 22, 2009

Exhibits: Resolution No. 793

Initial & Date

Concurred by Mayor:

CLH 6/16/09

Approved by City Administrator:

ROK 6/16/09

Approved as to form by City Atty:

ASB 6/15/09

Approved by Finance Director:

CR

Approved by Department Head:

DB 6/16/09

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and dollar amounts (\$0).

INFORMATION / BACKGROUND

Staff requests authorization to surplus the following equipment: One folding table, one bench top, one cabinet, four stacking chairs, one Foremost Drill Press, one Jet Drill Press, one Campbell Housfeld Compressor, one Troy Bilt Tiller, one Hewlett-Packard Desk Jet, and one New York Blower.

This equipment is obsolete.

FISCAL CONSIDERATION

Proceeds from the auctioning of these items will go to the general fund.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt Resolution No. 793 declaring the specified equipment surplus and eligible for sale.

RESOLUTION NO. 793

**A RESOLUTION OF THE CITY OF GIG HARBOR
DECLARING CITY EQUIPMENT SURPLUS AND ELIGIBLE
FOR SALE.**

WHEREAS, the Gig Harbor City Council has determined that city-owned equipment is surplus to the City's equipment needs and has been or is in need of being replaced with new equipment; and

WHEREAS, the City may declare such equipment surplus and eligible for sale;

NOW, THEREFORE, the City Council of the City of Gig Harbor hereby resolves as follows.

To declare as surplus:

	EQUIPMENT	Reason for Surplus	Quantity	SERIAL / ID NUMBER	MODEL INFO.
1.	Folding Table – 30" x 72"	Obsolete	1	N/A	N/A
2.	Bench Top – 24" x 66"	Obsolete	1	N/A	N/A
3.	Cabinet w/one drawer & one door – 22" wide x 30" deep x 31" high	Obsolete	1	N/A	N/A
4.	Stacking Chairs	Obsolete	4	N/A	N/A
5.	Foremost Drill Press	Obsolete/ Replaced	1	190539	MADPO 75AMA
6.	Jet Drill Press	Obsolete/ Broken	1	40857	14 MF
7.	Campbell Housfeld Compressor	Obsolete	1	110889L-087253	VT 615202
8.	Troy Bilt Tiller	Obsolete	1	120600256801	TUFFY-12060
9.	Hewlett-Packard Desk Jet	Obsolete	1	ESB7306029	C3198B
10.	New York Blower – Large exhaust blower	Replaced	1	Size FE	J08202-100

PASSED ON THIS 22nd day of June, 2009.

APPROVED:

MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 06/03/09
PASSED BY THE CITY COUNCIL: 06/22/09
RESOLUTION NO. 793



**Subject: Resolution in support of the
ACHIEVE Initiative Strategies for a
Healthier Community**

Proposed Council Action:

Adopt the attached Resolution.

Dept. Origin: Administration

Prepared by: Molly Towslee, City Clerk *MT*

For Agenda of: June 22, 2009

Exhibits: Resolution

Initial & Date

Concurred by Mayor: CLH 6/18/09

Approved by City Administrator: RSK

Approved as to form by City Atty: _____

Approved by Finance Director: _____

Approved by Department Head: _____

Expenditure	Amount	Appropriation	
Required \$0	Budgeted \$0	Required	\$0

INFORMATION / BACKGROUND

Due to the epidemic of decreasing health, nutrition and physical activity resulting in increased obesity, multiple agencies and jurisdictions are joining in support of the *ACHIEVE* Initiative. Councilmember Steven Ekberg and County Councilmember Terry Lee are asking the City of Gig Harbor to consider adopting a resolution in support of this effort for a healthier community.

ACHIEVE brings together local leaders and stakeholders to build healthier communities by promoting policy and environmental change strategies focused on chronic disease and/or obesity. The Tacoma-Pierce County Team has chosen Childhood Obesity as their area of focus. Areas of emphasis will include:

- Improved Nutrition
- Increased Physical Activity
- Created Healthy Environments
- Improved Access (to all above)

The initiative is intended to build a collaborative partnership between the Tacoma-Pierce County Public Health Department, the Tacoma-Pierce County YMCA and community leaders to provide an environment which exemplifies standards for a healthy community and empowers children and their families to live healthy lifestyles. Our target communities are Tacoma and Gig Harbor/Key Peninsula.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt the attached Resolution.

RESOLUTION NO. 794

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROCLAIMING SUPPORT FOR THE MULTI-AGENCY *ACHIEVE* INITIATIVE STRATEGIES TO INCREASE PHYSICAL ACTIVITY AND HEALTHY EATING FOR ALL COUNTY YOUTH AND ADULTS.

WHEREAS, it has been statistically demonstrated that our citizens are experiencing an epidemic of decreasing health, nutrition, and physical activity resulting in increased obesity; and

WHEREAS, obesity is a complex problem involving poor diet, physical inactivity, and life-style patterns; and

WHEREAS, obesity is linked to many chronic diseases including diabetes, heart disease, stroke, cancer, osteoarthritis, asthma, sleep apnea, and mental health problems; and

WHEREAS, 64 percent of Pierce County adults are overweight or obese and 26 percent of Pierce County children are at an unhealthy weight; and

WHEREAS, an increase in obesity is contributing to a substantial decrease in the health and wellness of all people and this is the first generation of children that will have a shorter lifespan than their parents; and

WHEREAS, while this trend continues, it has serious consequences for our community, resulting in loss of productivity, taxing our healthcare resources, and threatens the well being of our future generations; and

WHEREAS, broad community participation is essential to the development and implementation of successful wellness policies, and the *ACHIEVE* Initiative has been developed with the support of the Boys and Girls Clubs of South Puget Sound, City of Gig Harbor, City of Tacoma, Franciscan Health System, Key Pen parks, Metro Parks Tacoma, MultiCare Health System, Peninsula School District, PenMet Parks, Pierce County, Pierce County Medical Society, Tacoma School District, Tacoma-Pierce County Health Department, YMCA of Tacoma – Pierce County;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. For the reasons stated above, the City Council joins all agencies on the ACHIEVE Initiative in their resolve to:

- Work together to create environments that support physical activity and healthy eating as an everyday part of life;
- Develop and implement policies aimed at increasing physical activity and healthy eating among adults and youth;
- Address youth obesity by ensuring that youth receive 60 minutes of physical activity daily, consistently including all the following components: bone strengthening, aerobic activity, and muscle strengthening;
- Assure youth and their families have access to healthy and affordable foods every day, by means of:
 - Community gardens, farmers' markets, and full-service grocery stores in all neighborhoods
 - Healthy meals and snacks in daycares, schools, community centers and other community programming.

RESOLVED this 22nd day of June, 2009.

APPROVED:

MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 06/18/09
PASSED BY THE CITY COUNCIL: 06/22/09
RESOLUTION NO. 794



Subject: Voluntary Furlough Policy

Proposed Council Action:

Adopt a resolution approving a Voluntary Furlough Policy

Dept. Origin: Administration
Prepared by: Rob Karlinsey
For Agenda of: June 22, 2009
Exhibits: Resolution & Policy

Initial & Date

Concurred by Mayor: CLH 6/18/09
Approved by City Administrator: RJK 6/17/09
Approved as to form by City Atty: S. Snyder VIA EMAIL
Approved by Finance Director: DR
Approved by Department Head: RJK

Expenditure	Amount	Appropriation
Required \$0	Budgeted N/A	Required N/A

INFORMATION / BACKGROUND

The City' General Fund has experienced lower-than-anticipated revenues for the first five months of 2009. While significant expenditure cuts have been made, more are needed. A voluntary furlough policy will allow City employees who are willing to take unpaid time off and save the City additional money.

The attached resolution establishes the policy for voluntary furloughs and takes into consideration the potential effects if voluntary furloughs were to be approved and implemented.

Of note in particular are two issues: Health Insurance Benefits and Leave Accruals. The attached policy states that neither will be affected (i.e., not prorated) by voluntary furloughs, unless the employee is in unpaid status for more than 30 consecutive days.

The policy will go into effect on June 23, 2009 and will expire on December 31, 2009.

FISCAL CONSIDERATION

It is unknown whether any employees will volunteer for furlough days, although a handful of employees have shown some interest. Therefore, it is difficult at this time to estimate the cost savings of implementing this policy. At or near the end of the summer and again at year's end, the city administrator will report to the Mayor and City Council the cost savings realized, as well as the number of voluntary furlough days completed.

BOARD OR COMMITTEE RECOMMENDATION

The Finance & Safety Committee reviewed the attached policy on June 15, 2009. The attached policy reflects the Committee's recommendations.

RECOMMENDATION / MOTION

Move to: Adopt a resolution approving a Voluntary Furlough Policy

RESOLUTION NO. 795

**A RESOLUTION OF THE CITY OF GIG HARBOR,
WASHINGTON, ACKNOWLEDGING AND APPROVING
CERTAIN POLICIES REGARDING VOLUNTARY
EMPLOYEE FURLOUGHS AS CLARIFICATION OF THE
CITY'S ANNUAL SALARY ORDINANCE.**

WHEREAS, due both to the economy and to the limited revenue sources available to local governments in the state of Washington, the City of Gig Harbor is experiencing budget shortfalls and limitations; and

WHEREAS, the Mayor and City Administrator have implemented layoffs in accordance with the 2009 adopted budget to help address that budget shortfall; and

WHEREAS, the City Council deems it appropriate to create, as an interpretation of the annual salary ordinance, the potential for voluntary furloughs or leaves of absence by City employees in order to potentially avoid mandatory furloughs or further layoffs; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
HEREBY RESOLVE AS FOLLOWS:

Section 1. The attached policies shown as Exhibit A to this resolution, promulgated by the Mayor and City Administrator, are hereby approved and acknowledged by the City Council as appropriate interpretations of and supplements to the annual salary ordinance.

Section 2. The City Council acknowledges that these policies have been adopted in order to address unanticipated economic shortfalls and as such, these voluntary furloughs will constitute budget related furloughs within the meaning of 29

C.F.R. §541.710 and are an integral part of the City's expenditure reduction efforts within the meaning of Chapter 430, Washington Session Laws of 2009.

RESOLVED this 22nd day of June, 2009.

CITY OF GIG HARBOR

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

FILED WITH THE CITY CLERK: 06/18/09
PASSED BY THE CITY COUNCIL: 06/22/09
RESOLUTION NO. 695

Exhibit A

CITY OF GIG HARBOR

VOLUNTARY FURLOUGH POLICY AND PROCEDURE

Effective: June 23, 2009 **Expiration:** This policy shall expire on December 31, 2009.

The City reserves the right to revise, supplement, clarify or rescind any policy or portion of a policy when deemed appropriate by the Mayor or City Administrator.

1.0 OVERVIEW

- 1.1 INTENT OF POLICY - This policy is adopted to allow voluntary furloughs and is in addition to the City of Gig Harbor Personnel Policies and serves as a general guide to the City's employment practices and procedures. This policy is not intended to be a contract, express or implied, or any type of promise or guarantee of specific treatment upon which you may rely, or as a guarantee of employment for any specific duration.

Employees who are exempt from collective bargaining representation or otherwise deemed executive, managerial, or confidential by the City are considered at-will employees and may be terminated from City employment at any time with or without cause and with or without notice. All other employees' employment status shall be governed by the personal employment contract, collective bargaining agreement, civil service rules, City Personnel Policies, or other written document applicable to the individual case.

- 1.2. SCOPE OF POLICY - In cases where this policy conflicts with any City ordinance, Civil Service rule and regulation, the provision of a collective bargaining agreement, state or federal law, the terms of the law or agreement prevail. In all other cases, this policy applies.

In addition, the City Administrator may approve voluntary furloughs upon application by individual employees. The City Administrator reserves the right to approve or deny voluntary furlough requests, based on the business needs of the City.

- 1.4 DEFINITIONS - The following definitions are meant to clarify the language used in this policy in reference to furlough process and eligibility.

Delayed Furlough Day – A day off without pay taken in place of a designated furlough day.

Furlough –The placement of employees in a temporary status without duties and without pay. Furloughs will temporarily be administered as follows:

1. Approval of furlough is to be processed in writing when possible.
2. During a furlough day, furloughed employees remain City employees.
3. Outside employment for furloughed employees remains subject to the City’s policies, procedures, collective bargaining agreements, civil service rules and regulations, and other established guidelines.
4. Furloughed employees may not volunteer to do what the City otherwise pays employees to do.
5. Health insurance will continue in full for a furloughed benefit-eligible employee unless the employee is on unpaid leave more than 30 consecutive days.

FLSA-Exempt Employee – An individual designated by the City Administrator as being employed in a bona fide executive, administrative, or professional capacity, as defined by the Fair Labor Standards Act (FLSA) or the Washington Minimum Wage Act (WMWA), and who is therefore exempt from the overtime pay and minimum wage requirements of the FLSA or the WMWA.

Furlough Day – Any day in which a furloughed employee is placed in a temporary status without duties and without pay due to a financial need to reduce expenditures caused by declining revenues.

Furlough-Eligible / Must Report Person – Any position that has been identified as furlough eligible, however, due to job necessity, the employee is required to work on a designated furlough day. In this situation, the employee may take a replacement furlough day at an agreed upon later date.

Furlough-Ineligible Positions – Positions with assigned duties which cannot, in the judgment of the City Administrator, take part in furlough days due to public health, safety, and/or workload demands. These positions may change throughout the furlough process.

Furloughed Employee – Any employee who is voluntarily placed in a temporary status without duties and without pay due to a financial need to reduce expenditures caused by declining revenues.

Hourly – An employee who is entitled to be paid for all actual hours that he/she is required or permitted to work at either the straight time regular hourly rate for hours worked up to and including forty (40) in the workweek or overtime hourly rate at one and one-half times the hourly employee’s regular rate of pay for each hour worked in excess of forty (40) in the workweek.

Voluntary Furlough -- A furlough day or days, initiated at the request of an employee in which the employee is in a temporary status without duties and without pay due to a financial need to reduce expenditures caused by declining revenues.

Workweek – A fixed and regularly recurring period of 168 hours during seven consecutive twenty-four hour periods.

2.0 CLASSIFICATION

- 2.1 FLSA-Exempt Employees – All employees, including FLSA-exempt employees, who are identified as furlough-eligible, will be strictly prohibited from working on furlough days. During weeks in which a furlough occurs, FLSA-exempt employees will be converted to hourly status. FLSA-exempt employees will be required to track their hours consistent with the standard hourly tracking practices used in their home department. During the period when FLSA-exempt employees are converted to hourly, they must subscribe to standard working hours and all other rules (e.g., rest periods and meal periods) which are required in their home department. For example, partial day absences due to medical appointments must be requested in advance and deducted from the employee's sick leave accrual balance.

During weeks in which FLSA-exempt employees are converted to an hourly status, care must be taken to ensure that hourly rules are observed. FLSA-exempt employees converted to an hourly status in a week in which a furlough occurs are specifically directed not to work hours in excess of a standard schedule without the specific authorization of their supervisor or manager. FLSA-exempt employees must observe the agreed upon starting and ending times to each work day. Such work includes being physically present in the office, working at home, working online, working on the telephone, "working lunches", working on a blackberry or working on a cell phone. All work in service of the City for which an individual does not receive compensation through the approval process, including overtime, is prohibited. Attendance at off-hour meetings such as public hearings is compensable and must be recorded during furlough-affected weeks. During weeks in which FLSA-exempt employees are converted to hourly status, they may flex their work schedules, on an hour-for-hour basis within the work week, to make up for time worked off-hours (evening meetings, for example).

FLSA-exempt employees who are otherwise furlough-eligible but who submit an "Intent to Retire" form will not be converted to an hourly status during weeks in which a furlough occurs.

- 2.2 Regular Part Time / Hourly– Regular part-time and hourly employees will take the furlough days as scheduled. If a regular part-time or hourly employee is working an alternative workweek which provides for a regularly scheduled day off on a scheduled furlough day, an alternate unpaid furlough day will be scheduled preferably within the same week as the standard furlough day. Regular part-time and hourly employees will not be used to substitute for regular full-time employees who are on furlough days.

3.0 PAY AND BENEFITS

Unless otherwise provided for in an applicable collective bargaining agreement, the following applies:

- 3.1 Adjusted Service Date: An employee's adjusted service date (for leave accrual, seniority, and other purposes) shall not be changed due to unpaid furlough days.
- 3.2 Probationary Periods: Probationary periods are generally six (6) months in length. With the institution of furloughs, probationary periods will continue to be six months. Unless an employee is on more than fifteen (15) furlough days during the probationary period, Furlough days will not be considered as a reason to extend a standard probationary period.
- 3.3 Meal/Rest Periods: There will be no change in meal and rest periods due to furlough days being observed in any work week
- 3.4 Workweek: The definition of "workweek" will consist of seven consecutive 24 hour periods or 168 consecutive hours. The Department Heads will be responsible for administering workweeks affected by the furlough program.
- 3.5 Recordkeeping Requirements: Under the FLSA, the City is required to keep records on employee time. For FLSA overtime-eligible employees, this means that records must be kept for hours worked each day and the total hours worked each workweek. Recordkeeping requirements also apply to FLSA-exempt employees who are identified as furlough-eligible because they are converted to hourly employees in a week in which a furlough day occurs. During such weeks, FLSA-exempt employees will be required to conform to all of the policies normally observed by hourly employees. Attendance at off-hour meetings, such as public hearings, are compensable and must be recorded during furlough affected weeks.
- 3.6 Overtime / Compensatory Time: Those terms and conditions describing overtime and compensatory time contained in collective bargaining agreements, City policy, ordinance, or any other recognized guideline will continue to apply. When FLSA-exempt employees are converted to an hourly status during a week when a furlough occurs, hourly terms and conditions will apply to them. For example, an FLSA-exempt employee who, due to business conditions such as an emergency call out, works more than forty (40) hours in a week while in an hourly status will earn overtime payment or compensatory time.

Compensatory time accrual for FLSA-exempt staff converted to hourly during furlough affected weeks will only be approved in rare and unusual circumstances. Managers must consult with the City Administrator prior to making such approvals.

Unpaid leave (furloughs) will not count as hours worked toward the overtime threshold.

- 3.7 Medical, Dental, Vision Benefits: Medical, dental, vision, EAP and other insurance benefits (with the exception of life and disability insurance which is calculated based on

salary) will be unaffected by the furlough except when an employee is on unpaid status for 30 consecutive days or more.

- 3.8 401(a) and 457 Retirement Plan Contributions: The City's 401(a) defined contribution retirement plan is based on earnings. Furloughs will reduce earnings and therefore reduce the City's and the employee's contribution to the 401(a) plan. Employee participation in other plans such as the 457 deferred compensation plan which are contributed as a percentage of income will also be reduced accordingly.

4.0 ALTERNATIVE WORK ARRANGEMENTS

- 4.1 Alternate Workweeks: Individuals working a compressed workweek (e.g., 9/80 or 4/10 hour workweeks) may take unpaid furlough days. Individuals working an alternative workweek who have a normal day off on a scheduled unpaid furlough day may schedule and observe an alternate unpaid furlough day within that same pay period.

- 4.2 Timekeeping: Each department is responsible for establishing methods to ensure voluntary furlough days are observed by each furlough-eligible employee.

5.0 LEAVE ADMINISTRATION:

- 5.1 Vacation and Leave Accruals: The accrual of vacation and sick leave will not be affected by the 2009 furlough days, unless the employee is in unpaid status for 30 consecutive days or more.

- 5.2 Vacation. Employees may not use their paid vacation benefit on a day they would not normally be paid. Furlough days are not paid.

- 5.3 Vacation Carryover. Failure to use vacation leave beyond the maximum accrual amount results in forfeiture of the vacation leave unless specific "carryover" authorization has been provided by the City Administrator. This authorization will generally be granted in instances where, due to the direct result of the voluntary furlough, vacation use was either denied or, due to the furlough, no opportunity was available to schedule or reschedule before the end of the year. It is the responsibility of employees and managers to plan their vacations and workload during the year in order to avoid maximum vacation accrual issues. Departments have the obligation to ensure that the necessary adjustments to employee schedules are made prior to the end of year.

- 5.4 Family Medical Leave (FMLA). Employees will continue to have 12 weeks of protected Family Medical Leave as allowed under the Family Medical Leave Act (FMLA). Employees will not have a right to be paid on any day for which they would not normally be paid. In other words, employees on FMLA are not entitled to a paid day on a furlough day. Employees on FMLA leave will have the equivalent number of protected days for each furlough day added to the end of the 12 weeks of protected FMLA leave.

Eligibility. A furlough day is considered to be a regular day off and should not be counted when calculating leave eligibility. For example, when calculating whether the employee worked 1,250 hours in the previous 12 month period under FMLA, one would not count any furlough days as earned or hours worked.

- 5.5 Military Leave. The Washington State Legislature changed the number of paid military leave days from 15 to 21 in 2008. Managers and supervisors will continue to grant military leaves in accordance with the law. The annual leave periods are not to exceed 21 work days during each year. Such leaves are made with pay to employees eligible for leave benefits for the purpose of taking part in active duty or military training. Employees are not eligible to be paid for military leave on days when they would not normally be paid. Unless identified as “furlough-ineligible,” employees on military leave are not paid on furlough days. Persons taking military leave will continue to receive 21 paid work days per year to take part in active duty or military training. The requirements to submit a written request for military leave to the employee’s supervisor and attach copies of military documents that order the active duty will continue to be required.
- 5.6 Active Military Duty. USERRA provides that employees on a furlough or a leave of absence are to be given the same rights of employees on other types of leave. In the case of a furlough, active military employees do not have any more rights than other employees to use paid leave accruals while on leave for military service. For employees receiving supplemental military pay, furloughs will impact their regular differential pay. Employees will not receive supplemental pay for furlough days.
- 5.7 Domestic Violence Leave. Effective April 1, 2008, under Washington State law, employees who are victims or who are family members of victims of domestic violence, sexual assault or stalking may take a reasonable period of leave to receive medical treatment, attend legal proceedings or address safety concerns. The employee may elect to use sick leave, other paid time off, compensatory time or unpaid leave time. Managers and supervisors must continue to approve paid or unpaid leave time for domestic violence leave; however, they may not approve the use of paid leave time for those days for which an employee would not normally be paid. Managers and supervisors may not approve the use of paid domestic violence leave for scheduled unpaid furlough days.
- 5.8 Bereavement Leave. Employees are not eligible to be paid for bereavement leave on days when they would not normally be paid. Managers or supervisors will continue to approve bereavement leave within the limitations established. Managers or supervisors may not approve the payment of bereavement days for scheduled unpaid furlough days.
- 5.9 Jury Duty. Employees are not eligible to be paid for jury duty on days when they would not normally be paid. Employees called to jury duty during a furlough day would not be eligible to receive their regular compensation on that day but may be eligible to keep their court provided jury duty pay for that day which would otherwise be returned to the City.

- 5.10 Washington Family Care Act (WFCA). The furloughs should have no impact to WFCA leaves of absence. The WFCA provides that an employee may use paid leave accruals when caring for a qualifying family member with a serious health condition. The WFCA does not overrule a collective bargaining agreement or employer policies regarding the use of paid leaves. As a result, employees are not entitled to paid leave under the WFCA on a furlough day.
- 5.11 Pregnancy, Childbirth or Pregnancy Related Conditions (PCPRC). Furlough days do not impact PCPRC leave. The City will continue to treat female employees on PCPRC in the same manner as other employees on leave for sickness or other temporary disabilities. PCPRC may be taken the day before and the day following an unpaid furlough day but not on the unpaid furlough day.
- 5.12 Sick Leave Use. Employees may not use sick leave for furlough days. Employees may use paid leave benefits only on those days they are normally scheduled to work. Employees are not eligible to be paid for sick leave on days when they would not normally be paid.
- 5.13 Compensatory Time. Employees are not eligible to be paid for compensatory time on days when they would not normally be paid. Compensatory time will not be used in place of designated unpaid furlough days.

FLSA-exempt employees who are permitted to earn compensatory time during a furlough week in which they are designated as hourly must also use compensatory time during a furlough week in which they are designated as hourly. Managers and supervisors must consider very carefully (in advance) whether compensatory time will be approved in lieu of overtime payments. The recommended approach is that all hourly employees work within the forty (40) hour workweek structure and not incur compensatory time or overtime during a designated furlough week. Any furlough-eligible employee incurring unapproved compensatory time or overtime during a designated furlough week will be subject to discipline.

- 5.14 Holiday Pay. The requirement to be in paid status the day before and the day after a holiday in order to be paid for the holiday will be waived in those circumstances where the unpaid day is a furlough day. If an individual is in an unpaid status on a day before or a day following a holiday not caused by a furlough day, the employee will not be paid for the holiday. If a scheduled furlough day falls on a paid holiday, the employee will receive holiday pay for that day.

6.0 RESCISSION OF APPROVED LEAVES. (Not applicable under voluntary furloughs)

7.0 RETIREMENT

In accordance with the provisions of the recently enacted SB 6157, any compensation foregone by a member of the State Retirement System applicable to municipal employees

shall include any compensation foregone by a member during the 2009 to 2011 fiscal biennium as a result of reduced work hours, voluntary leave without pay or temporary furloughs. These rules shall be interpreted in accordance with the state of Washington's DRS rules which are anticipated to be issued on or about July 1, 2009.

8.0 COMMUNICATION.

8.1 New Hires. (not applicable under voluntary furloughs)

9.0 ADDITIONAL.

9.1 Grievance Procedures/Timelines. Grievance procedures typically specify the number of days for each step of a grievance. The number of days are typically specified as "days," "calendar days," or "business days." The terms and conditions of all collective bargaining agreements will be observed unless specifically overridden by a Memorandum of Understanding. Where a collective bargaining agreement specifies "calendar days," furlough days will generally be considered calendar days. Where the collective bargaining agreement specifies "business days," furlough days will be considered business days if the employee is furlough-ineligible and non-business days if the employee is furlough-eligible. Where the collective bargaining agreement specifies "days," the parties will agree on the meaning of the term upon notification of the grievance.

There is no property right to scheduled or substituted furlough days. There is no requirement to hold Loudermill hearings on furloughs for employees who are identified as furlough-eligible.

9.2 Unemployment Compensation. Eligibility is determined by the Washington State Department of Employment Security.

9.3 Emergency Procedure. In those cases where an emergency call out occurs on a furlough day or during a furlough week, employees may be called back to work. Such employees are compensated in accordance with standard compensation procedures and in conformance with the applicable collective bargaining agreement. FLSA-exempt employees may be called back to work on a furlough day. FLSA-exempt employees are compensated on an hourly basis for all time worked within a furlough affected week. FLSA-exempt employees are required to track their time during a furlough affected week consistent with the practices in their department. Overtime pay is paid to such non-represented employees for all hours worked in excess of forty (40) hours within that week including weekend days within the same week. If such employees are represented, they are paid in accordance with their collective bargaining agreements for calculation of overtime.

In the case of an employee being called to work on an unpaid furlough day due to emergency situations, the employee is not required to make up the furlough day at a later date.

10.0 PUBLIC DISCLOSURE ACT.

The term "business day" is not defined under the Public Records Act. When considering whether one should count a furlough day as a business day, one should keep in mind that the act is to be liberally construed. Recognizing that some parts of the city will be open on furlough days, the recommended course of action is to regard all furlough days as business days for public disclosure request purposes.



Subject: Drug & Alcohol Testing Policy

Dept. Origin: Administration

Proposed Council Action:

Prepared by: Rob Karlinsey

Adopt a resolution establishing a Drug & Alcohol Testing Policy for holders of Commercial Drivers Licenses

For Agenda of: June 22, 2009

Exhibits: Resolution & Policy

Initial & Date

Concurred by Mayor:

CLH 6/18/09

Approved by City Administrator:

RSK 6/17/09

Approved as to form by City Atty:

S. SNYDER VIA EMAIL

Approved by Finance Director:

CR

Approved by Department Head:

RSK

Expenditure Required	Amount Budgeted	Appropriation Required
See fiscal consideration below		

INFORMATION / BACKGROUND

A Federal law was implemented that requires mandatory drug and alcohol testing for operators of commercial vehicles (i.e., requiring a Commercial Drivers License to operate).

The attached resolution and accompanying policy complies with federal regulations. Only City employees who are holders of Commercial Drivers Licences (CDLs) in safety-sensitive functions will be subject to this policy. The policy requires and establishes processes for several types of drug & alcohol testing, including pre-employment, reasonable suspicion, random, post accident, among others. The policy also sets forth positive testing limits and processes by which positive tests are handled.

The City of Gig Harbor needs to comply with this law. A major component of this law is random testing. Because of its small number of CDL holders, the City cannot provide random testing on its own and therefore needs to join a random testing pool. The Association of Washington Cities (AWC) has established a consortium of cities to provide a large enough pool in order for the testing to be random. Agreements with AWC to join the consortium as well as with Health Force to conduct the testing will be forthcoming at a future Council meeting.

The attached resolution and accompanying policy will go into effect on August 17, 2009, which should give staff enough time to negotiate and have the testing and consortium contracts in place.

FISCAL CONSIDERATION

The annual cost for joining the AWC Drug & Alcohol Consortium is \$145 plus \$48 per CDL holder. This annual cost includes the random selection administration as well as the costs of the random tests themselves. Non-random tests (pre-employment, and reasonable suspicion tests, for example) cost additional: \$50 for drug tests and \$35 for alcohol tests.

The City employs approximately 13 CDL holders in Public Works, so the annual minimum cost of joining the consortium will be approximately \$769. ($\$148 + (\$48 \times 13)$)

The prorated cost for the remainder of this year will need to be funded through realization of cost savings in the General, Street, and Utility funds. The annual cost for 2009 will need to be budgeted accordingly.

BOARD OR COMMITTEE RECOMMENDATION

The Finance & Safety Committee has reviewed this policy on two occasions, the last of which was on June 15, 2009.

RECOMMENDATION / MOTION

Move to: Adopt a resolution establishing a Drug & Alcohol Testing Policy for holders of Commercial Drivers Licenses

RESOLUTION NO. 796

**A RESOLUTION OF THE CITY OF GIG HARBOR,
WASHINGTON, ADOPTING A DRUG & ALCOHOL
TESTING POLICY FOR CITY EMPLOYEES HOLDING
COMMERCIAL DRIVERS LICENSES.**

WHEREAS, The City of Gig Harbor is dedicated to providing quality, dependable and economical municipal services to the residents of the City of Gig Harbor; and

WHEREAS, Part of the City's mission is to ensure that the services are delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public; and

WHEREAS, In keeping with this mission, the City of Gig Harbor declares that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances or misuse of alcohol in the workplace is prohibited for all employees; and

WHEREAS, the City wishes to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991; and

WHEREAS, said policy should comply with all applicable federal regulations governing workplace anti-drug and alcohol programs in the motor carrier industry. Specifically, the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation has published 49 CFR Part 382, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, which sets standards for the collection and testing of urine and breath specimens; and

WHEREAS, the City wishes to establish a policy that sets forth the City of Gig Harbor alcohol and drug testing program and the testing and reporting requirements as required by those regulations; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY
RESOLVE AS FOLLOWS:

Section 1. The attached Drug and Alcohol Testing Policy for Employees who Operate Commercial Vehicles, shown as Exhibit A hereto, is hereby adopted.

Section 2. This resolution and accompanying Exhibit A shall go into effect on August 17, 2009.

RESOLVED this 22nd day of June, 2009.

CITY OF GIG HARBOR

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

FILED WITH THE CITY CLERK: 06/18/09
PASSED BY THE CITY COUNCIL: 06/22/09
RESOLUTION NO. 796

EXHIBIT A

City of Gig Harbor

**Drug and Alcohol Testing Policy
for Employees who Operate Commercial Vehicles**

I. PURPOSE

The City of Gig Harbor is dedicated to providing quality, dependable and economical municipal services to the residents of the City of Gig Harbor. Part of our mission is to ensure that the services are delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, the City of Gig Harbor declares that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances or misuse of alcohol in the workplace is prohibited for all employees.

Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable federal regulations governing workplace anti-drug and alcohol programs in the motor carrier industry. Specifically, the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation has published 49 CFR Part 382, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, which sets standards for the collection and testing of urine and breath specimens.

This policy sets forth the City of Gig Harbor alcohol and drug testing program and the testing and reporting requirements as required by those regulations.

II. APPLICABILITY

This drug and alcohol testing policy applies to all safety-sensitive employees (full- or part-time) of the City who are required to have and maintain a Commercial Driver's License in order to perform the duties of the job. Contractors performing functions for the City involving the use of a vehicle requiring a Commercial Driver's License, will be subject to specific alcohol and drug testing as required by federal regulations.

III. DEFINITIONS

ACCIDENT - Accident means an occurrence involving a commercial vehicle on a public road which results in (1) a fatality; (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (3) one or more motor vehicles incurring disabling damage requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

DRIVER - This term includes all employees whose positions may involve driving a commercial vehicle and that require the possession of a Commercial Driver's License.

COMMERCIAL VEHICLE - A commercial vehicle is one that either: 1) has a gross vehicle weight of over 26,000 pounds (including combined weight if towed unit weighs over 10,000 pounds); 2) is designed to transport 16 or more persons, including the driver; or 3) is used to transport hazardous materials, as provided under the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.

DRUGS - For the purposes of this policy, in accordance with the applicable federal regulations, "drugs" refers to the following five substances: marijuana (THC), cocaine, opiates, phencyclidine (PCP), and amphetamines.

MEDICAL REVIEW OFFICER (MRO) - The Medical Review Officer is the licensed physician responsible for receiving and interpreting laboratory results from the urine drug tests.

SAFETY SENSITIVE POSITION - For purposes of this policy, these are positions associated with the driving of commercial vehicles.

SUBSTANCE ABUSE PROFESSIONAL (SAP) - A Substance Abuse Professional is a licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders.

IV. EDUCATION AND TRAINING

Every covered employee will receive a copy of this policy and will have the ready access to the corresponding federal regulations including 49 CFR Parts 382 and 40, as amended. In addition, all covered employees will receive educational materials and/or on-site training on the signs and symptoms of drug use and alcohol misuse, including the effects and consequences of drug use and alcohol misuse on personal health

All supervisory personnel or city officials who are in a position to determine employees' fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

V. PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following:

- a. Illegally Used Controlled Substances or Drugs under the Drug-Free Workplace Act of 1988, any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp-related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.

Federal Motor Carrier Safety Administration drug testing regulations (49 CFR Part 382) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section VII of this policy. Illegal use of these five drugs is prohibited at all times, and thus covered employees may be tested for these drugs anytime that they are on duty.

- b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates mental functioning, motor skills, or judgment may be adversely affected must be reported to the designated supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.
- c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food or candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 382 just before, during, or just after the performance of safety-sensitive job functions.

VI. PROHIBITED CONDUCT

The following conduct regarding alcohol and drug use or abuse is prohibited:

- a. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.
- b. Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline.
- c. The City of Gig Harbor shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.
- d. Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.
- e. No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- f. No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- g. Consistent with the Drug-Free Workplace Act of 1988, all City of Gig Harbor employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace including City premises, vehicles, while in uniform, or while on city business.

VII. TESTING REQUIREMENTS

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40, as amended. All covered employees shall be subject to the following testing, as defined below, and as described in the Drug & Alcohol Testing Procedures:

A. Pre-employment Drug Testing

All individuals who are covered by this policy must pass a drug test as a post-offer condition of employment. Additionally, a non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with verified negative results. Applicants are required to report previous DOT-covered employer drug and alcohol test results—Failure to do so will result in the employment offer being rescinded.

B. Reasonable Suspicion Testing

Employees subject to this policy shall submit to a drug and/or alcohol test when the City reasonably suspects that this policy (except the prohibitions against possession, transfer or sale of alcohol) may have been or is presently being violated. A referral for testing will be based on contemporaneous, articulable observations. Such

referrals will be made by supervisory personnel who have received training concerning the signs and symptoms of drug and alcohol use.

Alcohol testing for reasonable suspicion may only be conducted just before, during or after an employee operates a commercial vehicle. If removed from duty based on reasonable suspicion of alcohol use and an alcohol test is not administered within eight hours, the employee will not be allowed to perform or continue to perform covered functions until:

- 1) an alcohol test is administered and the driver's breath alcohol concentration measures less than 0.02; or
- 2) 24 hours have elapsed following the determination that there is reasonable suspicion to believe that the employee has violated this policy concerning the use of alcohol.

C. Post-Accident Testing

Following an accident (as defined above) involving a commercial vehicle, the driver is required to submit to alcohol and drug tests if they are involved in an accident with a commercial vehicle on a public road which results in:

1. A fatality OR
2. The driver receives a citation under state or local law for a moving violation AND
 - a. there is bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene OR
 - b. one or more motor vehicles incurs disabling damage requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

Testing should occur as soon as possible, but may not exceed eight hours after the accident for alcohol testing and 32 hours after the accident for drug testing.

A driver who is subject to post-accident testing must remain readily available for such testing and may not take any action to interfere with testing or the results of testing. Drivers who do not comply with post-accident testing requirements will be considered to have refused to submit to testing and will be subject to sanctions for refusal to test as provided in this policy.

D. Random Testing

Employees covered by this policy will be subject to random, unannounced alcohol and drug testing.

E. Return to Duty Testing

Employees who have violated this policy, including those who have tested positive on a drug or alcohol test, and who under the discipline policy are allowed to return to work, must test negative prior to being released for duty. A return to duty test following alcohol misuse may not exceed an alcohol concentration of 0.02.

F. Follow-up Testing

An employee who is referred for assistance related to alcohol misuse and/or use of drugs is subject to unannounced follow-up testing for a period not to exceed 60 months as directed by a Substance Abuse Professional and the City. The number and frequency of follow-up testing will be determined by the Substance Abuse Professional and the City, but will not be less than six tests in the first 12 months following the employee's return to duty.

G. Split Sample Testing

Employees who test positive for drugs may request a second test of the remaining portion of the split sample within 72 hours of notification of a positive test result by the Medical Review Officer.

H. Retest for Dilute Test Results

Employees who render a dilute test that is positive for drugs will be treated as a verified test positive. Employees who render a dilute test that is negative may be subject to a retest, as specified in the Drug & Alcohol Testing Procedures.

VIII. REFUSAL TO TAKE AN ALCOHOL OR DRUG TEST

No employee shall refuse to submit to an alcohol or drug test as directed under this policy. A refusal to submit shall include, but is not limited to:

- a. Failure to provide adequate breath for testing without a valid medical explanation after the employee has received notice of the requirement for breath testing in accordance with the procedures manual;
- b. Failure to provide adequate urine for drug testing without a valid medical explanation after the employee has received notice of the requirement for urine testing in accordance with the procedures manual;
- c. Engaging in conduct that obstructs the testing process.

Refusal to submit to a test shall be considered the same as a positive test result.

IX. SECURING INFORMATION FROM PREVIOUS EMPLOYERS

If a person is to be hired into a position subject to this policy and during the previous two years has worked as a driver of a commercial vehicle, that person must authorize a request of all employers of the driver within the past two years to release information on the following:

- a. Positive alcohol or drug tests
- b. Refusal to be tested

The City will make a good faith effort to obtain and review the information from prior employers within 30 days of the person performing safety sensitive duties for the first time.

If the information obtained from previous employer indicates either a positive test or that a refusal to be tested occurred within the past two years, that person would not be permitted to drive commercial vehicles unless subsequent information indicates that an evaluation by a Substance Abuse Professional was made and return to duty testing was administered.

X. CONFIDENTIALITY AND RECORD RETENTION

All records related to drug and alcohol testing will be maintained in a secure location with controlled access. These records will be kept separate from records pertaining to all other employees.

XI. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT OR POSITIVE DRUG OR ALCOHOL TESTS

A. Discipline

An employee will be subject to appropriate disciplinary action as specified in the City's personnel policies up to and including termination from employment if:

- a. the employee tests positive for a drug or drugs;
- b. results from an alcohol test indicate a breath alcohol level of 0.02 or greater; and/or,
- c. the employee has engaged in prohibited conduct as outlined in Section V.

All employees regardless of disciplinary action taken will be advised of resources available to the employee in evaluating or resolving problems associated with drug use or alcohol misuse.

The following provisions apply to those employees who are not terminated for their policy violations:

B. Positive Test Result and/or Engaging in Prohibited Conduct.

If an employee tests positive for drugs or has an alcohol test that indicates a breath alcohol level of .04 or greater from a random, reasonable suspicion or post-accident test, or engages in prohibited conduct as outlined in Section V, the employee will be immediately removed from duties requiring the driving of a commercial vehicle. The employee will not be permitted to return to duties involving a CDL unless he/she:

1. has been evaluated by a qualified Substance Abuse Professional; and,
2. if recommended by a Substance Abuse Professional, has properly followed any rehabilitation prescribed; and,
3. has his/her Commercial Driver's License re-activated by the Washington State Department of Licensing; and,
4. has a verified negative result on a return-to-duty alcohol (<0.02) and/or drug test.

Upon completion of a recommended rehabilitation program and successful return to work, an employee will be subject to follow-up random testing for up to sixty (60) months as recommended by the Substance Abuse Professional and the City, with a minimum of six such unscheduled tests within the first twelve months of returning to duty.

C. Alcohol Concentration of 0.02 but less than 0.04

Employees having a breath alcohol concentration of at least 0.02 but less than 0.04, shall be removed from duty requiring the driving of a commercial vehicle for at least 24 hours.

XII. EMPLOYEE ASSISTANCE PROGRAM/VOLUNTARY REFERRAL

The City supports employees who volunteer for treatment of alcohol or drug abuse. Employees are encouraged to seek treatment voluntarily and to utilize the Employee Assistance Program. Any employee who comes forth and notifies the City of alcohol or drug abuse problems will be given the assistance extended to employees with any other illness. Any such program, however, may not interfere with the tests required by these

rules. For example, a driver may not identify himself/herself as unfit to drive after having been notified of a random or reasonable suspicion test and expect to avoid the consequences for a positive test or a refusal to test. In addition, voluntarily seeking assistance does not excuse any failure to comply with all of the provisions of this policy or other policies of the city.

No adverse action will be taken against an employee who voluntarily admits to alcohol misuse or controlled substance misuse within the parameters of these policies, provided, however, that an employee does not use self reporting in order to avoid testing under the provisions of the City's CDL program.

Sick leave, vacation leave or leave of absence without pay may be granted for treatment and rehabilitation as in other illnesses. Insurance coverage for treatment will be provided to the extent of individual coverage. Confidentiality of information will be maintained as much as possible at all times.

Employees will be returned to safety sensitive functions such as driving only upon successful completion of an educational or treatment program, as determined by the City in consultation with a drug and alcohol abuse evaluation specialist (i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor).



