

Gig Harbor City Council

**July 9, 2012
5:30 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Monday, July 9, 2012 – 5:30 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes June 25, 2012.
2. Liquor License Action: Assumption – The Wine Studio.
3. Re-appointment / Appointment to Design Review Board.
4. Salary Commission Report and Recommendation.
5. Second Reading of Ordinance No. 1242 – Amendment to 2012 Personnel Salary Schedule.
6. Second Reading of Ordinance No. 1243 – Allowing Schools in the PCD-BP Zoning District.
7. Rainier/Cascade Water Main Replacement – Public Works Contract.
8. City Facilities/Roof Maintenance – Contract Authorization.
9. Approval of Payment of Bills Jul 9, 2012: Checks #70016 through #70131 in the amount of \$368,831.45.
10. Approval of Payroll for June: Checks #6506 through #6533 and direct deposit transactions in the total amount of \$517,742.07.

PRESENTATIONS:

Recognition of Judy Oke for donation of Photo of Narrows Bridge.

OLD BUSINESS:

1. Settlement Agreement – Gig Harbor Marina lawsuit (Pierce County Superior Cause No. 09-2-15098-8).

NEW BUSINESS:

STAFF REPORT:

PUBLIC COMMENT:

MAYOR’S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Operations Committee: Thu. Jul 19th at 3:00 p.m.
2. Boards and Candidate Review Committee: Mon. Jul. 23rd at 4:30 p.m.
3. Downtown Planning/Visioning Committee: Wed. Jul 26th at 4:00 p.m.

ADJOURN:

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – June 25, 2012

PRESENT: Councilmembers Ekberg, Young, Guernsey, Perrow, Payne, and Kadzik and Mayor Hunter. Councilmember Kadzik was absent.

CALL TO ORDER: 5:31 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes Jun 11, 2012.
2. Receive and File: a) Parks Commission Minutes April 4, 2012; b) City Council / Parks Commission Joint Worksession Minutes May 2, 2012; c) Planning / Building Committee Minutes June 4, 2012;
3. Ordinance No. 1241 - Accepting Donation of Photo of Narrows Bridge for Public Display.
4. Resolution No. 903 – Materials Purchase Screwsucker Pump for Lift Stations No. 4 & 8.
5. Resolution No. 904 – Surplus Equipment Public Works.
6. Eddon Boat Remediation Monitoring Wells Contract / Anchor QEA, LLC.
7. Maritime Pier, Ramp and Float Project - Construction Contract Authorization; Change Order Authority for City Engineer; and Consultant Services Contract Amendment No. 3.
8. Approval of Payment of Bills Jun 25, 2012: Checks #69901 through #70015 in the amount of \$1,334,974.56.

MOTION: Move to adopt the Consent Agenda as presented.
Ekberg / Malich – unanimously approved.

OLD BUSINESS:

1. Public Hearing and Second Reading of Ordinance No. 1242 - Hospital Benefit Zone (HBZ) 30-year Project List. Finance Director David Rodenbach introduced this ordinance to amend the project list to allow the city to maximize the HBZ annual match benefit.

Mayor Hunter opened the public hearing at 5:32 p.m. No one came forward to speak and the hearing closed.

MOTION: Move to adopt Ordinance No. 1242 as presented.
Guernsey / Ekberg – unanimously approved.

NEW BUSINESS:

1. First Reading of Ordinance – Amendment to 2012 Personnel Salary Schedule. Finance Director David Rodenbach explained that the Chief of Police salary adjustment

was left out of the 2012 Salary Schedule in error. Council agreed that this could go on consent agenda for adoption at the next meeting.

2. Public Hearing and First Reading of Ordinance – Allowing Schools in the PCD-BP Zoning District. Senior Planner Jennifer Kester introduced this zoning code text amendment that would allow primary and secondary schools as permitted uses in the Planning community Development Business Park zones.

Mayor Hunter opened the public hearing at 5:37 p.m. No one came forward to speak and the hearing closed. Council agreed that this could go on consent agenda for adoption at the next meeting.

Councilmember Young recognized the new Peninsula School District Superintendent, Chuck Cuzzetto, sitting in the audience.

3. Public Hearing and First Reading of Ordinance – 2012 Housekeeping Code Amendments. Senior Planner Jenn Kester introduced this ordinance to implement efficiency amendments that will clarify permitting procedures, correct errors and omission, reduce the need for interpretations, and improve customer service. She said that there were a few substantive issues being addressed, then presented a summary of the proposed amendments.

Mayor Hunter opened the public hearing at 5:41 p.m.

Scott Teodoro – representing Harbor Greens. Mr. Teodoro explained that he and his business partner, Chad Roy would like to discuss the change in the portable sign regulations which he sees as being unfairly directed at his business. Mr. Teodoro presented his background and the history of his local grocery store. He described the need for portable signs in order for the business to be successful and how they are challenged by the regulations.

Mr. Teodoro responded to Council questions and comments. He said that he needs at least three changeable signs to get the word out on specials.

Ms. Kester explained that the hours of display isn't being removed; only relocated, and that changes to the temporary sign code section would not allow changeable interface.

There was further discussion on sign clutter.

Mayor Hunter closed the public hearing at 6:16 p.m.

Planning Director Tom Dolan asked for direction. Council agreed to let the rest of the housekeeping amendments move forward, then asked for Staff to work on solutions to the non-changeable interface portion of the ordinance bring back alternates at the next reading, scheduled for the July 23rd meeting.

4. Resolution – Recognizing and Support of Gig Harbor as a Boating Destination. Councilmember Jill Guernsey explained that this resolution is a result of comments that were heard while working on a visioning process for the downtown. The resolution makes a commitment that we recognize and encourage Gig Harbor as a boating community. She said that she hopes that other organizations will recognize this as well, as we move forward together.

Gary Glein – 3519 Harborview Drive. Mr. Glein spoke on behalf of the Waterfront Association, who he said has worked to promote economic vitality consistent with maintaining the Gig Harbor community character. He said that most people feel that enhancing boating and water-oriented assets is essential and contributes to the economic vitality of the downtown area. He said that they applaud the Mayor and Council for considering this resolution.

MOTION: Move to adopt Resolution No. 905 as presented.
Ekberg / Perrow – unanimously approved.

STAFF REPORT:

City Administrator Denny Richards said he is thrilled to be back in Gig Harbor. Mayor Hunter added that Denny has a quiet way of getting things done.

PUBLIC COMMENT: None.

MAYOR’S REPORT / COUNCIL COMMENTS:

Councilmember Malich commented on the deluge of political signs on city right of way and asked if the ones located in the middle of the road and center of the round-a-bouts could be limited as they block visibility and become a safety issue. He then voiced concern that the Farmer’s Market at Skansie Park has expanded to Sunday in addition to Wednesdays. He said that the park was not intended to be a place of business and suggested that the Parks Commission take a look at the policy.

City Administrator Richards said he was there on Sunday and there were a lot of walkers and other things going on. He explained that the market draws a lot of folks to the downtown area. He said he would look into it further.

Councilmember Perrow voiced concern with the vehicles parked on the grass. Mr. Richards explained that this has been discussed with the event coordinator and it was agreed that products that can only be transported by truck are allowed on the grass.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Downtown Planning and Visioning Open House: Wed. Jun 27th at 4:00 p.m.
2. Civic Center closed on Wed. July 4th.
3. Lodging Tax Advisory Committee: Mon. Jul 9th at 8:45 a.m.
4. Intergovernmental Affairs Committee: Mon. Jul 9th at 4:30 p.m.
5. Operations Committee: Thu. Jul 19th at 3:00 p.m.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i), and property acquisition per RCW 42.30.110(1)(b).

Mayor Hunter, City Councilmembers, City Administrator Denny Richards, and City Attorney Angela Belbeck were in attendance. It was announced that action may be taken after the session.

MOTION: Move to adjourn to Executive Session at 6:35 p.m. for approximately 20 minutes for the purpose of discussing pending litigation per RCW 42.30.110(1)(i), property acquisition per RCW 42.30.110(1)(b).
Ekberg / Guernsey – unanimously approved.

Councilmember Perrow recused himself from one of the items being discussed and left Executive Session.

MOTION: Move to return to regular session at 6:54 p.m.
Ekberg / Young – unanimously approved.

Councilmember Perrow rejoined the Commissioners.

MOTION: Go back into Executive Session for another five minutes to discuss a personnel issue per RCW 42.30.110(1)(g).
Young / Guernsey – unanimously approved.

MOTION: Move to return to regular session at 7:00 p.m.
Young / Guernsey – unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 7:00 p.m.
Young / Guernsey – unanimously approved.

