

# **GIG HARBOR CITY COUNCIL MEETING**



**July 8, 1996**

**7:00 P.M., CITY HALL COUNCIL CHAMBERS**



**AGENDA FOR GIG HARBOR CITY COUNCIL MEETING**

**July 8, 1996 - 7:00 p.m.**

**PUBLIC COMMENT/DISCUSSION:**

**CALL TO ORDER:**

**APPROVAL OF MINUTES:**

**CORRESPONDENCE / PROCLAMATIONS:**

1. WFOA - Distinguished Budget Award.
2. Viacom Cable - Transfer of Control to TCI.
3. Letter from Richard Freshley - Council Chambers.
4. Letter from Larry Storset.

**OLD BUSINESS:**

1. Second Reading of Ordinance - Coulter Rezone (REZ 94-01).
2. Second Reading of Ordinance - Amendment to GHMC, Chapter 15.12, Responsibility for Fire Investigations.
3. Second Reading of Ordinance - Repeal of Chapter 5.20 of the GHMC - Taxicabs.
4. Emergency Management Agreement.
5. Chamber of Commerce - Counter proposal.

**NEW BUSINESS:**

1. Washington Natural Gas Franchise - First Reading.
2. Amendment to GHMC - Cabarets.
3. Community Forest Grant Agreement.
4. Liquor License Assumption - WB Scotts to Spiros Pizza & Pasts.

**MAYOR'S REPORT:** Selection of Art for City Hall.

**COUNCIL COMMENTS:**

**STAFF REPORTS:**

Employee Emergency Handbook

**ANNOUNCEMENTS OF OTHER MEETINGS:**

**APPROVAL OF BILLS:**

**APPROVAL OF PAYROLL:**

**EXECUTIVE SESSION:** For the purpose of discussing claims.

**ADJOURN:**



## REGULAR GIG HARBOR CITY COUNCIL MEETING OF JUNE 24, 1996

**PRESENT:** Councilmembers Owel, Platt, Picinich, Markovich and Mayor Wilbert. Councilmember Ekberg was absent.

**PUBLIC COMMENT / DISCUSSION:** None.

### **PUBLIC HEARING:**

1. UGA Preannexation Zoning (Second of two required hearings). Mayor Wilbert opened the public hearing on this item. Ray Gilmore explained that this was the second of two required hearings for the proposed zoning for the Urban Growth Area. He added that Council did not have to act on this item this evening.

Walt Smith - PO Box 191, Gig Harbor. Mr. Smith spoke about the proposed Employment District zoning classification and how it limits development. He asked that this designation be remanded back to the Planning Commission for a text amendment to this designation.

Mike Scannel - 9424 Milton Avenue. Mr. Scannel said he had been asked by Doug Howe to speak to Council regarding the Employment District zoning designation. He said that the setbacks are too restrictive and asked that this be remanded back to the Planning Commission for reconsideration.

Del Stutz - 3003 Harborview Drive. Mr. Stutz said he purchased his property on Burnham Drive under Pierce County's zoning in anticipation of future business growth in the area. He said that he just found that the zoning for his property under this proposal would be residential, which he felt was incompatible with the Sportsmen's Club across the road. He asked that reconsideration be given to this area to be changed to C-1. Mr. Gilmore explained that the area in question was in the mixed-use zone in the Comprehensive Plan, and that a change to C-1 would require an amendment to the Comp Plan.

Paul Cyr - 4102 55th St. Ct. NW - Mr. Cyr again asked for reconsideration on the proposed zoning for the Stroh properties on Hunt by the Community College and by the Medical Center. Both properties are currently proposed to be RB-2 and the property owners would like it to be designated to B-2.

There were no more comments from the public or from the staff. Mayor Wilbert closed the Public Hearing on this item at 7:26 p.m.

2. Parks and Recreation Plan Draft. Mayor Wilbert opened the public hearing on this item at 7:27 p.m. Mr. Gilmore gave a brief introduction to these recommendations from the Planning Commission revising the Parks and Recreation Element of the Comp Plan. He added that the first reading of the ordinance to adopt these recommendations followed later in the agenda.

Brook Kauppila - 7770 Kauppila Lane - Ms. Kauppila said she had just received a letter regarding the removal of the highline road for equestrian trails in the plan. She strongly urged reconsideration,

because places to ride have become scarce, and there was so much support in favor of keeping the trails available to equestrians.

Paul Cyr - 4102 55th St. Ct. NW - Mr. Cyr said that this was a nice proposal for the city. He added that he didn't see the Tallman ballfield project included in the inventory, and said that this was a significant park for the city and would like to see it included in the document as an errata.

There were no further public comments. Ray Gilmore introduced Tom Beckwith, the consultant involved with the proposal. Mr. Beckwith gave a presentation on the development of the plan.

Mayor Wilbert closed the public hearing on this item at 7:42 p.m.

**CALL TO ORDER:** 7:42 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move approval of the minutes of the June 10, 1996 meeting as presented.  
Picinich/Markovich - unanimously approved.

**CORRESPONDENCE / PROCLAMATIONS:**

1. Pierce County - Community Development Consortium Agreement. Mayor Wilbert gave a brief explanation of the programs involved in the consortium.
2. Friends of the Peninsula Library - Proclamation. Mayor Wilbert read the proclamation and presented it to Judy Buskirk from Friend of the Peninsula Library. Ms. Buskirk gave a brief presentation on the organization and introduced the members present in the audience.

**OLD BUSINESS:**

1. Second Reading of Ordinance - Street Vacations. Mark Hoppen introduced the second reading of this ordinance.

**MOTION:** Move to approve Ordinance No. 723 regarding Street Vacations.  
Markovich/Owel - unanimously approved.

2. Second Reading of Ordinance - Preannexation Zoning for UGA. Ray Gilmore answered Council's questions regarding the passing of this ordinance. It was decided to bring this back for reintroduction at the July 22nd Council meeting to allow for more time for consideration.
3. Second Reading of Ordinance - Chapter 17.04, Definitions. Ray Gilmore introduced the second reading of this ordinance to modify certain definitions to be consistent with State law.

**MOTION:** Move to approve Ordinance No. 724.  
Markovich/Picinich - unanimously approved.

4. Second Reading of Ordinance - Title 17, GHMC ("Clean-up" Ordinance). Ray gave a brief overview of this ordinance and recommended it's adoption.

**MOTION:** Move to approve Ordinance No. 725.  
Picinich/Owel - unanimously approved.

5. Second Reading of Ordinance - Chapter 18.08 (Wetlands Management). Ray introduced the second reading of this ordinance updating the city's environmental codes to provide continuity with the Regulatory Reform Act.

**MOTION:** Move to approve Ordinance No. 726.  
Markovich/Picinich - unanimously approved.

6. Second Reading of Ordinance - Chapter 18.12 (Critical Areas). Ray explained that this ordinance, too, was updating the city's environmental codes to provide continuity with the Regulatory Reform Act.

**MOTION:** Move to approve Ordinance No. 727.  
Markovich/Picinich - unanimously approved.

7. Extension of Hearing Examiner Contract. Mark Hoppen presented this extension to the Hearing Examiner's contract to be effective through the month of December, 1996.

**MOTION:** Move we approve the extension to the Hearing Examiner's contract.  
Markovich/Picinich -

Carol Morris, legal counsel, suggested that the language in the contract that referred to chapter 17.10 of the Gig Harbor Municipal Code be modified to eliminate any specific reference to any one section.

**MOTION:** Move to adopt changes to the contract as suggested by legal counsel.  
Markovich/Picinich - unanimously approved.

**AMENDED MOTION:** Move we approve the extension to the Hearing Examiner's contract with changes to language as suggested by legal counsel.  
Markovich/Picinich - unanimously approved.

**NEW BUSINESS:**

1. First Reading of Ordinance - Draft Parks and Recreation Plan; Amendment to City of Gig Harbor Comprehensive Plan. Ray Gilmore explained that this item would be brought back at the July 22nd regular council meeting.

2. First Reading of Ordinance - Coulter Rezone (REZ 94-01). Ray Gilmore gave a brief history of this request to do a contract rezone on this parcel located at the corner of Peacock and North Harborview Drive, which fronts Franklin Avenue. He explained that the parcel was split by a R-1 and B-2 zoning, and the proposed zoning would be R-3. Councilmember Owel said she had testified at the public hearing on this item, therefore would be recusing herself from the proceedings. This will return for a second reading at the July 22nd council meeting.
3. First Reading of Ordinance - Amendment to GHMC, Chapter 15.12, Responsibility for Fire Investigations. Ray Gilmore introduced this ordinance revising the municipal code to reflect changes made after the adoption of Senate Bill 6403, delegating the responsibility for fire investigations within the City of Gig Harbor to the Pierce County Fire District #5 Fire Chief. This will return for a second reading at the next council meeting.
4. First Reading of Ordinance - Repeal of Chapter 5.20 of the GHMC - Taxicabs. Mark Hoppen explained that the current code was outdated, and that a taxicab service could more effectively be regulated through the existing business license process. This will return for a second reading at the next council meeting.
5. Shoreacres Water Company Contract. Mark Hoppen introduced this renewal of the four year contract to supply water to the Shoreacres Water Company. He explained that legal counsel had provided language changes to the arbitration section of the contract.

Councilmember Markovich commented that the standard utility extension language regarding annexation should be included in this contract, as the city was providing utilities just as they were to other outside city limits extension requests.

Charles Knowles - 2506 27th St. Ct. NW - Mr. Knowles said that he was the President of the Board of Director for Shoreacres Water Company. He said that the contract could not be changed because 90 days notice had not be given.

Councilmember Markovich said that due to this notification clause in the contract, he did not think this contract could be modified to include this language at this time but requested that the next time the contract came up for renewal, it be brought to council well enough in advance for inclusion of this language.

**MOTION:** Move we approve the contract with Shore Acres Water Company and that staff bring this issue back to Council one year prior to expiration of the contract.

Platt/Markovich -

Councilmember Platt asked how the arbitration language could be deleted, and yet the contract could not be changed otherwise, and suggested amending the contract to be valid



for a one year term. Carol Morris said she did not interpret the contract in the same way as Councilmember Markovich. She added that council could initiate annexation efforts at any time utilizing the election method. Mark Hoppen said that the majority of the population in Shoreacres would vote in favor if they understood the facts. After discussion, Council directed Mr. Hoppen to contact members of the Shoreacres Board of Directors and discuss changing the contract to include annexation language.

Councilmember Markovich withdrew his original motion.

**MOTION:** Move to table this item to the July 22nd meeting.  
Platt/Picinich - unanimously approved.

6. Utility Extension Request - Michael Paul (Knightsbridge). Mark Hoppen presented this request for sewer and water to property previously known as Knightsbridge. He explained that utility extension had been approved previously under another owner, and that one duplex already was hooked up, but that the contract had expired, requiring the new owner to reapply. Wes Hill explained that he had added a requirement for construction of curb and sidewalk along the parcel frontage.

**MOTION:** Move to approve utility extension to this property.  
Picinich/Markovich - unanimously approved.

7. Liquor License Renewals - Harvester, Puerto Vallarta, and Roundtable Pizza. No action taken.
8. Special Occasion Liquor License - 50th Anniversary Inc. of City. No action taken.

**MAYOR'S REPORT:**

Neighborhood Assistant Teams - City of Gig Harbor. Mayor Wilbert explained that the Peninsula Citizens Emergency Training would be meeting to discuss training neighborhoods for a major disaster. She talked about the form that might be utilized to gather information to establish Neighborhood Assistance Teams.

**COUNCIL COMMENTS:** None.

**STAFF REPORT:** None.

**ANNOUNCEMENT OF OTHER MEETINGS:** None.

**APPROVAL OF BILLS:**

**MOTION:** Move approval of checks #16099 through #16170 in the amount of

\$85,071.37.  
Owel/Platt - unanimously approved.

**APPROVAL OF PAYROLL:**

Mark Hoppen explained that due to a misunderstanding at the last council meeting on the notations on the payroll list because of a mid-month deduction, the total was changed. The following motion was made to correct the payroll approval.

**MOTION:** Move approval of payroll checks #12626 through #12742 in the amount of \$183,763.32.  
Owel/Ekberg - unanimously approved.

**EXECUTIVE SESSION:** For the purpose of discussing claims and property acquisition.

**MOTION:** Move to adjourn to executive session at 8:56 p.m. for the purpose of discussing claims and property acquisition for approximately 15 minutes.  
Picinich/Markovich - unanimously approved.

**MOTION:** Move to return to regular session at 9:10 p.m.  
Markovich/Picinich - unanimously approved.

**MOTION:** Move that we reject the claim for damages from Mr. Verdall.  
Picinich/Markovich - unanimously approved.

**ADJOURN:**

**MOTION:** Move to adjourn at 9:12 p.m.  
Platt/- unanimously approved.

Cassette recorder utilized.  
Tape 430 - Side A 190 - end.  
Tape 431 - Both Sides.  
Tape 432 - Side A 000 - 023.

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Mayor

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City Administrator



WASHINGTON FINANCE OFFICERS ASSOCIATION

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RECEIVED

JUN 25 1996

CITY OF GIG HARBOR

June 24, 1996

Gretchen Wilbert, Mayor  
City of Gig Harbor  
3105 Judson St  
Gig Harbor WA 98335

Dear Ms Wilbert:

This is to notify you that the City of Gig Harbor's 1996 Budget has earned the Washington Finance Officers Association Distinguished Budget Award. This award is patterned after the Government Finance Officers' Program and is the highest form of recognition in fiscal planning and budgeting within the State of Washington. In order to earn this award, the budget documents are critiqued by at least two reviewers who return a favorable response. I have received favorable responses from the reviewers of your 1996 document. (A summary of the responses will be mailed under separate cover to the official requesting the results.)

The budget document is judged on meeting program criteria covering policies, operations, financial planning and communications. The receipt of this recognition is evidence of an interest in effective fiscal management programs to the benefit of Gig Harbor residents. You and your staff are to be commended for such an interest.

A plaque and certificates will be presented to the City of Gig Harbor at the WFOA conference in Tacoma in September. We hope you will continue to participate in the programs of WFOA and GFOA.

Sincerely,

*Peggy Morant*

Peggy Morant  
WFOA Budget Awards Chair  
%City of Chehalis  
PO Box 871  
Chehalis, WA 98532  
(360) 748-6664

RECEIVED  
JUL 1 - 1996  
CITY OF GIG HARBOR

June 28, 1996

Mayor Gretchen Wilbert  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, WA 98335-1221

Dear Mayor Wilbert,

We are very pleased to advise the City of Gig Harbor that on June 17, 1996, the Internal Revenue Service issued a favorable private letter ruling on the pending transfer of control of Viacom Inc.'s cable operation to Tele-Communications, Inc. (TCI), paving the way for the closing of the transaction.

Several steps must be taken before the transaction can close. The most immediate is Viacom Inc.'s commencement of an exchange offer to its stockholders. The exchange offer began on June 24, 1996, and will expire at midnight (EDT) on July 22, 1996. Completion of the exchange offer is conditioned upon, among other things, there being a sufficient number of shares of Viacom Common Stock tendered for exchange and not withdrawn prior to the expiration date. Once the exchange offer is completed and the shares are exchanged, the transaction will move forward to a close.

The precise closing date is unclear at this time, but is anticipated to occur prior to August 30, 1996.

We, at Viacom, wish to express our appreciation for the cooperation and friendship we have enjoyed over these many years. As always, we will continue to keep you informed as the transaction progresses.