Subject: Drug & Alcohol Testing Procedures

Proposed Council Action:

Receive & File Drug & Alcohol Testing Procedures

Dept. Origin: Administration

Prepared by: Rob Karlinsey

For Agenda of: June 22, 2009

Exhibits: Procedures

Initial & Date

Concurred by Mayor:

CLH 6/18/09

Approved by City Administrator:

RAK 6/17/09

Approved as to form by City Atty:

S. SNYDER VIA EMAIL

Approved by Finance Director:

CP

Approved by Department Head:

RAK

Expenditure	Amount	Appropriation
Required \$0	Budgeted N/A	Required N/A

INFORMATION / BACKGROUND

At this same June 22 City Council meeting, the City Council is scheduled to approve a new Drug & Alcohol Testing *policy* for holders of Commercial Drivers Licenses (CDLs). The attached *procedures* implement and are in keeping with the *policy*. The attached *procedures* provide more administrative detail, including location of testing services, testing methodology, etc.

Like the policy, the procedures will go into effect on August 17, 2009.

FISCAL CONSIDERATION

See fiscal consideration for the Drug & Alcohol Testing policy.

BOARD OR COMMITTEE RECOMMENDATION

The Finance & Safety Committee reviewed the attached procedures on June 15, 2009.

RECOMMENDATION / MOTION

Move to: Receive & File

CITY OF GIG HARBOR

**Drug and Alcohol Testing Procedures
for Employees who Operate Commercial Vehicles**

Effective Date: August 17, 2009

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I. INTRODUCTION

A. Requirement to Participate in Drug and Alcohol Testing Program

The City of Gig Harbor is required by U.S. Department of Transportation regulations—49 CFR Part 40—and administrative guidelines under the Federal Motor Carriers Safety Administration—49 CFR Part 382—to administer a testing program for drug and alcohol use for employees who are required to have and maintain a Commercial Driver's License to perform their job duties.

In that endeavor, the City of Gig Harbor is a member of a consortium of public sector employers in Washington State, as allowed under 49 CFR Part 40, entitled the Association of Washington Cities Drug & Alcohol Testing Consortium.

B. Covered Employees

The following groups of employees are required by law to participate in the drug and alcohol testing program:

1. Regular employees who are required to operate a commercial vehicle as part of their routine job duties;
2. Temporary employees who are required to operate a commercial vehicle as part of their routine job duties;
3. Any employee who possesses a Commercial Driver's License who may at any time operate a commercial vehicle on an on-call, emergency or unscheduled bases (including supervisory employees who may be called upon at any time to operate a commercial motor vehicle);
4. Current employees who transfer or promote to a position requiring operation of a commercial vehicle and possession of a Commercial Driver's License;
5. Regular employees who are required to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
6. A pre-employment drug test is required of all persons given a conditional job offer for a position that meets the description outlined above.

C. Designated Employer Representative (DER)

The following individual(s) have been designated by the City to answer questions about the program and program materials and may provide employees with resource materials or referral assistance:

City Administrator	253-851-8136
City Clerk	253-851-8136
Public Works Director	253-851-8136

D. Employee Assistance Program

The City offers an Employee Assistance Program (EAP) designed to assist employees and their families who are experiencing personal or job-related problems. The EAP is available to employees who need assistance in dealing with a substance abuse problem. Employees are encouraged to contact the EAP for assistance in early detection of substance abuse problems and referral for treatment programs. All EAP services are confidential and at no cost to the employee. Employees who would like information on benefits of the Employee Assistance Program should contact either the City Clerk or the Employee Benefits Administrator.

No adverse action will be taken against an employee who voluntarily admits to alcohol misuse or controlled substance misuse within the parameters of these policies, provided, however, that an employee does not use self reporting in order to avoid testing under the provisions of the City's CDL program.

The individual to contact for EAP services is:

APS HealthCare
20126 Ballinger Way NE, #83
Shoreline, WA 98155
1-866-497-2858

E. Testing, Evaluation and Referral Services

The City has joined the Association of Washington Cities (AWC) Drug and Alcohol Testing Consortium for much of the administration of this program. The AWC Consortium has contracted with HealthForce Partners to conduct the random testing services, provide the testing laboratory facilities, arrange the testing collection sites, and provide the Medical Review Officer (MRO) functions. The services of a Substance Abuse Professional (SAP) are also available for employees with positive test results.

Drug and Alcohol Testing Collection Sites:

Prompt Care
The Doctors Clinic
1651 NE Bentley Drive
at SR 303/Wheaton Way
Bremerton, WA 98311
Tel: 360-782-3400

LabCorp
3401 S 19th Street, Suite 220
Tacoma, WA 98405
Tel: 253-383-0104

Note: This location does not perform breath alcohol testing.

Testing Laboratory, as approved by the U.S. Substance Abuse & Mental Health Services Administration (SAMHSA):

LabCorp
1229 Madison Street, Suite 500
Seattle, WA 98104
(206) 386-2661

Medical Review Officer

Dr. Calvin Jones
HealthForce Partners
6720 Fort Dent Way, Suite 150
Tukwila, WA 98188
(206) 242-3651

Substance Abuse Professional

APS HealthCare
20126 Ballinger Way NE, #83
Shoreline, WA 98155
1-866-497-2858

APS HealthCare will refer caller to a Substance Abuse Professional in the local area.

II. TESTING PROCEDURES

A. Pre-Employment Testing

Following a conditional offer of employment, prospective employees will be tested for the presence of drugs as part of the pre-employment physical examination and functional assessment tests. The City of Gig Harbor may not be required (but still has the option) to administer a pre-employment controlled substances test if:

1. The driver has participated in a controlled substances program that meets the requirements of 49 CFR Part 382 within the last 30 days; and
2. While participating in that program, the driver either:
 - a. Was tested for controlled substances within the past 6 months (from the date of application with the employer), or
 - b. Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and
3. The employer ensures that no prior employer of the driver has records of violation of this or any other US DOT agency rule within the previous 6 months.

The City of Gig Harbor will be required to obtain the name and address of the prior employer's program; verify that the driver participated in the program and that the program conformed to 49 CFR Part 40; verify the date the driver was last tested for drugs and that the driver has not refused to test for drugs.

Current employees who are transferring from a position that does not require a Commercial Driver's License to a position that does require one, will be tested for the presence of drugs prior to performing duties that require driving or operating a commercial vehicle.

A positive drug test result for an employment candidate will result in rescinding the conditional offer of employment by the City of Gig Harbor. The individual will only be eligible to re-apply for a position covered by these procedures after six months. A positive drug test result for an employee seeking to transfer to a position requiring the driving of a commercial vehicle will result in denial of the transfer, and the employee will be subject to discipline as described in the City's personnel policies.

B. Random Testing

The names and social security numbers (or de-identified number) for employees covered by these procedures at the City have been included in the AWC Drug and Alcohol Testing Consortium pool. This pool contains all eligible individuals from all of the consortium members. The pool database is managed by HealthForce Partners and is updated monthly as changes in personnel occur.

The annual random testing rate required under federal regulations is 50% of the pool for drug testing and 10% of the pool for alcohol testing. This means that if the pool contains 1,000 members, there will be at least 500 random drug tests and at least 100 random alcohol tests conducted throughout the year.

HealthForce Partners uses a software program called HEIDI to randomly select individuals for random testing on a monthly basis. Some individuals will be selected for drug testing and others will be selected for both drug and alcohol testing.

Each month, HealthForce Partners will send the names of individuals selected for random testing to the appropriate consortium member contacts. If City of Gig Harbor has any employees selected for testing, the names will be sent to the Designated Employer Representative.

Employees selected for random testing will be scheduled for a test by the Designated Employer Representative at some time during the month that the name was selected. Employees selected for alcohol testing may only be tested just before, during or after driving a commercial vehicle. Employees will not be notified until just prior to the testing.

Upon notification of selection for random testing, the employee will receive an *Employee Notification of Scheduled Drug and/or Alcohol Test* letter from the Designated Employer Representative. The employee will be asked to sign this letter and a *Testing Consent* form. The employee must present the *Employee Notification of Scheduled Drug and/or Alcohol Test* letter at the collection site along with picture identification at the time of testing. A copy of all of the forms will be retained by the City.

After notification, the employee must proceed directly to the collection site for testing and may be accompanied by a supervisor or other designee.

The collection and testing procedures are outlined in Attachment B.

If an employee scheduled for an alcohol test receives a confirmed test result with a breath alcohol level of 0.02 or above and is unaccompanied at the collection site, a supervisor will be called to the site to transport the employee.

Refusing to submit to a test will be considered the same as a positive test result and will subject the employee to the same consequences as receiving a positive test result.

C. Reasonable Suspicion Testing

According to the federal regulations, reasonable suspicion testing is to be based on "specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee." Only supervisors who have been trained in detecting the symptoms of alcohol misuse or drug use and who have directly observed behaviors, appearance or physical symptoms can subject an employee to reasonable suspicion testing. Supervisors should complete an *Impaired Behavior Incident Report Form* and, if possible, have the form signed by a witness.

If a supervisor has reasonable suspicion to believe that an employee who is on duty, about to go on duty, or just completed duty is under any influence of drugs or alcohol, the supervisor will remove the employee from duty immediately. The employee will be advised of the reasons for reasonable suspicion and will be transported to the collection site by the supervisor for testing.

Reasonable suspicion alcohol testing may only occur just before, during or after an employee drives a commercial vehicle. If a reasonable suspicion alcohol test is not conducted within two hours of determination that it is necessary, the supervisor will prepare and maintain documentation of the reasons why it did not occur.

D. Post-Accident Testing

All employees covered by these procedures will be subject to post-accident testing if they are involved in an accident with a commercial vehicle on a public road which results in:

1. A fatality OR
2. The driver receives a citation under state or local law for a moving violation AND
 - a. there is bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene OR
 - b. one or more motor vehicles incurs disabling damage requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

After an accident, employees are responsible for contacting the immediate supervisor or other management personnel. If the above conditions are met, the employee must make himself or herself available for post-accident testing as soon as possible. Post-accident testing for alcohol should occur within two hours if possible, but may not exceed eight hours. Testing for drugs should occur within 32 hours.

Employees subject to post-accident testing are prohibited from consuming alcohol for eight hours following the accident, or until the employee has completed the alcohol test, whichever comes first. An employee who does not comply with the post-accident testing will be considered to have refused testing and will be subject to disciplinary action. An employee in a post-accident situation should cooperate with law enforcement personnel investigating the scene.

Supervisors are responsible for determining if the accident qualifies the driver for post-accident testing and should escort the employee to the collection site if possible. If an employee is unable to provide consent to testing due to their medical condition, the supervisor will document the reasons why the employee was not tested. If testing is not completed within the required time following an accident, the supervisor will document in writing why the tests were not administered.

E. Return to Duty and Follow-Up Testing

All employees who have engaged in prohibited conduct as defined in the **Drug and Alcohol Testing Policy for Employees who Operate Commercial Vehicles**, including those who have tested positive for drugs or alcohol, are subject to return to duty and may be subject to follow-up testing.

1. Return to Duty Testing

After engaging in prohibited conduct regarding alcohol or drug use, an employee is required to undergo a return-to-duty alcohol and/or drug test prior to returning to a duty which requires driving a commercial vehicle. A return to duty alcohol test must result in a breath alcohol concentration of 0.02 or less. A return to duty drug test must result in a verified negative result.

2. Follow Up Testing

An employee who returns to work after evaluation by a Substance Abuse Professional (SAP) determining that the employee is in need of assistance in resolving problems associated with alcohol misuse or drug abuse is subject to unannounced follow up alcohol and/or drug testing as directed by the SAP and the City, but no less frequent than six times in the first year following the return to work. The follow up testing period may not exceed 60 months for each incident.

F. After Hours Testing

If the need for testing occurs outside of the normal hours of operation of the designated collection site, a supervisor or manager will be responsible for following the procedures established by HealthForce Partners for such occurrences.

III. TESTING COSTS AND COMPENSATION

A. Testing Costs

1. The City will pay for the following alcohol and or initial drug tests:
 - a. Random testing
 - b. Reasonable suspicion testing
 - c. Post-accident testing
 - d. Pre-employment

2. Employees are responsible for the costs associated with the following tests:
 - a. Follow-up testing
 - b. Return to duty testing
 - c. Split sample re-tests made at the employee's request

If a split sample re-test returns a negative result, the City will reimburse the employee for the cost of the test.

3. Substance Abuse Professional and rehabilitation costs will be the responsibility of the employee.

B. Pay Status

1. For Time Spent Testing
Employees will be compensated for time spent to report to the testing facility and be tested for the following alcohol and/or initial drug tests:
 - a. Random testing
 - b. Reasonable suspicion testing
 - c. Post-accident testing
 - d. Return to duty testing
 - e. Follow-up testing

Employees are responsible for taking the following tests on their own time:

- a. Split-sample re-tests made at the employee's request
2. Waiting for Results
Employees who have been asked to submit to a reasonable suspicion drug test will be placed on paid leave pending the outcome of the test results.

Such employees are eligible to use accrued vacation or sick leave during this time.

3. Alcohol Concentration of 0.02 but less than 0.04
If an employee receives an alcohol test result of at least 0.02 but less than 0.04, the employee must be removed from duty which requires driving a commercial motor vehicle for at least 24 hours following the administration of the test. The employee may use accrued vacation or sick leave during this absence.
4. Positive Drug Test or Alcohol Test Result of 0.04 or Higher
An employee who receives a positive drug test or who tests 0.04 or greater on an alcohol test is not allowed to return to work until all of the applicable requirements are met as outlined in the Policy (see Consequences of Engaging in Prohibited Conduct and Positive Drug or Alcohol Test). Such employees may use accrued vacation or sick leave during this absence.

IV. TESTING METHODS

A. Drug Testing

The drug testing requires candidates to provide a urine specimen of at least 45 ml to be tested for the presence of amphetamines, cocaine, marijuana (THC), opiates, and phencyclidine (PCP). The specimen will be sent to LabCorp, a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMSHA) to conduct screening and confirmation tests according to the protocols identified in the Department of Transportation Rules. All test results will be reviewed by the Medical Review Officer (MRO). Specific collection procedures and analytical procedures are covered in Attachment B.

B. Alcohol Testing

Alcohol testing will be conducted using an approved evidential breath testing (EBT) device operated by a trained breath alcohol technician (BAT) at the collection site. The first test performed will be a screening test. If the screening test results in an alcohol concentration of less than 0.02, it will be considered a negative test. If the screening test results in an alcohol concentration of 0.02 or greater, a second, or confirmation test is performed within 15 to 20 minutes. Specific alcohol testing procedures are covered in Attachment B.

V. TRAINING AND EDUCATION

The City will provide all affected employees with copies of these procedures and the Drug and Alcohol Testing Policy for Employees who Operate Commercial Vehicles and other

information as may be required by the federal regulations. Each driver must sign a receipt upon having been provided the above referenced information.

Managers and supervisors designated to determine whether reasonable suspicion exists to require a driver to undergo alcohol or drug testing will receive at least 60 minutes of training on alcohol and 60 additional minutes of training on drug abuse. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.



Business of the City Council
City of Gig Harbor, WA

Subject: SR 16/Burnham Drive Interchange Improvements Project Temporary Construction Easement.

Proposed Council Action: Authorize the Mayor to execute the Temporary Construction Easement with Pierce County Parks and Recreation.

Dept. Origin: Public Works
Prepared by: Marcos McGraw, Project Engineer
For Agenda of: June 22, 2009
Exhibits: Exhibit A—Temporary Construction Easement, Exhibit B—Temporary Construction Easement Drawing, Exhibit C—TESC Plans

Concurred by Mayor: [Signature]
Approved by City Administrator: [Signature]
Approved as to form by City Atty: Approved 5/6/09
Approved by Finance Director: [Signature]
Approved by Department Head: [Signature] 6/16/09

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and dollar amounts (\$0).

INFORMATION/BACKGROUND

A component of the next phase of the mitigation improvements of the SR16/Burnham Drive Interchange consists of storm culvert work that is located on a portion of private property owned by Pierce County Parks & Recreation. The temporary construction easement will authorize the City to perform this work.

FISCAL CONSIDERATION

No funds will be expended in conjunction with execution of this agreement.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Move to: Authorize the Mayor to execute the Temporary Construction Easement with Pierce County Parks and Recreation.

TEMPORARY CONSTRUCTION EASEMENT

THIS AGREEMENT is made by and between Pierce County Parks and Recreation, a municipal corporation and political subdivision of the State of Washington, hereinafter referred to as **Grantor**, and the Grantee City of Gig Harbor, a municipal corporation of the State of Washington, hereinafter referred to as **Grantee**.

RECITALS

WHEREAS, the Grantor owns real property commonly known with an approximate address of 10892 Burnham Drive and Tax Parcel Number _0122361010 (hereinafter referred to as the "Property"); and

WHEREAS, the Grantor has agreed to grant a Temporary Construction Easement to the Grantee, which easement is legally described in **Exhibit "A,"** attached hereto and incorporated by this reference (hereinafter referred to as the "Temporary Construction Easement"), for construction purposes associated with the Grantee's Burnham Drive, Borgen Blvd and SR-16 Mitigation Improvements Phase 2 Project (Grantee Project Number CSP 0823); and

WHEREAS, the Grantee requires the Temporary Construction Easement over the Property in order to construct a temporary creek diversion structure on the property as shown on **Exhibit "B"**, attached hereto and incorporated by this reference. The creek will be temporarily diverted while a contractor removes an existing 48 inch culvert from the stream channel to 'daylight' McCormick Creek in this vicinity;

NOW, THEREFORE, in consideration of mutual benefits and in further consideration of the general public welfare, and of the peculiar and special benefits and advantages that accrue therefrom, receipt of which is acknowledged, the Grantee and Grantor agree as follows:

AGREEMENT

Section 1. Temporary Construction Easement. The Grantor hereby grants to the Grantee, its employees and agents and assignable easement for the purpose necessarily and reasonably related to the construction of a temporary creek diversion structure on the property associated with the Grantee's Burnham Drive, Borgen Blvd and SR-16 Mitigation Improvements Phase 2 Project (the "Improvements"), along, in, upon, under and over the Grantor's Property as the easement is legally described in **Exhibit "A"** and as depicted on **Exhibit "B"**.

Section 2. Conditions. The Temporary Construction Easement is subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

A. The Grantee shall bear all costs and expenses associated with the construction, improvement, maintenance, repair and operation of the Improvements.

B. The Grantor shall not use any portion of the areas within the Temporary Construction Easement for any purpose inconsistent with the Grantee's construction of the Improvements during the term of this Agreement. The Grantor shall not construct any structures or plant any landscaping on or over the Temporary Construction Easement during the term of this Agreement.

C. The Grantee shall have all necessary access to the Temporary Construction Easement without prior notification to the Grantor.

D. The Grantee shall, upon completion of any work within the Temporary Construction Easement, restore the surface of the easement and any private improvements disturbed or destroyed by the Grantee during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the Grantee.

Section 3. Duration. This Temporary Construction Easement shall commence on the date the Grantee City Council awards the construction project, and shall terminate on the date the Improvements are accepted by the Grantee, but not later than December, 2009, unless extended upon the mutual agreement of the parties.

Section 4. Approval of Plans. Prior to any installation or construction related to the new temporary diversion structure, as indicated on the TESC Plans for the SR 16/Burnham Drive NW Interchange Improvements in **Exhibit "C"**, or any other substantial activity by Grantee on Grantor's property, a notification of and plans for the same shall be submitted in writing to Grantor by Grantee and no such work by Grantee shall be commenced without Grantor's prior written approval of the plans therefore, which approval shall not be unreasonably withheld: PROVIDED, HOWEVER, that in the event of an emergency requiring immediate action by Grantee for the protection of its facilities or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances. Any changes or revisions in the plans approved by Grantor shall also be subject to Grantor's prior approval. Nothing in this agreement shall be deemed to impose any duty or obligation on Grantor to determine the adequacy or sufficiency of Grantee's plans and designs, or to ascertain whether Grantee's construction or maintenance is in conformance with the plans and specifications approved by the Grantor.

Section 5. Work Standards. All work to be performed by Grantee on Grantors' Property shall be completed in a careful and workmanlike manner. Upon completion of the installation and subsequent removal of the new temporary diversion structure on Grantors' Property, Grantee shall promptly remove all construction equipment, debris and restore the surface of the Property as nearly as possible to the condition in which it was at the commencement of such work, and shall replace any survey monuments, and fences or gates that were taken down.

Section 6. No Soil Warranty. Grantor makes no representations or warranties that the soils of the real property subject to this easement are suitable for installing or constructing the new temporary diversion structure. Grantee shall rely solely upon its own soils investigations, including geo-technical, hydrological and soil stability analysis.

Section 7. Soil and Water Quality. Grantee shall be solely responsible and liable for all violations of water pollution and control regulations, soil and groundwater contamination, and other environmental regulations, arising out of or in any way relating to Grantee's use of the property during the term of this temporary easement. Grantee shall be solely liable for all fines or civil penalties, and any costs of remediation for water pollution, soil and groundwater contamination, or any other environmental contamination, if any, and shall wholly indemnify and hold harmless Grantor.

Section 8. Indemnification and Hold Harmless. The Grantee agrees to defend, indemnify and save harmless the Grantor, their appointed and elected officers, employees and agents from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the Grantor, their elected or appointed officials, employees and agents for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to Property including loss of use thereof, arising out of the granting of this easement or the exercise of the rights granted to the Grantee, whether such injury to persons or injury to Property is due to the negligence of Grantor, its appointed or elected officers, or its employees or agents, Grantees, its employees or agents, except only such injury or damage as shall have been occasioned by the sole negligence of the Grantor, its appointed or elected officials or employees or agents.

If the claim, suit, or action for injuries, death or damages as provided for in the preceding paragraph is caused by or results from the concurrent negligence of (a) the Grantor or the Grantors' agents or employees, and (b) the Grantee or Grantee's agents or employees, the indemnity provisions provided for in the preceding paragraph shall be valid and enforceable only to the extent of the Grantee's negligence.

Section 9. Notice. Any notice provided for or concerning this agreement shall be in writing and shall be deemed given when sent by certified or registered mail if sent to the respective address of each party as set forth below.

To Grantor: Kathryn Kravit-Smith, Director
Pierce County Parks and Recreation
9112 Lakewood, Dr. SW, Suite 121
Tacoma, WA 98499

To Grantee: Charles Hunter, Mayor
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Section 10. Jurisdiction/Venue. This Agreement shall be construed in accordance with the laws of the State of Washington and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 11. No Waiver. The failure of either Grantor or Grantee to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section 12. Severability. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision. In the event that any other portion of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

Section 13. Entire Agreement. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Agreement, which contains the entire understanding of the parties on the subject.

Section 14. Authorization to Sign. The parties hereto each represent and warrant that all necessary signatures and consents to enter this agreement/easement and to assume and perform the obligations hereunder have been duly and properly obtained.

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

PROPERTY OWNER:

PIERCE COUNTY PARKS AND RECREATION

By: _____
Kathryn Kravit-Smith

Its Director

ACCEPTANCE:

CITY OF GIG HARBOR

By: _____
Charles L. Hunter

Its Mayor

Attest:

Approved as to form

By: _____
City Clerk

Approved as to form:

By: _____
Deputy Prosecuting Attorney

By: _____
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

DATED: _____

Printed: _____
Notary Public in and for Washington
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

DATED: _____

Printed: _____
Notary Public in and for Washington
My appointment expires: _____

**EXHIBIT A
TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION**

A 50.00 foot by 50.00 foot Easement beginning at the Northeast property corner of parcel number 0122361010 abutting the Westerly Right-Of-Way line of Burnham Drive NW and described as the 'POINT OF BEGINNING', thence N87°40'56"W a distance of 50.00 feet, thence S07°27'14"W a distance of 50.00 feet, thence S87°40'46"E a distance of 50.00 feet, thence N07°27'14"E a distance of 50.00 feet and returning to the 'POINT OF BEGINNING'.

**EXHIBIT B
TEMPORARY CONSTRUCTION EASEMENT DRAWING**

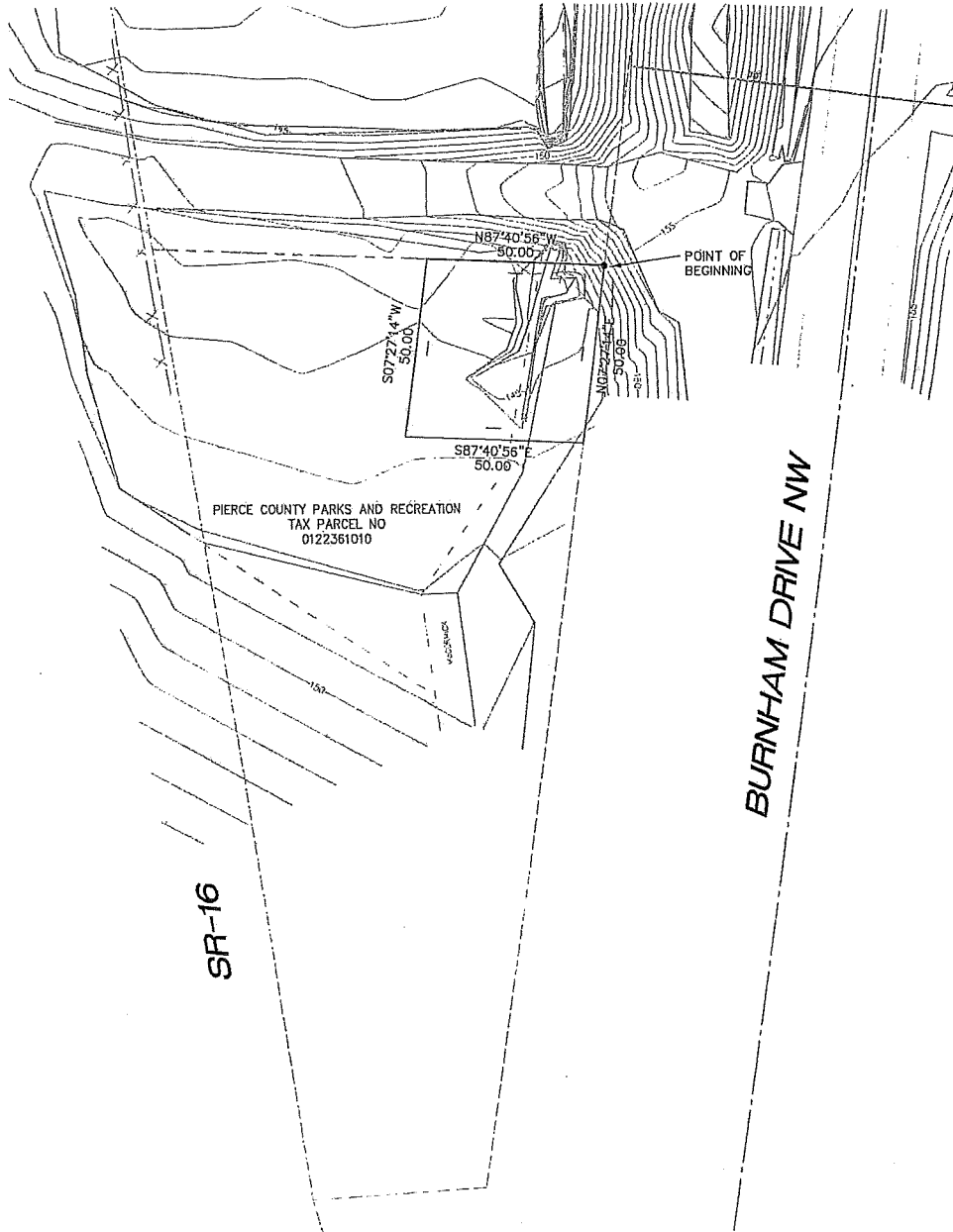
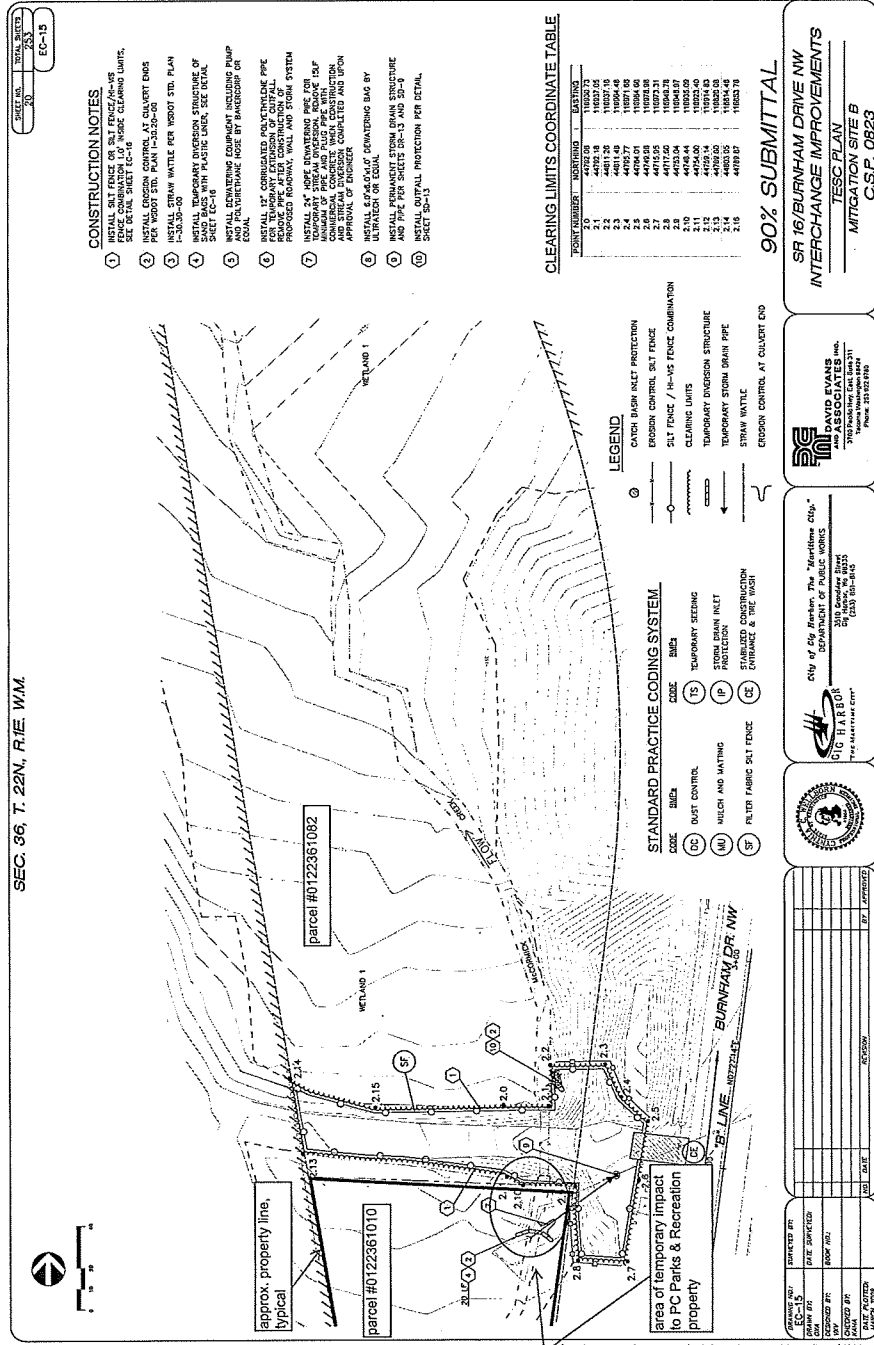


EXHIBIT C
TESC PLANS FOR THE SR 16/BURNHAM DRIVE NW INTERCHANGE IMPROVEMENTS





Subject: Wastewater Treatment Plant Improvement Project Surveying Services

Proposed Council Action: Approve and execute the Consultant Services Contract with PriZm Surveying, Inc. for the not-to-exceed amount of \$5,580.00.

Dept. Origin: Public Works/Engineering

Prepared by: Stephen Misiurak, P.E.
City Engineer

For Agenda of: June 22, 2009

Exhibits: Consultant Services Contract

Initial & Date

Concurred by Mayor: *CLH 6/18/09*
Approved by City Administrator: *POK 6/17/09*
Approved as to form by City Atty: *approved via email 6/9/09*
Approved by Finance Director: *DR 6/09*
Approved by Department Head: *DR 6/17/09*

Expenditure	Amount	Appropriation
Required \$5,580.00	Budgeted \$15,000,000	Required \$0

INFORMATION / BACKGROUND

The City of Gig Harbor requires surveying services during construction for Phase 1 of this construction project. These services will be provided at the request of the City to verify the correct baseline elevations of the new buildings, and structures are being achieved at the time of foundation layout.

FISCAL CONSIDERATION

Sufficient funds are available within this project to fund this necessary work.

BOARD OR COMMITTEE RECOMMENDATION

None

RECOMMENDATION / MOTION

Move to: Execute this Consultant Services Contract with PriZm Surveying, Inc., in the amount not to exceed Five Thousand Five Hundred and Eighty Dollars and No Cents (\$5,580.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
PRIZM SURVEYING, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and PriZm Surveying, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the construction and surveying work of the Phase 1 Wastewater Treatment Plant Improvement Project and desires that the Consultant perform services necessary to provide the following consultation services; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work including any addenda thereto as of the effective date of this Agreement, all of which are attached hereto as **Exhibit A – Scope of Work and Estimated Hours and Fees**, and are incorporated by this reference as if fully set forth herein;

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

TERMS

1. Retention of Consultant - Scope of Work. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Five Thousand Five Hundred Eighty Dollars and Zero Cents (\$5,580.00) for the services described in Section 1 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. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours and Fees**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**, unless the parties agree to a modification of this Contract, pursuant to Section 18 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.

3. 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 subconsultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or subconsultant 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 subconsultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants 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.

4. 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 October 6, 2010; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. Termination. The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. Non-Discrimination. The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman,

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because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. Indemnification.

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

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

8. 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, subconsultants or subcontractors.

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

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

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

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

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

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

9. 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.

10. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

11. 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.

12. Records. The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

13. 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 subconsultants 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.

14. 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.

15. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations shall also decide all

questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Public Works Director 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 prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

16. Written Notice. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

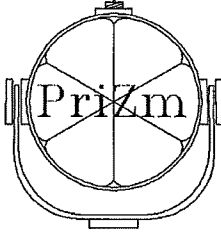
CONSULTANT:
PriZm Surveying, Inc.
ATTN: Gary D. Letzring, PLS
PO Box 110700
Tacoma, WA 98411
(253) 404-0983 FAX (253) 404-0984

City of Gig Harbor
ATTN: Stephen Misiurak, P.E.
City Engineer
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

17. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. Any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

18. Entire Agreement. This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 20____.



**PRIZM
SURVEYING INC.**

P.O. Box 110700
Tacoma, WA 98411
Office: 253-404-0983
Fax: 253-404-0984
ablaisdell@prizmsurveying.com
gletzring@prizmsurveying.com
prizmsurveying.com

Mr. Steve Misiurak P.E.
City Engineer
City of Gig Harbor

June 8, 2009

Re: City of Gig Harbor Wastewater Treatment Plant Project - WWTP Phase 1 Improvements
PROJECT #CSSP-0702

Dear Mr. Misiurak,

PriZm Surveying is pleased to provide you with this proposal for on-call surveying services on the above referenced project.

Task 1 – Wastewater Treatment Plat On-Call Survey Services:

- Horizontal and vertical control for the project duration. Consists of a control network that will be used throughout the construction process and will employ both conventional and GPS procedures. Site control & benchmarks will be maintained throughout the project.
- Field identify (As-Built) specific improvements as directed.
- Reduce and provide copies of actual field notes or other media with the as-built information.

The estimated cost for Task 1 services is \$5,280.00

Prizm has tried to include all items pertinent and discussed for this project, but if additional services are necessary, our current rates below will apply.

This proposal is based on an estimated 12 field visits with an approximate time of 2 hours per visit.

Prizm carries errors and omission (\$1,000,000) and liability insurance (\$1,000,000). If additional insurance is required, the premiums will be in addition to the above price. Should you desire to be named primary additionally insured please add \$300.00 to the above price.

Any part of this proposal is negotiable pending your particular survey requirements. Should you desire additional services beyond the scope above our regular hourly rates are as follows:

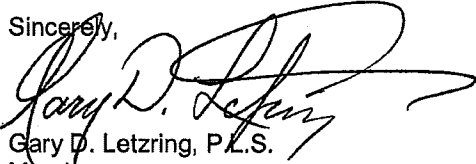
- 2-man survey crew \$130 an hour
- GPS survey crew \$145 an hour
- Licensed Land Surveyor \$95 an hour
- Survey Technician \$85 an hour
- Administration \$60 an hour

Each visit is estimated as:

2 hours of a 2-man survey crew	= \$260
½ hour travel time	= \$65
1 hour Survey Technician	= \$85
½ hour Administration	= \$30
Total per trip =	= \$440 x 12 = \$5,280.00
Additionally insured	+ \$300
Total estimated	\$5,580.00

We look forward to working with you, and if you have any questions or comments regarding this proposal, please call me at (253) 404-0983.

Sincerely,



Gary D. Letzring, P.L.S.

Member:

Land Surveyor's Association of Washington,
National Society of Professional Land Surveyors,
American Congress on Surveying and Mapping



Subject: Wastewater Treatment Plant SCADA System - On-Call Professional Services/ Advanced Industrial Automation

Proposed Council Action: Authorize the Mayor to execute a Consultant Services Contract with AIA for an amount not to exceed \$29,000.00.

Dept. Origin: Public Works/Engineering

Prepared by: Stephen Misiurak, PE
City Engineer

For Agenda of: June 22, 2009

Exhibits: Consultant Services Contract

	Initial & Date
Concurred by Mayor:	<u>CLH 6/18</u>
Approved by City Administrator:	<u>RJK 6/17</u>
Approved as to form by City Atty:	<u>approved via email 6/18/09</u>
Approved by Finance Director:	<u>DF</u>
Approved by Department Head:	<u>DF 6/17/09</u>

Expenditure	Amount	Appropriation
Required \$29,000.00	Budgeted \$ <u>29,000</u>	Required

INFORMATION / BACKGROUND

For cost savings purposes, the City Engineer had recommended we close the open On-Call Contract with AIA in February 2009. Since then, AIA has had continuous work to finish and maintain on the SCADA system project at the WWTP, so we are proposing a new On-Call Services Contract for the amount above and on the attached scope of work. This is for on-going SCADA system work not necessarily connected to the WWTP Phase 1 Improvement project.

FISCAL CONSIDERATION

There is \$29,000.00 in the maintenance and operations-collection fund in the Sewer Operating Fund under professional services (402-21-535-52-41-00).

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION / MOTION

Move to: Authorize the execution of the On-Call Professional Services Consultant Services Contract with AIA Corporation for the SCADA system at the WWTP in the amount up to and not exceeding \$29,000.00.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ADVANCED INDUSTRIAL AUTOMATION CORPORATION**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Advanced Industrial Automation Corporation, a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in On-Call Professional Services of the SCADA system at the WWTP and desires that the Consultant perform services necessary to provide the following consultation services; and

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

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

TERMS

1. **Retention of Consultant - Scope of Work.** The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. **Payment.**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Twenty Nine Thousand Dollars and No Cents (\$29,000.00) for the services described in Section 1 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. The Consultant's staff and billing rates shall be as described in **Exhibit A – Scope of Work**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**, unless the parties agree to a modification of this Contract, pursuant to Section 18 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.

3. 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 subconsultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or subconsultant 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 subconsultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants 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.

4. 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 December 31, 2009; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. Termination. The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. Non-Discrimination. The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The

Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. Indemnification.

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

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

8. 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, subconsultants or subcontractors.

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

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

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

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

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

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

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

9. 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.

10. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

11. **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.

12. **Records.** The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

13. **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 subconsultants 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.

14. **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.

15. **Resolution of Disputes and Governing Law.**

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

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Public Works Director 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

{ASB714519.DOC;1/00008.900000}

prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

16. Written Notice. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.


CONSULTANT:	City of Gig Harbor
Advanced Industrial Automation Corporation	Attention: Steve Misiurak, P.E.
Attention: Jon Mathison	City Engineer
6855 176 th Avenue NE, Suite 235	3510 Grandview Street
Redmond, WA 98052-5243	Gig Harbor, WA 98335
(425) 836-3386 FAX (425) 642-8282	(253) 851-6170
jon@advancedia.com	

17. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. Any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

18. Entire Agreement. This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 20_____.

CONSULTANT

By: 
Its: President

CITY OF GIG HARBOR

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A—Scope of Work

Consent Agenda - 12

Estimate

Advanced Industrial Automation Corp

6855 176th Avenue NE

Suite 235

Redmond WA 98052-5243

Date	Estimate #
6/1/2009	121

Name / Address
Darrell Winans - City of Gig Harbor Waste Water Treatment Plant Supervisor Public Works Department 3510 Grandview Street Gig Harbor, WA 98335

Project			
On Call Professional Services T&M			
Description	Qty	Cost	Total
Provide on-call SCADA control and electrical engineering services to the City of Gig Harbor as requested by the city. The SCADA and electrical engineering services are as summarized below.			
Electrical Engineering	100	115.00	11,500.00T
Provide Integration services.	100	105.00	10,500.00T
AutoCAD drafting services	50	85.00	4,250.00T
Mileage allowance per IRS standard rate.	990.91	0.55	545.00
SCOPE OF WORK			
Background: City of Gig Harbor On-call Engineering Services			
Communication, instrumentation, control, and low voltage electrical is critical to the Gig Harbor waste water collection and treatment systems. The existing SCADA (Supervisory Control and Data Acquisition) System and Siemens controllers need to be supported 24/7. Proposed Consultant has extensive experience with SCADA system, instrumentation, communications, and Siemens PLC. Using the consultant for this task will be cost effective solution in supporting city operations.			
Task 1 -Provide engineering support for Gig Harbor communications, instrumentation, control, and low voltage systems. AIA will provide engineering support and maintenance recommendations of the Gig Harbor existing SCADA System. This task will include the following:			
Twenty-four hour, seven days per week on-site maintenance and engineering support for the computer system equipment. This			
Client Signature _____		Total	
Date			

Phone #	Fax #	E-mail	Web Site
425-836-3386	425-642-8282	jon@advancia.com	www.advancia.com

Estimate

Advanced Industrial Automation Corp

6855 176th Avenue NE
 Suite 235
 Redmond WA 98052-5243

Date	Estimate #
6/1/2009	121

Name / Address
Darrell Winans - City of Gig Harbor Waste Water Treatment Plant Supervisor Public Works Department 3510 Grandview Street Gig Harbor, WA 98335

Project			
On Call Professional Services T&M			
Description	Qty	Cost	Total
includes the PLC, workstations, monitors, bulk storage devices, instrumentation, communication devices, and peripheral equipment. · Field change orders and/or updates recommended by the manufacturer shall be installed · Upgrades, modifications and enhancements. · Support for Siemens programmable logic controllers in Gig Harbor control area · On site operator training as needed · Key assumptions: Cost estimate assumes one-day trip to the Gig Harbor facility every two weeks to perform necessary update and troubleshooting tasks, including emergency calls for the duration of the contract. · Deliverables: Reliable secure 24/7 operations of SCADA system at Gig Harbor Control Area. Emergency services as required. Plans and specifications to update and upgrade the systems in a manner consistent with city requirements. · Schedule: 1 year. Emergency services as needed. Gig Harbor Sales Tax rate		8.40%	2,205.00

Client Signature _____ Date _____	Total \$29,000.00
--------------------------------------	--------------------------

Phone #	Fax #	E-mail	Web Site
425-836-3386	425-642-8282	jon@advancedia.com	www.advancedia.com



Business of the City Council
City of Gig Harbor, WA

Subject: Cushman Trail Phase 1
Improvements – State Interlocal Agreement.