CD recorder utilized: Tracks 1002 – 1020

Charles L. Hunter, Mayor

Molly Towslee, City Clerk



NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO:

WASHINGTON STATE LIQUOR CONTROL BOARD

License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov

TO: MOLLY TOWSLEE, CITY CLERK

DATE: 7/02/12

RE: ASSUMPTION

From THE WINE STUDIO OF GIG HARBOR, LLC
DbA THE WINE STUDIO OF GIG HARBOR

APPLICANTS:

THE WINE STUDIO OF GIG HARBOR A PARTNERSHI

License: 080669 - 1U County: 27
UBI: 603-217-473-001-0001
Tradename: THE WINE STUDIO OF GIG HARBOR
Address: 3123 56TH ST NW
GIG HARBOR WA 98335-1302

GULLICKSON, NICHOLAS DOUG
1968-12-15
GULLICKSON, BROOK LYN
1970-06-13
PERILLI, KIRSTEN BEATRIX
1970-06-18
PERILLI, RICHARD ROBERT
1970-07-18

Phone No.: 253-851-9463 NICK GULLICKSON

Privileges Applied For:
TAVERN - BEER/WINE
OFF PREMISES

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

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

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



Business of the City Council
City of Gig Harbor, WA

Subject: Re-Appointment and Appointment to the Design Review Board

Proposed Council Action:

A motion to re-appointment Darrin Filand to serve another four-year term in the professional category and to appoint Ray Gilmore for a four-year term as one of the CLG Historic Preservation Position; both terms ending July, 2016

Dept. Origin: Administration

Prepared by: Boards/Commission Review Committee

For Agenda of: July 9, 2012

Exhibits: 6/25/12 BCCR Meeting Minutes
Initial & Date

Concurred by Mayor: 6/28/12

Approved by City Administrator: 26/28/12

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

Two positions on the Design Review Board expired at the end of July. Darrin Filand asked to be re-appointed to his professional category position on the DRB. Kae Paterson said that she has served several years and it may be time for other qualified citizens to participate in the process. We received a letter of interest from Ray Gilmore, former city Planning Director to fill the CLG position.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

After interviewing all three candidates, the Boards and Commission Candidate Review Committee recommend the re-appointment of Mr. Filand, and to appoint Ray Gilmore for the CLG position.

RECOMMENDATION / MOTION

Move to: Re-appoint Darrin Filand to serve another four-year term in the professional category and to appoint Ray Gilmore for a four-year term as one of the CLG Historic Preservation Position both terms ending July, 2016.



BOARDS AND COMMISSIONS CANDIDATE REVIEW COMMITTEE

DATE: June 25, 2012
TIME: 4:00 p.m.
LOCATION: Executive Conference Room
SCRIBE: Molly Towslee, City Clerk
PRESENT: Councilmembers Ekberg and Guernsey. Councilmember Kadzik could not attend.

New Business:

1. Review Candidates for Design Review Board (2 terms expire in July)
 - Darrin Filand – request for reappointment.
 - Kae Paterson – request for reappointment.
 - Ray Gilmore – request for appointment.

Ray Gilmore gave an overview of his background and qualifications to serve as the CLG representative on the Design Review Board. He has been in the planning business a long time; currently is the Planning Director for Fircrest. He was the former Planning Director for City of Gig Harbor, and worked on original process to implement the design guidelines in Gig Harbor. He currently is working on design guidelines in Fircrest.

Mr. Gilmore explained that he would like to work on the “other side” of the process of design review. He voiced support of Council’s desire to preserve the character of the community when guidelines were implemented. He talked about the positive changes that he has observed along the waterfront, commenting that he thought there were too many marinas. Mr. Gilmore acknowledged the problem with maintaining the downtown retail, saying he thought additional parking might be helpful.

Darrin Filand shared that the DRB has grown as a board; their schedule has been fairly light the past four years, but it is getting busier. Mr. Filand explained that he thinks parts of the municipal code need to evolve with the lessons learned over time. He talked about the difference between working with a good design team that intuitively understands what we are trying to accomplish versus those who don’t. He said that many view the design guidelines as “red tape,” but there are those who really like the pre-app process which is encouraging. Mr. Filand commented that design guidelines exist in many other jurisdictions as well and the process has improved over the years. There are those who try and leverage the code to their advantage which can sometimes lead to confrontation.

When asked to speak about the toughest projects he has worked on, Mr. Filand responded that large box retail stores can be difficult, because you are trying to strike a

balance between their interior model requirements and exterior aesthetics isn't easy. He said they work hard to come up with honest solutions.

Mr. Filand talked about the challenges to amend the guidelines as staff time has been reduced. He added that they are getting more comfortable with the design manual and how it meets the goals of the comprehensive plan. He talked about judging a project in totality and how it fits with neighborhood identification. As far as stifling creativity, he explained that for those who understand the comprehensive plan principles, the guidelines equal good planning. A developer who just wants to "check off all the boxes" will end up with the same project over and over; not doing that may end up with something of value. He said that the pre-app process helps.

Mr. Filand talked about his dislike of large storage yards, wall planes, and parking lots, and trails that aren't screened from Highway 16. He also talked about projects that he feels have turned out well because of the guidelines and his current endeavor with Rick Gagliano and local high school students to develop a view basin model.

Kae Paterson shared that her heart is in the planning side of development. She commented on her love of the historical aspect of the town, Wilkinson Pond, and trees. When asked, Ms. Paterson responded that she feels the DRB is functioning pretty well, citing Gig Harbor North as an example. She said she that she has certain interests and wasn't so sure the DRB was the best place to pursue them.

When the interviews concluded Councilmembers Ekberg and Guernsey discussed the candidates and made a recommendation to forward to Council to re-appoint Darrin Filand and appoint Ray Gilmore as the second CLG / Historical position.

These recommendations for these reappointments and appointments will be forwarded to Council at the July 9, 2012 City Council meeting.

There were no further comments; the meeting adjourned at 5:05 p.m.



Business of the City Council
City of Gig Harbor, WA

Subject: Salary Commission
Report and Recommendation

Proposed Council Action:

No action required.

Dept. Origin: Administration

Prepared by: Molly Towslee, City Clerk *MT*

For Agenda of: July 9, 2012

Exhibits: Salary Commission Minutes 6/5/12;
Report and Recommendations

Initial & Date

Concurred by Mayor: *CLA 7-2-12*

Approved by City Administrator: *R 7/2/12*

Approved as to form by City Atty: _____

Approved by Finance Director: *DR 7-2-12*

Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required: \$86,400 in 2013	Budgeted	Required \$0

INFORMATION / BACKGROUND

An independent salary commission was established in 2008 to review and establish the salaries of the Mayor and the Councilmembers in accordance with state law. Because of the economic downturn, the commission was put on hold. Recently the committee met again to discuss salaries.

BOARD OR COMMITTEE RECOMMENDATION

The consensus of the Commission was to acknowledge the dedication and hard work of the Mayor and City Councilmembers. An increase in the workload, the complexity of issues, and the time commitment required to serve were all noted. The Salary Commission determined that it would be appropriate to increase in the current compensation which has been frozen since 1996.

The recommendation that came from this discussion was to increase the Council's compensation from \$254 per month to \$600 per month, and to increase the Mayor's compensation from \$923 per month to \$1500 per month. These increases were recommended to begin with the calendar year 2013.

A summary of the recommendations will be published two times in the legal newspaper as required by law.

FISCAL CONSIDERATION

The total compensation as outlined in the recommendation is \$18,000 a year for the Mayor and \$50,400 a year for seven Councilmembers; a total of \$86,400 in salaries will be budgeted for 2013.



SALARY COMMISSION

DATE: June 5, 2012
TIME: 8:30 a.m.
LOCATION: Executive Conference Room
SCRIBE: Molly Towslee, City Clerk
MEMBERS PRESENT: Harris Atkins, Tony Michaelson and Gregory Roberts and Finance Director, David Rodenbach.
Absent: Richard Jasper

New Business:

1. Review of current salaries, past adjustments and historic COLA figures / Recommendation for future action. Salary Commission members discussed the Mayor and City Councilmembers' compensation. The Commission spent time reviewing the data provided by staff, which included ordinances setting past compensation, AWC 2008 and 2011 Salary and Benefit Data, COLA History from 1998 to 2012, and verbal reports on the current budget projections, and the number of meetings Councilmembers attend per month. Members acknowledged that the Mayor's and Council's compensation was well below comparable cities.

The consensus of the Commission was to acknowledge the dedication and hard work of the Mayor and City Councilmembers. An increase in the workload, the complexity of issues, and the time commitment required to serve were all noted. The Salary Commission determined that it would be appropriate to increase in the current compensation; frozen since 1996.

After considerable discussion on which data to use to determine a recommendation for an appropriate increase, the Commission decided upon the following criteria:

The Mayor's salary evaluation was based on the list of Cities that have been used for employee salary comparison in the past. Because some of these cities are a Council and City Manager form of government, they were replaced with other like cities with a Strong Mayor and Council form (see attached list).

The Council salary evaluation utilized both past comparables plus the cities with a Mayor/Council form of Government used for the Mayor's salary evaluation (list also attached). Because the recommendation for the Councilmembers is higher than the

median, other factors such as the fact that they've been undercompensated for such a long time and the increased workload were taken into consideration.

The recommendation that came from this discussion was to increase the Council's compensation from \$254 per month to \$600 per month, and to increase the Mayor's compensation from \$923 per month to \$1500 per month. These increases were recommended to begin with the calendar year 2013.

MOTION: Moved by Atkins and seconded by Roberts to submit a salary schedule to the City Clerk on or before June 30th, increasing the Council's compensation from \$254 per month to \$600 per month and the Mayor's compensation from \$923 per month to \$1500 per month beginning with the calendar year 2013. Motion carried 3 - 0.

The Commission also believed that a press release announcing the change to the Mayor's and Council's pay, including the points of consideration, would be appropriate. The Commission agreed that they would look into benefits for Councilmembers at a later date.

Clerk Towslee was directed to prepare the appropriate paperwork to forward the recommendations for salary increases. She will also gather the benefit comparisons for other jurisdictions for consideration in the future.

2. Approval of Minutes of March 21, 2012. After review of the minutes, a motion was made.

MOTION: Move to approve the minutes of March 21, 2012.
Atkins / Michaelson – unanimously approved.

The commissioners and staff talked about when it would be the most appropriate to meet and discuss future salary adjustments. The ordinance only directs a meeting on even years, but since elections are staggered and budgets are fluid, they suggested meeting each year to discuss any required action.