Sincerely,



Diane R. Lachel  
Director, Government/Community Relations

June 25, 1996

RECEIVED

JUN 27 1996

CITY OF GIG HARBOR

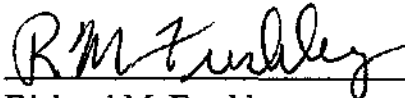
Mayor Gretchen Wilbert  
Gig Harbor City Council  
City Hall  
Gig Harbor WA 98335

I attended my first City Council Meeting last week as part of the group from the Peninsula Library. I was interested in the proceedings but was also disturbed that the arrangement of the meeting room hampers full participation by guests. Because of the way the podium, for guest speakers is placed, you can neither see their faces nor hear their remarks.

It would be simple to move the podium to the wall under the clock, so that it faced the staff table. This arrangement would greatly improve the acoustics and help guests to gain more from the council meetings. Also, guest speakers should be required to use the microphone so that remarks can be heard by all. It is ironic that these proceedings are called public "hearings", when the public cannot hear.

I hope that you will benefit from my observations.

Sincerely,



Richard M. Freshley  
4302 Berg Drive NW  
Gig Harbor WA 98335

Ph: 206-851-1126  
Fax: 206-858-8025  
E-Mail: 76652.1157@COMPUSERVE.COM

Enc: Sketch

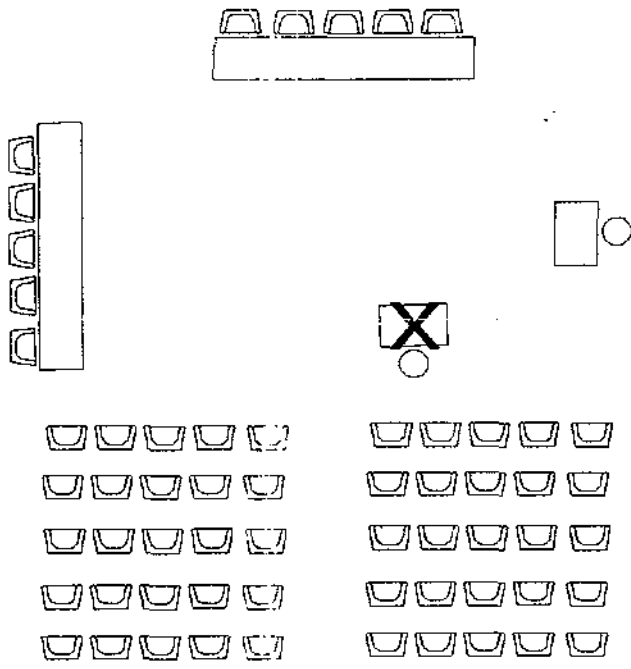


Diagram of Gig Harbor  
City Council Meeting Room

June 18, 1996

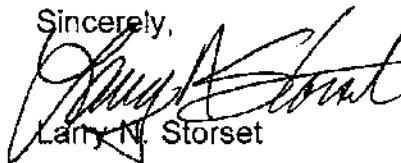
Gretchen Wilbert, Mayor  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

Dear Gretchen,

My term as a member of the City of Gig Harbor Planning Commission will be completed the end of this month. I have thoroughly enjoyed working with the Planning Commission members and the City of Gig Harbor staff as well as the many others who have participated in the work accomplished during these past four years. I have learned a great deal about our city and I am very proud and honored to have been appointed by you to serve on the commission. Although I will not be continuing for another appointment, I will continue to be actively involved in our cities future.

I expect that the future will have many new challenges and in particular the challenge of creating an acceptable solution to public parking. Should the opportunity arise, I would gladly serve in some capacity to help develop a solution to this critical need.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry N. Storset". The signature is stylized and cursive.

Larry N. Storset







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

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(206) 851-8136

## MEMORANDUM

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: PLANNING STAFF**  
**DATE: JULY 2, 1996**  
**RE: REZ 94-01 -- ESTHER COULTER - CONTRACT REZONE AT 9009  
FRANKLIN AVENUE (BETWEEN FRANKLIN AVENUE AND NO.  
HARBORVIEW DRIVE); SECOND READING OF ORDINANCE**

### INTRODUCTION/BACKGROUND

Esther Coulter requested approval of a contract rezone for a parcel located at 9009 Franklin Avenue. Preliminary approval of the concomitant rezone was approved by the City Council on November 14, 1994 subject to several conditions. One of the conditions stipulated that the official zoning map shall not be approved until the property owner shall file with the City Council for approval and record with the Pierce County auditor's office a final condominium plat for the parcel which reflects the approved site plan and which contains or references the information required as part of the site plan approval and the rezone contract. It was discovered however, that under Washington law, final condominium plats are based upon as-built drawings. A final plat could not, therefore, be recorded until after the project was completed. To meet the intent of the requirement for plat recordation prior to rezoning, a binding site plan was recorded with all the information which was to be included on the condominium plat. Another condition of approval required that a formal legal contract be submitted to the City's legal counsel for review and approval. A contract was submitted which was reviewed and approved as to form by Carol Morris, signed by the Mayor and is ready for recordation.

### REQUEST

All conditions of approval for rezone have been complied with and the applicant is now requesting final rezone approval.

### RECOMMENDATION

A draft ordinance approving the rezone is attached for the Council's consideration and includes a copy of the Coultercrest Concomitant Zoning Agreement. On the advise of legal counsel, minor changes have been incorporated. This is the second and final reading of the ordinance. Following adoption, the agreement will be filed with the Pierce County Auditor. The staff recommends approval of the ordinance as drafted.

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

**AN ORDINANCE TO AMEND THE CITY'S ZONING MAP BY REZONING FROM R-1 and B-2 TO R-3-CONTRACT A PARCEL OF LAND LOCATED AT 9009 FRANKLIN AVENUE, SUBJECT TO THE RECORDATION OF A CONCOMITANT ZONING AGREEMENT, WHICH SHALL GOVERN DEVELOPMENT OF THE PROPERTY.**

---

**WHEREAS**, Esther Coulter has requested a rezone from R-1 and B-2 to R-3 contract at 9009 Franklin Avenue (REZ 94-01/SPR 94-04); and

**WHEREAS**, a public hearing was held on October 19, 1994 at which time public input was received from numerous property owners within the vicinity of the subject site expressing support of the proposed rezone/site plan; and

**WHEREAS**, the Hearing Examiner recommended approval of the requested rezone\site plan as stated in his report dated October 27, 1994; and

**WHEREAS**, the Gig Harbor City Council has reviewed the record of the Hearing Examiner's decision at its regular session of November 14, 1994; and

**WHEREAS**, the Council agrees with the findings and conclusions of the Hearing Examiner as stated in his report for REZ 94-01/SPR 94-04 dated October 27, 1994 which refers to the staff report dated October 19, 1994; and,

**WHEREAS**, the Hearing Examiner has recommended conditions of approval for the proposed contract rezone subject to the condition that a formal legal contract be submitted to the City's legal counsel for review and approval and which contains the following additional conditions and restrictions:

1. Except for the parking lot and four-plex as shown on the approved site plan and landscape plan, no other uses or structures shall be allowed on the subject site.
2. All structures on the site shall conform to the following regulations:
  - (a) Fire flow must be provided in accordance with Uniform Fire Codes applicable at the time of building permit issuance.
  - (b) Access must be provided to all areas of both floors in accordance with the Washington State Standards for Access applicable at the time of building permit issuance. Access must also be provided in accordance with the Federal ADA Standards applicable at the time of building permit issuance.

- (c) Emergency exiting must be provided in accordance with Uniform Building Codes applicable at the time of building permit issuance.
  - (d) Fire rated separation walls and floor/ceiling assemblies will be required between each living unit in accordance with Uniform Building Codes applicable at the time of building permit issuance.
  - (e) A complete plan review will be done upon submittal of plans for building permit.
3. The lower parking lot will be at a level approximately 4 feet below natural grade (as existing prior to excavation) concealed behind berms around the perimeter of the premises, the berms being approximately 4 feet above the parking lot level. The perimeter berm and landscaping shall be designed to preserve sight lines from Peacock Hill Ave. entering N. Harborview Dr. as approved by the Public Works Department.
  4. Use, development and design of structures and landscaping on the property shall be consistent with the approved site plan and architectural designs ( to be included as labeled exhibits in the contract), provided that minor design and dimension alterations which do not alter the general scale, character, or intensity of development may be approved jointly by the Planning Director and owner or homeowner's association. Major amendments shall be approved only through City-adopted amendment processes for zoning designation and the joint approval of all owners of the property.
  5. In exchange for installation of curbs, gutters and sidewalks normally required as part of site plan approval, the owner of the subject parcel shall include on the recorded plat an easement to the City allowing curbs, gutters, sidewalks and roadways (which have historically existed on the site) across an area of a triangle measuring 30 feet up Peacock Hill Avenue and 60 feet along North Harborview Drive, with the apex of the triangle being on the property corner nearest the street  
  
intersection (as illustrated in Section VII.2 of the staff report dated October 19, 1994).
  6. Normal half street improvements shall be installed in accordance with code requirements along the property frontage on Franklin Avenue.
  7. An ordinance amending the official zoning map shall not be approved until the property owner shall file with the City Council for approval and record with the Pierce County auditor's office a final condominium plat for the parcel which reflects the approved site plan and which contains or references the information required as part of the site plan approval and this contract. All referenced information not contained directly on the plat shall be recorded with the Pierce County auditor's office.
  8. Maintenance of all privately owned common facilities on the site shall be the responsibility of the developer, owner or a home owners association. If common facilities are to be maintained by a home owners association, the association shall be established and incorporated prior to final plat approval. A copy of the association's

bylaws shall be submitted with the final plat and shall include, at a minimum, the following authorities and responsibilities:

- A. The enforcement of covenants imposed by the landowner or developer.
  - B. The levying and collection of assessments against all units to accomplish the association's responsibilities.
  - C. The collection of delinquent assessments through the courts.
  - D. The letting of contracts to build, maintain and manage common facilities.
9. Prior to finalization of the plat, a final landscape plan shall be submitted to and approved by the planning staff which specifies plant species and which conforms to all landscaping requirements of the zoning code.
10. All landscaped areas shall include a mechanical irrigation system.
11. The landscape plan shall include specifications on the berm design. The berm shall be a sloped berm on the street side and shall include sufficient ground cover to prevent erosion from water run-off onto the sidewalk.
12. Prior to issuance of final occupancy, all required improvements and landscaping shall be constructed and installed. In lieu of construction or installation of required improvements, a bond equal to an amount of 120% of the contractors bid for all required improvements shall be posted with the City. If accepted by the City, the bond shall have a term not to exceed eighteen (18) months. Required improvements shall be installed within twelve months of final occupancy permit issuance. Failure to construct or install the required improvements within the time specified to City standards shall result in the City's foreclosure of the bond. Upon foreclosure, the City shall construct, or may contract to construct and complete, the installation of the required improvements.
13. Prior to building permit issuance a grading and drainage plan, including provisions for storm water collection and retention, shall be submitted to the Public Works Department for review and approval; and,

**WHEREAS**, condition number 7 above states (in part) that the official zoning map shall not be approved until the property owner shall file with the City Council for approval and record with the Pierce County auditor's office a final condominium plat for the parcel which reflects the approved site plan and which contains or references the information required as part of the site plan approval and this contract.

**WHEREAS**, a binding site plan containing all required information stipulated in condition number 7 above was recorded (A.F.N. 9603270463) in lieu of a final condominium plat because a final condominium plat cannot be recorded until after the project is completed and because the project cannot be completed until the rezone is approved; and

**WHEREAS**, a formal legal contract as per the attached copy was submitted to the City's legal counsel for review and approval and is ready for recordation at the Pierce County Auditor's Office ; and

**WHEREAS**, all other conditions of approval have been complied with;

**NOW, THEREFORE**, the City Council of the City of Gig Harbor, Washington, **ORDAINS** that the following described property be rezoned from R-1 (single family) and B-2 (general business) to R-3-Contract (Multi-family residential - contract), subject to the recordation of a concomitant zoning agreement which shall govern development of the property:

DESCRIPTION-PER STATUTORY WARRANTY DEED A.F.N. 8802020363;

BEGINNING AT THE SOUTHEAST CORNER OF LOT SIX (6), PRENTICE ADDITION TO GIG HARBOR, EXTENDING THENCE NORTH 43 DEGREES WEST, ALONG THE EASTERLY LINE OF SAID LOT SIX AND THE EASTERLY LINE OF LOT FIVE (5) IN THE SAME ADDITION, A DISTANCE OF 227.28 FEET, TO THE NORTHEAST CORNER OF SAID LOT 5, IN SAID ADDITION; THENCE NORTH 44 DEGREES 27 MINUTES 55 SECONDS EAST A DISTANCE OF 100 FEET; THENCE SOUTH 43 DEGREES EAST, ON A LINE PARALLEL WITH THE EASTERLY BOUNDARY LINES OF SAID LOTS 5 AND 6 OF SAID PRENTICE ADDITION, A DISTANCE OF 157.48 FEET TO THE INTERSECTION OF SAID LINE WITH THE WESTERN BOUNDARY OF Section 17.72.030(M)SKAGIT STREET; THENCE SOUTH ALONG THE WESTERN BOUNDARY LINE OF SKAGIT STREET A DISTANCE OF APPROXIMATELY 46.22 FEET TO THE INTERSECTION OF SAID LINE WITH THE NORTHERLY BOUNDARY LINE OF FRONT STREET; THENCE SOUTHWESTERLY ALONG THE NORTH BOUNDARY LINE OF FRONT STREET A DISTANCE OF APPROXIMATELY 60.53 FEET TO THE PLACE OF BEGINNING.

The concomitant zoning agreement is attached hereto as Exhibit A, and is incorporated herein by this reference.

**PASSED** this \_\_\_\_\_ day of \_\_\_\_\_, 1996

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

ATTEST:

\_\_\_\_\_  
Mark E. Hoppen, City Administrator

Filed with City Clerk: June 19, 1996

Ordinance Adopted:

Date Published:

Effective Date:

Recorded at the Request of, and  
after Recording Return to:

Planning Director  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

## CONCOMITANT ZONING AGREEMENT

THIS AGREEMENT is entered into by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Esther Coulter, a single individual (hereinafter the "Owner").

### WITNESSETH:

WHEREAS, the Owner is a person owning a fee simple or having a substantial beneficial interest in the real property commonly described as 9009 Franklin Avenue in Gig Harbor, which is legally described in Exhibit A, attached hereto and by this reference incorporated herein (hereinafter the "Property"); and

WHEREAS, the Owner applied to the City for site plan approval and a rezone from R-1 and B-2 zoning designations to a R-3 zone with a concomitant zoning agreement (REZ 94-01SPR 94-04); and

WHEREAS, the Gig Harbor Hearing Examiner held a public hearing on the application on October 19, 1994, and recommended conditional approval of the application in his decision of October 27, 1995; and

WHEREAS, the Gig Harbor City Council reviewed the recommendation of the Hearing Examiner at a regular public meeting, and decided to conditionally approve the application in Resolution No. 433, dated November 14, 1995; and

WHEREAS, one of the conditions of the Council's approval is the Owner's execution of a concomitant zoning agreement to be recorded against the property, which imposed certain use and development restrictions designed to ameliorate the adverse impact of unrestricted use and development of the Property in the R-3 zone;

NOW, THEREFORE, the Owner hereby covenants, bargains and agrees on behalf of herself, her heirs, successors, legal representatives and assigns as follows:

Section 1. If the Property is rezoned to R-3 zoning designation, development of the Property shall be accomplished in accordance with the following conditions and restrictions:

- A. Except for the parking lot and four-plex as shown on the approved site plan and landscape plan, no other uses or structures shall be allowed on the Property.
- B. All structures on the Property shall conform to the following regulations:
  - 1. Fire flow must be provided in accordance with Uniform Fire codes applicable at the time of building permit issuance.
  - 2. Access must be provided to all areas of both floors in accordance with Washington State Standards for Access applicable at the time of building permit issuance. Access must also be provided in accordance with Federal ADA Standards applicable at the time of building permit issuance.
  - 3. Emergency exiting must be provided in accordance with the Uniform Building Codes applicable at the time of building permit issuance.
  - 4. Fire rated separation walls and floor/ceiling assemblies will be required between each living unit in accordance with Uniform Building Codes applicable at the time of building permit issuance.
  - 5. A complete plan review will be done upon submittal of plans for building permit.
- C. The lower parking lot will be a level approximately four feet below natural grade (as existing prior to excavation) concealed between berms around the perimeter of the premises, the berms being approximately four feet above the parking lot level. The perimeter berm and landscaping shall be designed to preserve sight lines from Peacock Hill Avenue entering North Harborview Drive as approved by the Public Works Director.
- D. Use, development and design of structures and landscaping on the Property shall be consistent with the approved site plan and architectural designs (which are attached hereto as Exhibits B through \_\_\_), provided that minor design and dimension alterations which do not alter the general scale, character, or intensity of the development may be approved jointly by the Planning Director and Owner or homeowners' association. Major amendments shall be approved only through City-adopted amendment processes for zoning designation and the joint approval of all owners of the Property.