Proposed Council Action: Authorize the
Mayor to execute an agreement with
Washington State Department of
Transportation (WSDOT) for the State to fund
design and construction of bicycle and
pedestrian improvements along an existing
gap in the Cushman Trail.

Dept. Origin: Public Works
Prepared by: Marcos McGraw
For Agenda of: June 22, 2009
Exhibits: Agreement GCA5564

Initial & Date
Concurred by Mayor: [Signature] 6/18/09
Approved by City Administrator: [Signature] 6/18/09
Approved as to form by City Atty: (email - 4/30/09)
Approved by Finance Director: [Signature] 6/18/09
Approved by Department Head: [Signature] 6/18/09

Table with 6 columns: Expenditure Required, Amount Budgeted, Appropriation Required, STATE FUNDED, Amount Budgeted, STATE FUNDED. Values: \$140,369.00, \$0, \$140,369.00.

INFORMATION/BACKGROUND

There is no clear direction to users of the Cushman Trail about the expected route from the Hollycroft Street trailhead to where the trail continues on the west side of Soundview Drive. This interlocal agreement between WSDOT and the City will provide funding for the City to design and construct improvements along this existing gap in the Cushman Trail. These improvements will include pavement markings to accommodate bike lanes, crosswalk markings and widen the sidewalk along the east side of Soundview Drive. The scope of this work will also include 'way-finding' signs, 'monument' signs and mile markings along the trail between Reid Road and Kimball Drive. Please see the attached exhibit depicting the improvements.

FISCAL CONSIDERATION

The Current adopted City budget does not provide funding for this project. However, all costs related to the described improvements will be paid by funding from WSDOT to the City on a reimbursement basis with zero out of pocket City funds required. The amount of this Cooperative Agreement is \$140,369.00 including retail sales tax. The agreement includes a contingency section for "extra work" (section IV) allowing a cost increase of not more than 25% without a supplemental agreement.

BOARD OR COMMITTEE RECOMMENDATION

At the regularly scheduled Public Works Committee meeting, the Public Works Committee was informed of this WSDOT grant and scope of work. The committee members concurred with the scope of work. This item went before the Parks Commission on May 6th, 2009 and they also generally concurred.

RECOMMENDATION/MOTION

Authorize the Mayor to execute an agreement with Washington State Department of Transportation (WSDOT) for the State to fund design and construction of bicycle and pedestrian improvements along an existing gap in the Cushman Trail.



Washington State Department of Transportation

State Participating Agreement Work by Local Agency Actual Cost	Organization and Address City of Gig Harbor Public Works Department 3510 Grandview Street Gig Harbor, WA 98335	
	Section / Location Cushman Trail Improvements, City of Gig Harbor.	
Agreement Number GCA-5564		Description of Work The Tacoma Narrows Bridge project agrees to contribute towards the City of Gig Harbor's, Cushman Trail Improvements project. Exhibit A - Cost Estimate Exhibit B - Plan
State Route Number SR 16	Control Section Number 2704	
Region Olympic Region		

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, (hereinafter the "STATE") and the above named organization, (hereinafter the "LOCAL AGENCY").

WHEREAS, the LOCAL AGENCY is planning the construction of a project as shown above, and in connection therewith, the STATE has requested that the LOCAL AGENCY perform certain work as herein described, and

WHEREAS, it is deemed to be in the best interest for the STATE to include specific items of work in the LOCAL AGENCY's construction contract proposed for the above-noted project, and

WHEREAS, the STATE is obligated for the cost of work described herein.

NOW THEREFORE, by virtue of RCW 47.28.140 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

**I
GENERAL**

The LOCAL AGENCY, as agent acting for and on behalf of the STATE, agrees to perform the above "Description of Work".

Plans, specifications and cost estimates shall be prepared by the LOCAL AGENCY in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction, and amendments thereto, and adopted design standards, unless otherwise noted. The LOCAL AGENCY will incorporate the plans and specifications into the LOCAL AGENCY's project and thereafter advertise the resulting project for bid and, assuming bids are received and a contract is awarded, administer the contract.

The LOCAL AGENCY agrees to submit plans and specifications for the described work as shown on Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT, to the STATE for approval prior to advertising the project.

The STATE may, if it desires, furnish an inspector on the project. Any costs for such inspection will be borne solely by the STATE. All contact between said inspector and the LOCAL AGENCY's contractor shall be through the LOCAL AGENCY's representative.

The STATE agrees, upon satisfactory completion of the work involved, to deliver a letter of acceptance which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the work under this AGREEMENT.

**II
PAYMENT**

The STATE, in consideration of the faithful performance of the work to be done by the LOCAL AGENCY, agrees to reimburse the LOCAL AGENCY for the actual direct and related indirect cost of the work.

An Itemized estimate of cost for work to be performed by the LOCAL AGENCY at the STATE's expense is marked Exhibit "A", and is attached hereto and by this reference made a part of this AGREEMENT.

Partial payments shall be made by the STATE, upon request of the LOCAL AGENCY, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.

The LOCAL AGENCY agrees to submit a final bill to the STATE within forty-five (45) days after the LOCAL AGENCY has completed the work.

**III
DELETION OF WORK**

In the event the estimate of cost, Exhibit "A", is in excess of \$10,000 and the total actual bid prices for the work covered by this AGREEMENT exceeds the estimate of cost by more than 15 percent, the STATE shall have the option of directing the LOCAL AGENCY to delete all or a portion of the work covered by this AGREEMENT from the LOCAL AGENCY's contract. Except, that this provision shall be null and void if the STATE's portion of the work exceeds 20 percent of the actual total contract bid price.

The STATE shall have five (5) working days from the date of written notification to inform the LOCAL AGENCY to delete the work. Should the STATE exercise its option to delete work, the STATE agrees, upon billing by the LOCAL AGENCY, to reimburse the LOCAL AGENCY for preliminary engineering costs incurred by the LOCAL AGENCY to include the work covered by this AGREEMENT in the LOCAL AGENCY's contract.

**IV
EXTRA WORK**

In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on Exhibit "A", this AGREEMENT will be modified by supplemental AGREEMENT covering said increase.

In the event it is determined that any change from the description of work contained in this AGREEMENT is required, approval must be secured from the STATE prior to the beginning of such work. Where the change is substantial, written approval must be secured.

Reimbursement for increased work and/or a substantial change in the description of work shall be limited to costs covered by a written modification, change order or extra work order approved by the STATE.

**V
RIGHT OF ENTRY**

The STATE hereby grants and conveys to the LOCAL AGENCY the right of entry upon all land which the STATE has interest, within or adjacent to the right of way of the highway, for the purpose of constructing said improvements.

Upon completion of the work outlined herein, all future operation and maintenance of the STATE's facilities shall be at the sole cost of the STATE and without expense to the LOCAL AGENCY.

**VI
LEGAL RELATIONS**

No liability shall attach to the LOCAL AGENCY or the STATE by reason of entering into this agreement except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

LOCAL AGENCY

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

By _____

By _____

Title _____

Title _____

Date _____

Date _____

SUMMARY	
TOTAL COST	\$140,369.00

DESIGN ESTIMATE	
DESCRIPTION	COST
Design costs of City projects are typically 15% of the of the estimated construction costs. Estimated construction costs include the contract administration costs and the construction estimate. Formula = (admin. costs + const.) X 15%	\$18,309.00

CONTRACT ADMINISTRATION COSTS (CE)			
DESCRIPTION			COST
City Inspection			\$13,000.00
City staff			\$15,000.00
		TOTAL	\$28,000.00

CONSTRUCTION ESTIMATE				
WORK DESCRIPTION	UNIT	QUANTITY	PRICE	EXTENSION
Directional Sign	each	3	\$1,800.00	\$5,400.00
Heritage Marker Sign	each	2	\$1,000.00	\$2,000.00
Crosswalk Markings	LF	200	\$4.25	\$850.00
Bicycle Symbol	each	3	\$160.00	\$480.00
Sidewalk, 10' Wide	SY	400	\$75.00	\$30,000.00
Sidewalk Ramp	each	6	\$2,500.00	\$15,000.00
Driveway Entrance	SY	74	\$100.00	\$7,400.00
Type II Slury Seal	SY	5900	\$5.20	\$30,680.00
Pavement Markings	LF	1500	\$1.50	\$2,250.00
			TOTAL	\$94,060.00

Cushman Trail improvements:

- Directional signs
 - 1 @ Ried Road (14th)
 - 1 @ west corner of Olympic Drive & Holycroft
 - 1 @ Kimbal Drive

- Heritage type marker (map & information)
 - 1 @ Ried Road (14th)
 - 1 @ Kimbal Drive

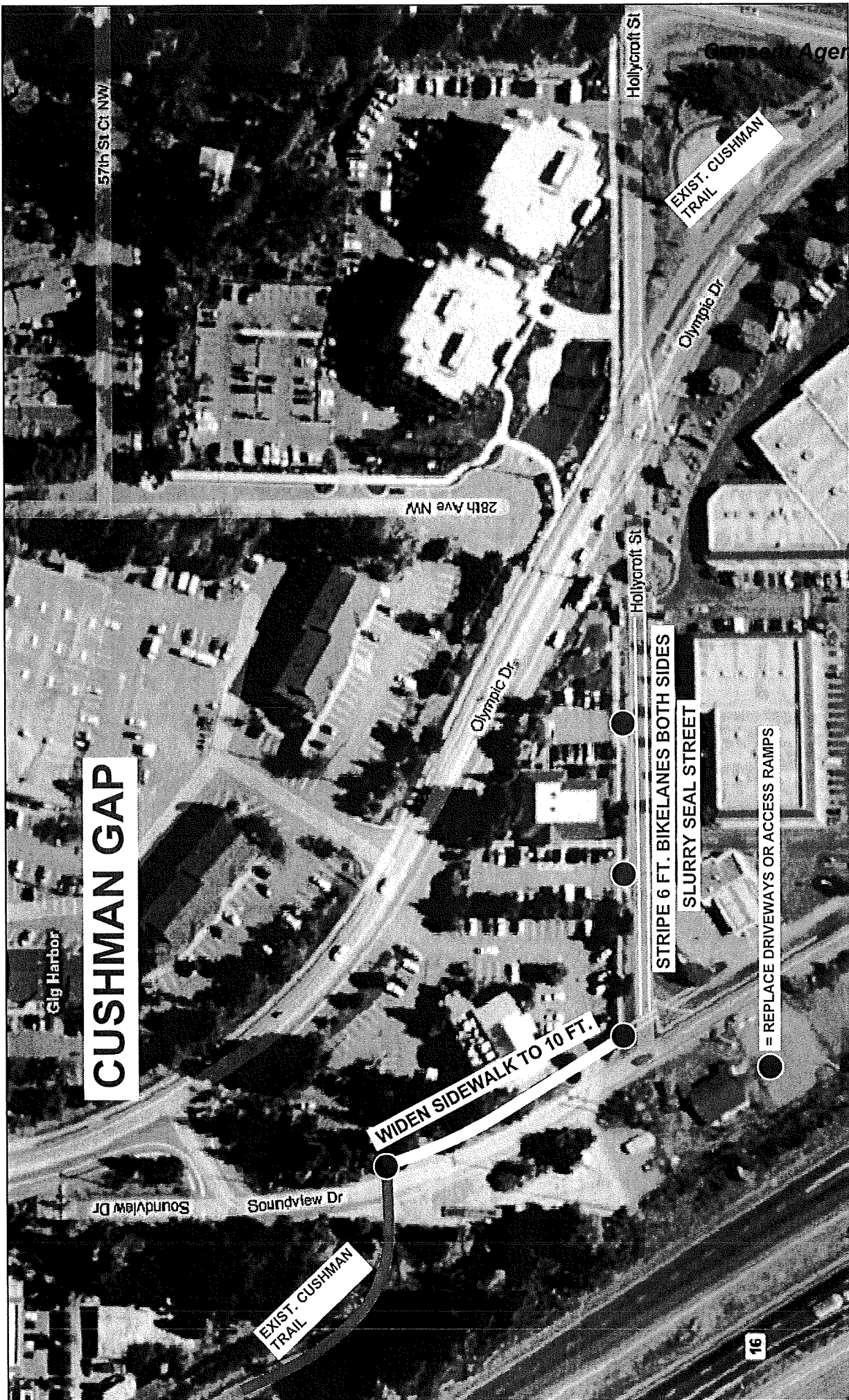
- Street surface & pavement markings
 - New crosswalk @ intersection of Holycroft Street & Soundview Dr. (1 each)
 - Restore crosswalks @ each quadrant of Olympic Drive & Holycroft Street (4 sets)
 - Place slurry seal asphalt on Holycroft Street from Olympic Dr. to Soundview Dr.
 - Restripe Holycroft Street from Olympic Dr. to Soundview Dr. to accommodate two 11ft lanes and two 6ft bicycle lanes w/ symbol.

- Bicycle lane & symbol
 - 1 in bike lane along south side of Holycroft Street
 - 1 in bike lane along north side of Holycroft Street

- New wider sidewalk
 - Replace existing sidewalk along Soundview Drive w/ 9ft wide sidewalk, from intersection w/ Holycroft Street northerly to Cushman Trail crosswalk.
 - Build new pedestrian ramp and wide trail access area @ trail crosswalk.
 - Clear & grub street trees & sod.
 - Upgrade pedestrian ramps @ intersection of Holycroft Street & Olympic Drive (4 each) and upgrade pedestrian ramps @ intersection of Holycroft Street & Soundview Drive (2 each).
 - Rebuild driveway entrances along Soundview Drive (2 each).

Note: The STATE shall not reimburse the LOCAL AGENCY for any bill received after February 26, 2010.

GCA-5564
Exhibit A
Sheet 2 of 2



CUSHMAN GAP

WIDEN SIDEWALK TO 10 FT.

STRIPES 6 FT. BIKELANES BOTH SIDES

SLURRY SEAL STREET

= REPLACE DRIVEWAYS OR ACCESS RAMPS

EXIST. CUSHMAN TRAIL



Washington State Department of Transportation

State Participating Agreement Work by Local Agency Actual Cost	Organization and Address City of Gig Harbor Public Works Department 3510 Grandview Street Gig Harbor, WA 98335
	Section / Location Cushman Trail Improvements, City of Gig Harbor.
Agreement Number GCA-5564	Description of Work The Tacoma Narrows Bridge project agrees to contribute towards the City of Gig Harbor's, Cushman Trail Improvements project. Exhibit A - Cost Estimate Exhibit B - Plan
State Route Number Control Section Number SR 16 2704	
Region Olympic Region	

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WHEREAS, it is deemed to be in the best interest for the STATE to include specific items of work in the LOCAL AGENCY's construction contract proposed for the above-noted project, and

WHEREAS, the STATE is obligated for the cost of work described herein.

NOW THEREFORE, by virtue of RCW 47.28.140 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

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The STATE may, if it desires, furnish an inspector on the project. Any costs for such inspection will be borne solely by the STATE. All contact between said inspector and the LOCAL AGENCY's contractor shall be through the LOCAL AGENCY's representative.

The STATE agrees, upon satisfactory completion of the work involved, to deliver a letter of acceptance which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the work under this AGREEMENT.

**II
PAYMENT**

The STATE, in consideration of the faithful performance of the work to be done by the LOCAL AGENCY, agrees to reimburse the LOCAL AGENCY for the actual direct and related indirect cost of the work.

An itemized estimate of cost for work to be performed by the LOCAL AGENCY at the STATE's expense is marked Exhibit "A", and is attached hereto and by this reference made a part of this AGREEMENT.

Partial payments shall be made by the STATE, upon request of the LOCAL AGENCY, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.

The LOCAL AGENCY agrees to submit a final bill to the STATE within forty-five (45) days after the LOCAL AGENCY has completed the work.

**III
DELETION OF WORK**

In the event the estimate of cost, Exhibit "A", is in excess of \$10,000 and the total actual bid prices for the work covered by this AGREEMENT exceeds the estimate of cost by more than 15 percent, the STATE shall have the option of directing the LOCAL AGENCY to delete all or a portion of the work covered by this AGREEMENT from the LOCAL AGENCY's contract. Except, that this provision shall be null and void if the STATE's portion of the work exceeds 20 percent of the actual total contract bid price.

The STATE shall have five (5) working days from the date of written notification to inform the LOCAL AGENCY to delete the work. Should the STATE exercise its option to delete work, the STATE agrees, upon billing by the LOCAL AGENCY, to reimburse the LOCAL AGENCY for preliminary engineering costs incurred by the LOCAL AGENCY to include the work covered by this AGREEMENT in the LOCAL AGENCY's contract.

**IV
EXTRA WORK**

In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on Exhibit "A", this AGREEMENT will be modified by supplemental AGREEMENT covering said increase.

In the event it is determined that any change from the description of work contained in this AGREEMENT is required, approval must be secured from the STATE prior to the beginning of such work. Where the change is substantial, written approval must be secured.

Reimbursement for increased work and/or a substantial change in the description of work shall be limited to costs covered by a written modification, change order or extra work order approved by the STATE.

**V
RIGHT OF ENTRY**

The STATE hereby grants and conveys to the LOCAL AGENCY the right of entry upon all land which the STATE has interest, within or adjacent to the right of way of the highway, for the purpose of constructing said improvements.

Upon completion of the work outlined herein, all future operation and maintenance of the STATE's facilities shall be at the sole cost of the STATE and without expense to the LOCAL AGENCY.

**VI
LEGAL RELATIONS**

No liability shall attach to the LOCAL AGENCY or the STATE by reason of entering into this agreement except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

LOCAL AGENCY

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

By _____

By _____

Title _____

Title _____

Date _____

Date _____

SUMMARY	
TOTAL COST	\$140,369.00

DESIGN ESTIMATE	
DESCRIPTION	COST
Design costs of City projects are typically 15% of the of the estimated construction costs. Estimated construction costs include the contract administration costs and the construction estimate. Formula = (admin. costs + const.) X 15%	\$18,309.00

CONTRACT ADMINISTRATION COSTS (CE)			
DESCRIPTION			COST
City Inspection			\$13,000.00
City staff			\$15,000.00
		TOTAL	\$28,000.00

CONSTRUCTION ESTIMATE				
WORK DESCRIPTION	UNIT	QUANTITY	PRICE	EXTENSION
Directional Sign	each	3	\$1,800.00	\$5,400.00
Heritage Marker Sign	each	2	\$1,000.00	\$2,000.00
Crosswalk Markings	LF	200	\$4.25	\$850.00
Bicycle Symbol	each	3	\$160.00	\$480.00
Sidewalk, 10' Wide	SY	400	\$75.00	\$30,000.00
Sidewalk Ramp	each	6	\$2,500.00	\$15,000.00
Driveway Entrance	SY	74	\$100.00	\$7,400.00
Type II Slurry Seal	SY	5900	\$5.20	\$30,680.00
Pavement Markings	LF	1500	\$1.50	\$2,250.00
			TOTAL	\$94,060.00

Cushman Trail improvements:

- Directional signs
 - 1 @ Ried Road (14th)
 - 1 @ west corner of Olympic Drive & Holycroft
 - 1 @ Kimbal Drive

- Heritage type marker (map & information)
 - 1 @ Ried Road (14th)
 - 1 @ Kimbal Drive

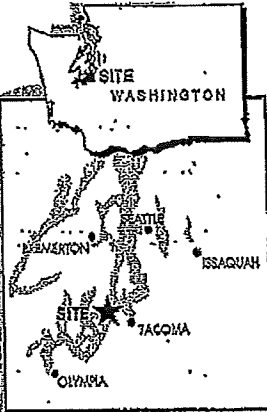
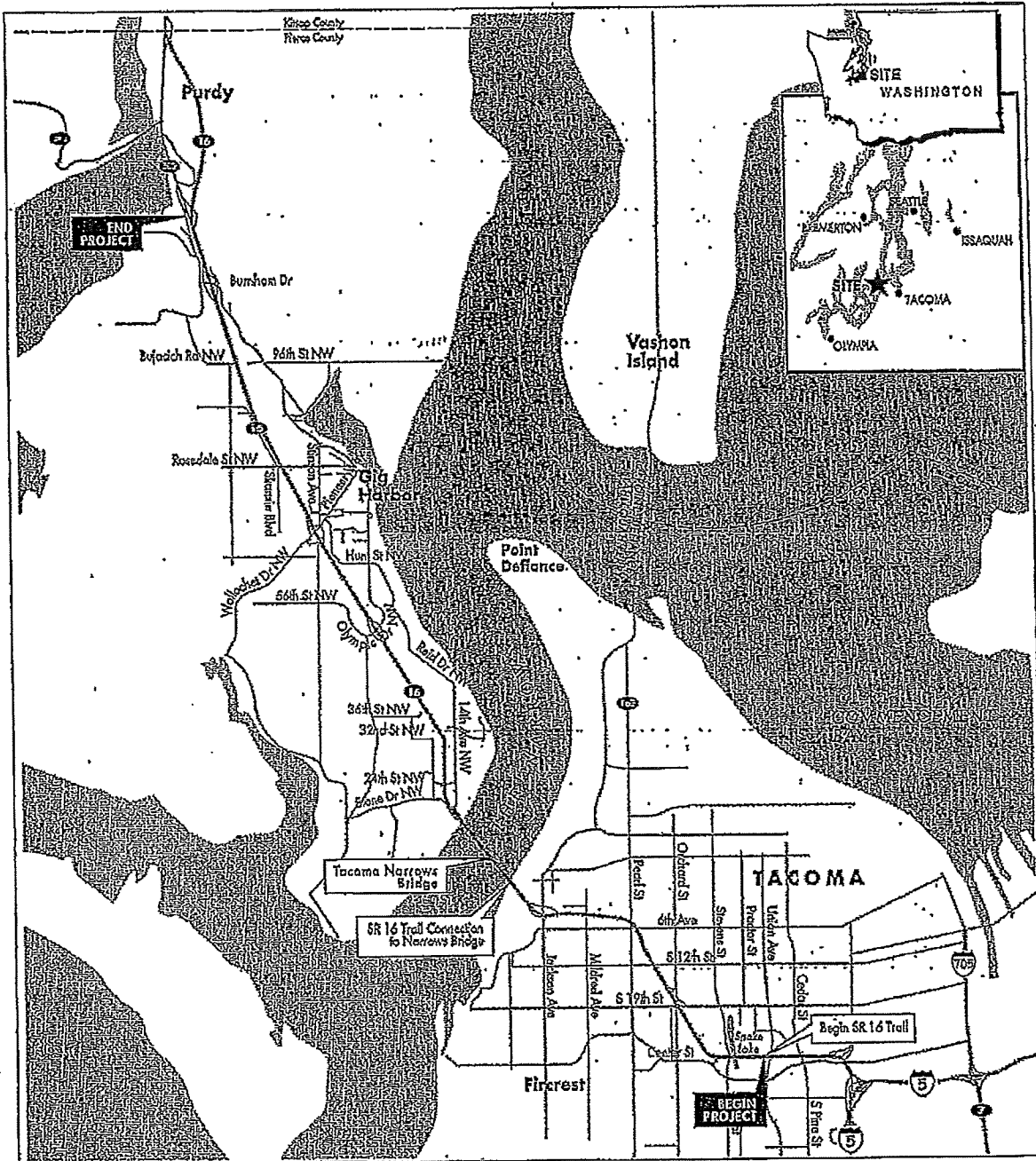
- Street surface & pavement markings
 - New crosswalk @ intersection of Holycroft Street & Soundview Dr. (1 each)
 - Restore crosswalks @ each quadrant of Olympic Drive & Holycroft Street (4 sets)
 - Place slurry seal asphalt on Holycroft Street from Olympic Dr. to Soundview Dr.
 - Restripe Holycroft Street from Olympic Dr. to Soundview Dr. to accommodate two 11ft lanes and two 6ft bicycle lanes w/ symbol.

- Bicycle lane & symbol
 - 1 in bike lane along south side of Holycroft Street
 - 1 in bike lane along north side of Holycroft Street

- New wider sidewalk
 - Replace existing sidewalk along Soundview Drive w/ 9ft wide sidewalk, from intersection w/ Holycroft Street northerly to Cushman Trail crosswalk.
 - Build new pedestrian ramp and wide trail access area @ trail crosswalk.
 - Clear & grub street trees & sod.
 - Upgrade pedestrian ramps @ intersection of Holycroft Street & Olympic Drive (4 each) and upgrade pedestrian ramps @ intersection of Holycroft Street & Soundview Drive (2 each).
 - Rebuild driveway entrances along Soundview Drive (2 each).

Note: The STATE shall not reimburse the LOCAL AGENCY for any bill received after February 26, 2010.

GCA-5564
Exhibit A
Sheet 2 of 2



0 0.5 1
Approximate Scale In Miles
0 1
Approximate Scale In Kilometers

Solve 16...
You're in the driver's seat!

GCA-5564
Exhibit B
Sheet 1 of 1

SR 16 / UNION AVENUE VICINITY TO SR 302 VICINITY

1993005.1 12.27.99



Subject: Transportation Modeling On-Call Services for Concurrency Evaluations -- Consultant Services Contract

Proposed Council Action: Authorize the Mayor to execute the Consultant Services Contract with PTV America, Inc. for On-Call Transportation Modeling Services in the not-to-exceed amount of \$50,000.

Dept. Origin: Public Works/Engineering

Prepared by: Stephen Misiurak, P.E. City Engineer

For Agenda of: June 22, 2009

Exhibits: Consultant Services Contract Traffic Report Preparation Fee Schedule

Initial & Date

Concurred by Mayor: [Signature] 6/18/09
Approved by City Administrator: [Signature]
Approved as to form by City Atty: approved via email 6/9/09
Approved by Finance Director: [Signature]
Approved by Department Head: [Signature] 6/18/09

Table with 3 columns: Expenditure Required, Amount Budgeted, and Appropriation Required. Values: \$50,000, \$0, See Fiscal Consideration Below.

INFORMATION / BACKGROUND

As private development projects submit permit applications, many require evaluation under the City of Gig Harbor transportation concurrency code. The recently updated traffic model serves as the starting point for the concurrency model runs which document the ability of the City to either reserve capacity for a project or deny the project for lack of capacity.

FISCAL CONSIDERATION

The City currently collects a traffic report preparation fee for each private development permit that requires a concurrency model run. The amount of this fee covers the consultant cost for performing the traffic model concurrency work and report resulting in zero cost to the City.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to execute the Consultant Services Contract with PTV America, Inc. for on-call transportation modeling services for the not-to-exceed amount of \$50,000.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
PTV AMERICA, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and PTV America, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in Transportation Modeling On-Call Services related to transportation capacity evaluations necessary to manage transportation concurrency in accordance with the Gig Harbor Municipal Code (GHMC) 19.10 and desires that the Consultant perform services necessary to provide the following consultation services; and

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

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

TERMS

1. Retention of Consultant - Scope of Work. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. Payment.

A. The City shall pay the Consultant an amount based on either the "Traffic Report Preparation Fee" collected by the City for private development project applications or time and materials, whichever is less, not to exceed \$50,000 (Fifty Thousand Dollars and No Cents) for the services described in Section 1 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. The Consultant's staff and billing rates shall be as described in **Exhibit B – Budget and Schedule**. 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 18 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.

3. **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 subconsultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or subconsultant 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 subconsultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants 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.

4. **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 June 30, 2011; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. **Termination.** The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the

time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. Non-Discrimination. The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. Indemnification.

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

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

8. 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, subconsultants or subcontractors.

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

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

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

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

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

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

9. 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.

10. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

11. 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.

12. Records. The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

13. 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 subconsultants 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.

14. 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.

15. Resolution of Disputes and Governing Law.

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

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Public Works Director 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 prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

16. Written Notice. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT: PTV America, Inc.
ATTN: Robert Shull or Ed Hayes
1145 Broadway Plaza, Suite 605
Tacoma, WA 98402-3583
(253) 272-4440

City of Gig Harbor
ATTN: Stephen T. Misiurak
Public Works, Engineering
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

17. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. Any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

18. Entire Agreement. This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____
day of _____, 20____.

CONSULTANT

CITY OF GIG HARBOR

By: _____

By: _____

Its: _____

Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A SCOPE OF WORK

City of Gig Harbor Transportation Modeling On-Call Services
City of Gig Harbor, Washington

The tasks proposed for this project are described in detail in approximate order of completion. The documentation task is described at the end of this section. However, this task is intended to be ongoing throughout the project. It is anticipated that we will work closely with City of Gig Harbor staff to maximize the technology transfer and to insure that staff provides input on and is aware of all model assumptions.

Project Parameters

The goals of this agreement are currently understood to apply the City's updated concurrency model to evaluate the transportation capacity impacts from proposed developments. The tasks are transportation capacity evaluation tests for these proposed developments.

If funding allows, the City of Gig Harbor may also request certain other tasks such as, but not limited to: performing scenario analysis for the TIP, evaluate multi-jurisdictional projects that impact or are within the City of Gig Harbor, and performing training and participate in the meetings and presentations as requested by the city.

Concurrency Model Enhancement & Development Evaluation

The concurrency model will be enhanced at nearby the development site. This effort will include refining the updated VISUM model to provide the comparison of the traffic operation of influenced transportation facilities as well as intersection capacity analysis before and after the development. Input data will be provided by the developer, or its agent, and supplied to PTV America through the City of Gig Harbor Public Works Department.

The detailed tasks are listed as follows.

Create Network Model Files – The updated VISUM forecast model will be the basis of the analysis. Other supplemental data for analysis will be gathered and analyzed, including the proposed site plan and access locations, proposed retail land use data.

Update/Enhance Network – The model will be updated with detailed ingresses/egresses at the development site. Plots of existing and proposed layout can be made for review if needed.

Code Intersections - Intersection geometry and timing detail at nearby the development site will be fine-tuned for use in intersection Level of Service analysis. These enhancements will also be useful for the build scenario analysis. This data may be imported from Synchro or other sources where possible.

Review and Update TAZ Structure - The current Traffic Analysis Zone (TAZ) structure at the site will be used as the basis; this structure is not expected to change at the site; however, if splits and aggregations of TAZs are considered necessary to analyze the proposed development more accurately, the scope of work can be adjusted to incorporate the changes.

Exhibit A SCOPE OF WORK, page 2

City of Gig Harbor Transportation Modeling On-Call Services
City of Gig Harbor, Washington

Compile and Enter Land Use Data – The proposed retail development land use will be analyzed and classified into the appropriate land use category in the updated VISUM model.

Develop Revised MPA Equivalencies - PTV staff will develop and plot the MPA (Multi-Point Assignment) equivalencies and load points. These will be reviewed by the City of Gig Harbor staff. These will be used in the model to insure the access points for the proposed development reflect the true traffic usage of the parking and surrounding roadway sections. These are especially important for the turning movement outputs and subsequent intersection analysis.

Update Trip Generation Rates - PTV America will compare the trip generation data handed in by the developer and adjust the trip generation process in the concurrency model if necessary. This may require additional coordination efforts with the City.

Model Run/Validation - PTV personnel will run all streamlined model procedures in the updated concurrency model to obtain the link volumes and turn volumes for the entire model. PTV will work in conjunction with City of Gig Harbor staff to validate the model. The validation process can be conducted iteratively to ensure the modeling accuracy.

Intersection Analysis – Analysis of the impact of existing intersection control approaches due to the proposed development will be one of the final deliverables to the City of Gig Harbor. This will include electronic version of LOS plots for the most influenced intersections by the proposed development and the trip analysis plots for the trips generated and attracted by the development.

Documentation - The model and the modeling process will be documented and all quantification of assumptions will be summarized. This will be delivered as a technical memorandum to City of Gig Harbor. After review, revisions will be incorporated for the final memorandum.

Exhibit B
BUDGET and SCHEDULE
City of Gig Harbor Transportation Modeling On-Call Services
City of Gig Harbor, Washington

The rates for this contract are presented in the table below.

Work will be billed monthly based upon time and materials and separated into projects with each project budget not to exceed the "Traffic Report Preparation Fee" collected by the City of Gig Harbor for a standard concurrency test and report.

For other projects that do not fall into the category of a standard concurrency test and the associated report, a task specific budget and schedule will be developed using the rates listed below.

RATES	
Principal	\$163.00
Project Manager	\$124.00
Associate	\$ 88.00

All PTV project efforts including the consulting services and the tasks will be completed within 3 weeks of receiving all network data and necessary inputs for updating the concurrency model. The effort outlined in this scope of work will be conducted by PTV America Inc. staff in the Tacoma office.



Subject: First Reading of Ordinance – Creating Code for Illicit Discharge Detection and Elimination

Proposed Council Action: Review an Ordinance of the City Council of the City of Gig Harbor, Washington, relating to adoption of regulations for illicit discharge detection and elimination, revising Chapter 14.20 GHMC, and adding a new Chapter 14.30 to the City of Gig Harbor Municipal Code.

Dept. Origin: Public Works/Engineering

Prepared by: Jeff Langhelm
Senior Engineer

For Agenda of: June 22, 2009

Exhibits: Proposed Ordinance

Concurred by Mayor:

Initial & Date

CLH 6/18/09

Approved by City Administrator:

PSK 6/17/09

Approved as to form by City Atty:

by email

Approved by Finance Director:

OP 6/09

Approved by Department Head:

RL 6/17/09

Expenditure		Amount		Appropriation	
Required	\$0	Budgeted	\$0	Required	\$0

INFORMATION / BACKGROUND

The City of Gig Harbor’s NPDES Phase 2 Stormwater Permit became effective on February 16, 2007 and contains various requirements for stormwater management and operations that must be implemented over the 5-year permit term ending February 15, 2012. The Permit has many conditions, including maintenance and operations of City facilities, permitting of development, inspections and enforcement of regulations, and other activities conducted in the City’s storm drainage system.

The proposed actions included in this ordinance include repealing the existing sections of the municipal code related to illicit discharges and connections (14.20.580 and 14.20.590) and the adopting a new Chapter 14.30 GHMC for broadening of the City’s enforceable mechanism for illicit discharge detection and elimination. This ordinance is intended to meet Condition S5.C.3 of the City’s Stormwater Permit with the goal of improving and maintaining water quality in compliance with the Clean Water Act.

FISCAL CONSIDERATION

None with this action.

BOARD OR COMMITTEE RECOMMENDATION

The draft ordinance was presented twice to the Operations and Public Project Committee at their April 2009 and June 2009 meetings.

RECOMMENDATION / MOTION

Move to: Review an Ordinance of the City Council of the City of Gig Harbor, Washington, relating to adoption of regulations for illicit discharge detection and elimination, revising Chapter 14.20 GHMC, and adding a new Chapter 14.30 to the City of Gig Harbor Municipal Code.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE CITY'S MUNICIPAL SEPARATE STORM SEWER SYSTEM; ADDING NEW CHAPTER 14.30 TO THE GIG HARBOR MUNICIPAL CODE ADOPTING REGULATIONS FOR ILLICIT DISCHARGE DETECTION AND ELIMINATION; AMENDING CHAPTER 14.20 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Gig Harbor (the "City") is regulated under the Washington State Department of Ecology's Western Washington Phase II Municipal Stormwater Permit (the "Permit"); and

WHEREAS, the Permit became effective in February 2007 and contains various requirements for stormwater management and operations that must be implemented over the 5-year permit term ending February 15, 2012; and

WHEREAS, the Permit broadly applies to City activities that include maintenance and operations of City facilities, permitting of development, inspections and enforcement of regulations, and other activities conducted in the City's Municipal Separate Storm Sewer System; and

WHEREAS, the City will be adopting code policies and procedures as needed to comply with the Permit; and

WHEREAS, to meet the conditions of the Permit, a Stormwater Management Program ("SWMP") has been prepared that outlines all requirements of the Permit and a summary of the City's work program to meet those requirements over the 5-year permit term, and will be updated annually to incorporate progress on implementing the SWMP and changes to projected future work efforts; and

WHEREAS, the repealing of Sections 14.20.580 and 13.20.590 of the Gig Harbor Municipal Code and the proposal for the new Illicit Discharge Detection and Elimination chapter is intended to meet Condition S5.C.3 of the Permit with the goal of improving and maintaining water quality in compliance with the Clean Water Act; Now, therefore,

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

Section 1. Sections 14.20.580 and 14.20.590 of the Gig Harbor Municipal Code relating to illicit discharges are hereby deleted in their entirety.

Section 2. A new Chapter 14.30 is added to Title 14 of the Gig Harbor Municipal Code to read as follows:

Chapter 14.30

ILLICIT DISCHARGE DETECTION AND ELIMINATION

Sections:

- 14.30.010 Purpose**
- 14.30.020 Definitions**
- 14.30.030 Applicability**
- 14.30.040 Administration**
- 14.30.050 General Provisions**
- 14.30.060 General Requirements**
- 14.30.070 Inspections and Investigations**
- 14.30.080 Enforcement**

14.30.010 Purpose.

The purpose of this chapter is to regulate the city's municipal separate storm sewer system ("MS4 or stormwater drainage system") regarding the introduction of pollutants that would adversely impact surface and groundwater quality of the state of Washington. The intent of this chapter is to:

- A. Control the introduction of pollutants to the stormwater drainage system by any person and/or entity.
- B. Prohibit illicit connections and discharges to the stormwater drainage system and receiving waters.
- C. Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.

14.30.020 Definitions.

"Best Management Practices" or "BMPs" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent and/or reduce pollution of water. BMPs are listed and described in the Stormwater Management Manual for Western Washington and the

Gig Harbor Stormwater Management and Site Development Manual, most recent version.

“Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

“Hazardous Materials” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Illegal Discharge” means any direct or indirect non-stormwater discharge to the stormwater drainage system, except as permitted or exempted in GHMC 14.20.060.

“Illicit Connection” is defined as either of the following:

- A. Any drain, conveyance, or hydraulic connection whether surface or subsurface, which allows an illegal discharge to enter the stormwater drainage system including but not limited to any conveyances which allow sewage, process wastewater, or wash water to enter the stormwater drainage system and any connections to the stormwater drainage system from indoor drains and sinks, regardless of whether the connection had been previously allowed, permitted, or approved by the city or other authorized public agency.
- B. Any drain or conveyance connected from a residential, commercial or industrial land use to the stormwater drainage system which has not been documented in plans, maps, or equivalent records and approved by the city.

“Municipal Separate Storm Sewer System (MS4)” or “stormwater drainage system” means the system of conveyances including sidewalks, roads with drainage systems, municipal streets, catchbasins, curbs, gutters, ditches, manmade channels, or storm drains owned and operated by the city and design or used for collecting or conveying stormwater.

“National Pollutant Discharge Elimination System (NPDES) Phase II Permit” means the “Western Washington Phase II Municipal Stormwater Permit” issued by the Washington State Department of Ecology with an effective date of February 16, 2007 and subsequent reissues.

“Non-Stormwater discharge” means any discharge to the stormwater drainage system that is not composed entirely of stormwater.

“Pollutant” or “Pollution” shall be construed to mean such contamination or other alteration of the physical, chemical, or biological properties of any of the waters of the state including, change in temperature, taste, color, turbidity, or odor of the waters or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious, to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life; as defined in by Federal regulatory requirements and RCW 90.48.020, as now existing or hereafter amended.

“Stormwater” means surface water runoff resulting from rainfall, snowmelt, or other precipitation.

“Storm Drainage System” – see “Municipal Separate Storm Sewer System (MS4)”.

“Wastewater” or “Process wastewater” means any liquid or water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

“Watercourse” and “river or stream” means any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, stormwater run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse which has been altered by humans.

“Waters of the state” means all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state of Washington as defined in RCW 90.48.

14.30.030 Applicability.

This chapter shall apply to all water entering the stormwater drainage system and waters of the state within the MS4.

14.30.040 Administration.

The public works director or designee shall administer this chapter and shall be referred to as the administrator. The administrator shall have the authority to develop and implement procedures to administer and enforce this chapter.

14.30.050 General Provisions.

A. Prohibition of Illegal Discharges.

1. No person shall discharge or cause to be discharged into the city's stormwater drainage system or waters of the state, any materials, including but not limited to, pollutants or waters containing any pollutants.
2. Prohibited discharges include, but are not limited to, the following:
 - a. Trash or debris;
 - b. Construction materials;
 - c. Petroleum products including, but not limited to, oil, gasoline, grease, fuel oil, heating oil;
 - d. Antifreeze and other automotive products;
 - e. Metals in excess of naturally occurring amounts, in either particulate or dissolved form;
 - f. Flammable or explosive materials;
 - g. Chemicals not normally found in uncontaminated water;
 - h. Acids, alkalis, or bases;
 - i. Painting products;
 - j. Degreasers and/or solvents;
 - k. Drain cleaners;
 - l. Commercial and household cleaning products;
 - m. Pesticides, herbicides, or fertilizers;
 - n. Steam cleaning wastes;
 - o. Pressure washing wastes;
 - p. Soaps, detergents, or ammonia;
 - q. Chlorinated water, including spa or swimming pool water;
 - r. Domestic or sanitary sewage;
 - s. Animal carcasses;
 - t. Food wastes;
 - u. Yard wastes;
 - v. Silt, sediment, or gravel;
 - w. Any hazardous material or waste;
 - x. Wastewater or process wastewater (including filtered or purified wastewaters).
3. The following discharges are allowed by this chapter if the discharges do not contain pollutants. The administrator may evaluate and

remove any of the exemptions if it is determined that they are causing an adverse impact.

- a. Diverted stream flows (i.e., channeled or piped streams);
 - b. Rising ground waters and springs;
 - c. Flows from riparian habitats and wetlands.
 - d. Uncontaminated ground water infiltration (as defined in 40 C.F.R. 35.2005(20));
 - e. Uncontaminated pumped ground water;
 - f. Foundation and footing drains;
 - g. Air conditioning condensation;
 - h. Irrigation water from agricultural sources that is commingled with urban stormwater;
 - i. Water from crawl space pumps;
 - j. Non-stormwater discharges covered by another NPDES permit;
 - k. Discharges from emergency fire fighting activities;
 - l. Discharges specified in writing by the administrator as being necessary to protect public health and safety.
4. The following types of discharges shall only be permitted if the stated conditions are met:
- a. Discharges from potable water sources, including water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water; planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the storm drainage system;
 - b. Discharges from lawn watering and other irrigation runoff; these shall be minimized through water conservation efforts;
 - c. Dechlorinated spa or swimming pool discharges; the discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the storm drainage system. The temperature of the discharge water shall not exceed 65 degrees Fahrenheit. Spa or swimming pool cleaning wastewater and filter backwash shall not be discharged to the storm drainage system.
 - d. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents; the amount of street wash, dust control, and building wash water shall be minimized. At active construction sites, street sweeping must be performed prior to washing the street.
 - e. Dye testing with verbal notification to the city at least twenty-four (24) hours prior to the time of the test;
 - f. Discharges resulting from maintenance, repair, or operation of fire fighting equipment and facilities that are not directly associated with public fire fighting, including discharges from public fire

fighting training exercises, unless city-approved best management practices are implemented.