Clerk Towslee also mentioned that she would be advertising to fill the vacant position.

There were no further comments; the meeting adjourned at 8:43 a.m.

**REPORT AND RECOMMENDATIONS
2012 CITY OF GIG HARBOR SALARY COMMISSION**

Summary of Recommendations

An increase from \$254 to \$600 per month for Council Members and an increase from \$923 to \$1500 per month for the position of Mayor beginning Jan. 1, 2013 were approved by a 3-0 vote at the June 6, 2012 meeting.

Composition of the Salary Commission

The Salary Commission was established by Ordinance No. 1136 in 2008 as an independent decision-making body charged with setting salaries for City of Gig Harbor elected officials in accordance with state law. The Commission is made up of five members. Commission members serve a four-year term and may only serve two terms.

The 2012 Salary Commission is composed of the following members:

	<u>Re-Appointed</u>	<u>End of Term</u>
Harris Atkins	05/10	03/31/14
Richard Jasper	04/12	03/31/16
Tony Michaelson	04/12	03/31/16
Gregory Roberts	04/12	03/31/16
Vacant Position		03/31/14

The Salary Commission must meet at least once every two years, and may meet any number of times necessary to establish salaries for the Mayor and Council.

Any new salary schedule must be filed with the City Clerk no later than June 30th. Once a schedule has been filed, the Commission will not meet until the following year.

Information Considered by the Commission

To arrive at a decision, the Salary Commission received the following information:

- 2008 and 2011 Salary Data from comparable and surrounding cities, including population.
- A copy of Ordinance No. 442, adopted on December, 1983 which officially adopted the Council's and Mayor's salaries and provided for yearly adjustments.
- COLA Data 1998 – 2012.
- CPI History from Municipal Research Data 1982 - 2012.
- Estimated number of hours spent (on a monthly basis) by Council Members conducting Council business dated 08/21/09.
- Current budget projections (verbal report by Finance Director)

Proceedings and Discussions

Salary Commission members Atkins, Roberts, and Michaelson met on June 5, 2012 to discuss the Mayor and City Councilmembers' compensation. The Commission spent time reviewing the

data provided by staff, which included ordinances setting past compensation, AWC 2008 and 2011 Salary and Benefit Data, COLA History from 1998 to 2012, and verbal reports on the current budget projections and the number of meetings Councilmembers attend per month. Members acknowledged that the Mayor's and Council's compensation was well below comparable cities.

The consensus of the Commission was to acknowledge the dedication and hard work of the Mayor and City Councilmembers. An increase in the workload, the complexity of issues, and the time commitment required to serve were all noted. The Salary Commission determined that it would be appropriate to increase in the current compensation; frozen since 1996.

After considerable discussion on which data to use to determine a recommendation for an appropriate increase, the Commission decided upon the following criteria:

The Mayor's salary evaluation was based on the list of Cities that have been used for employee salary comparison in the past. Because some of these cities are a Council and City Manager form of government, they were replaced with other like cities with a Strong Mayor and Council form (see attached list).

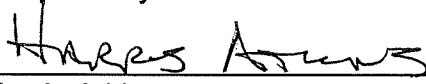
The Council salary evaluation utilized both past comparables plus the cities with a Mayor/Council form of Government used for the Mayor's salary evaluation (list also attached). Because the recommendation for the Councilmembers is higher than the median, other factors such as the fact that they've been undercompensated for such a long time and the increased workload were taken into consideration.

The recommendation that came from this discussion was to increase the Council's compensation from \$254 per month to \$600 per month, and to increase the Mayor's compensation from \$923 per month to \$1500 per month. These increases were recommended to begin with the calendar year 2013.


MOTION: Moved by Atkins and seconded by Roberts to submit a salary schedule to the City Clerk on or before June 30th, increasing the Council's compensation from \$254 per month to \$600 per month and the Mayor's compensation from \$923 per month to \$1500 per month beginning with the calendar year 2013. Motion carried 3 - 0.

The Commission also believed that a press release announcing the change to the Mayor's and Council's pay, including the points of consideration, would be appropriate. The Commission agreed that they would look into benefits for Councilmembers at a later date

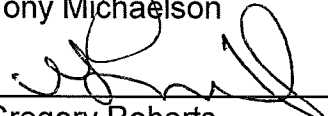
Respectfully Submitted:



Harris Atkins



Tony Michaelson



Gregory Roberts

6/15/12

Date

6/13/12

Date

6/25/12

Date



**Business of the City Council
City of Gig Harbor, WA**

**Subject: Second reading: Amendment To
2012 Personnel Salary Schedule**

**Proposed Council Action: Adopt Ordinance
after second reading**

Dept. Origin: Finance

Prepared by: David Rodenbach

For Agenda of: July 9, 2012

Exhibits: Ordinance, Exhibit B of March 26,
2012 consent agenda item 11.

Initial & Date

Concurred by Mayor:

CLH 7/2/12

Approved by City Administrator:

R 7/2/12

Approved as to form by City Atty:

Per Email

Approved by Finance Director:

CF 7-2-12

Expenditure see fiscal	Amount	Appropriation	
Required note below	Budgeted NA	Required	\$0

INFORMATION / BACKGROUND

The 2012 salary ranges for non-represented staff was approved at the March 26, 2012 Council meeting in conjunction with the Employees' Guild 2012 – 2014 contract. We recently learned that the adopted salary range for the Police Chief is incorrect.

The salary range for the Police Chief should have been increased 4.1 percent in accordance with the salary survey conducted in late 2011.

The range for Police Chief should be increased from \$8,045 - \$10,056 to \$8,376 - \$10,470.

FISCAL CONSIDERATION

The impact of this range increase is already included in the adopted 2012 budget.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

We recommend that Council adopt this ordinance after a second reading.

ORDINANCE NO. 1243

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON,
RELATING TO THE 2012 CITY PERSONNEL SALARY SCHEDULE;
AMENDING THE 2012 CITY PERSONNEL SALARY SCHEDULE TO
CORRECT AN ERROR.**

WHEREAS, on March 26, 2012, the City Council approved the 2012 through 2014 contract with the Employees' Guild setting the 2012 salary schedule for guild and non-represented employees; and

WHEREAS, after approval of the 2012 salary schedule staff found an error in the salary range for the Police Chief and a correction is needed; and

WHEREAS, the approved budget has capacity to include this change; Now, therefore,

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

Section 1. Amendment. The 2012 personnel salary schedule approved on March 26, 2012 in conjunction with the Employees' Guild contract is hereby amended to correct an error, changing the monthly salary range for the Police Chief from \$8,045 - \$10,056 to \$8,376 - \$10,470.

Section 2. 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 9th day of July, 2012.

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 city clerk: 06/20/12
Passed by the city council: 07/09/12
Date published: 07/11/12
Date effective: 07/16/12
Ordinance No. 1243



Business of the City Council
City of Gig Harbor, WA

Subject: Second Reading of Ordinance
Allowing Schools in the PCD-BP Zoning
District

Proposed Council Action: Adopt
ordinance

Dept. Origin: Planning

Prepared by: Jennifer Kester
Senior Planner

For Agenda of: July 9, 2012

Exhibits: Ordinance

Initial & Date

Concurred by Mayor:

CLA 6/28/12

Approved by City Administrator:

R. 6/28/12

Approved as to form by City Atty:

email 6/14/12

Approved by Finance Director:

N/A

Approved by Department Head:

TD 6/28/12

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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INFORMATION / BACKGROUND

Enclosed for your consideration is a proposed zoning code text amendment which would amend the land use matrix to allow primary and secondary schools as permitted uses in the Planned Community Development Business Park (PCD-BP) zoning district.

This amendment was initiated by the City Council at your April 23rd, 2012 meeting. The Peninsula School District had notified the City of Gig Harbor that Purdy Elementary school is reaching its maximum capacity and that an elementary school should be built in the Planned Community Development land use designations of the Gig Harbor North area, of which the PCD-BP zoning District is most suitable for the school district's needs.

APPLICABLE CODES AND POLICIES:

Zoning text amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. The general criteria for approval of a zoning text amendment are 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). The City Council may hold a public hearing on development regulation amendments without forwarding the amendment to the Planning Commission for review (GHMC 19.01.005(C)). This process is informally called "direct consideration."

Comprehensive Plan:

The City's Comprehensive Plan includes the following policies which support the amendments:

2.3.5. Public Schools and Education

a) Coordinate with the Peninsula School District in a joint-planning process to consider capital facilities needs and requirements for school development and expansion, school site location decisions, joint use of playgrounds/recreational facilities, development of facility siting criteria and the development of a common data base for sharing.

Municipal Code:

Chapter 17.04, Definitions, of the Zoning Code includes the following definitions:

17.04.717 School, primary.

"Primary school" means a public or private Washington State approved K – 8 school, including accessory playgrounds and athletic fields.

17.04.718 School, secondary.

"Secondary school" means a public or private Washington State approved 9 – 12 school, including athletic fields.

FISCAL CONSIDERATION

None.

SEPA DETERMINATION

The SEPA Responsible Official issued a Determination of Nonsignificance (DNS) for the proposed ordinance on May 16, 2012.

BOARD OR COMMITTEE RECOMMENDATION

At their April 19, 2012 meeting, the Planning Commission reviewed the school district's request to allow primary and secondary schools in the PCD-BP zoning district and had no objection to direct consideration.