- E. In exchange for installation of curbs, gutters and sidewalks normally required as part of site plan approval, the Owner shall include on the recorded plat an easement to the City allowing curbs, gutters, sidewalks and roadways (which have historically existed on the site) across an area of a triangle measuring 30 feet up Peacock Hill Avenue and 60 feet along North Harborview Drive, with the apex of the triangle being on the property corner nearest the street intersection (as illustrated in Section VII(2) of the staff report dated October 19, 1994).
- F. Normal half street improvements shall be installed in accordance with code requirements along the Property frontage on Franklin Avenue.
- G. An ordinance amending the official zoning map shall not be approved until the Owner shall file with the City Council for approval, and record with the Pierce County Auditor's office, a final condominium plat for the parcel which reflects the approved site plan and which contains or references the information required as part of the site plan approval and this contract. All referenced information not contained directly on the plat shall be recorded with the Pierce County Auditor's office.
- H. Maintenance of all privately owned common facilities on the Property shall be the responsibility of the Owner or a homeowners' association. If common facilities are to be maintained by a homeowners' association, the association shall be established and incorporated prior to final plat approval. A copy of the association's bylaws shall be submitted with the final plat and shall include, at a minimum, the following authorities and responsibilities:
  - 1. The enforcement of covenants imposed by the landowner or developer.
  - 2. The levying and collection of assessments against all units to accomplish the association's responsibilities.
  - 3. The collection of delinquent assessments through the courts.
  - 4. The letting of contracts to build, maintain and manage common facilities.
- I. Prior to finalization of the plat, a final landscape plan shall be submitted to and approved by the planning staff which specifies plant species and which conforms to all landscaping requirements of the zoning code. Plant species shall be chosen to ensure proper buffering, but not impair views from nearby properties.
- J. All landscaped areas shall include a mechanical irrigation system.



- K. The landscape plan shall include specifications on the berm design. The berm shall be a sloped berm on the street side and shall include sufficient ground cover to prevent erosion from water run-off onto the sidewalk.
- L. Prior to issuance of final occupancy, all required improvements and landscaping shall be constructed and installed. In lieu of construction or installation of required improvements, a bond equal to an amount of 120% of the contractor's bid for all required improvements shall be posted with the City. If accepted by the City, the bond shall have a term not to exceed eighteen (18) months. Required improvements shall be installed within twelve months of final occupancy permit issuance. Failure to construct or install the required improvements within the time specified to City standards shall result in the City's foreclosure of the bond. Upon foreclosure, the City shall construct, or may contract to construct and complete, the installation of the required improvements.
- M. Prior to building permit issuance, a grading and drainage plan, including provisions for storm water collection and retention, shall be submitted to the Public Works Department for review and approval.

Section 2. This contract shall be recorded in the records of the Pierce County Auditor and the covenants and promises hereof shall be deemed to attach and run with the Property, and shall be binding on the Owner, her heirs, assigns, successors and legal representatives.

Section 3. This contract may be amended or modified by agreement between the Owner and the City; provided that the amended contract shall be approved by the City Council by ordinance. Nothing in this Agreement shall prevent the City Council from making such further amendment to its Zoning Code, Comprehensive Plan or other development regulations as the Council may deem necessary in the interests of public health and safety.

Section 4. It is further expressly agreed that in the event any covenant, condition or restriction hereinabove contained or any portion thereof is determined by a court of competent jurisdiction to be invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition, or restriction hereinabove contained.

Section 5. The Owners shall pay all costs of recording of this contract.

Section 6. The prevailing party in any litigation brought to enforce this Agreement shall be entitled to its reasonable costs and reasonable attorneys' fees in such litigation.



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

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

Dated: 6/25/96

Molly M. Towstee  
Molly M. Towstee  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at: Gig Harbor  
My Commission expires: 12/2/99





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

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(206) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: STEVE BOWMAN, BUILDING OFFICIAL/FIRE MARSHAL**  
**DATE: JULY 2, 1996**  
**SUBJECT: REVISIONS TO THE GHMC RELATING TO FIRE INVESTIGATION RESPONSIBILITIES**

**INTRODUCTION:**

The Washington State Legislature in the adoption of Senate Bill 6403 has delegated the responsibility for fire investigations within the City of Gig Harbor to the Pierce County Fire District No.5 Fire Chief.

**POLICY ISSUES:**

Attached for your consideration is an ordinance, which would modify the GHMC to reflect the action taken by the Washington State Legislature in the adoption of Senate Bill 6403.

The City Attorney has reviewed this draft of the adopting ordinance and changes have been incorporated to Section 104.2.

**RECOMMENDATION:**

The Mayor and City Council adopt the necessary revisions to the GHMC.

**CITY OF GIG HARBOR  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REVISING THE FIRE CODE TO REFLECT THE DESIGNATION OF THE FIRE CHIEF OF THE PIERCE COUNTY FIRE DISTRICT NO. 5 AS THE PERSON RESPONSIBLE FOR INVESTIGATING FIRES WITHIN THE CITY, AS REQUIRED BY CHAPTER 161, 1996 LAWS OF WASHINGTON, REPEALING SECTION 15.12.030 AND AMENDING SECTION 15.12.040 OF THE GIG HARBOR MUNICIPAL CODE.**

**WHEREAS**, the Washington State Legislature has passed Chapter 161, 1996 Laws of Washington (SB 6403) and which became effective on June 1, 1996; and,

**WHEREAS**, the Gig Harbor Municipal Code must be amended to reflect the responsibilities designated to the Pierce County Fire District No.5 Fire Chief relating to fire investigation; and,

**WHEREAS**, Section 15.12.030 of the Gig Harbor Municipal Code designates the Gig Harbor Fire Marshal responsible for fire investigation within the City of Gig Harbor and should therefore be repealed; and,

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

Section 1. Section 15.12.030 of the Gig Harbor Municipal Code is hereby amended as follows:

Section 15.12.030    Amendment to UFC Section 104.2.

Section 104.2 of the Uniform Fire Code is amended as follows:

~~104.2 Investigations. The fire department may be requested by the Gig Harbor Fire Marshal to assist in the investigation to determine the cause, origin and circumstances of each and every fire occurring in the jurisdiction involving loss of life or injury to person or destruction or damage to property and, if it appears to the Gig Harbor Fire Marshal that such fire is of suspicious origin, the Gig Harbor Fire Marshal is authorized to take immediate charge of all physical evidence relating to the cause of the fire and is authorized to pursue the investigation to its conclusion.~~

~~a. The chief is authorized to investigate the cause, origin and circumstances of unauthorized releases of hazardous materials.~~

~~b. The Fire Marshal is authorized to investigate promptly the cause, origin and circumstances of each and every fire occurring within the City of Gig Harbor boundaries and involving loss of life or injury to persons or destruction to or damage of property. If the Fire Marshal has reasonable cause to believe that arson or criminal activity is connected with the fire, then the Fire Marshal will report his findings to the Gig Harbor Police Department. The Fire Marshal shall assist the Gig Harbor Police Department throughout the investigation.~~

~~c. The Gig Harbor Fire Marshal or in his absence the Gig Harbor Police Chief, is authorized to request assistance by other approved inspection agencies in making fire investigations if after preliminary investigation, the Fire Marshal has reasonable cause to believe that arson or criminal activity is connected with the fire, or if a fatality is involved.~~

104.2 Investigations. The fire department Fire Chief of Pierce County Fire District No. 5 or his/her designee is authorized to investigate promptly the cause, origin and circumstances of each and every fire occurring in the jurisdiction City of Gig Harbor involving loss of life or injury to person or destruction or damage to property and, if it appears to the bureau of investigation that such fire is of suspicious origin, they are authorized to take immediate charge of all physical evidence relating to the cause of the fire and are authorized to pursue the investigation to its conclusion.

The chief Fire Chief of Pierce County Fire District No. 5 or his/her designee is authorized to investigate the cause, origin and circumstances of unauthorized releases of hazardous materials.

The police department is authorized to assist the fire department in its investigations when requested to do so.

A copy of the fire investigation report issued by the Fire Chief of Pierce County Fire District No. 5 or his/her designee shall be submitted to the Washington State Patrol as required under Chapter 161, 1996 Laws of Washington and to the City Fire Marshal.

Section 2. Section 15.12.040 of the Gig Harbor Municipal Code is hereby amended as follows.

15.12.040 Amendment to UFC Article 2.

Article 2 of the Uniform Fire Code is amended as follows:

The following are additional definitions and abbreviations to those found in Article 2 of the Uniform Fire Code:

1. "AWWA" means the American Water Works Association.
2. "Building valuation data" means the Building Standards monthly publication issued by the International Conference of Building Officials.
3. "Commercial areas" means any development with buildings other than dwellings or industrial structures. Questions arising in the interpretation of this definition, concerning whether a development is commercial shall be resolved by reference to the occupancy tables contained in the Uniform Fire Code.
4. "Corporation counsel," as used in the Uniform Fire Code, means the city attorney for Gig Harbor.
5. "Dead-end main" means a water main over 50 feet long and not being fed from both ends at the time of installation.
6. "Draft hydrant" means a mechanical device designed for the removal of water by a fire pumper by applying a negative pressure without going through the normal domestic water system.
7. "Expanding water system" means an approved, expanding water system which is under taking new construction (definition follows) to provide water service to additional service connections. Any expanding water system shall install facilities sized to meet the necessary minimum design criteria for area being served. The expanding system shall show by plans submitted by a registered professional engineer how fire flow, if required, is to be provided and the plan shall be approved by the Gig Harbor public works department and the Gig Harbor fire marshal.
8. "Fire chief," "chief," or "chief of the fire prevention bureau," as used in the Uniform Fire Code, means the Pierce County Fire District No.5 Fire Chief for the purposes of fire investigation and fire suppression and means the fire marshal of Gig Harbor for the purposes of enforcement of the uniform fire code and Chapter 15 of the Gig Harbor Municipal Code.
9. "Fire Department" is a regularly organized fire department, fire protection district or fire company regularly charged with the responsibility of providing fire protection to the jurisdiction. Where referenced within this code the fire department shall mean the Department of Planning and Building.
10. "Fire flow" means the flow of water required for fire-fighting at a specific building or within a specific area.



11. "Fire marshal" means the city fire marshal or his appointee.
12. "Flush-type hydrant" means a hydrant installed entirely below grade.
13. "G.P.M." or "g.p.m." means gallons per minute.
14. "Hydrants" shall mean fire hydrants as approved by the city fire marshal. Special purpose adapters may be used with approval of the fire department.
15. "Industrial area" means manufacturing operations conducted in buildings of conventional design suitable for various types of manufacture.
16. "Inspector" of the fire department, or bureau of fire prevention, means personnel designated and assigned to perform the fire inspection functions by the fire marshal of Gig Harbor.
17. "Office of fire prevention and arson control," as used in the Uniform Fire Code and as amended in this chapter means that office as recognized by the city fire marshal to be able to perform the necessary functions of arson control.
18. "Private hydrant" means a fire hydrant situated and maintained to provide water for fire-fighting purposes with restrictions as to use. The location may be such that it is not readily accessible for immediate use by the fire department for other than certain private property.
19. "Public hydrant" means a fire hydrant so situated and maintained as to provide water for fire-fighting purposes without restriction as to use for the purpose. The location is such that it is accessible for immediate use of the fire department for all nearby property.
20. "Standby firemen," "fire watch," and "fire guard," as used in the Uniform Fire Code and as amended in this chapter means one or more experienced firemen or other qualified persons, as required and approved by the Gig Harbor fire marshal. They shall be uniformed and have available the necessary fire protection equipment. Also see Section 2501.19 of the Uniform Fire Code.
21. "Substantial alteration" is any alteration, where the total cost of all alterations (including but not limited to electrical, mechanical, plumbing, and structural changes) for a building or facility within any 12-month period amounts to 60 percent or more of the appraised value.
22. "Transmission main" means a main used to transport water from a source to storage, source to source, source or storage to water main.

23. "Water authority" and "purveyor" means the city public works department, a water district, or other body legally supplying water in the area and approved by the city.

24. "Water main" means the piping used to deliver domestic water and water intended for fire protection.

25. "Yard system" means any extension from a transmission main and/or water main onto a development site.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. This Ordinance shall take effect and be in full force five days after a publication of a summary.

PASSED by the Gig Harbor City Council and approved by its Mayor at a regular meeting of the council held on the \_\_\_\_ day of \_\_\_\_\_, 1996.

APPROVED:

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

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Mark E. Hoppen, City Administrator

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_

FILED WITH THE CITY CLERK: \_\_\_\_/96  
PASSED BY THE CITY COUNCIL: \_\_\_\_/96  
PUBLISHED: \_\_\_\_/96  
EFFECTIVE DATE: \_\_\_\_/96  
ORDINANCE NO. \_\_\_\_\_



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

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(206) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MHA*  
**SUBJECT: REPEAL OF TAXICAB ORDINANCE**  
**DATE: JUNE 18, 1996**

#### **INFORMATION/BACKGROUND**

The current chapter in the Gig Harbor Municipal Code that regulates the operation of a taxicab service in the City was put in effect in 1983. Recently, interest was shown by someone wanting to start a Purdy-based taxi service. In response to this inquiry, review of the code revealed that the chapter, most specifically fares, was outdated. It was determined that the current regulations were too prohibitive and a taxicab service could more effectively be regulated through the existing business license procedures.

#### **RECOMMENDATION**

Staff recommend that Council approve the attached ordinance at its second reading.

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

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REPEALING  
GHMC CHAPTER 5.20 RELATING TO LICENSING OF TAXICAB SERVICES.**

---

WHEREAS, the City of Gig Harbor has a chapter regulating the operation and licensing of a taxicab service in the City, and

WHEREAS, the current regulations are outdated and prohibitive, and

WHEREAS, in order to insure uniformity in licensing, and to be more administratively efficient, the process of licensing a taxicab service will continue to be processed under Title 5 Business and Occupation Licenses and Regulations;

NOW, THEREFORE,

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

Section 1. Chapter 5.20 of the Gig Harbor Municipal Code is hereby repealed.

Section 2 - Effective Date. This ordinance shall take effect and shall be in full force and effect five (5) days after its passage, approval and publication as required by law.

PASSED by the Council of the City of Gig Harbor, this \_\_\_\_ day of \_\_\_\_, 1996.