5. Discharge prohibitions shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency or Washington State Department of Ecology, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the stormwater drainage system.

B. Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

C. Waste Disposal.

No person shall throw, deposit, leave, maintain, or keep in or upon any public or private property, the stormwater drainage system, or waters of the state, any refuse, rubbish, garbage, litter, or other discarded or abandon objects, articles, or accumulations that may cause or contribute to pollution. Wastes deposited in proper waste receptacles for the purposes of collection are exempt from this prohibition.

14.30.060 General Requirements.

A. Requirement to Eliminate Illegal Discharges.

The administrator may require by written notice that a property owner or person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge, clean up the polluting matter and, if necessary, take measures to eliminate the source of the discharge to prevent the reoccurrence of discharges. The administrator may charge all associated costs thereof to the property owner or responsible party.

B. Requirement to Eliminate Illicit Connections.

The administrator may require by written notice that a property owner or person responsible for an illicit connection to the stormwater drainage system eliminate the connection by a specified date, regardless of whether or not the connection had been established or approved previously.

C. Requirement to Implement Best Management Practices.

The owner or operator of a commercial or industrial establishment and property owners shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the stormwater drainage system or waters of the state through the use of structural and non-structural BMPs (as defined in GHMC 14.30.020). The administrator may require any person responsible for a property or premise, which is, or may be, the source of an illicit discharge to implement, at their own expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the stormwater drainage system.

D. Watercourse Protection.

Any person owning property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, and other items that would pollute or contaminate the flow of water through the watercourse.

E. Notification of Illegal Discharges.

1. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation has information of any known or suspected illegal discharges into the stormwater drainage system or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
2. In the event of an illegal discharge of hazardous materials into the stormwater drainage system or waters of the state, said person shall immediately notify the appropriate public agency identified by the city. A list of appropriate agencies is available on the city's website or in person. The alternative notification agencies are the emergency dispatch services (911) and the city's Public Works Department.
3. In the event of an illegal discharge of non-hazardous materials into the stormwater drainage system or waters of the state, said person shall notify the city's Public Works Department by phone, by facsimile, or in person within forty-eight (48) hours after said discharge.
4. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be kept and maintained on a permanent basis from the effective date of this chapter.

14.30.070 Inspections and Investigations.

A. Facility and Property Inspections.

The administrator shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a property owner has security measures in force which require proper identification and clearance before entry into its premises, the property or facility owner/operator shall make the necessary arrangements to allow access to the administrator.

B. Facility and Property Access.

1. Facility operators shall allow the administrator ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and/or federal law.
2. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the property owner at the written or oral request of the administrator and shall not be replaced. The costs of clearing such access shall be borne by the property owner.

C. Monitoring and Sampling.

1. The administrator has the right to install or require the property owner to install monitoring equipment as is reasonably necessary in the opinion of the administrator to conduct appropriate monitoring and/or sampling of the facility's stormwater discharge. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the property owner at his/her own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
2. All data shall be collected in accordance with a sampling and analysis plan that is approved by the administrator.

14.30.080 Enforcement.

A. Failure to Comply.

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any activity or action caused or permitted to exist in violation of this chapter is a violation subject to enforcement under Chapter 12.17 GHMC.

B. Emergency Access and Reparation.

In the event the violation constitutes an immediate danger to public health or safety, the administrator is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. Any expense related to such remediation undertaken by the city shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking further relief or applying other penalties as outlined in Chapter 12.17 GHMC.

C. Civil Infraction.

Except as provided in subsection D of this section, conduct made unlawful by this chapter shall constitute a civil infraction and is subject to enforcement and fines as provided in Chapter 12.17 GHMC.

D. Misdemeanor.

Any person who again violates this chapter within twelve (12) months after having been found by the Gig Harbor Municipal Court to be in violation of this chapter, commits a misdemeanor and any person who is convicted thereof shall be punished as provided in Chapter 1.16 GHMC and fined as provided in Chapter 12.17 GHMC.

E. Civil Penalty.

In addition to any civil infraction fine, criminal penalty, and/ or other available sanction or remedial procedure, any person engaging in conduct made unlawful by this chapter shall be subject to a cumulative civil penalty in the amount of \$1,000 per day for each violation from the date set for compliance until the date of compliance. Any such civil penalty shall be collected in accordance with Chapter 12.17 GHMC.

F. Additional Remedies.

1. In addition to any other remedy provided by this chapter or under the Gig Harbor Municipal Code, the city may initiate injunction or abatement proceedings or any other appropriate action in courts against any person who violates or fails to comply with any provision of this chapter to prevent, enjoin, abate, and/or terminate violations of this chapter and/or to restore a condition which existed prior to the violation. In any such proceeding, the person violating and/or failing to comply with any provisions of this chapter shall be liable for the costs and reasonable attorneys' fees incurred by the city in bringing, maintaining and/or prosecuting such action.
2. The administrator may provide the option for compensation of all or part of any penalties incurred by any person(s) to be made in the form of community service approved by the administrator that will be of

benefit to the environment and the city. The person(s) and administrator will enter into a formal, written agreement providing for the community service. This agreement shall include in detail description of the service(s) to be rendered by the person(s) in penalty for noncompliance of this chapter. The description shall include a completion date with a mutually agreed compensation structure to offset the above mentioned penalties.

3. Any person who violates any provision of this chapter may also be in violation of the Federal Clean Water Act, NPDES Phase II Permit, and/or RCW 90.48 and may be subject to sanctions including civil and criminal penalties. Any enforcement action authorized under this chapter shall also include written notice to the violator of such potential liability.”

Section 3. Severability. If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 4. Effective Date. This ordinance shall take effect on and be in force as of August 14, 2009.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of _____, 2009.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 06/17/09
PASSED BY THE CITY COUNCIL: 07/13/09
PUBLISHED: 07/22/09
EFFECTIVE DATE: 08/14/09
ORDINANCE NUMBER:



Subject: First Reading of Ordinance – Revising Stormwater Code, Creating Grading Code, and Creating Code for Civil Construction

Proposed Council Action: Review an Ordinance of the City Council of the City of Gig Harbor, Washington, relating to adoption of new regulations related to stormwater and grading, repealing and replacing Chapter 14.20 of the City of Gig Harbor Municipal Code (GHMC), revising Section 18.10.080 GHMC, and adding Chapter 14.40 GHMC, and new regulations relating to the creation of a new civil permit by repealing and replacing Chapter 12.06 GHMC.

Dept. Origin: Public Works/Engineering

Prepared by: Jeff Langhelm *AL*
Senior Engineer

For Agenda of: June 22, 2009

Exhibits: Proposed Ordinance

	Initial & Date
Concurred by Mayor:	<i>ALH 6/16/09</i>
Approved by City Administrator:	<i>RJK</i>
Approved as to form by City Atty:	<i>by email</i>
Approved by Finance Director:	<i>SR</i>
Approved by Department Head:	<i>ALH 6/16/09</i>

Expenditure		Amount		Appropriation
Required	\$0	Budgeted	\$0	Required \$0

INFORMATION / BACKGROUND

The City of Gig Harbor’s NPDES Phase 2 Stormwater Permit became effective on February 16, 2007 and contains various requirements for stormwater management and operations that must be implemented over the 5-year permit term ending February 15, 2012. The Permit has many conditions, including maintenance and operations of City facilities, permitting of development, inspections and enforcement of regulations, and other activities conducted in the City’s municipal separate storm sewer system.

Many of the revisions and additions provided by this ordinance are intended to meet Condition S5.C.4 of the City’s Stormwater Permit with the goal of improving and maintaining water quality in compliance with the Clean Water Act. For example, the Permit includes requirements for adoption of a new stormwater technical manual such as Department of Ecology’s Stormwater Manual, or an equivalent Stormwater Manual from an NPDES Phase I jurisdiction such as Pierce County. The new stormwater technical manual proposed in this ordinance includes many of the requirements that have been previously provided by the existing Chapter 14.20 of the Gig Harbor Municipal Code (GHMC) and is based on the recently approved Pierce County Stormwater Management and Site Development Manual.

Additionally, Title 18 GHMC (Environment) currently employs Appendix J of the International Building Code (IBC) for grading regulations and places enforcement and authority of grading regulations with the Community Development Director, which no longer exists. However, staff believes Appendix J of the IBC is inadequate for the implementation of the City's Stormwater Permit. Also, the Public Works Department currently informally reviews and enforces grading permits on behalf of the Community Development Director with enforcement in accordance with Title 15 GHMC (Building and Construction). The new requirements for a grading permit are intended to assist with the implementation of the City's Stormwater Permit while enhancing the transparency of the City's permitting and enforcement of grading projects by establishing a grading code in Title 14 GHMC, which is enforced by the Public Works Director under Title 12 GHMC.

Finally, the revisions of this ordinance remove the limited requirement for a drainage permit and create instead a new requirement for a civil permit and/or a grading permit. The Public Works Department currently informally requires review of civil improvements through review and implementation of the Public Works Standards. However, without this code revision there is no clear application and permitting process for developments requiring civil improvements. This new requirement for a civil permit is intended to enhance the transparency of the City's permitting requirements for public works projects and replace the limited requirement for a drainage permit.

FISCAL CONSIDERATION

None with this action.

BOARD OR COMMITTEE RECOMMENDATION

The draft ordinance was presented twice to the Operations and Public Project Committee at their April 2009 and June 2009 meetings. Comments from the April meeting have been incorporated in to this version of the ordinance.

RECOMMENDATION / MOTION

Move to: Review an Ordinance of the City Council of the City of Gig Harbor, Washington, relating to adoption of new regulations related to stormwater and grading, repealing and replacing Chapter 14.20 of the City of Gig Harbor Municipal Code (GHMC), revising Section 18.10.080 GHMC, and adding Chapter 14.40 GHMC, and new regulations relating to the creation of a new civil permit by repealing and replacing Chapter 12.06 GHMC.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO STORMWATER AND GRADING REGULATIONS; REPEALING AND REPLACING CHAPTER 14.20 OF THE GIG HARBOR MUNICIPAL CODE TO ADOPT NEW REGULATIONS RELATING TO STORMWATER; AMENDING SECTION 18.10.080 OF THE GIG HARBOR MUNICIPAL CODE; ADDING NEW CHAPTER 14.40 TO THE GIG HARBOR MUNICIPAL CODE TO ADOPT REGULATIONS RELATING TO GRADING; REPEALING AND REPLACING CHAPTER 12.06 OF THE GIG HARBOR MUNICIPAL CODE TO ESTABLISH A CIVIL PERMIT PROCESS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Gig Harbor (the “City”) is regulated under the Washington State Department of Ecology’s Western Washington Phase II Municipal Stormwater Permit (the “Permit”); and

WHEREAS, the Permit became effective on February 16, 2007 and contains various requirements for stormwater management and operations that must be implemented over the 5-year permit term ending February 15, 2012; and

WHEREAS, the Permit broadly applies to City activities that include maintenance and operations of City facilities, permitting of development, inspections and enforcement of regulations, and other activities conducted in the City’s Municipal Separate Storm Sewer System; and

WHEREAS, the City will be adopting code policies and procedures as needed to comply with the Permit; and

WHEREAS, to meet the conditions of the Permit, a Stormwater Management Program (“SWMP”) has been prepared that outlines all requirements of the Permit and a summary of the City’s work program to meet those requirements over the 5-year permit term, and will be updated annually to incorporate progress on implementing the SWMP and changes to projected future work efforts; and

WHEREAS, the revisions and additions of this ordinance are intended to meet Condition S5.C.4 of the Permit with the goal of improving and maintaining water quality

in compliance with the Clean Water Act, which includes adoption of a new stormwater technical manual such as Department of Ecology's Stormwater Manual, or an equivalent Stormwater Manual from an NPDES Phase I jurisdiction; and

WHEREAS, the new stormwater technical manual includes many of the requirements that have been previously provided by the existing Chapter 14.20 GHMC and is based on the recently approved Pierce County Stormwater Management and Site Development Manual; and

WHEREAS, the revisions of this ordinance remove the requirement for a drainage permit and create instead the new requirement for a civil permit and/or a grading permit; and

WHEREAS, the Public Works Department currently informally requires review of civil improvements through review and implementation of the Public Works Standards; and

WHEREAS, the new requirements for a civil permit are intended to enhance the transparency of the City's permitting requirements for public works projects and replace the requirements for a drainage permit; and

WHEREAS, Title 15 GHMC, Building and Construction, currently places the authority of grading with the Community Development Director, which no longer exists; and

WHEREAS, the Public Works Department currently informally reviews and enforces grading permits on behalf of the Community Development Director with enforcement in accordance with Title 15 GHMC; and

WHEREAS, the new requirements for a grading permit are intended to enhance the transparency of the City's permitting and enforcement of grading projects by establishing a grading code in Title 14 GHMC, which is enforced by the Public Works Director under Title 12 GHMC; Now, therefore

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

Section 1. Chapter 14.20 of the City of Gig Harbor Municipal Code is repealed.

Section 2. A new Chapter 14.20 of the City of Gig Harbor Municipal Code is hereby added to read as follows:

**Chapter 14.20
STORMWATER MANGEMENT**

14.20.010 Declaration of Title

This Code shall be known as the “Stormwater Management Code”.

14.20.020 Purpose

The purpose of this Code is to:

1. Guide development or redevelopment activities within the City of Gig Harbor with regards to stormwater drainage. The provisions of this Code establish the minimum standards and construction procedures that must be met before issuance of a permit for development or redevelopment of property;
2. Minimize or eliminate the impacts of increased runoff, erosion, and sedimentation caused by land disturbance, development, and redevelopment;
3. Promote site planning and construction practices that seek to maintain the natural hydrologic conditions;
4. Require that stormwater facilities be operated, maintained, and repaired in conformance with this Code. The provisions of this Code establish the minimum level of compliance that must be met for maintaining stormwater facilities within the City;
5. Provide for inspection and maintenance of stormwater facilities in the City to ensure an effective and functional stormwater drainage system;
6. Not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code; and
7. Meet the requirements of the City’s National Pollution Discharge Elimination System Permit for Municipal Separate Storm Sewer Systems.

14.20.030 Definitions

“Basin” shall mean an area from which surface runoff is concentrated, usually to a single point such as the mouth of a stream

“Best management practice” or “BMP” shall mean the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial

practices, that when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington.

“Development” shall mean any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, placement of manufactured home/mobile home, mining, dredging, clearing, filling, grading, paving, excavation, drilling operations, or the subdivision of property. See also the definitions for redevelopment and land disturbing activities.

“Erosion” shall mean the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Also, detachment and movement of soil or rock fragments by water, wind, ice, or gravity

“Land disturbing activity” shall mean any activity that results in a movement of earth or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land-disturbing activity. Vegetation maintenance practices are not considered land-disturbing activity.

“Municipal Separate Storm Sewer System (MS4)” or “stormwater drainage system” means the system of conveyances including sidewalks, roads with drainage systems, municipal streets, catchbasins, curbs, gutters, ditches, manmade channels, or storm drains owned and operated by the city and design or used for collecting or conveying stormwater.

“Redevelopment” shall mean, where a site that is already substantially developed (i.e., has 35 percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

“Stormwater” shall mean that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

“Stormwater facility” shall mean a constructed component of a stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.

14.20.040 Adoption of Technical Manual

The *Gig Harbor Stormwater Management and Site Development Manual*, most recent version, hereafter called the “Manual”, is hereby adopted as the City’s manual for controlling runoff from new development, redevelopment and construction sites.

14.20.050 Authority

The Public Works Director (Director), or an assignee, shall have the authority to administer and enforce this Code. The Director shall also have the authority to develop and implement procedures to administer and enforce this Code. The Director may approve, conditionally approve, or deny an application for activities regulated by this Code. The Director is authorized to develop a regular inspection program for all stormwater facilities in the City.

14.20.060 Applicability

The provisions of this Code shall apply to all site development activities, both public and private, within the City of Gig Harbor.

Any land development which is required by operation of any City of Gig Harbor Code, state law, or federal law to construct, install, or modify any natural or manmade drainage features within, abutting, or serving the development shall do so in accordance with this Code. However, where the provisions of this Code directly conflict with any other Gig Harbor Code, state or federal law, comprehensive drainage plan, or special study, the more stringent provisions shall apply to the extent permissible by law.

Approval of any land development activity by the City of Gig Harbor does not constitute approval of other applicable permits that may be required by other agencies. The fact that any activity is exempt from the permit requirements of this Code shall not constitute an exemption from any other City code, ordinance, or state or federal law.

14.20.070 Exemptions

The following are exempt from the requirements of this Code:

1. Site development or redevelopment activities approved under an existing unexpired development permit prior to the effective date of this code. These activities shall instead meet the requirements of the code in place at the time of development permit approval; and
2. Site development or redevelopment permit applications that has been deemed a complete application prior to the effective date of this code. These applications shall instead meet the requirements of the code in place at the time the application was deemed complete; and

3. Commercial agriculture and forest practices regulated under Title 222 WAC, except for Class IV General Forest Practices that are conversions from timber land to other uses; and
4. Development that is undertaken by the Washington State Department of Transportation in state highway rights-of-way and is regulated by Chapter 173-270 WAC, the Puget Sound Highway Runoff Program.
5. Road construction and/or maintenance activities, including the creation of wetland mitigations sites and storm ponds, undertaken by the Gig Harbor Public Works Department shall be exempt from the administrative requirements of this Code, but shall comply fully with the technical requirements contained herein.
6. An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid Building Permit. This shall not exempt the placement of any fill material removed from such an excavation, and shall not exempt any excavation beyond the limits of the basement or footing excavations nor exempt excavations having an unsupported height greater than 4 feet after the completion of such a structure.
7. Agricultural crop management outside of critical drainage areas limited to the preparation of soil by turning, discing, or other means endorsed by the local Conservation District.
8. Excavation for cemetery graves.
9. The disposal of solid waste, wood waste, problem waste and demolition waste authorized pursuant to chapter 70.95 RCW, and regulations presently enacted or as may be amended or as specifically approved by the Pierce County Health District.
10. The on-site stormwater management for mining, quarrying, excavating, processing, and/or stockpiling of rock, sand, gravel, aggregate, or clay where established and provided by law, and a permit for said activity has been issued by the State of Washington or the Federal Government, provided such operations do not exceed the minimum requirements of this Code at the discharge location to the MS4.
11. Exploratory excavations under the direction of a qualified professional engineer.
12. Grading activities already approved by separate permit granted by any governing authority, provided that the activities meet the minimum requirements of this Code.
13. Emergency sandbagging, diking, ditching, filling, pumping, eductor truck work, or similar work during or after periods of extreme weather conditions when done to protect life or property.

14. Discharges of regulated effluent from any commercial or municipal facility holding a valid state or federal wastewater discharge permit.
15. Discharges from acts of nature not compounded by human negligence.
16. Discharges from properly operating on-site domestic sewage systems.
17. Discharges from properly applied agricultural chemicals or materials.

14.20.080 Variances

The Director of Public Works may grant a variance from the provisions of this Code, provided that all criteria are met as adopted in Section 12.16.010 of the Gig Harbor Municipal Code.

14.20.090 Discharge of Stormwater Directly to Puget Sound

Development or redevelopment sites that abut Puget Sound or tidally influenced areas of rivers and streams discharging into Puget Sound do not need to meet the flow control requirements of the Manual provided sufficient BMPs are provided to mitigate increased release rates and potential for erosion. All other requirements of the Manual shall be met.

14.20.100 Drainage Associated With Civil Construction and Grading Activities

- A. All civil construction activities shall conform to the requirements of Chapters 12.02 and/or 12.06 GHMC.
- B. All grading activities shall conform to the requirements of Chapter 14.40 GHMC.
- C. All site development and redevelopment activities shall meet the requirements of the Manual.
- D. Stormwater flows shall be accepted onto, and shall be discharged from, a project site at the natural or otherwise legally existing locations.

14.20.110 Changes in Site Topography

- A. The maximum surface gradient on any artificially created slope without a retaining structure shall be two (2) feet of horizontal run to one (1) foot of vertical fall (2:1). This gradient may be increased to that gradient which can be demonstrated through engineering calculations to be stable, if, in the opinion of the Director, it has been demonstrated by the Applicant through engineering

calculations performed by a qualified professional engineer that surface erosion can be controlled to that erosion rate equal to a properly stabilized 2:1 slope under the same conditions.

- B. Any rockery or other retaining structure greater than four feet in height must be permitted under a separate Building Permit issued by the City.
- C. The Applicant shall at all times protect adjacent private properties and public rights-of-way or easements from damage occurring during development. The Applicant shall restore private property and public improvements damaged by his/her operations.
- D. The Applicant shall be responsible for obtaining and coordinating all required State or Federal permits associated with the disturbance of wetlands or other regulated activities.

14.20.120 Maintenance of Erosion and Sedimentation Control

It shall be the responsibility of the Contractor performing the land disturbing activities to maintain all temporary erosion and sediment control and drainage facilities in good operating condition at all times, as described in the Manual. It shall be the responsibility of the property owner to maintain all permanent erosion and sediment control and drainage facilities in good operating condition at all times, as described in the Manual.

14.20.130 Agreements, Easements, Tracts, and Covenants

- 1. Each development installing stormwater facilities or drainage systems beyond the City's right of way shall submit a completed stormwater facilities maintenance agreement on a City form prior to approval of construction.
- 2. Drainage easements shall be provided for all stormwater conveyance systems that are not located in public rights-of-way or tracts. Said drainage easements shall be granted to the parties responsible for providing on-going maintenance of the systems and shall be of sufficient width to accommodate maintenance equipment and excavations relative to the depth and size of the systems.
- 3. Drainage easements through structures are not permitted.
- 4. Stormwater facilities that are to be maintained by the City, together with maintenance access roads to said facilities, shall be located in public right-of-way, separate tracts dedicated to the City, or drainage easements located in designated open space. The exception is for stormwater conveyance pipes that may be located within easements on private property, provided that all catch basins can be accessed without entering private property.
- 5. All runoff from impervious surfaces, roof drains, and yard drains shall be directed so as not to adversely affect adjacent properties. Wording to this effect shall

appear on the face of all binding site plans, short plats, boundary line adjustments, and final plats/PRDs, and shall be contained in any covenants required for a development.

14.20.140 Basin Planning

An adopted and implemented basin plan tailored to a specific basin may be used to develop requirements for source control, stormwater treatment, streambank erosion control, wetlands, and water quality sensitive areas. Adopted and implemented watershed-based basin plans may be used to modify any or all of the minimum requirements addressed in the Manual, provided that the level of protection for surface or ground water achieved by the basin plan will equal or exceed that which would otherwise be achieved by implementation of the provisions of this Code in the absence of a basin plan. Basin plans shall evaluate and include, as necessary, retrofitting of BMPs for existing development and/or redevelopment in order to achieve watershed-wide pollutant reduction goals. Standards developed from basin plans shall not modify any of the above requirements until the basin plan is formally adopted and fully implemented by the City.

14.20.150 Maintenance of Stormwater Facilities by Owners

For privately maintained stormwater facilities and BMPs, the maintenance requirements specified in this Code, including the Manual, shall be enforced against the owner(s) of the subject property served by the stormwater facility.

14.20.160 City Acceptance of New Stormwater Facilities

The City may accept for maintenance those new residential stormwater facilities constructed under an approved permit that meet the following conditions:

1. Improvements in residential plats/PRDs have been completed on at least 80% of the lots, unless waived by the Director; and
2. All drainage facilities have been inspected and accepted by the Director and said drainage facilities have been in satisfactory operation for at least two (2) years; and
3. All drainage facilities reconstructed during the maintenance period have been accepted by the Director; and
4. The stormwater facility, as designed and constructed, conforms to the provisions of this Code; and
5. All easements and tracts required under this Code, entitling the City to properly operate and maintain the subject drainage facility, have been conveyed to the City and have been recorded with the Pierce County Auditor; and

6. For non-standard drainage facilities, an operation and maintenance manual, including a maintenance schedule, has been submitted to and accepted by the City; and
7. A complete and accurate set of reproducible mylar record drawings and a digital file in a drafting format acceptable by the Director have been provided to the City of the stormwater facilities.

14.20.170 City Acceptance of Existing Stormwater Facilities

The City may accept for maintenance those stormwater facilities for residential developments existing prior to the effective date of this Code that meet the following conditions:

1. Improvements in residential plats/PRDs have been completed on at least 80% of the lots; and
2. An inspection by the Director has determined that the stormwater facilities are functioning as designed; and
3. The stormwater facilities have had at least two (2) years of satisfactory operation and maintenance, unless otherwise waived by the Director; and
4. The person or persons holding title to the properties served by the stormwater facilities submit a petition containing the signatures of the title holders of more than 50% of the lots served by the stormwater facilities requesting that the City maintain the stormwater facilities; and
5. All easements required under this Code, entitling the City to properly operate and maintain the subject stormwater facilities, have been conveyed to the City and have been recorded with the Pierce County Auditor; and
6. The person or persons holding title to the properties served by the stormwater facilities show proof of the correction of any defects in the drainage facilities, as required by the Director; and
7. A complete and accurate set of reproducible mylar record drawings and a digital file in a drafting format acceptable by the Director have been provided to the City of the stormwater facilities; and
8. The stormwater facilities meet current design standards as defined in the Manual or a variance has been approved.

14.20.180 City Inspections of Privately Maintained Stormwater Facilities

The Director is authorized to develop an inspection program for privately owned and maintained stormwater facilities in the City. The party (or parties) responsible for maintenance and operation shall be identified. The purpose of this inspection program shall be to determine if said storm water facilities, conveyance structures, and water quality facilities are in good working order and are properly maintained, and to ensure

that stormwater management BMPs are in place and that non-point source pollution control is being implemented. Critical stormwater facilities, as so deemed by the Director, may require a more frequent inspection schedule.

14.20.190 Test Procedures

In the event that water quality testing is utilized in determining whether a violation of this Section has occurred, said water quality test procedures shall be followed as described in the most recent edition of the “Code of Federal Regulations, Part 136”.

14.20.200 Violations of This Code

The placement, construction or installation of any structure, or the connection to a public storm drainage facility, or the discharge to a public drainage facility or any activity which violates the provisions of this Code shall be and the same is hereby declared to be unlawful and a public nuisance. The City may take enforcement action as set forth in Chapter 12.17 GHMC to ensure that any such activity, Code violation or property condition declared to be a public nuisance ceases and is abated through the use of civil or criminal penalties and Stop Work Orders, as well as any other remedies which are set forth in this Code, the Gig Harbor Municipal Code, or any applicable ordinance or statute, including, but not limited to revocation of any permits. The choice of enforcement action taken and the severity of any penalty shall be determined as set forth in Chapter 12.17 GHMC.

Section 3. Section 18.10.080 GHMC is revised to read:

The ~~community development~~ Public Works director shall require that any excavation, grading, fill or construction be performed only after issuance of a permit pursuant to GHMC Title 14 45.

Section 4. A new Chapter 14.40 is added to Title 14 of the Gig Harbor Municipal Code to read as follows:

**Chapter 14.40
GRADING**

14.40.010 Purpose.

- A. The purpose of this chapter is to promote, protect and preserve the public interest by regulating land alteration, particularly the grading of land in the city.
- B. This chapter is necessary in order to provide minimum development regulations and construction procedures which will preserve, replace or enhance natural

processes and characteristics to the maximum extent practicable, consistent with the zoning and subsequent development of the land within the city; to minimize water quality degradation and the sedimentation of creeks, streams, ponds, lakes, wetlands and other water bodies; to minimize the impact of increased runoff erosion and sedimentation on non-consenting persons caused by improper land development and maintenance practices; to maintain and protect groundwater resources; to minimize adverse effects of alteration in ground and surface water quantities, locations, and flow patterns; to promote safety upon city roads and right-of-way; to decrease potential landslide, flood, and erosion damage to public and private property; and to promote site planning and building practices which are consistent with the city's natural topographical, vegetational and hydrological features.

- C. This chapter is intended to promote the health, safety and welfare of the public and nothing in this chapter is intended to or shall be deemed to create a duty on the part of the city to protect or promote the interests of any particular person or class of persons. The existence of these regulations or any failure, refusal or omission of the city to enforce any provision in this chapter shall not prevent, supplant or affect the right of any person affected by the grading operations of another to invoke such private remedies as may be available against such other person.

14.40.020 Definitions.

For the purposes of this chapter, the definitions listed under this section shall be construed as specified in this section:

“Abbreviated Plan” means the project threshold for Abbreviated Plans described in the Gig Harbor Stormwater Management and Site Development Manual.

“Approved” means approved by the designated permit authority for grading permits.

“As-graded” means the surface condition after the completion of grading.

“Bench” means a relatively level step excavated into earth material on which fill is to be placed.

“Borrow” means earth material acquired from an off-site location for use in grading on a site.

“Brush” means vegetation one foot to four feet in height.

“Building” means any structure used or intended for supporting or sheltering any use or occupancy.

“Civil engineer” means a professional engineer licensed to practice in the state of Washington in civil engineering.

“Civil engineering” means the application of knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of mankind.

“Clearing” means the act of destroying or removing vegetation by mechanical or chemical means. See Chapter 17.94 GHMC.

“Grading permit” means the written permission of the permit authority to the permittee to proceed with the act of grading and land development within the provisions of this chapter.

“Compaction” means the densification of a fill by mechanical means.

“Critical Area” means those lands which are subject to natural hazards, contain important or significant natural resources or which have a high capability of supporting important natural resources. See Chapter 18.08 GHMC.

“Cut” – See “Excavation”.

“Development standards” means the Public Works Standards and/or the Gig Harbor Stormwater Management and Site Development Manual as approved by the city council.

“Earth material” means any rock, natural soil or any combination thereof.

“Engineering geologist” means a professional engineering geologist licensed to practice in the state of Washington experienced and knowledgeable in engineering geology.

“Engineering geology” means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

“Erosion” means the wearing away of the ground surface as a result of action by wind, water and/or ice.

“Excavation” means the removal of earth material by artificial means, also referred to as a cut.

“Existing grade” means the land elevation prior to grading.

“Fill” means deposition of earth material by artificial means.

“Filling” means any act by which earth, sand, gravel, rock or other solid material is deposited, placed, pushed, pulled or transported to a place other than the place from which it is excavated and the materials so placed.

“Finished grade” means the grade of the site after alterations are completed.

“Grade” means the vertical location of the ground surface.

“Grading” means any act which changes the elevation of the ground surface, including either excavation activities or fill activities.

“Ground cover” means root vegetation normally less than one foot in height.

“Grubbing” means the act of root vegetation removal from beneath the surface of the earth.

“Hydrologist” means a professional hydrologist licensed to practice in the state of Washington who has experience or specialized training in hydrology.

“Impervious” means without significant capacity to transmit water.

“Intermittent” means interrupted at intervals, periodic, recurrent, flowing in the same direction (streams), or depressions which fill on a frequent basis (ponds).

“Key” means a compacted fill placed in a trench excavated in earth material beneath the toe of a slope.

“Overstory” means vegetation above ten feet in height.

“Permit authority” means the Public Works Director. The director may designate subordinate(s) to make approvals, sign permits, and carry out other responsibilities in application to this code.

“Permittee” means the person(s) or entity to whom a grading permit is issued.

“Professional finding” means a written professional opinion with the professional’s seal from the state of Washington stating the facts observed or found and comparison of the characteristics of the work with the known minimal required criteria, followed by an opinion of the suitability of such work to perform the intended function.

“Registered professional” means a person currently licensed by the state of Washington to practice in engineering, architecture, landscape architecture, geotechnical engineering, geology, hydrology and/or surveying.

“Regulatory agencies” means appropriate departments of a governmental body.

“Rough grade” means the stage of construction at which the ground elevations are near the finished elevations planned.

“Sediment” means waterborne particles, graded or undefined, occurring by erosive action.

“Sedimentation” means the process of deposition of soil and organic particles displaced, transported, and deposited by water or wind.

“Sensitive lands” means lands possessing slopes in excess of twenty-five percent on unstable soil, natural drainage, geological or vegetative characteristics which pose potentially hazardous impacts for occupants of the land or its neighbors. See also “Critical Area”.

“Significant vegetation” as defined in GHMC 17.99.590.

“Siltation” means deposition of fine textured sediment in streams and surfaced waters.

“Site” means that defined portion of any lot(s) or parcel(s) of land or contiguous combination thereof, where grading is performed or permitted.

“Slope” means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

“Soil” means naturally occurring superficial deposits overlying bedrock.

“Soils engineering” means the application of the principles of soils mechanics in the investigation, evaluation and design of civil works involving the use of earth materials and the inspection and/or testing of the construction thereof.

“Stage” means a defined increment of work.

“Storm return interval” is an expression of the probability with which a storm of a given intensity and duration can be expected to occur; term used by a hydrologist to predict runoff quantities.

“Stream” means the surface water route generally consisting of a channel with bed, banks, or sides, in which surface waters flow in draining from higher or lower land, both perennial and intervening; the channel and intervening artificial components, excluding flows which do not persist more than twenty-four hours after cessation of rainfall at some time of the year.

“Structure” means that which is built or constructed including, but not limited to, tanks, towers, fences, silos, and chimneys. See also “Building”.

“Surface waters” means water bodies exposing a free water surface, with or without movement, such as streams, lakes, bogs, and ponds.

“Terrace” means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

“Tree” means a woody perennial plant with one or more main stem(s) or trunk(s) which develop many branches.

“Understory” means vegetation four feet to ten feet in height.

“Vegetation” means all organic plant life growing on the surface of the earth.

14.40.030 Permit authority.

The permit authority is the designated agent for the issuance of grading permits. The permit authority shall have the authority to develop administrative procedures to carry out the purposes and intent of this grading code. Such administrative procedures should be developed in consultation with technical advisors as circumstances require and shall be made available to the public for comment at least seventeen days before adoption.

14.40.040 Permit required.

- A. Application. No person shall make changes or cause changes to be made in the surface of any land by grading, excavating, filling, stockpiling or the removal or

disturbance of the natural topsoil thereon without first having obtained a valid grading permit, except as provided in subsection B of this section.

- B. Exemptions. A grading permit shall not be required for the following:
- 1) Agricultural crop management;
 - 2) Excavation and filling of cemetery graves;
 - 3) Routine maintenance of existing landscaping;
 - 4) Emergency situations involving immediate danger to life or property or substantial fire hazards;
 - 5) Excavations for wells, dewatering wells, or trenches for utilities;
 - 6) Exploratory excavations performed under the direct supervision of a design professional registered in the State of Washington.
 - 7) In any one year an excavation less than 50 cubic yards which:
 - a. Is less than one foot in depth; and
 - b. Does not obstruct a stream or surface water; and
 - c. Does not create a cut slope greater than five feet in height and steeper than two horizontal to one vertical; and
 - d. Is adequately protected against erosion.
 - 8) In any one year a fill less than 50 cubic yards which:
 - a. Is less than one foot in depth; and
 - b. Does not obstruct a stream or surface water; and
 - c. Is not intended to support structures; and
 - d. Does not create a fill slope greater than three feet in height and steeper than five horizontal to one vertical; and
 - e. Is adequately protected against erosion.
 - 10) Grading within five feet of a proposed footing that is required for placement of a building that is associated with a valid building permit.

14.40.050 Requirements.

It is the intent of this section to promote practices consistent with the city's natural topographic, vegetational, and hydrologic features, and to control substantial land alterations of a speculative nature. In considering whether to issue a permit, and in considering whether and what type of conditions should be imposed, the permit authority shall apply the following standards and criteria:

- A. General. The permit authority may approve or approve with modifications an application submitted under this subsection only if:
- 1) The proposal is in accord with the comprehensive plan, comprehensive drainage plan, zoning code, critical areas ordinance, drainage management

- code, National Flood Insurance Program, and other city codes and adopted standards,
- 2) The approval of the proposal will not pose a threat to or be detrimental to the public health, safety and welfare, and
 - 3) The applicant has demonstrated that approval of the proposal is necessary for the reasonable development or maintenance of the property.
- B. Hazards. Whenever the permit authority determines that any existing excavation or embankment or fill on private property has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of the property, upon receipt of notice in writing from the permit authority, shall within the period specified therein repair or eliminate such excavation or embankment so as to eliminate the hazard and be in conformance with the requirements of this code.
- C. Gig Harbor Stormwater Management and Site Development Manual. All grading projects shall be subject to meeting the requirements of the Gig Harbor Stormwater Management and Site Development Manual, most recent version, hereafter called the "Manual".

14.40.060 Permit—Application.

To obtain a permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall also include the following applicable information:

- A. Plan submittals in accordance with the Gig Harbor Stormwater Management and Site Development Manual, most recent version.
- B. Applicants for grading on slopes of critical areas or on slopes fifteen percent or greater but not exceeding thirty-five percent may be required by the permit authority to submit a grading report described in Section 14.40.060(C).
- C. Applicants for grading on slopes in excess of thirty-five percent shall submit a grading report prepared by a professional engineer licensed by the state of Washington. The required grading report shall contain the following information, including recommended methods for mitigating identified impacts and a description of how these mitigating measures may impact adjacent property:
 - 1) Soils Report. This report shall include data regarding the nature, distribution and strength of existing soils and the characteristics of the underlying geology, conclusions and recommendations for grading procedures, design criteria for corrective measures and opinions and recommendations covering the carrying capabilities of the site; and

- 2) Hydrology Report. This report shall include an adequate description of the hydrology of the site, conclusions and recommendations regarding the effect of hydrologic conditions on the proposed development and options and recommendations covering the carrying capabilities of the sites to be developed.

- D. Any additional information that may be required by the city shall be provided by independent consultants hired by the city at applicant's expense.

14.40.070 Permit—Fees.

Before accepting a permit application, the permit authority shall collect a permit fee. Such fee shall be determined according to the standard fee schedule approved by the city council by resolution.

14.40.080 Permit—Expiration.

For any permit authorized under this chapter the permit authority shall impose a time limit within which the proposed site work must be completed. The time limit for expiration of the permit shall be 180 days unless otherwise noted on the approved grading plans and conditioned on the approved grading permit. The Director is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing with justifiable cause demonstrated.

14.40.090 Financial Guarantees.

- A. All projects, except those projects meeting the requirements of Section 14.40.040(B) or those projects requiring only an Abbreviated Plan, shall establish a financial guarantee in accordance with the Manual in the form of cash escrow account, irrevocable letter of credit, or other form of credit which may be acceptable to the city at its sole discretion.
- B. The financial guarantee shall be sufficient to reimburse the city if it should become necessary for the city to enter the property for the purpose of correcting and/or eliminating hazardous conditions relating to soil stability and/or erosion, or to restore vegetation, and/or for other purposes authorized in this chapter. In addition, the financial guarantee may be required to protect the city from potential damage claims and/or other damage to city streets, utilities or property in the same manner and extent as may be required prior to issuance of a building permit pursuant to other sections of this code.
- C. In no case shall the financial guarantee be less than 125% of the estimated value of the grading activities provided by the applicant's civil engineer and approved by the permit authority.

- D. Should the city, during the course of construction, find it necessary to expend the financial guarantee to correct any work not in accordance with the approved plans and specifications, a stopwork order shall be issued to the permittee on any additional work until the financial guarantee is reestablished by the permittee.

14.40.100 Cuts.

- A. General.
 - 1) Unless otherwise recommended in the approved soils engineering and/or engineering geology report, cuts shall conform to the provisions of this section.
 - 2) In the absence of an approved soils engineering report, these provisions may be waived by the permit authority for minor cuts not intended to support structures.
- B. Slope. The slope of cut surfaces shall be no steeper than is safe for the intended use and shall be no steeper than two horizontal to one vertical unless the owner furnishes a soils engineering or an engineering geology report, or both, stating that the site has been investigated and giving an opinion that a cut at a steeper slope will be stable and not create a hazard to public or private property. The report shall be reviewed and approved by the city engineer prior to earth work.
- C. Terracing. Terracing shall be provided as required. See Section 14.40.130.

14.40.110 Fills.

- A. General.
 - 1) Unless otherwise recommended in the approved soils engineering report, fills shall conform to the provisions of this section.
 - 2) In the absence of an approved soils engineering report, these provisions may be waived by the permit authority for minor fills not intended to support structures.
- B. Fill Location. Fill slopes shall not be constructed on natural slopes steeper than two to one.
- C. Preparation of Ground. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other unsuitable materials, scarifying to provide a bond with the new fill and, where slopes are steeper than five to one and the height is greater than five feet, by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than five to one shall be at least

ten feet wide. The area beyond the toe of fill shall be sloped for sheet overflow or a paved drain shall be provided. When fill is to be placed over a cut, the bench under the toe of fill shall be at least ten feet wide but the cut shall be made before placing the fill and acceptance by the soils engineer or engineering geologist or both as a suitable foundation for fill.

D. Fill Material.

- 1) Organic material shall not be permitted in fills. Except as permitted by the building official, no rock or similar irreducible material with a maximum dimension greater than twelve inches shall be buried or placed in fills.
- 2) Exceptions. The permit authority may permit placement of larger rock when the soils engineer properly devises a method of placement, continuously inspects its placement and approves the fill stability. The following conditions shall also apply:
 - a. Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.
 - b. Rock sizes greater than twelve inches in maximum dimension shall be ten feet or more below grade, measured vertically.
 - c. Rocks shall be placed so as to assure filling of all voids.

E. Compaction. All fills shall be compacted to a minimum of ninety percent of maximum density as determined by the *International Building Code* (IBC) as adopted by the City. In-place density shall be determined in accordance with the IBC.

F. Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two horizontal to one vertical.

G. Terracing. Terracing shall be provided and the area above fill slopes and the surfaces to terraces shall be graded and paved as required. See Section 14.40.130.

14.40.120 Setbacks.

A. General. Cut and fill slopes shall be set back from site boundaries in accordance with this section. Setback dimensions shall be horizontal distances measured perpendicular to the site boundary.

B. Top of Cut Slope. The top of cut slopes shall be made not nearer to a site boundary line than one fifth of the vertical height of cut with a minimum of two feet and a maximum of ten feet. The setback may need to be increased for any required interceptor drains.

C. Toe of Fill Slope. The toe of fill slope shall be made not nearer to the site boundary line than one-half the height of the slope with a minimum of two feet

and a maximum of twenty feet. Where a fill slope is to be located near the site boundary and the adjacent off-site property is developed, special precautions shall be incorporated in the work as the permit authority deems necessary to protect the adjoining property from damage as a result of such grading. These precautions may include but are not limited to:

- 1) Additional setbacks;
 - 2) Provision for retaining or slough walls;
 - 3) Mechanical or chemical treatment of the fill slope surface to minimize erosion;
 - 4) Provisions for the control of surface waters.
- D. Modification of Slope Location. The permit authority may approve alternate setbacks using the variance process adopted by Section 12.16.010 GHMC. The permit authority may require an investigation and recommendation by a qualified engineer or engineering geologist to demonstrate that the intent of this section has been satisfied.