RECOMMENDATION / MOTION

Adopt ordinance

ORDINANCE NO. 1244

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO ZONING; ALLOWING PRIMARY SCHOOLS AND SECONDARY SCHOOLS AS PERMITTED USES IN THE PLANNED COMMUNITY DEVELOPMENT BUSINESS PARK DISTRICT (PCD-BP); AMENDING SECTION 17.14.020 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, currently, primary and secondary schools are not permitted or conditionally permitted in the Planned Community Development Business Park District (PCD-BP); and

WHEREAS, the intent of the Planned Community Development Business Park District (PCD-BP) is to enhance the city's economic base by providing suitable locations within the planned community development area for business and professional offices, corporate headquarters, research and development facilities, light industry and complementary educational, recreational and entertainment uses which are not detrimental to the business park district; and

WHEREAS, primary and secondary schools are permitted or conditionally permitted in these other mixed-use/commercial zones: Residential and Business Districts (RB-1 and RB-2), Downtown Business District (DB), General Business District (B-2), Neighborhood Commercial District (B-1), Commercial District (C-1), and Planned Community Development Commercial (PCD-C); and

WHEREAS, the City desires to allow primary and secondary schools in the PCD-BP zoning district because the normal activities of these could be found consistent with the intent of this zone and compatible with other business and recreational uses allowed in the PCD-BP zoning district; and

WHEREAS, the Peninsula School District has notified the City of Gig Harbor that Purdy Elementary school is reaching its maximum capacity and that an elementary school should be built in the Planned Community Development land use designations of the Gig Harbor North area, of which the PCD-BP zoning District is most suitable for the school districts needs; and

WHEREAS, the proposed text amendments are consistent with the following policy in the Comprehensive Plan:

2.3.5. Public Schools and Education

a) Coordinate with the Peninsula School District in a joint-planning process to consider capital facilities needs and requirements for school development and expansion, school site location decisions, joint use of playgrounds/recreational

facilities, development of facility siting criteria and the development of a common data base for sharing.

WHEREAS, the proposed development regulations amendments were forwarded to the Washington State Department of Commerce on April 25, 2012, pursuant to RCW 36.70A.106, and was granted expedited review on May 10, 2012; and

WHEREAS, the City's SEPA Responsible Official issued a Determination of Nonsignificance (DNS) for this Ordinance on May 16, 2012; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on June 25, 2012; and

WHEREAS, on July 9, 2012, 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 17.14.020 in the Land Use Matrix chapter of the Gig Harbor Municipal Code is hereby amended, 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 ²⁵
Uses																				
Dwelling, single-family	-	P	P	P	P	C	P	P	C	P ¹⁴	C	C	P ¹⁴	-	P	P	P	-	P ¹⁴	P
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	-	-	-
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
Living facility,	-	-	-	C	-	P	C	C	C	P	-	C	P	C	-	-	-	-	-	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 ²⁵
Uses																				
assisted																				
Nursing facility, skilled	-	-	-	C	-	P	C	C	C	P	C	C	P	C	-	-	-	-	-	P
Hospital	-	-	-	-	-	-	-	-	C	-	C	C	-	C	-	-	-	C	-	-
School, primary	P	C	P	C	P	C	C	C	C	P	C	C	P	-	-	-	-	P	-	-
School, secondary	P	C	P	C	P	C	C	C	C	P	C	C	P	-	-	-	-	P	-	-
School, higher educational	P	C	-	C	-	C	C	C	C	P	C	C	P	-	-	-	-	P	-	-
School, vocational/trade	P	C	-	C	-	C	C	C	C	P	C	C	P	P	-	-	-	P	-	-
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
Religious worship, house of	-	C	P ⁵	C	P ⁵	C	C	C	C	P	C	C	P	C	-	-	-	C	-	P/C ¹⁵
Museum	P	-	-	-	-	-	-	-	-	-	C	C	P	-	-	-	-	-	-	-
Community recreation hall	P	-	P	C	P	C	C	C	C	P	C	C	P	-	-	-	-	P	P	-
Clubs	-	-	C	C	C	C	C	C	P	P	P	P	P	C	-	C ²¹	P	P	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
Electric Vehicle Charging Station ²⁶	P	P ²⁷	P ²⁷	P ²⁷	P ²⁷	P ²⁷	P ²⁷	P	P	P	P	P	P	P	P ²⁷	P ²⁷	P	P	P	P
Rapid Charging Station ²⁸	P	-	-	-	P ²⁹	P ²⁹	-	P ²⁹	P	P	P	P	P	P	-	-	P	P	P	P ²⁹
Battery Exchange Station	-	-	-	-	-	-	-	-	P	-	P	P	P	C	-	-	-	C	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
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	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	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	WMI	WC	PCD-BP	PCD-NB	MUD ²⁵
Uses																				
services, level 1																				
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	-	-
Commercial child care	-	-	C	-	C	-	C	C	C	-	-	P	-	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	-
Vehicle wash	-	-	-	-	-	-	-	-	-	-	P	P	P	-	-	-	-	-	-	-
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	-	-	-
Drive-through facility	-	-	-	-	-	-	-	-	C	-	C	C	P	-	-	-	-	-	-	-
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
Industrial, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	P	-	-	-	-	-	-
Marine industrial	-	-	-	-	-	-	-	-	-	-	-	P	-	C	-	P ¹¹	C	-	-	-
Wireless	C	C	C	C	C	C	P	P	C	P	C	P	P	P	C	C	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 ²⁵
Uses																				
communication facility ⁴																				
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 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 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.

²⁵ Permitted and conditional uses in the MUD district overlay are subject to the minimum parcel size and location requirements contained in GHMC 17.91.040(A).

²⁶ Level 1 and Level 2 charging only.

²⁷ Electric vehicle charging stations, level 1 and level 2 only, are allowed only as accessory to a principal outright permitted or principal permitted conditional use.

²⁸ The term "Rapid" is used interchangeably with Level 3 and Fast Charging.

²⁹ Only "electric vehicle charging stations – restricted" as defined in Chapter 17.73 GHMC.

Section 2. 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 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 9th day of July, 2012.

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: 06/20/12
PASSED BY THE CITY COUNCIL: 07/09/12
PUBLISHED: 07/11/12
EFFECTIVE DATE: 07/16/12
ORDINANCE NO: 1244



**Business of the City Council
City of Gig Harbor, WA**

Subject: Rainier-Cascade Ave Water Main Replacement – Public Works Contract

Proposed Council Action: Approve and authorize the Mayor to award and execute a Public Works Contract with Henderson Partners in an amount not exceed \$539,003.05 for the award of all Bid Schedules (A and B) in the Contract Documents and authorize the City Engineer to approve additional expenditures up to \$50,000 to cover any cost increases that may result from contract change orders.

Dept. Origin: Public Works/Engineering

Prepared by: Jeff Langhelm *JL*

For Agenda of: June 9, 2012

Exhibits: Public Works Contract

	Initial & Date
Concurred by Mayor:	<i>CLH 7/5/12</i>
Approved by City Administrator:	<i>R 7/5/12</i>
Approved as to form by City Atty:	<i>VIA EMAIL 7/3/12</i>
Approved by Finance Director:	<i>[Signature]</i>
Approved by Department Head:	<i>[Signature] 7/5/12</i>

Expenditure Required	\$ 589,003.05	Amount Budgeted	\$ 677,000.00	Appropriation Required	\$0
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INFORMATION/BACKGROUND

The City of Gig Harbor routinely budgets for the improvement and replacement of existing water mains throughout the City in accordance with the adopted Water System Plan. For the 2012 Budget, the City Council identified the replacement of the existing asbestos cement water main in Rainer Ave. and Cascade Ave. to improve the City's water system.

Due to possible lower than anticipated construction prices, staff prepared the contract documents to include one base bid schedule (Sch A – Rainier/Cascade Ave Water Mains) and one additive bid schedule (Sch B – Snug Harbor Pressure Reducing Valve (PRV) Vault Improvements). The Snug Harbor PRV work is intended to replace a worn out valve that provides water supply to the water mains in both Rainier Ave. and Cascade Ave.

BID RESULTS

The Rainier-Cascade Ave Water Main Replacement Project was bid using the City's Public Works bidding process. The Engineer's Opinion of Probable Cost for all Bid Schedules was \$603,000. A total of five bid proposals were received by the City on June 27, 2012. Bid results from each bidder are summarized below showing the total bid amount for the recommended award of all Bid Schedules (A and B.)

BIDDER	TOTAL BID AMOUNT
1. Henderson Partners	\$ 539,003.05
2. Nova Contracting	\$ 539,017.15
3. WC & T, Inc.	\$ 559,163.43
4. Pacific Coast General	\$ 566,553.37
5. RV Associates	\$ 657,486.84

FISCAL CONSIDERATION

The 2012 City of Gig Harbor Budget includes funding for the proposed work in the Water Division Capital fund. The budget summary for this item is provided in the table below:

2012 Budget for Water Division – Capital, Objective No. 5	\$ 677,000.00
Requested 2012 Expenses:	
Base Bid (Schedule A)	(\$ 473,880.26)
Additive Bid (Schedule B)	(\$ 65,122.79)
Change Order Authority for Public Works Contract	(\$ 50,000.00)
<i>Materials Testing Contract</i>	(\$ 6,000.00)
<i>Change Order Authority for Materials Testing Contract</i>	(\$ 500.00)
Remaining 2012 Budget =	\$ 81,496.95

Note: *Italicized* expenses are estimated.

BOARD OR COMMITTEE RECOMMENDATION

This contract work was based on recommendations provided in the City's Water System Plan and the adopted 2012 Budget adopted by City Council. This contract work was not based on a separate board or committee recommendation.