APPROVED:

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

ATTEST:

\_\_\_\_\_  
MARK E. HOPPEN  
City Administrator/Clerk



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3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(206) 851-8136

**TO:** MAYOR WILBERT AND CITY COUNCIL  
**FROM:** MARK HOPPEN, CITY ADMINISTRATOR *MH*  
**SUBJECT:** EMERGENCY MANAGEMENT  
**DATE:** JULY 2, 1996

### **INFORMATION/BACKGROUND**

Attached is the Emergency Management summary and a proposed contract with an attachment describing the deliverables to the City of Gig Harbor from Pierce County Emergency Management. The contract language presented has been reviewed and adjusted by the City's legal counsel and Pierce County has accepted these recommended changes.

### **POLICY CONSIDERATIONS**

Under Washington State law (RCW 38.52), every county, city, and town is directed to establish an emergency management program. There are three options open to the City. One is to establish their own program, appropriate funds and develop a budget, and direct staff to run it. The second option is to form a "local organization for emergency management" as outlined in RCW 38.52.070, and develop a budget, and hire a director and staff to run it. The third option is to contract with Pierce County Emergency Management where the services are outlined in a contract.

### **FISCAL IMPACTS**

The cost to the City will be \$.60 per person. With the current population of 4110, the fee will be \$2,466.00 per year. Our initial payment will be prorated for the remainder of the year.

### **RECOMMENDATION**

Move to authorize the Mayor to sign the contract with Pierce County Emergency Management to provide for emergency management services from their approved program.

## AGREEMENT FOR EMERGENCY MANAGEMENT

THIS AGREEMENT is made and entered into by and between PIERCE COUNTY, a political subdivision of the State of Washington, (hereinafter referred to as "County") and the CITY OF GIG HARBOR, a municipal corporation of the State of Washington, (hereinafter referred to as "City")

WHEREAS, County has established an Emergency Management Plan pursuant to the provisions of Chapter 38.52 of the Revised Code of Washington; and

WHEREAS, County and City believe it to be in the best interests of their citizens that County and City share and coordinate services in the event of an emergency situation; NOW THEREFORE,

### IT IS HEREBY AGREED AS FOLLOWS:

1. Purpose. It is the purpose of this agreement to provide an economical mechanism to provide for the common defense and protect the public peace, health, and safety and to preserve the lives and property of the people of the signatory jurisdictions against the existing and increasing possibility of the occurrence of major emergencies or disasters, either man-made or from natural causes.

2. Duration. The duration of this agreement shall be that period commencing on the 1st day of \_\_\_\_\_ and terminating at midnight on the 31st day of December, 1996, unless this agreement is sooner extended or terminated in accordance with the terms hereof.

3. Definitions. As used in this agreement, the following definitions will apply.

A. "Emergency Management" or "Comprehensive Emergency Management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergency and disasters, and aid victims suffering from injury or damage resulting from disasters caused by all hazards, whether natural or man-made, and to provide support for search and rescue operations for persons and property in distress.

B. "Emergency or Disaster" shall mean an event or set of circumstances which: (a) demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences or (b) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

4. Services. County shall provide emergency management services to the city as required by the County's Emergency Management Plan, as outlined in Chapter 38.52. RCW in accordance with the provisions of said chapter as such services are defined herein and as more

specifically described in Attachment 'A', which is incorporated herein by this reference. All such services shall be provided to the City during the term of this agreement.

5. Compensation. Upon execution of this Agreement, City shall pay County the sum of \$.60 per capita per year for all services rendered under the terms of this agreement, using population figures from the "Population Trends for Washington State" publication of the State Office of Financial Management. Nothing herein shall prevent County from making a claim for additional compensation in the event of an actual emergency or disaster as authorized by Chapter 38.52. RCW.

6. Termination. Either party may terminate this agreement upon ninety (90) days written notice to the other party. In the event that the County terminates this Agreement prior to the expiration date set forth in Section 2, or prior to the end of any one year renewed term after the County has received payment from the City as described in Section 5, the County shall reimburse the City on a pro-rata basis for the City's annual payment for services or work not performed.

Notices and other communications shall be transmitted in writing by U.S. Mail, postage prepaid, addressed to the parties as follows:

If to Pierce County, to: Pierce County, Office of the Executive  
930 Tacoma Avenue South, Room 737  
Tacoma, WA 98402-2102

If to City of Gig Harbor: Office of the Mayor  
3105 Judson Street  
Gig Harbor, WA 98335

7. Renewal. This agreement may be renewed for successive one year terms upon the mutual agreement of the parties as signified by a Memorandum of Renewal signed by the duly authorized representatives of each of the parties. Such Memorandums of Renewal must be signed by both parties by January 30th of each year to effect a renewal of the Agreement for the following year.

8. Hold Harmless and Indemnification. The County, its officials, officers, employees and agents hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents, and agents from any and all claims, costs, judgments, awards, attorneys' fees or liabilities, including claims by the County's own employees to which the county might otherwise be immune under Title 51, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the County, its officials, officers, employees or agents in performing this Agreement are the proximate cause. This covenant of indemnification shall include, but not be limited by this reference to, claims against the City arising as a result of the negligent acts or omissions of the County, its officers, officials, employees or agents, in the performance of work or services permitted under this Agreement. Said indemnification obligation shall extend to claims which are not reduced to a suit and any claims

which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the County refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court of competent jurisdiction (or such other tribunal that the parties shall agreed to decide the matter) to have been a wrongful refusal on the part of the County, then the County shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' and costs of the City, including reasonable attorneys' fees for recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury or death to persons or damage to property caused by or resulting from the concurrent negligence of the County and the City, its officers, officials, employees or agents, the County's liability hereunder shall only be to the extent of the County's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the County's waiver of immunity under Title 41 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The parties acknowledge that certain immunities are available to them under chapter 38.52 RCW. Unless this indemnification provision presents a conflict with chapter 38.52 RCW, it shall govern the indemnification rights and responsibilities of the parties hereto.

9. General. Neither party may assign or transfer this contract or any rights or obligations hereunder without the prior written consent of the other party. This contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever. Any changes to this contract requested by either party may only be affected if mutually agreed upon in writing by duly authorized representatives of the parties hereto.

10. Governing law, resolution of disputes. This Agreement shall be construed in accordance with the laws of the State of Washington. The prevailing party in any legal action shall be entitled to all remedies provided herein, and to all its costs and expenses, including reasonable attorneys' fees, expert witness fees and any such fees and expenses incurred on appeal.

11. Severability. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other of its provisions.

12. Filing. This Agreement shall become effective upon the occurrence of the following events:

- a. approval of the Agreement by the official action of the governing bodies of each of the parties;





Attachment 'A'

**PIERCE COUNTY DEPARTMENT OF EMERGENCY MANAGEMENT  
PROPOSED CONTRACT DELIVERABLES TO  
CITY OF GIG HARBOR, WASHINGTON**

1. Offer the Applied Technology Center classes to the school district, fire service, law enforcement, public works and other interested parties in Gig Harbor.
2. Conduct a Table Top Exercise for the City Council as appropriate.
3. Assist in sending personnel to the Emergency Management Institute in Emmitsberg, Maryland.
4. Review city emergency management plans as developed.
5. Assist in exercise design and conducting exercises for the various departments within the City of Gig Harbor.
6. Provide information on a model city ordinance or other legal and administrative matters as they pertain to emergency management.
7. Through quarterly meetings with other cities and towns, provide up-dated information on emergency management trends, planning, policies, training opportunities, etc.
8. Provide access to the Local Emergency Planning Committee (LEPC) activities.
9. Advise on special conferences such as the Washington State Emergency Managers Association and the Washington State Emergency Management Directors Conference.
10. Train neighborhood captains for the Neighborhood Preparedness Program as needed.
11. Present Emergency Preparedness classes for the general public.
12. Assist the Gig Harbor Emergency Manager in management response functions if necessary and provide manning for his EOC if necessary.
13. Represent the community for disaster recovery as needed.
14. Monitor Amateur Radio support to the community.
15. Offer and assist in other emergency management program assistance as appropriate such as exercises, special training, incident support.
16. Conduct specialized emergency management training as appropriate or available.



## CITY OF GIG HARBOR PRESENTATION SUMMARY

### ISSUE: Emergency Management

Prepared by William Lokey, Director, Pierce County Department of Emergency Management

Under Washington State law (RCW 38.52), every county, city and town is directed to establish an emergency management program. The amount of local commitment (i.e. size and scope of the program) is a discretionary policy decision each respective political jurisdiction must make. Under the law (RCW 38.52) and state administrative codes (WAC 118-30) there are three options for a political jurisdiction to be in compliance with the requirements of establishing an emergency management program.

1. Do it themselves. By local ordinance establish a program, appropriate funds for it, develop a budget, hire a director and staff, etc.
2. Form a "local organization for emergency management" where the chief executives of two or more jurisdictions form the organization as outlined in RCW 38.52.070, decide upon a fair contribution from each, develop a budget, hire a director and staff, etc.
3. Contract for emergency management services from an existing approved program where the specifics of services are outlined in a contract, mutually agreeable to both parties.

The first step in the process is for a jurisdiction to decide that they want to do something with regard to emergency management in the first place. This decision may be based upon statutory requirements, disaster potential for the area, disaster history in the area, public pressure or possibly other reasons. Historically in Washington State the reasons have been as varied as the structure of emergency management throughout the state.

If a jurisdiction decides it wants to have an emergency management program, the next step is to decide what is the most efficient and effective of the above ways to do it. Also, the structure of the program within a local jurisdiction is permissive, subject to local government discretion. Emergency management offices in Washington are found as separate departments, as well as within law enforcement, fire service, public works, communications, administrative services, planning, and transportation departments.

In Pierce County government, the Department of Emergency Management is a separate department within the Public Safety branch. DEM has five divisions including Emergency Management, the Fire Prevention Bureau, the E9-1-1 Administration, the EMS Administration, and Radio Communications. We contract with the City of Tacoma and ten other cities and towns,



including Fife, Sumner, Bonney Lake, Steilacoom, Milton, Orting, Dupont, Fircrest, University Place, and Eatonville. At this time, Puyallup and Buckley have their own programs.

For the smaller cities and towns, the current contract price is \$.60 per capita. This may increase in the future as the economic impact of incorporations is determined. The goal is to have some parity between what the cities and towns pay and the per capita contribution from the unincorporated county.

The Pierce County Emergency Management Program focuses on four primary areas: **emergency public education** to help citizens become more self sufficient and able to take care of themselves and their neighbors, **training** to help policy makers and responders have the necessary skills they may need to solve problems in disasters, **planning** to help guide organizational and individual actions in disaster preparedness, response and recovery, and **building interagency cooperation** to improve coordinated preparedness, response and recovery efforts.

The areas where our contract cities want program emphasis are covered in the "Scope of Work" section of each respective contract. (Sample Scope of Work attached) In some of our communities, the effort has been toward public education, in others, the effort has been in training. It has varied for each community. Our recommended first task is the development of a local emergency ordinance to cover such policy issues as emergency authority, chain of command, succession and delegation of emergency powers and emergency purchasing. Each city or town also is asked to designate a lead person as a point of contact for program development and ongoing work.

It is important to note that under the terms of the contract, Pierce County does not assume any command and control authority over any city personnel, facilities or equipment. Under the law, this is totally a city or town responsibility. County assistance is also supplemental to the efforts of the city in disaster response. Our goal is to develop the city or town's capability to take care of its own needs to the maximum extent possible should a disaster occur.

Under the terms of the contract we are also able to assist with emergency management administrative issues, such as registration and documentation requirements for the use of volunteers (emergency workers as outlined in RCW 38.52 and WAC 118-04), the reporting and Community Right to Know requirements of the Emergency Planning and Community Right to Know Act of 1986 (EPCRA)(as outlined in WAC 118-40) , the planning requirements of the Oil Pollution Act of 1990 (OPA-90) if needed, and application requirements for federal disaster relief such as after the Inaugural Day Windstorm of 1993 or the Floods of 1996..

Pierce County has made a strong commitment to Emergency Management. The Department itself is a recognized state and national leader in emergency public education, training, emergency planning, EPCRA and OPA-90 issues, and urban search and rescue. We feel we could provide the citizens of Gig Harbor with the most cost effective option for a quality emergency management program.

June 25, 1996

RECEIVED

JUN 27 1996

CITY OF GIG HARBOR

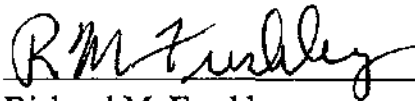
Mayor Gretchen Wilbert  
Gig Harbor City Council  
City Hall  
Gig Harbor WA 98335

I attended my first City Council Meeting last week as part of the group from the Peninsula Library. I was interested in the proceedings but was also disturbed that the arrangement of the meeting room hampers full participation by guests. Because of the way the podium, for guest speakers is placed, you can neither see their faces nor hear their remarks.

It would be simple to move the podium to the wall under the clock, so that it faced the staff table. This arrangement would greatly improve the acoustics and help guests to gain more from the council meetings. Also, guest speakers should be required to use the microphone so that remarks can be heard by all. It is ironic that these proceedings are called public "hearings", when the public cannot hear.

I hope that you will benefit from my observations.

Sincerely,



Richard M. Freshley  
4302 Berg Drive NW  
Gig Harbor WA 98335

Ph: 206-851-1126  
Fax: 206-858-8025  
E-Mail: 76652.1157@COMPUSERVE.COM

Enc: Sketch

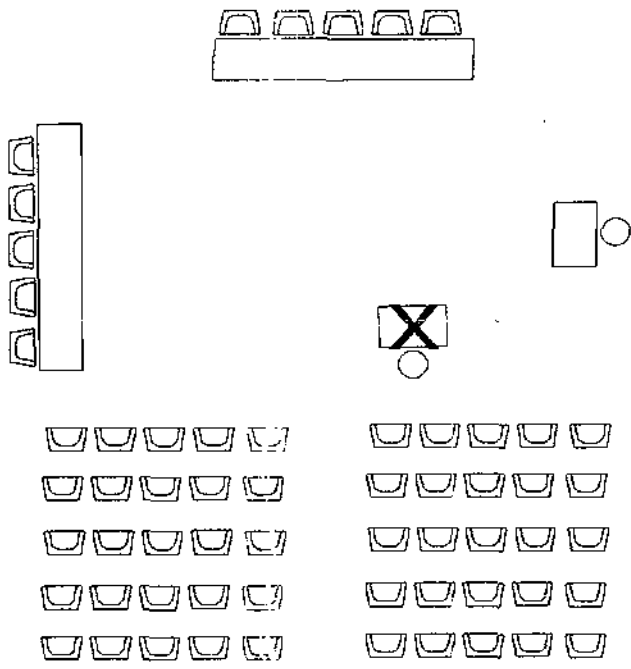


Diagram of Gig Harbor  
City Council Meeting Room



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

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(206) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR**  
**SUBJECT: CHAMBER COUNTER/BOGUE BUILDING**  
**DATE: JULY 3, 1996**

### **INFORMATION/BACKGROUND**

The Chamber has countered the city's offer to sell the Bogue Building. The counter offer indicates two options: 1) \$155,000 sale price with no public use encumbrance and 2) \$125,000 sale price with a public use encumbrance limited in time to three years.

Other principal distinctions in the counter offer from the city's offer include: 1) the Chamber's attorney (Gordon and Misner) as the holder of \$500 earnest money; 2) the city's agreement to provide title insurance; 3) the cost of escrow shared equally by Chamber and city; 4) deletion of language at the end of Paragraph 13, "...or any fact, circumstance or event which occurred prior to or after the Closing Date."; and 5) the addition of Paragraph 19. Financing Condition.

In Paragraph 7 (c), it appears that the Chamber has limited the city's ability to repurchase the property to three years after the closing date. In addition, if the chamber makes a decision that it is unable or chooses not to allow use of the Community Room, the chamber notifies the city, and then the city can repurchase the property. This option to repurchase apparently expires after the Chamber notifies the city that it is unable or chooses not to allow use of the Community Room. In the event that the Chamber never submits this notification to the City during the three year period after closing, it automatically expires.

