

## GIG HARBOR CITY COUNCIL MEETING OF MARCH 27, 2000

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

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

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

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

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

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

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

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

There were no further public comments and the Mayor closed the public hearing at 7:28 p.m.

**CONSENT AGENDA:**

*These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.*

1. Approval of the Minutes of the March 13, 2000, City Council and March 23, 2000 Special City Council Meetings.
2. Correspondence / Proclamations:
  - a. Pierce County Department of Community Services - Economic Development Efforts.
3. Kimball Drive / Pioneer Way Improvement Project - Consultant Services Contract.
4. Pt. Fosdick Improvement Project - Right of Way Donation /Temporary Construction Easement.
5. Approval of Payment of Bills for March 27, 2000:  
Checks #24649 through #24764 for \$224,636.76. Check #24648 replaced voided Check #24209.
6. Liquor License Application - Old Harbor Saloon.

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

**OLD BUSINESS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Second Reading of Ordinances - Planning Commission Recommendations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

**NEW BUSINESS:**

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

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

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

Ekberg/Picinich - unanimously approved.

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

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

Owel/Dick - unanimously approved.

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

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

Dick/Picinich - unanimously approved.

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

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

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

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

#### **STAFF REPORTS:**

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

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

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

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

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


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

**ADJOURN:**

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

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

  
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Mayor

  
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City Clerk