RECOMMENDATION/MOTION

Approve and authorize the Mayor to award and execute a Public Works Contract with Henderson Partners in an amount not exceed \$539,003.05 for the award of all Bid Schedules (A and B) in the Contract Documents and authorize the City Engineer to approve additional expenditures up to \$50,000 to cover any cost increases that may result from contract change orders.

CITY OF GIG HARBOR PUBLIC WORKS CONTRACT
Rainier / Cascade Ave - Water Main Replacement Project
CWP-1202

THIS AGREEMENT, made and entered into, this ____ day of _____, 201_, by and between the City of Gig Harbor, a Non-Charter Code city in the State of Washington, hereinafter called the "City", and Henderson Partners, LLC, organized under the laws of the State of Washington, located and doing business at, 11302 Burnham Drive NW, Gig Harbor, WA 98332 hereinafter called the "Contractor."

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

The Contractor shall do all of the work in Schedules A and B, and furnish all of the labor, materials, tools, and equipment necessary to complete the work under this contract generally consisting of but is not limited to furnishing all labor, materials, tools, and equipment necessary to remove where noted, and abandon in place and dispose of existing AC (asbestos cement – Transite) water mains and related appurtenances, and complete the installation of approximately 1,850 lineal feet of new 8" ductile iron water main including valves, fittings, hydrants, metered services, and appurtenances; remove existing PRV and vault and install a new PRV, vault, valves, and appurtenances complete; full width pavement overlay and pavement repairs, traffic control; grading; temporary erosion and sediment control measures; landscape and surface restoration; and all other work complete, and shall perform any changes in the work as directed by the City; all as more completely described in the contract documents entitled "Rainier / Cascade Ave - Water Main Replacement, CWP-1202.", these Special Provisions, and the Standard Specifications which are by this reference incorporated herein and made a part hereof; and agrees to accept payment for the same in accordance with the said contract documents, including the schedule of prices in the "Proposal," the sum of Five Hundred Thirty-nine Thousand Three Dollars and Five Cents (\$539,003.05), subject to the provisions of the Contract Documents, the Special Provisions, and the Standard Specifications.

1. The Notice to Proceed will be given within 21 days after the contract has been executed BY BOTH PARTIES. The Contractor shall commence construction activities on the project site within ten (10) calendar days of the Notice to Proceed date, unless otherwise DIRECTED BY THE OWNER in writing. Contract time shall begin on the first working day following the Notice to Proceed Date. Work shall be substantially complete in accordance with Section 1-08.5 of the Special Provisions in the Contract Documents.
2. The Contractor agrees to pay the City for liquidated damages incurred according to Standard Specification 1-08.9 per day for each and every day all work remains uncompleted after expiration of the specified time, as liquidated damages.
3. The Contractor shall provide for and bear the expense of all labor, materials, tools and equipment of any sort whatsoever that may be required for the full performance of the work provided for in this Contract upon the part of the Contractor.
4. The term "Contract Documents" shall mean and refer to the following: "Invitation to Bidders," "Bid Proposal," "Addenda" if any, "Specifications," "Plans," "Contract,"

"Performance Bond," "Maintenance Bond," "Payment Bond," "Special Provisions," "Notice to Proceed," "Change Orders" if any, and any documents referenced or incorporated into the Contract Documents, including, but not limited to the Washington State Department of Transportation's "2012 Standard Specifications for Road, Bridge, and Municipal Construction," including the American Public Works Association (APWA) General Special Provisions.

- 5. The City agrees to pay the Contractor for materials furnished and work performed in the manner and at such times as set forth in the Contract Documents.
- 6. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, assigns, agents, subcontractors, and employees, does hereby agree to the full performance of all of the covenants herein contained upon the part of the Contractor.
- 7. It is further provided that no liability shall attach to the City by reason of entering into this Contract, except as expressly provided herein.

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed the day and year first hereinabove written:

CITY of GIG HARBOR:

CONTRACTOR:

 Charles L. Hunter, Mayor
 City of Gig Harbor
 Date: _____

 (Signature of Official)

 (Print Name)

 (Title)
 Date: _____

ATTEST:

 City Clerk

APPROVED FOR FORM:

 City Attorney



**Business of the City Council
City of Gig Harbor, WA**

Subject: City Facilities/Roof Maintenance – Contract Authorization

Dept. Origin: Public Works/Operations

Proposed Council Action:

Award and authorize the Mayor to execute a Small Public Works Contract with Roof Therapy, Inc. in the amount of \$6,455.00, plus WA State Sales Tax (8.5%) for Roof Cleaning Services at the Skansie House and Pavilion, Civic Center Building, Visitor Center and Wilkinson Farmhouse and Garage and authorize the Public Works Superintendent to approve additional costs up to \$500 for replacement of additional shingles and shakes.

Prepared by: Marco Malich
Public Works Superintendent

For Agenda of: July 9, 2012

Exhibits: Public Works Contract

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

Initial &
Date

CLM 7/5/12

R 7/5/12

via email 6-27-12

Expenditure Required	\$7,504.00	Amount Budgeted	\$7,900.00	Appropriation Required	\$0
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INFORMATION/BACKGROUND

Routine maintenance inspection of City buildings identified the need for cleaning the roofs, removing and applying a moss treatment and cleaning the gutters on the Skansie House, Civic Center, Visitor Center and Wilkinson Farmhouse and Garage. The Pavilion roof at Skansie House will also be cleaned and treated for moss.

In accordance with the City's Limited Public Works Process (Resolution No. 884), staff solicited quotes from twelve firms and the following two quotes were received for this work:

ITEM	DESCRIPTION	Roof Therapy	CT Gutters
1	Skansie House & Pavilion	\$990.00	\$2,150.00
2	Civic Center	\$3,725.00	\$11,000.00
3	Visitor Center	\$665.00	\$1,100.00
4	Wilkinson Farmhouse & Garage	\$1,075.00	\$1,450.00
	Sub Total	\$6,455.00	\$15,700.00

FISCAL CONSIDERATION

The 2012 Parks Operating budget, Objective #14 and City Buildings' budget, Objective #4 provides \$7,900 for this work. An allowance of up to an additional \$500 has been made for replacement of missing or damaged shingles/shakes.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Award and authorize the Mayor to execute a Small Public Works Contract with Roof Therapy, Inc. in the amount of \$6,455.00, plus WA State Sales Tax (8.5%) for Roof Cleaning Services at the Skansie House and Pavilion, Civic Center Building, Visitor Center and Wilkinson Farmhouse and Garage and authorize the Public Works Superintendent to approve additional costs up to \$500 for replacement of additional shingles and shakes.

**CITY OF GIG HARBOR
SMALL PUBLIC WORKS CONTRACT**

THIS CONTRACT is made and entered into this _____ day of _____, 20____, by and between the City of Gig Harbor, Washington (the "City"), and Roof Therapy, Inc., a Corporation (the "Contractor").

FOR AND IN CONSIDERATION of the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

1. Scope of Work.

The Contractor agrees to furnish all material, labor, tools, equipment, apparatus, etc. necessary to perform and complete in a workmanlike manner the work set forth in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference.

2. Time of Performance and Completion.

The work to be performed under this Contract shall commence as soon as the Contractor has received a Notice to Proceed from the City and in accordance with the schedule set forth in the Scope of Work.

3. Payments.

The Contractor agrees to perform all work called for at the rate of Six Thousand Four Hundred Fifty-Five Dollars and Zero Cents (\$6,455.00), plus applicable Washington State Sales Tax. Said sum shall constitute full compensation for all labor, materials, tools, appliances, etc. required to perform the required services.

4. Retainage. [This section intentionally left blank.]

5. Performance and Payment Bond. [This section intentionally left blank.]

6. Warranty/Maintenance Bond. [This section intentionally left blank.]

7. Indemnity.

A. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney's fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees or volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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

8. Insurance.

A. The Contractor shall secure and maintain in force throughout the duration of this Contract, business auto coverage for any auto no less than a \$1,000,000 each accident limit.

B. The Contractor shall secure and maintain in force throughout the duration of this Contract, comprehensive general liability insurance with a minimum coverage of not less than a limit of \$1,000,000 per occurrence, \$2,000,000 annual aggregate for bodily injury, including death, and property damage. The insurance will be written on an occurrence basis, by an 'A' rated company licensed to conduct business in the State of Washington. The general liability policy shall name the City as an additional insured and shall include a provision prohibiting cancellation, changes and reductions of coverage under said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this Section shall be delivered to the City with the signed Contract. Under this Agreement, the Contractor'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 commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

C. The Contractor 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 Contractor's coverage.

D. In addition, the Contractor shall secure and maintain workers' compensation insurance pursuant to the laws of the State of Washington.

9. Prevailing Wage.

A. The prevailing rate of wage to be paid to all workmen, laborers, or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this Contract will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are attached hereto and by reference made a part of this Contract as though fully set forth herein.

B. On or before the date of commencement of the work, the Contractor shall file a statement under oath with the City and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workmen, or mechanics employed upon the work by the Contractor or any Subcontractor, which shall not be less than the prevailing rate of wage. Such statement and any subsequent statement shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries.

10. Termination.

A. Termination for Contractor's Default. If the Contractor refuses or fails to make adequate progress of the work, or to prosecute the work or any separable part thereof with such diligence that will insure its completion within the time specified in this Contract, or defaults under any provision or breaches any provision of this Contract, the City may serve notice upon the Contractor and its surety of the City's intention to terminate by default the right of the Contractor to perform the Contract, and unless within ten (10) days after the serving of such notice, the Contractor shall satisfactorily arrange to cure its failure to perform and notify the City of the corrections to be made, the right of the Contractor to proceed with the work shall terminate. In the event of any such termination, the City shall serve notice thereof upon the Surety and the Contractor, provided, however, that if the Surety does not commence performance thereof within twenty (20) days from the date of the mailing to such Surety of the notice of termination, the City may take over the work and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Contractor. In the case of termination for default, the Contractor shall not be entitled to receive any further payment until the work is finished.

B. Termination by City for Convenience. The performance of work under this Contract may be terminated by the City in accordance with this paragraph in whole or in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance or work under the Contract is terminated, and the date upon which such termination becomes effective. The Contractor shall stop work on the project upon the date set forth in the Notice of Termination and shall

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take such actions as may be necessary, or as the City may direct, for the protection and preservation of the work. After receipt of a Notice of Termination, the Contractor shall submit to the City its termination claim, in the form and with the certification prescribed by the City. Such claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination. Upon approval by the City, the termination claim shall be paid.

C. Termination by Contractor. If the work should be stopped under an order of any court, or other public authority, for a period of thirty (30) days, through no act or fault of the Contractor or of anyone employed by him, then the Contractor may, upon seven (7) days written notice to the City, terminate this Contract and recover from the City payment for all work executed and any proven loss sustained. Should the City fail to pay to the Contractor, within the payment period provided for in this Contract, any sum due and owing, then the Contractor may, upon seven (7) days written notice to the City, stop the work or terminate this Contract.

11. Compliance with Laws. The Contractor shall at all times comply with all applicable state and local laws, rules, ordinances and regulations.

12. Nondiscrimination. Except to the extent permitted by a bona fide occupational qualification, the Contractor agrees that the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

13. Independent Contractor. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and subcontractors during the performance of this contract.

14. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Contractor is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of the Contractor shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. In the performance of the work, the Contractor 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 subcontractors of the Contractor. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subcontractors during the performance of this

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Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Contractor performs

15. Legal Action. In the event that either party shall bring suit to enforce any provision of this Contract or to seek redress for any breach, the prevailing party in such suit shall be entitled to recover its costs, including reasonable attorneys' fees.

16. Entire Agreement. This Contract, together with all attachments, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations and agreements, whether written or oral. This Contract may be amended only by written change order, properly signed by both parties.

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

CITY OF GIG HARBOR

CONTRACTOR

MAYOR CHARLES L. HUNTER
Date: _____

By: _____
Title: _____
Date: _____

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
Office of the City Attorney

EXHIBIT A



3800A Bridgeport Way W #3 | University Place, WA 98466
 Phone: (253) 566-1223 | Fax: (253) 566-1311
 www.rooftherapy.net | Contr# ROOFTI*994CG
 Licensed, Bonded & Insured

Estimate

Name / Address
City of Gig Harbor RE: Skansie House 3207 Harborview Dr Gig Harbor, WA 98335 ATTN: TERRI REED

Date	6/14/12
Estimate #	10491

Payment due within 10 days of project completion. \$25 Late fee 10 days from inv date + 2% interest.

Description	Qty	Cost	Total
Gently air clean composition roof, removing bulk of moss and debris, clean out gutters, and clean up resulting debris on siding and grounds.		570.00	570.00
FALL (damp weather): Apply moss treatment to roof to kill moss root (effective in 2-3 months).		155.00	155.00
* Optional: (PLEASE INITIAL TO ACCEPT) <i>JR</i> - We could clean the Pavilion roof at the same time for an additional <u>\$160.00</u> , then apply a moss treatment in the fall for an additional <u>\$105.00</u> . * Work to be done on the slowest tourist day (Tuesday), with area being coned off. * Please call Jason's cell phone at (253) 686-7015 to discuss the details of this proposal. Thank you for your interest in our services! Bid expires 7/1/12			

If signed, this bid serves as a legally binding contract between Roof Therapy, Inc. and the customer named above.

Subtotal	\$725.00
Sales Tax (8.5%)	\$61.63
Total	\$786.63

Signature _____

EXHIBIT A



3800A Bridgeport Way W #3 | University Place, WA 98466
 Phone: (253) 566-1223 | Fax: (253) 566-1311
 www.rooftherapy.net | Contr# ROOFTI*994CG
 Licensed, Bonded & Insured

Estimate

Name / Address
City of Gig Harbor RE: Civic Center 3510 Grandview St Gig Harbor, WA ATTN: TERRI REED

Date	6/14/12
Estimate #	10490

Payment due within 10 days of project completion. \$25 Late fee 10 days from inv date + 2% interest.

Description	Qty	Cost	Total
ALL ROOFS:			
SUMMER (dry weather): Gently air clean composition roof, removing bulk of moss and debris, clean out gutters, and clean up resulting debris on siding and grounds.		2,625.00	2,625.00
FALL (damp weather): Apply moss treatment to roof to kill moss root (effective in 2-3 months).		1,100.00	1,100.00
* Work to be done on a weekend or holiday.			
* Please call Jason's cell phone at (253) 686-7015 to discuss the details of this proposal. Thank you for your interest in our services! Bid expires 7/1/12			

If signed, this bid serves as a legally binding contract between Roof Therapy, Inc. and the customer named above.

Subtotal	\$3,725.00
Sales Tax (8.5%)	\$316.63
Total	\$4,041.63

Signature _____

EXHIBIT A



3800A Bridgeport Way W #3 | University Place, WA 98466
 Phone: (253) 566-1223 | Fax: (253) 566-1311
 www.rooftherapy.net | Contr# ROOFTI*994CG
 Licensed, Bonded & Insured

Estimate

Name / Address
City of Gig Harbor RE: Visitor Center 3125 Judson St Gig Harbor, WA 98335 ATTN: TERRI REED

Date	6/14/12
Estimate #	10489

Payment due within 10 days of project completion. \$25 Late fee 10 days from inv date + 2% interest.

Description	Qty	Cost	Total
Gently air clean composition roof, removing bulk of moss and debris, clean out gutters, and clean up resulting debris on siding and grounds.		460.00	460.00
FALL (damp weather): Apply moss treatment to roof to kill moss root (effective in 2-3 months).		165.00	165.00
Replace 4 missing or damaged full/partial shingles on roof (additional damaged shingles will be replaced at \$10 each).	4	10.00	40.00
* Work to be done during the week, avoiding foot traffic below.			
* Please call Jason's cell phone at (253) 686-7015 to discuss the details of this proposal. Thank you for your interest in our services! Bid expires 7/1/12			

If signed, this bid serves as a legally binding contract between Roof Therapy, Inc. and the customer named above.

Subtotal	\$665.00
Sales Tax (8.5%)	\$56.53
Total	\$721.53

Signature _____

EXHIBIT A
 3800A Bridgeport Way W #3 | University Place, WA 98466
 Phone: (253) 566-1223 | Fax: (253) 566-1311
 www.rooftherapy.net | Contr# ROOFTI*994CG
 Licensed, Bonded & Insured



Roof Therapy, INC.

Estimate

Date	6/14/12
Estimate #	10492

Name / Address
City of Gig Harbor RE: Wilkinson Farmhouse & Garage 4118 Rosedale St Gig Harbor, WA 98335 ATTN: TERRI REED

**TO ACCEPT PROPOSAL:
 PLEASE SIGN, DATE
 AND RETURN ONE COPY.
 THANK YOU!**

Payment due upon completion of each phase, \$25 Late fee 10 days from inv date + 2% monthly interest.

Description	Qty	Cost	Total
MINIMAL MAINTENANCE OF FARMHOUSE AND DETACHED GARAGE:			
Install permanent safety anchor on roof to provide support for fall protection equipment.	2	65.00	130.00
Gently air clean shake roof, removing bulk of moss and debris, clean out gutters, and clean up resulting debris on siding and grounds		320.00	320.00
Replace split/missing/worn shakes (each bundle contains 30 shakes)	2	170.00	340.00
Replace deteriorated/split hip and ridge cap (20 pieces per bundle)	0.5	150.00	75.00
Note: Number of shakes actually replaced may end up higher/lower than estimated amount.			
FALL (damp weather): Apply moss treatment to roof to kill moss root (effective in 2-3 months).		210.00	210.00
* Please call Jason's cell phone at (253) 686-7015 to discuss the details of this proposal. Thank you for your interest in our services!			

If signed, this bid serves as a legally binding contract between Roof Therapy, Inc. and the customer named above.

Subtotal	\$1,075.00
Sales Tax (8.5%)	\$91.38
Total	\$1,166.38

Signature _____ Date _____

"Setting the Standard for Roof Maintenance"



**Business of the City Council
City of Gig Harbor, WA**

<p>Subject: Settlement Agreement – Gig Harbor Marina lawsuit (Pierce County Superior Cause No. 09-2-15098-8)</p> <p>Proposed Council Action: Approve and authorize the Mayor to execute the Settlement Agreement in connection with <i>Gig Harbor Marina and Stanley and Judith Stearns v. City of Gig Harbor</i>.</p>	<p>Dept. Origin: Office of the City Attorney</p> <p>Prepared by: Angela Belbeck</p> <p>For Agenda of: July 9, 2012</p> <p>Exhibits: Settlement Agreement (to be provided once received)</p> <p style="text-align: right;">Initial/Date</p> <p>Concurred by Mayor: <u>CLH 7-5-12</u></p> <p>Approved by City Administrator: <u>R- 7/5/12</u></p> <p>Approved as to form by City Atty: _____</p> <p>Approved by Finance Director: _____</p> <p>Approved by Department Head: _____</p>
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Expenditure Required	Amount Budgeted	\$	Appropriation Required	\$0
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INFORMATION/BACKGROUND

Plaintiffs filed a complaint in Pierce County Superior Court for damages alleging mishandling of processing of a development permit. The City removed the complaint to federal court. Plaintiffs voluntarily dismissed all federal claims and the federal court remanded the matter to Pierce County Superior Court for resolution of state law claims. Since that time the parties have filed a number of pretrial motions and have undergone extensive discovery. The case is presently set for trial in September. As previously authorized, one of the City’s attorneys, Steve Lamberson, has negotiated a settlement that would result in dismissal of the matter subject to the City Council’s approval.