The Chamber has changed our release and covenant not to sue paragraph (No. 13) to only release us from the operation and maintenance of the property by the Purchaser. We had required a much more comprehensive release and covenant not to sue, which included a release of the City for circumstances or events which occurred prior to or after the closing date.

### **POLICY CONSIDERATIONS**

The public use covenant was primarily proposed as a long-term policy commitment on the part of the Chamber. The Chamber has pointed out in discussion subsequent to the city's offer that some Chambers do not allow public use at all. Thus, it is conceivable that the current Chamber, which has a strong public use commitment (augmented by the conditions of the rent-free lease) might over time choose to restrict or eliminate public use of the facility.

### **FISCAL CONSIDERATIONS**

It is unlikely that any bank would have a problem providing \$155,000 mortgage to the Chamber with or without the public use encumbrance on the title, either as the encumbrance was written in the city's offer or in the Chamber's counter-offer.

**COUNTER PROPOSAL  
TO  
"PURCHASE AND SALE AGREEMENT"**

Date: 28 JUN 96  
Time: 4:00 PM of Counter Proposal

The proposal to sell the real property commonly known as the Bogue Building, 3125 Judson Street, Gig Harbor, Washington 98335 made by the City of Gig Harbor, entitled "Purchase and Sale Agreement", and which Seller has neither dated nor signed, is not acceptable to Purchaser in the form presented; but the following counter proposal is hereby submitted. Amended paragraphs are denoted with a capital letter and as being amended. The unamended paragraphs are simply iterated from Gig Harbor's proposal.

THIS AGREEMENT is made and entered into as between the City of Gig Harbor, Washington ("Seller"), and the Gig Harbor/Peninsula Chamber of Commerce, a non-profit corporation ("Purchaser").

To provide for the purchase and sale of the property herein described is agreed:

1. PURCHASE AND SALE: Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, that certain property commonly known as the Bogue Building, 3125 Judson Street, Gig Harbor, Washington, and legally described in Exhibit A attached hereto and incorporated herein as if set forth in full (the "Property"). ~~Escrow agent is authorized to provide complete legal description.~~

A. Paragraph 2 is amended to the following:

2. PURCHASE PRICE AND TERMS OF PAYMENT.

Purchaser shall, concurrently with its execution of this Agreement, ~~deposit with GORDON & MISNER, attorneys at law, Five Hundred Dollars and 00/100s (\$500.00) as its earnest money under this Agreement.~~

The price and terms shall be:

~~Option a:~~ The total purchase price for the Property is **One Hundred Fifty-five Thousand Dollars (\$155,000.00)** payable at Closing less the earnest money paid toward purchase; provided, there are no conditions on the purchaser's ownership (i.e., the conditions of amended paragraph 7, [§ D, infra] shall not apply).

~~Option b:~~ The purchase price shall be **One Hundred Twenty-five Thousand Dollars (\$125,000.00)** payable at closing, less the earnest money paid toward purchase; and, provided the conditions on ownership described in amended paragraph 7, [§ D, infra] shall apply.

Seller chooses Option \_\_\_\_\_ Seller's initials: \_\_\_\_\_

3. CONVEYANCE. Upon Closing, title to the Property shall be conveyed from Seller to Purchaser by a Statutory Warranty Deed.

B. Paragraph 4 is amended to the following:

4. TITLE AND TITLE INSURANCE. Seller warrants that Seller has the right to sell the Property on the terms herein.

~~Seller agrees to furnish and pay for a Purchaser's Policy of Title Insurance.~~

Title to the Property is to be free of all encumbrances or defects except those which the Purchaser may determine in its sole discretion are consistent with its intended use of the Property. Seller and Purchaser authorize the party hereinafter designated as Closing Agent to apply for a preliminary commitment for a WLTA Standard Coverage Buyer's Policy of Title Insurance in the amount of the purchase price. ~~Said preliminary~~



commitment, and the policy to be issued, shall ensure fee title to the Property free and clear of all liens, encumbrances or defects, and shall contain no exceptions other than those provided for in said standard form of insurance and the encumbrances or defects identified as acceptable to the Purchaser as provided herein.

Encumbrances to be discharged by Seller, if any, shall be paid from Seller's funds at Closing. If the title cannot be made insurable as set forth above prior to the Closing date, this Agreement may be terminated by either Purchaser or Seller and Purchaser's earnest money less authorized expenditures shall be refunded.

C. Paragraph 5 is amended to the following:

**5. ESCROW AND CLOSING.**

a. Closing Agent - Date of Closing. The sale shall be closed in an office designated by Purchaser no later than 6 SEP 96, 1996, upon which date this Agreement shall terminate, unless extended by agreement of the parties, or as hereinafter provided.

Escrow shall be opened at GORDON F MEISNER, referred to in this Agreement as the "Closing Agent." The Purchaser and Seller shall deposit with the closing agent, all instruments, documents and monies necessary to complete the sale in accordance with this Agreement.

Purchaser currently leases the property from the Seller, and agrees to maintain the property and its improvements in their present condition, normal wear and tear excepted, until Purchaser is entitled to possession hereunder.

In the event that this sale cannot be closed by the date provided herein due to the unavailability of either party, the Closing Agent, or financing institution, to sign any necessary document, or to deposit any necessary money, because of any interruption of available transport; strikes, fire, flood or extreme weather; governmental regulations; incapacitating illness; acts of God; or other similar occurrences; the Closing date shall be extended seven (7) days beyond cessation of such condition, but in no event more than fourteen (14) days beyond the Closing as provided herein without written agreement of the parties.

b. Expenses of Escrow. Title insurance premiums, loan fees and all other costs or expenses of escrow shall be paid as follows:

1. The full cost of securing the title insurance policy for Purchaser referred to herein shall be paid by Seller;
2. The cost of recording the Deed to Purchaser shall be paid by Purchaser;
3. The cost of excise taxes, if any, necessary to record the Deed to Purchaser shall be paid by the Seller.
4. All costs and fees including expenses incident to Purchaser's financing on the Property, if any, shall be paid by Purchaser.
5. Encumbrances to be discharged by Seller to provide clear title shall be paid by Seller.
6. ~~This cost of escrow shall be shared equally between Purchaser and Seller.~~

c. Pro-Rations. All real property taxes, assessments, and utility charges against the Property shall be pro-rated as of the date of closing. Said prorations, if any, shall be effected on the basis of the latest available tax bills and other applicable statements and based upon a 365 day calendar year. If current year tax statements are not available at the close of escrow, the prorations will be made as above provided and shall be adjusted between Purchaser and Seller outside of escrow as soon as the filed tax bills or other information is available.

d. Closing Defined. Closing for the purpose of this Agreement, is defined as the date that all documents are executed and the sale proceeds are available for disbursement to Seller. When notified, Purchaser and Seller will deposit, without delay, in escrow with Closing Agent, all instruments and monies required to complete the transaction in accordance with this Agreement.

6. POSSESSION. Purchaser shall be entitled to possession at Closing.

~~D. Paragraph 7 is amended to the following:~~

7. COMMUNITY ROOM COVENANT. (Note: The following conditions shall apply only if Seller has chosen option b. in paragraph 2, *supra*).

a. Current Use of Community Room. Purchaser currently leases the property from the Seller, and now allows use of a Community Room, described in Exhibit B, attached hereto and incorporated herein by this reference, by the public on an "as available basis." Purchaser handles scheduling and provides custodial services for the Community Room. Purchaser does not charge fees for use of the Community Room to non-profit community services clubs, youth, charity, schools, senior groups, health service organizations, human service organizations or the City.

b. Continued Use of Community Room After Closing. The Purchaser acknowledges that the Seller expressly conditions the sale of the property upon the Purchaser's agreement to allow continued use of the Community Room as described in paragraph 7(a) above, or equivalent space in the building on the Property for three (3) years following closing. This condition shall be included in the Statutory Warranty Deed which conveys the Property from the Seller to the Purchaser. Such covenant shall run with the land and bind all future owners acquiring equitable or legal interests in the property for the duration of the condition. Accordingly, by its acceptance of a deed or other instrument vesting a substantial beneficial interest in all or any portion of the Property in the Purchaser or any future owner or assignee, the Purchaser and each owner or assignee shall covenant to be bound by these obligations for three (3) years following closing.

c. City's Option to Repurchase Property. During the duration (3 years from the closing date) of the covenant, if the Purchaser is either unable or chooses not to comply with the conditions of purchase contained in this Section 7, then the Seller may ~~one time only~~ and for a period of thirty days notify the Purchaser that the Seller exercises an option to repurchase the Property. Upon such notification, the Seller may exercise the right, privilege and option to repurchase the Property described in Exhibit A at its then market value, ~~provided that after the Seller's option to repurchase has once arisen, unless exercised, it shall expire.~~ The price of the Property shall be determined by the following method: (1) the parties may agree upon a price, after consulting with their real estate appraisers; but if unable to agree, (2) the Purchaser shall choose a real estate appraiser, and the Seller shall choose an appraiser, and the two appraisers shall choose a third appraiser, who shall determine the fair market value of the Property. The Seller shall purchase the Property for its fair market value as determined by the third appraiser within thirty (30) days, unless the parties otherwise agree to a different date in writing.

Seller's right of repurchase shall in any event expire three years from the date of closing.

E. Paragraph 8 is amended to the following:

8. CONDITION OF PROPERTY. Purchaser acknowledges that it is familiar with the property and has investigated same. Purchaser agrees to purchase the property in its present condition on the terms noted. **PURCHASER AGREES THAT, EXCEPT AS OTHERWISE PROVIDED HEREIN, PURCHASER IS ACQUIRING THE PROPERTY IN ITS CURRENT CONDITION AS IS, WHERE IS, AND SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES ANY REPRESENTATIONS OR WARRANTIES, EITHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, AS TO THE CONDITION OR STATUS OF THE PROPERTY, except as set forth in Seller's "Real Property Transfer Disclosure Statement," a copy of which is attached**

9. DEFAULT

A. By Seller. In the event of any default by Seller, Purchaser shall, in addition to any other remedy Purchaser may have including specific performance, be entitled to immediately cancel this Agreement and receive a refund of its earnest money deposit and interest; provided, however, Purchaser may, at its option, waive any default by Seller and proceed with the purchase of the Property.

B. By Purchaser. If Purchaser fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the Purchaser shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure. The parties intend this provision to be governed by RCW 64.04.005(1)(a).

10. ATTORNEY'S FEES. In the event any action or proceeding to compel compliance with, or for a breach of, the terms and provisions of this Agreement, the prevailing party shall be entitled to recover from the losing party all costs and expenses of such action or proceeding, including, but not limited to the reasonable attorneys fees of the prevailing party.

11. ASSIGNMENT. This Agreement may not be assigned without either party's prior written consent.

12. CASUALTY LOSS. If, prior to Closing, improvements on the Property shall be destroyed or materially damaged by fire or other casualty, this Agreement, at the option of the Purchaser, shall become null and void.

~~E. Paragraph 13 is amended to the following:~~

13. RELEASE AND COVENANTS NOT TO SUE. Purchaser agrees to indemnify, hold harmless and defend the Seller from and against any and all claims, actions, suits, liability, loss, cost, expenses and damages of any nature whatsoever, including costs and attorney's fees, which are caused by or arise out of the ownership operation, or maintenance of the Property by Purchaser.

14. WRITTEN NOTICE. Any written notices required by this Agreement shall be sent by mail to the following addresses:

PURCHASER:

Gig Harbor/Peninsula Chamber of Commerce  
3125 Judson Street  
Gig Harbor, WA 98335

SELLER:

Mayor Gretchen Wilbert  
3105 Judson Street  
Gig Harbor, WA 98335

WITH A COPY TO:  
Ogden Murphy Wallace, P.L.L.C.  
2100 Westlake Center Tower  
1601 Fifth Avenue  
Seattle, WA 98101-1686

15. TIME IS OF ESSENCE. Time is of the essence of this Agreement.

16. SURVIVAL. The representations made by the parties in Sections 7, 8, 9, 10 and 13 shall survive closing.

17. COMPLETE AGREEMENT. This Agreement supersedes any and all agreements, written or oral between the parties hereto regarding the subject Property, which are prior in time to this Agreement. Neither Purchaser or Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specified herein.

18. GOVERNING LAW. This Agreement shall be construed and interpreted under the laws of the State of Washington.

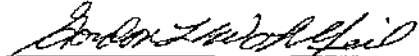
G. Add a paragraph 19 to the agreement, as follows:

~~19. FINANCING CONDITION.~~ Purchaser's obligation to purchase hereunder is conditioned upon Purchaser obtaining financing in an amount and upon terms satisfactory to Purchaser. Purchaser agrees to apply promptly (within 5 business days) for financing after Seller's acceptance hereof. ~~IF FINANCING ACCEPTABLE TO PURCHASER IS NOT OBTAINABLE WITHIN NINETY (90) DAYS OF APPLICATION THEREFORE, THIS AGREEMENT SHALL TERMINATE AND EARNEST MONEY (LESS APPRAISAL FEE, CREDIT REPORT AND CANCELLATION FEE(S), IF ANY) shall be refunded to Purchaser.~~ Purchaser and Seller herein authorize Closing Agent to disburse funds from Agent's trust account for payment of credit report and appraisal fees if any prior to closing.

**EXPIRATION:** This counter offer shall expire unless a copy hereof with written acceptance is delivered to purchaser or its agent, DAVID D. GORDON and GORDON & MISNER, within 15 days from date.

PURCHASER:

GIG HARBOR CHAMBER OF COMMERCE  
a Washington non-profit corporation

  
By: GORDON L. GORDON  
Its: Executive Director

---

THE UNDERSIGNED Seller accepts the above counter offer.

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

CITY OF GIG HARBOR  
a Washington Municipal Corporation

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

Attest/Authenticated:

\_\_\_\_\_  
City Clerk/Administrator  
Mark Hoppen  
Date: \_\_\_\_\_

Approved as to Form:

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

# REAL PROPERTY TRANSFER DISCLOSURE STATEMENT

To be used in transfers of residential real property, including multi-family dwellings up to four units; new condominiums not subject to a public offering of securities, and certain timeshares. See RCW 64.06 for further explanations.

## INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA". If the answer is "yes" to any asterisked (\*) items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and initial each page of this Disclosure Statement and each attachment. Delivery of the Disclosure Statement must occur not later than FIVE (5) DAYS of mutual acceptance of a written purchase and sale agreement between Buyer and Seller unless Buyer and Seller agree otherwise.