14.40.130 Terracing.

- A. General. Unless otherwise indicated on the approved grading plans, terracing and related drainage shall conform to the provisions of this section for cut or fill slopes steeper than three horizontal to one vertical.
- B. Terrace.
- 1) Terraces at least six feet in width shall be established at not more than thirty-foot vertical intervals on all cut or fill slopes to control surface drainage and debris except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than sixty feet and up to one hundred twenty feet in vertical height, one terrace at approximately mid-height shall be twelve feet in width. Terrace widths and spacing for cut and fill slopes greater than one hundred twenty feet in height shall be designed by the civil engineer and approved by the permit authority. Suitable access shall be provided to permit property cleaning and maintenance.
 - 2) Swales or ditches on terraces shall have a minimum gradient of five percent and must be paved with reinforced concrete not less than three inches in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of one foot and a minimum paved width of five feet.
 - 3) A single runoff swale or ditch shall not collect runoff from a tributary area exceeding thirteen thousand five hundred square feet (projected) without discharging into a down drain.
- C. Subsurface Drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.

- D. Disposal of drainage.
- 1) All drainage facilities shall be designed to carry water to the nearest practicable drainage way approved by the permit authority. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive down drains or other devices.
 - 2) Building pads shall have a drainage gradient of two percent toward approved drainage facilities. The permit authority may approve alternate gradients using the variance process adopted by Section 12.16.010 GHMC.
 - 3) Exception. The gradient from the building pad may be one percent if all of the following conditions exist throughout the permit area:
 - a. No proposed fills are greater than ten feet in maximum depth.
 - b. No proposed finish cut or fill slope faces have a vertical height in excess of ten feet.
 - c. No existing slope faces, which have a slope face steeper than ten horizontally to one vertically, have a vertical height in excess of ten feet.
- E. Interceptor Drains. Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than forty feet measured horizontally. Interceptor drains shall be paved with a minimum of three inches of concrete or gunite and reinforced. They shall have a minimum depth of twelve inches and a minimum paved width of thirty inches measured horizontally across the drain. The slope of drain shall be approved by the building official.

14.40.140 Erosion control.

Temporary and permanent erosion control measures shall be provided in accordance with the Gig Harbor Stormwater Management and Site Development Manual.

14.40.150 Grading inspection.

- A. General. All projects which include grading shall be subject to inspection by the permit authority. The permit authority shall be granted unlimited right of entry to the work site by submittal of the grading application for the purposes of review, making inspections to determine that the requirements of the plans and permits are being complied with, and for the purposes of taking corrective measures of an emergency nature. The cost of such corrective measures shall be borne by the permittee. The permit authority may require inspection and testing by an approved testing agency at any stage of the application or project.
- B. Contractor requirements. Every contractor or other person performing or directing the performance of any work requiring a permit under this chapter shall have in his/her possession prior to commencement of and during all phases of

the work an original or copy of a valid permit therefore, and shall further have a duty to be familiar with the terms and conditions of the permit and approved plans.

C. Engineered Grading Requirements.

- 1) For grading projects requiring plan submittals by a professional engineer licensed to practice in the State of Washington, it shall be the responsibility of the professional engineer who prepares the plan submittal to incorporate all recommendations from the soils engineer and engineering geology reports into the grading plan. The professional engineer shall be responsible for the inspection and approval of the grading within the professional engineer's area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade and drainage of the development area. The professional engineer shall act as the coordinating agent in the event the need arises for liaison between the other professionals, the contractor and the permit authority. The professional engineer also shall be responsible for the preparation of revised plans and the submission of as-graded record drawings upon completion of the work. The grading contractor shall submit in a form prescribed by the permit authority a statement of compliance to the record drawing.
- 2) Soils engineering and engineering geology reports shall be required as specified. Before and during grading all necessary reports, compaction data and soil engineering and engineering geology recommendations shall be submitted to the civil engineer and the permit authority by the soils engineer and the engineering geologist.
- 3) The soils engineer's area of responsibility shall include, but not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes and the design of buttress fills, where required, incorporating data supplied by the engineering geologist.
- 4) The engineering geologist's area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters and the need for subdrains or their groundwater drainage devices. He shall report his findings to the soils engineer and the civil engineer for engineering analysis.
- 5) The permit authority shall inspect the project at the various stages of the work requiring approval to determine that adequate control is being exercised by the professional consultants.

D. Regular Grading Requirements.

- 1) The permit authority may require inspection and testing by an approved testing agency at permittee's expense.

- 2) The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills.
- E. Notification of Noncompliance. If, in the course of fulfilling his responsibility under this chapter, the civil engineer, the soils engineer, the engineering geologist or the testing agency finds that the work is not being done in conformance with this chapter or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the permit authority. Recommendations for corrective measures, if necessary, shall be submitted to the permit authority.
- F. Transfer of Responsibility for Approval. If the registered professional or the testing agency of record is changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of his or her technical competence for approval upon completion of the work.
- G. It shall be the permittee's responsibility to notify the permit authority or his designee at least forty-eight (48) hours prior to the time required for inspection. If the permit authority fails to inspect the project within eight working hours after the scheduled inspection time, the permittee may proceed with the project but shall not be relieved from compliance with the requirements of the plans, specifications, and permit as approved. All inspections and testing required shall be determined prior to issuance of the permit, except those that may be required when conditions exist that were not covered in the documents submitted when requesting a permit. The permit authority may require additional inspection or testing if conditions are found to be different than those presented in the plans or supporting documents; however, if and when conditions change, it shall be the responsibility of the applicant or the professional consultants who submitted the plans or documents to provide the permit authority with recommended changes to procedures, for its review and approval.
- H. Suspension of Permits. Whenever the permit authority determines that the act or intended act of grading (excavation or fill has become or will constitute a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way, drainage channel, stream or surface water, including siltation and sedimentation therein, the permit authority shall immediately suspend the clearing and grading permit. The permittee or other person or agent in control of the property, upon receipt of notice in writing from the permit authority shall, within the period specified therein, terminate such clearing, grading, excavation, embankment or fill, or eliminate the same from the development plans.

14.40.160 Work completion.

- A. Final Reports. Upon completion of the rough grading work and at the final completion of the work the permit authority may require the following reports and drawings and supplements thereof:
- 1) As-graded record drawings in accordance with Section 14.40.150(C)(1) GHMC prepared by the civil engineer including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and subsurface drainage facilities. The civil engineer shall state that to the best of his/her knowledge the work was done in accordance with the final approved grading plan.
 - 2) A soils-grading report prepared by the soils engineer, including locations and elevations of field density tests, summaries of field and laboratory tests and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. The soils engineer shall render a finding as to the adequacy of the site for the intended use.
 - 3) A geologic grading report prepared by the engineering geologist, including a final description of the geology of the site and any information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The engineering geologist shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors.
- B. Notification of Completion. The permittee or the permittee's agent shall notify the permit authority when the grading operation is ready for final inspection. Final approval shall not be given until all work and all erosion-control measures have been completed in accordance with the final approved grading plan and the required reports have been submitted.
- C. Maintenance Guarantee. All projects, except those projects meeting the requirements of Section 14.40.040(B) or those projects requiring only an Abbreviated Plan, shall submit a financial maintenance guarantee for a period of two years from the date of the notification of completion. The guarantee shall be in a form acceptable to the city attorney and shall be signed by the owner(s) of the property. The value of the financial maintenance guarantee shall be 15 percent of the project civil engineer's opinion of probable cost as approved by the permit authority.

14.40.170 Enforcement.

- A. In the event the City finds deficiencies under the approved plans or other permit conditions or any violation of this chapter, the property owner shall make such corrections as are necessary within fifteen days of the date of written notice by registered mail, return receipt requested, to the owner of record and the occupant of the property.

- B. In the event the person or persons violating this chapter shall fail to make corrections within fifteen days of the date of written notice by the city, the city may:
- 1) Prosecute violations of this chapter in accordance with Section 12.17 GHMC.
 - 2) By council resolution, declare any conditions which constitute or will constitute a violation of any of the provisions of this chapter, or rules or regulations adopted under this chapter, a public nuisance for which the city may seek legal or equitable relief to enjoin any acts or practices or abate any such conditions.
 - 3) Revoke the right to occupancy of the subject property and/or enter on the property as may be required to correct deficiencies as required by the approved grading plan. All costs for corrective measures and enforcement actions shall be borne by the property owner.
- C. Notwithstanding any other provision of this chapter, whenever the permit authority finds that a violation of this chapter or rules or regulations adopted under this chapter has created or is creating an unsanitary, dangerous, or other condition which, in his judgment, constitutes an immediate hazard, he may suspend or revoke any permit for which the approval of grading plan is required on the project or development where the violation exists and suspend or terminate operations under the permit immediately.
- D. Any person discharging material which will block, damage or contaminate the drainage system of the city shall be liable for all costs incurred by the city or others in cleaning up or correcting the action and may be charged with a misdemeanor punishable by fines.
- E. Penalty or enforcement provisions provided in this chapter shall not be exclusive, and the city may pursue any remedy or relief deemed appropriate in response to a violation of this chapter or the rules and regulations adopted under this chapter. The city council may institute a suit for a mandatory injunction directing a person to remove a structure or make the same comply with its terms. If the city council is successful in its suit, the respondent shall bear the costs of the action.
- F. The failure or refusal of the city to enforce any provision of this chapter, and as amended, shall not constitute a waiver or bar to prevent enforcement thereof against any person for any other violation by any other person.

Section 5. Chapter 12.06 of the City of Gig Harbor Municipal Code is repealed.

Section 6. A new Chapter 12.06 of the City of Gig Harbor Municipal Code is provided as follows:

**Chapter 12.06
Civil Construction Permitting and Maintenance**

12.06.010 Purpose

The purpose of this Code is to:

1. Establish a permit process for submittal, review, and issuance of a permit for construction of civil improvements not already required by Chapter 12.02 GHMC and Chapter 14.40 GHMC;
2. Provide for inspection and maintenance of civil construction activities to ensure an effective and functional water system, wastewater system, transportation system, and stormwater drainage system; and
3. Establish provisions for the recording of civil construction activities.

12.06.020 Definitions

For the purposes of this chapter, the definitions listed under this section shall be construed as specified in this section:

“Civil Construction Activity” means man-made action to install or create civil improvements.

“Civil Engineer” means a professional engineer licensed to practice in the state of Washington in civil engineering.

“Civil Improvement” means a man-made object or entity that benefits human-kind or mitigates the impact of human-kind, including, but not limited to, motorized and non-motorized ways of travel, street lighting, stormwater facilities, underground utilities, and overhead utilities, both public and private.

“Development” means any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, utilities, placement of manufactured home/mobile home, mining, dredging, clearing, filling, grading, paving, excavation, drilling operations, or the subdivision of property.

12.06.030 Authority

The Public Works Director (Director), or an assignee, shall have the authority to administer and enforce this Code. The Director shall also have the authority to develop and implement procedures to administer and enforce this Code. The Director may

approve, conditionally approve, or deny an application for activities regulated by this Code.

12.06.040 Applicability

The provisions of this Code shall apply to all civil construction activities not regulated by Chapter 12.02 GHMC or Chapter 14.40 GHMC, both public and private, within the City and:

- 1) Performed within the City's right-of-way; or
- 2) On private property that may impact access to the City's right of way; or
- 3) On private property whose stormwater runoff may impact an adjacent property or water body; or
- 4) Modifies or connects a non-single family residential utility on private property that connects to a city-owned utility; or
- 5) On private property that creates a public street; or
- 6) On private property that creates or modifies a private street.

12.06.050 Exemptions; Emergencies

A. The following are exempt from the requirements of this Code:

1. Development that is undertaken by the Washington State Department of Transportation in state highway rights-of-way.
2. Road construction and/or maintenance activities undertaken by the Gig Harbor Public Works Department shall be exempt from the administrative requirements of this Code, but shall comply fully with the technical requirements contained herein.
3. A structure authorized by a valid Building Permit. This shall not exempt the placement of any civil improvements beyond the limits of the basement or footing excavations of structures.

B. Owners who perform emergency civil construction activities during or after periods of extreme weather conditions when done to protect life or property shall apply for a Civil Permit no later than one month after the period of extreme weather conditions has passed.

12.06.060 Variances

The Director may grant a variance from the provisions of this Code, provided that all criteria are met as adopted in Section 12.16.010 of the Gig Harbor Municipal Code.

12.06.070 Permit Requirements

The Director shall establish requirements for the submittal of Civil Permits, subject to the following criteria:

- A. Each applicant shall first file a written permit application on a form furnished by the City for that purpose.
- B. All site development activities shall comply with the standards, specifications and requirements contained in Titles 12, 13, and 14 of the Gig Harbor Municipal Code.
- C. Before accepting a permit application, the permit authority shall collect a permit fee. Such fee shall be determined according to the standard fee schedule approved by the city council by resolution.
- D. The Director shall establish a checklist demonstrating the information that shall be provided by the applicant for review of a Civil Permit.
- E. Time limitation on permit application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing and expired, unless such application has been pursued in good faith or a permit has been issued; except that the Director is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing with justifiable cause demonstrated.
- F. Record drawings. The applicant shall provide to the City both a final record drawing and a final record survey of the proposed development, each in both mylar format and digital format. These drawings shall be have the seal of a civil engineer and be provided after the City accepts the construction improvements shown on the civil plans but prior to any certificate of occupancy for any buildings or structures located on the site plan. The digital format of the drawings shall be in AutoCAD compatible file and include all improvements in the right of way and all stormwater, water, and sewer utilities. The horizontal datum shall be NAD 1983 HARN State Plane South FIPS 4602 feet, or as otherwise approved by the Director. The vertical datum shall be NGVD 29, or as otherwise approved by the Director.

12.06.080 When a Professional Civil Engineer is Required

Unless otherwise exempted by the Gig Harbor Municipal Code, Civil Permit applications shall require the submittal of documents prepared by a Civil Engineer.

12.06.090 Permit Modifications

Proposed modifications to an approved Civil Permit must be submitted to the Director and be reviewed for compliance with this Code. Substantial proposed modifications, as determined by the Director, shall require additional review fees and shall require re-issuance of the required permit. Minor proposed modifications may be accepted by the Director without requiring the re-issuance of the accepted permit or the payment of additional review fees.

12.06.100 Financial Guarantees

The owner shall submit financial guarantees as a guarantee of performing the work provided by an approved Civil Permit and as a guarantee of maintenance of the completed work. Financial guarantees may include bonds, cash set-asides, irrevocable lines of credit, or other types of guarantees accepted by the Director and approved by the city attorney. At no time shall the financial guarantee for a Civil Permit duplicate financial guarantees for the same scope of work. The financial guarantees for a Civil Permit shall be provided as follows:

- A. Performance Guarantee. Prior to the issuance of a Civil Permit the owner of the project shall submit a financial performance guarantee for all work related to the improvements proposed by the Civil Permit. The guarantee shall be in a form acceptable to the city attorney. The value of the financial performance guarantee shall be 125 percent of the project civil engineer's opinion of probable cost as approved by the Director.
- B. Maintenance Guarantee. Prior to release of a performance guarantee(s) the owner of the project shall submit a financial maintenance guarantee for a period of two years from the date of the release of the performance guarantee for all work related to the completed improvements. The guarantee shall be in a form acceptable to the city attorney. The value of the financial maintenance guarantee shall be 15 percent of the project civil engineer's opinion of probable cost as approved by the Director.

Section 7. Severability. If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 8. Effective Date. This ordinance shall take effect on and be in force as of August 14, 2009.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this 13th day of July, 2009.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

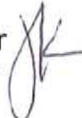
By: _____
ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 06/17/09
PASSED BY THE CITY COUNCIL: 07/13/09
PUBLISHED: 07/22/09
EFFECTIVE DATE: 08/14/09
ORDINANCE NUMBER:



Subject: Public Hearing and First Reading of Ordinance - Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone (ZONE 07-0006)

Dept. Origin: Planning

Prepared by: Jennifer Kester
Senior Planner 

For Agenda of: June 22, 2009

Proposed Council Action: Review the ordinances and staff's proposed changes and provide direction to staff on the desired rezone area for the second reading.

Exhibits: Staff Recommended Rezone Area; MUD/MX Comparison chart; Draft MX Chapter Ordinance; Draft MX Rezone Ordinance; Draft MUD Overlay Removal Ordinance; Planning Commission Recommendation; Applicable Excerpts from Planning Commission Minutes

Initial & Date

Concurred by Mayor: CLH 6/17/09
Approved by City Administrator: RJK
Approved as to form by City Atty: 2-man 6/12/09
Approved by Finance Director: N/A
Approved by Department Head: TD 6/16/09

Expenditure		Amount		Appropriation	
Required	0	Budgeted	0	Required	0

INFORMATION / BACKGROUND

The City's Planning and Building Committee and City Attorney asked the Planning Commission to review and consider the removal of the Mixed Use District Overlay from the zoning map and zoning code and recommend appropriate zoning for those affected parcels.

The Planning Commission held work study sessions on this amendment in 2008 on January 3rd, January 17th, and February 7th. Work study sessions were also held in 2009 on March 5th, March 19th, April 2nd, May 7th and May 21st. Public hearings were held in 2008 on March 6th and April 17th and in 2009 on March 19th.

After the public hearing, the Planning Commission recommended removing the Mixed Use District Overlay (MUD) from the zoning map and repealing Chapter 17.91, Mixed Use District Overlay. All properties currently within the MUD Overlay north of the Northharbor Business Campus would be rezoned to a new Mixed Use (MX) zoning district. A new Chapter 17.57 Mixed Use District (MX) would be added to the zoning code. Properties within the current MUD overlay located south of the Northharbor Business Campus would not be rezoned to the new MX district. The current underlying zoning (RB-2 or B-2) for those properties would remain the same. The Commission has also proposed that portions of the properties west of Burnham Drive within the MUD overlay would be rezoned to the new MX zone.

The Planning Commission's recommendation is attached. The changes would create a new Chapter 17.57 Mixed Use District (MX) and amend the use allowances currently in the MUD overlay. The proposal includes incentives for developing projects with a mix of residential and nonresidential uses. Also included in this proposal is the addition of a definition for "townhouse" and several housekeeping amendments to implement the new chapter. The Planning Commission's recommendation is shown in underlined / strike-out format to best show the proposed changes to the existing MUD Overlay. A comparison chart showing the differences between MUD overlay and MX is also attached.

After the Planning Commission's recommendation, the planning staff analyzed the development potential of the five (5) properties west of Burnham Drive currently in the MUD Overlay. All but one is severely constrained by critical areas, their buffers and topography. Planning staff feels it is inappropriate, given those constraints, to assume that commercial developed is viable on those properties. Rezoning those four (4) parcels to the new MX zone could give the property owners false expectation that commercial development is feasible. Therefore, the planning staff is recommending that only the largest parcel west of Burnham Drive be rezoned to the new MX zone. All other properties would retain their current R-2 zoning. Residential uses are typically more suitable for severely constrained properties such as these. The Planning Commission had much discussion regarding the properties west of Burnham Drive. They ultimately decided to rezone those properties currently within the MUD overlay to the new MX zone due to the underlying MUD land use designation.

POLICY CONSIDERATIONS

Zoning text and map amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare, and whether the proposed amendment is consistent with the Gig Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW). Zoning text and map amendments are considered a Type V legislative action (GHMC 19.01.003). Applications for amendments to the zoning district map may only be approved if all of the following criteria are satisfied:

- 1. The application for the zoning district map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan;*
- 2. The application for the zoning district amendment must further or bear a substantial relationship to the public health, safety and general welfare;*
- 3. No substantial detrimental effect will be caused by the granting of the application for the amendment;*
- 4. The proponents of the application have the burden of proof in demonstrating that conditions have changed since the original zoning or original designation for the property on the zoning district map. (GHMC 17.100.035)*

Gig Harbor Comprehensive Plan:

From the Land Use Element of the Comprehensive Plan

Policy 2.2.3.g:

Mixed Use

Mixed Use is an area of commercial/employment, office and multifamily located along principle collector routes which link the downtown area with SR-16. Commercial/employment activity within a Mixed Use area caters to a customer base beyond the immediate surrounding neighborhoods due to its location along the collector routes. The individual commercial/employment activities or developments in these areas are not of a size or character to be considered "major" activity or traffic generating uses. Multifamily and office uses are allowed within the Mixed Use area to provide economic diversity and housing opportunities near transit routes and business activities. The desired allocation of land use within the Mixed Use designation is:

Commercial/Employment	45% maximum
Professional Office	30% maximum
Multifamily	25% minimum

Planning Commission Analysis:

In recommending a new Mixed Use District (MX zone) the Planning Commission had the following vision for the zone:

The mixed use district will encourage the combination of residential and commercial uses in the same development in order to achieve a sustainable, live-work neighborhood, reduce vehicle trips and avoid urban sprawl. Given the district's proximity to retail centers, business parks and recreational facilities, the district can support the needs of residents, employees and businesses. Since the district is located between Burnham Drive and Harbor Hill Drive and along the Cushman Trail, the district provides opportunities for the City to promote walkable, bicycle-friendly land use and improve the interconnectivity of the street system. The Commission envisions mixed-use buildings to provide for some of the additional 2,500 residents and 1,600 employees expected within the City in the next 20 years. The district is located within the Gig Harbor North neighborhood design area and the City's design standards will ensure quality design of the mixed use developments.

The following is a synopsis of the issues discussed and reviewed at the work-study sessions and public hearings.

The Planning Commission discussed the reasons for the creation of the Mixed Use District Overlay in 1997 and assessed whether or not it had worked. It was agreed that due to the nature of the overlay as a second zone, implementation of the MUD overlay was difficult for staff and applicants. Property owners had dual-zoning of their property owners that must be navigated to yield a viable project. As very little new development had occurred in the MUD Overlay area in the ten years it had been in affect, it was clear that the overlay was not being utilized, perhaps due to its cumbersome nature.

The Planning Commission recognized that the simplest solution to the MUD overlay was to remove the overlay and not implement any new zoning of the area. However, the Commission understood that removal with no rezone would amount to a "down-zoning" for some property owners.

The Planning Commission agreed that the overlay should be removed, but felt that the public and property owners should be given a chance to comment on options for rezoning before the Commission recommended the removal of the overlay to the Council. Public hearings were held on March 6th and April 17th, 2008 and March 19th, 2009.

Three options were developed throughout the process and were brought to the public for comments. Option C was most consistent with all the public comment and is what the Planning Commission is recommending to the Council:

Option A: Removing the MUD overlay and making no change the underlying zoning. The underlying zoning would be the only zoning applicable to the affected parcels.

Option B: Rezoning all affected parcels to a new Mixed Use District zone and adding a new Mixed Use District to the zoning code which harmonizes the allowances in the MUD overlay with the uses allowed in the R-1 and RB-2 zones.

Option C: Repealing the current MUD overlay chapter and adding a new Mixed Use District (MX) chapter. Rezone all properties north of the Northharbor Business Campus within the MUD Overlay to a new Mixed Use (MX) zoning district and provide density and height incentives for mixed use development. Properties within the current MUD overlay located south of the Northharbor Business Campus would not be rezoned to the new MX district. The current underlying zoning (RB-2 or B-2) for those properties would remain the same.

Parcels south of the Northharbor Business Campus:

In the review of the parcels south of Northharbor Business Campus, the Commission felt that the existing zoning, RB-2 and B-2, was appropriate mixed use zoning for the area. Both zones allowed a mix of residential, commercial and office. In addition, both zones allow a higher density than the new MX zone (RB-2 - up to 12 and B-2 - unlimited through a CUP). Testimony from the agent of one property owner in the area stated that they preferred the RB-2 zoning over the new MX. The Planning Commission also felt that the Northharbor Business Campus, given its industrial character and layout was a natural boundary to the MX zone.

The following outlines the most significant changes made to the existing MUD overlay to create the new Mixed Use (MX) zone (A comparison chart showing the differences between MUD overlay and MX is also attached.):

Density: The existing overlay has a maximum density of 4 dwelling units per acre with a 30% increase if certain standards are met (up to 5.2 dwelling units per acre). The Planning Commission is proposing to retain the 4 du/a minimum and allow up to 6 du/a outright. Through incentives for mixed use developments (residential and nonresidential in the same site or building) and extra open space, a project can reach 9 dwelling units per acre.

Height: The existing overlay has a 35-foot height maximum. The Planning Commission is proposing to retain the 35 foot height maximum; but, allow up to 50 feet if a building contains both residential and nonresidential uses.

Land Use Matrix. The Planning Commission is proposing the following use changes:

New Uses Permitted: Home occupations; ancillary sales; and, wireless communication facilities.

New Uses Conditionally Permitted: Primary schools; secondary schools; higher educational schools; vocational/trade schools; museums; community recreation halls; clubs; commercial child care; automotive fuel-dispensing facility; vehicle washes; taverns; and, drive-through facilities.

Uses changing from Permitted to Conditionally Permitted: Independent living facilities; assisted living facilities; skilled nursing facilities; private/public services; ministorages; and, industrial level 1 uses.

ENVIRONMENTAL ANALYSIS

The SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the proposed amendments on April 16, 2008 as per WAC 197-11-340(2). The appeal period ended on June 16, 2008 and no appeals were filed.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

The Planning Commission has issued a Notice of Recommendation to the Council on this amendment (see enclosure)

RECOMMENDATION / MOTION

Move to: Staff recommends the Council review the ordinances and staff's proposed changes and provide direction to staff on the desired rezone area for the second reading.

MUD/MX Performance Standards Comparison Chart

If a performance standard is not listed, no substantive change between MUD and MX is proposed. No proposed changes in minimum lot area (none), lot width (none) and impervious surface coverage (45%)

Note: As the MUD is an overlay, a property owner could also choose to develop under the use allowances and performance standards of the underlying zone. This would not be possible after the MX rezone.

	MUD Overlay	MX District
Minimum setbacks	Front, 15 feet. Side, 5 feet. At least 20 feet is required on the opposite side of a lot having a zero lot line. Rear, 15 feet.	<u>SFR and Duplex:</u> Matches the rest of City of Gig Harbor <u>Multifamily and Nonresidential</u> Front, 15 feet. Side, 8 feet. At least 20 feet is required on the opposite side of a lot having a zero lot line. Rear, 15 feet.
Maximum Height	35 feet	35 feet outright; up to 50 feet provided the building is mixed use, minimum 25%/75% split of residential and nonresidential uses
Density	4 dwelling units per acre; up to 5.2 with increased open space and trails	4 to 6 dwelling units per acre; up to 9 with mixed use development and increased open space
Minimum Development Parcel Size	Parcel must be 10 acres in size to develop a new commercial project next to residential unless contiguous with existing commercial zone and vice versa for new residential development	No limitation
Separation of Uses	<u>Single-family to existing Multifamily</u> Existing multi-family was required to provide a new 25 foot buffer when a single-family residential development was proposed adjacent	No buffer proposed

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, REPEALING CHAPTER 17.91 MIXED USE DISTRICT OVERLAY (MUD) FROM THE GIG HARBOR MUNICIPAL CODE; ADOPTING A NEW CHAPTER 17.57 MIXED USE DISTRICT (MX) TO THE GIG HARBOR MUNICIPAL CODE; ADDING A NEW SECTION 17.04.797, DEFINITION FOR TOWNHOUSE, TO THE GIG HARBOR MUNICIPAL CODE; AND MAKING HOUSEKEEPING AMENDMENTS TO IMPLEMENT THE NEW MX DISTRICT CHAPTER BY AMENDING SECTIONS 17.01.100, 17.14.020, 17.61.040, AND 17.99.170 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the existing Mixed Use District Overlay (MUD) was adopted in 1997 as part of the Gig Harbor North annexation to implement the Mixed Use land use designation; and

WHEREAS, very little new development has occurred in the MUD overlay area since it has been in effect; and

WHEREAS, due to the nature of the regulations contained in the overlay, property owners within the existing MUD have had dual-zoning that must be navigated to yield a viable project, and

WHEREAS, the City believes the dual-zoning has been difficult for staff and applicants to understand and implement; and

WHEREAS, the City's Planning and Building Committee asked the City Planning Commission to review and consider the removal of the Mixed Use District Overlay (MUD) from the zoning map and zoning code and recommend appropriate zoning for those affected parcels; and

WHEREAS, the City desires to repeal the existing MUD overlay chapter; and

WHEREAS, after a series of work-study sessions and public hearings, the City desires to create a new Mixed Use (MX) zoning district which allows some of the uses and contains some of the performance standards of the MUD overlay, but better implements the policies of the Mixed Use land use designation; and

WHEREAS, Mixed Use land use designation is intended to provide economic diversity and housing opportunities near transit routes and business activities; and

WHEREAS, the Planning Commission developed the following vision for the new MX zone:

The mixed use district will encourage the combination of residential and commercial uses in the same development in order to achieve a sustainable, live-work neighborhood, reduce vehicle trips and avoid urban sprawl. Given the district's proximity to retail centers, business parks and recreational facilities, the district can support the needs of residents, employees and businesses. Since the district is located between Burnham Drive and Harbor Hill Drive and along the Cushman Trail, the district provides opportunities for the City to promote walkable, bicycle-friendly land use and improve the interconnectivity of the street system. The Commission envisions mixed-use buildings to provide for some of the additional 2,500 residents and 1,600 employees expected within the City in the next 20 years. The district is located within the Gig Harbor North neighborhood design area and the City's design standards will ensure quality design of the mixed use developments.

WHEREAS, the City desires to provide building height and residential density incentives for developing projects with a mix of residential and nonresidential uses; and

WHEREAS, the City Planning Commission held public hearings on this Ordinance on March 6th, 2008, April 17th, 2008 and March 19th, 2009 and made a recommendation of approval to the City Council; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on April 16, 2008 and was not appealed; and

WHEREAS, on April 16, 2008, a copy of this Ordinance was sent to the Washington Department of Community, Trade and Economic Development, pursuant to RCW 36.70A.106; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on _____, 2009; and

WHEREAS, on _____, the City Council held a second reading during a regular City Council meeting; Now, therefore,

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

Section 1. Section 17.01.100 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.01.100 Exceptions to minimum lot area.

A lot which does not satisfy the minimum lot area requirements of the applicable zone may be developed as a separate building site, according to the following:

A. Combination of Legally Nonconforming Lots. A property owner of two or more lots that are legally nonconforming as to lot area may request that the lots be combined into one larger lot, even if the resulting lot does not satisfy the existing lot area requirements in the underlying zone, as long as the director determines that the property owner has submitted sufficient evidence to demonstrate that the original lots are legally nonconforming. In addition, the lot combination shall satisfy the requirements of and be processed according to the procedures in Chapter 16.03 GHMC, with the exception of GHMC 16.03.003(B). This section does not apply in any overlay district to allow the combination of any lots created through the mixed use overlay district (MUD), a planned unit development (PUD) or planned residential district (PRD).

B. Dedication of Property to the Public. That portion of a lot remaining after dedication or sale of a portion of the lot to the city or state for street or highway purposes shall be a separate building site, as long as the area of the remaining lot is at least 3,000 square feet.

Section 2. A new Section 17.04.797 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

17.04.797 Townhouse.

“Townhouse” means a type of attached dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls which may be located on the lot lines.

Section 3. Section 17.14.020 of the Gig Harbor Municipal Code is hereby amended, as last amended by ORD 1160, to read as follows:

17.14.020 Land use matrix

	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 ²⁰	PCD-C	ED ¹⁸	WR	WM	WC	PCD-BP	PCD-NB	MUD MX
Uses																				
Dwelling, single-family	-	P	P	P	P	C	P	P	C	P ¹⁴	C	C	P ¹⁴	-	P	P	P	-	P ¹⁴	P

	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 ²⁰	PCD-C	ED ¹⁸	WR	WMI	WC	PCD-BP	PCD-NB	MUD MX	
Uses																					
Dwelling, duplex	-	-	-	P	P	P	-	P	C	P ¹⁴	C	C	P ¹⁴	-	P	P	P	-	P ¹⁴	P	
Dwelling, triplex	-	-	-	C	P	P	-	P	C	P ¹⁴	C	C	P ¹⁴	-	-	C ¹⁷	P	-	P ¹⁴	P	
Dwelling, fourplex	-	-	-	C	P	P	-	P	C	P ¹⁴	C	C	P ¹⁴	-	-	C ¹⁷	P	-	P ¹⁴	P	
Dwelling, multiple-family	-	-	-	-	P	P ⁶	-	P	C	P ¹⁴	C	C	P ¹⁴	-	-	-	-	-	P ¹⁴	P	
Accessory apartment ¹	-	C	P	-	P	-	C	C	C	P ¹⁴	C	C	P ¹⁴	-	-	-	P	-	P ¹⁴	P	
Family day care provider	-	P	P	P	P	P	P	P	C	P	P	P	P	-	P	P	P	-	P	P	
Home occupation ²	-	P	P	P	P	P	P	P	C	P	-	C	-	-	P	P	P	-	-	P	
Adult family home	-	P	P	P	P	P	P	P	C	P	P	P	P	-	P	P	P	-	P	P	
Living facility, independent	-	-	-	C	-	P	C	C	C	P	C	C	P	C ²²	-	-	-	-	-	P	C
Living facility, assisted	-	-	-	C	-	P	C	C	C	P	-	C	P	C	-	-	-	-	-	P	C
Nursing facility, skilled	-	-	-	C	-	P	C	C	C	P	C	C	P	C	-	-	-	-	-	P	C
Hospital	-	-	-	-	-	-	-	-	C	-	C	C	-	C	-	-	-	C	-	-	
School, primary	P	C	P	C	P	C	C	C	C	P	-	C	P	-	-	-	-	-	-	C	
School, secondary	P	C	P	C	P	C	C	C	C	P	-	C	P	-	-	-	-	-	-	C	
School, higher educational	P	C	-	C	-	C	C	C	C	P	-	C	P	-	-	-	-	P	-	C	
School, vocational/trade	P	C	-	C	-	C	C	C	C	P	-	C	P	P	-	-	-	P	-	C	
Government administrative office	P	C	P	C	P	C	C	P	P	P	P	P	P	P	C	P	P	P	P	P	
Public/private services	P	C	-	C	-	C	C	C	C	P	C	C	P	C	C	C	C	P	P	P	C
Religious worship, house of	-	C	P ⁵	C	P ⁵	C	C	C	C	P	-	C	P	C	-	-	-	C	-	P/C ¹⁵	
Museum	P	-	-	-	-	-	-	-	-	-	C	C	P	-	-	-	-	-	-	C	
Community recreation hall	P	-	P	C	P	C	C	C	C	P	C	C	P	-	-	-	-	P	P	C	
Clubs	-	-	C	C	C	C	C	C	P	P	P	P	P	C	-	C ²¹	P	P	C	C	
Parks	P	P	P	P	P	P	P	P	P	P	C	C	P	-	P	P	P	P	P	P	
Essential public facilities	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Utilities	P	C	P	C	P	C	C	C	C	P	C	C	P	C	C	C	C	P	P	P	
Cemetery	-	-	-	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Lodging, level 1	-	C	-	C	-	P	P	P	P	P	C	C	-	-	C	C	C	-	-	P	
Lodging, level 2	-	-	-	-	-	-	-	C	P	-	P	P	P	-	-	-	C	-	-	P	
Lodging, level 3	-	-	-	-	-	-	-	C	P	-	P	P	P	-	-	-	C	P	-	P	

	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 ²⁰	PCD-C	ED ¹⁸	WR	WM	WC	PCD-BP	PCD-NB	MUD MX
Uses																				
Personal services	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Business services	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Professional services	-	-	-	-	-	-	P	P	P	-	P	P	P	P	-	P	P	P	P	P
Ancillary services	P	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Product services, level 1	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Product services, level 2	-	-	-	-	-	-	-	-	-	-	-	P	P	P	-	-	-	-	-	P ¹⁶
Sales, level 1	-	-	-	-	-	-	C ^{7,8}	-	P	P	P	P	P	C ²³	-	-	P	C ²⁴	P ¹³	P
Sales, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	C ²³	-	-	-	-	-	-
Sales, level 3	-	-	-	-	-	-	-	-	-	-	-	P	-	C	-	-	-	-	-	-
Sales, ancillary	-	-	-	-	-	-	P	P	P	-	P	P	P	P	-	-	P	P	-	P
Commercial child care	-	-	C	-	C	-	C	C	C	-	-	P	-	C	-	-	-	C	-	C
Recreation, indoor commercial	-	-	-	-	-	-	C	C	P	-	P	P	P	C	-	-	-	C	-	P
Recreation, outdoor commercial	-	-	-	-	-	-	C	C	C	-	P ¹⁰	P	P	C	-	-	-	C	-	P
Entertainment, commercial	-	-	-	-	-	-	-	-	P	-	P	P	P	-	-	-	-	C	-	P
Automotive fuel-dispensing facility	-	-	-	-	-	-	-	-	P	-	P	P	P	C	-	-	-	C	P	C
Vehicle wash	-	-	-	-	-	-	-	-	-	-	P	P	P	-	-	-	-	-	-	C
Parking lot, commercial	-	-	-	-	-	C	-	-	-	-	-	-	-	-	-	-	C ¹⁹	-	-	-
Animal clinic	-	-	-	-	-	-	-	-	P ⁹	-	P	P	-	P	-	-	-	P	-	P
Kennel	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-
Adult entertainment facility ³	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-	-	-
Restaurant 1	-	-	-	-	-	-	C ⁸	P	P	P	P	P	P	P	-	C ¹²	P	P	P	P
Restaurant 2	-	-	-	-	-	-	-	-	P	-	P	P	P	C ²³	-	-	P	C ²⁴	P	P
Restaurant 3	-	-	-	-	-	-	-	-	P	-	P	P	P	C ²³	-	-	P	C ²⁴	P	P
Tavern	-	-	-	-	-	-	-	-	C	-	P	P	P	-	-	-	P	-	-	C
Drive-through facility	-	-	-	-	-	-	-	-	C	-	C	C	P	-	-	-	-	-	-	C
Marina	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	P	P	-	-	-
Marine sales and service	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	P	P	-	-	-
Marine boat sales, level 1	-	-	-	-	-	-	-	-	-	-	P	P	-	P	-	P	P	-	-	-

	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 ²⁰	PCD-C	ED ¹⁸	WR	WM	WC	PCD-BP	PCD-NB	MUD MX
Uses																				
Marine boat sales, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	C ²³	-	P	P	-	-	-
Ministorage	-	-	-	-	-	-	-	C	-	-	C	C	P	C	-	-	-	-	-	P C
Industrial, level 1	-	-	-	-	-	-	-	C	C	-	C	P	-	P	-	-	-	C	-	P C
Industrial, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	P	-	-	-	-	-	-
Marine industrial	-	-	-	-	-	-	-	-	-	-	-	P	-	C	-	P ¹¹	C	-	-	-
Wireless communication facility ⁴	C	C	C	C	C	C	P	P	C	P	C	P	P	P	C	C	C	P	P	P
Accessory uses and structures	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

¹ Accessory apartments requiring conditional use permits are subject to the criteria in GHMC Section 17.64.045.

² Home occupations are subject to Chapter 17.84 GHMC.

³ Adult entertainment facilities are subject to Chapter 17.58 GHMC.

⁴ Wireless communication facilities are subject to Chapter 17.61 GHMC.

⁵ Houses of religious worship shall be limited to parcels not greater than 5 acres.

⁶ Multiple-family dwellings shall be limited to no more than eight attached dwellings per structure in the R-3 district.

⁷ Sales, level 1 uses shall be limited to food stores in the RB-1 district.

⁸ See GHMC Section 17.28.090(G) for specific performance standards of restaurant 1 and food store uses in the RB-1 zone.

⁹ Animal clinics shall have all activities conducted indoors in the DB district.

¹⁰ Drive-in theaters are not permitted in the B-2 district.

¹¹ Marine industrial uses in the WM district shall be limited to commercial fishing operations and boat construction shall not exceed one boat per calendar year.

¹² Coffeehouse-type restaurant 1 uses shall not exceed 1,000 square feet in total size in the WM district.

¹³ Sales, level 1 uses shall be limited to less than 7,500 square feet per business in the PCD-NB district.

¹⁴ Residential uses shall be located above a permitted business or commercial use.

¹⁵ Houses of religious worship on parcels not greater than 10 acres are permitted uses in the MUD MX district; houses of religious worship on parcels greater than 10 acres are conditionally permitted uses in the MUD MX district.

¹⁶ Auto repair and boat repair uses shall be conducted within an enclosed building or shall be in a location not visible from public right-of-way and adjacent properties.

¹⁷ Only one triplex dwelling or one fourplex dwelling is conditionally permitted per lot in the WM district.

¹⁸ Planned unit developments (PUDs) are conditionally permitted in the ED district.

¹⁹ Commercial parking lots in the WC district shall be related to shoreline uses.

²⁰ Junkyards, auto wrecking yards and garbage dumps are not allowed in the C-1 district.

²¹ Clubs in the WM zone shall not serve alcoholic beverages and shall not operate a grill or deep-fat fryer.

²² Independent living facilities are conditionally allowed in the ED zone only when in combination with assisted living facilities, skilled nursing facilities or hospitals in the same site plan or binding site plan.

²³ See GHMC Section 17.45.040 for specific performance standards of sales and restaurant uses in the ED zone.

²⁴ See GHMC Section 17.54.030 for specific performance standards of sales and restaurant uses in the PCD-BP zone.

Section 4. Chapter 17.91 of the Gig Harbor Municipal Code is hereby repealed.

Section 5. A new chapter 17.57 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**Chapter 17.57
MIXED USE DISTRICT (MX)**

17.57.010 Intent.

A. The purpose of the mixed use district is to:

1. Provide areas that offer a balance of residential and compatible business uses integrated within a village-style setting.
2. Encourage the combination of residential and commercial uses in the same development in order to achieve a sustainable, live-work-play neighborhood and avoid urban sprawl.
3. Minimize the need to travel via automobile within the district, reduce the trips out of the district for daily shopping and personal services, and provide the opportunity to work close to home or live above one's business.

B. The standards for development in this chapter are intended to:

1. Encourage mixed use projects through density and height incentives.
2. Promote an attractive, desirable setting and encourage links among uses.
3. Encourage people to walk from one use to another.
4. Ensure that different uses are adequately separated by varying the placement and size of common areas, landscaping and preservation of significant vegetation.

17.57.020 Permitted uses.

Refer to Chapter 17.14 GHMC for uses permitted in the MX district.

17.57.030 Conditional uses.

Refer to Chapter 17.14 GHMC for uses conditionally permitted in the MX district.

17.57.040 Development standards.

In a MX district, the following development standards shall apply:

	Detached single-family and duplex dwellings	Other residential and nonresidential
A. Minimum lot area:	No minimum	No minimum
B. Minimum lot width:	No minimum	No minimum
C. Minimum front yard setback ³ :	House: 20 feet Porch: 12 feet Garage: 26 feet	15 feet

- D. Minimum side yard setback^{1, 2, 3}: 8 feet 8 feet
- E. Minimum rear yard setback^{1, 3}: 30 feet 15 feet

F. Maximum lot area coverage: Forty-five percent, excluding driveways, private walkways and similar impervious surfaces.

¹ Garages accessory to detached single-family and duplex dwellings may be located in the defined side and rear yards, provided they conform to the criteria in GHMC 17.99.490(A)(1).

² A minimum side yard setback of 20 feet is required on the opposite side of a lot having a zero lot line.

³ If a property is located within the Canterwood Blvd/Burnham Drive/Harborview Drive Corridor, as defined by GHMC 17.99.150, the enhancement corridor setback required by GHMC 17.99.160(C) shall apply.

17.57.050 Density.

The minimum residential density is four dwelling units per acre. The maximum residential density is six dwelling units per acre. Bonus densities over the maximum density may be permitted under the provisions of GHMC 17.57.070.

17.57.060 Maximum height of structures.

In a MX district, all buildings and structures shall not exceed 35 feet in height except as provided under GHMC 17.57.070 and GHMC 17.99.390(A)(3).

17.57.070 Incentives for mixed use occupancies within the same development.

When a site plan or plat includes a mix of residential and nonresidential uses, increased density and building height is allowed as follows:

A. Density. The maximum density may be increased by 50 percent based upon the following:

- 1. At least 25 percent of the gross floor area of the site plan or plat is designated for nonresidential uses; and,
- 2. Ten percent of the development site is in common open space.

B. Building Height. The maximum height for a building may be increased by 15 feet if at least 25 percent of gross floor area of the building is residential and at least 25 percent of the gross floor area of the building is nonresidential.

17.57.080 Mixed use occupancies within the same structures.

Residential units and nonresidential uses shall be permitted within the same structure, provided that where a nonresidential or residential portion of the building is located on different floors nonresidential uses shall occupy the floors below the residential uses.

17.57.090 Townhouse and zero lot line residential developments.

A. The maximum number of dwelling units per structure in townhouse or zero lot line developments is four dwelling units.

B. Each townhouse or zero lot line unit must have individual private yards or courts enclosed by a wall, berm or dense landscaping.

C. Townhouse units adjacent to a single family residence within the same development shall have a front yard setback equal to or exceeding the required

single-family dwelling front yard setback and a minimum side yard setback of 25 feet if adjacent to a single-family lot.

D. Easements shall be required for all zero lot line developments to facilitate access from the adjoining lot for necessary maintenance and repair activities.

17.57.100 Separation of uses/transition buffers.

To ensure that different land uses are adequately separated, the following transition buffers and setbacks shall be used:

A. Buffers Separating New Nonresidential uses from Existing Residential Uses. A nonresidential use must meet the following standards where it is adjacent to property which is either developed or planned for residential use. Zone transition standards as required by GHMC 17.99.170 may also apply:

1. A minimum 35-foot setback from any property line shared with a residential site.
2. The minimum setback shall be planted as a transition buffer and consist of landscaping forming a dense vegetative screen. All existing native vegetation shall be retained in the buffer.
3. No parking shall occur within the minimum setback/ transition buffer.

B. Buffers Separating New Residential Use from Existing Nonresidential Uses. A residential use must meet the following standards where it is adjacent to property which is either developed or planned for nonresidential or business use:

1. A minimum 35-foot setback from any property line shared with a nonresidential site.
2. The minimum setback shall be planted as a transition buffer and consist of landscaping forming a dense vegetative screen. All existing native vegetation shall be retained in the buffer.

C. Buffers Separating New Multiple-family Dwellings from Existing Single-Family Dwellings. A multiple-family use must meet the following standards where it is adjacent to property which is developed as single-family residential. Zone transition standards as required by GHMC 17.99.170 may also apply:

1. A minimum setback of 25 feet from all street rights-of-way common to both uses.
2. A minimum setback of at least 25 feet from any property line shared with a single-family use.
3. The minimum setbacks shall be landscaped. Parking areas shall not occupy the required setback area.

17.57.110 Performance standards.

A. Landscaping and significant vegetation preservation. Landscaping and significant vegetation preservation shall comply with the requirements of Chapters 17.78 and 17.99 GHMC and/or conditions of approval of discretionary applications required by this title. Such landscaping shall be maintained for the life of the project. In no event shall such landscaped areas be used for storage of materials or parking of vehicles.

B. Parking and loading facilities. Off-street parking and loading shall comply with the standards of Chapter 17.72 GHMC.

C. Exterior Mechanical Devices. All HVAC equipment, pumps, heaters and other mechanical devices shall be screened from view from all public rights-of-way.

D. Outdoor Storage of Materials. Outdoor storage of materials and supplies, except for authorized sales displays, shall be completely screened from adjacent properties and public rights-of-way.

E. Outdoor Lighting. Outdoor lighting shall conform to the standards of GHMC 17.99.350 and 17.99.460. Such lighting shall be shielded so that direct illumination shall be confined to the property boundaries of the light source. Ground-mounted floodlighting or light projection above the horizontal plane is prohibited between midnight and sunrise. Temporary outdoor lighting intended to advertise a temporary promotional event shall be exempt from this requirement.

F. Trash Receptacles. Trash receptacles shall be screened from view. Screening shall be complementary to building design and materials.

G. Design. Development in the MX district shall conform to the design and development standards contained in Chapter 17.99 GHMC. Duplex dwellings shall conform to the design standards defined for single-family dwellings in Chapter 17.99 GHMC.

H. Signage. Signage must comply with the requirements of Chapter 17.80 GHMC.

Section 6. Section 17.61.040 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.61.040 Development standards for all commercial districts (C-1, B-1, B-2, PCD-C, PCD-BP, MX).

A. Small Satellite Dish Antenna. No additional development standards.

* * *

Section 7. Section 17.99.170 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.99.170 Zone transition standards.

Zone transitions occur wherever opposing zones meet. All parcels in a specific zone that abut, or are across the street from, parcels in a different zone (regardless of uses in that zone or as otherwise stated below) are subject to either ZONE TRANSITION BUFFERING STANDARDS or ZONE TRANSITION DEVELOPMENT STANDARDS. Zone transition standards do not apply to development that is permitted under the development standards of the opposing zone or between zones that collectively fall under any one of the following zoning district categories.

The DRB shall not consider or recommend approval of any deviation or proposed modification of any standard in GHMC 17.99.180 or 17.99.190, except as provided in GHMC 17.99.200.

ZONE TRANSITION CATEGORIES	ZONING DISTRICTS
LOW DENSITY RESIDENTIAL	R-1, R-2, PCD-RLD, WM, WR
LOW TO MEDIUM DENSITY RESIDENTIAL	R-2, R-3, <u>MX</u>
MODERATE DENSITY RESIDENTIAL AND MIXED USES	R-3, PCD-RMD, RB-1, RB-2, PCD-NB, <u>MX</u>
NONRESIDENTIAL*	B-1, B-2, C-1, PCD-C, ED, PI, DB, WC, RB-1*, RB-2*, PCD-NB*, <u>MX</u>
* PARCELS WITH AN RB-1, RB-2, OR PCD-NB ZONING DESIGNATION ARE NOT INCLUDED IN THE NONRESIDENTIAL CATEGORY IF THERE ARE ANY RESIDENTIAL STRUCTURES ON THE SITE.	

Section 8. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 9. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this ___ day of _____, 2009.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

FILED WITH THE CITY CLERK:

PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, APPROVING A CITY-INITIATED REZONE OF 23 PARCELS CONSISTING OF 135.23 ACRES FROM R-1, RB-2, PI AND R-2 ZONING DISTRICTS ALL WITH THE MUD OVERLAY TO MIXED USE DISTRICT (MX), LOCATED NORTH OF 97TH STREET AND PRIMARILY EAST OF BURNHAM DRIVE NW; INCLUDING PIERCE COUNTY ASSESSOR PARCELS NUMBERED 0222312031, 0222312027, 0222312029, 0222312028, 0222316001, 0222316002, 0222316003, 0222316004, 0222312023, 0222312019, 0222312013, 0222313008, 0222313067, 0222313044, 0222313023, 0222313069, 0222314016, 0222313070, 0222313012, 0222313024, AND THE PORTIONS OF PARCELS NUMBERED 0222316005, 0122361010 AND 0222313020 WHICH HAVE A MIXED USE LAND USE DESIGNATION; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF GIG HARBOR; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City's Planning and Building Committee asked the City Planning Commission to review and consider the removal of the Mixed Use District Overlay (MUD) from the zoning map and recommend appropriate zoning for those affected parcels; and

WHEREAS, on _____, 2009, the City Council adopted Ordinance No. _____ which repealed Chapter 17.91 Mixed Use District Overlay (MUD) from the Gig Harbor Municipal Code and added Chapter 19.57 Mixed Use District (MX) to the Gig Harbor Municipal Code; and

WHEREAS, the MX district replaces the MUD overlay in intent and function; and

WHEREAS, the underlying zoning for the affected area is primarily Single-Family Residential (R-1) which does not allow commercial uses; and

WHEREAS, the MUD overlay allowed a variety of business, commercial and residential uses; and

WHEREAS, the City desires to maintain the allowance for business and commercial uses in the affected area; and

WHEREAS, the City desires to rezone those properties north of the Northharbor Business Campus and primarily east of Burnham Drive NW subject to the repealed Chapter 17.91 MUD overlay to the new MX district; and

WHEREAS, the proposed rezone is a Type V action as defined in GHMC 19.01.003(B) for area-wide zoning map amendments; and

WHEREAS, a final decision for a Type V application shall be rendered by the City Council after a recommendation from the Planning Commission as per GHMC 19.01.003(A); and

WHEREAS, the City Planning Commission held public hearings on this Ordinance on March 6th, 2008, April 17th, 2008 and March 19th, 2009 and made a recommendation of approval to the City Council; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on April 16, 2008 and was not appealed; and

WHEREAS, on April 16, 2008, a copy of this Ordinance was sent to the Washington Department of Community, Trade and Economic Development, pursuant to RCW 36.70A.106; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on _____, 2009; and

WHEREAS, on _____, 2009, the City Council held a second reading during a regular City Council meeting; Now, therefore,

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

Section 1. Criteria. Zoning map amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. Applications for amendments to the zoning district map may only be approved if all of the following criteria are satisfied:

- A. The application for the zoning district map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan;
- B. The application for the zoning district amendment must further or bear a substantial relationship to the public health, safety and general welfare;
- C. No substantial detrimental effect will be caused by the granting of the application for the amendment;
- D. The proponents of the application have the burden of proof in demonstrating that conditions have changed since the original zoning or original designation for the property on the zoning district map. (GHMC 17.100.035)

Section 2. Findings. The City Council considered the recommendation of the Planning Commission, and makes the following findings in relation to the criteria of approval in section 1 above:

- A. The Comprehensive Plan has designated this area Mixed Use. The intent, standards, and density and height incentives of the Mixed Use District (MX) are consistent with the policies of the Mixed Use land use designation.
- B. Rezoning the affected area to MX district will further the general welfare of Gig Harbor by continuing the use allowances for the property owners and will promote a sustainable, live-work neighborhood, reduce vehicle trips and avoid urban sprawl. In addition, the rezone will remove the dual-zoning the MUD Overlay has created. Safety and public health will be addressed at the time of further development through a number of City regulations including requirements for all new development to be served by sewers, limitations on road access points, traffic concurrency and other public works standards. The future development of the properties will have to address public health and safety concerns.
- C. No substantial detrimental effect would be caused by this rezone. The properties within the affected area are currently zoned with the MUD overlay. No new uses are being prohibited with the change to the MX zoning district. The incentives for mixed use buildings and development in the MX zoning district will promote a sustainable, live-work neighborhood, reduce vehicle trips and avoid urban sprawl.
- D. The existing Mixed Use District Overlay (MUD) was adopted in 1997 as part of the Gig Harbor North annexation to implement the Mixed Use land use designation. However, very little new development has occurred in the MUD overlay area since it has been in effect. Due to the nature of the regulations contained in the overlay, property owners within the existing MUD have had dual-zoning that must be navigated to yield a viable project. The dual-zoning has been difficult for staff and applicants to understand and implement, which has played a part in the underdevelopment of the area.

Section 3. Rezone. The 135.23 acres of real property located north of 97th Street and primarily east of Burnham Drive NW, as shown on Exhibit "A" attached hereto and incorporated by this reference, including tax parcels numbered: 0222312031, 0222312027, 0222312029, 0222312028, 0222316001, 0222316002, 0222316003, 0222316004, 0222312023, 0222312019, 0222312013, 0222313008, 0222313067, 0222313044, 0222313023, 0222313069, 0222314016, 0222313070, 0222313012, 0222313024, and the portions of parcels numbered 0222316005, 0122361010 and 0222313020 which have a mixed use land use designation, are hereby rezoned from R-1, RB-2, PI and R-2 districts with the MUD overlay to Mixed Use District (MX).

Section 4. Zoning Map. The Planning Director is hereby instructed to effectuate the necessary changes to the Official Zoning Map of the City in accordance with the zoning established by section 3.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 6. Effective Date. This ordinance shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this ___ day of _____, 2009.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, APPROVING A CITY-INITIATED REZONE TO REMOVE THE MUD OVERLAY FROM 13 PARCELS CONSISTING OF 35.4 ACRES LOCATED EAST AND WEST OF BURNHAM DRIVE APPROXIMATELY SOUTH OF 97TH STREET NW; INCLUDING PIERCE COUNTY ASSESSOR PARCELS NUMBERED 0222313027, 0222313018, 0222313063, 0222313016, 0222314036, 0222314037, 0222313048, 0222313066, 0221062070, 0221061093, 0221061094, 0221061028, AND 0221061050; THE UNDERLYING ZONING WILL BE RETAINED; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF GIG HARBOR; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City’s Planning and Building Committee asked the City Planning Commission to review and consider the removal of the Mixed Use District Overlay (MUD) from the zoning map and recommend appropriate zoning for those affected parcels; and

WHEREAS, on _____, 2009, the City Council adopted Ordinance No. _____ which repealed Chapter 17.91 Mixed Use District Overlay (MUD) from the Gig Harbor Municipal Code and added Chapter 19.57 Mixed Use District (MX) to the Gig Harbor Municipal Code; and

WHEREAS, the City desires to remove the MUD overlay as there is no zoning code chapter which implements the overlay; and

WHEREAS, the new MX zoning district is not appropriate for the subject area given underlying zoning (RB-2, B-2 and R-2) and environmental constraints within the area; and

WHEREAS, the RB-2 zoning district allows a mix of business and residential uses at a higher outright density than the MX zoning district; and

WHEREAS, the B-2 zoning district allows a mix of retail, business and residential uses with no maximum residential density; and

WHEREAS, the subject area is designated as Mixed Use on the City of Gig Harbor Comprehensive Plan Land Use Map; and

WHEREAS, both the RB-2 and B-2 zoning districts implement the Mixed Use land use designation as both zones provide for a variety of multiple-family, business and commercial/employment uses desired by the land use designation; and

WHEREAS, the subject area zoned RB-2 and B-2 contain a variety of uses, including ministorage and mobile home park, none of which will become nonconforming use with the removal of the MUD overlay; and

WHEREAS, four of the properties in the MUD overlay area with the underlying zoning of R-2 are severely constrained with the headwaters of Donkey Creek and associated wetlands located on the properties leaving little to no developable area once buffers and setbacks are applied; and

WHEREAS, the City assumes that variances will be necessary to allow any reasonable use on those subject parcels with R-2 zoning; and

WHEREAS, rezoning those subject parcels with R-2 zoning to the MX zoning district would be inappropriate as the parcels cannot accommodate commercial development given the environmental constraints and the MX zoning would give the property owners false assurance that commercial development is feasible; and

WHEREAS, the proposed rezone to remove the MUD overlay is a Type V action as defined in GHMC 19.01.003(B) for area-wide zoning map amendments; and

WHEREAS, a final decision for a Type V application shall be rendered by the City Council after a recommendation from the Planning Commission as per GHMC 19.01.003(A); and

WHEREAS, the City Planning Commission held public hearings on this Ordinance on March 6th, 2008, April 17th, 2008 and March 19th, 2009 and made a recommendation of approval to the City Council; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on April 16, 2008 and was not appealed; and

WHEREAS, on April 16, 2008, a copy of this Ordinance was sent to the Washington Department of Community, Trade and Economic Development, pursuant to RCW 36.70A.106; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on _____, 2009; and

WHEREAS, on _____, 2009, the City Council held a second reading during a regular City Council meeting; Now, therefore,

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

Section 1. Criteria. Zoning map amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. Applications for amendments to the zoning district map may only be approved if all of the following criteria are satisfied:

- A. The application for the zoning district map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan;
- B. The application for the zoning district amendment must further or bear a substantial relationship to the public health, safety and general welfare;
- C. No substantial detrimental effect will be caused by the granting of the application for the amendment;
- D. The proponents of the application have the burden of proof in demonstrating that conditions have changed since the original zoning or original designation for the property on the zoning district map. (GHMC 17.100.035)

Section 2. Findings. The City Council considered the recommendation of the Planning Commission, and makes the following findings in relation to the criteria of approval in section 1 above:

- A. The Comprehensive Plan has designated this area Mixed Use. The RB-2 and B-2 zoning districts implement the Mixed Use land use designation as both zones provide for a variety of multiple-family, business and commercial/employment uses desired by the land use designation. Removing the MUD overlay from the subject R-2 zoned is consistent with the goals and policies of the Environment Element of the Comprehensive Plan.
- B. Removing the MUD overlay from the RB-2 and B-2 zoned properties in the subject area will further the public health and general welfare because the City will be able to retain projected buildable lands densities and property will maintain a mix of residential and business uses. Removing the MUD overlay from the R-2 zoned properties in the subject area will allow the City to protect the headwaters of Donkey Creek and ensure that property owners do not have a false expectation that commercial development is feasible. Safety and public health will be addressed at the time of further development through a number of City regulations including requirements for all new development to be served by sewers, limitations on road access points, traffic concurrency and other public works standards. The future development of the properties will have to address public health and safety concerns.
- C. No substantial detrimental effect would be caused by this rezone. Property owners with RB-2 and B-2 zoning will retain their underlying zoning and density allowances. No existing use will become nonconforming. The City will be able to better protect critical areas by limiting commercial uses in severely constrained areas.

D. The existing Mixed Use District Overlay (MUD) was adopted in 1997 as part of the Gig Harbor North annexation to implement the Mixed Use land use designation. However, very little new development had occurred in the MUD overlay area since it has been in affect. Due to the nature of the regulations contained in the overlay, property owners within the existing MUD have had dual-zoning that must be navigated to yield a viable project. The dual-zoning has been difficult for staff and applicants to understand and implement, which has played a part in the underdevelopment of the area.

Section 3. Rezone. The Mixed Use District Overlay (MUD) on 35.4 acres of real property located located east and west of Burnham Drive approximately south of 97th Street NW, as shown on Exhibit "A" attached hereto and incorporated by this reference, including tax parcels numbered: 0222313027, 0222313018, 0222313063, 0222313016, 0222314036, 0222314037, 0222313048, 0222313066, 0221062070, 0221061093, 0221061094, 0221061028, and 0221061050, is hereby removed.

Section 4. Zoning Map. The Planning Director is hereby instructed to effectuate the necessary changes to the Official Zoning Map of the City in accordance with the zoning established by section 3.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 6. Effective Date. This ordinance shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this ___ day of _____, 2009.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

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



COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE OF RECOMMENDATION

CITY OF GIG HARBOR PLANNING COMMISSION ZONE 07-0006

TO: Mayor Hunter and Members of the Council
FROM: Harris Atkins, Chair, Planning Commission
RE: ZONE 07-0006 – Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone

The City's Planning and Building Committee and City Attorney asked the Planning Commission to review and consider the removal of the Mixed Use District Overlay from the zoning map and zoning code and recommend appropriate zoning for those affected parcels.

The Planning Commission held work study sessions on this amendment on January 3rd, January 17th, 2008, February 7th, 2008. Work study sessions were also held on March 5th, March 19th, April 2nd, 2009 and May 7, 2009. Public hearings were held on March 6th and April 17th, 2008 and March 19th, 2009.

On April 2nd, 2009, the Planning Commission recommended removing the Mixed Use District Overlay (MUD) from the zoning map and repealing Chapter 17.91, Mixed Use District Overlay. All properties currently within the MUD Overlay north of 97th Street would be rezoned to a new Mixed Use (MX) zoning district. A new Chapter 17.57 Mixed Use District (MX) would be added to the zoning code. Properties within the current MUD overlay located south of 97th Street would not be rezoned to the new MX district. The current underlying zoning (RB-2 or B-2) for those properties would remain the same.

In recommending a new Mixed Use District (MX zone) the Planning Commission had the following vision for the zone:

The mixed use district will encourage the combination of residential and commercial uses in the same development in order to achieve a sustainable, live-work neighborhood, reduce vehicle trips and avoid urban sprawl. Given the district's proximity to retail centers, business parks and recreational facilities, the district can support the needs of residents, employees and businesses. Since the district is located between Burnham Drive and Harbor Hill Drive and along the Cushman Trail, the district provides opportunities for the City to promote walkable, bicycle-friendly land use and improve the interconnectivity of the street system. The Commission

envisions mixed-use buildings to provide for some of the additional 2,500 residents and 1,600 employees expected within the City in the next 20 years. The district is located within the Gig Harbor North neighborhood design area and the City's design standards will ensure quality design of the mixed use developments.

EXISTING APPLICABLE COMPREHENSIVE PLAN POLICIES:

From the Land Use Element of the Comprehensive Plan

Policy 2.2.3.g:

Mixed Use

Mixed Use is an area of commercial/employment, office and multifamily located along principle collector routes which link the downtown area with SR-16.

Commercial/employment activity within a Mixed Use area caters to a customer base beyond the immediate surrounding neighborhoods due to its location along the collector routes. The individual commercial/employment activities or developments in these areas are not of a size or character to be considered "major" activity or traffic generating uses. Multifamily and office uses are allowed within the Mixed Use area to provide economic diversity and housing opportunities near transit routes and business activities. The desired allocation of land use within the Mixed Use designation is:

Commercial/Employment	45% maximum
Professional Office	30% maximum
Multifamily	25% minimum

Harris Atkins, Chair
Planning Commission

HARRIS S. ATKINS

Date 5/21/2009

RECOMMENDED AMENDMENTS:

Note: The amendments are shown here in underline strikeout format to show the changes between the existing Chapter 17.91 and the new Chapter 17.57, Mixed Use District (MX). The draft ordinance will repeal Chapter 17.91 and add a new 17.57.

**Chapter 17.91 ~~57~~
MIXED USE DISTRICT OVERLAY (MUD MX)**

17.91 ~~57.010~~ Intent.

~~The intent of the mixed use zone is to provide flexibility in promoting the development of an integrated multi-use district which permits a variety of residential types and compatible businesses in close proximity to each other.~~

~~Development standards and the design manual assure site development that is sensitive to critical lands and will provide the flexibility necessary to accommodate changing land use patterns and conditions.~~

~~Projects should be designed to ensure that early development does not foreclose options for later development and that new and different uses can be added without jeopardizing uses already established or planned for.~~

A. The purpose of the mixed use district is to:

1. Provide areas that offer a balance of residential and compatible business uses integrated within a village-style setting.

2. Encourage the combination of residential and commercial uses in the same development in order to achieve a sustainable, live-work-play neighborhood and avoid urban sprawl.

3. Minimize the need to travel via automobile within the district, reduce the trips out of the district for daily shopping and personal services, and provide the opportunity to work close to home or live above one's business.

B. The standards for development in this chapter are intended to:

1. Encourage mixed use projects through density and height incentives.

2. Promote an attractive, desirable setting and encourage links among uses.

3. Encourage people to walk from one use to another.

4. Ensure that different uses are adequately separated by varying the placement and size of common areas, landscaping and preservation of significant vegetation.

17.91 ~~57.020~~ Permitted uses.

Refer to Chapter 17.14 GHMC for uses permitted in the MUD MX district overlay.

17.91 ~~57.030~~ Conditional uses.

Refer to Chapter 17.14 GHMC for uses conditionally permitted in the MUD MX district overlay.

~~17.91.040 Site development and performance standards.~~

17.57.040 Development standards.

In a MX district, the following development standards shall apply:

	<u>Detached single-family and duplex dwellings</u>	<u>Other residential and nonresidential</u>
A. Minimum lot area:	No minimum	No minimum
B. Minimum lot width:	No minimum	No minimum
C. Minimum front yard setback ³ :	House: 20 feet Porch: 12 feet Garage: 26 feet	15 feet
D. Minimum side yard setback ^{1, 2, 3} :	8 feet	8 feet
E. Minimum rear yard setback ^{1, 3} :	30 feet	15 feet

F. Maximum lot area coverage: Forty-five percent, excluding driveways, private walkways and similar impervious surfaces.

¹ Garages accessory to detached single-family and duplex dwellings may be located in the defined side and rear yards, provided they conform to the criteria in GHMC 17.99.490(A)(1).

² A minimum side yard setback of 20 feet is required on the opposite side of a lot having a zero lot line.

³ If a property is located within the Canterwood Blvd/Burnham Drive/Harborview Drive Corridor, as defined by GHMC 17.99.150, the enhancement corridor setback required by GHMC 17.99.160(C) shall apply.

~~17.91.040A. Minimum Development Parcel Size. To promote efficient and compatible groupings of uses within a mixed use district, the following minimum development parcel sizes shall apply:~~

~~1. No parcel less than 10 acres shall be developed with residential uses, except where the parcel is contiguous to a developed or planned residential area.~~

~~2. No parcel less than 10 acres shall be developed with commercial or business uses, except where the parcel is contiguous to a developed or planned business or commercial area.~~

~~3. Where phased development is proposed for a parcel of 10 acres or greater and where the first phase is less than 10 acres, the remaining portion of the parcel reserved for future development shall be committed to residential or commercial uses.~~

~~4. Where residential and nonresidential uses are developed on the same parcel or site, the parcel size requirements may be waived where it is found that the intent of the mixed use zone is otherwise met.~~

17.57.050 Density.

~~17.91.040B. Density. Maximum The minimum residential density is four dwelling units per acre. The maximum residential density is six dwelling units per acre. Minimum parcel size is not specified. Bonus densities of up to 30 percent over the base maximum density may be permitted under the provisions of GHMC 17.57.070, based upon the following allocations:~~

~~1. Thirty percent of the development site is common open space, which must be contiguous to or greater than one acre in area (plus five percent).~~

~~2. A pedestrian trail system is provided within the common open space area, consistent with the adopted trails plan per the land use map (plus 10 percent).~~

~~3. A minimum 35 percent of the required common open space is improved as an active recreational area (plus 10 percent). Active recreational areas shall include, but not be limited to:~~

~~a. Clearly defined athletic fields and/or activity courts.~~

b. Recreation center or community facility.

~~4. Additional common open space is provided between the development and adjacent residential zones, uses or developments (plus five percent bonus maximum at a ratio of one percent density bonus per five percent open space increase).~~

17.57.060 Maximum height of structures.

In a MX district, all buildings and structures shall not exceed 35 feet in height except as provided under GHMC 17.57.070 and GHMC 17.99.390(A)(3).

17.57.070 Incentives for mixed use occupancies within the same development.

When a site plan or plat includes a mix of residential and nonresidential uses, increased density and building height is allowed as follows:

A. Density. The maximum density may be increased by 50 percent based upon the following:

1. At least 25 percent of the gross floor area of the site plan or plat is designated for nonresidential uses; and,

2. Ten percent of the development site is in common open space.

B. Building Height. The maximum height for a building may be increased by 15 feet if at least 25 percent of gross floor area of the building is residential and at least 25 percent of the gross floor area of the building is nonresidential.

17.57.080 Mixed use occupancies within the same structures.

~~17.91.040E. Mixed Use Occupancies Within the Same Structure. Residential units and retail business or office uses nonresidential uses shall be permitted within the same structure, subject to the following standards:~~

~~1. The nonresidential use must have access by way of a business arterial and shall front directly on an adjacent sidewalk or pedestrian walkway, or on a front or side yard from which vehicles are excluded.~~

~~2. provided that where a business nonresidential or residential portion of the building is located on different floors, business nonresidential uses shall occupy the floors below the residential uses.~~

~~3. C. Business Nonresidential and residential portions of a building must be separated by soundproof walls, floors, equipment, utilities or other suitable architectural features or appurtenances.~~

~~4. D. Allocation of uses shall be consistent with the city of Gig Harbor comprehensive plan.~~

17.57.090 Townhouse and zero lot line residential developments.

~~17.91.040C. General.~~

~~1. A. The maximum number of residential density is four dwelling units per structure in townhouse or zero lot line developments is four dwelling units.~~

~~2. B. Each townhouse or zero lot line unit must have individual private yards or courts enclosed by a wall, berm or dense landscaping.~~

~~3. C. Townhouse units adjacent to a single family residence within the same development shall have a front yard setback equal to or exceeding the required single-family dwelling front yard setback and a minimum side yard setback of 25 feet if adjacent to a single-family lot.~~

4. D. Easements shall be required for all zero lot line developments to facilitate access from the adjoining lot for necessary maintenance and repair activities.

17.57.100 Separation of uses/transition buffers.

~~17.91.040D. Separation of Uses/Transition Buffers.~~ To ensure that different land uses are adequately separated, the following transition buffers and setbacks shall be used:

4. A. Buffers Separating New Businesses Nonresidential uses from Existing Residential Uses. A ~~business or~~ nonresidential use must meet the following standards where it is adjacent to property which is either developed or planned for residential use. ~~in addition to the Zone transition standards defined in as required by GHMC 17.99.1870~~ may also apply:

a. 1. A minimum 35-foot setback from any property line shared with a residential site.

b. 2. The minimum setback shall be planted as a transition buffer and consist of landscaping forming a dense vegetative screen or retention of existing native vegetation within required buffer areas equal to the minimum setback. All existing native vegetation shall be retained in the buffer.

c. 3. No parking shall occur within a required the minimum setback/ transition buffer.

2. B. Buffers Separating New Residential Use from Existing Nonresidential Uses. A residential use must meet the following standards where it is adjacent to property which is either developed or planned for nonresidential or business use:

a. 1. A minimum 35-foot setback from any property line shared with a nonresidential site.

b. 2. The minimum setback shall be planted as a transition buffer and consist of landscaping forming a dense vegetative screen or retention of existing native vegetation within required buffer areas equal to the minimum setback. All existing native vegetation shall be retained in the buffer.

3. C. Buffers Separating New Multifamily Multiple-family Dwellings from Existing Single-Family Dwellings. In addition to the zone transition standards in GHMC 17.99.180, A multifamily multiple-family use must meet the following standards where it is adjacent to property which is developed as single-family residential. Zone transition standards as required by GHMC 17.99.170 may also apply:

a. 1. A minimum setback of 25 feet from all street rights-of-way common to both uses.

b. 2. A minimum setback of at least 25 feet from any property line shared with a single-family use.

c. 3. The minimum setbacks shall be landscaped. Landscaping within required buffer areas equal to minimum width of the buffer. Parking areas shall not occupy the required buffer setback area.

4. ~~Buffers Separating Single-Family Dwellings from Existing Multifamily Dwellings.~~ Where adjacent property is developed or planned for single-family residential use, a multifamily residential development must meet the following standards:

a. ~~A minimum setback of 25 feet from all street rights-of-way common to both uses.~~

b. ~~A minimum setback of at least 25 feet from any property line shared with a single-family use.~~

e. Landscaping within required buffer areas equal to the minimum width of the buffer.

17.57.110 Performance standards.

17.91.040F. Performance Standards.

1. Minimum yards (from the property line):
 - a. Front, 15 feet.
 - b. Side, five feet. At least 20 feet is required on the opposite side of a lot having a zero lot line.
 - c. Rear, 15 feet.
2. Maximum Height. The maximum height of a structure shall not exceed 35 feet.
3. Maximum lot area coverage: Forty five percent, excluding driveways, private walkways and similar impervious surfaces.
4. A. Landscaping and significant vegetation preservation. Landscaping and significant vegetation preservation shall comply with the requirements of Chapters 17.78 and 17.99 GHMC and/or conditions of approval of discretionary applications required by this title. Such landscaping shall be maintained for the life of the project. In no event shall such landscaped areas be used for storage of materials or parking of vehicles.
- B. Parking and loading facilities. Off-street parking and loading shall comply with the standards of Chapter 17.72 GHMC.
5. C. Exterior Mechanical Devices. All HVAC equipment, pumps, heaters and other mechanical devices shall be screened from view from all public rights-of-way.
6. D. Outdoor Storage of Materials. Outdoor storage of materials and supplies, except for authorized sales displays, shall be completely screened from adjacent properties and public rights-of-way.
7. E. Outdoor Lighting. Outdoor lighting shall conform to the standards of GHMC 17.99.350 and 17.99.460. Such lighting shall be shielded so that direct illumination shall be confined to the property boundaries of the light source. Ground-mounted floodlighting or light projection above the horizontal plane is prohibited between midnight and sunrise. Temporary outdoor lighting intended to advertise a temporary promotional event shall be exempt from this requirement.
8. F. Trash Receptacles. Trash receptacles shall be screened from view. Screening shall be complementary to building design and materials.
9. G. Design. Development in the MUD MX district shall conform to the design and development standards contained in Chapter 17.99 GHMC. Duplex dwellings shall conform to the design standards defined for single-family dwellings in Chapter 17.99 GHMC.
10. H. Signage. Signage must comply with the requirements of Chapter 17.80 GHMC.

17.14.020 Land use matrix (includes recommended changes from ED and PCD-BP amend.)

	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 ²⁰	PCD-C	ED ¹⁸	WR	WM	WC	PCD-BP	PCD-NB	MUD MX
Uses																				
Dwelling, single-family	-	P	P	P	P	C	P	P	C	P ¹⁴	C	C	P ¹⁴	-	P	P	P	-	P ¹⁴	P

Uses	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 ²⁰	PCD-C	ED ¹⁸	WR	WM	WC	PCD-BP	PCD-NB	MUD/MX
Dwelling, duplex	-	-	-	P	P	P	-	P	C	P ¹⁴	C	C	P ¹⁴	-	P	P	P	-	P ¹⁴	P
Dwelling, triplex	-	-	-	C	P	P	-	P	C	P ¹⁴	C	C	P ¹⁴	-	-	C ¹⁷	P	-	P ¹⁴	P
Dwelling, fourplex	-	-	-	C	P	P	-	P	C	P ¹⁴	C	C	P ¹⁴	-	-	C ¹⁷	P	-	P ¹⁴	P
Dwelling, multiple-family	-	-	-	-	P	P ⁶	-	P	C	P ¹⁴	C	C	P ¹⁴	-	-	-	-	-	P ¹⁴	P
Accessory apartment ¹	-	C	P	-	P	-	C	C	C	P ¹⁴	C	C	P ¹⁴	-	-	-	P	-	P ¹⁴	P
Family day care provider	-	P	P	P	P	P	P	P	C	P	P	P	P	-	P	P	P	-	P	P
Home occupation ²	-	P	P	P	P	P	P	P	C	P	-	C	-	-	P	P	P	-	-	P
Adult family home	-	P	P	P	P	P	P	P	C	P	P	P	P	-	P	P	P	-	P	P
Living facility, independent	-	-	-	C	-	P	C	C	C	P	C	C	P	C ²²	-	-	-	-	-	P/C
Living facility, assisted	-	-	-	C	-	P	C	C	C	P	-	C	P	C	-	-	-	-	-	P/C
Nursing facility, skilled	-	-	-	C	-	P	C	C	C	P	C	C	P	C	-	-	-	-	-	P/C
Hospital	-	-	-	-	-	-	-	-	C	-	C	C	-	C	-	-	-	C	-	-
School, primary	P	C	P	C	P	C	C	C	C	P	-	C	P	-	-	-	-	-	-	C
School, secondary	P	C	P	C	P	C	C	C	C	P	-	C	P	-	-	-	-	-	-	C
School, higher educational	P	C	-	C	-	C	C	C	C	P	-	C	P	-	-	-	-	P	-	C
School, vocational/trade	P	C	-	C	-	C	C	C	C	P	-	C	P	P	-	-	-	P	-	C
Government administrative office	P	C	P	C	P	C	C	P	P	P	P	P	P	P	C	P	P	P	P	P
Public/private services	P	C	-	C	-	C	C	C	C	P	C	C	P	C	C	C	C	P	P	P/C
Religious worship, house of	-	C	P ⁵	C	P ⁶	C	C	C	C	P	-	C	P	C	-	-	-	C	-	P/C ¹⁶
Museum	P	-	-	-	-	-	-	-	-	-	C	C	P	-	-	-	-	-	-	C
Community recreation hall	P	-	P	C	P	C	C	C	C	P	C	C	P	-	-	-	-	P	P	C
Clubs	-	-	C	C	C	C	C	C	P	P	P	P	P	C	-	C ²¹	P	P	C	C
Parks	P	P	P	P	P	P	P	P	P	P	C	C	P	-	P	P	P	P	P	P
Essential public facilities	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Utilities	P	C	P	C	P	C	C	C	C	P	C	C	P	C	C	C	C	P	P	P
Cemetery	-	-	-	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lodging, level 1	-	C	-	C	-	P	P	P	P	P	C	C	-	-	C	C	C	-	-	P
Lodging, level 2	-	-	-	-	-	-	-	C	P	-	P	P	P	-	-	-	C	-	-	P
Lodging, level 3	-	-	-	-	-	-	-	C	P	-	P	P	P	-	-	-	C	P	-	P
Personal services	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P

Uses	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 ²⁰	PCD-C	ED ¹⁸	WR	MM	WC	PCD-BP	PCD-NB	MUD/MX
Business services	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Professional services	-	-	-	-	-	-	P	P	P	-	P	P	P	P	-	P	P	P	P	P
Ancillary services	P	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Product services, level 1	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Product services, level 2	-	-	-	-	-	-	-	-	-	-	-	P	P	P	-	-	-	-	-	P ¹⁶
Sales, level 1	-	-	-	-	-	-	C ^{7,8}	-	P	P	P	P	P	C ²³	-	-	P	C ²⁴	P ¹³	P
Sales, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	C ²³	-	-	-	-	-	-
Sales, level 3	-	-	-	-	-	-	-	-	-	-	-	P	-	C	-	-	-	-	-	-
Sales, ancillary	-	-	-	-	-	-	P	P	P	-	P	P	P	P	-	-	P	P	-	P
Commercial child care	-	-	C	-	C	-	C	C	C	-	-	P	-	C	-	-	-	C	-	C
Recreation, indoor commercial	-	-	-	-	-	-	C	C	P	-	P	P	P	C	-	-	-	C	-	P
Recreation, outdoor commercial	-	-	-	-	-	-	C	C	C	-	P ¹⁰	P	P	C	-	-	-	C	-	P
Entertainment, commercial	-	-	-	-	-	-	-	-	P	-	P	P	P	-	-	-	-	C	-	P
Automotive fuel-dispensing facility	-	-	-	-	-	-	-	-	P	-	P	P	P	C	-	-	-	C	P	C
Vehicle wash	-	-	-	-	-	-	-	-	-	-	P	P	P	-	-	-	-	-	-	C
Parking lot, commercial	-	-	-	-	-	C	-	-	-	-	-	-	-	-	-	-	C ¹⁹	-	-	-
Animal clinic	-	-	-	-	-	-	-	-	P ⁹	-	P	P	-	P	-	-	-	P	-	P
Kennel	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-
Adult entertainment facility ³	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-	-	-
Restaurant 1	-	-	-	-	-	-	C ⁸	P	P	P	P	P	P	P	-	C ¹²	P	P	P	P
Restaurant 2	-	-	-	-	-	-	-	-	P	-	P	P	P	C	-	-	P	C	P	P
Restaurant 3	-	-	-	-	-	-	-	-	P	-	P	P	P	C	-	-	P	C	P	P
Tavern	-	-	-	-	-	-	-	-	C	-	P	P	P	-	-	-	P	-	-	C
Drive-through facility	-	-	-	-	-	-	-	-	C	-	C	C	P	-	-	-	-	-	-	C
Marina	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	P	P	-	-	-
Marine sales and service	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	P	P	-	-	-
Marine boat sales, level 1	-	-	-	-	-	-	-	-	-	-	P	P	-	P	-	P	P	-	-	-
Marine boat sales, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	C ²³	-	P	P	-	-	-
Ministorage	-	-	-	-	-	-	-	C	-	-	C	C	P	C	-	-	-	-	-	P
Industrial, level 1	-	-	-	-	-	-	-	C	C	-	C	P	-	P	-	-	-	C	-	P

Uses	PI	R-1	R1D	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 ²⁰	PCD-C	ED ¹⁸	WR	WM	WC	PCD-BP	PCD-NB	MUD/MX	
Industrial, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	P	-	-	-	-	-	-	
Marine industrial	-	-	-	-	-	-	-	-	-	-	-	P	-	C	-	P ¹¹	C	-	-	-	
Wireless communication facility ⁴	C	C	C	C	C	C	P	P	C	P	C	P	P	P	C	C	C	P	P	P	
Accessory uses and structures	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

¹ Accessory apartments requiring conditional use permits are subject to the criteria in GHMC Section 17.64.045.

² Home occupations are subject to Chapter 17.84 GHMC.

³ Adult entertainment facilities are subject to Chapter 17.58 GHMC.

⁴ Wireless communication facilities are subject to Chapter 17.61 GHMC.

⁵ Houses of religious worship shall be limited to parcels not greater than 5 acres.

⁶ Multiple-family dwellings shall be limited to no more than eight attached dwellings per structure in the R-3 district.

⁷ Sales, level 1 uses shall be limited to food stores in the RB-1 district.

⁸ See GHMC Section 17.28.090(G) for specific performance standards of restaurant 1 and food store uses in the RB-1 zone.

⁹ Animal clinics shall have all activities conducted indoors in the DB district.

¹⁰ Drive-in theaters are not permitted in the B-2 district.

¹¹ Marine industrial uses in the WM district shall be limited to commercial fishing operations and boat construction shall not exceed one boat per calendar year.

¹² Coffeehouse-type restaurant 1 uses shall not exceed 1,000 square feet in total size in the WM district.

¹³ Sales, level 1 uses shall be limited to less than 7,500 square feet per business in the PCD-NB district.

¹⁴ Residential uses shall be located above a permitted business or commercial use.

¹⁵ Houses of religious worship on parcels not greater than 10 acres are permitted uses in the MUD district; houses of religious worship on parcels greater than 10 acres are conditionally permitted uses in the MUD district.

¹⁶ Auto repair and boat repair uses shall be conducted within an enclosed building or shall be in a location not visible from public right-of-way and adjacent properties.

¹⁷ Only one triplex dwelling or one fourplex dwelling is conditionally permitted per lot in the WM district.

¹⁸ Planned unit developments (PUDs) are conditionally permitted in the ED district.

¹⁹ Commercial parking lots in the WC district shall be related to shoreline uses.

²⁰ Junkyards, auto wrecking yards and garbage dumps are not allowed in the C-1 district.

²¹ Clubs in the WM zone shall not serve alcoholic beverages and shall not operate a grill or deep-fat fryer.

²² Independent living facilities conditionally allowed in the ED zone only when in combination with assisted living facilities, skilled nursing facilities or hospitals in the same site plan or binding site plan.

²³ See GHMC Section 17.45.040(N) for specific performance standards of sales uses in the ED zone.

²⁴ See GHMC Section 17.54.030(O) for specific performance standards of sales uses in the PCD-BP zone.

17.04.797 Townhouse.

"Townhouse" means a type of attached dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls which may be located on the lot lines.

Housekeeping Amendments:

17.01.100 Exceptions to minimum lot area.

A lot which does not satisfy the minimum lot area requirements of the applicable zone may be developed as a separate building site, according to the following:

A. Combination of Legally Nonconforming Lots. A property owner of two or more lots that are legally nonconforming as to lot area may request that the lots be combined into one larger lot, even if the resulting lot does not satisfy the existing lot area requirements in the underlying zone, as long as the director determines that the property owner has submitted sufficient evidence to demonstrate that the original lots are legally nonconforming. In addition, the lot combination shall satisfy the requirements of and be processed according to the procedures in Chapter 16.03 GHMC, with the exception of GHMC 16.03.003(B). This section does not apply in any overlay district to allow the combination of any lots created through the ~~mixed use overlay district (MUD)~~, a planned unit development (PUD) or planned residential district (PRD).

B. Dedication of Property to the Public. That portion of a lot remaining after dedication or sale of a portion of the lot to the city or state for street or highway purposes shall be a separate building site; as long as the area of the remaining lot is at least 3,000 square feet.

17.61.040 Development standards for all commercial districts (C-1, B-1, B-2, PCD-C, PCD-BP, MX).

A. Small Satellite Dish Antenna. No additional development standards.

* * *

17.99.170 Zone transition standards.

Zone transitions occur wherever opposing zones meet. All parcels in a specific zone that abut, or are across the street from, parcels in a different zone (regardless of uses in that zone or as otherwise stated below) are subject to either ZONE TRANSITION BUFFERING STANDARDS or ZONE TRANSITION DEVELOPMENT STANDARDS. Zone transition standards do not apply to development that is permitted under the development standards of the opposing zone or between zones that collectively fall under any one of the following zoning district categories.

The DRB shall not consider or recommend approval of any deviation or proposed modification of any standard in GHMC 17.99.180 or 17.99.190, except as provided in GHMC 17.99.200.

ZONE TRANSITION CATEGORIES	ZONING DISTRICTS
LOW DENSITY RESIDENTIAL	R-1, R-2, PCD-RLD, WM, WR
LOW TO MEDIUM DENSITY RESIDENTIAL	R-2, R-3, <u>MX</u>
MODERATE DENSITY RESIDENTIAL AND MIXED USES	R-3, PCD-RMD, RB-1, RB-2, PCD-NB, <u>MX</u>
NONRESIDENTIAL*	B-1, B-2, C-1, PCD-C, ED, PI, DB, WC,

	RB-1*, RB-2*, PCD-NB*, <u>MX</u>
* PARCELS WITH AN RB-1, RB-2, OR PCD-NB ZONING DESIGNATION ARE NOT INCLUDED IN THE NONRESIDENTIAL CATEGORY IF THERE ARE ANY RESIDENTIAL STRUCTURES ON THE SITE.	

MUD/MX Performance Standards Comparison Chart

If a performance standard is not listed, no substantive change between MUD and MX is proposed. No proposed changes in minimum lot area (none), lot width (none) and impervious surface coverage (45%)

Note: As the MUD is an overlay, a property owner could also choose to develop under the use allowances and performance standards of the underlying zone. This would not be possible after the MX rezone.

	MUD Overlay	MX District
Minimum setbacks	Front, 15 feet. Side, 5 feet. At least 20 feet is required on the opposite side of a lot having a zero lot line. Rear, 15 feet.	<u>SFR and Duplex:</u> Matches the rest of City of Gig Harbor <u>Multifamily and Nonresidential</u> Front, 15 feet. Side, 8 feet. At least 20 feet is required on the opposite side of a lot having a zero lot line. Rear, 15 feet.
Maximum Height	35 feet	35 feet outright; up to 50 feet provided the building is mixed use, minimum 25%/75% split of residential and nonresidential uses
Density	4 dwelling units per acre; up to 5.2 with increased open space and trails	4 to 6 dwelling units per acre; up to 9 with mixed use development and increased open space
Minimum Development Parcel Size	Parcel must be 10 acres in size to develop a new commercial project next to residential unless contiguous with existing commercial zone and vice versa for new residential development	No limitation
Separation of Uses	<u>Single-family to existing Multifamily</u> Existing multi-family was required to provide a new 25 foot buffer when a single-family residential development was proposed adjacent	No buffer proposed

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
January 3, 2008
Gig Harbor Civic Center**

PRESENT: Commissioners Jim Pasin, Harris Atkins, Jeane Derebey, Joyce Ninen and Dick Allen. Commissioners Theresa Malich and Jill Guernsey were absent. Staff present: Jennifer Kester, Tom Dolan and Diane Gagnon.

CALL TO ORDER: 6:00 p.m.

APPROVAL OF MINUTES

It was decided to reference the waterfront zones specifically on page 2 2nd paragraph and to remove the phrase "if they meet that definition" as it was redundant. Commissioner Pasin asked for clarification of a sentence in the first paragraph on page 3 and it was decided to remove the second half of the sentence which said "and Ms. Kester added that we could add a specific definition" and replace it with "in the waterfront zones". Mr. Pasin also pointed out that he meant to express his disapproval of the 65,000 square foot limitation rather than 35,000 as stated on page 4.

MOTION: Move to approve minutes of December 20th, 2007 as amended. Ninen/Pasin – Motion passed unanimously.

OLD BUSINESS

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** – Proposal by the City Council to amend the definition of gross floor area; create definitions for underground parking, basement, finished grade, and original grade; amend parking requirements to include maximum number of parking spaces for uses; and reconsider the maximum building sizes for WC, VM and WR zones.

Senior Planner Jennifer Kester went over her memo on underground structures and an e-mail from Randy Boss. She stated that she hoped to have them review the memo and then develop a memo to the City Council at the next meeting.

2. Introduction of the first quarter work program:

- Implementation of Neighborhood Design Areas in Design Manual
- Grandfathering Nonconforming Structures Inside and Outside the Waterfront Zones/ Triplexes in R-2 zone
- Removal of Mixed Use District Overlay and determination of appropriate underlying zoning
- Limiting Office Uses in Waterfront Millville
- Appropriateness of RB-1 zoning district locations and allowed uses

Removal of the Mixed Use District Overlay and determination of appropriate underlying zoning

Ms. Kester stated that this item had been on the work program for a couple of years. She noted that the City Attorney and the Planning and Building Committee had expressed the overlay should probably be removed. She further explained that if the overlay is removed it will effectively down zone some of the properties; therefore, we need to look at what the properties should be zoned. She stated that the MUD could become a zone; they could just leave the zones as they are or they could come with entirely different zones. Mr. Pasin said that what had always bothered him with this is that they don't seem to know what they really want in this area. Ms. Kester said there was a Mixed Use District land use designation in the Comprehensive Plan which might help. Mr. Pasin stated that with the advent of Harbor Hill Drive the vision for that area may not be the same. Mr. Atkins asked what the original intent was and Ms. Kester said that at that time there was a big push for mixed use types of development and for some flexibility. Mr. Dolan said that it isn't necessarily the uses that are allowed there that is the problem, but rather the process. Ms. Ninen said that mixed use zones are very popular and Ms. Kester said that the issue is just that people need to know what could be built next to them. Mr. Pasin said that the mixed use zones were really for more of an urban setting. Ms. Kester said she would bring the policies out of the comp plan to the next meeting to help with the discussion. She also noted that there had been a rezone to ED in the area. Ms. Ninen also noted that there is a proposed connection road and that it would make sense to have more retail development. Mr. Atkins said that once Harbor Hill Drive connects to Burnham it could really be a traffic issue if we add more retail uses here. Ms. Kester stated that traffic models that have been run have always assumed that this area is mixed use.

Limiting Office Uses in Waterfront Millville

Ms. Kester said that this item had been around the longest, proposed in 2005. She noted that it had been proposed prior to the land use matrix and the applicant was proposing the office uses only be allowed as incidental uses in existing buildings. She noted that this had come about as a result of an approved 3500 sq ft office building that has yet to be built. Additionally, Ms. Kester noted that they would have to think about what is incidental. She noted that office uses also have different impacts than some of the other uses already allowed in this zone. Mr. Allen said that he thought that the 3500 sq ft limit solved the applicant's concerns. Ms. Kester stated that it had been pointed out to the applicant and they still wanted to move forward with this amendment. Ms. Kester then pointed out that this would make a couple of buildings nonconforming.

Acting Chair Harris Atkins called a five minutes recess at 7:25 pm. The meeting was reconvened at 7:30.

Appropriateness of RB-1 zoning district locations and allowed uses

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
January 17, 2008
Gig Harbor Civic Center**

PRESENT: Commissioners Jim Pasin, Harris Atkins, Theresa Malich, Jill Guernsey, Joyce Ninen and Dick Allen. Commissioner Jeane Derebey was absent. Staff present: Jennifer Kester, Tom Dolan and Diane Gagnon.

CALL TO ORDER: 6:00 p.m.

ELECTION OF OFFICERS

Commissioner Harris Atkins nominated Theresa Malich to serve another term as Chair and Commissioner Jill Guernsey seconded the nomination.

Commissioner Joyce Ninen nominated Harris Atkins to serve another term as Vice Chair and Theresa Malich seconded the nomination.

MOTION: Move to elect Theresa Malich as Chair and Harris Atkins as Vice Chair. Ninen/Guernsey – Motion passed unanimously.

APPROVAL OF MINUTES

It was noted that at the bottom of page two it should say Mr. Pasin rather than Ms. Pasin, at the top of page two change the word "their" to "the" and spell out Boundary Line Adjustment.

MOTION: Move to approve the minutes for January 3rd, 2008 as amended. Ninen/Atkins – Motion passed unanimously.

Senior Planner Jennifer Kester noted that the second item on the agenda; Nonconforming Uses in the R-2 zone and nonconforming structures regulations, may have some conflict of interest issues since a Planning Commission member may have a chance to benefit and may need to recuse themselves. Ms. Kester suggested that the commission may want to move this to the last item on the agenda or limit the discussion to the nonconforming uses. It was decided that this item would be moved to the end of the agenda and Theresa Malich and Dick Allen would recuse themselves at that time since they own property in an R-2 zone.

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** – To finalize a memo to City Council for further direction on the topic of underground structures. Memo includes new definitions for gross floor area, underground building and attic.

Ms. Kester then asked if they were done with the definitions and if everyone was okay with the memo. Ms. Ninen felt that the memo was very concise. Ms. Kester asked for a motion to approve the memo and direct Chairman Malich to sign it.

MOTION: Move to authorize the Chair to send this memo to council as amended. Atkins/Ninen - Motion passed with Mr. Pasin opposed.

Chairman Malich called a short recess at 7:00 p.m. The meeting was reconvened at 7:05 p.m.

2. City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 – ZONE 07-0006 – Removal of Mixed Use District overlay and determination of appropriate underlying zoning.

Ms. Kester displayed a map of the overlay area. She stated that the consensus among staff, the City Attorney and the City Council is that the overlay needs to be removed. She explained how overlays usually work, adding restrictions and that this one allows additional uses. Ms. Kester explained what would happen if the overlay were removed and the underlying zones were left, stating that some of the properties would be effectively down zoned. She stated that the comprehensive plan has designated this area as a mixed use area. Mr. Pasin said that if we remove the overlay and the road gets developed then there is an opportunity to rezone around it to something more appropriate. Ms. Kester pointed out 96th street and explained the proposed split diamond approach and how the new interchange may affect this area. She stated that this area will change so the question is whether we want to change it now or wait for when the interchange is put in and examine it then. Mr. Atkins said that it seemed like the Mixed Use District was a good idea and asked why it failed. Ms. Kester answered that some of the property owners have taken advantage of the zoning or are anticipating taking advantage of the Mixed Use District but first there was a transportation issue and then a sewer issue. Mr. Atkins said that the underlying zoning doesn't seem to make sense, but rezoning is a large project. Ms. Kester suggested that the Mixed Use District could become its own zone they could just rezone everything in the overlay. She said that there will be some property owners who won't like that. Mr. Atkins said that he had driven the area and it was quite amazing all the stuff that was in there. Mr. Pasin stated that he thought that some of the area actually didn't reflect the area where the uses would probably grow once the interchange is in place.

Ms. Guernsey asked about the effects of removing the overlay and just having the underlying zoning. Ms. Kester explained how the overlay is applied. Ms. Ninen suggested changing the Mixed Use District to include the uses currently in the underlying zone. Ms. Kester agreed that the Mixed Use District could be tweaked to include some of the uses and standards from the other zones. She said that she would most closely liken the Mixed Use District to the B-2 zone with a density calculation that is much lower. Additionally, she noted that the traffic studies that were done assumed highest and best use. Ms. Kester then explained how it would need to happen if they

were to create a mixed use zone stating that it would not be that difficult but would have to add some impervious surface limitations and some rewording.

Ms. Kester said that she could work on a proposal to make the mixed use overlay a zone. Mr. Pasin said that he was concerned about the section that distinguishes between different size parcels and Ms. Kester said that section may have to go away. Mr. Pasin said that he also had a concern with zone transition. Mr. Atkins agreed that was something to be considered, but suggested they pick an approach and then look at those issues. Ms. Kester then highlighted the land use designation. Everyone agreed that Ms. Kester would work on a mixed use district zone and then they could discuss the boundaries, etc. Mr. Pasin stated that he was concerned that some of the area needed to be another zone and everyone agreed that that may be true but that right now they just needed to figure out what a mixed use zone is and then decide what area will be within it and what some of the other properties might be zoned. Ms. Guernsey suggested that at the next meeting they have an aerial photo so that they can see what is there now.

3. Direct Council consideration of an ordinance that would standardize how residential heights are measured in Historic Districts.

Planning Director Tom Dolan explained that this was the result of the height issue with the two new homes being constructed along Harborview. He noted that there is a provision in the Historic District that is not in any other zone that says height is measured from natural grade for residential. He continued by saying that staff is proposing a small change that will make how you determine height consistent throughout the height restriction area. He explained that the change would be to change the wording to say "natural and finished grade" so that it would be the same for residential or commercial. Mr. Dolan stated that the City Council was asking for direct consideration on this item.

Mr. Pasin said that he thought it needed further discussion. Ms. Malich suggested that this might be a good subject for a combined meeting of the DRB and Planning Commission. Ms. Kester said that it is a larger question as to whether the height allowed is even correct. Mr. Dolan said he recommended that the larger discussion happen in the examination of the view basin plan. Ms. Kester explained how this will be more restrictive. Discussion followed on how structures are measured.

MOTION: Move to recommend the Council enter into direct consideration of this item. Ninen/Atkins – Motion passed unanimously.

Theresa Malich and Dick Allen recused themselves for the next item.

4. City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 – ZONE 07-0031 – Nonconforming Uses in R-2 zone and nonconforming structures regulations.

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
February 8, 2008
Gig Harbor Civic Center**

PRESENT: Commissioners Jim Pasin, Harris Atkins, Theresa Malich, Jill Guernsey, Joyce Ninen, Jeane Derebey and Dick Allen. Staff present: Jennifer Kester, Tom Dolan and Diane Gagnon.

CALL TO ORDER: 6:00 p.m.

NEW BUSINESS

1. **Carol Davis, P.O. Box 621, Gig Harbor WA 98335** (ZONE 07-0013) Limiting Office Uses in Waterfront Millville Zone

The applicant, Carol Davis noted that her major concern and her reason for proposing this text amendment was that there was no limit on the number of office buildings that could be built along Harborview. It was her impression that the intent of the original allowance was to protect the offices that were already there. She didn't think that anyone foresaw a 3500 sq ft office building being built across from a residential zone. She noted there is nothing in the code to prevent the entire water side of the WM zone from becoming offices. Her idea was to limit the amount of offices in some way, perhaps using a percentage and that offices be an ancillary use.

Chairman Theresa Malich said that there have been some conversions of houses into offices. Commissioner Joyce Ninen asked about personal services and product services which are also allowed, she pointed out that the intent of the zone is to provide a wide range of uses and activities. She stated that she felt that it was really important to have many things that would draw people to the downtown. Ms. Davis stated that offices don't really draw people downtown. Commissioner Harris Atkins asked if the size of the building was really the issue rather than use. Senior Planner Jennifer Kester pointed out that in the mixed use portion of the comprehensive plan where it sets out specific percentages for each use. Commissioner Jill Guernsey asked if the concern was that the uses that are allowed in this zone are too broad. Ms. Davis said that her concern was that current buildings will be torn down and larger office buildings will be built. Commissioner Jim Pasin asked if she was really concerned with the size and she said she was concerned with that but didn't feel that it could be changed. Mr. Pasin asked if it was a concern that it might be an office use rather than retail. Ms. Davis said that yes, tourists will not come here if it's all office buildings. Ms. Kester stated that there will be things changed in that area with the Shoreline Master Program update and the View Basin plan along with a discussion with the Mainstreet program. Planning Director Tom Dolan said that he believed that one of the primary issues in the Shoreline Master Program update will be to look at all the allowed uses along the water. Dick Allen said that he felt that retail should not be allowed in the WM zone. He said that he felt that once you have limited the size of the building then the use is really limited.

Commissioner Joyce Ninen pointed out that Sales Level One is shown as not allowed in WM on the matrix; however, in the development standards of WM it limits the hours of sales level one, she was wondering if the matrix was a mistake. Ms. Kester said that she would research what had happened. She then asked that everyone state their position. Ms. Malich felt there was an issue that needed to be addressed as there are some properties that could be redeveloped and do we really want the waterfront to be all offices. Mr. Pasin said that he didn't feel that would ever happen. Ms. Ninen said that she felt that it was probably too expensive to develop into offices. Mr. Pasin asked if there was a difference between a 3500 sq ft house and 3500 sq ft of offices and added that an office building is less intrusive than a personal service use. Planning Commissioner Jeane Derebey said that office uses are going to be able to comply with the limited hours of operation when things such as personal services may not. Commissioner Harris Atkins agreed with the concept of making the downtown more vibrant and viable; however, he was hesitant to regulate the amount of each use. He said that if and when the marinas are converted we will definitely need to address these issues. Mr. Allen said that he would be concerned if there were not a size limitation in place. He stated that the WM zone was put in place in order to prevent the spread of the DB into that area, to make more of a smooth transition. Ms. Ninen stated that she did think that it was important to keep the downtown viable and personal services are more likely to draw more people downtown. She felt that since the buildings have to go through design review she felt that there was some control and that 3500 square feet wasn't really very big. Ms. Derebey said that if we are worried about the viability of the downtown we may not be able to save Millville and still keep the downtown vibrant. Ms. Ninen mentioned that since there is more development happening on the north end of Harborview then maybe it takes Millville to be the link. Mr. Dolan suggested that this really could be part of the discussion during the Shoreline Master Program update because anything done now could be undone. Ms. Guernsey said that there is an underlying issue of whether we should look at redefining the uses allowed in Waterfront Millville, but she didn't think now was the time to do that since we have the 3500 sq ft limitation in place. She felt that the discussion could happen at the time that we discuss the Shoreline Master Program. Ms. Davis agreed that the item could be tabled until the discussion during the Shoreline Master Program update. Ms. Kester agreed to let Ms. Davis know when those meetings happen.

2. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** – (ZONE 07-0006) Removal of Mixed Use District overlay and determination of appropriate underlying zoning.

Senior Planner Jennifer Kester stated that after the last meeting they had suggested a zoning chapter that kind of melded the MUD and the underlying zones and so she noted where she had created a new chapter called the Mixed Use District. She stated that the overlay had most of the components for a zone; there were just a few items that needed to be addressed.

Ms. Kester went over each of the seven talking points and the recommended changes to the land use matrix.

Ms. Kester asked if they were supportive of the approach to the new zone and Mr. Pasin said that he was in favor of it as long as everyone understood that the boundaries may change. Ms. Derebey asked if he was suggesting that we should remove the residential portion from the MUD and he agreed that perhaps that would be the case. Ms. Derebey noted that there was not much area left if we removed the residential area. Ms. Kester stated that perhaps the property owners would want to keep their underlying zone and when it comes to population allocation this is considered a mixed use zone. Mr. Atkins noted that the residential area could develop today as a mixed use.

Mr. Pasin stated that the transition standards could be difficult. Ms. Kester pointed out that she was proposing that the zone transition standards not apply internally. Ms. Guernsey stated that those situations would happen throughout the city. She added that the main problem is getting rid of the cumbersome overlay. Mr. Allen asked if the overlay had been difficult to administer and Ms. Kester said that yes it was difficult to administer. Ms. Guernsey said that it gives each property dual zoning and we don't do that for everyone else. Ms. Derebey asked why not just give people the underlying zone. Ms. Kester explained that some people have expectations of their zoning so if we just removed the overlay, it would be down zoning property. Ms. Guernsey cautioned against down zoning with no real public benefit other than that it's too difficult to administer. Ms. Ninen asked wasn't there people in the MUD who get to choose and Ms. Kester said that yes they either choose the overlay or the underlying zone. Ms. Ninen asked how many property owners would be down zoned if we took away the overlay. Ms. Kester answered maybe 3.

Mr. Pasin asked what would happen if we just rezoned it to RB-2. Ms. Kester noted that the retail component would go away and the density would be much higher. She added that there may be a comprehensive plan issue, so it would be easier to create a mixed use district zone rather than RB-2. Mr. Pasin stated that if we really create a mixed use zone it may be a model for zoning in the future. Mr. Dolan asked if they wanted to look at this as a separate zone or just down zone it. Mr. Atkins suggested that they propose adoption of the underlying zone to simplify the process and then see what the public says. Ms. Kester said that she had thought perhaps we could put forth options. Mr. Pasin said he would rather remove the overlay and then if people wanted to ask for a rezone they could. Ms. Malich asked that everyone give their opinion on the issue. Mr. Atkins said that down zoning would be the easiest but it doesn't give any direction and maybe Ms. Kester's approach is better to define a zone. Mr. Allen was unsure. Ms. Ninen asked how many underlying zones were there and Ms. Kester said that there was R-1, PI, RB-2 and B-2. Ms. Ninen said that she liked the idea of a mixed use zone, but didn't know if it was the right time to take it on; however, it seems right for the area. Ms. Derebey clarified that if they changed to this new zone the zoning that is there will go away and will become a new zone and Ms. Kester answered yes. Ms. Derebey pointed out that this new zone would give them most of the options they had. She stated that she felt that we needed an area of this type and this may be the only area. Ms. Guernsey said that she was not against a mixed use zone because they are a good mix, the problem is that this area is difficult to envision as appropriate for mixed use.

She continued by stating that with or without the creation of a mixed use zone we need to look at the zoning of this area. She stated that she didn't like the existing dual standards. Ms. Malich said that she was worried about how this is administered currently. Ms. Kester said that as long as the overlay goes away it will work for staff and noted that there must have been some intent that this was an area for mixed use.

Ms. Kester said that overall everyone seems to want to hear from the property owners and perhaps they should hold the public hearing March 6th and then discuss it further. Mr. Dolan asked if staff could advertise the hearing as being for both options. Mr. Pasin stated that he would have a problem with this proposal. Ms. Guernsey asked what he wanted to do. Mr. Pasin said he just wanted to take away the overlay and would not want to take the existing overlay and just make it one zone. Mr. Atkins stated that he didn't think that R-1 was appropriate for the area.

Mr. Atkins asked about the impact of the new road that will go through the area. Ms. Kester said that she would expect that it would be commercial development since it will connect to the freeway. Mr. Dolan asked if they wanted to advertise for two options or just the down zone for the March hearing date. Ms. Derebey thought the choice was better, Ms. Ninen agreed. Mr. Pasin said that he felt everyone was overlooking that some of these areas are high intensity use. Ms. Derebey said that she wasn't so sure that we shouldn't be looking at the fact that this zone could possibly be used elsewhere in town. Ms. Derebey pointed out that we are charged with planning the future land use of the city not necessarily just doing whatever the property owners want; of course we would take it into consideration. Ms. Guernsey said that people could ask to be rezoned individually. Ms. Kester noted that they could and then perhaps create a sub area plan. She pointed out that it may be a concern that a major arterial would go through an R-1 zone. Mr. Pasin asked why staff had not proposed PCD-NB and Ms. Kester answered that because we would have to do a comprehensive plan amendment; however, if that is what everyone wants, then we can go that route. Ms. Malich said she would like the two options presented for a public hearing. Mr. Pasin noted that if they remove the overlay the greatest impact is on the R-1 zone.

Ms. Kester then went over the seven talking points and her proposals for each.

1. Minimum lot area and lot width. Ms. Kester stated that she was not recommending a minimum lot area or width. Mr. Pasin said that there should be no minimum lot area or minimum lot width.
2. Minimum setbacks for detached single-family and duplexes. Ms. Kester stated that she was proposing the same setbacks as the rest of the city. Mr. Pasin said he didn't want that but had no suggestion for what it should be. Ms. Kester explained the standards.
3. Minimum development parcel size. Ms. Kester said that she was proposing that this be removed and everyone agreed.
4. Density. Ms. Kester explained the current density regulations and proposed a minimum of 4 with a maximum of 8 and the 30% increase provision (up to 10.4). Mr. Atkins asked how the density allowances compared with the way it would

have been with the overlay. Ms. Kester answered that over all you have the potential for more units. Mr. Pasin mentioned the issue of the existing amenities in the area and that he didn't understand why we would ask them to provide more in exchange for additional density. Ms. Guernsey stated that the real issue is do we want a minimum density. Ms. Kester suggested that they not do away with it entirely so that they don't get large lot developments, but could offer a lesser density when someone is doing a true mixed use development. She explained how it could possibly work. Ms. Guernsey and Ms. Derebey both said they liked the 4-8 and everyone agreed.

5. Zone transition standards. Ms. Kester proposed that the zone transition standards not be required internally and everyone agreed that this was a good start for the public hearing.
6. Buffer requirements between new single-family and existing multiple-family developments. Ms. Kester suggested getting rid of Item D. Ms. Guernsey and Ms. Derebey agreed. Ms. Kester suggested they think about the other buffering requirements and whether they make sense along with the townhouse and zero lot line residential developments section.
7. Land Use Matrix. Ms. Kester went over several changes she was suggesting in the land use matrix. Ms. Guernsey asked about the living/nursing facilities and suggested that perhaps they should be conditional rather than permitted. She liked the idea that the performance standards make sure they fit. Mr. Pasin said that he didn't see the need to make it conditional in a mixed use environment. Everyone agreed that they should be conditional. Ms. Ninen suggested that a museum could be an allowed use in this zone; everyone agreed that it could be a conditional use in the zone. It was suggested that auto fuel facilities and vehicle wash should perhaps be allowed conditionally. Ms. Kester noted that wireless communication facilities are being proposed as permitted and stated that she would research if the wireless communication section of the municipal code deals with siting near residential.

3. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** – (ZONE 07-0031) Nonconforming Uses in R-2 zone and nonconforming structure regulations.

Discussion was held on whether this issue could be discussed at the next meeting. Ms. Kester noted that the discussion on the neighborhood design areas is coming up and that several members of the Design Review Board want to be involved. She added that there will be a public hearing on the 6th of March, so that leaves the discussion on the appropriateness of RB-1 zoning at the next meeting and then also finishing up nonconforming uses in the R-2 zone. It was decided that at the next meeting on the 21st of February we will discuss RB-1 zoning and nonconforming uses.

APPROVAL OF MINUTES

MOTION: Move to approve the minutes for January 17th, 2008.
Guernsey/Atkins – Motion passed unanimously.

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session and Public Hearing
March 6, 2008
Gig Harbor Civic Center**

PRESENT: Commissioners Jim Pasin, Harris Atkins, Theresa Malich, Jill Guernsey, Joyce Ninen, Jeane Derebey and Dick Allen. Staff present: Jennifer Kester, Tom Dolan and Diane Gagnon.

CALL TO ORDER: 6:00 p.m.

APPROVAL OF MINUTES

MOTION: Move to approve the minutes of February 7th, 2008. Ninen/Allen – Motion passed unanimously.

Discussion followed on the minutes of February 21, 2008. The following changes were suggested by Ms. Ninen and agreed to by the commission.

On page 1 change Mr. Atkins *asked* to Mr. Atkins *stated*.

Page 2 add *that RB-1 was appropriate*.

Typo on page 2 *Soundview*.

Page 3 change *than* to *then*.

Page 3 remove second that

Talking point 2 – replace *with talking point #2 with that non conforming structures comply with as many applicable codes as possible*.

Page 3, add *the structure*.

Remove *Ms. Malich agreed suggesting that there would be no need to further discuss this item*.

MOTION: Move to approve the minutes with the changes discussed. Ninen/Guernsey – Motion passed unanimously.

WORK-STUDY SESSION

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** – ZONE 08-0001 – Nonconforming use and structure amendments.

Senior Planner Jennifer Kester went over the proposed changes to the ordinance as a result of the previous meeting. She noted that the council has passed ordinance 1122 which allows for reconstruction of non conforming structures due to acts of nature. Ms. Kester stated that due to the extent of the requirements in this section it should probably say that there is a specific permit necessary for a non conforming use and/or structure. She then went over the section on nonconforming uses of land. She stated that the commission had been interested in what codes would have to be met in order to rebuild

completed. Ms. Kester referred her to ordinance 1122 on page four where it states that the application had to be made within a year.

Chairman Malich called a 5 minute recess at 6:56. The meeting was reconvened at 7:04 p.m.

PUBLIC HEARING

1. City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 – ZONE 07-0006 – Removal of Mixed Use District overlay and determination of appropriate underlying zoning.

Ms. Kester went over the request by City Council for removal of the Mixed Use District overlay. She explained the two options; Option A, removal of the overlay entirely and Option B, to implement a new mixed use zone which would be a harmonization of the uses allowed in the MUD overlay and underlying zones. Ms. Kester highlighted the changes. She stated that staff is also recommending a new definition of townhouse in order to implement the standards in the MUD zone.

Chairman Malich opened the public hearing at 7:10 p.m.

Don Wilcox, Burnham Drive, presently zoned B-2 with the MUD overlay. Mr. Wilcox asked how this would affect his property. Ms. Kester pointed out his parcel and explained that if the MUD overlay was removed his property was B-2, if it was the new mixed use zone, the uses would be the same but some of the performance standards may change.

Mark Shoens, 2002 Sullivan Drive NW – Mr. Shoens stated that he owns property on Burnham Drive NW and have been waiting for water, sewer and traffic concurrency. He said he was trying to figure out if he was going to lose some ability to develop his property. Ms. Kester said that he was zoned R-1 with an MUD overlay, she explained the current standards and the two options being presented tonight. He asked why they wanted to remove the overlay and Ms. Kester explained. Mr. Shoen expressed that he would prefer Option B.

Jerry Larimore, 4710 Gay Rd. Tacoma WA – Mr. Larimore stated that he owns property along Burnham Drive and that it sounds like taking something if Option A were implemented so he would prefer Option B. He asked about the tax implications. Ms. Kester explained that without knowing how Pierce County assesses the property now, she couldn't answer. She continued by saying it would depend on if the assessor treasurer currently takes the overlay into consideration.

Chairman Malich closed the public hearing at 7:20 p.m.

2. City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 – ZONE 08-0001 – Nonconforming use and structure amendments

Chairman Malich opened the public hearing at 7:21 p.m.

Senior Planner Jennifer Kester explained that the proposal is to change the nonconforming use and structures section of code. Ms. Kester explained what this section of code pertains to. She stated that the council recently passed an ordinance that nonconforming residential uses in the R-2 zone and that use burned down or was destroyed by some other act of nature, 100% of it can be rebuilt. She explained what the previous code had stated. She continued by explaining that the City Council asked that the Planning Commission examine whether that should apply to all zones rather than just R-2. She went over some of the changes that would be implemented with this ordinance.

George Pollock, 2808 Harborview Drive – Mr. Pollock said he was very thankful for the passage of Ordinance 1122 and was concerned by the remodel portion of the ordinance. Ms. Kester explained that replacement value only applied to things that would require a building permit, not carpets, lighting, etc. Ms. Kester stated that there were no provisions in today's codes for remodel of nonconforming structures and that this proposal would at least allow for it.

Due to the arrival of additional interested citizens, Chairman Malich re-opened the public hearing on Item 1, Removal of Mixed Use District overlay and determination of appropriate underlying zoning, at 7:25 p.m.

Wade Perrow, 9119 N Harborview Drive – Mr. Perrow stated that he agreed with the idea of removing the MUD overlay. He continued by saying that there are certain elements that can't just be removed.

Jill Guernsey explained the options in the proposal. Mr. Perrow said that he wasn't sure we needed another zone in the city. He asked that the Planning Commission make sure that the city has an adequate employment base.

Ms. Kester assured Mr. Perrow that the uses currently allowed in the overlay would be allowed in the mixed use zone. He stated he didn't think it was the best zoning for the city. He said that he had marked up the matrix to try to illustrate what he felt the zone should be for the area. Ms. Guernsey asked which of the current zoning districts he would suggest for the area. He explained why he thought it should be zoned differently and that this was an opportunity to really examine what should happen in this area. Harris Atkins asked if anyone had further comments after hearing Mr. Perrow's comments.

Mr. Larimore said that he thought that in a mixed use zone you could accomplish what Mr. Perrow was talking about but he also felt that transitioning between zones sounded nice as long as you do not down zone someone's property. Mr. Pasin asked how he envisioned his property being used and he said he didn't know.

MOTION: Move to direct staff to prepare an ordinance incorporating the changes discussed tonight for our final consideration at the next feasible meeting. Atkins/Derebey –

Mr. Atkins stated that his intent was to include an exemption of interior remodeling and the other items that Ms. Kester had noted within the text. He stated that it is difficult to legislate common sense and asked the commission members to give this issue some thought for further discussion at the next meeting. Mr. Pasin felt that they should be cautious and that just because something gets put within the setbacks it doesn't necessarily improve views. Mr. Allen said that views are not really a consideration.

Motion passed unanimously.

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** – ZONE 07-0006 – Removal of Mixed Use District overlay and determination of appropriate underlying zoning.

MOTION: Move to defer this item to the next meeting. Ninen/

Ms. Kester went over the things that were still left to discuss within this quarter. Mr. Atkins went over what the options were and what some of the public had said tonight. He asked what everyone else thought and if they wanted to examine other zones. Ms. Derebey, Ms. Malich and Ms. Ninen stated they liked the new Mixed Use zone. Mr. Pasin said he wanted to discuss it further. Ms. Guernsey thought that Mr. Perrow had a good idea to reexamine the entire area but the City Council really doesn't want the commission to take the time to do that right now. She stated that she prefers Option B assuming that we need to do something now. Mr. Allen said that if it's just a fix then he would prefer Option B unless we want to take on a larger task. Mr. Atkins said he would go with the mixed use Option B, he didn't think that the area was big enough to warrant several different zones.

Ms. Ninen's motion died for lack of a second.

MOTION: Move to forward a recommendation to the City Council for the text amendment as written on the condition that the ordinance is brought back for review.

Ms. Kester pointed out that it is really an area-wide rezone and Mr. Atkins withdrew his motion.

MOTION: Move to have staff prepare an area wide rezone for the mixed use district with the currently configured boundaries. Atkins/Ninen – Motion passed unanimously.

ADJOURNMENT

MOTION: Move to adjourn at 8:50 p.m. Ninen/Derebey – Motion passed.

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
April 17th
Gig Harbor Civic Center**

Present: Commissioners Jim Pasin, Harris Atkins, Jeane Derebey, Dick Allen, Theresa Malich, Jill Guernsey Joyce Ninen and Jeane Derebey.

Staff Present: Tom Dolan, Jennifer Kester and Cindy Andrews

CALL TO ORDER: – 6:05 pm

APPROVAL OF MINUTES:

MOTION: Move to table the minutes from April 3rd, 2008 until the next meeting.
Atkins / Ninen – Motion passed unanimously

NEW BUSINESS:

1. **Discussion of the agenda for the Planning Commission's meeting with the City Council on April 21st, 2008 –**

Senior Planner Jennifer Kester summarized the upcoming April 21st meeting with City Council discussing the new re-appointment policy and the Vision and Charter work program. Ms. Derebey asked if council had seen everything that the board had completed. Ms. Kester replied no, Mr. Dolan added that council had approved the work program. Board members discussed the reappointment policy, the new DRB process, annexations and the Shoreline Master Plan Update. Mr. Dolan encouraged board members to bring their comments to the April 21st meeting.

2. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335 -**
ZONE 08-0003 – Appropriateness of RB-1 zoning district locations and allowed uses in the RB-1 zone.

Ms. Kester asked board members if they would like to discuss item #2 tonight noting that the last time the item had been discussed had been on March 20th. Board members agreed to postpone the item.

MOTION: Move to postpone until the next meeting Zone 08-0003. Derebey / Ninen –
Motion passed unanimously.

Recess at 6:45

7:00 – PUBLIC HEARING

1. **City of Gig Harbor, 3510 Grandview St, Gig Harbor, WA 98335 –**
Zone 07-0006- Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone.

Ms. Kester discussed the proposal to remove the mixed use district overlay and add the new MX Zone explaining the intent to harmonize the R-1 and the RB-2 zones.

Ms. Kester continued to explain the changes pointing out that property owners would not see a reduction in the zoning of their property however they would see a change in the density in the RB2- zone, also no requirements for parcel size developments and buffer requirements would be carried over.

Chair Theresa Malich opened the hearing up for public comments.

Mark Shoenes– 2002 Sullivan Dr, Gig Harbor, WA 98335. Mr. Shoenes asked for the reason in the reduction of the density in the RB-2 zone. Ms. Kester explained by removing the process for allowing the density to expand to 12 units per acre in the new MX zone_it would harmonize the R-1 and RB-2 zones, noting that the MX zone would still allow density of 8 units per acre

Tom Metzdorf -15604 Sunny Cove Dr, Olalla, WA. Mr. Metzdorf currently owns property along Burnham Dr. asked to confirm that the property would remain commercial for development purposes. Ms. Kester replied yes however light industrial would require a Conditional Use Permit.

Ms. Malich closed the public hearing on Item #1 at 7:15 pm

2. Carl Halsan, Halsan Frey LLC, P.O. Box 1447, Gig Harbor, WA 98335 –
Zone 07 -0012 Height Restriction Area Special Exception

Ms. Kester introduced applicant Carl Halsan.

Mr. Halsan summarized his proposed text amendment explaining the intent to make the process clearer for properties owners that would like to remove their property from the Height Restriction Area explaining the difficulties imposed by the current criteria.

Ms. Kester explained the concern of the Planning Commissions members for protecting views of property that would not be in the Height Restriction Area. Ms. Kester explained the Planning Commission's proposed changes to the intent statement and the criteria for removal from the Height Restriction area. Board members further discussed their proposed changes to the criteria specifically the reference to the Gig Harbor view basin and the Soundview neighborhoods, the removal of the term adjacent and other properties as well as stating that current and potential views should refer to all properties. Mr. Halsan agreed to the changes. Ms. Kester explained the proposed change to the permit type_to a type III permit to insure that property owners would be notified and a public hearing would be held.

Ms. Malich closed the public hearing at 7:28.

3. City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335 –
Zone 07-0008 – Gross Floor Area Definition Amendment.

Ms. Kester summarized Zone 07-0008 pointing out the most notable change would be the removal of the underground floor area as part of the calculation of the gross floor area. Ms. Kester also discussed additional changes to the amendment including defining attic space and removing garage space as part of the calculation for off street parking. Ms Kester further explained why the Planning Commission is not proposing the change to the gross floor area definition apply to the waterfront zones given the higher utilization of the land for waterfront properties.

Ms. Malich closed the public hearing at 7:34 pm.

MOTION: Move that the Planning Commission recommend adoption of the amendments to the gross floor area, underground floor area and attic area covered in the staff report dated April 17th, 2008 also including a reference to the language contained in the January 17th, memo from the Planning Commission Chair to City Council and that the second version of the definitions for underground floor area be used. Also that the motion be based on the discussion contained in the January 17th memo to city council which includes more language on shoreline master program update. Atkins / Derebey – motion passed as amended – Mr. Pasin abstained.

Mr. Dolan discussed the reasons that the upland areas would be treated differently than the shoreline areas. Ms. Kester asked if it would be alright if she added additional language referencing the SMP update. Ms. Malich agreed. Ms. Kester suggested using the memo signed by Ms. Malich to clarify the reason why waterfront zones were not included in the gross floor area definition change.

Height Restriction Comments: Item 2

Board members discussed the definition of views, views of Gig Harbor Bay, of the Narrows, across the bay, the inner harbor and territorial views. Ms. Kester discussed what views would be considered the most important. Ms. Malich pointed out that most homeowners would have a territorial view. Mr. Atkins asked if there would be a way to define their view. Ms. Kester suggested it could be mapped to include water, mountain, ridge line, and view over water and territorial. Ms. Ninen noted that homeowners have a financial impact associated with their view and that they should have some protection. Mr. Pasin pointed out the importance in the description of views.

MOTION: To adopt the staff's recommendation for height restriction area criteria as presented with the change to page 5 reference to the Narrows be changed to refer to Puget Sound.
Ninen / Derebey – Motion passed unanimously

Mixed Use Overlay Comments: Item #1

Ms. Kester discussed the proposed MX zone explaining that there would be no requirement to develop as a mixed use. Commission members discussed development options, uses, density, incentives and projects currently vested. The Commission members reviewed the letter provided by Courtney Kaylor of McColluogh Hill PS expressing concerns with the reduction of density for the property she represents, the RV Resort. The Commission directed staff to prepare an Option C, which would rezone only those portions of the mixed use overlay north of the Northharbor Business Campus to the new MX zone and would remove the overlay from those south of the same point. Furthermore, the Commission requested staff develop incentive-based performance standards for the MX zone for Option C which would require a percentage of mixed use development on any given site. Board members agreed to continue the discussion at a later date. Ms. Kester agreed.

Mr. Dolan discussed staff schedules the possible cancelation of the May 1st meeting and potential addition of a special meeting in July.

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
March 5, 2009
Gig Harbor Civic Center**

PRESENT: Commissioners: Harris Atkins, Joyce Ninen, Jeane Derebey, Jill Guernsey, Jim Pasin, Michael Fisher and Dick Allen. Staff Present: Jennifer Kester and Tom Dolan. Guest Present: Dick Adams

CALL TO ORDER: Chair Harris Atkins called the meeting to order at 5:05 p.m.

APPROVAL OF MINUTES:

MOTION: Move to postpone the minutes of February 19, 2009 – Ninen/Allen
Motion passed unanimously.

City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –
ZONE 07-0006 – Mixed Use District Overlay (MUD) Amendments and Area-Wide
Rezone

The planning staff gave a brief history of the proposed amendment since the last time the Commission reviewed the amendment was April 2008. The staff summarized Options A and B, discussed in 2008, and the most recent iteration developed for this meeting, Option C.

Option C would:

1. Remove the MUD overlay
2. Repeal Chapter 17.91, Mixed Use District Overlay
3. Rezone all properties north of 97th Street currently within the MUD Overlay to a new Mixed Use (MX) zoning district and add a new Chapter 17.57 Mixed Use District (MX) to the zoning code.
4. Retain the current underlying zoning for those properties within the current MUD overlay located south of 97th Street: RB-2 or B-2.
5. Provide density and building height incentives for mixed use projects.

The Commission decided that the proposed Option C, in general, was the appropriate approach as compared to Option A and B discussed in 2008. The Commission discussed the proposed boundaries of the MX district under Option C and agreed to maintain those boundaries for the public hearing.

The Commission then reviewed the proposed density of the new MX district. The base density range was proposed at 4 to 6 dwelling units per acre with a 30% increase for including nonresidential uses in the development. Nonresidential uses would need to equal at least 25% of the gross floor area of the total development to receive the density bonus.

The Commission asked staff about the density and percent mixed use of the Olympic Mixed Use project along Olympic Drive which houses Harbor Greens. The Olympic Mixed Use project has 60 dwelling units on approximately 5 acres, yielding approximately 12 dwelling units per acre. The nonresidential component of the site accounts for approximately 33% of the gross floor area. Overall, the Commission felt that the Olympic Mixed Use project was a successful mixed use project.

After additional discussion about the Olympic Mixed Use project, the Commission decided that the proposed 25 percent nonresidential was appropriate but that a larger density increase was warranted. The Commission agreed that a 50% increase, to a maximum of 9 dwelling units per acre, should be allowed in the new MX zone. However, in addition to the nonresidential component, the Commission recommended that in order to achieve the density bonus 10% of the development site must be in common open space. This would assure available outdoor community space; something that was lacking in the Olympic Mixed Use development.

The Commission then discussed the proposed height incentive for buildings which contained both residential and nonresidential uses. An additional 10 feet over the 35 feet base would be allowed as long as the residential or nonresidential component was not less than 25% of the gross floor area. The Commission wanted to know if 35 feet would allow a three-story building and if 45 feet (if the bonus was utilized) would allow a four-story building. The Commission agreed that they didn't want to see building's greater than four stories tall in the MX zone. The staff agreed to discuss the height requirements for three and four stories with the City's Building Official and provide a recommendation at a later meeting.

The Commission discussed if limitations should be put on where nonresidential uses can exist in mixed use buildings. It was agreed that the only limitation necessary was to require nonresidential uses to be below residential uses when those uses occur on different floors.

Future Actions:

- Staff to discuss the proposed height limitation and building requirements with building official and provide a recommendation for appropriate height limitations for a three-story and four-story building at a later meeting.
- Public hearing on Option C is scheduled for March 19, 2009.

ADJOURNMENT

MOTION: Move to adjourn at 7:30pm – **Motion passed 4-1 (Pasin was opposed).**

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session and Public Hearing
March 19, 2009
Gig Harbor Civic Center**

PRESENT: Commissioners: Joyce Ninen, Jill Guernsey, Jim Pasin, Michael Fisher, Jeane Derebey and Dick Allen. Chairman Harris Atkins was absent.
Staff Present: Tom Dolan, Jennifer Kester and Diane Gagnon.

CALL TO ORDER: Acting Chair Joyce Ninen called the meeting to order at 5:00 p.m.

APPROVAL OF MINUTES:

MOTION: Move to table the minutes of February 19th, 2009 until the next meeting. Derebey/Fisher. Motion passed unanimously.

5:00 WORK STUDY SESSION

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –**
ZONE 07-0006 – Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone

Senior Planner Jennifer Kester went over the memo that had been sent out to reflect the changes the commission had discussed at the last meeting and noted the specific changes.

Ms. Kester stated that since the last meeting she had talked to the City Building Official regarding height and that he had said a 10-foot floor with some wiggle room for each floor would be adequate. She continued by saying that a 35' height limitation from footprint would get three stories with a flat roof but not necessarily a pitched roof, 45' would get you four stories with a flat roof. She also stated that Rick Gagliano was willing to do some calculations on what would be necessary to get 3 floors and with incentive 4 floors. Commissioner Ninen voiced concern with a four-story building with a flat roof. Commissioners Pasin and Derebey said they were not concerned and felt that it was a better use of the height. Ms. Ninen said she would like to see what Mr. Gagliano came up with since he is an architect and also on the Design Review Board. Commissioner Allen said that he wanted to know what it took to get 3 and 4 floors comfortably without thinking about the 35 and 45 feet and he felt that it would be good to get Mr. Gagliano's advice.

Ms. Kester noted that Mr. Pasin had asked that she talk about the affect of the enhancement corridor standards on this new district. She said that along Burnham Drive there is a 30-foot setback on either side of that right of way in which no building or parking or tree removal is allowed. If there is not adequate screening to screen 50% of the development then they have to provide plantings to reach 50% and have to do all

facades as prominent façades within the enhancement corridor. She noted that the development standards for front yards could be larger than stated in the proposed ordinance. Ms. Ninen asked if perhaps there should be a footnote in the development standards stating that within the enhancement corridor the setbacks may be different.

Commissioner Michael Fisher asked what the lines on the map represented and did the math work when it was a small parcel. Ms. Kester stated that it may be difficult to get the 50% increase in density but it is achievable. Mr. Allen asked for clarification of what the footnote would say. Ms. Kester gave an example of what it could say.

Ms. Ninen asked if there was any feedback from the council meeting on Monday which would have an impact on this proposal. Planning Director Tom Dolan said that there were no specific recommendations but after public testimony there may be changes necessary.

Mr. Allen asked about the 5' sideyard setback and what the rationale was for that. Ms. Kester said that she believed that it was currently written that way in the MUD overlay. Mr. Allen expressed some concerns with it being so narrow and Ms. Kester said it may be an issue with larger buildings with windows, etc. Mr. Dolan agreed that they should look at that and talk to the building official about whether there would be a conflict with fire codes and the design manual. Mr. Allen asked if the 5' was being offered as some kind of incentive and Ms. Kester said she didn't think so.

Ms. Ninen said that she had looked at other zones that have mixed use and she hadn't seen anything less than 8 feet and Ms. Kester said that there was one that had 5.

Commissioner Guernsey asked about the front yard and side yards on page 4. She asked that the word setback be inserted. Ms. Kester agreed.

Ms. Kester noted that Ms. Ninen and Mr. Allen had dropped off some language suggestions for page 2 of 10 in the setback section, recommending that the word "minimum" should be inserted. In addition, Ms. Ninen and Mr. Allen recommended that on page 4 under section 100, the word "line" be inserted after the word "property". She stated that the council had a discussion on height at the work study session. They also pointed out the boundary on the southern section did not follow the parcel lines. Mr. Pasin said that there is one portion on the west side of the road and given the fact that it's an enhancement corridor he asked if we were doing those people any favors with this proposal. Ms. Kester noted that staff has talked to those property owners and they seem to be desirous of a nonresidential use. Mr. Dolan further explained the location of the property. Discussion continued on properties along Burnham Drive and reasonable use exceptions.

Ms. Kester suggested that perhaps after the hearing, the commission may want to take another look at the uses proposed since it had been awhile since they had proposed them.

A ten minute recess was called at 5:50 pm.

The meeting was called to order at 6:00 pm

6:00 PUBLIC HEARING

Acting Chair Joyce Ninen opened the public hearing.

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** –
ZONE 07-0006 – Mixed Use District Overlay (MUD) Amendments and Area-Wide
Rezone

Ms. Ninen asked Ms. Kester to give an overview of the proposal for this public hearing. Ms. Kester went over the proposal for the new MX zone. She went over the new amendments for incentives for mixed use and some other housekeeping changes. She reviewed the proposed increase in allowed density and the removal of limitations to mixed use occupancies. She then went over the changes to the uses. She stated that she was here to answer questions.

Tom Sturgeon, P.O. Box 1800, Orting WA 98360

He said that McCormick Creek plat was his property and that the mixed use district intent states that they are promoting the intent. He didn't think that he would be able to get the density or height that the commission was proposing so he was here to see if this proposal would allow him to apply for a new plat. He said that it would allow him to possibly get more density. He asked that they look at what is best for everyone. He thought that they could consider height and underground parking. He noted that one of his conditions was to build a road to Harbor Hill. He noted that they have some of this mixed use in Puyallup and it isn't working. It works in Kirkland, but it may not work here. Jim Pasin said that he felt that this proposal provided property owners with more flexibility. Mr. Sturgeon said that he liked the idea that he could get 9 dwelling units per acre. Ms. Ninen asked if the 185 units were all single family and Mr. Sturgeon said that it was all single family. Ms. Ninen asked what price range he was shooting for and he said somewhere between \$216,000 and \$260,000. Commissioner Fischer asked what his density was and Mr. Sturgeon said that he felt it was a little more than four per acre. He said that he wasn't sure that 9 dwelling units per acre could be achieved with some of these regulations. He asked that since this is a rather large piece that it's development be considered.

Sean Mondavi, P.O. Box 2352, Gig Harbor WA 98335

Mr. Mondavi stated that he would like to have his office and construction yard be a permitted use. He noted that his neighbor has a contractor yard. Mr. Dolan said that this was a violation and there had been cutting of trees without permits. He continued by saying that Kristin Moerler is working with him to figure out a way to locate an office and noted that his property is severely impacted by steep slopes and wetlands. Mr.

Dolan stated that staff is in the process of trying to figure out if what he wants to do can be accomplished, given the constraints of the property. Ms. Kester noted that on page 2 of 10 it talks about the neighboring uses and the Planning Commission is proposing to strike that. Mr. Mondavi stated that times are hard and asked for help with his project.

Ms. Kester noted that she had received an e-mail from Loretta Larimore and Jerry Larimore and stated that they were in agreement with the proposed changes. Mr. Allen asked how big their property was and Ms. Kester said that she thought that it was about ten acres.

Acting Chair Joyce Ninen closed the public hearing 6:37 p.m.

Mr. Pasin stated that he had some comments regarding the proposal. He stated that in the permitted uses on page 8 of 10 he noticed that tavern is not a permitted or conditional use and since there were some taverns further south he asked why we were not allowing them. He then asked about the drive thru and felt that it should at least be a conditional use and he would actually permit it outright. Ms. Ninen said she was not against having drive thru be conditional in that zone and everyone agreed. Ms. Guernsey said that since we were allowing all restaurants we should allow taverns and everyone agreed that it should be at least a conditional use.

Ms. Derebey asked why they had spent so much time on this when Mr. Sturgeon had a plat for such a large chunk and Ms. Kester said he has expressed that he might not go forward with his plat.

Mr. Pasin recommended getting the additional information and tabling this item until the next meeting. Ms. Kester went over what additional information they had asked for. Ms. Derebey asked if she would also check continuity with the fire code and Ms. Kester said that she would check on the minimums.

OTHER BUSINESS

Planning Director Tom Dolan said that the Planning Commission may be asked to look at an area wide rezone within the newly annexed Burnham/Sehmel annexation area. He further stated that one of the property owners; Paul Garrison has expressed concern with the preannexation zoning of RB-1 since he has industrial uses on his property and would like to bring his property in as an employment district. Mr. Garrison did not appear before the council when these issues were discussed for preannexation zoning. It was noted that the City Attorney advised that in order to change the zoning at this point we would have to do the annexation all over again so we may be looking at an area wide rezone and that the annexation should be final April 6th. Mr. Dolan noted that the areas where the zoning code and comprehensive plan don't match really need to be cleaned up.

ADJOURNMENT

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
April 2, 2009
Gig Harbor Civic Center**

PRESENT: Commissioners: Harris Atkins, Joyce Ninen, Jill Guernsey, Michael Fisher and Dick Allen. Commissioners Absent: Jim Pasin, Jeane Derebey. Staff Present: Jennifer Kester and Peter Katich. Guest Present: Karl Scherer, Dino Formiller, Paul and Betty Garrison, and Florence Wintermute

CALL TO ORDER: Chair Harris Atkins called the meeting to order at 5:05 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of February 19, 2009 with corrections – Ninen/Guernsey **Motion passed unanimously**

Minutes for the March 5, 2009 meeting were passed out and will be reviewed at the next meeting.

Minutes for the March 16, 2009 joint meeting of the Commission and Council and the March 19, 2009 Commission meeting will be ready for distribution by the next meeting.

City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –
ZONE 07-0006 – Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone

Ms. Kester addressed proposed approach for rezoning the area currently zoned Mixed Use District Overlay to MX Mixed Use District. She addressed the proposed setback, height and use regulations for the district. In regard to side yard setbacks, Ms. Ninen inquired as to the side yard setback requirements of other jurisdictions. She inquired of Mr. Katich what the city of Tacoma's side yard setback requirements were. Mr. Katich noted that the city had recently revised its code to require a 5 foot side yard setback. Mr. Allen expressed his opinion that reduced setbacks pose a fire safety issue. Chair Atkins inquired as to whether staff had consulted the Fire District regarding the requirement. Ms. Kester indicated that the International Residential Code required fire resistive construction for structures located within 5 feet of a side property line. Ms. Kester suggested that the Commission focus on aesthetics and open space in their deliberations concerning the setback issue, not fire safety as that is addressed by the building code. The Commission reached consensus that a minimum 8 foot side yard setback for nonresidential and residential should be required.

Turning to the proposed height requirement for the district, Ms. Kester indicated that Rick Gagliano, Vice Chair of the city's Design Review Board, had reviewed the height issue and provided his comments as well as a sketch that addresses the minimum floor to floor height required for mixed use buildings that include retail, office and residential uses. In this regard, a minimum floor to floor height for retail is 14 feet, while residential and office uses typically require 10 feet between floors. Ms. Kester addressed how the maximum 35 foot height limit for a structure could actually be taller on the downhill side of sloping parcels. Discussion ensued among the Commission members on the use of incentives that would allow for additional height above the 35 feet. After much discussion on the issue, the Commission reached consensus that the height incentive set forth in proposed GHMC 17.57.070.B should be increased from 10 to 15 feet if at least 25 percent of the gross floor area of a mixed use building contains residential and at least 25 percent of the gross floor area of the building is nonresidential. The additional 15 feet would allow a four-story building with the first floor as retail.

Lastly, with regard to permitted, conditional and prohibited uses within the proposed district, Ms. Kester noted that ministorage and industrial level 1 uses are currently listed as conditional uses within the proposed district and inquired of the Commission regarding whether they should be allowed as such or prohibited. Ms. Ninen indicated her preference to allow them a conditional uses. Chair Atkins indicated that a consistent vision may not exist for the area. Commission members commented that the Comprehensive Plan will need to be amended to align with the regulations of the new mixed use district. Ms. Kester indicated that the GMA required 7 year update to occur in 2011 would be an opportunity to resolve any inconsistencies. Ms. Guernsey indicated her preference to allow the two industrial uses as conditional uses. After discussion, the Commission reached consensus that the two industrial uses should remain conditional uses within the proposed district.

MOTION: Move to recommend approval of the proposed area-wide rezone and new MX District as amended, subject to the preparation of a notice of recommendation and a vision statement for the district by staff. Atkins / Ninen – **Motion passed unanimously**

Future Actions:

- Staff to prepare a draft notice of recommendation which includes a vision statement for the district for Planning Commissions review at a future meeting.

The Commission adjourned for a 5 minute break at 6:20pm

City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –
ZONE 09-0003 – Sehmel Drive Area-Wide Rezone

Ms. Kester explained the background associated with the request for an area-wide rezone of the area, which will officially be annexed into the city on April 6, 2009. She noted that the area in question consists of approximately 18 acres and comprised of

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
May 7, 2009
Gig Harbor Civic Center**

PRESENT: Commissioners: Harris Atkins, Jim Pasin, Jeane Derebey, Michael Fisher and Dick Allen. Commissioners Absent: Joyce Ninen and Jill Guernsey. Staff Present: Jennifer Kester and Tom Dolan. Guests Present: Carl Carlson, Ann Fiermier

CALL TO ORDER: Chair Harris Atkins called the meeting to order at 5:02 p.m.

APPROVAL OF MINUTES:

Minutes for the April 16, 2009 meeting will be ready for distribution by the next meeting.

**City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –
ZONE 07-0006 – Mixed Use District Overlay (MUD) Amendments and Area-Wide
Rezone**

Ms. Kester presented the draft Notice of Recommendation and vision statement she prepared for the Planning Commission's review. The commission discussed the vision statement and made several changes to the draft language. The commission decided to look at the intent statement of the new MX zone at the May 21st meeting to ensure that the intent statement matches their vision. The commission members were asked to bring their proposed changes to the May 21st meeting.

**City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –
ZONE 09-0004 – Off-Street Parking Requirements**

The commission continued their review of the amendments and clarifications proposed to the off-street parking requirements resulting from recent zoning code amendments and potential future amendments. They discussed business and ancillary service parking requirements and decided the parking requirement should be consistent with the professional office and personal services parking requirements in order to make change of use tenant improvements simpler. The commission decided to leave the staff proposed requirements for cemeteries as is and directed staff to discuss the requirements with Haven of Rest.

The commission voted to recommend at public hearing the following parking standards:

Business Services: 1 stall per 300 sq.ft. of gross floor area
Ancillary Services: 1 stall per 300 sq.ft. of gross floor area
Industrial uses: 1 stall per 1000 sq.ft. of gross floor area

Wade Perrow

P.O. Box 245
Gig Harbor, Wa 98335
253-853-2308
wade@wpconstrcution.com

June 22, 2009

To: Mayor Hunter and Members of the Council

Re: Zone 07-0006 –Mixed Use Overlay (MUD) Amendment and Area-Wide Rezone

Thank you in advance for considering this public testimony regarding the proposed zoning changes and amendments. This letter is written specifically to address issues affecting property located between 96st and 97th St off of Burnham Dr. (see attached marked-up copy of the MUD Overlay Removal Option C Planning Commission March 5, 2009). As a property owner of the presently zoned RB-2 with a (MUD) Mixed Use District Overlay and an adjoining property owner with a (ED) Employment District, I would ask the City Council recognize the identified property as (ED) Employment District **not** RB-2. In recognition of this, I would request the Council support a property request for rezone in future Comp Plan update.

On May 26 of this year (4 weeks ago) the council acted to adopt changes to the ED Zone 08-0007 to “..attain comprehensive plan consistency, which including changes to the in intent statements and allowed uses...” (It's our understanding these changes will become law on June 5th). The changes made and adopted apply specifically to the property located on the attached drawing. The property is connected to the Northharbor Business Campus, which serves the city's comprehensive planning initiative for employee needs ED Zone. As the planning commission stated in their recommendations to the Council, “...*ED zoning district is more appropriate for an industrial type of uses*”similar to what is presently in the Northharbor Business Campus and what would fit well on this adjoining eight acres in question.

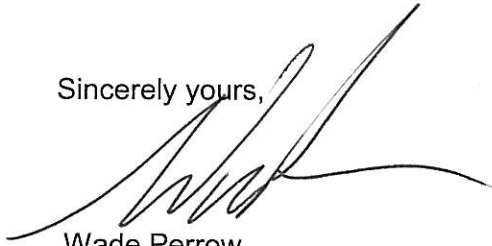
Efforts of the planning commission to address the Mix Use District Overlay, may have been premature as the new definition of the (ED) Employment District had not been finalized at the time the Planning Commission was holding meeting and hearings, on rezone matter. It is my belief that we have to place the cart before the horse. I cannot see where the planning commission could have properly evaluated the amendments and area wide re-zones if one did not know what the final intent and allowed uses were for ED zone.

As a property owner affected by this proposed change to the mix use overlay (MUD) as well as a adjoining property owner in the (ED) Employment District, I would ask that the council consider support a FUTURE REQUEST for re-zoning on property north of 96th **not** 97th street to ED. This would move the line from one side of the effected property to the other and place the

uses closer to what can and should be applied to vacate property in an Employee District close to a gun club.

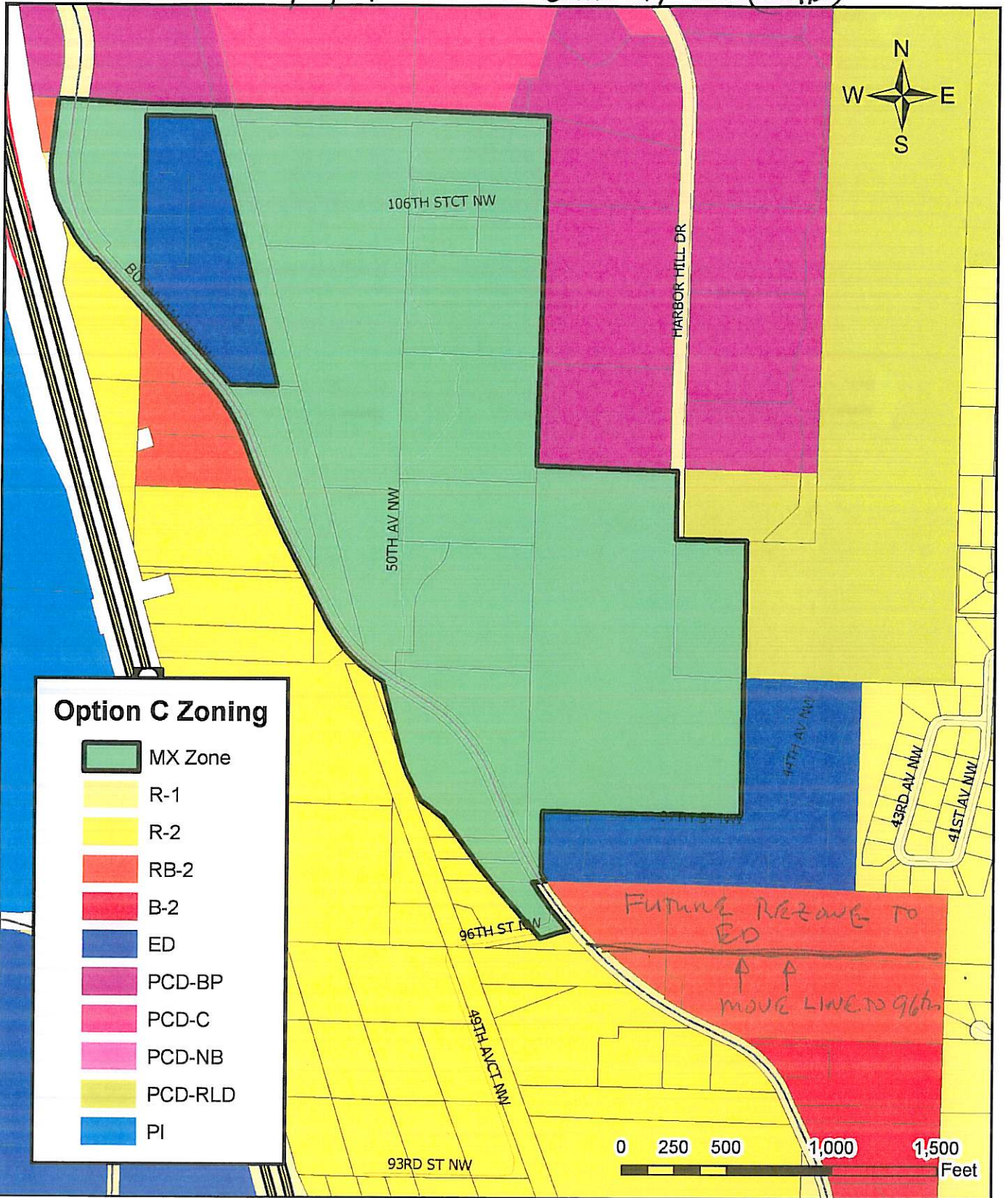
Thank you in advance for your consideration of this and **I would ask that the council considered the impact of taking of rights associated with the effective suggested down zoning of the property in question.** I believe working with the planning commission to address this matter in upcoming Comp Plan Amendments, with your support; will lead to proper land use classification that serves the need of both the city and the property owner.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Wade Perrow', with a long horizontal flourish extending to the right.

Wade Perrow

Wade Pearson 6/22/09 letter to Council and (MUD)



MUD Overlay Removal Option C Planning Commission March 5, 2009

John W. Holmaas
Post Office Box 206
Gig Harbor, WA 98335
JohnH@Windermere.com
253 851 0551
253 381 1552
FAX: 253 851 0551

June 22, 2009

Mayor Chuck Hunter
and City Council Members
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

RE: Zone 07-0006 ... area wide rezone

As a member of 96th Street LLC we ask that all properties lying North of 96th street, between Burnham Drive and the subdivision known as Avalon Woods become ED, employment district, at the earliest possible time.

We appreciate the Planning Commission and Council efforts to change to ED zoning on the adjoining property and feel the line needs to be extended southerly to 96th Street.

We trust you include this ED REZONE REQUEST in the next available Comprehensive Plan Amendment.

Thank you.

John W. Holmaas
9062202



Subject: Public Hearing and First Reading of Ordinance - Height Restriction Area Criteria Amendment (ZONE 07-0012).

Proposed Council Action: Review ordinance and approve or deny the text amendment request at second reading.

Dept. Origin: Planning

Prepared by: Tom Dolan *Tom*
Planning Director

For Agenda of: June 22, 2009

Exhibits: Draft Ordinance; Minutes from City Council Work/Study Session

Initial & Date

Concurred by Mayor: CLH 6/17/09

Approved by City Administrator: RJK

Approved as to form by City Atty: approved by e-mail

Approved by Finance Director: N/A

Approved by Department Head: TD 6/15/09

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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INFORMATION / BACKGROUND

Attached for the Council's consideration is a draft ordinance that would amend the intent and criteria for removal of properties from the height restriction area. The initial application was submitted on September 12, 2005 by Carl Halsan of Halsan Frey LLC.

On May 27, 2008, the Council held a public hearing and first reading of the draft ordinance as recommended by the Planning Commission. It was determined at this meeting that additional changes to the amendment were necessary to clarify the intent of the chapter and remove ambiguities in the proposed criteria. Staff worked with the applicant and developed a modified ordinance.

On March 9, 2009, the Council held a second public hearing and first reading of the revised draft ordinance. At the public hearing, additional concerns were expressed by the Council. To further discuss these concerns, the Council held a work study session on April 27, 2009. At the work study session, specific direction was provided to staff to amend the intent section of the Height Restriction Area Ordinance to: 1) protect views (both from the site and from adjacent properties); 2) preserve the historic height of structures within the Height Restrictions Area; and 3) maintain the bulk and scale of buildings in the Height Restriction Area.

The attached draft ordinance contains a revised intent section. In addition, staff has amended the criteria required for the removal of properties from the Height Restriction Area Map to reflect the changed intent.

If the City Council desires a process to remove properties from the height restriction area, the staff believes the proposed changes to the intent and criteria for approval are appropriate and meet the direction provided to staff at the 4/27/09 Council work study session. If the Council does not want to provide a process for removal from the height restriction area, the Council should deny this amendment and repeal the current criteria (GHMC 17.62.040).

POLICY CONSIDERATIONS

Zoning text amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare, and whether the proposed amendment is consistent with the Gig Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW). Zoning text amendments are considered a Type V legislative action (GHMC 19.01.003).

ENVIRONMENTAL ANALYSIS

The City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on January 4, 2006.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

The Planning Commission recommended approval of the previous version of the text amendment reviewed at the May 27, 2008 council meeting.

RECOMMENDATION / MOTION

Move to: Staff recommends the Council review the ordinance and approve or deny the text amendment request at second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING SECTION 17.62.010 OF THE GIG HARBOR MUNICIPAL CODE TO BROADEN THE INTENT OF THE HEIGHT RESTRICTION AREA CHAPTER; AMENDING SECTION 17.62.040 OF THE GIG HARBOR MUNICIPAL CODE TO REVISE THE CRITERIA FOR REMOVAL OF PROPERTY FROM THE HEIGHT RESTRICTION AREA MAP; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City adopted provisions for a Height Restriction Area, codified at chapter 17.62 of the Gig Harbor Municipal Code; and

WHEREAS, the intent language found in the Height Restriction Area ordinance focuses on the preservation of views from adjacent properties; and

WHEREAS, the City desires to broaden the intent language to clarify the importance of preserving views both from on the site and from adjacent properties, preserving the historic structure height, and maintaining neighborhood bulk and scale within the Height Restriction Area; and

WHEREAS, the City desires to amend the intent and criteria for removal from the Height Restriction Area to insure that historic structure height and neighborhood bulk and scale compatibility are maintained; and

WHEREAS, the City desires to amend the intent of the height restriction area chapter to recognize those neighborhoods which have views of Gig Harbor Bay, Mount Rainier and the Puget Sound thereby implementing the Neighborhood Design Polices of the Comprehensive Plan; and

WHEREAS, on December 13, 2005, a copy of the text amendment was sent to the Washington Department of Community, Trade and Economic Development, pursuant to RCW 36.70A.106; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on January 4, 2006; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on April 17, 2008 and made a recommendation of approval to the City Council; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on May 27, 2008; and

WHEREAS, the Gig Harbor City Council considered the revised Ordinance at first reading and public hearing on March 9, 2009; and

WHEREAS, on _____, 2009, the City Council adopted this Ordinance at second reading during a regular City Council meeting; Now, therefore,

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

Section 1. Section 17.62.010 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.62.010 Intent

The purpose of this height restriction area is to establish standards for those properties located inside the Gig Harbor ~~v~~View Basin and Soundview neighborhoods where decreased building height shall be required. This is intended to be a limitation on height so as not to restrict current or potential views from the site or adjacent other properties. The Height Restriction Area is further intended to preserve the historic height of structures and maintain the bulk and scale of buildings within the View Basin and Soundview neighborhoods.

Section 2. Section 17.62.040 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.62.040 Amendment to height restriction area map.

Amendments to the height restriction area map are a ~~Type IV~~ III permit procedure. The procedures established under Chapter 17.100 GHMC and GHMC Title 19 for the consideration of amendments to the zoning district map shall be followed for amendments to the height restriction area map. Property owners desiring removal from the height restriction area map shall meet each of the following criteria:

A. That the request to amend the height restriction area map is consistent with and furthers the goals, policies and objectives of the comprehensive plan, including but not limited to the Community Design Element;

B. The property ~~or area~~ proposed for removal from the height restriction area map, if developed to its fullest height and extent allowed by the underlying zoning district does not currently possess or does not potentially possess a any view of Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows;

C. The gradient of the land on the subject property and within 100 feet of the property or area in any direction does not have a slope of five

percent or greater toward Gig Harbor Bay, Mt. Rainier or the Puget Sound;
and

D. That views from adjacent properties will not be adversely affected.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

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

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this ___ day of ____, 2009.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck, City Attorney

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

OUTLINE MINUTES
City Council Worksessions

Date: April 27, 2009 Time: 7:50 PM Location: Comm Rm A&B Scribe: Molly Towsee

Members Present:

Mayor: Chuck Hunter
City Council: Steve Ekberg, Derek Young, Jim Franich, Paul Conan, Ken Malich, and Paul Kadzik.

Staff Present: Rob Karlinsky, David Stubchaer, Tom Dolan, and Molly Towsee.

Call to Order at 7:50 p.m.

- 1) Height Restriction Ordinance. Tom Dolan, Planning Director, presented the background information for this ordinance which is a result of a private application submitted by Carl Halsan on behalf of Pioneer & Stinson, LLC to change the criteria for how properties could be removed from the height restriction area. Mr. Dolan further explained that Mr. Halsan has recently submitted a private application under the existing criteria to remove their property from the height restriction area. The hearing on the recently submitted application is scheduled for June 4th before the Hearing Examiner and any appeal of her decision would come before City Council. If the revised ordinance follows the normal procedure of two readings, it would not be in effect before the June 4th date hearing date.

Council asked the necessity of the ordinance if the applicant's project would already have been considered under the current code. Mr. Dolan responded that the application has gone through the Planning Commission process resulting in this draft ordinance as their recommendation to Council. Mr. Dolan also said it's a legislative matter and Council could decide that the code amendment is inappropriate. He added that the applicant would like a decision on withdrawal of their property from the Height Restriction Area before the Planning Commission considers their request for a Comp Plan Amendment so that the allowed structure height is clear to all.

After discussing several concerns and the intended outcome for amending the code, staff was directed to amend the ordinance to "beef up" the intent section to reflect that it is important to 1) protect views (both from the site and from adjacent properties); 2) preserve the historic height of structures within the Height Restriction Area; and 3) maintain the bulk and scale of buildings in the Height Restriction Area.

This worksession ended at 8:40 p.m. and the next worksession began. Tracks 1002 – 1011.

Councilmembers Ekberg, Young, Franich and Malich left the meeting, as they had been presented with the information at a previous Finance Committee meeting. David Rodenbach, Finance Director, joined the meeting.



Subject: Staff Report - Planning Commission's recommendation on marina parking requirements

Proposed Council Action: Review Planning Commission recommendation and determine if the Council would like to proceed with originally proposed amendment.

Dept. Origin: Planning

Prepared by: Jennifer Kester Senior Planner (with signature)

For Agenda of: June 22, 2009

Exhibits: Proposed Amendment; Planning Commission Recommendation; Planning Commission Minutes

Initial & Date

Concurred by Mayor: (signature) 6/11/09
Approved by City Administrator: (signature) 6/11/09
Approved as to form by City Atty: (signature) 6/12/09
Approved by Finance Director: N/A
Approved by Department Head: (signature) 6/11/09

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required. Values: 0, 0, 0.

INFORMATION / BACKGROUND

The Planning Commission reviewed the City Council's January 5, 2009 recommendation that the parking regulations for marinas in the Waterfront Millville (WM) zone be applied to the two other zones which allow marinas (WC and C-1).

The Planning Commission held a work study session on this amendment on February 5, 2009. During the work-study session, the Planning Commission reviewed the proposed amendment, existing parking regulations, applicable Comprehensive Plan policies and current conditions of waterfront projects and surrounding neighborhoods.

Ultimately, the Planning Commission recommended that the marina parking regulations in the WC, WM and C-1 zones remain the same. The Planning Commission recommendation is attached.

POLICY CONSIDERATIONS

Zoning text amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare, and whether the proposed amendment is consistent with the Gig Harbor Municipal

Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW). Zoning text amendments are considered a Type V legislative action (GHMC 19.01.003).

Gig Harbor Comprehensive Plan:

From the Community Design Element of the Comprehensive Plan

3.2.3 Limit asphalt areas.

Allow and encourage shared parking between developments.

3.16.4. Minimize asphalt coverage along waterfront.

Standard parking requirements have prompted removal of structures characteristic of Gig Harbor's historical development and have encouraged bleak expanses of asphalt along the waterfront. To counter this trend consideration should be given to:

- (a) Revised parking standards for waterfront districts.*
- (b) Development of off-site parking areas, public and private.*
- (c) Use of aesthetically pleasing paving materials including colored, textured or grass-block pavers*

3.20.2. Develop downtown parking standards.

Standards should address downtown parking needs while avoiding asphalt encroachment into historic business areas.

Planning Commission Analysis:

The Planning Commission's complete analysis can be found in their enclosed Notice of Recommendation. Below is a summation of their analysis:

- The Commission was concerned that the proposed amendment would create nonconformities and hardships for many existing businesses in the WC and C-1 zones.
- The Commission found that applying more restrictive parking regulations to the WC and C-1 zones would be inconsistent with policies in the Community Design Element of the Comprehensive Plan.
- The Commission felt that the current marina parking restriction in the WM zone was appropriate, given the proximity of the Waterfront Millville zone to the historic Millville residential neighborhood. The Commission was concerned that without such restriction, parking for marinas would spill into the residential neighborhood and would congest its narrow streets due to the neighborhood's accessibility: topography and street system grid. Similar accessibility does not exist in neighborhoods abutting WC and waterfront C-1 zones.

ENVIRONMENTAL ANALYSIS

The SEPA Responsible Official will issue a SEPA threshold determination if the Council chooses to continue review of the proposed amendments.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

The Planning Commission recommended that the marina parking regulations in the WC, WM and C-1 zones remain the same.

RECOMMENDATION / MOTION

Review Planning Commission recommendation and determine if the Council would like to proceed with originally proposed amendment.



COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE OF RECOMMENDATION

CITY OF GIG HARBOR PLANNING COMMISSION ZONE 09-0001

TO: Mayor Hunter and Members of the Council
FROM: Harris Atkins, Chair, Planning Commission
RE: ZONE 09-0001 - Marina Parking Regulations

The Planning Commission reviewed the City Council's January 5, 2009 recommendation that the parking regulations for marinas in the Waterfront Millville (WM) zone be applied to the two other zones which allow marinas (WC and C-1). Currently, in the Commercial (C-1) and Waterfront Commercial (WC) zones on sites with both marinas and upland uses, the usage which generates the larger number of parking spaces (upland or marina) will satisfy the parking requirements of the other usage and parking stalls can be shared. Such sharing of parking spaces is not allowed in the WM zone.

The Planning Commission held a work study session on this amendment on February 5, 2009. During the work-study session, the Planning Commission reviewed the proposed amendment, existing parking regulations, applicable Comprehensive Plan policies and current conditions of waterfront projects and surrounding neighborhoods. After much discussion the Commission passed the following motion for the reasons stated below.

Recommend to the City Council that the marina parking regulations in the WC, WM and C-1 zones remain the same.

The Commission was concerned that the proposed amendment, by requiring additional on-site parking, would create nonconformities and hardships for many existing businesses in the WC and C-1 zones.

In addition, the Commission reviewed the applicable Comprehensive Plan policies and found that applying more restrictive parking regulations to the WC and C-1 zones would be inconsistent with those policies. The current allowance for shared parking in the WC and C-1 zones helps prevent parking lots from dominating the waterfront setting.

However, the Commission felt that the current marina parking restriction in the WM zone was appropriate, given the proximity of the Waterfront Millville zone to the historic Millville residential neighborhood. The Commission was concerned that without such

restriction, parking for marinas would spill into the residential neighborhood and would congest its narrow streets due to the neighborhood's accessibility: topography and street system grid. Similar accessibility does not exist in neighborhoods abutting WC and waterfront C-1 zones.

APPLICABLE COMPREHENSIVE PLAN POLICIES:

From the Community Design Element of the Comprehensive Plan

3.2.3 Limit asphalt areas.

Allow and encourage shared parking between developments.

3.16.4. Minimize asphalt coverage along waterfront.

Standard parking requirements have prompted removal of structures characteristic of Gig Harbor's historical development and have encouraged bleak expanses of asphalt along the waterfront. To counter this trend consideration should be given to:

- (a) Revised parking standards for waterfront districts.*
- (b) Development of off-site parking areas, public and private.*
- (c) Use of aesthetically pleasing paving materials including colored, textured or grass-block pavers*

3.20.2. Develop downtown parking standards.

Standards should address downtown parking needs while avoiding asphalt encroachment into historic business areas.

Harris Atkins, Chair
Planning Commission

HARRIS ATKINS

Date 2/19/2009

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
February 5, 2009
Gig Harbor Civic Center**

PRESENT: Commissioners: Harris Atkins, Joyce Ninen, Jeane Derebey, Jim Pasin and Dick Allen. Commissioners Absent: Jill Guernsey. Staff Present: Jennifer Kester and Tom Dolan.

CALL TO ORDER: Chair Harris Atkins called the meeting to order at 5:00 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of December 4, 2008 with corrections. Ninen / Allen – **Motion passed unanimously.**

MOTION: Move to approve the minutes of January 7, 2009 with corrections. Ninen / Pasin – **Motion passed unanimously.**

MOTION: Move to approve the minutes of January 15, 2009. Ninen / Pasin – **Motion passed unanimously.**

The Commission postponed the approval of the October 16, 2008 minutes to allow for the correction of grammatical and substance errors.

**CITY OF GIG HARBOR, 3510 GRANDVIEW ST., GIG HARBOR, WA 98335 -
ZONE 09-0001 - Marina Parking Regulations**

Planning Commission reviewed the City Council's recommendation that the parking regulations for marinas in the Waterfront Millville (WM) zone be applied to the two other zones which allow marinas (WC and C-1). The marina parking regulations for the WM zone is more restrictive than for the WC and C-1 zones.

The Commission expressed concern that such change would create nonconformities in the WC and C-1 zones. They discussed specific sites, such as the Tides Tavern, which may incur a hardship if the proposed change was codified.

The Commission reviewed the Comprehensive Plan policies related to parking and waterfront uses. The Commission felt that applying more restrictive parking regulations to the WC and C-1 zones would be inconsistent with those policies.

However, the Commission felt that the current marina parking restriction in the WM zone was appropriate, given the proximity of the Waterfront Millville zone to the historic Millville residential neighborhood. The Commission was concerned that without such restriction, parking for marinas would spill into the residential

neighborhood and would congest its narrow streets due to the neighborhood's accessibility: topography and street system grid. Similar accessibility does not exist in other neighborhoods abutting WC and waterfront C-1 zones.

MOTION: Move to recommend to the City Council that the marina parking regulations in the WC, WM and C-1 zones remain the same. Ninen / Pasin – **Motion passed 4-1 (Allen was opposed).**

Future Actions:

- Staff to prepare a written recommendation to the Council for the chair's signature.

DISCUSSION ITEM - Potential Planning Commission-sponsored 2009 Comprehensive Plan amendments

The Commission discussed the ED zoned properties in the Purdy area and agreed that these properties were not appropriately zoned due to topographic constraints. They recognized that any change in zoning would require a Comprehensive Plan land use map amendment. However, they did not consider such amendments a priority due to the properties' location in the UGA.

The Commission also reviewed the locations of RB-1 zoned land and identified four (4) properties for which a rezone and land use map amendment may be warranted.

MOTION: Move to initiate a Comprehensive Plan amendment for 2009 to consider the appropriateness of the land use designation for four (4) properties currently zoned RB-1. Pasin / Derebey – **Motion passed unanimously.**

The 4 properties to be included are the RB-1 zoned parcels located at:

- Sehmel Drive
- Peacock Hill Ave and Ringold Ave
- Stinson Ave (Spadoni Corner)
- 56th St and 38th Ave

Future Actions:

- Staff to update Commissioners on the potential amendment docket and the feasibility of including the above amendment in the current year process.
- Staff to prepare application materials if it is determined that the docket has enough room for this amendment.

ADJOURNMENT

MOTION: Move to adjourn at 7:15pm - Ninen / Derebey – **Motion passed unanimously.**