The Settlement Agreement will be provided once the signed original is received. If the Settlement Agreement signed by Plaintiffs is not received prior to the July 9 Council meeting, this item will be moved to the July 23 agenda.

BOARD OR COMMITTEE RECOMMENDATION

n/a

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute the Settlement Agreement in connection with *Gig Harbor Marina and Stanley and Judith Stearns v. City of Gig Harbor*.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter "Agreement") is entered into by and between the City of Gig Harbor (hereinafter the "City") and Gig Harbor Marina, Inc., Stanley Stearns and Judith Stearns (husband and wife) (hereinafter the "Plaintiffs"). Individually the City and Plaintiffs are each a "Party," and collectively they are the "Parties." This Agreement shall be effective as of the date of execution by all Parties hereto ("Effective Date").

RECITALS

WHEREAS, Plaintiffs are the owners of certain real property located in the City of Gig Harbor, with the address: 3323 Harborview Drive, Gig Harbor, Washington, Pierce County parcel number 5970000030, legally described as:

Section 05 Township 21 Range 02 Quarter 34 MILLVILLE: MILLVILLE
L 3 & E 25 FT OF L 4 B 1 INC LD BET HIGH WATER LI & ML INC
TDLDS ABUTT

(hereinafter referred to as the "Property"); and

WHEREAS, in August of 2005, Plaintiffs filed *Gig Harbor Marina, Inc., et al. v. City of Gig Harbor*, Pierce County Cause No. 05-2-11084-3, alleging that the City's actions relating to the Property violated state law and the Constitution; and

WHEREAS, on March 17, 2006, Plaintiffs submitted an application to the City for a Minor Site Plan Amendment for a development called the "Bayview Marina" on the Property; and

WHEREAS, on June 27, 2007, the City issued the Minor Site Plan Amendment, which was not appealed under the Land Use Petition Act, RCW Chapter 36.70C; and

WHEREAS, on August 8, 2008, Plaintiffs submitted a building permit application to the City; and

WHEREAS, the City notified Plaintiffs that the building permit was ready to be picked up on August 24, 2009, upon payment of various fees by Plaintiff; and

WHEREAS, Plaintiffs paid the related fees, including payment of the City's sewer connection fee , and picked up the building permit on October 13, 2009; and

WHEREAS, the City's code allowed the Plaintiffs to pay the sewer connection fee under protest, but the Plaintiffs chose not to do so; and

WHEREAS, on November 3, 2009, the Parties stipulated to a dismissal of Pierce County Superior Court Cause No. 05-2-11084-3 without prejudice; and

WHEREAS, on November 3, 2009, the Plaintiffs filed another lawsuit against the City in which Plaintiffs did not appeal the building permit under LUPA, RCW Chapter 36.70C, but alleged damages against the City (Pierce County Cause No. 09-2-15098-8); and

WHEREAS, the Plaintiffs did not include any allegations or claims relating to the sewer connection fee in either Pierce County Superior Court Cause No. 05-2-11084-3 or 09-2-15098-8; and

WHEREAS, the City removed this case to federal court (U.S. District Court Cause No. C09-5726BHS) where Plaintiffs voluntarily dismissed their federal claims and

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter "Agreement") is entered into by and between the City of Gig Harbor (hereinafter the "City") and Gig Harbor Marina, Inc., Stanley Stearns and Judith Stearns (husband and wife) (hereinafter the "Plaintiffs"). Individually the City and Plaintiffs are each a "Party," and collectively they are the "Parties." This Agreement shall be effective as of the date of execution by all Parties hereto ("Effective Date").

RECITALS

WHEREAS, Plaintiffs are the owners of certain real property located in the City of Gig Harbor, with the address: 3323 Harborview Drive, Gig Harbor, Washington, Pierce County parcel number 5970000030, legally described as:

Section 05 Township 21 Range 02 Quarter 34 MILLVILLE: MILLVILLE
L 3 & E 25 FT OF L 4 B 1 INC LD BET HIGH WATER LI & ML INC
TDLDS ABUTT

(hereinafter referred to as the "Property"); and

WHEREAS, in August of 2005, Plaintiffs filed *Gig Harbor Marina, Inc., et al. v. City of Gig Harbor*, Pierce County Cause No. 05-2-11084-3, alleging that the City's actions relating to the Property violated state law and the Constitution; and

WHEREAS, on March 17, 2006, Plaintiffs submitted an application to the City for a Minor Site Plan Amendment for a development called the "Bayview Marina" on the Property; and

WHEREAS, on June 27, 2007, the City issued the Minor Site Plan Amendment, which was not appealed under the Land Use Petition Act, RCW Chapter 36.70C; and

WHEREAS, on August 8, 2008, Plaintiffs submitted a building permit application to the City; and

WHEREAS, the City notified Plaintiffs that the building permit was ready to be picked up on August 24, 2009, upon payment of various fees by Plaintiff; and

WHEREAS, Plaintiffs paid the related fees, including payment of the City's sewer connection fee , and picked up the building permit on October 13, 2009; and

WHEREAS, the City's code allowed the Plaintiffs to pay the sewer connection fee under protest, but the Plaintiffs chose not to do so; and

WHEREAS, on November 3, 2009, the Parties stipulated to a dismissal of Pierce County Superior Court Cause No. 05-2-11084-3 without prejudice; and

WHEREAS, on November 3, 2009, the Plaintiffs filed another lawsuit against the City in which Plaintiffs did not appeal the building permit under LUPA, RCW Chapter 36.70C, but alleged damages against the City (Pierce County Cause No. 09-2-15098-8); and

WHEREAS, the Plaintiffs did not include any allegations or claims relating to the sewer connection fee in either Pierce County Superior Court Cause No. 05-2-11084-3 or 09-2-15098-8; and

WHEREAS, the City removed this case to federal court (U.S. District Court Cause No. C09-5726BHS) where Plaintiffs voluntarily dismissed their federal claims and

moved the Court to remand the remaining state claims to state court, which the Court granted; and

WHEREAS, the Parties desire to resolve this dispute without resort to further litigation; and

WHEREAS, the undersigned Parties to this Agreement have had sufficient opportunity to review the facts and law relevant to any asserted or potential claims associated with actions referred to in U.S. District Court Cause No. C09-5726 BHS, Pierce County Superior Court Cause Nos. 05-2-11084-3 and 09-2-15098-8; have had the opportunity to fully consult with counsel of their choosing, and have done so; and have entered into this Agreement knowingly and voluntarily, without duress or coercion from any source; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual understandings of the Parties as set forth below, the Parties agree and promise as follows:

TERMS

Section 1. Dismissal of Pending Litigation. The Parties agree to the following procedure for the implementation of the settlement:

- A. Plaintiffs shall execute this Settlement Agreement in the form agreed upon by the Parties and return the original signed Settlement Agreement to the City's attorney.
- B. The City Council shall consider the Settlement Agreement by placing it on the Council Agenda and by voting on it in open session at the next scheduled meeting of

the City Council following delivery of the Signed Settlement Agreement to the City's attorney per Section 1.A. above.

C. If approved, the Mayor shall sign the Settlement Agreement.

D. Upon completion of Section 1.C. above, Plaintiffs' attorney shall sign the Stipulation and Order of Dismissal, Exhibit A hereto, and hand deliver the signed original to the City's attorney, and at the same time, the City's attorney shall hand deliver to Plaintiffs' attorney a check in the amount of Fifty-four Thousand Dollars (\$54,000.00) payable to Gig Harbor Marina and to Dennis D. Reynolds Law Office. Such hand delivery shall take place within ten (10) court days of the completion of Section 1.C. above at the City of Gig Harbor City Hall located at 3510 Grandview Street, Gig Harbor, WA 98335 at the earliest mutually agreeable time.

E. The City's attorney shall attach the original of the Settlement Agreement to the original Stipulation and Order of Dismissal, and arrange to have it filed in the records of the Pierce County Superior Court under Cause No. 09-2-15098-8.

The Parties agree that entry of the Stipulation and Order of Dismissal shall dismiss all proceedings in Pierce County Superior Court Cause No. 09-2-15098-8 with prejudice, and all other issues related thereto, including but not limited to all issues and claims in Pierce County Cause No. 05-2-11084-3 and U.S. District Court Cause No. C09-5726BHS, as well as Plaintiffs' request for a refund of the \$25,620 Sewer Connection Fee for the Bayview Marina Building, and that each Party shall bear its own costs and attorneys' fees incurred therein.

Section 2. Occupancy Certificate Activities Covered in this Settlement. On November 30, 2011, the City issued Plaintiffs a letter titled “Provisional Occupancy Approval – Bayview Building, 3323 Harborview Drive, BD-07-0089,” which set forth three enumerated Building/Fire conditions and five enumerated Planning conditions to be satisfied prior to the City’s issuance of a final Certificate of Occupancy for the Bayview Building. On December 5, 2011, the City issued an Administrative Approval of permit numbers PL-SPA-11-0011, PL-ALP-11-0004 and PL-DRB-11-0076, which satisfied Planning Condition #5 of the City’s November 30, 2011 Provisional Occupancy Approval. Plaintiffs subsequently satisfied the remaining conditions. On April 4, 2012, the City issued a final Certificate of Occupancy for Plaintiffs’ Bayview Building. The Parties agree that neither the City nor Plaintiffs have appealed or will appeal the Certificate of Occupancy or request any refund, adjustment or recalculation of the sewer connection fee under Gig Harbor Municipal Code Chapter 13.32. Based on the foregoing, the Parties agree that all disputes relating to the Bayview Building have been resolved.

Section 3. Compromise of Claims. The Parties understand and agree that this Agreement is a compromise of disputed claims, and the execution and performance of this Agreement does not constitute and shall not be construed as an admission of liability, fault or responsibility by the other Party. No Party’s actions in settlement of this litigation, including any actions or statements made in the negotiation or performance of any of the activities described in this Agreement, shall be used against that Party or introduced in evidence in any court proceeding.

Section 4. Notice. All required notices under this Agreement shall be delivered to the Parties' representatives at the addresses listed below by certified U.S. Mail:

City

Mayor Charles L. Hunter
3510 Grandview St.
Gig Harbor, WA 98335

Plaintiffs

Stan Stearns
c/o Arabella's Landing Marina
3323 Harborview Drive
Gig Harbor, WA 98332-2126

Section 5. Release. Upon execution of the Stipulation and Order of Dismissal referenced in Section 1 of this Agreement, Exhibit A hereto, as well as entry of the Stipulation and Settlement Agreement into the files of the Clerk of the Pierce County Superior Court, the undersigned Parties to this Agreement hereby agree that they shall, and hereby do, mutually release, quit, and forever discharge one another and their successors and the Association of Washington Cities Risk Management Services Agency (AWC-RMSA), past, present and future elected officials, officers, agents, employees, members, assigns, relations and attorneys of and from any and all claims, demands, damages, actions, controversies, attorneys' fee claims, disputes, cause of action, or suits of any kind or nature whatsoever, whether known or unknown, asserted or not asserted, foreseen or unforeseen, whether past, present or future, which each has, may have or could have against the other, pertaining to or arising from Pierce County Superior Court Cause No. 09-2-15098-8, Pierce County Superior Court Cause No. 05-2-11084-3 or U.S.

District Court Cause No. C09-5726 BHS, including, but not limited to, any and all claims for damages and/or attorneys' fees under claims of negligence, tortious interference, RCW Chapter 64.40 and 42 U.S.C. Section 1983 and 42 U.S.C. Section 1988. This release also includes, but is not limited to, any claims the Plaintiffs claim to have against the City relating to the Alternative Landscape Plan, Minor Site Plan Amendment and Design Review Applications submitted on October 26, 2011 (PL-SPA-11-0011, PL-ALP-11-004 and PL-DRB-11-0076), the Temporary Certificate of Occupancy or the Certificate of Occupancy for the Bayview Building, the \$25,620 Sewer Connection Fee, or any damages for any alleged delay the Plaintiffs claim to have suffered relating to the same.

The Parties have no knowledge of any existing claims against the other Party that have not been released under this Section. This Agreement is binding on all Parties, their successors, heirs, legal representatives and assigns.

Section 6. Representations or Warranties. The Parties acknowledge that no other person or entity, nor any agent or attorney of any person or entity, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement concerning the subject matter hereof, to induce the Parties to execute this Agreement. The Parties further acknowledge that they have not executed this Agreement in reliance on any such promise, representation or warranty not contained herein.

Section 7. Authority to Execute. Each signatory of this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the entity or Party for which he or she is signing, and that he or

she will defend and hold harmless the other Party from any claim that he or she was not fully authorized to execute this Agreement on behalf of the person or entity for whom he or she signed. Upon a proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation, and will be enforceable against each Party in accordance with the terms herein.

Section 8. Specific Performance. The Parties agree that damages are not an adequate remedy for breach of this Agreement, and that the Parties are entitled to compel specific performance of all material terms of this Agreement by any Party in default herein. All terms and provisions of this Agreement are material.

Section 9. Governing Law, Venue and Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Subject to the limitations on pending and future litigation in this Agreement, venue for any action arising out of or relating to this Agreement shall lie in the Pierce County Superior Court or the U.S. District Court for the Western District of Washington in Tacoma. The substantially prevailing Party in any such litigation shall be reimbursed by the other Party for its reasonable attorney's fees, expert witness fees and costs.

Section 10. Entire Agreement. This Agreement contains the entire Agreement between the Parties with respect to the subject matter hereof, and shall not be modified or amended in any way except in writing, and signed by the Parties hereto.

Section 11. Interpretation. This Agreement was drafted by negotiation by counsel for the Parties, and there shall not be a presumption or construction against either

Party. Any titles or captions of paragraphs contained in this Agreement are for convenience and reference only.

Section 12. Binding Nature of Agreement. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties, their heirs, executors, administrators, successors, devisees, assigns and all persons now or hereafter holding or having all or any part of any interest of a Party to this Agreement.

Section 13. Severability. If any portion of this Agreement is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Agreement.

Section 14. Counterpart Originals. Each signatory to this Agreement may sign a separate original of this Agreement. In such event, the Agreement remains as binding and enforceable as it would be if all Parties signed the Agreement at the same time and place.

Section 15. Third Party Beneficiaries. This Agreement is neither expressly nor impliedly intended to be for the benefit of any third party, and it is neither expressly nor impliedly enforceable by any third party.

Dated this __ day of July 2012.

DEFENDANT CITY OF GIG HARBOR:

**PLAINTIFFS GIG HARBOR
MARINA, STANLEY STEARNS
& JUDITH STEARNS**

By _____
Mayor Charles L. Hunter

By Stanley Stearns
Stanley Stearns, President of Gig
Harbor Marina, Inc.

By Stanley Stearns
Stanley Stearns

By Judith Stearns
Judith Stearns

ATTEST:

By _____
City Clerk Molly Towslee

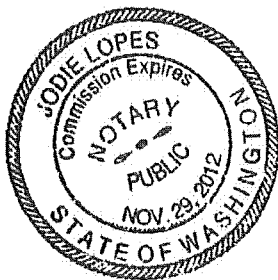
APPROVED AS TO FORM:

By: _____
Office of the City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Stanley Stearns is the person who appeared before me, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Gig Harbor Marina and on his own behalf and that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 7/31/12



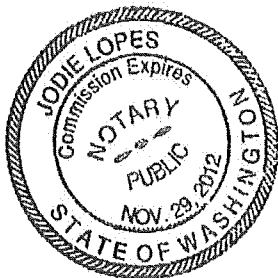
Jodie Lopes
Jodie Lopes
(print or type name)

NOTARY PUBLIC, State of Washington
Residing at: W. Washington
My Commission expires: 11/29/12

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Judith Stearns is the person who appeared before me, and that said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 7/31/12



Jodie Lopes
Jodie Lopes
(print or type name)

NOTARY PUBLIC, State of Washington
Residing at: W. Washington
My Commission expires: 11/29/12

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Charles 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: _____

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

My Commission expires: _____

EXHIBIT A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

GIG HARBOR MARINA, INC.,
STANLEY STEARNS and JUDITH
STEARNS, husband and wife,

Plaintiffs,

v.

CITY OF GIG HARBOR, a Washington
corporation,

Defendants.

NO. 09-2-15098-8

STIPULATION AND ORDER OF
DISMISSAL WITH PREJUDICE

[Clerk's Action Required]

I. STIPULATION

COME NOW the parties hereto, by and through their attorneys of record, and hereby stipulate that all claims between the parties in the above-entitled action are to be dismissed with prejudice without an award of costs or attorney's fees to any party.

SO AGREED this ___ day of July 2012.

Respectfully submitted,

ETTER, MCMAHON, LAMBERSON,
CLARY & ORESKOVICH, P.C.

By:

Stephen M. Lamberson, WSBA No. 12985
Attorneys for Defendant

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MORRIS LAW, P.C.

By: _____
Carol A. Morris, WSBA No. 19241
Attorneys for Defendant

SCHWABE, WILLIAMSON & WYATT

By: _____
Aaron M. Laing, WSBA No. 34453
Attorney for Plaintiffs

LAW OFFICE OF DENNIS DEAN REYNOLDS

By: _____
Dennis Dean Reynolds, WSBA No. 4762
Attorney for Plaintiffs

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ORDER OF DISMISSAL

Based upon the stipulation of the parties above, it is hereby ORDERED, ADJUDGED AND DECREED that this lawsuit is hereby DISMISSED WITH PREJUDICE, subject to the terms and conditions set out in the Settlement Agreement attached hereto as Exhibit A and incorporated herein by this reference, each party to bear its own attorney fees and costs.

DONE this ____ day of July 2012.

PIERCE COUNTY SUPERIOR COURT

The Honorable Stephanie A. Arend

Presented by:

Etter, McMahon, Lamberson,
Clary & Oreskovich, P.C.

By _____
Stephen M. Lamberson, WSBA No. 12985
Attorney for Defendant

Notice of Presentment waived,
Approved as to form:

Schwabe, Williamson & Wyatt

By _____
Aaron M. Laing, WSBA No. 34453

Law Office of Dennis Dean Reynolds

By _____
Dennis Dean Reynolds, WSBA No. 4762