## NOTICE TO BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY THE SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED AT SUDSON ST CITY GIG HARBOR COUNTY MERCE ("THE PROPERTY") LEGALLY DESCRIBED ON ATTACHED EXHIBIT A. DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME THIS DISCLOSURE FORM IS COMPLETED BY THE SELLER. YOU HAVE THREE (3) BUSINESS DAYS (UNLESS BUYER AND SELLER AGREE OTHERWISE) FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOU SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER, UNLESS YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A PURCHASE AND SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF ANY OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN THE BUYER AND THE SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON YOUR BEHALF, FOR EXAMPLE, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, OR PEST AND DRY ROT INSPECTORS. THE PROSPECTIVE BUYER AND THE OWNER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller [ ] is/  is not occupying the property

1

### I. SELLER'S DISCLOSURES:

	YES	NO	DON'T KNOW	
<b>1. TITLE</b>				
A. Do you have legal authority to sell the property?	<input checked="" type="checkbox"/>	[ ]	[ ]	2
*B. Is title to the property subject to any of the following?				
(1) First right of refusal	<input checked="" type="checkbox"/>	[ ]	[ ]	3
(2) Option	[ ]	<input checked="" type="checkbox"/>	[ ]	4
(3) Lease or rental agreement	[ ]	<input checked="" type="checkbox"/>	[ ]	5
(4) Life Estate	[ ]	<input checked="" type="checkbox"/>	[ ]	6
*C. Are there any encroachments, boundary agreements or boundary disputes?	[ ]	<input checked="" type="checkbox"/>	[ ]	7
*D. Are there any rights of way, easements, or access limitations that may affect the owner's use of the property?	[ ]	<input checked="" type="checkbox"/>	[ ]	8
*E. Are there any written agreements for joint maintenance of an easement or right of way?	[ ]	<input checked="" type="checkbox"/>	[ ]	9
*F. Is there any study, survey project or notice that would adversely affect the property?	[ ]	<input checked="" type="checkbox"/>	[ ]	10
*G. Are there any pending or existing assessments against the property?	[ ]	<input checked="" type="checkbox"/>	[ ]	11
*H. Are there any zoning violations, nonconforming uses, or any unusual				

Seller's Initials: W E A Date: 5/21

- |     |   | YES                                 | NO                                  | DON'T KNOW               |    |
|-----|---|-------------------------------------|-------------------------------------|--------------------------|----|
|     | restrictions on the subject property that would affect future construction or remodeling? | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 12 |
| *I. | Is there a boundary survey for the property?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 13 |
| *J. | Are there any covenants, conditions, or restrictions which affect the property?           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | 14 |

2. WATER

- |       |   |                          |                                     |                          |    |
|-------|---|--------------------------|-------------------------------------|--------------------------|----|
| A.    | Household Water   |                          |                                     |                          |    |
| (1)   | The source of the water is <input checked="" type="checkbox"/> Public <input type="checkbox"/> Community <input type="checkbox"/> Private <input type="checkbox"/> Shared |                          |                                     |                          | 15 |
| (2)   | Water source information:   |                          |                                     |                          |    |
| *a.   | Are there any written agreements for shared water source?   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 16 |
| *b.   | Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 17 |
| *c.   | Are there any known problems or are repairs needed?   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 18 |
| *d.   | Does the source provide an adequate year round supply of potable water?   | <input type="checkbox"/> | <i>NA</i>                           | <input type="checkbox"/> | 19 |
| B.    | Irrigation  |                          |                                     |                          |    |
| (1)   | Are there any water rights for the property?  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 20 |
| * (2) | If they exist, to your knowledge, have the water rights been used during the last five-year period?   | <input type="checkbox"/> | <i>NA</i>                           | <input type="checkbox"/> | 21 |
| * (3) | If so, is the certificate available?  | <input type="checkbox"/> | <i>NA</i>                           | <input type="checkbox"/> | 22 |
| C.    | Outdoor Sprinkler System  |                          |                                     |                          |    |
| (1)   | Is there an outdoor sprinkler system for the property?  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 23 |
| * (2) | Are there any defects in the outdoor sprinkler system?  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 24 |

3. SEWER/SEPTIC SYSTEM

- |       |  |                                     |                          |                          |    |
|-------|--|-------------------------------------|--------------------------|--------------------------|----|
| A.    | The property is served by:<br><input checked="" type="checkbox"/> Public sewer main <input type="checkbox"/> Septic tank system <input type="checkbox"/> Other disposal system<br>(describe) <u>city</u> |                                     |                          |                          | 25 |
| B.    | If the property is served by a public or community sewer main, is the house connected to the main?   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 26 |
| C.    | If the property is connected to a septic tank system:  |                                     |                          |                          |    |
| (1)   | Was a permit issued for its construction, and was it approved by the city or county following its construction?  | <input type="checkbox"/>            | <i>NA</i>                | <input type="checkbox"/> | 27 |
| (2)   | Date when was it last pumped? _____  |                                     |                          |                          | 28 |
| * (3) | Are there any defects in the operation of the septic tank system?  | <input type="checkbox"/>            | <i>NA</i>                | <input type="checkbox"/> | 29 |
| (4)   | Date when was it last inspected? _____<br>By whom: _____   |                                     |                          |                          | 30 |
| (5)   | How many bedrooms was the septic tank system approved for? _____ bedrooms  |                                     |                          |                          | 31 |
| *D.   | Are any plumbing fixtures, including laundry drain, not connected to the septic tank/sewer system?<br>If not, explain: _____   | <input type="checkbox"/>            | <i>NA</i>                | <input type="checkbox"/> | 32 |
| *E.   | Are you aware of any changes or repairs to the septic tank system?   | <input type="checkbox"/>            | <i>NA</i>                | <input type="checkbox"/> | 34 |
| F.    | Is the septic tank system, including the drainfield, located entirely within the boundaries of the property?   | <input type="checkbox"/>            | <i>NA</i>                | <input type="checkbox"/> | 35 |

4. STRUCTURAL

- |       |   |                                     |                                     |                          |    |
|-------|---|-------------------------------------|-------------------------------------|--------------------------|----|
| *A.   | Has the roof leaked?<br>If yes, has it been repaired?                             | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 36 |
| *B.   | Have there been any conversions, additions or remodeling?                         | <input type="checkbox"/>            | <i>NA</i>                           | <input type="checkbox"/> | 37 |
| * (1) | If yes, were all building permits obtained?                                       | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | 38 |
| * (2) | If yes, were all final inspections obtained?                                      | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | 39 |
| C.    | Do you know the age of the house?<br>If yes, year of original construction: _____ | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | 41 |

Seller's Initials: MEH Date: 5/21

YES NO DON'T KNOW

- \*D. Do you know of any settling, slippage, or sliding of the house or other improvements?  
If yes, explain: Crack on back foundation wall/porch  maybe  42
- \*E. Do you know of any defect with the following: (Please check all applicable items)
- |  |   |   |    |
|--|---|---|----|
| <input type="checkbox"/> Foundations   | <input type="checkbox"/> Decks          | <input type="checkbox"/> Exterior Walls | 44 |
| <input type="checkbox"/> Chimneys      | <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Fire Alarms    | 45 |
| <input type="checkbox"/> Doors         | <input type="checkbox"/> Windows        | <input type="checkbox"/> Patios         | 46 |
| <input type="checkbox"/> Ceilings      | <input type="checkbox"/> Stab Floors    | <input type="checkbox"/> Driveways      | 47 |
| <input type="checkbox"/> Pools         | <input type="checkbox"/> Hot Tub        | <input type="checkbox"/> Sauna          | 48 |
| <input type="checkbox"/> Sidewalks     | <input type="checkbox"/> Outbuildings   | <input type="checkbox"/> Fireplaces     | 49 |
| <input type="checkbox"/> Garage Floors | <input type="checkbox"/> Walkways       | <input type="checkbox"/> Wood Stoves    | 50 |
| <input type="checkbox"/> Other _____   |   |   | 51 |
- \*F. Was a pest or dry rot, structural or "whole house" inspection done?  
When and by whom; \_\_\_\_\_    52  
53
- \*G. Since assuming ownership, has your property had a problem with wood destroying organisms and/or have there been any problems with pest control, infestations, or vermin?    54

5. SYSTEMS AND FIXTURES

If the following systems or fixtures are included with the transfer, do they have any existing defects:

- |  |                          |                                     |                          |    |
|--|--------------------------|-------------------------------------|--------------------------|----|
| *A. Electrical system, including wiring, switches, outlets, and service            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 55 |
| *B. Plumbing system, including pipes, faucets, fixtures, and toilets               | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 56 |
| *C. Hot water tank   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 57 |
| *D. Garbage disposal   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 58 |
| *E. Appliances   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 59 |
| *F. Sump pump  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 60 |
| *G. Heating and cooling systems  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 61 |
| *H. Security system <input type="checkbox"/> Leased <input type="checkbox"/> Owned | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 62 |
| *I. Other _____  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 63 |

6. COMMON INTEREST

- A. Is there a Home Owners' Association?    64  
Name of Association \_\_\_\_\_
- B. Are there regular periodic assessments?    65  
\$ \_\_\_\_\_ per  month  quarter  year  
 Other \_\_\_\_\_ 66  
67
- \*C. Are there any pending special assessments?    68
- \*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?    69

7. GENERAL

- \*A. Is there any settling, soil, standing water, or drainage problems on the property?    70
- \*B. Does the property contain fill material?    71
- \*C. Is there any material damage to the property of any of the structure from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?    72
- D. Is the property in a designated flood plain?    73
- E. Is the property in a designated flood hazard zone?    74
- \*F. Are there any substances, materials, or products that may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based

Seller's Initials: MEJ Date: 5/21

- |  | YES | NO                                  | DON'T KNOW                          |    |
|--|-----|-------------------------------------|-------------------------------------|----|
| paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property?     | [ ] | <input checked="" type="checkbox"/> | [ ]                                 | 75 |
| *G. Are there any tanks or underground storage tanks (e.g., chemical, fuel, etc.) on the property? | [ ] | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | 76 |
| *H. Has the property ever been used as an illegal drug manufacturing site?                         | [ ] | <input checked="" type="checkbox"/> | [ ]                                 | 77 |

8. FULL DISCLOSURE BY SELLERS

- A. Other conditions or defects:  
 \*Are there any other material defects affecting this property or its value that a prospective Buyer should know about? [ ] [ ]  78
- B. Verification

The foregoing answers and attached explanations (if any) are complete and correct to the best of Seller's knowledge and Seller has received a copy hereof. Seller agrees to defend, indemnify and hold harmless GORDON, MISNER & ROBINSON, Attorneys at Law, their agents and employees, from and against any and all claims that the above information is inaccurate. Seller authorizes GORDON, MISNER & ROBINSON to deliver a copy of this Disclosure Statement to all prospective Buyers of the Property.

Date: 5/21/96 Date: \_\_\_\_\_  
 Seller: *M E A* Seller: \_\_\_\_\_

II. BUYER'S ACKNOWLEDGEMENT

- A. Buyer acknowledges the duty to pay diligent attention to any material defects which are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. Buyer acknowledges and understands that the disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any other party. Buyer waives any and all claims against GORDON, MISNER & ROBINSON, Attorneys at Law, their agents and employees, for inaccurate information provided by Seller, except to the extent that they, or their agents and/or employees, had actual knowledge of such inaccurate information. This information is for disclosure only and is not intended to be a part of the written agreement between Buyer and Seller.
- C. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this Disclosure Statement below) hereby acknowledges receipt of a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature(s).

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF THE DISCLOSURE. YOU, THE BUYER, HAVE THREE (3) BUSINESS DAYS (UNLESS BUYER AND SELLER AGREE OTHERWISE) FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER UNLESS YOU WAIVE THIS RIGHT OF REVOCATION.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS REAL PROPERTY TRANSFER DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY AND NOT OF ANY OTHER PARTY.

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

Seller's Initials: M E A Date: 5/21/96



BUYER'S WAIVER OF RIGHT TO REVOKE OFFER

Buyer has read and reviewed the Seller's responses to this Real Property Transfer Disclosure Statement. Buyer approves this statement and waives Buyer's right to revoke Buyer's offer.

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

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

Buyer: \_\_\_\_\_

Buyer: \_\_\_\_\_

BUYER'S WAIVER OF RIGHT TO RECEIVE COMPLETED REAL PROPERTY TRANSFER DISCLOSURE STATEMENT

Buyer has been advised of Buyer's right to receive a completed Real Property Disclosure Statement. Buyer waives that right.

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

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

Buyer: \_\_\_\_\_

Buyer: \_\_\_\_\_

SELLER'S FURTHER EXPLANATION OF ANY ASTERISKED ITEM

If the answer is "Yes" to any asterisked (\*) items, please explain below (use additional sheets if necessary). Please refer to the line number(s) of the question(s).

3. (1) He has offered the right to re-purchase at market value

5. see above

4. Various remodeling activities - city permitted, inspected and approved.

Seller's Initials: MEH Date: 5/21/98





City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(206) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MH*  
**SUBJECT: WASHINGTON NATURAL GAS FRANCHISE**  
**DATE: JULY 1, 1996**

#### **INFORMATION/BACKGROUND**

The city's franchise agreement with Washington Natural Gas has needed renewal for several years. Negotiating the renewal of the 25 year franchise has proven difficult because Washington Natural Gas has been in a reorganizational upheaval - good-willed but loosely coupled for day-to-day business - nearly impossible to contact with respect to this long-term agreement. Recently, the gas company agreed to the city's last negotiating draft of the agreement, enabling staff to bring this agreement to Council for signature. Attorney David L. Johnson of Washington Natural Gas Company should be thanked for his effort to conclude the franchise agreement.

#### **POLICY CONSIDERATIONS**

The agreement before Council protects city interests with respect to its easements and traffic considerations, guaranteeing proper notice, prior permitting, compliance with city standards, as-built documentation upon request, reimbursement for emergencies, and right-of-way restoration.

#### **FISCAL CONSIDERATIONS**

Fiscal considerations are addressed in Section 6. Recovery of Costs. Washington Natural Gas agrees to pay a fee for the drafting and filing of the attached agreement and related work. Further, the company will pay city permit fees, as well as any fees for city inspection, review, or supervision activities under the franchise. Also, the agreement contemplates reimbursement to the city for extraordinary expenses which involve gas company facilities and which are incurred by the city in the course of protecting life and property.

#### **RECOMMENDATION**

Staff recommends that Council direct the Mayor to sign the franchise agreement on behalf of the city and forward the agreement to Washington Natural Gas for compliance with Section 21. Acceptance of the agreement.



David L. Johnson  
Attorney

July 1, 1996

VIA FACSIMILE  
AND REGULAR MAIL

Ms. Carol A. Morris  
Ogden Murphy Wallace  
2100 Westlake Center Tower  
1601 Fifth Avenue  
Seattle, Washington 99101-1686

Re: City of Gig Harbor/ Washington Natural Gas Company Franchise

Dear Carol:

The draft franchise you sent to me on June 18th is acceptable to Washington Natural Gas Company. Regarding the mailing address in Section 18, the zip code should be 98109 (unless you prefer our post office box, P.O. 1869), and mailings may be directed to the attention of "Government Affairs."

Since Mark Hoppen has called to inquire about the franchise, I hope you do not mind if I fax a copy of this letter to him. Feel free to contact me if you have any questions or require any additional information.

Sincerely,



David L. Johnson

cc: Mark Hoppen  
Nina Odell  
Randy Bannecker

WHEN RECORDED RETURN TO:  
City of Gig Harbor  
Administrative Assistant  
3105 Judson Street  
Gig Harbor, WA 98335

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

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO WASHINGTON NATURAL GAS COMPANY, A WASHINGTON CORPORATION, AND A PUBLIC UTILITY SELLING AND DISTRIBUTING GAS WITHIN THE STATE OF WASHINGTON, THE RIGHT AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, ROADS, ALLEYS, LANES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF GIG HARBOR, WASHINGTON, FOR A PERIOD OF TWENTY-FIVE YEARS, FOR CONSTRUCTING, MAINTAINING, REPAIRING, RENEWING AND OPERATING A GAS DISTRIBUTION SYSTEM AND ACCESSORIES WITHIN AND THROUGH THE CITY OF GIG HARBOR, WASHINGTON.**

---

WHEREAS, RCW 35A.47.040 authorizes code cities to issue non-exclusive franchises for use of public street and rights-of-way, and

WHEREAS, this ordinance has been introduced more than five (5) days prior to its passage by the City Council, and

WHEREAS, this ordinance has been submitted to the City Attorney and has received at least a majority vote of the entire City Council at a regular meeting, now, therefore

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

Section .1. Rights Granted. The right is hereby granted to WASHINGTON NATURAL GAS COMPANY (hereinafter referred to as the "Grantee") to lay, construct, extend, maintain, repair, renew and replace gas pipes, gas mains and accessories under, along and/or across any and all streets, avenues, roads, alleys and other rights-of-way in the City for the purpose of

therein laying, constructing, extending, maintaining, renewing, replacing and repairing mains and pipes and all appurtenances thereto and accessories used and/or useful for the transmission, sale and distribution of gas within and through the present or future territorial limits of the City of Gig Harbor, Washington (hereinafter referred to as the "City"), for the term of twenty-five years from and after the effective date of this ordinance, except as hereinafter provided.

Section 2. City's Reservation of Rights. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any gas facilities of the Grantee, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law.

In the event that franchise, state or other applicable laws should change during the franchise term, which permit the City to impose franchise fees or exercise other regulatory authority over the Grantee, then Grantee agrees to negotiate with the City, upon the City's request, for an amendment of this franchise to provide for the inclusion of a franchise fee or the City's exercise of such regulatory authority. If the parties fail to reach agreement in these negotiations after one month, the City may elect to terminate this franchise.

Section 3. Requirement for Work in Public Rights-of-Way. Whenever the Grantee shall excavate in any public right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its gas facilities, it shall apply to the City for a permit to do so and, in

addition, shall give the City at least ten (10) working days notice of intent to commence work on main lines in the right-of-way, and five (5) working days notice of intent to commence work on all other lines in the right-of-way, unless such notice is waived by the Public Works Director. In no case shall any work commence within any public right-of-way without a permit, except as otherwise provided in this franchise ordinance.

During any period of relocation, installation, construction or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public right-of-ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

If the Grantee shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the Grantee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

- A. Installation of any lines is compatible with all federal, state and local regulations and Grantee's construction standards;
- B. Such joint use shall not unreasonably delay the Grantee's work;
- C. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;
- D. The Grantee may deny such request for safety reasons.

Section 4. Emergency Work -- Permit Waiver. In the event of any emergency in which any of the Grantee's facilities located in or under any street breaks or is damaged, or if the

Grantee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, the Grantee shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Grantee from the requirement of obtaining any permits necessary for this purpose, and the Grantee shall apply for all such permits not later than the next succeeding day during which the Gig Harbor City Hall is open for business.

Section 5. Records. the Grantee shall at all times keep complete records showing the relative location and size of all gas lines heretofore laid in the City, and showing the relative location of all gates, gauges, and other service construction. Such records shall be kept current by the Grantee, who shall provide as-builts to the City after construction is complete.

Upon the City's request for information on the location of Grantee's gas lines or other facilities prior to the designing of rights-of-way improvements or other City improvements, the Grantee shall respond with the information on both the horizontal and vertical depth location of the Grantee's facilities no later than two (2) business days after the receipt of the request, unless otherwise agreed by the parties in writing. The City, as excavator, shall have the right to receive compensation from the Grantee for all costs incurred if the Grantee does not accurately locate its facilities as required by this section and in accordance with RCW 19.122.030. Such compensation shall be paid by the Grantee to the City within thirty (30) days after receipt of an invoice.

Section 6. Recovery of Costs. The Grantee shall pay a filing fee for the City's administrative costs in drafting and processing this franchise agreement and all work related thereto. The Grantee shall further be responsible for all permit fees associated with activities undertaken



through the authority granted in this franchise ordinance or under the laws of the City. When the City incurs costs and expenses for review, inspection or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a fee is not established, the Grantee shall pay such costs and expenses directly to the City.

In addition, the Grantee shall promptly reimburse the City for any and all extraordinary costs the City reasonably incurs in response to any emergency involving the Grantee's facilities, except to the extent that the emergency results from the negligence of the City. For the purpose of this section, "extraordinary costs" are those reasonable and necessary costs incurred by the City in the course of protecting life and property that exceed the normal and usual expenses anticipated for police and fire protection, emergency services and public works. These shall include, but not be limited to, overtime for public employees, unusual fuel consumption requirements, any loss or damage to publicly owned equipment, and the purchase or lease of any special equipment or services required to protect the public during the emergency. In the event that the City reasonably incurs extraordinary costs in response to any emergency involving the Grantee's facilities which results from the negligence of any third party and/or the Grantee, the Grantee shall promptly reimburse the City for such costs within thirty (30) days after receipt of an invoice from the City.

Section 7. Restoration. The Grantee shall, after installation, construction, relocation, maintenance or repair of its facilities within the franchise area, restore the surface of the right-of-way to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets after restoration or repair. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and

local standards and specifications. The Grantee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the affected area at its sole cost and expense.

Section 8. Indemnification. The Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the Grantee, its officers or employees in performing this franchise are the proximate cause.

The Grantee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person including claims by the Grantee's own employees, including those claims to which the Grantee might otherwise be immune under Title 51 RCW, arising against the City (1) solely by virtue of the City's ownership or control of the rights-of-way; (2) by virtue of the Grantee's exercise of the rights granted herein; or (3) by virtue of the City's permitting the Grantee's use of the City's rights-of-way; which claims are based upon the City's inspection or lack of inspection of work performed by the Grantee, its employees, agents officers or representatives, in connection with the work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise.

This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of negligent acts or omissions of the Grantee, its employees, officers, representatives or agents in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction or work in any public right-of-way in the performance of the work or services permitted under this franchise.

Inspection or acceptance by the City of any work performed by the Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of the Grantee, then the Grantee shall pay all of the City's costs of defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fee for recovering under this indemnification clause.

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 Grantee and the City, its officers, employees and agents, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein covers claims by the Grantee's own employees from which the Grantee might

otherwise be immune under Title 51 RCW, and this waiver has been mutually negotiated by the parties.

Section 9. Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this franchise, the Grantee shall, upon request of the City, furnish a bond executed by the Grantee and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the Director of Public Works as sufficient to ensure performance of the Grantee's obligations under this franchise. The bond shall be conditioned so that the Grantee shall observe all of the covenants, terms and conditions and faithfully perform all of the obligations of this franchise, and to erect or replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City.

Section 10. Relocation. The Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street any of its installations, including abandoned facilities when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental entity acting in a governmental capacity, provided that the Grantee shall in all cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of pipeline required to be temporarily disconnected or removed.

If the City determines that the project necessitates the relocation of the Grantee's then existing facilities, the City shall:

- A. At least sixty days (60) days prior to the commencement of such improvement project, provide the Grantee with written notice requiring such relocation;
- B. Provide the Grantee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for the Grantee's facilities so that the Grantee may relocate its facilities in other City right-of-way in order to accommodate such improvement project; and
- C. After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities at no charge or expense to the City so as to accommodate the improvement project at least five (5) days prior to commencement of the project.

The Grantee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its facilities as otherwise provided in this section.

The provisions of this section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 11. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further

franchises in, along, over, through, under, below or across any of said streets, avenues, alleys or public rights-of-way of every type and description. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets or public rights-of-way, or affect the City's jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way of every type and description.

Section 12. Forfeiture and Revocation. If the Grantee willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the City under the provisions of this franchise, then the Grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon at least thirty (30) days notice to the Grantee. Prior to or at the hearing, the Grantee may request a reasonable time within which to remedy the default.

The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Grantee to comply with the provisions of this ordinance, and to recover damages and costs incurred by the City by reason of the Grantee's failure to comply.

In addition to any other remedy provided herein, the City reserves the right to pursue any legal remedy to compel or force the Grantee to comply with the terms of this franchise, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 13. Insurance. The Grantee shall procure and maintain for the duration of this franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Grantee, its officials, employees and representatives. The Grantee shall provide a copy of such insurance policy to the City for its inspection prior to the adoption of this franchise ordinance.

Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductible or self-insured retentions shall be the sole responsibility of the Grantee.

The insurance policy obtained by the Grantee shall name the City, its officers, officials, employees, and volunteers, as additional insureds with regard to activities performed by or on behalf of the Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Grantee's insurance shall be primary insurance as respects the City, its officers, officials, employees or volunteers. Any insurance maintained by the City, its officers, officials, employees and volunteers shall be in excess of the Grantee's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice, by certified mail, return receipt requested, has been given to the City. Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Section 14. Assignment. This agreement may not be assigned or transferred without the prior, written approval of the City. The Grantee shall provide prompt, written notice to the City of any such proposed assignment.

Section 15. Abandonment of Facilities. Any plan for abandonment of any of Grantee's gas lines or facilities installed under this franchise or any of its predecessors must be submitted to the City for its written consent. The City Public Works Director shall review the plan for abandonment prior to commencement of any work, and all necessary permits must be obtained prior to such work. The provisions of this Section shall survive the expiration, revocation or termination of this franchise ordinance.

Section 16. Modification. The City and the Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 17. Integration. The written provisions and terms of this franchise ordinance shall supersede all prior verbal statements of either party, and any prior franchise ordinance between the parties. Such statements or prior franchise ordinances shall not be effective or be construed as entering into, forming a part of, or altering in any manner whatsoever, this Agreement.

Section 18. Notice. Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise

specified: City of Gig Harbor  
3105 Judson Street  
Gig Harbor, WA 98335  
Attn: City Administrator

Washington Natural Gas Company  
815 Mercer Street  
Seattle, WA 98109  
Attn: \_\_\_\_\_

Section 19. Binding Effect. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall further be binding upon the heirs,



successors, executors, administrators, legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned herein.

Section 20. Severability. If any section, sentence, clause or phrase of this franchise ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise ordinance. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the parties reserve the right to renegotiate the grant of franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

Section 21. Acceptance. This franchise is granted upon the express condition that the Grantee, within thirty (30) days after the adoption of this ordinance, shall file with the Clerk of the City a written acceptance of the same, and when so accepted by the Grantee shall constitute a contract between the City and Grantee for all of the uses, services and purposes herein set forth.

Section 22. Effective Date. This Ordinance shall take effect after at least one publication in the City's official newspaper, and after the \_\_\_\_ of \_\_\_\_\_, 1996, a period consisting of thirty days after the Franchise Agreement is approved by City Council, as long as the Grantee has submitted an acceptance as required by Section 21 above.

PASSED BY THE COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,  
AND APPROVED BY ITS MAYOR AT A REGULAR MEETING OF SAID COUNCIL HELD  
ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 1996.

APPROVED:

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

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY ADMINISTRATOR, MARK HOPPEN

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_

FILED WITH THE CITY CLERK: 7/1/96  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. \_\_\_\_\_

**SUMMARY OF ORDINANCE NO. \_\_\_\_\_**

of the City of Gig Harbor, Washington

---

On the \_\_\_\_ day of \_\_\_\_\_, 1996, the City Council of the City of Gig Harbor, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO WASHINGTON NATURAL GAS COMPANY, A WASHINGTON CORPORATION, AND A PUBLIC UTILITY SELLING AND DISTRIBUTING GAS WITHIN THE STATE OF WASHINGTON, THE RIGHT AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, ROADS, ALLEYS, LANES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF GIG HARBOR, WASHINGTON, FOR A PERIOD OF TWENTY-FIVE YEARS, FOR CONSTRUCTING, MAINTAINING, REPAIRING, RENEWING AND OPERATING A GAS DISTRIBUTION SYSTEM AND ACCESSORIES WITHIN AND THROUGH THE CITY OF GIG HARBOR, WASHINGTON.

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
CITY ADMINISTRATOR, MARK HOPPEN





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

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(206) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MHS*  
**SUBJECT: AMENDMENT TO GHMC - CABARETS**  
**DATE: JULY 2, 1996**

**INFORMATION/BACKGROUND**

Chapter 4.25.040 (F) of the Gig Harbor Municipal Code has an incorrect reference to Chapter 9.24 of the GHMC. Chapter 9.24 is reserved for Parks and is not currently in use. The correct reference should be Chapter 9.34, Crimes Relating to Public Peace.

If an enforcement issue should arise, this reference should be corrected.

**RECOMMENDATION**

Staff recommend that Council approve the attached ordinance at its second reading.

**CITY OF GIG HARBOR  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF GIG HARBOR, MAKING A CLEAN-UP  
AMENDMENT TO THE LICENSING REQUIREMENTS FOR CABARETS,  
AMENDING SECTION 5.24.040(F) TO CORRECTLY REFERENCE  
CHAPTER 9.34 OF THE GIG HARBOR MUNICIPAL CODE.**

---

WHEREAS, Section 5.24.040 (F), of the Gig Harbor Municipal Code states that every applicant for a cabaret license shall be subject to the requirements set forth in Chapter 9.24 GHMC; and

WHEREAS, Chapter 9.24 of the GHMC is an erroneous reference; and

WHEREAS, GHMC Section 5.24.040(F) should have referenced Chapter 9.34 GHMC, Crimes Relating to Public Peace;

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

Section 1. Section 5.24.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**5.24.040 Licensing prohibited.** No cabaret License shall be issued to:

\* \* \*

F. In addition to the foregoing, every applicant for a cabaret license shall be subject to the requirements set forth in ~~Chapter 9.24~~ 9.34 GHMC.

Section 2. This ordinance shall take effect and be in full force five days after publication.

**PASSED** by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the council held on this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

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

ATTEST:

---

Mark E. Hoppen  
City Administrator/Clerk

Filed with city clerk: 7/2/96  
Passed by city council:  
Date published:  
Date effective:







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

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(206) 851-8136

**TO: CITY COUNCILMEMBERS**  
**FROM: MAYOR GRETCHEN WILBERT**  
**SUBJECT: COMMUNITY FOREST GRANT AGREEMENT**  
**DATE: JULY 2, 1996**

**INFORMATION/BACKGROUND**

The Urban Forest Grant Application by the City of Gig Harbor has been approved. The Department of Natural Resources is asking us to sign an agreement between the State and the City.

**FISCAL IMPACTS**

The grant is for \$2,000 to be given to the City to purchase trees for planting in City right of way.

**RECOMMENDATION**

Move to authorize the Mayor to sign the Community Forest Grant Agreement.



WASHINGTON STATE DEPARTMENT OF  
**Natural Resources**

RECEIVED

JUN - 7 1996

CITY OF GIG HARBOR  
GIG HARBOR  
KALEEN COTTINGHAM  
Supervisor

June 4, 1996

Mayor Gretchen Wilbert  
City of Gig Harbor  
3015 Judson Street  
Gig Harbor, WA 98335

RE: Grant K244.096.C6

Dear Mayor Wilbert:

Enclosed is your Community Forestry grant agreement (two copies). Please review, have both copies signed by the appropriate City of Gig Harbor authority, and return both to me for the DNR Supervisor's signature. The agreement is effective upon the DNR Supervisor's signature.

Please read your contract, particularly the scope of activity. You will be expected to complete the scope of activity as outlined in your grant proposal by the completion date of June 30, 1997.

We appreciate your willingness to include the technical support provided by DNR to your project. We were concerned about tree species selections, staking method, etc. and have included DNR has planting specification and staking methods to help facilitate your project. In addition, as you begin your pecies selection, please don't hesitate to give us a call. We have a wealth of information we could provide to you which will help make your project the success that we know it will be.

If you have any questions about the agreement, please feel free to contact me at (360) 902-1703 or Jodi Luedecker at (360) 902-1324.

Sincerely,

tish carr, P.F.  
Urban and Community Forestry  
Program Coordinator

c: George Flanigan  
File

**AGREEMENT**

**BETWEEN**

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES**

**AND**

**CITY OF GIG HARBOR**

This agreement is made and entered into by and between Washington State Department of Natural Resources, PO Box 47046, Olympia, Washington 98504-7046, hereinafter referred to as the DNR, and City of Gig Harbor, 3015 Judson Street, Gig Harbor, WA 98335, hereinafter referred to as the Grantee, for the express purposes set forth in the following provisions.

In consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the parties mutually agree as follows:

**SPECIAL TERMS AND CONDITIONS**

1. **Scope of Activity Under Grant Agreement:**

- a. The Grantee will perform the work outlined in Attachment B and complete all reports required under this agreement.
- b. The Grantee shall produce quarterly progress reports, annual reports, and a final report summarizing work performed and evaluating the performance and results of this contract.

All deliverables required under this agreement must be delivered to the grant manager. All oral reports required under this agreement must be presented at the location requested by the DNR.

- c. Attachment B contains the scope of activity, objectives and tasks, and deliverables.

- e. The Grantee shall complete all specified activities including submission of reports, and/or other required documentation within the time periods set forth in the agreement.

Failure by the Grantee to make satisfactory progress toward completion of the activities or project within the timelines specified in this agreement shall be considered a material breach and shall be grounds for immediate termination of this agreement by the DNR. The DNR has sole discretion to determine whether the Grantee is making satisfactory progress on the activities or project.

- 2. Conduct of Work: The Grantee shall furnish all necessary qualified personnel, material, and equipment, and manage and direct the same to timely complete the activities or project described in this agreement.
- 3. Period of Performance:
  - a. Commencement Date: Subject to its other provisions, the period of performance under this agreement shall commence upon final execution by both parties.
  - b. Completion Date: This agreement shall terminate on June 30, 1997, or when all of its terms and conditions have been satisfied, whichever is earlier, unless sooner terminated as provided herein.
- 4. Rights and Obligations: Attachment A contains the General Terms and Conditions governing the activities to be performed under this agreement, the nature of the relationship between the DNR and the Grantee, and specific obligations of both parties. All rights and obligations of the parties to this agreement shall also be subject to and governed by Attachment B, incorporated by reference herein.
- 5. Grant Disbursement and Payment:
  - a. Amount of Grant. The total grant shall not exceed \$2,000, and will be disbursed upon satisfactory completion of timely deliverables as described in Attachment B and in compliance with all contract terms. Grant disbursement shall be on a cost reimbursement basis for costs incurred in the performance of this agreement.
  - b. Time of Disbursement. Disbursement shall be considered timely if made by the DNR within 30 days after receipt of properly completed invoice vouchers. Disbursement shall be sent to the address designated by the Grantee. The DNR may, in its sole discretion, terminate the agreement or withhold disbursements claimed by the Grantee if the Grantee fails to satisfactorily comply with any term or condition of this agreement or if USDA Forest Service federal funding which the DNR receives is no longer available.

- c. Method of Disbursement. Requests for disbursement under this agreement shall be submitted by the Grantee on invoice vouchers prepared in the manner prescribed by the DNR. These vouchers shall include such information as is necessary for the DNR to determine the exact nature of all expenditures. Each voucher will clearly indicate that it is for activities under this agreement. Requests for disbursement shall be submitted to the DNR grant manager.
  - d. Expenses. No additional requests for costs or expenses are allowable. All costs and expenses associated with the Grantee fulfilling the terms and the agreement's conditions are included in the grant's amount stated in section 5(a) and no additional disbursements shall be made under this agreement.
  - e. Recapture Provision. In the event the Grantee fails to expend funds in accordance with any federal or state law or regulation or the provisions of this agreement, the DNR reserves the right to recapture funds in the amount equivalent to the amount of noncompliance. Repayment by the Grantee of funds under this section shall occur within 30 days of demand.
6. Federal Subcontract: When the DNR is passing federal funds to the Grantee, the Grantee shall:
- a. Adhere to the federal Office of Management & Budget guidelines and to other applicable federal and state regulations.
  - b. Grantees that receive federal financial assistance from more than one state agency are to inform the state agency providing the majority of federal assistance of that fact and request that the state agency act as cognizant state agency for the Grantee. A Grantee with the major federal assistance originating from a local or federal source other than the state should inform the cognizant state agency of the other source and ensure that the major federal assistance agency is notified of the cognizant state agency's need for audit information to comply with its own monitoring requirements.  
  
Cognizant state agency is defined as a state agency that is either assigned or has assumed the responsibility of implementing single audit requirements and coordinating audit follow-up for a particular Grantee by virtue of providing the majority of financial assistance.
  - c. Grantees are to notify their cognizant agency of their audit cycle. Within 30 days of receipt of the annual or biennial audit report, Grantees are to distribute copies to their cognizant agency.
  - d. Have an audit made in accordance with Office of Management and Budget (OMB) Circular A-128, or OMB Circular A-133 in the case of higher

education, hospitals, or other nonprofit organizations if the Grantee receives, in total from all sources, \$25,000 or more. The Grantee must forward a copy of the state auditor's audit along with Grantee response and the final corrective action plan as approved by the State Auditor's Office to the cognizant agency within ninety (90) days of the date of the audit report.

- e. If it has been determined that the DNR is the cognizant state agency, the Grantee shall provide by August 31 of each calendar year the following:
    - 1) Type of audit to be performed. If the Grantee is exempt from federal audit requirements, the DNR shall be so notified.
    - 2) A listing of all state agencies providing federal assistance and the programs under which they were received by OMB Catalog of Federal Domestic Assistance Number (CFDA). If the Grantee is a local or municipal government and subject to the State Auditor's Office (SAO) Budgeting Accounting Reporting System (BARS), the Grantee is to identify all financial assistance received by the appropriate BARS code. This should include assistance received directly from federal agencies and through, or from, other state and local governments.
    - 3) A listing of all financial assistance sources and the amounts provided identified under the following categories: 1) federal assistance obtained directly from a federal agency; 2) federal assistance obtained through a state or local government; and 3) other financial assistance obtained from a state or local government.
  - f. Provide access to grant/financial records for inspection by the DNR or by any duly authorized audit representative of Washington State for a period of at least six years after the final grant payment or any dispute resolution.
7. Acceptance: Disbursement shall be payable to the Grantee only upon completion of contract by the Grantee, and acceptance by the DNR. If a deliverable is not acceptable to the DNR, the DNR shall within ten (10) working days from receipt, notify the Grantee in writing of the nature of the defects in the deliverable and any proposed remedy. The Grantee shall respond to this notice in writing within ten (10) working days specifying action to be taken so as to permit acceptance by the DNR.
8. Performance Reporting: The Grantee shall submit quarterly and annual progress reports to the DNR. These reports shall address any adverse conditions that have affected the project objectives and/or time schedules, and include action taken to resolve the matter. The Grantee shall also immediately contact the DNR grant manager in person or by fax or by telephone should any adverse conditions arise. The quarterly progress reports are due to the DNR for each quarter falling within the grant period on the following dates:

September 30      March 31  
December 31      June 30

The final report is due to the DNR upon completion date as specified in 3 (b).

9. Grant manager: The grant manager for the Grantee is:

Mayor Gretchen Wilbert  
City of Gig Harbor  
3015 Judson Street  
Gig Harbor, WA 98335

The grant manager for the DNR is:

tish carr, Program Coordinator  
Community Forestry  
Washington Department of Natural Resources  
1111 Washington Street SE  
PO Box 47037  
Olympia, WA 98504-7037  
(360) 902-1703.

CITY OF GIG HARBOR

WASHINGTON STATE  
DEPARTMENT OF NATURAL  
RESOURCES

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

APPROVED AS TO FORM BY THE  
ASSISTANT ATTORNEY GENERAL.

## ATTACHMENT A

### GENERAL TERMS AND CONDITIONS

1. Identification: The Grant Agreement Number must appear on all documents, correspondence, invoices and all other written material submitted or prepared in conjunction with this agreement.
2. Independent Capacity of Grantee: The Grantee and its employees or agents performing under this agreement are not employees or agents of the DNR. The Grantee will not represent itself nor claim to be an officer or employee of the DNR or of Washington State by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to an employee under Washington law.
3. Deduction: The DNR shall make no deductions from the stated amount of the grant for income tax, social security taxes, medical insurance, industrial insurance, license fees or deduction of any other kind. Grantee is responsible for all deductions for which the Grantee may be liable.
4. Retention of Records: The Grantee shall maintain books, records, documents and other materials which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this agreement. These materials shall be available at all reasonable times for inspection, review, or audit by personnel duly authorized by the DNR, and state or federal officials so authorized by law, rule, regulation or contract. The Grantee will retain these materials for six (6) years after settlement or termination.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

5. Rights of Inspection: The Grantee shall provide right of access to its facilities to the DNR or any of its officers, or to any other authorized agent or official of Washington State or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this agreement.
6. Treatment of Assets: Title to all property furnished by the DNR shall remain in the DNR. Any property of the DNR furnished to the Grantee shall, unless otherwise provided herein or approved by the DNR, be used only for the performance of this agreement.

The Grantee shall be responsible for any loss or damage to property of the DNR which results from the negligence of the Grantee or which results from the failure on property, the Grantee shall notify the DNR thereof and shall take all reasonable steps to protect that property from further damage.



The Grantee shall surrender to the DNR all property of the DNR prior to settlement upon completion, termination or cancellation of this agreement.

7. Close Out: The Grantee must submit all requests for reimbursement for activities under this agreement to the DNR so that they are received no later than thirty (30) days following the termination of this agreement. If an earlier date is specified in this agreement, the earlier date shall take precedence.
8. Non-Discrimination: During the performance of activities under this agreement, the Grantee shall comply with all federal and state non-discrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any non-discrimination law, regulation, or policy, this agreement may be rescinded, cancelled or terminated in whole or in part, and the Grantee may be declared ineligible for further agreements with the DNR.
9. Assignability: This agreement, and any claim arising under this agreement, is not assignable or delegable by the Grantee either in whole or in part.
10. Subcontracting: The Grantee may enter into subcontracts consistent with requirements set forth in Attachment B.
11. Disputes: Except as otherwise provided in this agreement, any dispute concerning this agreement which is not settled by the parties shall be decided by the DNR's division manager who shall reduce his/her decision to writing and furnish a signed copy to the Grantee. The decision of the division manager shall be final and conclusive unless, within thirty (30) days from the receipt of such copy, the Grantee mails or otherwise furnishes to the division manager a written appeal. The appeal will be decided by a DNR deputy supervisor. The decision of the deputy supervisor, or duly authorized representative, for the determination of such appeal shall be final and conclusive.

The Grantee does not hereby waive any right to seek review of the DNR's decision. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal. However, such further review shall be sought only in the Superior Court of Thurston County. Pending final decision of a dispute hereunder, the Grantee shall proceed diligently with the performance of the agreement and in accordance with the decision rendered by DNR.

12. Termination for Funding Reasons: The DNR may unilaterally terminate this agreement in the event that funding from federal, state or other sources becomes no longer available to the DNR, or is not allocated for the purpose of meeting the DNR's obligation hereunder. Such action is effective when the DNR sends written notification of termination.

13. Termination for Convenience: The DNR may terminate this agreement in whole or in part by written notice to the Grantee when it is in the best interest of the DNR. If this agreement is so terminated, the DNR shall be liable only for disbursements in accordance with the terms of this agreement for activities completed prior to the effective date of termination.
14. Indemnification: The Grantee shall defend, protect and hold harmless Washington State, the DNR or any officers or employees thereof, from and against all claims, suits or actions arising from the Grantee's acts or omissions which are libelous or slanderous, result in injury to persons or property, violate a right of confidentiality, or use or reproduce material of any kind which constitutes an infringement of any copyright, patent, trademark or trade name.
15. Publication Rights, and Rights to Data, Patents and Inventions: The Grantee shall not publish any of the results of the grant work without the advance written permission of the DNR. Said requests will not be unreasonably withheld and will be answered within thirty (30) days of receipt of said request by the DNR.

Unless otherwise provided, data which originates from this grant shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the DNR. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

Data which is delivered under the agreement, but which does not originate therefrom, shall be transferred to the DNR with a nonexclusive, royalty-free irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so: provided, that such license shall be limited to the extent to which the Grantee has a right to grant such a license.

16. Industrial Insurance Coverage: The Grantee shall provide or purchase any necessary industrial insurance coverage prior to performing activities under this agreement. The DNR will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Grantee or any agent or employee of the Grantee which might arise under industrial insurance laws during performance of activities under this agreement.
17. Licensing, Accreditation and Registration: The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this agreement.
18. Compliance with Law: The Grantee shall comply with all federal and state laws relating to this agreement.

19. Confidentiality: Grantee shall not disclose to any third party any proprietary or confidential information received from the DNR, or acquired during the course of activities under this agreement and shall not use for its own benefit or that of others, any such information, whether developed in the course of this agreement or derived from the DNR, except as may be authorized by the DNR in writing. All information developed in the performance of this agreement shall be considered the DNR's proprietary information.
  
20. Governing Law: This agreement shall be governed by the laws of Washington State. In the event of an inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:
  - a. Applicable federal and state statutes and regulations;
  - b. The Special Terms and Conditions as contained in the main agreement;
  - c. The General Terms and Conditions as contained in this Attachment A;
  - d. Any statement of scope of activities attached hereto and incorporated by reference herein; and
  - e. Any other provisions or attachments of the agreement whether incorporated by reference or otherwise.
  
21. Jurisdiction/Venue: This agreement shall be construed and interpreted under the laws of Washington State and the venue of any action brought under this agreement shall be in the Superior Court for Thurston County. The Grantee, by execution of this agreement, acknowledges the jurisdiction of the courts of Washington State in this matter.
  
22. Waiver: A failure by the DNR to exercise its rights shall not constitute a waiver of any rights under this agreement unless stated to be such in writing signed by an authorized representative of the DNR and attached to the original agreement.
  
23. Entire Agreement: This document contains all covenants, stipulations and provisions agreed to by both parties. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein, except for extension of the completion date. No changes, amendments or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this agreement. Extensions of the completion date are valid if in writing and signed by an authorized representative of the DNR.
  
24. Severability. If any provisions of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

**ATTACHMENT B**

**GRANTEE: CITY OF GIG HARBOR**

**SCOPE OF ACTIVITY:** Under the Cooperative Forestry Assistance Act of 1978 and 1990 amendments, the Grantee will complete the following:

- This project is designed to plant trees on city easements and in city park spaces with the help of various community groups and with the coordination of the Public Works Department. The project culminates in a recognition activity for all in volunteer groups.

**COSTS AND GRANT AMOUNTS:**

Allowable costs are all charges necessary and reasonable to accomplish the objectives of the agreement during the grant period subject to DNR approval. The Grantee will meet with the DNR at the beginning of and throughout the grant period to discuss proposed projects and to determine which activities are reimbursable.

Costs not reimbursable include:

- Overhead greater than the indirect cost rate agreed upon by the DNR and the USDA Forest Service for a given period. This rate is 17% through June 30, 1997.
- Stipends or any kind of director's fees for members.
- Out-of-state travel.
- Construction activities or capital outlays including purchase of land.



RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD  
 License Division - 1025 E. Union, P.O. Box 43075  
 Olympia, WA 98504-3075  
 (360) 664-0012

RECEIVED

JUN 28 1996

DATE: 6/26/96

TO: CITY OF GIG HARBOR

CITY OF GIG HARBOR

RE: ASSUMPTION  
 From W.B. SCOTTS RESTAURANTS, INC.  
 Dba W. B. SCOTT'S RESTAURANT

APPLICANTS:

AARDAL, SUSAN BISHOP  
 11-25-55 532-62-6048

License: 363055 - 2H County: 27

Tradenam: SPIRO'S PIZZA & PASTA  
 Loc Addr: 3108 HARBORVIEW DR  
 GIG HARBOR WA 98335

Mail Addr: 3108 HARBORVIEW DR  
 GIG HARBOR WA 98335-2124

Phone No.: 206-851-9200 SUSAN B. AARDAL

Classes Applied For:

H Spirituous liquor by individual glass and/or beer and wine on premises

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

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

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

\_\_\_\_\_  
 DATE SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNER