

GIG HARBOR CITY COUNCIL MEETING



October 27, 1997

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

AGENDA FOR GIG HARBOR CITY COUNCIL MEETING
October 27, 1997 - 7:00 p.m.

CALL TO ORDER:

PUBLIC HEARING: 1998 General Fund Revenue Sources.

APPROVAL OF MINUTES:

CORRESPONDENCE / PROCLAMATIONS:

1. Safe Streets.

OLD BUSINESS:

1. Third Reading of Ordinance - Planning Commission Recommendation, Amendments to Title 17, GHMC; Wireless Communication Facilities.
2. Second Reading of Ordinance - Telecommunications, Use of Public Property.
3. Second Reading of Ordinance - Part Time Personnel Benefits.

NEW BUSINESS:

1. County Committee on Economic Development.
2. First Reading of Ordinance – 1998 Property Tax Levy.
3. Henderson Bay - Property Purchase Agreement and Condemnation Ordinance.
4. Six-Year Transportation Plan.
5. Permit Processing – Tenant Improvements and Processing Times.
6. Special Occasion Liquor License – Womens Interclub Council

PUBLIC COMMENT/DISCUSSION:

MAYOR'S REPORT:

COUNCIL COMMENTS:

STAFF REPORTS:

1. Ray Gilmore, Planning/Building Department.
2. Dave Rodenbach, Finance Department – Quarterly Report.

ANNOUNCEMENTS OF OTHER MEETINGS:

1. October 30th, Dan Burden:
1-4 p.m. at City Hall – Kimball Community.
7-9 p.m. at City Hall – Livable Communities Public Lecture.

APPROVAL OF BILLS:

EXECUTIVE SESSION: For the purpose of discussing litigation, potential litigation, and personnel.

ADJOURN:



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH
DATE: October 21, 1997
SUBJECT: PUBLIC HEARING - 1998 GENERAL FUND REVENUE SOURCES

INTRODUCTION

Chapter 251, Laws of 1995 requires cities to hold a public hearing on revenue sources for the next year's general fund budget. The hearing must include considerations of possible increases in property tax revenues.

Budgeted General Fund Revenue Summary

Revenue Source	1996	1997	1998 (preliminary)
Property Taxes (30% is budgeted in the Street Fund)	\$275,000	\$300,000	\$500,000
Sales Tax	1,470,000	1,800,000	1,900,000
Other Taxes	466,000	490,000	660,000
Licenses and Permits	135,000	132,300	140,700
Intergovernmental Revenues	78,111	250,000	291,000
Fines and Forfeits	100,000	90,000	90,000
Miscellaneous Revenues	85,000	113,500	128,500
Total Revenues	2,609,111	3,175,800	3,710,200
Beginning Cash Balance	900,000	600,000	700,000
Total Resources	\$3,509,111	\$3,775,800	\$4,410,200

This chart includes General Fund revenues only. 70% of property taxes are included. The other 30% plus expected diverted road tax moneys (from Westside Annexation) are budgeted in the Street Fund.

The "city" portion of property taxes is shared by the City, Fire District and Library District and is limited to \$3.60 per thousand of assessed valuation in total (except for voted "excess levies"). The 1997 rates are: City - \$1.6000; Fire District - \$1.5000; Library District - \$0.5000; Total - \$3.6000. Each year the tax rate is also limited by the 106% limit which prevents taxes on existing property from increasing more than 6% per year. The calculation of assessed valuation and the various limits is performed by the County and results in a reliable estimate of revenue in December or January.

There are no increases in property, sales, or any other tax rates proposed by the City for 1998.

REGULAR GIG HARBOR CITY COUNCIL MEETING OF OCTOBER 13, 1997

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

CALL TO ORDER: 7:04 p.m.

PUBLIC HEARING: Amendments to Title 17, GHMC; Wireless Communication Facilities. Mayor Wilbert opened the Public Hearing at 7:04 p.m. and Ray Gilmore, Planning Director, gave a brief introduction to this ordinance addressing the citing of telecommunications facilities. He added that three faxes had been received as testimony to be included in the record; one from Spencer Consulting, Inc.; one from WNH Pacific; and one from CAS Consulting. Mr. Gilmore suggested that Councilmembers should review their copies of the correspondence, and that a third reading of the ordinance would be appropriate to give time for Staff to respond to the comments.

Steve Lewotsky – 3025 112th Ave NE, Bellevue. Mr. Lewotsky said he was representing WNH Pacific. He said that he thought that the ordinance was a good first draft and that he had several comments that were listed in his correspondence to Council. He began to go over the comments and was advised by Carol Morris, legal counsel, that it would be more appropriate if he were to allow time for staff to review his comments to be able to respond at the next reading. He agreed that this would be best.

There were no further public comments, and the public hearing was closed at 7:32 p.m.

APPROVAL OF MINUTES:

MOTION: Move approval of the minutes of the September 22, 1997 as presented.
Ekberg/Owel - unanimously approved.

CORRESPONDENCE/PROCLAMATIONS: None scheduled.

OLD BUSINESS:

1. First Reading of Ordinance - Planning commission Recommendation, Amendments to Title 17, GHMC; Wireless Communication Facilities. Ray Gilmore, Planning Director, addressed this agenda item during the public hearing at the beginning of the meeting.

MOTION: Move that we postpone this until the October 27th meeting to allow staff time to respond, and that no additional written comments be allowed for public record.
Picinich/Ekberg – unanimously approved.

2. Second Reading of Ordinance - Collection of Debt. Mark Hoppen, City Administrator, introduced the second reading of this ordinance authorizing the cost of a collection agency involved in collecting municipal debt to be paid by the debtor.

MOTION: Move to approve Ordinance 770.
Owel/Ekberg – unanimously approved.

3. Pioneer Park Rotary Project. Mark Hoppen explained that when this project was recently brought before council, Councilmembers requested that the park be reoriented downhill and referred it to the design review process. After the revisions, the bank was not willing to accept the new project, as it required expansion of the area commitment, so the project was back before Council as previously submitted. He introduced Dave Freeman to present the project. Mr. Freeman explained that he was the architect representing the Gig Harbor Rotary Club and that the club had been working on the placement of a light pole left from the first Narrows Bridge, “Gallopig Gertie,” for approximately five years. He explained that the purpose of the park project was to memorialize the bridge and the people who participated in its construction. Mr. Freeman answered questions about ownership of the lightpole and the following motion.

MOTION: Move we approve the lease agreement between the City of Gig Harbor and Key Bank National Association with the amendment that upon reversion of the property back to its original condition that the light pole become the property of the Gig Harbor Peninsula Historical Society.
Owel/Picinich – unanimously approved.

NEW BUSINESS:

1. First Reading of Ordinance – Telecommunications – Use of Public Property. Carol Morris, Legal Counsel, introduced this ordinance relating to the placement of telecommunication facilities on public property. She said that this ordinance contained a lot of information to review in regards to street use permitting, franchising, and different types of cabling, and that any comments or concerns could be brought up at the second reading.
2. Talmo Street Vacation Request. Mark Hoppen, City Administrator, said that this was a request to vacate property adjacent to Highway 16 and Wollochet Drive. He explained that the proposed vacation would benefit both Talmo and the City because of maintenance considerations for the area. He introduced Scott Wagner, representing Talmo Inc. and Burton Park Associates, who gave an overview of the project that was proposed to locate in the area near the requested vacation. He added that the vacation would allow for more screening from SR-16, and make a more usable configuration for the property. Wes Hill, Public Works Director, explained that the areas proposed for vacation was surplus to the City’s needs and that the State did not need the area to complete any improvements to SR-16. He gave a description of the configuration of the vacation and the conditions that would

accompany the vacation. Councilmember Ekberg voiced concerns that the existing businesses would not have access. Mr. Hill explained that there would be conditions to allow access until the buildings were no longer occupied. Mark Hoppen explained that what was being requested by Council was to set a hearing date for the vacation, and that staff would address any concerns.

MOTION: Move we set a Public Hearing date of November 10, 1997 at 7:00 p.m. to consider the street vacation.
Ekberg/Picinich – unanimously approved.

3. First Reading of Ordinance – Part Time Personnel Benefits. Mark Hoppen explained that this ordinance was in response to Council's request for guidelines for part-time personnel benefits. He added that this would allow a part-time employee to qualify for benefits by paying a percentage of the premium based upon a pre-determined share. He gave an overview of the breakdown of proportions. This will return for a second reading at the next meeting.
4. Request for Time Extension – Rod Nilsson. Ray Gilmore, Planning Director, explained that when the Chapel Hill Townhomes received PUD approval in 1994, the conditions stipulated that the applicant file a final development plan within three years. He went on to explain that since then, the code had been amended to allow for a five-year period for completion of a final development filings and that Mr. Nilsson was requesting a time extension which would be consistent with the current code. Because the resolution approving the Chapel Hill project specifically listed the three-year time limitation, a resolution amending the original PUD was included to approve the requested extension.

MOTION: Move to adopt Resolution No. 503.
Picinich/Owel – unanimously approved.

5. Underground Storage Tank Removal – Contract Award. Wes Hill explained that the City owned two underground tanks that had been taken out of service for the past three years due to stricter regulations. He said that to obtain the required insurance, soils testing, and licensing fees was not cost effective, and recommended that the tanks be removed. He asked for approval to hire the low bidders, Kleen Environmental Technologies, Inc. to perform the job.

MOTION: Move we authorize the execution of the contract for the decommissioning and removal of the underground fuel storage tanks at the City shop to Kleen Environmental Technologies, Inc. as the lowest bidder in the amount of eight-thousand, fifty-one dollars and forty cents (\$8,051.40), including sales tax.
Platt/Owel – unanimously approved.

6. Consolidation of Copier Maintenance Contracts. Molly Towslee, City Clerk, asked for approval to consolidate the four copier maintenance contracts into one, which would be brought to Council for approval each year.

MOTION: Move to authorize the Mayor to sign the consolidated copier service contract in the amount of \$230 per month with any copies over the 20,000 contracted being billed at the .0115 State contract amount.
Picinich/Owel -- unanimously approved.

7. Liquor License Application – Harbor Humidor. No action taken.
8. Special Occasion Liquor License – Knights of Columbus. No action taken.
9. Liquor License Renewals – Bayview Grocery; Gig Pub & Grill; and Olympic Village BP. No action taken.
10. Discontinued Sales of Liquor – The Captain’s Mate & The Captain’s Keep. No action taken.

PUBLIC COMMENT:

Cynthia Stearns and Nita Barcott. Ms. Stearns and Ms. Barcott came forward to congratulate the City of Gig Harbor for winning the Reader’s Choice contest put forth by the “Accent Magazine” publication recently. The City won the ‘Favorite Community to Live’ category, as well as being named as honorable mention in several other categories such as ‘Best View of Mt. Rainier’ and ‘Favorite Water View.’ Ms. Stearns explained that the nominations came from their nine-county base of Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pierce and Skagit and that over 700 nominations had been received. She introduced Nita Barcott and explained that Nita had won the ‘Favorite Photographer’ category.

Jim Pasin – 3212 50th St. Ct. NW. Mr. Pasin said he wished to create an awareness with Councilmember and the Mayor with a situation he had been involved with recently. He gave a brief history of his office building complex and the businesses he had brought to the community. He explained that his concern was the time it took to obtain a building permit for tenant improvements. He said he feared the delays in permitting would discourage certain businesses from leasing space and asked if there may be a more efficient way of dealing with tenant improvement permits in a timely manner. He added that he had spoken to Mark Hoppen, City Administrator, and that he had attempted to resolve his concerns.

Councilmember Ekberg asked Mr. Pasin to submit his suggestions and concerns to staff to be addressed on the next City Council agenda.

Mark Robinson – 7415 Stinson Avenue. Mr. Robinson said he had been fortunate to round up four of the candidates for the upcoming election for City Council to participate in a forum at the Gig

Harbor Yacht Club on Thursday, October 23rd and invited everyone to attend.

MAYOR'S REPORT: None scheduled.

COUNCIL COMMENTS: None.

STAFF REPORT:

1. Chief Mitch Barker, GHPD. Chief Barker said that he didn't have much to add to the stats in the packet, but offered to answer any questions that Council may have.
2. Wes Hill, Public Works Director. Mr. Hill announced that the bid for the project for the Jerisich Dock Extension had been advertised and that he would bring back the results at the November 10th meeting. He gave a brief report on the progress of the East-West road project, explaining that he had obtained a preliminary agreement from property owners for alignment of the road.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Special School Board Meeting October 20th – City Hall, 5:30 p.m. in the Council Chambers.
2. City Councilmember Forum - Gig Harbor Yacht Club on Thursday, October 23rd, 6:30 p.m.

APPROVAL OF BILLS:

MOTION: Move approval of checks #18393 through #18859 in the amount of \$161,456.27.
Owel/Ekberg - unanimously approved.

APPROVAL OF PAYROLL:

MOTION: Move approval of September payroll checks #14685 through #14820 in the amount of \$228,690.53.
Owel/Ekberg - unanimously approved.

EXECUTIVE SESSION:

MOTION: Move to adjourn to Executive Session at 8:38 p.m. for approximately 15 minutes for the purpose of discussing litigation, potential litigation, and personnel.
Ekberg/Platt - unanimously approved.

MOTION: Move to return to regular session and extend the executive session for an

additional 10 minutes.
Owel/Platt - unanimously approved.

MOTION: Move to return to regular session at 9:05 p.m.
Platt/Picinich - unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 9:05 p.m.
Platt/Owel - unanimously approved.

Cassette recorder utilized.
Tape 471 Side A 328 – end.
Tape 471 Side B 000 – end.
Tape 472 Side A 000 – end.
Tape 472 Side B 000 – 354.

Mayor

City Clerk

Safe Streets Campaign
1501 Pacific Avenue, Suite 305
Tacoma, Washington 98402-4420
(206) 272-6824

RECEIVED
OCT 20 1997
CITY OF GIG HARBOR

S A F E S T

October 15, 1997

Board of Directors:

Dan Barkley, President
Asst. Superintendent
Tacoma Public Schools

Marcia Newlands, Secretary
Attorney
Heller Ebrman White & McAuliffe

Ralph Jones, Treasurer
Director
Common Goals

Cathy Brewis
Advertising Director
The News Tribune

Wendell Brown, Councilperson
Pierce County Council

Gerald Costello
Pierce County Prosecutor's Office

Mike Dunbar, Exec. Vice-President
Financial & Retirement Planners
Northwest, Inc.

Brian Ebersole, Mayor
City of Tacoma

Ejetland, President & CEO
YMCA

Mark French, Acting Sheriff
Pierce County Sheriff's Dept.

Rev. John Hopkins
Community Member

Billie Malcolm
Community Member

Son Thanh Nguyen
Community Member

Roger Ottenbach, General Manager
KCPQ

Chief Ben Reisz
Sumner Police Department

Doug Richardson, Councilperson
Lakewood City Council

Michele Skanes
Community Member

Ray Tenslon, President
Simpson Paper Co.

Tex Whitney, Senior Vice-President
Columbia Bank

Debbie Winskill
Community Member

Advisory Members:

Rick Allen, CEO
United Way

Tip Arreola, Chief
Tacoma Police Dept.

Chuck Robbins, Executive Director
Department of Public Safety
Pierce County

Jim Walton, Deputy City Manager
City of Tacoma

Honorable Gretchen Wilbert
Mayor of Gig Harbor
P O Box 145
Gig Harbor, WA 98335

Dear Mayor Wilbert:

We of the Safe Streets Campaign invite you and nine representatives of your community to participate in the upcoming community "Open Forum '97" on November 8, 1997.

Open Forum '97 will be:


Saturday, November 8, 1997
8:30 - 12:00 Noon
Mt. Tahoma High School
6229 S. Tyler
Tacoma, WA


Safe Streets has been in existence for eight years. During that time, it has evolved from a fledgling grassroots effort to a critical mass of 160,000 organized block members who volunteer to work on graffiti removal, drug house closures and community revitalization. The county-wide effort has resulted in local approaches in communities such as yours, thereby creating a tremendous capacity for local community change.

The purpose of the forum is to bring citizens together to express their ideas on community issues, drugs, illegal gangs, violence and public safety. Their ideas will be formed into the 1998 Safe Streets Community Action Plan which is scheduled for publication and distribution in 1998.

We ask that you form a community team to attend Open Forum '97. Through the program, your team will bring their issues and their collective voice to help shape the Safe Streets community agenda. Please call our office to reserve your space. At that time, we will inform you of the next steps.

Sincerely,


Dan Barkley, President
Safe Streets Board


Brian Ebersole, Mayor
City of Tacoma



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: *PL* PLANNING-BUILDING STAFF
SUBJECT: THIRD READING OF ORDINANCE/ AMENDMENTS TO TITLE 17;
WIRELESS COMMUNICATION FACILITIES ORDINANCE
DATE: OCTOBER 21, 1997

Background/Introduction

Attached is the final draft of the wireless communications ordinance for the City of Gig Harbor. The City has received several comments on the draft. The comments are attached along with staff's analysis and recommendation.

Policy Issues

The ordinance governs the zoning aspects of telecommunications facilities. The ordinance not only addresses wireless communication facilities but also satellite dish systems, amateur radio towers and broadcast and relay towers. Although these latter facilities are not directly the subject of the Telecommunications Act of 1996, previous federal regulations and state statutes limit local governments' ability to preclude the siting of such facilities.

With the exception of broadcast and relay towers (permitted only in the Employment Districts west of SR-16), the ordinance does not outright prohibit wireless communication facilities within the city. The proposed ordinance emphasizes co-location (attached or grouped with existing facilities) as a preferred siting method. Should that not prove to be a viable option, there is a order of siting preference. Additionally, a proposed facility may require approval by the Hearing Examiner, depending upon the zone in which it is to be located. Council may want to refer to the general summary which was distributed at the first reading.

The standards proposed are deemed reasonable in accomplishing the objectives of meeting state and federal requirements while protecting the public's welfare under through the city's zoning authority. A table which summarizes standards and location requirements is attached.

Fiscal Impact

The ordinance will have negligible impact on the city's financial resources. Appropriate permit

review fees will be recommended at the next update of the Fee Resolution so off-set the cost of staff review on applications.

Recommendation

This is the final reading of the ordinance. The moratorium on telecommunication facilities expires October 28 (tomorrow). Staff recommends that the effective date of the ordinance be established as October 27, using the emergency procedures available under Section 1.08.020(B). Any changes adopted by Council will be incorporated into the final version of the ordinance.



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND GIG HARBOR CITY COUNCIL
FROM: PLANNING STAFF
SUBJ.: RESPONSE TO LETTER FROM W.H. PACIFIC (STEVE LEWOTSKY)
DATE: OCTOBER 21, 1997

The following comments and recommendations are based upon the letter received from Steven Lewotsky of W.H. Pacific.

General Guidelines and Permit Requirements

COMMENT: Apparent conflict with Section 17.61.030E . Subsection 020B.4 indicates that commercial districts are the most preferred location for cellular facilities. Subsection 030.E states that no broadcast and relay facilities are permitted in commercial zones.

RESPONSE: The definition of broadcast and relay towers is very general and includes various types of facilities which require transmission towers. Cellular (wireless communication) facilities are defined separately under section 17.04.755. Wireless communication facilities must meet a set of standards that are likewise addressed in Section 17.61.050 E, 2-7 (Broadcast and Relay Towers). No change is necessary .

Section 17.61.020.C.a – General requirements for Co-location -- Height Standards

COMMENT: Concern about the height limitation imposed under this section. The section requires that the applicant contact owners of structures in excess of 30 feet in height within a ¼ mile radius as possible co-location sites. The request is to increase the height standard from 30 feet to 80 feet and to broaden the site criteria to include height and line-of-sight transmission.

RESPONSE: The proposed standard does not impose a height limit of 30 feet. It requires that an applicant contact owners of structures which are 30 feet OR GREATER in height. 80 feet is definitely greater than 30 feet in height and – should such a structure exist in the City – it would be a potentially good site for co-location. If the standard was amended to 80 feet, an applicant could claim that co-location is not possible as there are very few – if any – 80'+ structures in the city. Recommend that this section remain as is, but to include height and line-of-site as site-value criteria.

Section 17.61.020.D.2.f

COMMENT: Conflict between two time limits on abandonment of a facility. One section states 60 days, another states one year.

RESPONSE: Staff recommends that the abandonment period be one year. This is consistent with other “time thresholds” in the zoning code.

COMMENT: The term stealth is slang for an illegal site. Suggest different wording.

RESPONSE: The term “stealth technology” is used in the text of the ordinance. It is a general term that means the utilization of various methods to conceal or diminish the visual impacts of wireless communication facilities and towers. If the term stealth is suspect, alternative wording such as “concealment”, “visual mitigation techniques”, or “masking” could be employed. Staff has no preference.

Sections 17.61.030D.1./D.2. and E.3

COMMENT: Concern about limiting siting outside of required setback areas. Opportunities for concealment are greatest in required yards where one could take advantage of any tall natural or artificial feature. Suggests alternate language that would permit the consideration of using required setback areas if the proposed facility will take advantage of an existing natural or artificial feature to conceal the facility or minimize its visual impact.

RESPONSE: Staff concurs with the amended section, as recommended by Mr. Lewotsky.

Additional Language for Section 17.61.060 D.3 c. & d.

COMMENT: Staff concurs with adding this language to stated sections

Section 17.45.030D. Conditional Uses

COMMENT: Schools and other institutions should be permitted as onditional uses.

RESPONSE: Council was previously advised that there is a typographical error in the city code from which this section was copied. The correct term is Employment district, not education district. Also, the strikeover was to eliminate the current requirement that telecommunication facilities be authorized as a conditional use in employment districts. The proposed change in this ordinance would make telecommunication facilities a permitted use in the employment district. Staff concurs that within the Public Institutional District, telecommunication facilities should be provided for as a conditional use. Consequently, the proposed wording should be added to the ordinance:

* * *

17.15.030 Conditional uses.

1. Any essential public facility as defined in GHMC 17.15.010(C) and the city of Gig Harbor comprehensive plan may only be authorized as a conditional use.
2. Wireless communication facilities and support structures.

Comments received from Spencer Consulting Group were previously submitted to Council at the last meeting, along with legal counsel’s comments. Nonetheless, they are attached for Council’s consideration.

Staff will incorporate those changes into the ordinance as approved by Council.



October 13, 1997

Mayor Gretchen Wilbert
City of Gig Harbor
3125 Judson Street
Gig Harbor, WA 98335

**Re: Gig Harbor Telecommunications Code Draft
File No. 3-1997-2701**

Dear Mayor Wilbert

I received a copy of the most recent telecommunications code draft for Gig Harbor earlier this week. After comparing it with the draft I received in May, I still feel you have the makings for a good code. I do have some reservations about one or two things. I thought I would take a moment to briefly outline my concerns and provide you with some alternatives to think about. I realize that you may already have heard some or all of my suggestions. However, the changes evident in the current draft are significant and I would like to add my thoughts to the record.

[Delete]

Add

Section 17.61.020.B.4. General Guidelines and Permit Requirements. This section appears to conflict with Section 17.61.030.E. Subsection 020.B.4 indicates that commercial districts are the most preferred location for cellular facilities after public lands and employment districts. However, subsection 030.E states that no broadcast facilities are permitted in commercial zones. I think some clarification is needed. The problem may actually be with the definition of "Broadcast and Relay Towers" which includes cellular communications services. If the word cellular was deleted it would clarify things.

Alternative Language for Section 17.04.125 Broadcast and Relay Towers means a freestanding support structure, attached antenna, and related equipment, intended for transmitting commercial television, radio, telephone, [cellular] or other communications facilities.

Section 17.61.020.D.2.g. General Guidelines and Permit Requirements. It would be helpful to use the full and complete title for the FCC citation to be certain we are consulting the correct code citation.

Section 17.61.020.C.a General Guidelines and Permit Requirements. Determining the value of a site based on location alone, without consideration for height and line of sight does not take into account the limitations of PCS technology. A thirty-foot tall pole enjoys an extremely small coverage area. An antenna array mounted at this elevation from grade would have very limited effectiveness, unless it was perched on top of a high knoll with a clear view in all directions, or if it was performing specific coverage in a very mature wireless system.

Additionally, trees cause drastic degradation of PCS signal strength and quality, consequently wireless antenna arrays need to be above the surrounding trees. Since most trees in and around Gig Harbor (Douglas firs, etc.), exceed 30 feet in height, there would be no value in a facility of such low elevation or approaching the owner of a 30 foot high property to collocate. Thirty feet is not a useful height for the Gig harbor area. I am suggesting 80 feet because that is the low height range of a Douglas fir tree.

Mayor Gretchen Wilbert
October 13, 1997
Page 2

Alternative Language for 17.61.020.C.a.

a. Applicants are required to demonstrate: (i) that they have contacted the owners of structures in excess of [thirty] ~~eighty~~ feet [(30')] (80') within one quarter (1/4) mile radius of the proposed site and which from a location, height, and line-of-sight standpoint could provide part of a network for transmission of signals; (ii) have asked permission to install the antenna on those structures; and (iii) were denied for reasons other than economic feasibility.

b. The information submitted by the applicant shall include (i) a map of the area to be served by the tower or antenna, (ii) its relationship to other cell sites in the applicant's network, and (iii) an evaluation of existing buildings taller than [thirty] ~~eighty~~ feet [(30')] (80') within one quarter (1/4) mile radius of the proposed site and which from a location, height, and line-of-sight standpoint could provide part of a network for transmission of signals

Section 17.61.020.D.2.f General Guidelines and Permit Requirements. This section appears to be in conflict with Section 17.61.040.D.9 Abandonment and Disrepair. The General Guidelines call for removal of an abandoned tower in 60 days; however, Section 17.61.040.D.9 calls for removal in 12 months. This is similar to my first comment. One or the other should be deleted or the text should clarify how these subsections are meant to be used. I would suggest staying with 12 months simply because it allows greater time to negotiate lease arrangements for another provider to use the facility, which could avoid another wireless facility application.

Alternative Language Section 17.61.020.D.2.f. A signed statement indicating that (1) the applicant and landowner agree that they will diligently negotiate in good faith to facilitate collocation of additional personal wireless service facilities by other providers on the applicants structure or within the same site location and (2) the applicant and/or landlord agree to remove the facility within [sixty (60) days] 12 months after abandonment.

Section 17.61.030.D.3.a Development Standard for all Public Institutional, Residential, Waterfront District, and Downtown Business Districts (PI, R-1, R-2, R-3, RB-1, RB-2, PCD-RLD, PCD-RMD, WR, WM, and DB). This is just a note of caution that the word "stealth," in the telecommunications industry, is frequently used as a slang term for an illegal site. You might consider selecting a different word here.

Sections 17.61.030.D.1, 17.61.040.D.2, 17.61.050.E.2 Siting Standards, and Section 17.61.060.D.3 Special Exceptions. Setback areas often provide the best opportunities for monopole concealment. By observing required setbacks as stated in this proposed amendment, the opportunity to take advantage of any tall natural or artificial features in setback areas, such as trees and light standards, is denied. The area of a lot not dedicated to setback area is most often cleared for buildings or parking areas, seldom leaving large, tall features that could help conceal a cellular site. It is difficult to place a monopole within the buildable area of an undeveloped parcel or within the footprint of an existing building. The proposed language prohibits the use of large portions of any lot, regardless of whether it could more effectively conceal or minimize the impact of a cellular facility.

There are two ways that this code could use setback areas to advantage. One is to provide language in the subsection which requires the applicant to demonstrate that allowing cellular facilities to be located in

Mayor Gretchen Wilbert
October 13, 1997
Page 3

setback areas will significantly lessen the impact of the monopole. The other is to allow setback variances through special exception and under the same conditions.

Alternative Language for Sections 17.61.030.D.1, 17.61.040.D.2, and 17.61.050.E.2. No wireless equipment reviewed under this Section shall be located within required building setback areas unless it is demonstrated that locating the proposed facility within the required setback area will take advantage of an existing natural or artificial feature to conceal the facility or minimize its visual impacts.

Additional Language for Section 17.61.060.D.3.c. & d. Wireless Communications Facilities - Special Exceptions.

c. Residential Zones - An applicant for a proposed wireless facility that locates the facility within a required setback area shall meet the Special Exception Criteria.

d. Commercial and Industrial Zones - An applicant for a proposed wireless facility that locates the facility within a required setback area shall meet the Special Exception Criteria.

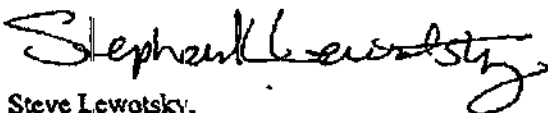
Section 17.45.030.D. Conditional Uses. Schools and other institutions often have existing tall structures which can be used to support an antenna array. By not permitting cell sites in this zone as a conditional use denies those institutions the benefit of lease compensation. Most institutions can always use additional funding sources. Telecommunications facilities should be permitted by conditional use in education districts.

Alternative Language for Sections 17.45.030.D . Public utilities and public services such as libraries, electrical substations, telephone exchanges, telecommunication facilities, police and fire stations.

Thank you for taking the time to review these comments. If you have any questions, please do not hesitate to call me at (425) 828-2806.

Sincerely,

W&H PACIFIC, INC.



Steve Lewotsky,
Senior Planner

SKL:gs
G:\DOWNLOAD\SKL\GIG\HARV.DOC

cc: Ray Gilmore, Director of Planning and Building Services, City of Gig Harbor



P.L.L.C. ATTORNEYS AT LAW

2100 Westlake Center Tower - 1601 Fifth Avenue - Seattle, WA 98101-1686 • (206) 447-7000 • Fax (206) 447-0215

MEMORANDUM

DATE: October 13, 1997

TO: Ray Gilmore, Gig Harbor Planning Director

FROM: Carol Morris, City Attorney

RE: Response to Letter from Spencer Consulting Group

Ray, here is my response to the letter from Spencer Consulting Group, which is undated (received by the City on October 10, 1997):

1. **Priority of Locations.** I don't understand the problem. Apparently, the Group wants to be allowed to locate wireless facilities in residential and/or waterfront districts through the Conditional Use process instead of having to demonstrate that they can't locate their facilities elsewhere. This comment is difficult to understand, given that the provider would be required (under § 17.64.046(B)(2)) to demonstrate that:

there is a need for the proposed tower to be located in or adjacent to the residential area, and which shall include documentation on the procedures involved in the site selection and an evaluation of alternative sites and existing facilities on which the proposed facility could be located or co-located; . . .

It seems that they will have to make the showing one way or another.

2. **Collocation.** This appears to be a comment that in some situations collocation may not be appropriate. However, the City's code does not require collocation, in recognition of the fact that in some situations, collocation may not be appropriate.

Apparently, the Group feels that the language of proposed GHMC § 17.61.020(C) is "burdensome and arbitrary." The Group does not state why they believe that this is an arbitrary requirement, or why they believe that this requirement "may overstep the bounds of the acceptable limits placed on the local regulatory authority by" the Telecommunications Act.

Memorandum to Ray Gilmore, Gig Harbor Planning Director
October 12, 1997
Page 2

The Group states that the City will "already have information constituting what sites work and don't work through the Permit Processing Requirements Section." However, in the next sentence, it asserts that the information required by the permit processing requirement section "could constitute proprietary information that is not the proper subject of City inquiry . . ." Perhaps this issue could be better fleshed out if the Group would provide the City with the manner in which it considers the City could "appropriately" require collocation, and obtain information to determine whether or not a provider had adequately exhausted all avenues of collocation before applying to locate a new tower or facility. I am not suggesting that adoption of the ordinance be delayed, because I believe this is a non-isse.

The Group asserts that "by demonstrating that a diligent effort has been made to locate on existing structures within non-residential zones providers would reveal potential locations for future sites, which is an inappropriate use of proprietary and confidential information." This comment assumes that the City has described the specific method for a provider to comply with this requirement, when in fact, the City has not. The "diligent effort" required by the code will be unique to each application for the location of a new antenna support structure in a residential or waterfront district. The provider need not disclose any information it considers to be proprietary or confidential. Of course, the City's decision to approve or deny the application must be based on substantial evidence in the record. If the applicant does not choose to submit evidence to the City to meet this criterion, the City can hire a consultant (at the applicant's cost), to provide the City with information necessary to determine whether the application can be denied.

3. **Permit Processing Requirements.** The Group misunderstands the requirements of proposed GHMC § 17.61.020(D). This section merely requires that the applicant and the landowner agree that they will "diligently negotiate in good faith to facilitate collocation of additional personal wireless service facilities by other providers on the structure . . ." This does not dictate the language to be inserted in any contract between the landowner and provider.
4. **Permit Processing Requirements.** Given the technological improvements in the last couple of years, wireless facilities could become outdated relatively soon. If providers plant towers throughout the City in an effort to provide "seamless coverage," and tower technology later becomes unnecessary, the antennas could be abandoned. Therefore, the question is how long should the abandoned tower and/or antenna be left standing before the City requires that the tower and/or antenna be taken down?

* The test should not be the provider's determination of "financial feasibility." However, the current requirement of sixty days after abandonment may be too short. Perhaps the City should consider removal within a one year period, given that a provider may not

Memorandum to Ray Gilmore, Gig Harbor Planning Director
October 12, 1997
Page 3

- service an abandoned tower and/or antenna to ensure that it does not deteriorate or otherwise become a public health and safety problem from high winds or other weather conditions.
5. **Permit Processing Requirements.** The Group apparently objects to the submission of a statement by the applicant as to whether construction of the tower will accommodate collocation of additional facilities. The concern is that technical concerns may limit the ability of carriers to collocate. If this is the case for any proposed facility, the provider should state this fact in response to the City's requirement. There doesn't appear to be any need for the City to wait to adopt this ordinance for AT&T's assistance in developing collocation policies.
 6. **Development Standards -- Collocation.** The Group apparently asserts that proposed GHMC § 17.61.030(D) requires collocation. It does not.

The Group asserts that "technical concerns like potential radio frequency interference or space limitations at a site can limit the ability of carriers to collocate." If this is true, then the provider need only provide evidence to demonstrate this fact. If the City finds that there is substantial evidence in the record to demonstrate that the placement of a freestanding wireless communication facility on an existing structure cannot accommodate the provider's needs, the City will not deny the application.
 7. **Development Standards -- Equipment Shelters.** The Group requests that the code allow equipment shelters to be constructed to 400 square feet. The actual language of the code reads: "Associated above-ground equipment shelters shall not exceed two hundred forty (240) square feet unless operators can demonstrate that more space is needed. "The Group asserts that the 240 "limit" may "act to prohibit certain technologies and thus violate the Act." Nothing in the applicable language sets an absolute limit on the size of equipment shelters. If a provider can demonstrate a need for a larger shelter, then the City can permit a larger shelter.
 8. **Review by an Independent Consultant.** The Group considers the section of the proposed code relating to the selection and retention of an independent consultant to be "discretionary and burdensome." The Group claims that the self-interested applicant can "better address the technical and public safety issues."

There are a number of code provisions which allow the City to hire a third party expert at the applicant's cost -- drafting of an EIS under SEPA, etc. In some instances, the City may need an independent consultant to review the submission of an applicant, especially when technical information is provided. The City simply does not have the funds to hire a person on staff with the necessary expertise in telecommunications facilities, and should

**Memorandum to Ray Gilmore, Gig Harbor Planning Director
October 12, 1997
Page 4**

hire an outside expert, at the applicant's cost, to review the application for compliance with code.

CAM175876.1M/70008.150.039/B0008.

SPENCER CONSULTING, INC.

Facility Siting, Planning & Community Relations

1370 Stewart Street
Seattle, WA 98109

RECEIVED

(206) 682-5540 Facsimile
(206) 682-4939 Phone
(206) 749-0484 Phone

OCT 10 1997

Ray Gilmore
Planning Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

CITY OF GIG HARBOR

Re: Personal Wireless Telecommunications Ordinance

Dear Mr. Gilmore:

Thank you for the opportunity to comment on the draft Personal Wireless Telecommunications Ordinance (Ordinance) now under consideration by the City Council of the City of Gig Harbor. I am writing on behalf of our client AT&T Wireless Services. We would like to first commend the City and staff for the work that has been done so far on this ordinance. However, as outlined below there are still several issues that we would like to have addressed in the Ordinance.

17.61.020.B Priority of Locations.

As your draft is currently written, new primary support structures and antennas will only be allowed in residential and waterfront districts if locations are not available on existing structures or in non-residential districts; and only on or in existing churches, parks, schools, utility facilities, or other appropriate public facilities. While providers will seek to locate in those districts before seeking to locate in more sensitive zoning districts, providers are at times required to locate support structures and antennas in residential areas to meet coverage requirements. We would request that more opportunities be provided to site new primary support structures and antennas through the Conditional Use process.

17.61.020.C General Requirements for Collocation.

Collocation is a good goal in appropriate circumstances. However, not all circumstances are appropriate for collocation projects. Many factors are balanced when finding the best location for a site, such as; line of site, topography, road and utility access, etc. Often these factors prohibit collocation. Collocation will generally require an additional equipment shelter and will add height and size to a tower or other structure sufficient to accommodate the weight of additional antennas and the separation required. Therefore, there may be many situations, especially in or around residential zones, where collocation will be inappropriate.

Requiring the applicant to collocate at the risk of denial has the effect of discriminating against those providers entering the area late. They will not be able to determine the location that best suits their needs but will be at the mercy of the earlier entrant. Additionally, the first entrant may be burdened by the added cost to construct facilities in anticipation of collocation projects that may never materialize. Collocation is a good goal in appropriate circumstances and should be encouraged, but such circumstances should be determined by the applicants on a case by case basis. Provisions having the effect of mandating collocation violate the 1996 FCC Telecommunications Act.

Subsection (a) of Section 17.61.020.C requiring applicants to demonstrate that they have contacted the owners of structures in excess of 30' within a one-quarter mile radius of the proposed site is burdensome and arbitrary. It may overstep the bounds of the acceptable limits placed on the local regulatory authority by the Federal Telecommunications Act, Amendments of 1996 (The Act). The City will in actuality already have information constituting which sites work and don't work through the Permit Processing Requirements Section. Subsection (b) of Section 17.61.020.C requiring applicants to include a map of the area to be served by the tower or antenna and its relationship to other cell sites in the applicant's network requires disclosure of service areas. The disclosure of service areas is vague and could constitute proprietary information that is not the proper subject of City inquiry, and the area that is subject to disclosure should be clearly defined.

The last paragraph in Section 17.61.020.C states "...an applicant desiring to locate new antenna support structure in residential or waterfront district shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a non-residential zone, and that due to valid considerations including physical constraints, and economic technical feasibility, no appropriate location is available". According to this statement applicants desiring to locate new antenna support structures in residential or waterfront areas may be allowed to do so only if it can be demonstrated that a diligent effort has been made to collocate on existing structures within non-residential zones. While providers will seek to locate on existing structures within non-residential zones, providers are at times required to locate support structures in residential areas to meet coverage requirements. By demonstrating that a diligent effort has been made to locate on existing structures within non-residential zones providers would reveal potential locations for future sites, which is an inappropriate use of proprietary and confidential information. Wireless providers have no objection to showing the location of existing facilities, or location of facilities for which zoning

applications have been filed. However, the wireless industry is competitive and most providers will tell you that future build plans are proprietary and confidential. If providers were to reveal potential locations for facilities, this information would become public record available to competitors.

17.61.020.D. Permit Processing Requirements

Subsection f of the Permit Processing Requirements requires an applicant and landowner to agree that they will negotiate in good faith to facilitate collocation by other providers within the same site location and removal upon abandonment. These are legitimate concerns. However, zoning authority is the authority to regulate the *use of land* for the protection of public health, safety and welfare. This authority would not extend so far as to allow the City to regulate the terms of agreements between private parties. A wireless services provider is in a much better position to determine when collocation is feasible, and a wireless company would be in a better financial position to provide the assurance that a facility be removed after a reasonable period of discontinued use.

Subsection i of the Permit Processing Requirements requires a statement by the applicant as to whether construction of the tower will accommodate collocation of additional facilities or antennas for future users. AT&T Wireless Services appreciates the City's interest in curtailing site proliferation through collocation. However, at times technical concerns like potential radio frequency interference, or space limitations at a site can limit the ability of carriers to collocate. AT&T Wireless Services is willing to work with the City to develop policies which provide incentive for collocation.

17.61.030.D.7 WCF- Development Standards. Collocation

Subsection 7 of Section 17.61.030.D states in part "...Placement of a freestanding wireless communication facility *may be denied* if placement of the antenna on an existing structure can accommodate the applicant's/operator's communications needs". Subsection 7 further states "...collocation of a proposed antenna... or placement on an existing structure shall be explored and documented by the applicant/operator... to show reasonable efforts were made to identify alternate locations". Requiring the applicant to collocate at the risk of denial has the effect of discriminating against those providers entering the area late. They will not be able to determine the location that best suits their needs but will be at the mercy of the earlier entrant. As previously stated, AT&T Wireless Services appreciates the City's interest in curtailing site proliferation through collocation. However, at times technical concerns like potential radio frequency interference or space limitations at a site can limit the ability of carriers to collocate. AT&T Wireless Services is willing to work with the City to develop policies and incentives for collocation.

City of Gig Harbor
October 7, 1997
Page Four

17.61.030.D.8 WCF Development Standards. Equipment Shelters

Enlarging the equipment shelter maximum floor area to 400 square feet would better reflect current size requirements for equipment shelters. The smaller 240 square foot limit may act to prohibit certain technologies and thus violate the Act of 1996.

17.61.070.A Review by Independent Consultant- Third Party Review

Requiring the selection of a third party expert to review WCF applications with the cost to be borne by the applicant is discretionary and burdensome. The provider/applicant rather than a third party consultant better addresses the technical and public safety issues. The provider/applicant can at the City's request provide additional information addressing technical and public safety concerns during the WCF application review process. City staff through the City's adoption of specific submittal requirements can carefully screen the accuracy and completeness of submissions. These requirements can be incorporated into the Permit Processing Requirements Section. AT&T Wireless Services is willing to work with the City to develop specific submittal requirements that would ensure compliance with the City's policies and goals.

Conclusion

Thank you for the opportunity to comment on your draft ordinance. We look forward to working with the City to develop an ordinance which will meet both the industry's needs for providing service and the City of Gig Harbor's desire to protect the public health, safety and welfare.

Sincerely,



Ron Grina
Land Use Planner

CC: Ross Baker, AT&T Wireless Services, Inc.,
Lorraine Spencer, Spencer Consulting, Inc.



P.L.L.C. ATTORNEYS AT LAW

2100 Westlake Center Tower • 1601 Fifth Avenue • Seattle, WA 98101-1686 • (206) 447-7000 • Fax (206) 447-0215

MEMORANDUM

DATE: October 22, 1997

TO: Ray Gilmore, Gig Harbor Planning Director

FROM: Carol Morris, City Attorney

RE: Letter of October 13, 1997 from CAS Consulting

Ray, here are my comments on the above letter:

1. **17.61.020 General Guidelines and Permit Requirements.**

After reviewing the comments made by CAS and others on the collocation requirements in this section, I recommend that the language be changed as follows:

Co-location on existing wireless support . . . The City may request that the applicant perform feasibility studies associated with applications for communications facilities in order to demonstrate that locations on existing structures have been explored as the preferred siting alternative, or that a conditional use permit or the exceeding a variance from the development standards in this chapter, as requested by the applicant, is necessary in order to provide wireless communications, television, radio or other broadcast services.

The following must be demonstrated: If the City requests such a feasibility study of an applicant, the study shall demonstrate:

- a. Applicants are required to demonstrate: that the applicant has: they have (i) contacted the owners of structures in excess of thirty feet (30') within a one-quarter (1/4) mile radius of the proposed site and from which a location standpoint could provide part of a network for transmission of signals; (ii) have asked for permission to install the antenna on those structures; and (iii) were denied for reasons other than economic feasibility received a denial

Memorandum to Ray Gilmore, Gig Harbor Planning Director
October 22, 1997
Page 3

Removal of Abandoned Facilities.

CAS comments that the 60 day removal period is too soon. In my letter responding to the comments of the Group, I acknowledged that this might be true. CAS suggests 120 days, which is even shorter than the time period I suggested.

Environmental Documents.

CAS suggests that Section D(2)(g) on page 11 should be amended to state that SEPA review be required in place of Federal Environmental Review. I assumed that you would be performing SEPA on an application under the consistency requirements of Title 19, and therefore did not add any requirements for SEPA in this ordinance. I think that the provisions of Title 19 address this issue, because Section D(2)(g) does not require federal environmental review, it merely requires that the applicant submit copies of any such documents that they were required to complete by any federal agency. The SEPA exemptions should appear in our SEPA chapter (review the copies of RCW 43.21C.0384, RCW 8.036.375 and RCW 19.27A.027).

Maps and Photographs.

Even though CAS commented that the 1/4 mile area in an earlier provision was "arbitrary," they now assert that the requirement in Section D(2)(h) should be amended so that an operator need only disclose information "within 1/4 mile of the City Boundary."

CAS states that an aerial photograph "does not add anything to the application that could not be identified in a map or drawing except additional cost." This is not true. An aerial photograph will provide information to the hearing body or officer regarding the surrounding uses, location of structures or trees that might make the proposed tower more compatible with the area, etc.

CAS states that the requirement of disclosing the service areas of other wireless service facilities of the operator "is quite vague and could constitute proprietary information." This requirement is for information to demonstrate the need for the requested antenna, tower or facility, and relates back to the operator's disinclination to collocate on structures with other operators. The City is not requesting proprietary information, it is requesting information as to the operator's claimed need to construct a new tower, for example, within a very short distance of another new tower.

17.61.030 and 17.61.040

Memorandum to Ray Gilmore, Gig Harbor Planning Director
October 22, 1997
Page 2

of permission to install the antenna on those structures, together with the reason for such denial.

CAS comments that the requirements of subsections C(a) and (b) are burdensome and arbitrary. The requirement to contact owners of structures in excess of 30 feet within 1/4 mile radius of the proposed site and from which a location standpoint could provide part of a network for transmission of signals, so that the operator can find out whether it can locate an antenna on an existing structure, before it installs a new tower or new wireless support structure, is not arbitrary. It requires the operator to explore alternatives to siting an antenna before it constructs another new tower or facility. The requirement has been drafted to prevent a proliferation of new structures within the City.

Subsection C(b) merely requires that the operator provide the City with information demonstrating the area served and the evaluation of the buildings over 30 feet within a 1/4 mile radius so that the City can determine whether the operator has first attempted to locate on an existing structure. This does not "dictate where the provider must locate." Nothing in this section requires the operator to locate in any particular area, or on any particular structure.

CAS comments that the 30 foot and 1/4 mile radius designations are "arbitrary and may overstep the bounds of the acceptable limits placed on local regulatory by the Act." The 30 foot requirement derives from the fact that the height limit in most zones in the City is 35 feet. If an operator could locate an antenna on an existing structure, the structure and the antenna might still be within the height limit for the underlying zone. The 1/4 mile radius requirement was felt to be small enough to allow the operator to comply without significant expenditures of resources, while taking into account the City's legitimate concern that new towers and/or wireless support structures are not constructed in limited areas where collocation is possible.

Permit Processing Requirements -- Subsection D(2)(f).

CAS comments that the City's requirement that the applicant and landowner "agree that they will diligently negotiate in good faith to facilitate co-location of additional" facilities by other providers does not require that co-location occur. This language also does not have "the effect of mandating collocation.

As I stated in my earlier memo to you regarding the comments of the "Group," no alternative language has been provided by these operators. It would be helpful to read the operator's version of an ordinance which they believe meets the Act's requirements and which actually works to encourage collocation. However, given the imminent expiration of our moratorium, we should not wait to receive any information from the operators.

Memorandum to Ray Gilmore, Gig Harbor Planning Director
October 22, 1997
Page 4

CAS comments that the City's prohibition on broadcast and relay towers in certain districts violates the Act. This ignores the fact that there is a special exception procedure, and that broadcast and relay towers are not regulated by the Federal Telecommunications Act. Under the special exception criteria, an applicant for a wireless communication facility would be required to demonstrate, among other things, that strict application of the code would result in the operator's inability to receive a signal or effectively provide telecommunications services. Nothing in the Act requires the City to allow wireless communications towers outright in residential zones.

CAS is correct, if the City receives information from an applicant that it could not effectively provide wireless communication service in the City without an 80 foot tower in a residential zone, and the City denies the application, the City could be subject to litigation under the Act. However, the City Council should not assume that the City will violate the terms of the ordinance in its decision whether or not to adopt it. The operators prefer ordinances that set up as few obstacles as possible to their establishment of new towers in the City, and this is the reason for the City's request for additional information on the need to allow a proliferation of towers, especially in residential zones.

Let me know if you have any additional questions.

CAM176836.1L/F0008.150.C89/B0008.

CAS

Planning, Government Relations & Right of Way Consulting

29009 Thirteenth Avenue South
Federal Way, Washington 98003
(253) 946-5041
fax: 946-8205

October 13, 1997

City of Gig Harbor City Council
3105 Judson Street
Gig Harbor, WA 98335

Sent via facsimile to: (253)851-8563

Re: New Telecommunications Siting Ordinance

Dear Mayor and City Council Members:

Thank you for the opportunity to comment on the draft Telecommunication Siting Standards Ordinance (Ordinance) now under consideration by City Council. I regret that I am unable to attend this evening's meeting due to an unavoidable scheduling conflict, but I hope you will take the following comments into consideration in your deliberations this evening. I am writing on behalf of my clients AT&T Wireless Services and Spencer Consulting who have serious concerns regarding the proposed Ordinance.

17.61.020 General Guidelines and Permit Requirements

General Requirements - Collocation

Section C(a) and (b) requiring proof that all owners of structures in excess of 30 feet have been contacted is burdensome and arbitrary. The first main paragraph of Section C is sufficient in requiring an analysis of preferred siting. In a more general manner, it requires a demonstration that locations on existing structures have been explored and that they don't work. In Section C(a) and (b), the City is attempting to dictate where the provider must locate rather than regulating where not to go based upon reasonable restrictions. This is an inappropriate use of local zoning authority. The 30 foot and 1/4 mile radius designations are arbitrary and may overstep the bounds of the acceptable limits placed on local regulatory authority by the Federal Telecommunications Act (The Act).

Additionally, proving that access was denied for reasons other than economic feasibility is burdensome and an improper use of authority. If economic feasibility is not an acceptable criteria for making a locating decision on or in a specific area or building, what is? Will the City negotiate leases for the industry if a landlord is unwilling to accept the rent offered? If so, will the City then engineer the facility to operate in that location? Requirements such as these have no place in an ordinance of this type. It is one thing to require the provider to prove why a certain location was chosen, it is quite another to require such detailed and often proprietary information regarding site selection. Requirements such as this might act to prohibit entrants and thus violate The Act. The City would be better served by a broader set of guidelines such as those identified in the main paragraph of Section C. The guidelines of the Ordinance should strive to be consistent with reality and add value to the Ordinance. Subsections (a) and (b) do not accomplish these goals and should be removed accordingly.

Permit Processing Requirements - Collocation and Abandonment

Section D(2)(f) is not in the best interests of the City of Gig Harbor. Collocation is a good goal in appropriate circumstances. However, not all circumstances are appropriate for collocation projects. Many factors dictate the best location for a site such as line of sight, network configuration, topography, road and utility access, as well as a number of other factors. Often these factors prohibit collocation. Additionally, the cost of acquiring larger parcels to accommodate collocation may be prohibitive. As the Ordinance notes in 17.61.050 E(3), on page 21, collocation will generally require expansion of the facility by adding height and size to a tower or other structure sufficient to accommodate the weight of additional antennas and the separation required. Additionally, collocations often require a 100% increase in size of the associated equipment shelters. Therefore, there may be many situations, especially in or around sensitively zoned areas where collocation will be inappropriate.

Requiring collocation has the effect of discriminating against those providers entering the market later. They will not be able to determine the location that best suits their needs but will be at the mercy of the earlier entrant. The second entrant might be required to pay rents in excess of the industry standard for use of another's facilities. Additionally, the first entrant may be discriminated against by the added cost to construct facilities in anticipation of collocation projects that may never materialize. The City should not put itself in the situation of mediating disputes, regulating rents or legislatively requiring added costs. Section (f) should be removed from the Ordinance. Collocation is a good goal in appropriate circumstances and the City should encourage it through incentives. However, such circumstances should be determined by the applicants on a case by case basis. Provisions having the effect of mandating collocation violate The Federal Act.

Additionally, the removal of facilities within sixty (60) days of abandonment is unreasonable and may not be in the best interests of the City. It will take longer than 60 days to secure a new tenant. Both the City and provider have a great amount of time and money invested in processing and approving every application. If disassembly were required, the provider and the City would lose the ability to collocate on the site forever and thus lose this investment permanently. As such, the period stated in each paragraph addressing abandonment should be increased from sixty (60) days to at least 120 days to allow for alternative arrangements to be made for use of the site.

Environmental Documents - Section D(2)(g)

For appropriate cases, SEPA review should be required in place of Federal Environmental Review, and it should be clearly stated that SEPA exemptions will apply.

Maps and Photographs - Section D(2)(h)

Section D(2)(h) should be revised as follows: "A current map showing the location of the proposed tower, the locations of other personal wireless service facilities operated by the applicant and those proposed by the applicant that are within the City or outside of the City but within one-half mile of the City boundary." An aerial photograph does not add anything to the application that could not be identified in a map or drawing except additional cost. The disclosure of service areas is quite vague and could constitute proprietary information that is not the proper subject of City inquiry. Finally, the area that will be subject to the disclosure should be defined clearly such as within 1/4 mile of the City Boundary.

17.61.030 and 17.61.040 Development Standards - Tower Prohibition

It is understandable that the City and residents are concerned with the proliferation of towers and antenna support structures throughout the City, and it is the function of the City through this Ordinance to guide the industry to those locations that would be least offensive to the City. However, the City cannot prohibit or have the effect of prohibiting telecommunications facilities from the City. Sections 17.61.030 E and 17.61.040 E have the effect of prohibiting towers, and thus certain technologies, from certain zones where they may in fact need to locate.

The industry does not want to invade the residential or other sensitively zoned areas within the City, if it is not at all necessary. Through expedited permit review, reduced costs, and less stringent design standards, the City will successfully encourage the industry to locate facilities away from sensitive zones when feasible. However, not all situations will be feasible nor can they be foreseen. Therefore, this Ordinance needs more flexibility than is currently proposed.

The Special Exception Section, 17.61.060, is a step in the right direction. However, it does not go far enough. There must be some mechanism in this Ordinance to ensure that all special circumstances will be considered. Section 17.61.050 E is too limited in its acceptable locations for towers and 17.61.060 D(4) seems to indicate that tower location cannot be expanded through special exception. This is a serious problem with the Ordinance as proposed and could subject the City to litigation under the Federal Telecommunications Act.

Conclusion

Finally, a few general comments are in order. Flexibility must be a prominent aspect of the new Gig Harbor Wireless Facilities Siting Ordinance in order to encourage the applicants to be creative and use the best possible design methods in the best locations. Guidelines and decision making criteria are much more productive features of an ordinance of this type than outright prohibitions which may violate The Federal Act as well as discourage the best use of land.

It has become obvious over the past few years that technology is advancing at a very rapid pace. We do not know what technologies or facilities uses may emerge over the short term, let alone the long term. It would be disappointing if the Gig Harbor Planning Department, Commission, and/or Council were forced to revisit the issue of Wireless Facilities Siting and draft a new ordinance within a year or two. A good way to avoid this is to draft a flexible ordinance that gives discretionary authority for case by case decision-making to the Planning Director, City Engineer or other City Official and that encourages applicants to seek alternatives without the threat of additional costly and time consuming processes.

Thank you again for the opportunity to comment. We hope you will consider the comments and concerns expressed in this letter seriously and revise the Ordinance accordingly before passage. Please contact me at 253-946-5041 if I can be of any further assistance to you in this process.

Sincerely,


Karen Kirkpatrick
Planning Consultant

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR RELATING TO LAND USE AND ZONING, ESTABLISHING SITING STANDARDS FOR AMATEUR RADIO ANTENNAE, SATELLITE DISH ANTENNAE, TELEVISION AND RADIO BROADCAST TOWERS, AND TELECOMMUNICATION FACILITIES REGULATED UNDER THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, ADOPTING DEVELOPMENT STANDARDS, AND PROVIDING FOR SPECIAL EXCEPTIONS AND CONDITIONAL USE PERMITS; ADDING A NEW CHAPTER 17.61; ADDING NEW SECTIONS 17.04.041, 17.04.125, 17.04.225, 17.04.756, 17.04.757, 17.04.758 AND 17.64.046; AMENDING SECTIONS 17.04.055, 17.04.710, 17.45.030 AND 17.64.040 ~~TO~~ OF THE GIG HARBOR MUNICIPAL CODE; DECLARING AN EMERGENCY NECESSITATING AND IMMEDIATE EFFECTIVE DATE.

WHEREAS, Wireless Personal Communications Services and Wireless Communication Facilities ("WCF") comprise a rapidly growing segment of the utilities and communications sector and have merit and value for the community and region as a whole; and,

WHEREAS, ~~growth in the~~ use of wireless communication services has grown 20% to 30% annually on a national basis since 1991, and it is estimated that half of the number of households will have wireless services by the Year 2000; and,

WHEREAS, wireless communication services contribute to the public health, safety and welfare in that they provide emergency services communications in the event of accidents and natural disasters; and,

WHEREAS, the FCC requires license holders to provide services to areas within

WHEREAS, ~~WCFs- wireless communications facilities~~ are required to provide quality communication services to meet the growing needs of the public and businesses for wireless communication services ~~and~~; and

WHEREAS, wireless communication services should be accommodated ~~just as infrastructure for utilities has been accommodated;~~ and, by the City just as the City has accommodated infrastructure for other utilities; and

WHEREAS, the Federal Tele-communications Act of 1996 preserves local authority regarding zoning issues related to wireless communication services ~~where~~ as long as local jurisdictions do not unreasonably discriminate among all the service providers, i.e., allowing one or two carriers to provide service rather than all who are in the market ~~and that;~~ and

WHEREAS, the Tele-communications Act allows each jurisdiction ~~must~~ to determine how much regulation, if any, is necessary; and,

WHEREAS, the current zoning code of the City of Gig Harbor was adopted before wireless communication facilities were anticipated, and therefore, appropriate siting and development standards do not exist; and,

WHEREAS, the Gig Harbor Code also does not address other types of communication facilities not regulated under the 1996 Tele-communications Act such as amateur (HAM) radio and satellite dish antennae; and,

WHEREAS, on October 28, 1996, the Gig Harbor City Council adopted Ordinance No. 739, ~~and~~ which declared a moratorium on the siting of wireless and tele-communications facilities for a period not to exceed one year, in order to allow City staff

sufficient time and resources to develop the necessary standards to address telecommunication and wireless communications facilities; and,

WHEREAS, the City Planning Commission held various workshop meetings on the subject of tele-communications, and on June 5, 1997, a public hearing was held on a draft ordinance; and

WHEREAS, the Planning Commission acknowledges that the City Zoning Code (Title 17 GHMC) establishes 19 specific zoning districts, consisting of 7 Residential districts, 8 Commercial and Employment Districts, 3 Waterfront districts and a Public-Institutional district; and,

WHEREAS, the Planning Commission, following its final worksession on August 7, recommends adoption of this ordinance, which describes standards ~~are applied for wireless and telecommunication to be applied to wireless communication services and other types of communication~~ facilities which distinguish between the purely commercial (non-residential) districts from the residential and waterfront (mixed use) districts.

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

Section

1. A new section 17.04.041 is hereby added to the Gig Harbor Municipal Code, to read as follows:

17.04.041 Amateur radio tower means an antenna and tower which transmits non-commercial communication signals and is licensed as an amateur radio tower by the Federal Communications Commission. Guy wires for amateur radio towers are considered part of the structure for the purposes of meeting development standards.

Section 2. Section 17.04.055 of the Gig Harbor Municipal Code is amended

to read as follows:

~~17.04.055 "Antenna" means a metallic device used for the transmission or reception of electromagnetic waves. This definition does not include satellite dish antenna. is any system of electromagnetically tuned wires, poles, rods, reflecting discs or similar devices used to transmit or receive electromagnetic waves between terrestrial and/or orbital based points; this includes, but is not limited to, radio antenna, television antenna, satellite dish antenna and cellular antenna. Types of antenna include:~~

~~1. Omnidirectional (or "whip") antenna transmits and receives radio frequency signals in a 360 degree radial pattern.~~

~~2. Directional (or "panel") antenna transmits and receives radio frequency signals in a specific pattern of less than 360 degrees.~~

~~3. Parabolic antenna (or "dish") is a bowl shaped device for the reception and/or transmission of communication signals in a specific directional pattern.~~

Antenna means any exterior apparatus designed for telephonic radio, data, Internet or television communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower or building for the purpose of providing personal wireless services, included unlicensed wireless tele-communications services, wireless tele-communications services utilizing frequencies authorized by the Federal Communications Commission for "~~cellular,~~" "~~enhanced~~"cellular," "~~enhanced~~ specialized mobile radio," and "~~personal~~"personal communications services," "~~tele-communications~~" "~~tele-communications~~ services," and its attendant base station. An "antenna array" is one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (panel) and parabolic (disc). The antenna array does not include the support structure.

Section 3. A new section 17.04.125 is hereby added to the Gig Harbor

Municipal Code, to read as follows:

17.04.125 Broadcast and Relay Towers means a freestanding support structure, attached antenna, and related equipment intended for transmitting, receiving or re-transmitting commercial television, radio, telephone, cellular or other

communication services.

Section 4. A new ~~section 17.04.225~~ Section 17.04.203 is hereby added to the Gig Harbor Municipal Code, to read as follows:

17.04.203 Cel-site - A tract or parcel of land that contains wireless service facilities, including any antenna, support structure, accessory buildings and parking, and may include other uses associated with and ancillary to wireless services.

Section 5. A new section 17.04.225 is hereby added to the Gig Harbor Municipal Code, to read as follows:

17.04.225 Co-location - The placement and arrangement of multiple antenna and equipment on a single support structure and equipment pad area.

Section 6. A new Section 17.04.554 is hereby added to the Gig Harbor Municipal Code, to read as follows:

17.04.554 Microcell means a wireless communication facility consisting of an antenna that is either: (i) four feet (4') in height and with an area of not more than five hundred eighty (580) square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet (6') in length.

Section 7. Section 17.04.710 of the Gig Harbor Municipal Code is amended to read as follows:

17.04.710 Satellite dish antenna means a circular or parabolically shaped device of solid or mesh construction, designed and erected for receiving telecommunication signals. A small satellite dish antennae is defined as having a diameter of one meter or less and located within any zoning district or two meters or less within commercial and employment districts. A large satellite dish antennae is defined as having a diameter of greater than one meter in diameter in any residential zone or two meters in diameter in commercial and employment districts.

Section 6.8. A new section ~~17.04.756~~ 17.04.755 is hereby added to the Gig Harbor Municipal Code, to read as follows:

~~17.04.756~~ 17.04.755 Wireless communication facility means any unstaffed facility for the transmission and/or reception of radio frequency (RF) signals through electromagnetic energy usually consisting of an equipment shelter or cabinet, a support tower or other structure used to achieve the necessary elevation, and the transmission and reception devices or antenna.

Section 7 9. A new section ~~17.04.757~~ 17.04.756 is hereby added to the Gig Harbor Municipal Code, to read as follows:

~~17.04.757~~ 17.04.756 Wireless communications facility (WCF), attached means an Antenna Array that is attached to an existing building or structure (Attachment Structure), which structures shall include but not be limited to utility poles, signs, water towers, with any accompanying pole of device (Attachment Device) which attaches the Antenna Array to the existing building or structure, transmission cables, and an Equipment Facility which may be located either inside or outside of the Attachment Structure.

Section 8 10. A new Section ~~17.04.757~~ 17.04.757 is hereby added to the Gig Harbor Municipal Code, to read as follows:

17.04.757 Wireless Services or Wireless Communication Services means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

Section 11. A new section 17.04.758 is hereby added to the Gig Harbor Municipal Code to read as follows:

17.04.758 Wireless communications support structure means a structure designed and constructed specifically to support an Antenna Array (as defined in GHMC 17.04.055), and may include a monopole, self-supporting (lattice) tower, guy-wire support tower and other similar structures. Any device (Attachment Device) which is used to attach an Attached WCF to an existing building or structure (Attachment Structure) shall be excluded from the definition of and regulations applicable to Support Structures.

Section 12. A new chapter 17.61 (Communications Facilities) is hereby added to the Gig Harbor Municipal Code, to read as follows:

COMMUNICATIONS FACILITIES

Chapter 17.61

Sections:	17.61.010	Purpose.
	17.61.020	General Guidelines and Permit Regulations.
	17.61.030	Development Standards for all Public Institutional, Residential, Waterfront District and Downtown Business Districts (PI, R-1, R-2, R-3, RB-1, RB-2, PCD-RLD, PCD-RMD, WR, WM, WC, and DB).
	17.61.040	Development Standards for all Commercial Districts (C-1, B-1, B-2, PCD-C, and PCD-BP).
	17.61.050	Siting Standards for Employment Districts (ED).
	17.61.060	Special Exceptions.
	17.61.070	Review by Independent Consultant- Third Party Review.

17.61.010 Purpose

In addition to implementing the general purposes of the Comprehensive Plan and development regulations, this section addresses the issues of permitting, siting, appearance and safety associated with broadcast and relay towers, amateur radio towers, ~~tele-communications~~ tele-communications monopoles, satellite dish antenna, wireless communications facilities and related equipment. It provides siting opportunities at appropriate locations within the City to support existing communications technologies and to allow adapt to new technologies as needed.

This chapter provides for a wide range of locations and siting options for ~~the provisions for wireless technology which minimizes~~ wireless communications facilities which minimize associated safety hazards and visual impacts ~~sometimes associated with wireless communications facilities~~. The siting of wireless communication facilities on existing buildings and structures, co-location of telecommunication facilities on a single support structure and visual mitigation strategies are encouraged to preserve neighborhood aesthetics and reduce visual clutter in the community.

17.61.020 General Guidelines and Permit Requirements

- A. General Guidelines. The development standards in this chapter address setback and other site specific location factors. Siting criteria for ~~broadcast and relay towers and wireless~~ all communication facilities are necessary to encourage ~~the siting of these facilities~~ in the most appropriate

locations based upon land use compatibility, neighborhood characteristics and aesthetic considerations.

B. Priority of locations. ~~Wireless communication facilities and antennae should be located, in a~~ The order of priorities for locating new wireless service facilities shall be as follows:

1. Place antennae and towers on public property, if practical.
2. Place antennae on appropriate rights-of-way.
3. Place antennae and towers in employment zoned districts.
4. Place antennae and towers in districts (in descending order of preference, ~~on existing broadcast and relay towers and wireless support structures, within employment districts, publicly owned structures, commercial structures or sites,~~) commercial districts, public institutional districts, and downtown business districts, which do not adjoin or adversely impact residential or waterfront districts.
5. Place antennae and towers on other non-residential property.
6. Place antennae and towers in the City multi-family zoned areas.
7. Place antennae and towers in multi-family residential structures exceeding thirty feet (30') in height.
8. Place antennae and towers in residential and waterfront zones, ~~districts only if (a) locations are not available on existing structures or in non-residential districts; and (b) only on or in existing churches, parks, schools, utility facilities or other appropriate public facilities.~~

B. Co-location, General Requirements

C. General Requirements for Co-location. For new antenna and wireless communications facilities, co-location on existing towers and wireless support structures is preferred. Where co-location has been demonstrated to be impracticable, new towers are most appropriately located ~~in employment districts, followed by, in descending order of preference, commercial districts, public institutional districts, Downtown Business district, residential districts and waterfront districts as stated in~~

the order of preference in (B), above.

Co-location on existing wireless support structure broadcast and relay towers is encouraged by fewer standards and a simplified permit procedure. Attachment of antennae to existing nonresidential structures and buildings primarily within business park, employment and commercial districts is preferable to installation of new wireless support structures, broadcast and relay towers or monopoles. The City may request that the applicant perform feasibility studies associated with applications for communications facilities in order to demonstrate that locations on existing structures have been explored as the preferred siting alternative, or that any particular height exceeding the development standards in this chapter requested by the applicant is necessary in order to provide telecommunication wireless communications, television, radio or other broadcast services.

The following must be demonstrated:

- a. Applicants are required to demonstrate: (i) that they have contacted the owners of structures in excess of thirty feet (30') within a one-quarter (1/4) mile radius of the proposed site and from which a location standpoint could provide part of a network for transmission of signals; (ii) have asked for permission to install the antenna on those structures; and (iii) were denied for reasons other than economic feasibility.
- b. The information submitted by the applicant shall include (i) a map of the area to be served by the tower or antenna, (ii) its relationship to other cell sites in the applicant's network, and (iii) an evaluation of existing buildings taller than thirty feet (30'), within one-quarter (1/4) mile of the proposed tower or antenna which from a location standpoint could provide part of a network to provide transmission of signals.

In addition to the above, an applicant desiring to locate a new antenna support structure in a residential or waterfront district shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a non-residential zone, and that due to valid considerations including physical constraints, and economic or technological feasibility, no appropriate location is available.

€ D. Permit Processing Requirements

1. Permit Type

- a. Small satellite dish antenna. Small satellite dish antenna shall comply with all Uniform Building Code requirements, and chapter 15.06 GHMC, but are otherwise exempt from the permit application procedures of Title 19 GHMC.**
- b. Large satellite dish antenna. Large satellite dish antennae and other antenna applications shall be processed as a Type II permit. A building permit shall also be required.**
- c. Amateur radio towers. Amateur radio towers applications shall be processed as a Type II permit. A building permit shall also be required.**
- d. Wireless communication facilities. A conditional use permit shall be required for wireless communication facilities in Residential, Waterfront District and Downtown Business Districts, which shall be processed as a Type III permit. For all other districts, wireless communication facilities shall be processed as a Type II permit. A building permit shall also be required.**
- e. Broadcast and relay towers. Broadcast and relay tower applications shall be processed as a Type II permit. A building permit shall also be required.**

2. Elements of a complete application. A complete application for the Type II permits described in this chapter shall consist an original of the following:

- a. A site plan, drawn at a scale not less than 1 inch per 50 feet, showing the boundaries and dimensions of the parcel or site, including any adjacent public streets or easements.**
- b. An elevation of the proposed facility, including any buildings, existing or proposed, associated with the facility, and which shall include all dimensions of proposed structures.**

- c. A topographic map, based upon the most recent site survey or information available, at no less than five-foot contour intervals.
 - d. The required application fee as established pursuant to Chapter 3.40 GHMC.
 - e. Three copies of the original of the application.
 - ~~f. A signed statement indicating that (1) the applicant and landowner agree that they will diligently negotiate in good faith to facilitate co-location of additional personal wireless service facilities by other providers on the applicant's structure or within the same site location and (2) the applicant and/or landlord agree to remove the facility within sixty (60) days after abandonment.~~
 - ~~g. Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by FCC Para. 1.1307, or in the event that a FCC environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment.~~
 - ~~h. A current map and aerial photograph showing the location of the proposed tower, a map showing the locations and service areas of other wireless service facilities operated by the applicant and those proposed by the applicant that are close enough to impact service within the City.~~
 - ~~i. A statement by the applicant as to whether construction of the tower will accommodate co-location of additional facilities or antennas for future users.~~
3. A complete application for a conditional use permit shall, in addition to the elements described in 2(a), above, ~~shall~~ include those elements as described in ~~Section~~ GHMC § 17.96.050(B-D) and (L).

17.61.030 Development Standards for all Public Institutional, Residential, Waterfront District and Downtown Business Districts (PI, R-1 R-2, R-3, RB-1, RB-2, PCD-RLD, PCD-RMD, WR, WM, WC, and DB).

- A. **Small Satellite Dish Antenna - Development Standards.** Small satellite dish antenna shall not extend above the highest point of the roof.
- B. **Large Satellite Dish Antenna - Development Standards.** The following minimum standards apply to all Antennae:
1. **Siting on Lot.** Large satellite dish antennae shall be ~~to~~sited in the rear yard as a first order of preference. If the applicant demonstrates that reception is not available in this location, the second order of preference for siting shall be the side yard. If the applicant demonstrates that reception is not available in this location, the third order of preference shall be the front yard. Finally, if reception is not available in any other location, the satellite dish antenna may be located on or attached to a roof, pursuant to the Special Exception procedures in GHMC 17.61.060.
 2. **Height and Size.** Antenna, antenna mountings and large satellite dishes shall be no taller than the minimum required for the purposes of obtaining an obstruction-free reception window. Large satellite dish antenna shall not exceed twelve feet (12') in diameter and fifteen feet (15') in height, including their bases. Height shall be measured from existing grade.
 3. **Color.** To the extent technically feasible, specific paint colors may be required to allow the antenna or large satellite dish and mounting structures to blend better with the surroundings.
 4. **Screening, Landscaping.** Screening of all large satellite dish antenna may be required with one or a combination of the following methods: fencing, walls, landscaping, structures or topography which will block the view of the antenna as much as practicable from any street and from the yards and main floor living areas of residential properties within approximately five hundred feet (500'). Screening may be located anywhere between the antenna and the above mentioned viewpoints. A dense vegetative screen (pursuant to GHMC § 17.04.269) shall be provided for large satellite dish antenna that are visible from any portion of the right-of-way. Landscaping installed for the

purposes of screening shall be maintained in healthy condition.

5. Signs Prohibited. Satellite dish antenna shall not be used for the purposes of signage or message display of any kind.
6. UBC Conformance. Construction plans and final construction of the mounting bases of all large satellite dish antenna shall be in accordance with the requirements established in the latest edition of the Uniform Building Code adopted by the City.
7. Type of Dish. Aluminum mesh dishes should be used, as practicable, instead of a solid fiberglass type large satellite dish antenna.
8. Number of Dishes allowed. Only one large dish satellite antenna shall be allowed on each residentially-zoned property.

C. Amateur Radio Towers - Development Standards. The following minimum standards apply to amateur radio towers:

1. Siting on Lot. Amateur radio towers may be ground or roof-mounted; however, ground-mounted towers must be located at a point farthest from lot lines as feasible, or the point farthest from residential structures on abutting properties.
2. Height and Size. The height of a ground-mounted tower may not exceed sixty-five feet (65') unless ~~a proposal~~ an applicant demonstrates that physical obstructions impair the adequate use of the tower reception. Telescoping towers may exceed the sixty-five foot (65') height limit only when extended and operating. The combined structure of a roof-mounted tower and antenna shall not exceed a height of twenty-five feet (25') above the existing roofline.
3. Color. To the extent technically feasible and in compliance with safety regulations, specific paint colors may be required to allow the tower to blend better with its setting.
4. Screening, Landscaping. Screening of the bases of ground-

mounted amateur radio towers shall be provided with one or a combination of the following methods: fencing, walls, landscaping, structures, and/or topography which will block the view of the antenna as much as practicable from any street and from the yards and main floor living areas of residential properties within approximately five hundred feet (500') of the tower. Screening may be located anywhere between the base and the above mentioned viewpoints. Landscaping for the purposes of screening shall be maintained in a healthy condition. Bases of amateur radio towers shall be solidly screened by a view-obscuring fence, wall, or evergreen plantings at least six feet (6') in height.

5. Signs Prohibited. No signs shall be placed or posted on amateur radio towers.
6. UBC Conformance. Construction plans and final construction of the mounting bases and towers of amateur radio towers covered by this Section shall meet the structural design requirements of this Section and shall be in accordance with the requirements established in the ~~latest edition of the~~ Uniform Building Code as adopted by the City.

D. Wireless Communication Facilities - Development Standards. The following standards shall be applied to all wireless ~~equipment communication facilities~~, such as antenna and equipment shelters, exclusive of the broadcast and relay tower. Wireless monopoles, lattice, and guy towers are regulated by the sub-sections that govern broadcast and relay towers, Section GHMC § 17.61.050(E)(2-7).

1. Siting on Lot. No wireless ~~equipment reviewed under this Section~~ communications facilities shall be located within required building setback areas.
2. Height and Size. The combined antenna and supporting structure shall not extend more than fifteen feet (15') above the existing or proposed roof structure.
3. Color, Screening, Landscaping.

- a. Wireless communication antenna installed on existing buildings shall be screened or camouflaged to the greatest practicable extent by use of shelters, compatible materials, location, color, and/or other stealth tactics to reduce visibility of the antenna as viewed from any street or residential property. The antenna shall be visually concealed utilizing color and compatible material to camouflage the facility to the greatest extent feasible.
 - b. Screening of wireless - ~~equipment~~ communications facilities shall be provided with one or a combination of the following materials: fencing, walls, landscaping, structures, or topography which will block the view of the antenna and equipment shelter as much as practicable from any street and from the yards and main floor living areas of residential properties within 500 five hundred feet (500'). Screening may be located anywhere between the base and the above mentioned viewpoints.
 - c. Landscaping for the purposes of screening the wireless communications facilities shall be maintained in a healthy condition.
 - d. Any fencing required for security shall meet the screening standards of the City's Design Guidelines.
4. Signs Prohibited. No wireless equipment shall be used for the purposes of signage or message display of any kind.
 5. Conform to UBC. Wireless communication facilities shall comply with all applicable UBC requirements.
 6. Abandonment, Disrepair. A wireless communication facility shall be removed by the facility owner within 12 months of the date it ceases to be operational or if the facility falls into disrepair and is not maintained. Disrepair includes structural features, paint, landscaping, or general lack of maintenance which could result in safety or visual impacts.

7. Co-Location. Placement of a freestanding wireless communication facility may be denied if placement of the antenna on an existing structure can accommodate the operator's ~~operator's~~ applicant/operator's communications needs. The applicant shall also comply with the co-location requirements of GHMC § 17.61.020(C). The co-location of a proposed antenna on an existing broadcast and relay tower or placement on an existing structure shall be explored and documented by the ~~operator~~ applicant/operator in order to show that reasonable efforts were made to identify alternate locations.

8. Equipment Shelters.

a. Limit on area. Associated above ground equipment shelters shall be minimized, and shall not exceed 240 two hundred forty (240) square feet (e.g. 12' x 20') unless operators can demonstrate that more space is needed.

b. Color. Shelters shall be painted a color that matches existing structures or the surrounding landscape.

c. Materials. The use of concrete or concrete aggregate shelters is not allowed.

d. Screening, Landscaping. A dense vegetative screen shall be created around the perimeter of the shelter.

e. Undergrounding. Operators shall consider undergrounding equipment if technically feasible or placing equipment within existing structures.

f. UBC Conformance. Equipment shelters shall comply with all UBC requirements, but may be exempt from building envelope insulation requirements (See, RCW 19.27A.027.)

E. Broadcast and Relay Towers - Development Standards. Broadcast and Relay Towers are not permitted in any Residential, Waterfront District and Downtown Business districts.

17.61.040 Siting Development Standards for all Commercial Districts (C-1, B-2, 1, B-1, 2, PCD-C, PCD-BP)

- A. Small Satellite Dish Antenna. No additional development standards.
- B. Large Satellite Dish Antenna - Development Standards. In addition to the standards in GHMC § 17.61.030 (1-7), the following standards shall apply:
 - 1. Ground mounted antenna are subject to the following requirements:
 - a. Size. Such antenna shall not exceed twelve ~~(12)~~ feet (12') in diameter and fifteen ~~(15)~~ feet (15') in height. Height shall be measured from existing grade.
 - b. Placement. Ground-mounted antenna shall be located outside of any required landscape area and preferably located in service areas or other less visible locations.
 - c. Screening. From the time of installation, ground-mounted antenna shall be screened as high as the center of the dish when viewed from any public right-of-way. Solid screening shall be provided as high as the dish if the proposed location abuts an adjoining residential zone.
 - 2. Roof mounted antenna shall be solidly screened at least as high as the center of the dish. The screening shall be of a material and design compatible with the building, consistent with the City's Design Review Manual, and can include parapet walls or other similar screening.
- C. Amateur Radio Towers - Development Standards. In addition to the development standards in GHMC § 17.61.030(C), the following minimum standards apply:
 - 1. Placement. Amateur radio towers reviewed under this Section shall not be located within any easement, the front yard, side or rear yard building setback areas. Amateur

radio towers may be ground or roof mounted; however, ground mounted towers must be located at a point farthest from lot lines as feasible, or the point farthest from residential structures on abutting properties

2. Paint Colors. To the extent technically feasible and in compliance with safety regulations, specific paint colors may be required to allow the tower to blend better with its setting.
3. Screening. Screening of the bases of ground-mounted amateur radio towers shall be provided with one or a combination of the following methods: fencing, walls, landscaping, structures, or topography which will block the view of the antenna as much as practicable from any street and from the yards and main floor living areas of residential properties within approximately 500 five hundred feet (500'). screening may be located anywhere between the base and the above mentioned viewpoints. Landscaping for the purposes of screening shall be maintained in a healthy condition. Bases of amateur radio towers shall be solidly screened by a view-obscuring fence, wall, or evergreen plantings at least six feet (6') in height.
4. Signs. Amateur radio towers shall not be used for the purposes of signage and shall not display a sign of any kind.
5. UBC Conformance. Construction plans and final construction of the mounting bases and towers of amateur radio towers covered by this Section shall meet the structural design requirements of this Section and shall be subject to approval by the City Building Official.
7. Commercial Use prohibited. Towers Amateur radio towers located in residential districts shall not be constructed or used for commercial use purposes.
8. Height. The height of a ground-mounted tower may not exceed 65 sixty-five feet (65') unless a proposal an applicant demonstrates that physical obstructions impair the adequate use of the tower. Telescoping towers may exceed the 65 sixty-five-foot (65') height limit only when extended

and operating. The combined structure of a roof-mounted tower and antenna shall not exceed a height of ~~25 twenty-five feet (25')~~ above the existing roofline.

D. Wireless Communication Facilities - Development Standards. In addition to the requirements of GHMC § 17.61.030(C), the following standards shall be applied to all wireless ~~equipment communications facilities~~, such as antenna and equipment shelters, exclusive of any broadcast and relay tower. Wireless monopoles, lattice, and guy towers are regulated by the sub-sections that govern broadcast and relay towers, GHMC § 17.61.050(E)(2-7).

1. Co-location. Installation of a freestanding wireless communication facility shall may be denied if placement of the antenna on an existing structure can accommodate the operator's communications needs. The applicant shall be required to comply with the co-location requirements of GHMC § 17.61.020(e). The co-location of a proposed antenna on an existing broadcast and relay tower or placement on an existing structure shall be explored and documented by the operator in order to show that reasonable efforts were made to identify alternate locations.
2. Location. No wireless ~~equipment communications facilities~~ reviewed under this Section shall be located within required building ~~setback~~ set back areas.
3. Height. The combined antenna and supporting structure shall not extend more than ~~15~~ fifteen feet (15') above the existing or proposed roof structure.
4. Signs. No wireless equipment shall be used for the purposes of signage or message display of any kind.
5. Visibility. Location of wireless communication antenna on existing buildings shall be screened or camouflaged to the greatest practicable extent by use of shelters, compatible materials, location, color, and/or other stealth tactics to reduce visibility of the antenna as viewed from any street or residential property.
6. Screening. Screening of wireless equipment shall be provided with one or a combination of the following

materials: fencing, walls, landscaping, structures, or topography which will block the view of the antenna and equipment shelter as much as practicable from any street and from the yards and main floor living areas of residential properties within ~~500~~ five hundred feet (500'). Screening may be located anywhere between the base and the above mentioned viewpoints. Landscaping for the purposes of screening shall be maintained in a healthy condition.

7. Fencing. Any fencing required for security shall meet screening codes in the same manner as applied to screening for mechanical and service areas.
8. UBC Conformance. Construction plans and final construction of the mountings of wireless antenna and equipment shelters shall be approved by the City Building Official. Applications shall document that the proposed broadcast and relay tower and any mounting bases are designed to reasonably withstand wind and seismic loads.
9. Abandonment, Disrepair. A wireless communication facility shall be removed by the facility owner within ~~12~~ twelve (12) months of the date it ceases to be operational or if the facility falls into disrepair and is not maintained. Disrepair includes structural features, paint, landscaping, or general lack of maintenance which could result in safety or visual impacts.
10. Equipment Shelters. Associated above-ground equipment shelters shall not exceed ~~240~~ two hundred forty (240) square feet (e.g. 12' x 20') unless operators can demonstrate that more space is needed. A dense vegetative screen shall be created around the perimeter of the shelter. Operators shall consider under-grounding equipment is technically feasible or placing the equipment within an existing structure. Above ground equipment shelters for antenna located on buildings shall be located within, on the sides or behind the buildings and screened to the fullest extent possible.

E. Broadcast and Relay Towers - Development Standards. Broadcast and Relay Towers are prohibited in all Commercial Districts.

17.61.050 Siting Standards for Employment District (ED).

- A. Small Satellite Dish Antenna. No additional development standards.
- B. Large Satellite Dish Antenna and other Antenna. The development standards in GHMC § 17.61.030(B) shall apply.
- C. Amateur Radio Towers. The development standards in GHMC § 17.61.030(C) shall apply.
- D. Wireless Communication Facilities. The development standards of GHMC § 17.61.030(D) shall apply.
- E. Broadcast and Relay Towers. The following minimum standards apply to broadcast and relay towers:
 - 1. Location. Broadcast and relay towers are restricted to Employment Districts west of SR-16, north of a line extending east-west from 97th Street NW and south of the Swede Hill interchange
 - 2. Siting on Lot. Broadcast and relay towers reviewed under this Section shall not be located within any required building setback areas.
 - 3. Height and Size. The combined height of a broadcast and relay tower and antenna shall not exceed ~~85~~ eighty-five feet (~~85'~~) except when co-location is specifically provided for, then the broadcast and relay tower shall not exceed ~~100~~ one hundred feet (~~100'~~).
 - 4. Color. To the extent technically feasible and in compliance with safety regulations, specific colors of paint may be required to allow the broadcast and relay tower to blend better with its setting.
 - 5. Landscaping, Screening. Any fencing required for security shall meet screening codes in the same manner as applied to screening for mechanical and service areas.
 - 6. Signs Prohibited. Broadcast and relay towers shall not be used for

the purposes of signage to display a message of any kind.

7. Co-Location. Placement of a broadcast and relay tower may be denied if an alternative placement of the antenna on a building or other existing structure can accommodate the communications needs. Applicants shall be required to provide documentation that reasonable efforts to identify alternative locations were made.
8. Future Co-Location Accommodation. Owners and operators of a proposed broadcast and relay tower shall provide information regarding the opportunity for the co-location of other antenna and related equipment. If feasible, provision for future co-location may be required.
9. Federal Requirements. All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If those standards and regulations are changed, then wireless service providers governed by this chapter shall bring their towers and antennas into compliance with the revised standards and regulations within three (3) months of their effective date or the timelines provided by the revised standards and regulations, whichever is longer. The revised standards and regulations are not retroactively applicable to existing providers, unless otherwise provided by federal law. Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute grounds for the City to remove a provider's facilities at the provider's expense.
10. Building Codes, Safety Standards. To ensure the structural integrity of towers, antennas and facilities, the applicant/owner shall ensure that they are maintained in compliance with standards contained in the applicable City building codes and the applicable standards for towers published by the Electronic Industry Association (EIA), as amended from time to time. If, upon application for a building permit or inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30') days to bring the tower into compliance with such standards. If the owner fails to bring the tower into compliance within thirty (30') days, the City may remove the tower at the owner's expense.

11. Structural design. Towers shall be constructed to Electronic Industry Association Standards, which may be amended from time to time, and to all applicable codes adopted by the City. Further, any improvements or additions to existing towers shall require submission of site plans stamped by a professional engineer which demonstrate compliance with EIA Standards and all other applicable industry practices. The plans shall be submitted and reviewed at the time applications for building permits are submitted.
12. Abandonment, Disrepair. All broadcast and relay towers shall be removed by the facility owner within 12 months of the date it ceases to be operational, or if the facility falls into disrepair and is not maintained. Disrepair includes structural features, paint, landscaping, or general lack of maintenance which could result in safety or visual impacts.

17.61.060 Special Exceptions.

- A. Purpose. An applicant may apply for a special exception ~~may be considered~~ where the strict application of the standards for the specific type of facility would result in the obstruction or inability to receive a communication signal.
- B. Complete Application. An application for a Special Exception is processed under the same permit type as the underlying permit. A complete application for a Special Exception shall consist of:
 1. ~~The applicant's justification for the request for Special Exception by demonstrating that the obstruction or inability to receive a communication signal is the result of factors beyond the property owner's or applicant's control. This shall take into consideration potential permitted development on adjacent and neighboring properties respective to future "reception window obstruction". Photographs, sealed drawings, maps and/or manufacturers specifications and other technical information as necessary should be provided to demonstrate to the City that the Special Exception is necessary. A completed application form as required by the City Planning and Building~~

Services Department

2. ~~The applicant for a Special Exception shall demonstrate that the proposed material, shape and color of the antenna will minimize negative visual impacts on adjacent or nearby residential uses to the greatest extent possible. The use of certain materials, shapes and colors may be required in order to minimize visual impacts. The required application fee.~~
 3. A written statement which satisfactorily demonstrates that all of the Special Exception criteria have been met
- C. General Criteria. Each determination granting a Special Exception shall be supported by written findings of fact and conclusions demonstrating that all of the following general criteria and all specific criteria in subsection (D) below have been met:
1. The applicant has demonstrated that strict application of this Code would result in an inability to receive a signal or to effectively provide tele-communications services, and that this is the result of factors beyond the control of the applicant; and,
 2. The proposed material, shape and color of the antenna will minimize visual impacts on neighboring properties to the greatest extent possible; and,
 3. Where appropriate, the applicant has demonstrated that the antenna will allow co-location for additional antennas and/or/telecommunication facilities.
- D. Special Exception Criteria for specific facilities. In addition to the applicant's submission of materials described in subsection B above, a special exception may only be granted in accordance with the following criteria:
1. Large Satellite Dish Antenna and other Antenna - Special Exceptions
 - a. Residential Zones

- (1) Modifications to requirements for setbacks, size, screening and maximum height may be considered by Special Exception.
- (2) If a Special Exception is requested from the height limit for a ground-mounted dish, the height of the dish shall be limited to a maximum of eighteen feet (18') above the existing grade.
- (3) A rooftop location shall only be considered if the requirements of this chapter would result in reception blockage. If a Special Exception is sought to obtain a rooftop location, the diameter of the dish shall be limited to ~~1.8 meters~~ six feet (6') and a maximum permitted height of fifteen feet (15') above the roofline. The approval authority may require the applicant to place the antenna in an area of the roof which takes into consideration view blockage and aesthetics, provided reception is available.

b. Commercial and Employment Districts

- (1) Ground-mounted antenna. Exceptions to be first considered shall be from setback, landscape and service area requirements, size and screening requirements. Only if these waived regulations would still result in reception blockage shall a Special Exception from height requirements be considered. If a Special Exception is sought to vary from the height limit, the height of the dish shall be limited to a maximum of twenty feet (20') above the existing grade.
- (2) Roof-mounted antenna. The first exception to be considered shall be the center of the roof requirement; the second exception shall be from the size and screening requirements, respectively. Only if these waived

regulations would still result in the blockage of an electromagnetic signal, shall a Special Exception from height requirements be considered. A Special Exception from the height limit shall be allowed up to a maximum of twenty feet (20') above the existing or proposed structure. The approval authority may require the applicant to place the antenna in an area on the roof which takes into consideration view blockage and aesthetics, provided there is a useable signal and structural considerations allow the alternative placement.

2. Amateur Radio Towers - Special Exceptions. Residential Zones -- Where a property owner desires to vary from the height, location or setback limitations, the Special Exception Criteria must be met.
3. Wireless Communications Facilities - Special Exceptions
 - a. Residential Zones - An applicant for a proposed wireless facility that exceeds the height limit shall meet the Special Exception Criteria.
 - b. Commercial and Industrial Zones - An applicant for a proposed wireless facility that exceeds the height limit shall meet the Special Exception Criteria.
4. Broadcast and Relay Towers - Special Exceptions
 - a. Commercial and Employment Districts - An applicant for a proposed broadcast and relay tower that exceeds height limits shall be required to obtain a conditional use permit under GHMC § 17.64.046.

17.61.070 Review by Independent Consultant -- Third Party Review

A. Wireless service providers use various methodologies and analyses, including geographically based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration.

~~topographic constraints that affect signal paths, etc. In certain instances, a third party expert may need to review the technical data submitted by a provider. The City may require a technical review as part of the permitting process. The costs of the technical. The Planning Director may, at his or her discretion, require that technical information provided by the applicant in justification for a wireless or telecommunication facility, or a broadcast and relay tower at a proposed location be reviewed by a qualified individual or firm selected by the City. The costs for such review shall be borne solely by the applicant. by the provider.~~

~~Section 10 The selection of the third party expert may be by mutual agreement between the provider and the City, or, at the discretion of the City, with a provision for the provider and interested parties to comment on the proposed expert and review his/her qualifications. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the provider's methodology and equipment used. The expert review is not intended to be a subjective review of the site which was selected by the provider. Based on the results of the expert review, the City may require changes to the provider's application. The expert review shall address the following:~~

- ~~1. the accuracy and completeness of submissions;~~
- ~~2. the applicability of analysis techniques and methodologies;~~
- ~~3. the validity of the conclusions reached; and~~
- ~~4. any specific technical issues designated by the City.~~

Section 13. Section 17.45.030 of the Gig Harbor Municipal Code is amended to read as follows:

17.45.030 Conditional uses

Subject to the requirements, standards and procedures for conditional uses set forth in Chapter 17.64 GHMC, the following uses may be permitted in an employment education district:

- A. Hospitals, clinics and establishments for people convalescing from illness or operation;

- B. Senior citizen housing;
- C. Commercial child care facilities;
- D. Public utilities and public services such as libraries, electrical substations, telephone exchanges, ~~telecommunication facilities~~, police and fire stations;
- E. Recreational buildings and outdoor recreation;
- F. Houses of religious worship;
- G. Planned unit developments with a minimum of 65 percent of the site consisting of an employment based use; and
- H. Ministorage facilities.

Section 11 14. Chapter 17.64.040 of the Gig Harbor Municipal Code is

amended to read as follows:

17.64.040 Review criteria

Each determination granting or denying a conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions are met:

- A. That the use for which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;
- B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;
- C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;
- D. That the site is of sufficient size to accommodate the proposed use and all

yards, open spaces, walls and fences, parking, loading, landscaping and other such features as are required by this title or as needed in the opinion of the examiner.

For wireless communication facilities and broadcast and relay towers, the criteria in Section 17.64.046 shall apply.

Section 12.15. A new section 17.64.046 of the Gig Harbor Municipal code is adopted as follows:

17.64.046 Conditional Use Permits for Review Criteria for Wireless Communication Facilities, Broadcast and Relay Towers.

- A. Type of Permit. Applications for conditional use permits for wireless communications and broadcast and relay towers shall be processed as a Type III permit.
- B. Criteria for Approval. Applications for conditional use permits for wireless communication facilities and broadcast and relay towers may be approved if the applicant demonstrates all of the following:
 - 1. That there will be no injury to the neighborhood or other detriment to the public welfare;
 - 2. That there is a need for the proposed tower to be located in or adjacent to the residential area, and which shall include documentation on the procedures involved in the site selection and an evaluation of alternative sites and existing facilities on which the proposed facility could be located or co-located;
 - 3. The feasibility of future consolidated use of the proposed facility or co-location with other public utility facilities;
 - 4. The facility shall be designed to be as least intrusive as practicable, including, but not limited to, the exterior treatment of the facility so as to be harmonious with the character of the surrounding neighborhood, the use of landscaping and privacy screening to buffer the facility and activities on the site from surrounding properties and that any equipment that is not enclosed shall be designed and located on the site to minimize impacts related to noise, light and glare onto surrounding properties.

Section 16. 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 14. 17. Declaration of Emergency and Establishing an Effective Date.

On October 28, 1996, the City Council imposed a moratorium on the establishment. Location permitting or franchising of new telecommunications carriers/operators/facilities within the City, whether on, through, over or under private or public property or the public streets, through the use of overhead or underground telecommunication. This moratorium is scheduled to expire on October 28, 1997. Both the Planning Commission and the City Council held public hearings on this ordinance, and members of the public were invited to provide testimony and evidence for consideration by the Planning Commission and City Council. On the last working day prior to the public hearing before the council, the City received letters from members of the public on the subject of this ordinance. In order for the City staff to fully respond to these letters, the City Council postponed its action on this ordinance until October 27, 1997. At that time, these letters and the response from City staff will be considered by the Council. Because the moratorium is scheduled to expire on October 28, 1997, the City Council hereby declares an emergency necessary for the protection of the public health, safety and property, which requires that this ordinance become immediately effective on the day of its adoption, which is October 27, 1997. The City shall immediately publish a summary of this ordinance.

SUMMARY OF ORDINANCE NO.

of the City of Gig Harbor, Washington

On the _____ day of _____, 1997, 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 CITY COUNCIL RELATING TO LAND USE AND ZONING, ADOPTING DEFINITIONS FOR COMMUNICATION FACILITIES SUCH AS AMATEUR RADIO ANTENNA, SATELLITE DISH ANTENNA ESTABLISHING SITING STANDARDS FOR AMATEUR RADIO ANTENNAE, SATELLITE DISH ANTENNAE, TELEVISION AND RADIO BROADCAST TOWERS, AND TELECOMMUNICATION FACILITIES REGULATED UNDER THE FEDERAL TELE-COMMUNICATIONS ACT OF 1996, ADOPTING DEVELOPMENT STANDARDS, AND PROVIDING FOR SPECIAL EXCEPTIONS AND CONDITIONAL USE PERMITS; ADDING A NEW CHAPTER 17.61; ADDING NEW SECTIONS 17.04.041, 17.04.125, 17.04.225, 17.04.756, 17.04.757, 17.04.758 AND 17.64.046; AMENDING SECTIONS 17.04.055, 17.04.710, 17.45.030 AND 17.64.040 OF THE GIG HARBOR MUNICIPAL CODE; DECLARING AN EMERGENCY NECESSITATING AN IMMEDIATE EFFECTIVE DATE.

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

DATED this _____ day of _____, 1997.

MOLLY TOWSLEE, CITY CLERK



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT, CITY COUNCILMEMBERS
FROM: CAROL MORRIS, CITY ATTORNEY
SUBJECT: SECOND READING OF ORDINANCE
TELECOMMUNICATIONS - USE OF PUBLIC PROPERTY
DATE: JULY 9, 1997

INFORMATION/BACKGROUND

On October 29, 1996, the Gig Harbor City Council imposed a one-year moratorium on the permitting for the siting of telecommunications facilities in the City. Ordinance 739 was passed to allow the City staff, Planning Commission and City Council sufficient time to develop a telecommunications ordinance(s) consistent with the Telecommunications Act of 1996, and the City's interest in zoning and management of public rights-of-way.

POLICY CONSIDERATIONS

Distinction between the two proposed telecommunications ordinances.

An ordinance was developed to address siting of telecommunications facilities on private property, which has been reviewed by the City Planning Commission. The attached ordinance (adding a new Chapter 12.18 to the Gig Harbor Municipal Code) establishes requirements for telecommunication carriers' and cable operators' use of the public rights-of-way and other public property.

Summary of telecommunications ordinance.

The attached telecommunications ordinance requires that telecommunications carriers and cable operators obtain business licenses and that they obtain the applicable permission to use the public right-of-way, by either franchise, right-of-way permit or lease. In addition, the ordinance describes violations and contains an enforcement mechanism which includes civil and criminal penalties.

Consistency with Telecommunications Act of 1996.

A. Discriminatory or Prohibitory Actions. Under the Telecommunications Act, the City may not adopt a regulation which prohibits, or has the effect of prohibiting, the ability of any entity to provide any interstate or intrastate telecommunications service. (47 U.S.C. § 332(c)(7)(B)(i).

B. Compensation for Use of Public Property. Nothing in the Act affects the authority of the City to "manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government." (*Id.*)

C. City Action on Applications. The City is required to act on a request for authorization to place, construct or modify personal wireless service facilities within a reasonable time. 47 U.S.C. § 332(c)(7)(B)(ii), (iii). Any decision to deny a request must be made in writing and be supported by substantial evidence contained in a written record. (Id.) A person adversely affected by the City's action or failure to act that is inconsistent with 47 U.S.C. § 332(c)(7) may seek expedited review in the courts. (47 U.S.C. § 332(c)(7)(B)(v).)

D. Regulations Based on Environmental Effects of RF Emissions Preempted. The Act expressly preempts the City's regulation of the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).

Staff believes that the attached ordinance is consistent with the Telecommunications Act and all of the above.

RECOMMENDATION

This is the second reading of the telecommunications ordinance adopting a new chapter 12.18 to the Gig Harbor Municipal Code. Final action is scheduled at this reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO TELECOMMUNICATIONS AND CABLE TELEVISION; ESTABLISHING REQUIREMENTS FOR TELECOMMUNICATION CARRIERS' AND CABLE OPERATORS' USE OF THE PUBLIC RIGHTS-OF-WAY AND PUBLIC PROPERTY; DESCRIBING THE PROCEDURES FOR APPLICATION AND APPROVAL OF TELECOMMUNICATION BUSINESS LICENSES, TELECOMMUNICATIONS RIGHT-OF-WAY USE PERMITS, FRANCHISES AND CABLE TELEVISION FRANCHISES; DESCRIBING VIOLATIONS AND ESTABLISHING PENALTIES; AND ADDING A NEW CHAPTER 12.18 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, RCW 35A.11.020 grants code cities broad authority to regulate the use of the public rights-of way; and

WHEREAS, RCW 35A.47.040 grants code cities broad authority to grant non-exclusive franchise agreements; and

WHEREAS, Congress has adopted the Telecommunications Act of 1996 (hereinafter the "Act") in order to encourage the development of high-technology communications systems through increased competition among communications companies; and

WHEREAS, the Act provides for the removal of regulatory barriers, rate deregulation and relaxation of certain anti-trust provisions in an attempt to achieve this goal; and

WHEREAS, the Act is anticipated to have a significant effect on the manner in which communications services are delivered, and local telephone companies and cable television companies will all be able to provide telephone, data, video and other communications services; and

WHEREAS, the Act contains numerous provisions which directly affect local taxation, zoning, franchise authority and public rights-of-way management; and

WHEREAS, the Act will likely place additional demands on the use of the City's public rights-of-way and public property; and

WHEREAS, the City currently has regulations which do not adequately address the use of public rights-of-way for telecommunication purposes; now therefore,

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

Section 1. A new chapter 12.18 is hereby added to the Gig Harbor Municipal Code, to read
as follows:

**CHAPTER 12.18
TELECOMMUNICATIONS**

**ARTICLE I.
GENERAL PROVISIONS**

Sections	12.18.010	Purpose.
	12.18.020	Definitions.
	12.18.030	Business License Required.
	12.18.040	Telecommunications Right-of-Way Permit Required.
	12.18.050	Telecommunications Franchise Required.
	12.18.060	Cable Television Franchise Required.
	12.18.070	Facilities Lease Required.
	12.18.080	Construction Permit Required.
	12.18.090	Application to Existing Franchise Ordinances, Agreements, Leases, and Permits -- Effect of Other Laws.
	12.18.0100	General Penalties.
	12.18.0110	Other Remedies.

Section 12.18.0101: Purpose. The purpose and intent of this Chapter is to:

- establish a local policy concerning telecommunications providers and service;
- establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services;
- promote competition in telecommunications;
- minimize unnecessary local regulation of telecommunications providers and services;
- encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;
- permit and manage reasonable access to the public ways of the City for telecommunications purposes on a competitively neutral basis;

- conserve the limited physical capacity of the public ways held in public trust by the City;
- assure that the City's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs;
- secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the public ways;
- assure that all telecommunications carriers providing facilities or services within the City comply with the ordinances, rules and regulations of the City;
- assure that the City can continue to fairly and responsibly protect the public health, safety and welfare;
- enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

Section 12.18.0102: Definitions. For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"Access channels" means channels set aside by a franchisee exclusively for noncommercial public, educational, or governmental use (commonly referred to as "PEG" channels).

"Addressability" means the ability of a system allowing a franchisee to authorize specific equipment to receive, change or to cancel any or all specified programming.

"Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

"Applicant" means any person or entity that applies for any permit or franchise pursuant to this Chapter.

"Basic cable service" means the lowest level of service regularly provided to all Subscribers that includes the retransmission of local broadcast signals.

"Cable Act" shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. §532, *et seq.*, as now and hereafter amended.

"Cable facilities" means equipment and wiring used to transmit audio and video signals to subscribers.

"Cable operator" means a telecommunications carrier providing or offering to provide "cable service" within the City as that term is defined in the Cable Act.

"Cable service" for the purpose of this Chapter shall have the same meaning provided by the Cable Act.

"Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and other service to subscribers.

"Cablecast" means the distribution of programming which originates within the facilities of the cable television system.

"Channel" or **"cable channel"** means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television signal as defined by the Federal Communications Commission.

"Character generator" means a device used to generate alpha numerical programming to be cablecast on a cable channel.

"City" means the City of Gig Harbor, Washington.

"City property" means and includes all real property owned by the City, other than public streets and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right-of-way licensing and franchising as provided in this Chapter.

"Council" means the City Council of the City of Gig Harbor, Washington acting in its official capacity.

"Data communication" means (1) the transmission of encoded information or (2) the transmission of data from one point to another.

"Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hospitals, hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes, extended care facilities and other multiple family residential units.

"Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

"Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

"FCC" or **"Federal Communications Commission"** means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

"Fiber Optics" means the technology of guiding and projecting light for use as a communications medium.

"Franchise" shall mean the initial authorization, or renewal thereof, issued by the city, whether such authorization is designated as a franchise, permit, Ordinance, resolution, contract, certificate or otherwise, which authorizes construction and operation of the cable system for the purpose of offering cable service or other service to subscribers.

"Franchisee" means the person, firm or corporation to whom or which a franchise, as herein above defined, is granted by the Council under this Chapter and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in this Chapter.

"Gross revenues" means any and all revenues (as that term is defined by generally accepted accounting principles) received directly or indirectly from all sources which arise out of or are derived from the operation of a franchisee's cable system in the City. When the revenue of the franchisee includes gross revenues from sources outside of the City, a franchisee shall prorate the gross revenues among its sources by multiplying such gross revenues by a fraction, the numerator of which is the number of franchisee's subscribers in the City and the denominator of which is the total number of all a franchisee's subscribers. "Gross revenues" shall not include the following:

1. Fees and payments from subscribers who do not live in the City;
2. Taxes on services furnished by a franchisee, which are imposed on any subscriber or used by any governmental unit, agency or instrumentality and which are collected by a franchisee for such entity;
3. Bad debt write-offs;
4. Revenue from the sale of equipment or other assets of the cable system to persons not purchasing services from the cable system;
5. Revenue from transactions involving real property owned or leased by the franchisee;
6. Amounts collected from subscribers as a franchise fee to be paid to City.

"Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

"Installation" means the connection of the cable system from feeder cable to subscribers' receivers.

"Institutional networks (I-Nets)" means that portion of a cable system which is designated principally for the provision of non-entertainment services to public schools, or public agencies such as public libraries separate and distinct from the subscriber network, or on secured channels of the subscriber network.

"Interactive services" means services provided to subscribers where the subscriber (i) receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; and (ii) has the ability to transmit signals to any other location for any purpose.

"Office" means the person or entity designated by the City as being responsible for the administration of a franchise for the City.

"Operator" means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of this Chapter.

"Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.

"Overhead facilities" means utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

"Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

"Premium services" means video programming offered on a pay-per-channel or pay-per-program basis.

"Property of franchisee" means all property owned, installed or used by a Franchisee in the conduct of its business in the City under the authority of a franchise granted pursuant to this Chapter.

"Proposal" means the response, by an individual or organization, to a request by the City regarding the provision of cable services; or an unsolicited plan submitted by an individual or organization seeking to provide cable services in the City.

"Public street" means any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the City which has been acquired,

established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

"Public way" means and includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for telecommunications facilities.

"State" means the State of Washington.

"Subscriber" means a person or entity or user of the cable system who lawfully receives cable services or other service therefrom with franchisee's express permission.

"Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the federal or state orders and regulations, to allow its use by a telecommunications carrier for a pole attachment.

"Telecommunications carrier" means and includes every person that directly or indirectly owns, controls, operates or manages plan, equipment or property within the City, used or to be used for the purpose of offering telecommunications service.

"Telecommunications facilities" means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

"Telecommunications provider" means and includes every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities.

"Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

"Telecommunications system" See **"Telecommunications facilities"**.

"Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

"Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in any federal or state orders and regulations.

"Utility easement" means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

"Utility facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the City and used or to be used for the purpose of providing utility or telecommunications services.

Section 12.18.0103: Business License Required. Except as otherwise provided herein, all cable operators, telecommunications carriers, and telecommunications providers engaged in the business of transmitting, supplying or furnishing of cable service or telecommunications originating or terminating in the City shall apply for and obtain a business license with the City pursuant to Article II. of this Chapter.

Section 12.18.0104: Telecommunications Right-of-Way Use Permit Required. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any public way of the City for the sole purpose of providing telecommunications service to persons and areas outside the City shall first obtain a telecommunications right-of-way use permit granting the use of such public ways from the City pursuant to Article III. of this Chapter.

Section 12.18.0105: Telecommunications Franchise Required. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in, under, over or across any public way of the City, and to also provide telecommunications service to persons or areas in the City, shall first obtain franchise granting the use of such public ways from the City pursuant to Article IV. of this Chapter.

Section 12.18.0106: Cable Television Franchise Required. Except as otherwise provided herein, any telecommunications carrier or other person who desires to construct, install, operate, maintain or locate cable or telecommunications facilities in any public way in the City for the purpose of providing cable service to persons in the City shall first obtain a cable franchise from the City pursuant to Article V. of this Chapter.

Section 12.18.0107: Facilities Lease Required. No telecommunications carrier or other entity who desires to locate telecommunications or other equipment on City property shall locate such facilities or equipment on City property unless granted a Facilities Lease from the City. The City Council reserves unto itself the sole discretion to lease City property for telecommunications and other facilities, and no vested or other right shall be created by this Section or any provision of this Chapter applicable to such Facilities Leases.

Section 12.18.0108: Construction Permits Required. Except as otherwise provided herein, the holder of a permit or franchise granted pursuant this Chapter shall, in addition to said permit or franchise, be required to obtain a Construction Permit from the City pursuant to Article VII. of this Chapter. No work, construction, development, excavation, or installation of any

equipment or facilities shall take place within the public ways until such time as the Construction Permit is issued.

Section 12.18.0109: Application to Existing Franchise Ordinances, Agreements, Leases, and Permits -- Effect of other Laws.

A. This Chapter shall have no effect on any existing franchise ordinance, franchise agreement, lease, or permit to use or occupy a public way in the City until:

1. the expiration of said franchise ordinance, agreement, lease, or permit; or
2. the amendment to an unexpired franchise ordinance, franchise agreement, lease, or permit, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

B. Nothing in this Chapter shall be deemed to create an obligation upon any person for which the City is forbidden to require a permit, license, or franchise by federal, state, or other law.

Section 12.18.0110: General Penalties.

A. Penalty.

1. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the provisions of this Chapter shall be subject to a cumulative penalty in the amount of five hundred Dollars (\$500) per day for each violation from the date set for compliance until compliance with this Chapter is achieved.

2. In addition to any penalty which may be imposed by the City, any person violating or failing to comply with any of the provisions of this Chapter shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

3. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The City Administrator shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the City Administrator, take appropriate action to collect the penalty.

4. The violator may show as full or partial mitigation of liability:
- a. That the violation giving rise to the action was caused by the wilful act, or neglect, or abuse of another; or
 - b. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented

by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the violator.

B. Criminal Penalties.

1. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the applicable provisions of this Chapter and who has had a judgment entered against him or her pursuant to Section 12.18.100(A)(3) or its predecessors within the past five (5) years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding Five Thousand Dollars (\$5,000.00) or be imprisoned for a term not exceeding one (1) year or be both fined and imprisoned. Each day of noncompliance with any of the applicable provisions of the Chapter shall constitute a separate offense.

2. The above criminal penalty may also be imposed:

a. For any other violation of this Chapter for which corrective action is not possible;

b. For any wilful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this Chapter; and

c. For any violation of a stop work or other order issued pursuant to this Chapter.

3. In addition to any criminal penalty which may be imposed by the City, a violator may also be liable for damages and costs of restoration described in subsection 12.18.100(A), above.

C. Additional Relief. The City may request that the City Attorney seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this Chapter when civil or criminal penalties are inadequate to effect compliance.

Section 12.18.0111: Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

**ARTICLE II.
BUSINESS LICENSING OF TELECOMMUNICATIONS
CARRIERS AND PROVIDERS**

Section	12.18.0120	Purpose of Business License Registration.
	12.18.0130	Business License Required.
	12.18.0140	Business License Fees.

Section 12.18.0112: Purpose of Business License Registration. The purpose of telecommunications business licensing is to:

- A.** provide the City with accurate and current information concerning the cable operators and telecommunications carriers and providers who offer or provide services within the City, or that own or operate facilities within the City;
- B.** assist the City in enforcement of this Chapter;
- C.** assist the City in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the City;
- D.** assist the City in monitoring compliance with local, State and Federal laws.

Section 12.18.0113: Business License Required. All cable operators, telecommunications carriers, and telecommunications providers that offer or provide any cable service or telecommunications service for a fee directly to the public, either within the City, or outside the corporate limits from cable or telecommunications facilities within the City, shall apply for and obtain a business license with the City pursuant to this Chapter, and the requirements of Chapter 5.01 of the Gig Harbor Municipal Code, on forms to be provided by the City Administrator, which shall include the following:

- A.** The identity and legal status of the applicant, including any affiliates.
- B.** The name, address, telephone number, and title of the officer, agent or employee responsible for the accuracy of the business license application statement.
- C.** A description of applicant's existing or proposed facilities within the City.
- D.** A description of the service that the applicant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.
- E.** Information sufficient to determine whether the applicant is subject to the public way permitting and/or franchising requirements imposed by this Chapter.
- F.** Information sufficient to determine whether the transmission, origination or receipt of the services provided or to be provided by the applicant constitutes an occupation or

privilege subject to any municipal telecommunications tax, utility tax or other occupation tax imposed by the City.

G. Information sufficient to determine that the applicant has applied for and received any certificate of authority required by any federal or state agency to provide telecommunications services or facilities within the City.

H. Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide services or construct facilities within the City.

Section 12.18.0114: Business License Fees. Each application for a business license as a cable operator or telecommunications carrier or provider shall be accompanied by an application fee which shall be set by the City Council by resolution.

**ARTICLE III.
TELECOMMUNICATIONS RIGHT-OF-WAY USE PERMITS**

Sections	12.18.0150	Telecommunications Right-of-Way Use Permit.
	12.18.0160	Telecommunications Right-of-Way Use Permit Application.
	12.18.0170	Issuance/Denial of Telecommunications Right-of-Way Use Permit.
	12.18.0180	Agreement.
	12.18.0190	Nonexclusive Grant.
	12.18.0200	Rights Granted.
	12.18.0210	Terms of Telecommunications Right-of-Way Use Permit.
	12.18.0220	Telecommunications Right-of-Way Use Permit Route.
	12.18.0230	Service to City Users.
	12.18.0240	Compensation to the City.
	12.18.0250	Amendment of Permit.
	12.18.0260	Renewal of Telecommunications Right-of-Way Use Permit.
	12.18.0270	Standards for Renewal of Permits.
	12.18.0280	Obligation to Cure as a Condition of Renewal.

Section 12.18.0115: Telecommunications Right-of-Way Use Permit. A telecommunications right-of-way permit shall be required of any telecommunications carrier who desires to occupy specific public ways of the City for the sole purpose of providing telecommunications services to persons or areas outside the City.

Section 12.18.0116: Telecommunications Right-of-Way Use Permit Application. Any person that desires a telecommunications right-of-way use permit pursuant to this Chapter shall file an application with the City which shall include the following information:

A. The identity of the applicant, including all affiliates of the applicant.

B. A description of the telecommunications services that are or will be offered or provided by the applicant over its telecommunications facilities.

C. A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services.

D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:

- (1) the location and route requested for applicant's proposed telecommunications facilities;
- (2) the location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;
- (3) the location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers;
- (4) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

E. If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

- (1) the excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;
- (2) the excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

- (1) the location proposed for the new ducts or conduits;
- (2) the excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

- H. A preliminary construction schedule and completion date.
- I. A preliminary traffic control plan in accordance with the City's adopted street standards.
- J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.
- K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.
- L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the telecommunications services.
- M. All deposits or charges required pursuant to this Chapter.
- N. An application fee which shall be set by the City Council by resolution.

Section 12.18.0117: Issuance/Denial of Telecommunications Right-of-Way Use Permit. Within 120 days after receiving a complete application under Section 12.18.0160 hereof, the City shall issue a written determination granting or denying the permit in whole or in part. Prior to granting or denying a permit under this Article, the City Council shall conduct a public hearing and make a decision based upon the following standards. If the permit is denied, the written determination shall include the reason(s) for denial.

- A. The financial and technical ability of the applicant.
- B. The legal ability of the applicant.
- C. The capacity of the public ways to accommodate the applicant's proposed facilities.
- D. The capacity of the public ways to accommodate additional utility, cable, and telecommunications facilities if the permit is granted.
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the permit is granted.
- F. The public interest in minimizing the cost and disruption of construction within the public ways.
- G. The service that applicant will provide to the community and region.

- H. The effect, if any, on public health, safety and welfare if the license is granted.
- I. The availability of alternate routes and/or locations for the proposed facilities.
- J. Applicable federal and state telecommunications laws, regulations and policies.
- K. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

Section 12.18.0118: Agreement. No permit shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the permittee has been granted to right to occupy and use public ways of the City.

Section 12.18.0119: Nonexclusive Grant. No permit granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.

Section 12.18.0120: Rights Granted. No permit granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed a permit only to use and occupy the public ways for the limited purposes and term stated in the permit. Further, no permit shall be construed as any warranty of title.

Section 12.18.0121: Terms of Telecommunications Right-of-Way Use Permit. Unless otherwise specified in a permit, a telecommunications permit granted hereunder shall be in effect for a term of one (1) year, which shall be revokable upon thirty (30) days notice by the City to the permittee.

Section 12.18.0122: Telecommunications Right-of-Way Permit Route. A telecommunications permit granted under this Article shall be limited to a grant of specific public ways and defined portions thereof.

Section 12.18.0123: Service to City Users. A permittee shall be permitted to offer or provide telecommunications services to persons or areas within the City upon approval of an application for a telecommunications franchise pursuant to Article IV. of this Chapter.

Section 12.18.0124: Compensation to the City. Each permit granted pursuant to this Article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the right to occupy and use the public ways of the City granted under such permits; provided, nothing in this Chapter shall prohibit the City and a permittee from agreeing to the compensation to be paid.

Section 12.18.0125: Amendment of Permit. A new permit application shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public ways of the City which are not included in a permit previously granted under this Chapter. If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted license, the City shall grant a permit amendment without further application.

Section 12.18.0126: Renewal of Telecommunications Right-of-Way Use Permit. A permittee that desires to renew its permit under this Article shall, not more than 180 days nor less than 90 days before expiration of the current permit, file an application with the City for renewal of its permit which shall include the following:

- A. The information required pursuant to Section 12.18.0160 of this Chapter.
- B. Any information required pursuant to the permit agreement between the City and the permittee.
- C. All deposits or charges required pursuant to this Chapter.
- D. An application fee which shall be set by the City Council by resolution.

Section 12.18.0127: Standards for Renewal of Permits. Within 90 days after receiving a complete application for permit renewal, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying the renewal of a permit under this Article, the City Council shall conduct a public hearing and make a decision based upon the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

- A. The financial and technical ability of the applicant.
- B. The continuing capacity of the public ways to accommodate the applicant's existing facilities.
- C. The applicant's compliance with the requirements of this Chapter and the permit.
- D. Applicable federal, state and local telecommunications laws, rules and policies.
- E. Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

Section 12.18.0128: Obligation to Cure as a Condition of Renewal. No permit shall be renewed until any ongoing violations or defaults in the permittee's performance of the permit, or of

the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the permittee has been approved by the City.

**ARTICLE IV.
TELECOMMUNICATIONS FRANCHISE**

Sections	12.18.290	Telecommunications Franchise.
	12.18.300	Franchise Application.
	12.18.310	Determination by the City.
	12.18.320	Agreement.
	12.18.330	Nonexclusive Grant.
	12.18.340	Terms of Franchise Grant.
	12.18.350	Rights Granted.
	12.18.360	Franchise Territory.
	12.18.370	Compensation to the City.
	12.18.380	Nondiscrimination.
	12.18.390	Amendment of Franchise Grant.
	12.18.400	Renewal Application.
	12.18.410	Renewal Determination.
	12.18.420	Obligation to Cure as Condition of Renewal.

Section 12.18.0129: Telecommunications Franchise. A telecommunications franchise shall be required of any telecommunications carrier or other person who desires to occupy public ways of the City and to provide telecommunications services to any person or area in the City.

Section 12.18.0130: Franchise Application. Any person that desires a telecommunications franchise pursuant to this Chapter shall file an application with the City which shall include the following:

- A.** The identity of the applicant, including all affiliates of the applicant.
- B.** A description of the services that are or will be offered or provided by the applicant over its existing or proposed facilities.
- C.** A description of the transmission medium that will be used by the franchisee to offer or provide such services.
- D.** Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:
 - (1)** the location and route requested for applicant's proposed facilities.

- (2) the location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route.
- (3) the location(s), if any, for interconnection with the facilities of other telecommunications carriers and cable operators.
- (4) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

E. If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

- (1) the excess capacity currently available in such ducts or conduits before installation of applicant's facilities;
- (2) the excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

- (1) the location proposed for the new ducts or conduits;
- (2) the excess capacity that will exist in such ducts or conduits after installation of applicant's facilities.

H. A preliminary construction schedule and completion dates.

I. A preliminary traffic control plan in accordance with the City's adopted street standards.

J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the facilities and services described in the application.

L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications or other services.

M. Whether the applicant intends to provide cable service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising.

N. An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

O. A description of the services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions.

P. A description of applicant's access and line extension policies.

Q. The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire franchise area.

R. All fees, deposits or charges required pursuant to Article VI. of this Chapter.

S. Such other and further information as may be requested by the City Administrator.

T. An application fee which shall be set by the City Council by resolution.

Section 12.18.0131: Determination by the City. Within 120 days after receiving a complete application under Section 12.18.0300 hereof, the City shall issue a written determination granting or denying the application in whole or in part. Prior to granting or denying a franchise under this Article, the City Council shall conduct a public hearing and make a decision based upon the following standards. If the application is denied, the written determination shall include the reason for denial.

A. The financial and technical ability of the applicant.

B. The legal ability of the applicant.

C. The capacity of the public ways to accommodate the applicant's proposed facilities.

D. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted.

E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.

- F. The public interest in minimizing the cost and disruption of construction within the public ways.
- G. The service that applicant will provide to the community and region.
- H. The effect, if any, on public health, safety and welfare if the franchise requested is granted.
- I. The availability of alternate routes and/or locations for the proposed facilities.
- J. Applicable federal and state telecommunications laws, regulations and policies.
- K. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.
- L. That the requirements of RCW 35A.47.040 have been complied with.

Section 12.18.0132: Agreement. No franchise shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchisee has been granted to right to occupy and use public ways of the City.

Section 12.18.0133: Nonexclusive Grant. No franchise granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.

Section 12.18.0134: Terms of Franchise Grant. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of ten (10) years.

Section 12.18.0135: Rights Granted. No franchise granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

Section 12.18.0136: Franchise Territory. A telecommunications franchise granted under this Article shall be limited to the specific geographic area of the City to be served by the franchisee, and the specific public ways necessary to serve such areas.

Section 12.18.0137: Compensation to the City. Each franchise granted under this Article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the franchise rights granted to the franchisee; provided, nothing in this Chapter shall prohibit the City and a franchisee from agreeing to the compensation to be paid.

Section 12.18.0138: Nondiscrimination. A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for the franchisee's services; provided, however, that nothing in this Chapter shall prohibit a franchisee from making any reasonable classifications among differently situated customers.

Section 12.18.0139: Amendment of Franchise Grant. A new franchise application and grant shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in public ways of the City which are not included in a franchise previously granted under this Article. If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted franchise, the City shall grant a franchise amendment without further application.

Section 12.18.0140: Renewal Application. A franchisee that desires to renew its franchise under this Chapter shall, not more than 180 days nor less than 120 days before expiration of the current franchise, file an application with the City for renewal of its franchise which shall include the following:

- A. The information required pursuant to Section 12.18.0300 of this Chapter.
- B. Any information required pursuant to the franchise agreement between the City and the grantee.
- C. All deposits or charges required pursuant to this Chapter.
- D. An application fee which shall be set by the City Council by resolution.

Section 12.18.0141: Renewal Determination. Within 120 days after receiving a complete application for renewal under Section 12.18.0400 hereof, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying renewal of a franchise under this Article, the City Council shall conduct a public hearing and make a decision based upon the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

- A. The financial and technical ability of the applicant.
- B. The legal ability of the applicant.
- C. The continuing capacity of the public ways to accommodate the applicant's existing facilities.
- D. The applicant's compliance with the requirements of this Chapter and the franchise agreement.

E. Applicable federal, state and local telecommunications laws, rules and policies.

F. Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

Section 12.18.0142: Obligation to Cure as a Condition of Renewal. No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the City.

ARTICLE V. CABLE TELEVISION FRANCHISE

Sections	12.18.430	Cable Television Franchise.
	12.18.440	Franchise Application.
	12.18.450	Determination by City.
	12.18.460	Agreement.
	12.18.470	Nonexclusive Grant.
	12.18.480	Terms of Franchise Grant.
	12.18.490	Rights Granted.
	12.18.500	Franchise Territory.
	12.18.510	Nondiscrimination.
	12.18.520	Amendment of Franchise Grant.
	12.18.530	Renewal Application.
	12.18.540	Renewal Determination.
	12.18.550	Obligation to Cure as Condition of Renewal.
	12.18.560	Rates.
	12.18.570	Franchise Fee.
	12.18.580	Periodic Meetings.
	12.18.590	Cable System Evaluation.
	12.18.600	Public, Educational and Governmental Access.
	12.18.610	City-wide Public, Educational and Governmental Access Interconnection.
	12.18.620	Institutional Networks (I-Nets).
	12.18.630	City-wide Institutional Networks Interconnection.
	12.18.640	Access and Institutional Network Equipment.
	12.18.650	External Franchising Costs.
	12.18.660	Continuity of Service.
	12.18.670	Equalization of Civic Contributions.
	12.18.680	Subscriber Rate Complaint Process.
	12.18.690	Parental Control Devices.
	12.18.700	Discounts.
	12.18.710	Customer Service.
	12.18.720	Telephone Response.

12.18.730	Failure to Improve Customer Service.
12.18.740	Reports.
12.18.750	Programming.
12.18.760	Inconsistency.

Section 12.18.0143: Cable Television Franchise. A cable television franchise shall be required of any telecommunications carrier, cable operator, or other person who desires to occupy the public ways of the City and to provide cable service to any person or area in the City.

Section 12.18.0144: Franchise Application. Any person that desires a cable television franchise pursuant to this Article shall file an application with the City which, in addition to the materials required by Section 12.18.290, shall include information whether the applicant intends to provide telecommunications service, and sufficient information to determine whether such service is subject to telecommunications franchising pursuant to this Chapter.

Section 12.18.0145: Determination by the City. Within 120 days after receiving a complete application under Section 12.18.0440, the City shall issue a written determination granting or denying the application in whole or in part. Prior to granting or denying a franchise under this Article, the City Council shall conduct a public hearing and make a decision based upon the standards set forth in Section 12.18.310. If the application is denied, the written determination shall include the reason(s) for denial.

Section 12.18.0146: Agreement. No franchise shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchisee has been granted to right to occupy and use public ways of the City and to provide cable service to persons or areas within the City.

Section 12.18.0147: Nonexclusive Grant. No franchise granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of cable services or any other purposes.

Section 12.18.0148: Terms of Franchise Grant. Unless otherwise specified in a franchise agreement, a cable franchise granted hereunder shall be valid for a term of ten (10) years.

Section 12.18.0149: Rights Granted. A cable television franchise granted pursuant to this Article shall authorize a franchisee:

A. To engage in the business of operating and providing cable service and services and the distribution and sale of such services to subscribers within the City; and

B. To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public way, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appropriate to the cable system.

Provided, however, that no privilege or exemption shall be granted or conferred upon a franchisee by any franchise except as specifically prescribed therein, and any use of any public way shall be consistent with any prior lawful occupancy of the public way or any subsequent improvement or installation therein. Provided further, that no franchise granted pursuant to this Article shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. No franchise shall be construed as any warranty of title.

Section 12.18.0150: Franchise Territory. A cable television franchise granted under this Article shall be limited to the specific geographic area of the City to be served by the franchisee, and the specific public ways necessary to serve such areas.

Section 12.18.0151: Nondiscrimination. A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this Chapter shall prohibit a franchisee from making any reasonable classifications among differently situated customers. Provided further, that nothing in this Ordinance shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and that connection and/or service charges may be waived or modified during promotional campaigns of a franchisee. A franchisee will not deny access to cable service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides.

Section 12.18.0152: Amendment of Franchise Grant. Except as otherwise provided by 47 U.S.C. § 545, a new franchise application and grant shall be required of any cable operator that desires to extend its franchise territory, to locate its cable facilities in public ways of the City which are not included in a franchise previously granted under this Article, or to otherwise modify its franchise or franchise agreement. If ordered by the City to locate or relocate its cable facilities in public ways not included in a previously granted franchise, the City shall grant a franchise amendment without further application.

Section 12.18.0153: Renewal Application. A franchisee that desires to renew its franchise under this Chapter shall, not more than 180 days nor less than 120 days before expiration of the current franchise, file an application with the City for renewal of its franchise which shall include the following:

- A. The information required pursuant to Section 12.18.0440 of this Chapter.
- B. Any information required pursuant to the franchise agreement between the City and the grantee.
- C. Any information required pursuant to the Cable Act.
- D. All deposits or charges required pursuant to this Chapter.

E. An application fee which shall be set by the City Council by resolution.

Section 12.18.0154: Renewal Determination. Within 120 days after receiving a complete application under Section 12.18.530, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying renewal of a franchise under this Article, the City Council shall conduct a public hearing and make a decision based upon the standards set forth in the Cable Act, its implementing regulations, and the standards set forth in Section 12.18.410. If the renewal application is denied, the written determination shall include the reason(s) for non-renewal.

Section 12.18.0155: Obligation to Cure as a Condition of Renewal. No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the City.

Section 12.18.0156: Rates. Within thirty (30) days after the grant of franchise pursuant to this Article, a franchisee shall file with the City a complete schedule of all present rates charged to all subscribers. Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, a franchisee shall provide the City and all subscribers a minimum of thirty (30) days prior written notice of such change. Subject to 47 U.S.C. § 543 and applicable FCC regulations, the City may regulate the rates or charges for providing cable service and other equipment and may establish rate regulation review procedures as delegated by Federal law.

Section 12.18.0157: Franchise Fee. As permitted by 47 U.S.C. § 542, a franchisee shall pay the City a franchise fee equal to five percent (5%) or greater of its gross revenues as defined in this Chapter. The franchise fee shall be paid quarterly, on or before the thirtieth (30th) day of each January, April, July, and October. Such remittances shall be accompanied by forms furnished by the City to report reasonably detailed information as to the sources of such revenues.

Section 12.18.0158: Periodic Meetings. Upon request, but not more than once during any calendar year, a franchisee shall meet with designated City officials and/or designated representative(s) of the City to review the performance of a franchisee for the preceding period. The franchisee shall be given not less than thirty (30) days' prior written notice of any such meeting. The subjects may include, but are not limited to, those items covered in the periodic reports and performance tests.

Section 12.18.0159: Cable System Evaluation. In addition to periodic meetings, and with written notice of not less than five (5) business days so that a franchisee can arrange to have necessary personnel present, the City may require reasonable evaluation sessions at any time during the term of a franchise. It is intended that such evaluations cover areas such as customer service, response to the community's cable-related needs, and a franchisee's performance under and compliance with the terms of a franchise.

Section 12.18.0160: Public, Educational and Governmental Access. As permitted by 47 U.S.C. § 531, the City may require, as a condition of a franchise granted pursuant to this Article, provisions for Public, Educational and Government (PEG) Access.

Section 12.18.0161: City-wide Public, Educational and Government Access Interconnection. As permitted by 47 U.S.C. § 531, the City may request a franchisee to begin negotiations to interconnect PEG access channels of a cable television system with any and all other contiguous and compatible cable systems. Interconnection of system may be accomplished by direct cable connection, microwave link, or other technically feasible method. Upon receiving request of the City to interconnect, if a franchisee has not already done so, a franchisee shall initiate negotiations with other affected system(s), and shall report to the City the results of such negotiations no later than sixty (60) days after such initiation. Any costs of interconnection may be passed through to subscribers by a franchisee.

Section 12.18.0162: Institutional Networks (I-Nets). A franchisee's cable system shall have the capability of serving designated educational and public buildings with uni- or bi-directional video/audio signals. The linkage may be by cable, microwave or other means deemed appropriate by a franchisee. If required, suitable encoding and decoding devices shall be made available by a franchisee to assure transmission security. A public entity desiring the activation of such service shall make application thereof to a franchisee. Activation of such services to a public entity shall not be unduly denied. As provided by the Cable Act, a public entity in the City denied such service may request a public hearing to evaluate such denial. Both the requestor and the franchisee shall be provided the opportunity to present the reasons for the request and the reasons for the denial. Upon a finding by the City Council that these services are reasonably required to meet community needs, taking into account the cost of meeting such needs, the City Council may require the activation of such services for the public entity in a reasonable time and on the same basis that other public entities in the City receive the same service.

Section 12.18.0163: City-wide Institutional Networks Interconnection. A franchise agreement may require a franchisee to make such interconnections as necessary to connect certain designated institutions on a City-wide basis. The same conditions as enumerated in Section 12.18.0620 shall apply to such interconnections.

Section 12.18.0164: Access and Institutional Network Equipment. A franchise agreement may require a franchisee to contribute either specified goods and services and/or a specified sum of money for the purpose of providing facilities and equipment for PEG access programming and the Institutional Networks.

Section 12.18.0165: External Franchising Costs. Prior to expenditure of capital for any franchise related requirements that would be treated as an external cost passed through to customers, the franchisee shall notify the City of its intent to exercise its right and the amount to be passed through to customers. The City may waive the franchise related requirement if, in the City's opinion, the increase in rates would be a burden on City rate payers.

Section 12.18.0166: Continuity of Service. It shall be the right of all subscribers to continue receiving service so long as their financial and other obligations to a franchisee are fulfilled. In this regard a franchisee shall act so far as it is reasonably within its control to provide all subscribers with continuous uninterrupted service during the term of the franchise, subject to applicable law. In the event a franchisee fails to operate a system for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the City Council or without just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond a franchisee's control, the City may, after notice and an opportunity for a franchisee to commence operations at its option, operate the emergency alert system or designate someone to operate the emergency alert system until such time as a franchisee restores service or a replacement franchisee is selected. If the City is required to fulfill this obligation for a franchisee, a franchisee shall reimburse the City for all reasonable costs or damages that are the result of a franchisee's failure to perform.

Section 12.18.0167: Equalization of Civic Contributions. In the event of one or more new franchises being granted, the City may require that such subsequent franchisees pay to the City an amount proportionally equal to franchising costs contributed by the initial franchisee. These costs may include but are not limited to such features as access and institutional network costs, bi-directional or equivalent cable installed to municipal buildings and similar expenses. Additional franchisees shall provide all PEG access channel(s) currently available to the subscribers of existing franchisees. In order to provide these access channels, additional franchisees shall interconnect, at their cost, with existing franchisees, subject to any reasonable terms and conditions that the existing franchisee providing the interconnection may require. These interconnection agreements shall be made directly between the franchisees. The City Council, in such cases of dispute of award, may be called upon to arbitrate regarding these arrangements. Additional franchisees shall contribute towards costs of PEG access paid by a prior franchisee by paying to the prior franchisee on each anniversary of the grant of the subsequent franchise an amount equal to a proportionate share of the amount contributed by the prior franchisee for PEG access costs in constant dollars. This proportionate share shall be based upon the number of subscribers in the City held by each franchise and shall be contributed until such time as equal contributions towards the cost of PEG access have been made.

Section 12.18.0168: Subscriber Rate Complaint Process. As provided by 47 U.S.C. § 543, any subscriber aggrieved by a cable rate increase shall file its cable rate complaint with the City within ninety (90) days of the effective date of such an increase. Such complaints shall be submitted upon a form prescribed by the City Administrator. If the City receives cable rate complaints from cable subscribers, it may, in its sole discretion, file a cable rate complaint with the FCC, seeking review of any such rate increase.

Section 12.18.0169: Parental Control Devices. A franchisee shall make available at its cost, including applicable handling fees, a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

Section 12.18.0170: Discounts. A franchisee shall offer a discount of thirty percent (30%) from the normal charge for basic services and installation to those individuals age sixty-two (62) or

older or disabled who are the legal owner or lessee/tenant of their residence provided that their combined disposal income from all sources does not exceed the median income level Housing and Urban Development (HUD) standards for the Seattle-Everett area for the preceding calendar year. The City or its designee shall be responsible for certifying to a franchisee that such applicants conform to the specified criteria.

Section 12.18.0171: Customer Service.

A. A franchisee shall render repair service to restore the quality of the signal at approximately the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system. A log of all service interruptions shall be maintained for a period of at least one (1) year. The City, after two (2) working days' notice, may inspect such logs.

B. An employee of a franchisee shall answer and respond to all individual complaints received up until 5:00 p.m. weekdays. A franchisee may use an answering service to receive complaints after 5:00 p.m. weekdays and on weekends and holidays and shall respond to any system outage affecting more than five (5) subscribers regardless of day and hour. A copy of the instructions to the answering service by a franchisee shall be furnished to the City or its designee.

C. A technician shall be on call seven (7) days a week, twenty-four (24) hours a day. A franchisee shall respond immediately to service complaints in an efficient manner.

D. A franchisee shall maintain a sufficient repair force to respond to individual requests for repair service within two (2) working days after receipt of the complaint or request, except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven (7) days, to the extent reasonable. If a subscriber has notified a franchisee of an outage, no charge for the period of the outage shall be made to the subscriber if the subscriber was without service for a period exceeding twenty-four (24) hours.

E. A franchisee shall supply at the time of a new connection, and periodically at least once a year, the title, address and telephone number of the city official or his/her designee, to whom subscribers may direct their concerns.

F. In no case will a franchisee's service standards fall below the standards established below the National Cable Television Association (NCTA) which are attached hereto as Appendix A, and incorporated by this reference as though completely set forth herein.

Section 12.18.0172: Telephone Response.

A. A franchisee shall maintain an adequate force of customer service representatives as well as incoming trunk lines so that telephone inquiries are met promptly and responsively. A franchisee shall have in place procedures for utilization of other manpower and/or

recording devices for handling the flow of telephone calls at peak periods of large outages or other major causes of subscriber concern. A copy of such procedures and/or policies shall be made available to the City.

B. In order that the City may be informed of a franchisee's success in achieving satisfactory customer relations in its telephone answering functions, a franchisee shall, upon request by the City, and routinely each quarter, provide the City with a summary that provides the following:

- (1) Total number of calls received in recording periods;
- (2) Time taken to answer;
- (3) Average talk time;
- (4) Number of calls abandoned by the caller;
- (5) Average hold time;
- (6) Percentage of time all lines busy;
- (7) An explanation of any abnormalities.

C. This data will be compared to the minimum standards of the NCTA, or any amendment thereto increasing such standards, and shall be monitored by the City.

D. Calls for service generated during periods of system outages due to emergencies affecting more than twenty-five (25) customers may be excluded from the service response calculations. The City shall have the sole determination as to what constitutes a system failure due to emergency and which calls shall be excluded from the service level calculations.

Section 12.18.0173: Failure to Improve Customer Service. The City or its designee shall review telephone response and customer service information with a franchisee. Improvements will be made by the franchisee in the appropriate categories which are found deficient from the last reporting period. Failure to do so may result in action being taken pursuant to Section 12.18.1050 of this Chapter.

Section 12.18.0174: Reports. A franchisee shall furnish, upon request, a report of its activities as appropriate. Such report shall include:

- A.** A copy of the franchisee's most recent annual report;
- B.** A copy of the franchisee's 10-K Report, if required by the Securities and Exchange Commission;
- C.** The number of homes passed by the franchisee's cable system;

- D. The number of subscribers with basic services;
- E. The number of subscribers with premium services;
- F. The number of hook-ups in the reporting period;
- G. The number of disconnects in the reporting period;
- H. The total number of miles of cable under the franchisee's control within the City;
- I. A summary of complaints received by category, length of time taken to resolve each complaint, and action taken to provide resolution;
- J. A copy of the franchisee's current billing practices, and a sample copy of the franchisee's current bill format;
- K. A copy of the franchisee's current subscriber service agreement;
- L. Any other such reports with respect to the franchisee's local operations, affairs, transactions, or property that the City may deem to be appropriate.

Section 12.18.0175: Programming. For informational purposes, a franchisee shall file a listing of its programming and the tiers in which they are placed. A franchisee shall consider the City's suggestions of general programming categories as determined from time to time in residential questionnaire polls. The results of such surveys, when performed, shall be appended to the respective franchise agreements.

Section 12.18.0176: Inconsistency. If any portion of this Article should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other Federal law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other Federal law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this Article shall not be effected thereby.

ARTICLE VI. CONDITIONS OF PERMITS AND FRANCHISES

Sections	12.18.770	Purpose.
	12.18.780	Acceptance.
	12.18.790	Police Power.
	12.18.800	Rules and Regulations by City.
	12.18.810	Location of Facilities.
	12.18.820	Compliance with One Call Locator Service.
	12.18.830	Construction Permits.
	12.18.840	Interference with the Public Ways.

12.18.850	Damage to Property.
12.18.860	Notice of Work.
12.18.870	Repair and Emergency Work.
12.18.880	Maintenance of Facilities.
12.18.890	Relocation or Removal of Facilities.
12.18.900	Building Moving.
12.18.910	Removal of Unauthorized Facilities.
12.18.920	Emergency Removal or Relocation of Facilities.
12.18.930	Damage to Facilities.
12.18.940	Restoration of Public Ways, Other Ways and City Property.
12.18.950	Facilities Maps.
12.18.960	Duty to Provide Information.
12.18.970	Leased Capacity.
12.18.980	Insurance.
12.18.990	General Indemnification.
12.18.1000	Performance and Construction Surety.
12.18.1010	Security Fund.
12.18.1020	Construction and Completion Bond.
12.18.1030	Coordination of Construction Activities.
12.18.1040	Assignments or Transfers of Grant.
12.18.1050	Transactions Affecting Control of Grant.
12.18.1060	Revocation or Termination of Grant.
12.18.1070	Notice and Duty to Cure.
12.18.1080	Hearing.
12.18.1090	Standards for Revocation or Lesser Sanctions.
12.18.1100	Incorporation by Reference.
12.18.1110	Notice of Entry on Private Property.
12.18.1120	Safety Requirements.

Section 12.18.0177: Purpose. The purpose of this Article is to set forth certain terms and conditions which are common to all Telecommunications Right-of-Way Use Permits, Telecommunications Franchises, and Cable Television Franchises. Except as otherwise provided in this Chapter or in such a permit or franchise, the provisions of this Article apply to all such permits and franchises approved or granted by the City Council.

Section 12.18.0178: Acceptance. No permit or franchise granted pursuant to the provisions of this Chapter shall become effective unless and until the ordinance granting the same has become effective. Within thirty (30) days after the effective date of the Ordinance granting a permit or awarding a franchise, or within such extended period of time as the Council in its discretion may authorize, a franchisee shall file with the City Administrator its written acceptance of the permit or franchise, in a form satisfactory to the City Attorney, together with the bonds, insurance policies, and security fund required by this Article.

Section 12.18.0179: Police Power. In accepting any permit or franchise, the permittee or franchisee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power.

Section 12.18.0180: Rules and Regulations by the City. In addition to the inherent powers of the City to regulate and control any permit or franchise it issues, the authority granted to it by the Cable Act and the Telecommunications Act of 1996, and those powers expressly reserved by the City, or agreed to and provided for in any permit or franchise, the right and power is hereby reserved by the City to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers giving due regard to the rights of permittee and franchisee's. Except as provided in this Chapter, the foregoing does not allow for amendment by the City of material terms of any permit or franchise it issues without the consent of the permittee or franchisee. The City Council reserves the right to delegate its authority for permit and franchise administration to a designated agent.

Section 12.18.0181: Location of Facilities. All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a permit or franchise agreement.

A. A permittee or franchisee grantee shall install its cable or telecommunications facilities within an existing underground duct, chaseway, or conduit whenever excess capacity exists within such utility facility.

B. A permittee or franchisee with permission to install overhead facilities shall install its cable or telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

C. Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public way of the City, a permittee or franchisee with permission to occupy the same public way must also locate its cable or telecommunications facilities underground.

D. Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public way of the City, a permittee or franchisee that currently occupies the same public way shall relocate its facilities underground. Absent extraordinary circumstances or undue hardship as determined by the City Public Works Director, such relocation shall be made concurrently to minimize the disruption of the public ways. No extension granted by the Director of Public Works under this Subsection shall exceed a period of twelve (12) months.

E. Whenever new cable or telecommunications facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future cable or telecommunications carriers or facilities, the permittee or franchisee and all other occupants of the

public way shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future operators and carriers.

Section 12.18.0182: Compliance with One Call Locator Service. All permittees and franchisees shall, before commencing any construction in the public ways, comply with all regulations of Chapter 19.122 RCW, the One Call Locator Service.

Section 12.18.0183: Construction Permits. All permittees and franchisees are required to obtain construction permits for cable and telecommunications facilities as required in Article VII. of this Chapter. However, nothing in this Chapter shall prohibit the City and a permittee or franchisee from agreeing to alternative plan review, permit, and construction procedures for a permit or franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

Section 12.18.0184: Interference with the Public Ways. No permittee or franchisee may locate or maintain its cable or telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the permittee or franchisee, at the permittee or franchisee's cost, temporarily or permanently, as determined by the City Public Works Director.

Section 12.18.0185: Damage to Property. No permittee or franchisee nor any person acting on a permittee or franchisee's behalf shall take any action or permit any action to be done which may impair or damage any City property, public ways of the City, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto.

Section 12.18.0186: Notice of Work. Unless otherwise provided in a permit or franchise agreement, no permittee or franchisee, nor any person acting on the permittee's or franchisee's behalf, shall commence any non-emergency work in or about the public ways of the City or other ways without twenty (20) working days' advance notice to the City.

Section 12.18.0187: Repair and Emergency Work. In the event of an unexpected repair or emergency, a permittee or franchisee may commence such repair and emergency response work as required under the circumstances, provided the permittee or franchisee shall notify the City as promptly as possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

Section 12.18.0188: Maintenance of Facilities. Each permittee or franchisee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

Section 12.18.0189: Relocation or Removal of Facilities. Within thirty (30) days following written notice from the City, a permittee or franchisee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any cable or

telecommunications facilities within the public ways whenever the City Public Works Director shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

A. The construction, repair, maintenance or installation of any City or other public improvement in or upon the public ways.

B. The operations of the City or other governmental entity in or upon the public ways.

Section 12.18.0190: Building Moving. Whenever any person shall have obtained permission from the City to use any street or public way for the purpose of moving any building, a permittee or franchisee, upon seven (7) days' written notice from the City, shall raise or remove, at the expense of the person desiring to move the building, any of the permittee or franchisee's facilities which may obstruct the removal of such building; provided that the person desiring to move the building shall comply with all requirements of the City for the movement of buildings.

Section 12.18.0191: Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the City, any permittee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized cable or telecommunications system, facility or related appurtenances within the public ways of the City shall, at its own expense, remove such facilities or appurtenances from the public ways of the City. A cable or telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

A. Upon expiration or termination of the permittee or franchisee's permit or franchise.

B. Upon abandonment of a facility within the public ways of the City. Any property of a permittee or franchisee shall be deemed abandoned if left in place ninety (90) days after expiration or termination of a permit or franchise.

C. If the system or facility was constructed or installed without the prior grant of a permit or franchise.

D. If the system or facility was constructed or installed without the prior issuance of a required construction permit.

E. If the system or facility was constructed or installed at a location not permitted by the permittee or franchisee's permit or franchise.

Provided, however, that the City may, in its sole discretion, allow a permittee, franchisee, or other such persons who may own, control, or maintain cable or telecommunications facilities within the public ways of the City to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment or removal of a permittee or franchisee's facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment of

the property of such persons in place, the property shall become that of the City, and such persons shall submit to the City Administrator an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. The provisions of this Section shall survive the expiration, revocation, or termination of a permit or franchise granted under this Chapter.

Section 12.18.0192: Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any cable or telecommunications facilities located within the public ways of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to any cable operator, telecommunications carrier, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

Section 12.18.0193: Damage to Facilities. Unless directly and proximately caused by the willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any cable or telecommunications facility upon City property or within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such City property or within the public ways by or on behalf of the City.

Section 12.18.0194: Restoration of Public Ways, Other Ways and City Property.

A. When a permittee or franchisee, or any person acting on its behalf, does any work in or affecting any public ways, other ways or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

B. If weather or other conditions do not permit the complete restoration required by this Section, the permittee or franchisee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the permittee or franchisee's sole expense and the permittee or franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. A permittee, franchisee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

Section 12.18.0195: Facilities Maps. Each permittee or franchisee shall provide the City with an accurate map or maps certifying the location of all telecommunications facilities within the public ways. Each permittee or franchisee shall provide the City with updated maps annually.

Section 12.18.0196: Duty to Provide Information. Within ten (10) days of a written request from the City Administrator, each permittee or franchisee shall furnish the City with information sufficient to demonstrate:

A. That permittee or franchisee has complied with all requirements of this Chapter.

B. That all sales, utility and/or telecommunications taxes due the City in connection with the cable or telecommunications services and facilities provided by the permittee have been properly collected and paid by the permittee or franchisee.

C. All books, records, maps and other documents, maintained by the permittee or franchisee with respect to its facilities within the public ways shall be made available for inspection by the City at reasonable times and intervals.

Provided, however, that nothing in this section shall be construed to require a permittee or franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require a permittee or franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

Section 12.18.0197: Leased Capacity. A permittee or franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with such permit or franchise; provided:

A. The permittee or franchisee shall furnish the City with a copy of any such lease or agreement between the permittee or franchisee and the customer or lessee; and

B. The customer or lessee complied, to the extent applicable, with the requirements of this Chapter.

Section 12.18.0198: Insurance. Unless otherwise provided in a permit or franchise agreement, each permittee or franchisee shall, as a condition of the permit or grant, secure and maintain the following liability insurance policies insuring both the permittee or franchisee and the City, and its elected and appointed officers, officials, agents and employees as co-insureds:

A. Comprehensive general liability insurance with limits not less than

- (1) Five Million Dollars (\$5,000,000) for bodily injury or death to each person;
- (2) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and
- (3) Five Million Dollars (\$5,000,000) for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).

E. The liability insurance policies required by this section shall be maintained by the permittee or franchisee throughout the term of the permit or franchise, and such other period of time during which the permittee or franchisee is operating without a franchise or permit hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Administrator of such intent to cancel or not to renew.

F. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation or intent not to renew, the permittee or franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

Section 12.18.0199: General Indemnification. No permit or franchise shall be deemed to be granted under this Chapter unless it includes an indemnity clause substantially conforming to the following:

The permittee or franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the permittee or franchisee's own employees to which the permittee or franchisee 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 permittee or franchisee, its agents, servants, officers or employees in performing under this permit or franchise are the proximate cause. The permittee or franchisee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards or liability to any person including claims by the permittee or franchisee's own employees, including those claims to which the permittee or franchisee might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the permittee or franchisee's exercise of the rights granted herein, or by virtue of the City's permitting the permittee or franchisee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the permittee or

franchisee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this permit or franchise or pursuant to any other permit or approval issued in connection with this permit or franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of the permittee or franchisee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this permit or franchise.

Inspection or acceptance by the City of any work performed by the permittee or franchisee 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 permittee or franchisee refuses the tender of defense in any suit or any 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 permittee or franchisee, then the permittee or franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of 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 permittee or franchisee and the City, its officers, employees and agents, the permittee or franchisee's liability hereunder shall be only to the extent of the permittee or franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the permittee or franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this Section shall survive the expiration or termination of this franchise agreement.

Notwithstanding any other provisions of this Section, the permittee or franchisee assumes the risk of damage to its facilities located in the City's public ways, rights-of-way, and easements from activities conducted by the City, its officers, agents, employees and contractors. The permittee or franchisee releases and waives any and all claims against the City, its officers, agents, employees or contractors for damage

to or destruction of the permittee or franchisee's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees and contractors, in the public ways, rights-of-way, and easements subject to this permit or franchise, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any wilful or malicious action on the part of the City, its officers, agents, employees or contractors. The permittee or franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the permittee or franchisee's facilities as the result of any interruption of service due to damage or destruction of the User's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any wilful or malicious actions on the part of the City, its officers, agents, employees or contractors.

Section 12.18.01100: Performance and Construction Surety. Before a permit or franchise granted pursuant to this Chapter is effective, and as necessary thereafter, the permittee or franchisee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the City as may be required by this Chapter or by an applicable permit or franchise agreement.

Section 12.18.01101: Security Fund. Each permittee or franchisee shall establish a permanent security fund with the City by depositing the amount of \$50,000 with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund shall be maintained at the sole expense of the permittee or franchisee so long as any of the permittee or franchisee's cable or telecommunications facilities are located within the public ways of the City.

A. The fund shall serve as security for the full and complete performance of this Chapter, including any costs, expenses, damages or loss the City pays or incurs, including civil penalties, because of any failure attributable to the permittee or franchisee to comply with the codes, ordinances, rule, regulations or permits of the City.

B. Before any sums are withdrawn from the security fund, the City shall give written notice to the permittee or franchisee:

- (1) describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of permittee or franchisee's act or default;
- (2) providing a reasonable opportunity for permittee or franchisee to first remedy the existing or ongoing default or failure, if applicable;

- (3) providing a reasonable opportunity for permittee or franchisee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable;
- (4) that the permittee or franchisee will be given an opportunity to review the act, default or failure described in the notice with the City Administrator or his or her designee.

C. Grantees shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.

Section 12.18.01102: Construction and Completion Bond. Unless otherwise provided in a permit or franchise agreement, a performance bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of constructing the permittee or franchisee's cable or telecommunications facilities within the public ways of the City shall be deposited before construction is commenced.

A. The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the City Public Works Director, including restoration of public ways and other property affected by the construction.

B. The construction bond shall guarantee, to the satisfaction of the City:

- (1) timely completion of construction;
- (2) construction in compliance with applicable plans, permits, technical codes and standards;
- (3) proper location of the facilities as specified by the City;
- (4) restoration of the public ways and other property affected by the construction;
- (5) the submission of 'as-built' drawings after completion of the work as required by this Chapter.
- (6) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

Section 12.18.01103: Coordination of Construction Activities. Section 12.18.090 notwithstanding, all permittees and franchisees are required to cooperate with the City and with each other.

A. By February 1 of each year, permittees and franchisees shall provide the City with a schedule of their proposed construction activities in, around, or that may affect the public ways.

B. Each permittee and franchisee shall meet with the City, other permittees and franchisees and users of the public ways annually or as determined by the City to schedule and coordinate construction in the public ways.

C. All construction locations, activities and schedules shall be coordinated, as ordered by the City Public Works Director, to minimize public inconvenience, disruption or damages.

Section 12.18.01104: Assignments or Transfers of Grant. Ownership or control of a cable or telecommunications system, license, permit, or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

A. No permit, franchise, or other grant shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the permit or franchise, unless otherwise provided in the permit or franchise agreement.

B. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.

C. The permittee or franchisee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of transfer:

- (1) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
- (2) All information required of a permit or franchise applicant pursuant to Articles III., IV. and V. of this Chapter with respect to the proposed transferee or assignee;
- (3) Any other information reasonably required by the City.
- (4) An application fee which shall be set by the City Council by resolution.

D. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the cable or telecommunications system pursuant to this Chapter.

E. Unless otherwise provided in a license or franchise agreement, the permittee or franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign a permit or franchise. No approval shall be deemed approved until all such costs and expenses have been paid.

F. Any transfer or assignment of a permit, franchise, system or integral part of a system without prior written approval of the City under this Section or pursuant to a permit or franchise agreement shall be void and is cause for revocation of the grant.

Section 12.18.01105: Transactions Affecting Control of Grant. Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control of the permittee or franchisee, of the ownership or working control of a cable or telecommunications system, of the ownership or working control of affiliated entities having ownership or working control of the permittee or franchisee or of a telecommunications system, or of control of the capacity or bandwidth of the permittee or franchisee's cable or telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to Section 12.18.01040 hereof. Transactions between affiliated entities are not exempt from City approval. A franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of a franchisee's company. Every change, transfer, or acquisition of control of a franchisee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee.

Section 12.18.01106: Revocation or Termination of Grant. A permit or franchise granted by the City to use or occupy public ways of the City may be revoked for the following reasons:

A. Construction or operation in the City or in the public ways of the City without a permit or franchise grant of authorization.

B. Construction or operation at an unauthorized location.

C. Unauthorized substantial transfer of control of permittee or franchisee.

D. Unauthorized assignment of a permit or franchise.

E. Unauthorized sale, assignment or transfer of a permittee or franchisee's franchise, permit, assets, or a substantial interest therein.

F. Misrepresentation or lack of candor by or on behalf of a permittee or franchisee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any permit or franchise pursuant to this Chapter.

G. Abandonment of cable or telecommunications facilities in the public ways.

H. Failure to relocate or remove facilities as required in this Chapter.

I. Failure to pay taxes, compensation, fees or costs when and as due the City.

J. Insolvency or bankruptcy of the permittee or franchisee.

K. Violation of any material provision of this Chapter.

L. Violation of the material terms of a permit or franchise agreement.

Section 12.18.01107: Notice and Duty to Cure. In the event that the City Administrator believes that grounds exist for revocation of a permit or franchise, he or she shall give the permittee or franchisee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the permittee or franchisee a reasonable period of time not exceeding thirty (30) days to furnish evidence:

A. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.

B. That rebuts the alleged violation or noncompliance.

C. That it would be in the public interest to impose some penalty or sanction less than revocation.

Section 12.18.01108: Hearing. In the event that a permittee or franchisee fails to provide evidence reasonably satisfactory to the City Administrator as provided in Section 12.18.1070 hereof, the City Administrator shall refer the apparent violation or non-compliance to the City Council. The City Council shall provide the permittee or franchisee with notice and a reasonable opportunity to be heard concerning the matter.

Section 12.18.01109: Standards for Revocation or Lesser Sanctions. If the City Council determines that a permittee or franchisee willfully violated or failed to comply with any of the provisions of this Chapter or a permit or franchise granted under this Chapter, or through willful misconduct or gross negligence failed to heed or comply with any notice given the permittee or franchisee by the City under the provisions of this Chapter, then the permittee or franchisee shall, at the election of the City Council, forfeit all rights conferred hereunder and the permit or franchise may be revoked or annulled by the City Council. The City Council may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies,

including obtaining an order from the superior court having jurisdiction compelling the permittee or franchisee to comply with the provisions of this Chapter and any permit or franchise granted hereunder, and to recover damages and costs incurred by the City by reason of the permittee or franchisee's failure to comply. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent and gravity of the violation and in making its determination under this Section:

- A. Whether the misconduct was egregious.
- B. Whether substantial harm resulted.
- C. Whether the violation was intentional.
- D. Whether there is a history of prior violations of the same or other requirements.
- E. Whether there is a history of overall compliance.
- F. Whether the violation was voluntarily disclosed, admitted or cured.

Section 12.18.01110: Incorporation By Reference. The provisions of this Chapter shall be incorporated by reference in any permit or franchise approved hereunder. The provisions of any proposal submitted and accepted by the City shall be incorporated by reference in the applicable permit or franchise. However, in the event of any conflict between the proposal, this Chapter, and the permit or franchise, the permit or franchise shall be the prevailing document.

Section 12.18.01111: Notice of Entry on Private Property. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property to perform new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property by the permittee or franchisee. A door hanger may be used to comply with the notice and posting requirements of this Section. A franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

Section 12.18.01112: Safety Requirements. A permittee or franchisee, in accordance with applicable National, State, and Local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of a permit or franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The City reserves the general right to see that the system of a permittee or franchisee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with a permittee

or franchisee, establish a reasonable time for a franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a permittee or franchisee.

VII. CONSTRUCTION STANDARDS

Sections	12.18.1130	General Construction Standards.
	12.18.1140	Construction Codes.
	12.18.1150	Construction Permits.
	12.18.1160	Applications.
	12.18.1170	Engineer's Certification.
	12.18.1180	Traffic Control Plan.
	12.18.1190	Issuance of Permit.
	12.18.1200	Construction Schedule.
	12.18.1210	Compliance with Permit.
	12.18.1220	Display of Permit.
	12.18.1230	Survey of Underground Facilities.
	12.18.1240	Noncomplying Work.
	12.18.1250	Completion of Construction.
	12.18.1260	As-Built Drawings.
	12.18.1270	Restoration of Improvements.
	12.18.1280	Landscape Restoration.
	12.18.1290	Construction Surety.
	12.18.1300	Exceptions.
	12.18.1310	Responsibilities of the Owner.

Section 12.18.01113: General Construction Standards. No person shall commence or continue with the construction, installation or operation of cable or telecommunications facilities within the City except as provided in this Chapter.

Section 12.18.01114: Construction Codes. Cable and telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations.

Section 12.18.01115: Construction Permits. No person shall construct or install any cable or telecommunications facilities within the City without first obtaining a construction permit therefor, provided, however:

A. No permit shall be issued for the construction or installation of cable or telecommunications facilities within the City unless the cable operator or telecommunications carrier has filed an application for a business license with the City pursuant to Article II of this Chapter.

B. No permit shall be issued for the construction or installation of telecommunications facilities in the public ways unless the cable operator or telecommunications carrier has applied for and received a permit or franchise pursuant to this Chapter.

C. No permit shall be issued for the construction or installation of cable or telecommunications facilities without payment of the construction permit fee established by a resolution adopted by the City Council for this purpose.

Section 12.18.01116: Applications. Applications for permits to construct cable or telecommunications facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

B. The location and route of all facilities to be installed on existing utility poles.

C. The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways.

D. The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.

E. The location of all other facilities to be constructed within the City, but not within the public ways.

F. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public ways.

G. The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

Section 12.18.01117: Engineer's Certification. All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

Section 12.18.01118: Traffic Control Plan. All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

Section 12.18.01119: Issuance of Permit. Within forty-five (45) days after submission of all plans and documents required of the applicant and payment of the permit fees required by this

Article, the City's Public Works Director, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he may deem necessary or appropriate.

Section 12.18.01120: Construction Schedule. The permittee shall submit a written construction schedule to the City Public Works Director ten (10) working days before commencing any work in or about the public ways. The permittee shall further notify the City Public Works Director not less than two (2) working days in advance of any excavation or work in the public ways.

Section 12.18.01121: Compliance with Permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City Public Works Director and his or her representatives shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

Section 12.18.01122: Display of Permit. The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Public Works Director or his or her representatives at all times when construction work is occurring.

Section 12.18.01123: Survey of Underground Facilities. If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a state-registered land surveyor. The permittee shall relocate any facilities which are not located in compliance with permit requirements.

Section 12.18.01124: Noncomplying Work. Upon order of the City Public Works Director, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed.

Section 12.18.01125: Completion of Construction. The permittee shall promptly complete all construction activities so as to minimize disruption of the public and other ways and other public and private property. All construction work authorized by a permit within public and other ways, including restoration, must be completed within one hundred twenty (120) days of the date of issuance.

Section 12.18.01126: As-Built Drawings. Within sixty (60) days after completion of construction, the permittee shall furnish the City with two (2) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all cable or telecommunications facilities constructed pursuant to the permit.

Section 12.18.01127: Restoration of Improvements. Upon completion of any construction work, the permittee shall promptly repair any and all public and private property improvements, fixtures, structures and facilities in the public or other ways or otherwise damaged during the course

of construction, restoring the same as nearly as practicable to its condition before the start of construction.

Section 12.18.01128: Landscape Restoration.

A. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation maintenance, repair or replacement of cable or telecommunications facilities, whether such work is done pursuant to a franchise or permit shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

B. All restoration work within the public ways shall be done in accordance with landscape plans approved by the City Public Works Director.

Section 12.18.01129: Construction Surety. Prior to issuance of a construction permit, the permittee shall provide a performance bond, as provided in Section 12.18.1020 of this Chapter.

Section 12.18.01130: Exceptions. Unless otherwise provided in a permit or franchise agreement, all cable operations and telecommunications carriers are subject to the requirements of this Article.

Section 12.18.01131: Responsibilities of the Owner. The owner of the facilities to be constructed and, if different, the permittee or franchisee, are responsible for performance of and compliance with all provisions of this Article.

Section 2. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

Section 4. Effective date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum. This ordinance shall take effect five (5) days after passage of publication of an approved summary thereof consisting of the title.

PASSED and ADOPTED by the Gig Harbor City Council this ___ day of _____, 1997.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
Molly Towslee, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____
Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 10/8/97
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. _____

SUMMARY OF ORDINANCE NO. _____

of the City of _____, Washington

On the ___ day of _____, 199_, the City Council of the City of _____, 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, RELATING TO TELECOMMUNICATIONS AND CABLE TELEVISION; ESTABLISHING REQUIREMENTS FOR TELECOMMUNICATION CARRIERS' AND CABLE OPERATORS' USE OF THE PUBLIC RIGHTS-OF-WAY AND PUBLIC PROPERTY; DESCRIBING THE PROCEDURES FOR APPLICATION AND APPROVAL OF TELECOMMUNICATION BUSINESS LICENSES, TELECOMMUNICATIONS RIGHT-OF-WAY USE PERMITS, FRANCHISES AND CABLE TELEVISION FRANCHISES; DESCRIBING VIOLATIONS AND ESTABLISHING PENALTIES; AND ADDING A NEW CHAPTER 12.18 TO THE GIG HARBOR MUNICIPAL CODE.

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

DATED this _____ day of _____, 199_.

Molly Towslee, City Clerk



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *M.H.*
SUBJECT: Second Reading of Ordinance - PART-TIME PERSONNEL BENEFITS
DATE: SEPTEMBER 29, 1997

INFORMATION/BACKGROUND

The attached ordinance responds to Council's direction at the last meeting to provide regulation with respect to benefits for employees who work part-time. This policy has been reviewed and approved by Legal Counsel.

POLICY CONSIDERATIONS

This ordinance allows employees who work part-time to receive benefits by paying a pre-determined share of benefits costs based on the number of hours worked per week, as averaged throughout a quarter year. Temporary employees are not eligible for benefits. Employees working less-than-20 hours per week are not eligible for benefits. Employees working from 20 up to 30 hours per week may purchase all benefits at 50% of benefits cost. Employees working from 30 up to 40 hours per week may purchase all benefits by paying 25% of benefits cost. Regular employees working 40 hours or more receive full benefits. Again, these proportions are determined on quarterly averages.

FISCAL CONSIDERATIONS

The city employs few part-time employees. Thus, the current fiscal ramifications of this policy are not particularly significant. This policy, however, clarifies these situations.

RECOMMENDATION

Staff recommends approval of the ordinance at this second reading.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, RELATING TO PERSONNEL BENEFITS,
AMENDING THE CITY'S PERSONNEL REGULATIONS
(ADOPTED PURSUANT TO RESOLUTION 495) BY
ESTABLISHING CRITERIA FOR ELIGIBILITY IN THE CITY'S
HEALTH, VISION, DENTAL AND OTHER PAYROLL
DEDUCTION PLANS FOR PART-TIME EMPLOYEES.**

WHEREAS, from time to time the City employs persons working part-time or other alternative work schedules; and

WHEREAS, the regulations applicable to the City's part and full-time employees are set forth in "the City of Gig Harbor Personnel Regulations, 1997," which was adopted by reference in Gig Harbor Resolution 495; and

WHEREAS, the City Council finds it to be in the public interest to establish regulations allowing part-time employees to receive benefits commensurate with the services they provide in order to maximize the use of public funds; and

WHEREAS, the City also desires to permit part-time employees the protections and advantages of being involved in group health insurance plans and other benefit programs,
NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Gig Harbor, Washington as follows:

Section 1. Regular employees of the City who, on a quarterly basis, work an average of less than the forty hour per week for weekly employees, or a proportionately

adjusted number of hours for shift employees, shall be eligible for participation in the City's benefit programs under the following terms and conditions:

- (a) Employees working 40 hours or more per week shall receive full benefits.
- (b) Employees working less than 20 hours per week shall not be eligible and may not participate in the City's benefit programs.
- (c) Employees working from 20 to less than 30 hours per week on a quarterly basis shall be eligible for participation in the benefit program by paying 50% of the cost of the benefit programs attributable to themselves and/or their families, with the City paying the remaining 50% of the benefit program costs.
- (d) Employees working from 30 to less than 40 hours per week on a quarterly basis shall be eligible for participation in the benefit program by paying 25% of the cost of the benefit program attributable to themselves and/or their families with the City paying the remaining 75% of the benefit program costs.

Section 2. As used in this ordinance, the following terms shall be given the definition shown:

- (a) **Benefit Program.** Health, Vision, and Dental and other benefit programs, including participation in the City's deferred compensation program provided to regular full time employees of the City.
- (b) **Program Costs.** The cost which the City pays on behalf of its full time employees.
- (c) **Full-Time Employee.** An employee working an average of 40 hours or more per week on a monthly basis, provided, however, that shift employees such as police officers who work a schedule calculated at greater than 40 hours per week shall have their eligibility determined on a proportionate basis by comparing the shift-worker's weekly work schedule with 40 hours per week.
- (d) **Eligibility.** A part time employee shall be eligible for participation in the program after completing one full calendar quarter (3 months). A full time employee shall be eligible for participation in the program on the first day of the month following the date of employment.

Section 3. The benefits established pursuant to this program shall be interpreted and applied in accordance with the plan, requirements or insurance policy of a particular benefit program. For example, if the City has a program such as deferred compensation which the employee designates a portion of his or her salary, which results in no cost to the City, an employee may participate regardless of the number of hours, and the provisions of the program shall apply. In the event of conflict between this ordinance and any individual employment contract or labor collective bargaining agreement, the provisions of the contract or the collective bargaining agreement shall control.

Section 4. Severability. In any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 5. Effective Date. This ordinance shall take effect and 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 October, 1997.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
DATE PUBLISHED:
DATE EFFECTIVE:

**SUMMARY OF ORDINANCE NO.
of the City of Gig Harbor, Washington**

On _____, 1997, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the summary of text of which is as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO PERSONNEL BENEFITS, AMENDING THE CITY'S PERSONNEL REGULATIONS (ADOPTED PURSUANT TO RESOLUTION 495) BY ESTABLISHING CRITERIA FOR ELIGIBILITY IN THE CITY'S HEALTH, VISION, DENTAL AND OTHER PAYROLL DEDUCTION PLANS FOR PART-TIME EMPLOYEES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

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

APPROVED by the City Council at their regular meeting of _____, 1997.

BY: _____
Molly M. Towslee, City Clerk



Pierce County

Department of Community Services
Strategic Economic Development Plan
Citizens' Advisory Committee
8815 South Tacoma Way, Suite 202
Tacoma, Washington 98499-4588
(253)798-7205 • 1-800-992-2456 • FAX (253)798-6604
TDD/Voice 1-800-833-6388

Linda Hurley Ishem, Director
Robert L. Shedd, Chair
Lucy Cerqui, Vice-Chair

September 18, 1997

RECEIVED

SEP 19 1997

CITY OF GIG HARBOR

Mark Haupin
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

RE: Council agenda

The Citizens' Advisory Committee for the Pierce County Strategic Economic Development Action Plan respectfully requests to be on the agenda of the City Council on the evening of Monday, October 27, at 7 p.m. Please call me at the number below to confirm our spot on the agenda.

The citizen group has been meeting since January at the request of the County Executive and County Council to come up with recommendations for the Council and Executive on economic development in the geographic area of Pierce County. The citizens realize for the recommendations to work, the cities and towns also must be aware of the recommendations. All are based on the tenets laid out in the economic development element of the County's comprehensive plan, but the citizens' group saw opportunities for collaborations across the geographic area of Pierce County's many jurisdictions.

To this end, a citizen member of the group, Roland Dewhurst, would like to make a short presentation to the Council (15 minutes), explaining the work of the citizens' committee and their conclusions, especially concerning partnerships/interjurisdictional cooperation. Citizens have made presentations to the Pierce County Regional Council and the Board of Directors of the Tacoma/Pierce County Chamber of Commerce, as well as the South County Business Forum and the Pierce County Council.

I have enclosed copies of the recommendations for you, the council members and the mayor so you will have time to review them before the presentation. If you have any further questions, please call me at 798-3570. I may be reached by fax at 798-6604 or by e-mail at cwilli3@co.pierce.wa.us.

Thanks for your gracious help.

Cherilyn Williams
Cherilyn Williams
Coordinator

Enclosures



Partnerships

Pierce County
Strategic
Economic
Development
Action Plan

JULY
19

Pierce County Citizens' Advisory Committee on Economic Development

To excel in the next century, Pierce County and its cities and towns must be good places to do business, places where streamlined permitting and a flexible business climate are balanced with vibrant neighborhoods and a strong ethic of care for the environment.

By working together through strategic partnerships, Pierce County, its cities and towns, utilities, organized labor, the military, educators, and employers can welcome and encourage those opportunities that will create jobs for Pierce County's residents and strengthen the County's diverse economy.

Resolution from Pierce County Citizens' Advisory Committee, 1997

Bob Shedd, Co-Chair
Weyerhaeuser Real Estate
Company

Lucy Cerqui, Co-Chair
Cerqui Farms

Tom Aldrich
Asarco

Fred Anderson
Former Public Works Director

Bob Arndt
Lakewood Plan Board

Janet Ash
Pierce Transit

John Austin
Toray Composites

Rhonda Brown, Advisor
CDC

John Buchalski
Long Shoremen Union

Bob Camp
Camp Corporation

Richard Carkner
Washington State University

Casey Cochrane
Tacoma/Pierce County Chamber
of Commerce

Mara Cohen
WA State Employment Security

Sherry Davis
Puyallup Tribe of Indians

Joel Derefield
City of Roy

Roland Dewhurst
Associated General Contractors

Susan Hall

Lisa Henkel, Advisor
Drainage Commissioner

Peter Huffman
City of Tacoma

Peter Kee
Restaurateur

Bob Jean, Advisor
City of University Place

Kirk Kirkland
Tacoma Audubon Society

Julia Koster
City of Tacoma Public Works

Kyu Lee

Mandy Ma, Advisor
Korean Community

Don McCarty
Water Company

Don Meyer
Port of Tacoma

John Miller
NorthBay Development Corp.

Nancy Moffatt, Advisor
Bethel School District #403

Andrew Neiditz
City of Lakewood

Gary Nomentan
Puget Sound Energy

Rachel Nugent
Pacific Lutheran University
Department of Economics

Pat O'Malley
Pierce County Council

Young OH, Advisor
Fair Housing Board

Janet Prichard
Pacific Lutheran University
Public Information

Dnane Rivera
County Executive's Office

Jeff Rounce
Business Examiner

Fred Shanaman
Rainier Management

Gerald Sorensen

Dennis Stranik

Susan Suess
Economic Development Board

Pat Swanson
Teamsters

Liz Tail
Puyallup International

Dennis Taylor
Sustainable Pierce County

Jim Taylor
Taylor Construction

John Thompson
Central Labor Council

Sally Walker
Past Chair, Pierce County Council

Wayne Williams, Advisor
Tacoma Community College

Pierce County Executive
Doug Sutherland

Pierce County Council
Ken Madsen, Chair
Karen Biskey
Wendell Brown
Sarah Casada
Harold Moss
Pat O'Malley
Jan Shabro

Pierce County Department of
Community and Human Services
Daisy Stallworth
Executive Director

Pierce County Department of
Community Services
Linda Hurlley Ishem
Director

The Puget Sound economy has experienced steady growth over the last thirty years and is poised on the cusp of a new period of expansion as part of the global economy. The region's business base is diverse and includes most of the industries that will drive economic growth over the next several decades. International trade, through both seaport and airport, is growing. The region's natural amenities draw businesses and workers alike to settle here.

As an integral part of this regional economy, Pierce County has the opportunity to excel as it moves into the next century. To help prepare the county for its economic future, the County Executive and County Council convened a Citizens' Advisory Committee on Economic Development in January 1997. That committee, composed of 50 members from throughout the county, developed recommendations in areas which are essential to the county's future well-being: public infrastructure, regulatory processes, workforce training, and business attraction, retention, and growth.

The Citizens' Advisory Committee recognizes that *partnerships are key as Pierce County moves into the twenty-first century*. The County must create strategic alliances with the cities and towns within its borders; with neighboring counties; with

the Port of Tacoma; with its schools, colleges, and universities; with organized labor; with utilities; the military; and local businesses. Only by working in partnership can the County build on opportunities within Tacoma, at the Port, and throughout the region. Thus, the Committee's recommendations are infused with the notion that the County must seek and nurture strategic partnerships as a key part of its economic development plan.




The Committee recommends that input on these recommendations be sought throughout the county, at city council meetings and from interested citizens and organizations. Responding to their suggestions will make the plan — and the partnerships it proposes — that much stronger.

The Committee also recognizes that for these recommendations to succeed, there must be clear accountability for them on the County's staff. The Committee recommends that the Executive and County Council assign responsibility for the implementation of this plan to a staff person who will report directly to them and who will have the authority to implement this plan.

Goal

Pierce County and its cities and towns must provide adequate highways, roads, sewers, telecommunications, and other infrastructure for current and future growth, particularly in Employment Centers identified in the County's Comprehensive Plan. The processes for planning, prioritizing, funding, and building infrastructure must be predictable and accomplished in partnership with jurisdictions around the county.

 *The County and other jurisdictions should adopt specific policies for undertaking area-wide Environmental Impact Statements (EISs) for planned Employment Centers.*

Area-wide EISs for planned Employment Centers could provide certainty, simplify the permitting process, and reduce the cost for businesses seeking to locate at the Employment Centers. These EISs would allow jurisdictions to target areas for growth and then plan for the types of growth these areas will receive.

EISs should be completed in sufficient detail to allow most project applications undergoing State Environmental Policy Act (SEPA) review within an Employment Center to receive a Determination of Non-Significance (DNS), some to receive a Mitigated Determination of Non-Significance (MDNS), and a very few to require a Supplemental EIS. Once an area-wide EIS for an Employment Center has been completed, the County should work with

the Legislature, cities and towns, and its own permitting agencies to ensure expedited SEPA review for projects within the Employment Center that conform to the EIS.

Action

The Committee recommends that the County prepare a preliminary environmental assessment of the Frederickson Employment Center during the first three quarters of 1998. This environmental assessment should be built on existing plans for the area and should set the scope for an area-wide EIS, to be initiated in 1998. A Frederickson EIS will not only prove valuable in assisting with future development at Frederickson, but will also serve as a model for other Employment Centers in Pierce County and its cities and towns. Work on the Frederickson environmental assessment and EIS should be coordinated through the County Executive's Office.



We will know this recommendation has succeeded if...

An environmental assessment for the Frederickson area is funded and completed in 1998 and next steps to move toward preparation of an area-wide EIS are identified and funded.



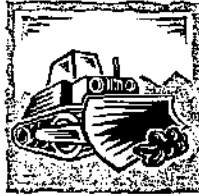
The County should help coordinate the work of existing multi-jurisdictional committees studying key transportation corridors.

To help them review proposed projects, lobby for funding, and set standards for infrastructure provision along each corridor.

With Federal and State funds declining, the County and its cities and towns will be in the best position to receive funding if all affected jurisdictions share the same priorities and lobby for them vigorously. Jurisdictions throughout the county must understand that their best hope for success in addressing transportation and infrastructure problems is to work together toward common priorities. The committees that have been established to study particular transportation corridors could help set priorities and lobby for funding if their work is coordinated. These committees could also assist in reaching agreements about infrastructure standards (e.g., consistent specification of dimensions for roads, sidewalks, etc.)

Action

The Committee recommends that the County Executive and County Council, in cooperation with the Port, military bases, and local cities and towns, identify committees studying major transportation corridors and the jurisdictions affected by the work of those committees. The County should then help coordinate the work of the committees to arrive at a clear sense of the priorities for infrastructure investment.

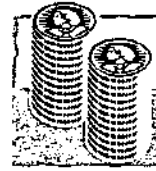


We will know this recommendation has succeeded if...

By the end of 1998, the County and its fellow jurisdictions decide on several common infrastructure priorities and work as a team to achieve them.



The County should select a standard analytic model to evaluate the cost-effectiveness, impact on quality of life, and economic development effects of proposed capital projects. The County should ensure that all departments proposing projects use this model to provide information about the proposed project to decisionmakers.



Money for infrastructure is scarce, so it is vitally important that the County get the maximum return on its infrastructure investments. When considering alternative investments, policymakers should weigh a project's costs against its social benefits including the direct benefits to the facility's users, the broader economic development effects in terms of jobs and income, and the project's effects on the "second paycheck" that residents derive from environmental quality and amenities.

While some quality of life issues and economic development impacts are difficult to quantify, decision-makers need to consider this information when making investment decisions about infrastructure. The Committee recognizes that infrastructure decisions are often influenced by legal mandates or by the needs of a particular constituency. Nonetheless, better information about alternatives can help policymakers discern which investments are in the broadest public interest.

Action

The Committee recommends that the County Executive assemble a team of County staff and outside experts to review generally accepted models for project analysis then select an approach that will become the County's standard. The team

should work with County departments to ensure that all proposed capital projects are evaluated using this standard set of criteria.

We will know this recommendation has succeeded if...

By the end of 1998, all County departments use a standard model to analyze proposed capital projects and can explain their priorities clearly to policymakers and the public.



The County and its partners should form a task force that would identify crucial infrastructure projects that do not meet the criteria for traditional funding sources and then identify non-traditional funding sources for these projects.

The Committee recognizes that some projects must be done, yet either do not meet the traditional criteria for funding or do not reach the top of the County's priority list. For these projects, the County and its partners should consider using non-traditional sources of funding, including but not limited to user fees, latecomer fees, local improvement districts, local option gas taxes, and property tax increases. Deciding to use such sources will always be difficult. Yet the Committee firmly believes that unless the County finds ways to fund an adequate system of public infrastructure,

it will not realize the Comprehensive Plan's vision of a healthy, growing economy.

Action

The Committee recommends that the County Executive and County Council, in cooperation with local cities and towns, the Port, military bases, utilities, Chambers of Commerce, and the Economic Development Board, convene a task force to develop a list of major capital projects that are unlikely to receive funding from traditional sources. The task force would set priorities among the unfunded projects and identify innovative sources of funding for the priority projects.

We will know this recommendation has succeeded if...

By the end of 1999, the County and its partners consider and seek non-traditional funding sources for one or more infrastructure projects.

Goal

Pierce County must provide regulatory and permitting processes that are fair, easy to understand, and simple to follow. Its regulations must balance environmental stewardship with an understanding of the needs of business.



County staff should receive training on general economic principles, the regional and Pierce County economies, and their role in helping Pierce County move toward its economic future.

Educating staff about economics and economic development principles, the county and regional economies, and their role in strengthening the county's economy, will give them a better understanding of where they fit within County government and how their work furthers its economic and environmental goals. This, in turn, will help them implement their responsibilities within the context of the County's overall mission. This training program should include customer service training and involve the private sector.

Action

The Committee recommends that the County Executive's staff, in consultation with local educators and economists, design a short economics and customer service curriculum for County staff. Staff should receive this training by the end of 1998, with newly hired staff receiving the

training within a year of employment.

We will know this recommendation has succeeded if...

By the end of 1998, observers of County government witness changes in the attitude and knowledge level of staff throughout County departments.



Develop a permitting committee composed of policymakers from Pierce County and its cities and regulating agencies to develop consistent guidelines and regulations for permitting and to set consistent development standards.

Committee members noted that permitting can be particularly difficult when one has to move between jurisdictions: regulations, agencies, processes, and development standards all differ between jurisdictions.

The Committee suggested an interjurisdictional committee be charged with examining the regulations, processes, and standards of Pierce County and each of the jurisdictions within the county and then recommending mecha-



nisms to make these regulations and the processes by which they are implemented more consistent. The Committee noted that Frederickson could be used as a pilot to implement this recommendation, and suggested that the Accommodation Plan be used as a model for this process.

Action

The Committee recommends that the County Executive and County Council, in cooperation with the Growth Management Coordinating Committee and local cities, towns, and utilities, create a task force on regulatory processes to develop more consistency between jurisdictions' regulatory processes.

We will know this recommendation has succeeded if...

By the end of 1998, the County and its partners have identified three to five areas in their permitting processes in which greater clarity and/or consistency are desired, and have begun to take steps to make the needed changes to those processes.



Expand the range of permitting tasks performed by private, licensed experts.

The County currently allows private, licensed experts to conduct wetlands review and some other studies.

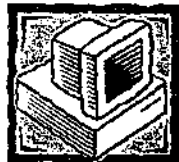
Broadening the scope of work private experts can conduct on the County's behalf (to include, perhaps, architectural, engineering, or traffic review) could make the permitting process easier, quicker, and less expensive. The Committee noted that progress on this recommendation should take into account the County's liability in the permitting arena and that work in this area should set clear guidelines for hiring and compensating private experts.

Action

The Committee recommends that County staff, in cooperation with the Growth Management Coordinating Committee, set standards for work that can be performed by private, licensed experts by the end of 1999.

We will know this recommendation has succeeded if...

By the end of 1999, the County has developed regulations that allow it to hire private, licensed experts for three to five tasks needed in the permitting process.



Goal

A trained and competent workforce is essential for success as Pierce County moves into the next century. Pierce County must work collaboratively with its schools, colleges, and universities and with private employers and other jurisdictions to ensure that its residents are prepared for good jobs through high-quality, targeted training.



The County Executive should convene an Executive Summit on Workforce Training to share "best practices" and help create partnerships among schools and colleges, businesses, organized labor, and the military.

Facilitating partnerships is a top priority for the Citizens' Advisory Committee. Committee members noted that the County has a unique ability to pull together diverse players and get them working together. In addition, with its role as a data gatherer, the County has the ability to identify trends and analyze gaps in the system. The County should use these abilities to help identify "best practices" in employment training around the county and to convene partnerships between educational institutions, employers, organized labor, and the military to share these practices.

An Executive Summit on Workforce Training could bring together teachers, principals, and voc-tech instructors from the K-12 system, faculty from the county's community and technical colleges and universities, employers, and representatives of the

military and organized labor. The Summit would provide an opportunity to share successes and problems; to network; and to develop a shared understanding of the needs of the workforce of the future. Out of that summit, a number of innovative new partnerships could emerge: business partnerships with K-12 schools, apprenticeships and internships, training partnerships between businesses and community and technical colleges, and research collaborations for continuing education.



Action

The Committee recommends that the County Executive convene a Summit on Workforce Training during the first half of 1998 that will include representatives of schools, colleges, universities, the military, organized labor, and businesses.

We will know this recommendation has succeeded if...

By the end of 1998, schools and employers have created partnerships and developed new programs that build on existing best practices in workforce training.

Goal

Pierce County must be seen as a desirable place to do business. It must support and nurture new enterprises; help existing businesses expand, modernize, and market; and attract new businesses to the county. Streamlined permitting and a flexible business climate must be married to a commitment to a high quality of life and a strong ethic of care for the environment. Pierce County must welcome and encourage opportunities that will create good jobs for its residents.



County staff should be able to provide strategic information, both direct and referral, to business.

County staff should be able to provide high-quality information to businesses in two ways:

First, any staff person in County government should be able to quickly refer businesses with questions to the appropriate person or organization. Businesses wishing to locate, expand, or modernize within the county should get quick, accurate information about permitting, land availability and zoning, infrastructure, financing, training, or other needs.

Second, County staff should obtain employment information newly available from the State Division of Employment Security and use it, in conjunction with the County Benchmarks, to provide useable information and forecasts about the county's employment market.

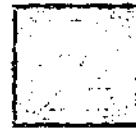
Action

The Committee recommends that County staff, coordinated by the staff person responsible for implementing this plan, develop a means of providing information and referral services to businesses. These services should develop in collaboration with the other organizations, including the Economic Development Board and Chambers of Commerce, that assist businesses as part of their mission. The Committee also recommends that the County produce, at least once a year, updated employment trend information in useable and trackable form.



We will know this recommendation has succeeded if...

By the end of 1998, County government is perceived as a place to get quick, high-quality business information.



When the Department of Health's inventory of brownfields and abandoned industrial sites is completed, the County and its partners should assess the costs and benefits of redeveloping individual sites to determine the opportunities for reuse of these sites.

Action

The Committee recommends that the County use the Department of Health's brownfields inventory to conduct preliminary cost-benefit analysis on the possibility of their reuse, then prepare a list of brownfields sites ranked by potential for redevelopment.

We will know this recommendation has succeeded if...

By the end of 1998, the County creates a list of brownfields sites that are most likely to be redeveloped and can use its analysis to demonstrate the cost-effectiveness of redeveloping these sites to public and private developers.

The Tacoma-Pierce County Department of Health is currently preparing an inventory of polluted sites with the City of Tacoma and the State Department of Ecology as part of its Aquifer Protection Plan. The County could build on this inventory by convening representatives of relevant cities, the Port, labor, the tribes, environmental organizations, business, and community to assess the costs and benefits of redeveloping individual sites. This assessment could include the estimated cost for cleanup, the size of the site, its proximity to Employment Centers and other developable properties, key transportation corridors, or existing infrastructure. Through this type of assessment, the County and its partners can determine which sites are most appropriate for redevelopment and then create strategies for their reuse.



Economic Development Objectives

(Adopted November 1994)

- Strengthen existing business and industry and assist new business to locate in the County adding to the diversity of economic opportunity and employment.
- Pursue an active and aggressive recruitment program to induce a variety of commercial and industrial enterprises to settle in the County.
- Encourage the growth of readily-available large planned Employment Center development sites, properly zoned and serviced with infrastructure.
- Develop programs that create healthy central business districts (CBD) and neighborhood commercial districts throughout the County.
- Through tiering and the Capital Facilities Plan, assure that adequate infrastructure is provided to accommodate economic growth.
- Actively participate in the development of a properly educated and trained workforce.
- Encourage programs that develop and promote our cultural resources.
- Achieve and maintain a high environmental quality of life in order to maintain and develop a robust, thriving economy and keep Pierce County a preferred place to live, work, and play.
- Pierce County should develop regulations which are consistent, enforceable, fair, predictable, and timely.
- Coordinate economic development efforts so that a clear and consistent economic policy is followed.

These objectives, from the Economic Development Element of Pierce County's 1994 Comprehensive Plan, formed the basis of the Citizens' Advisory Committee's work.

Pierce County Department of Community and Human Services
Daisy Stallworth, Executive Director

Pierce County Department of Community Services
Linda Hurley Ishem, Director
Rob Allen
Cherilyn Williams

8815 South Tacoma Way, Suite 202
Tacoma, WA 98499-4588
253-798-7205
www.co.pierce.wa.us

Consultant Team
Daniel Malarkey, *ECONorthwest*
Mary Bourguignon, *The Cedar River Associates*
Tim Thompson, *Gordon Thomas Honeywell*
Paul Sommers, *University of Washington Northwest Policy Center*



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH
DATE: October 21, 1997
SUBJECT: 1998 TAX LEVY ORDINANCE

INTRODUCTION

This is the first reading of an ordinance setting the 1998 property tax levy.

BACKGROUND

The preliminary assessed valuation for 1998 taxes is \$426,722,759. This is a 16% increase over 1997. Our 1997 property tax rate is \$1.6036 per thousand. Our best estimate of taxes available for 1998 is \$700,000 which represents a 16.7% increase. However, the assessed valuation is subject to significant change before it is final and we don't know how our rate will be affected by the Fire and Library District requests and by the 106% limit.

In order to prepare a tax levy ordinance to receive the maximum amount of taxes before we have all the necessary information, the county assessor's office recommends requesting well over the amount we expect to receive. Therefore, this ordinance is based on a 1998 property tax rate of \$1.7388 per thousand raising \$742,000 in taxes. Our 1998 budget will be based on the most accurate information available at the time it is passed, currently \$700,000.

The ordinance also sets excess levy rates for outstanding voted general obligation bonds. Debt service for the 1987 GO Bonds for sewer plant construction is approximately \$100,000 in 1998 or \$0.2347 per thousand.

FINANCIAL

Property taxes are the second largest source of the city's general revenues at approximately 20%.

RECOMMENDATION

Staff recommends adoption of the ordinance at its second reading.

CITY OF GIG HARBOR

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, LEVYING THE GENERAL PROPERTY TAXES FOR THE CITY OF GIG HARBOR FOR THE FISCAL YEAR BEGINNING JANUARY 1, 1998.

WHEREAS, the City Council of the City of Gig Harbor has considered the city's anticipated financial requirements for 1998, and the amounts necessary and available to be raised by ad valorem taxes on real and personal property, and

WHEREAS, it is the duty of the City Council to certify to the board of county commissioners/council estimates of the amounts to be raised by taxation on the assessed valuation of property in the city,

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

Section 1. The ad valorem tax general levies required to raise estimated revenues for the City of Gig Harbor for the ensuing year commencing January 1, 1998, shall be levied upon the value of real and personal property which has been set at an assessed valuation of \$426,722,759. Taxes levied upon this value shall be:

The 1997 property tax for collection in 1998 is \$700,000 (the amount levied in 1996 for collection in 1997), plus an increase of \$42,000, which is an increase of 6%, plus an increase equal to the amount allowed under the new construction provisions of RCW 84.55.010.

Section 2. The ad valorem tax excess levies required to raise estimated revenues for the City of Gig Harbor for the ensuing year commencing January 1, 1998, shall be levied upon the value of real and personal property which has been set at an assessed valuation of \$426,722,759. Taxes levied upon this value shall be:

Approximately \$0.2347 per \$1000 assessed valuation, producing an estimated amount of \$100,000 for 1987 sewer construction general obligation.

Section 3. This ordinance shall be certified by the city clerk to the clerk of the board

of county commissioners/council and taxes hereby levied shall be collected and paid to the Finance Director of the City of Gig Harbor at the time and in a manner provided by the laws of the state of Washington for the collection of taxes.

Section 4. This ordinance shall be published in the official newspaper of the city, and shall take effect and be in full force five(5) days after the date of its 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 __, 1997.

Gretchen A. Wilbert, Mayor

ATTEST:

Molly Towslee
City Clerk

Filed with city clerk: 10/20/97
Passed by the city council:
Date published:
Date effective:



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR
SUBJECT: HENDERSON BAY PROPERTY PURCHASE AGREEMENT
AND CONDEMNATION ORDINANCE
DATE: OCTOBER 22, 1997

INFORMATION/BACKGROUND

The Peninsula School District approved an agreement for the purchase of the Henderson Bay property on October 20, 1997. This agreement, prepared by real estate specialist David Ellenhorn of Ogden Murphy Wallace and reviewed by Legal Counsel Carol Morris, is attached for Council consideration. The price for purchase of the entire property is proposed at \$2,005,000, the mid-point between the District's appraisal value of \$2.245m and the City's appraisal value of \$1.765m.

The City would condemn the vacant property (see attached map), initially taking possession of two-thirds of the property, paying a proportional payment of \$1.35m. The City would take possession of the remaining parcel on or before December 31, 2000, subsequent to the School District's satisfactory demolition of the building. The City will have absolutely no responsibility for demolition of the building or be involved, monetarily or otherwise, with the demolition of the building and disposal of the hazardous materials on the property.

The steps for purchase would be as follows: (1) the District and City would sign an agreement which would describe all of the obligations of the parties with regard to condemnation of the vacant parcel and option to purchase the school building parcel in the future; (2) the City would file the condemnation action through ordinance (attached) and proceed under the normal statutory processes for the condemnation; (3) if the condemnation proceeded to conclusion, then the City would take possession of the vacant parcel; and (4) the District would agree to sell the school building property to the City on or before December 31, 2000, **without** the school building, and the City would accept it if the City's hazardous materials inspection (upon removal of the building) is accepted. The District would be required to obtain permits from the City for demolition of the school building from the City, and these permits (as well as the language in the agreement) would allow the City to inspect at every stage of demolition of the school building and throughout the removal of the underground storage tanks to ensure that there are no hazardous materials remaining on the property at the time of closing.

POLICY CONSIDERATIONS

The proposed purchase of 10.5 acres of school district property for park purposes and

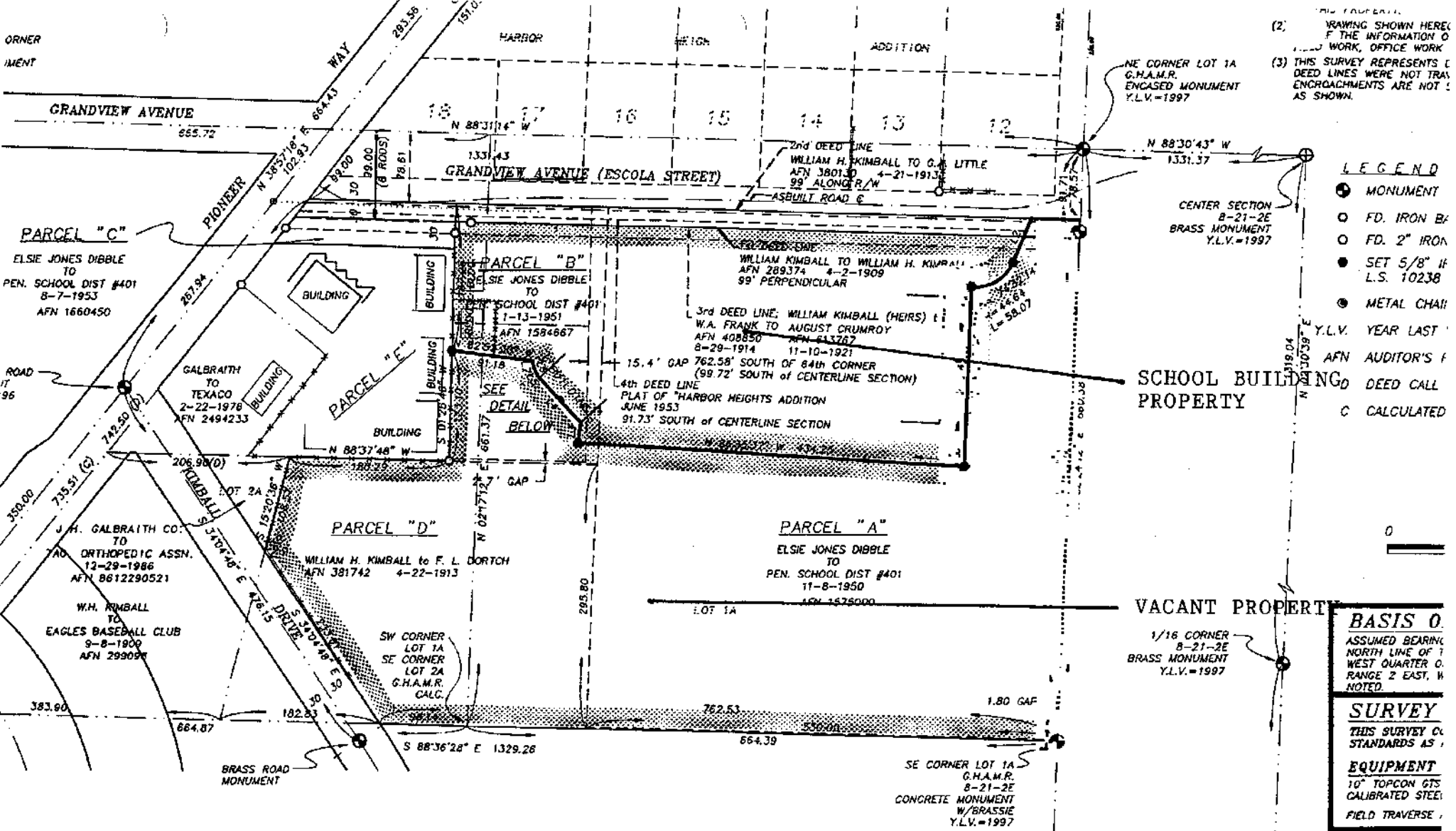
for a future municipal campus promotes the city's objectives as articulated in the Comprehensive Parks Plan and will meet the city's future need for municipal buildings consistent with the eventual build-out of the city's current urban growth area. The site acquisition, along with Grandview Forest Park, places 20 municipal acres available for civic and recreational parks purposes in a centrally located, easily accessible site, which will accommodate future civic needs, as well as current and future recreational needs.

FISCAL CONSIDERATIONS

Initially, the vacant property would be purchased. Bonds, paid yearly for a 10 year period through the city's General Fund, would be utilized for this purpose. If the purchase is approved, then a bond ordinance, through Dain Bosworth with Cynthia Weed of Preston, Gates & Ellis LLP as Bond Counsel, will be presented at the next council meeting. The remainder of the property, the school building property (see attached map), would be purchased with cash from the Property Acquisition Fund, cash which is already available. Neither the purchase of the vacant property or the purchase of the school building property will increase the community tax burden.

RECOMMENDATION

Staff recommends approval of the purchase agreement as presented. Staff also recommends approval of the attached ordinance for initiation of the condemnation action at this reading.



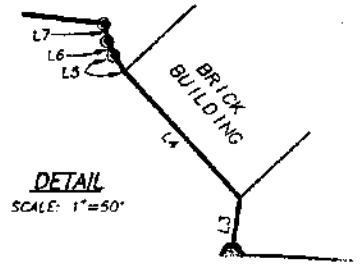
(2) DRAWING SHOWING HERE OF THE INFORMATION OF WORK, OFFICE WORK
 (3) THIS SURVEY REPRESENTS DEED LINES WERE NOT TRACED ENCROACHMENTS ARE NOT AS SHOWN.

- LEGEND**
- ⊙ MONUMENT
 - FD. IRON B/L
 - FD. 2" IRON
 - SET 5/8" IF L.S. 10238
 - METAL CHAIN
 - Y.L.V. YEAR LAST
 - AFN AUDITOR'S F
 - DEED CALL
 - C CALCULATED



LINE TABLE

NO.	BEARING	DISTANCE
L1	N 88°31'14" W	54.73
L2	S 22°51'28" W	52.98
L3	N 08°17'31" E	22.61
L4	N 42°41'14" W	68.54
L5	N 31°29'09" W	7.47
L6	N 23°49'52" W	6.21
L7	N 11°20'42" W	7.05



BASIS 0.
 ASSUMED BEARING NORTH LINE OF 1 WEST QUARTER 0, RANGE 2 EAST, W. NOTED.

SURVEY
 THIS SURVEY ON STANDARDS AS

EQUIPMENT
 10" TOPCON GTS CALIBRATED STEEL FIELD TRAVERSE



**OPTION AGREEMENT AND
AGREEMENT FOR THE PURCHASE AND SALE OF
HENDERSON BAY ALTERNATIVE HIGH SCHOOL**

IN

GIG HARBOR, WASHINGTON

BETWEEN

THE CITY OF GIG HARBOR

AND

PENINSULA SCHOOL DISTRICT

TABLE OF CONTENTS

1.	Condemnation of Vacant Property	1
2.	Termination of Condemnation	3
3.	Condemnation Expenses	4
3.1	Purchaser's Expenses	4
3.2	Waiver of Seller's Reimbursement Right	4
4.	Option to Purchase School Building Property	4
5.	Purchase and Sale of the School Building Property	5
6.	Purchase Price and Payment	5
6.1	Purchase Price	5
6.2	Prorations	5
7.	Closing Date for School Building Property	5
8.	Deliveries at Closing of School Building Property	6
8.1	Seller's Deliveries	6
8.2	Plans and Permits	7
8.3	Possession	7
9.	Closing Costs Related to Properties	7
9.1	Purchaser's Costs	7
9.2	Seller's Costs	7
10.	Prorations, Security Deposits and Additional Improvements Related to School Building Property	7
11.	Reserved	8
12.	Conditions Precedent to Purchaser's Obligation to Close	9
12.1	Conditions to Purchase of Vacant Property	9
12.2	Conditions to Purchase of School Building Property	9
13.	Seller's Covenants	10
13.1	Due Diligence Materials	10
13.2	Operation of Properties	10

13.3	Right of Inspection	10
13.4	Encumbrances	10
13.5	Material Changes	11
13.6	Contract Compliance	11
13.7	Additional Improvements	11
13.8	Compliance with Applicable Law	11
13.9	Removal of Heating Oil Underground Storage Tanks	11
13.10	Notification to Purchaser of Release	12
13.11	Removal of School Building and All Other Improvements	12
13.12	Access	12
13.13	Assessments	13
14.	Seller's Representations and Warranties	13
14.1	Title to Property	13
14.2	Utilities	13
14.3	Governmental Permits	13
14.4	Hazardous Substances	13
	14.4.1 Definitions	14
	14.4.2 Presence of Hazardous Substances	14
	14.4.3 Violations	15
14.5	Asbestos and Other Dangerous Materials	15
14.6	Disposal of Hazardous Substances Used in Operation of Property	15
14.7	Underground Storage Tanks	15
14.8	No Assessments	15
14.9	Boundary Lines of Property	15
14.10	Litigation	15
14.11	No Violation	16
14.12	Authorization	16
14.13	Seller's Books	16
14.14	Liens	16
14.15	Defects	16
14.16	True and Accurate Representations	16
15.	Title Examination and Objections	17
15.1	Title Review	17
15.2	Failure to Cure	18
15.3	Removal of Liens	18
15.4	Permitted Exceptions	19
16.	Escrow Agent	19
17.	Default	19

18.	Condemnation or Destruction	20
18.1	Condemnation	20
18.2	Damage or Destruction	20
18.3	Termination	20
18.4	Postponement of Closing	20
19.	Indemnification	20
19.1	Seller's Indemnity	20
19.2	Purchaser's Indemnity	21
20.	Assignment	21
21.	Representations Regarding Brokers	21
22.	Subsequent Attachment of Exhibits	21
23.	Notices	21
24.	Miscellaneous	22
24.1	Governing Law; Construction	22
24.2	Counterparts	23
24.3	Rights, Powers and Privileges	23
24.4	Waiver	23
24.5	Time	23
24.6	Entire Agreement	23
24.7	Survival	23
24.8	Successors	23
24.9	Time Periods	23
24.11	Modifications	23
24.12	Attorneys' Fees	23

**OPTION AGREEMENT AND
AGREEMENT FOR THE PURCHASE AND SALE OF
HENDERSON BAY ALTERNATIVE HIGH SCHOOL
IN
GIG HARBOR, WASHINGTON**

THIS OPTION AGREEMENT AND AGREEMENT FOR THE PURCHASE AND SALE OF HENDERSON BAY ALTERNATIVE HIGH SCHOOL IN GIG HARBOR, WASHINGTON (this "Agreement"), is entered into this ___ day of October, 1997 (the "Effective Date"), by and between the Peninsula School District, a Washington municipal corporation ("Seller"), the City of Gig Harbor, Washington, a Washington municipal corporation ("Purchaser") and Commonwealth Land Title Insurance Company, Seattle, Washington, ("Escrow Agent");

WHEREAS, Seller is the owner of that certain real property consisting of a school building, located at 3510 Grandview Street, Gig Harbor, Washington, more particularly described on Exhibit A attached hereto and made a part hereof (the "School Building Property"); and

WHEREAS, Seller is also the owner of that certain real property which lies adjacent to the School Building Property and is vacant and/or is improved with above ground parking areas, more particularly described in Exhibit B, attached hereto and made a part hereof (the "Vacant Property"); and

WHEREAS, as an integral part of this entire Agreement, Seller desires to enter into a contract creating an irrevocable option (subject to satisfaction of certain conditions precedent to closing, covenants and agreements herein) in favor of Purchaser to Purchase the School Building Property and the Seller desires to cooperate in the condemnation by Purchaser of the Vacant Property (the Vacant Property and the School Building Property sometimes being referred to as the "Properties") upon the terms and conditions herein below set forth for the purposes of constructing municipal buildings and/or acquiring the land for a public park;

NOW, THEREFORE, for and in consideration of Ten and no/100 Dollars (\$10.00), the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Condemnation of Vacant Property. The Purchaser shall commence condemnation of the Vacant Property for the purpose of acquiring land to construct municipal buildings and/or acquiring the land for a public park, pursuant to RCW 8.12.030. The parties agree that the condemnation will proceed as follows:

1.1 The City Council of Purchaser adopts a condemnation ordinance (RCW 8.12.040), condemning the Vacant Property.

1.2 Upon adoption of the condemnation ordinance described in 1.1, the City Attorney for Purchaser ("City Attorney") will file a petition for condemnation of the Vacant Property in Pierce County Superior Court (the "Court") pursuant to RCW 8.12.050 and .060, naming all parties with an interest in the Vacant Property, as disclosed in a recent and updated title report.

1.3 The City Attorney will serve the summons and petition on all parties with an interest in the Vacant Property, as required by RCW 8.12.070. If the interested parties cannot be personally served, the City Attorney shall make arrangements for service of such parties by publication. Seller agrees to supply Purchaser with the names and addresses of interested parties of which Seller is aware.

1.4 The City Attorney shall schedule a date for the hearing on public use and necessity as required by RCW 8.12.090.

1.5 The Seller agrees to stipulate to the adjudication on public use and necessity in a form satisfactory to Purchaser. If any other interested party refuses to stipulate, a hearing will be held on the issue of public use and necessity. A failure of Seller to so stipulate shall be a breach of this Agreement.

1.6 The Seller agrees that One Million Three Hundred Fifty Thousand and Dollars and No Cents (\$1,350,000.00) reflects the fair market value of the Vacant Property, and agrees to stipulate to the entry of a stipulation and decree of appropriation (the "Stipulation and Decree of Appropriation") based on that value in form satisfactory to Purchaser which eliminates any interest the Seller has in the Vacant Property. A failure of Seller to so stipulate shall be a breach of this Agreement.

1.7 In exchange for the Seller's execution of, and contingent upon the anticipated agreement of any other named or intervening party to execute, the Stipulation and Decree of Appropriation, the Purchaser agrees to deposit a check for One Million Three Hundred Fifty Thousand Dollars and No Cents (\$1,350,000.00) with the registry of the Court, as provided in RCW 8.12.200. In all circumstances, especially including those described in Clause 1.10, this payment shall constitute the full and final payment made by the Purchaser for the Vacant Property.

1.8 The Seller acknowledges that it must obtain an order of the Court to withdraw the money in the Court registry, and that if any other interested party claims an interest in said amount, and the Court recognizes such interest by allowing another interested party any portion of the deposited amount, the Purchaser shall not be required to pay any additional sums to the Seller.

1.9 The Stipulation and Decree of Appropriation shall supplement this Agreement by describing the date of the Purchaser's possession of the Vacant Property, and any other matters not addressed herein.

1.10 Subject to Purchaser's right to terminate the condemnation proceeding as provided in Section 2, if there are any other interested parties to the condemnation, and such interested parties refuse to execute the Stipulation and Decree of Appropriation, the City shall proceed to trial on the issue of just compensation for the Vacant Property. In the event any court decrees that just compensation is more than \$1,350,000, it will be the Seller's obligation to pay such additional monies into the registry of the Court promptly upon such determination of value.

1.11 Upon execution of the Stipulation and Decree of Appropriation, the Seller shall also execute and deposit with the Escrow Agent a statutory warranty deed in form satisfactory to Purchaser granting the Vacant Property to the Purchaser, subject to a nonexclusive easement in favor of Seller for ingress and egress within fifteen (15) feet of one portion of the Vacant Property boundary, as further described on Exhibit E, attached hereto and incorporated herein by this reference. The deed will be delivered to Purchaser at such time (the "Vacant Property Closing Date") as Purchaser supplies Escrow Agent with satisfactory evidence that it has paid the \$1,350,000 described in Section 1.6 above into the registry of the Court.

1.12 On the Vacant Property Closing Date, the Seller shall deliver to Purchaser an ALTA Form B Owner's form of title insurance policy, or if Purchaser so desires and pays any additional premium, an ALTA extended policy (the "Vacant Property Title Policy"), or the irrevocable commitment of the title insurer in writing to Purchaser to deliver same insuring title conveyed by seller pursuant to the Statutory Warranty Deed in a form satisfactory to Purchaser, subject only (a) real property taxes or assessments due after the date of entry of the Stipulation and Decree of Appropriation (subject to proration as described in Section 10.1); (b) reserved oil and/or mineral rights; (c) rights reserved in federal patents and state deeds; and (d) governmental building and land use regulations, codes, ordinances and statutes.

2. **Termination of Condemnation.** If at any time before or after commencement of the condemnation:

a. any named, or intervening party or any potential intervening party contests the condemnation of the Vacant Property by requesting a hearing on public use and necessity;

b. the Court fails to make a finding of public use and necessity, or any appeal is taken with regard to a finding of public use and necessity;

c. any named or intervening party in the condemnation refuses or fails to execute the Stipulation and Decree of Appropriation, or otherwise causes the Purchaser to go to trial on the issue of the compensation to be paid for the Vacant Property; or

d. the Seller breaches any term or condition of this Agreement;

then the Purchaser shall have the right, upon giving written notice to Seller, to dismiss its condemnation action and terminate its obligation to condemn the Vacant Property without penalty.

Such termination shall be without prejudice or effect on the Purchaser's option to purchase the School Building Property as provided herein.

3. Condemnation Expenses.

3.1 Purchaser's Expenses. As further consideration for Purchaser's obligations hereunder, and in recognition of the expenses to be incurred by Purchaser in undertaking the condemnation described in Section 1 above, Seller agrees to reimburse Purchaser for one-half of all costs incurred relating to the condemnation, including but not limited to (a) costs of the City Attorney drafting pleadings for and attending, and overseeing all phases of the condemnation process, including any negotiation of a resolution of any contested portions of the condemnation process with any and all parties, (b) all expenses of the condemnation action, including service of process fees, expert witness fees, and all court costs related to the condemnation, and (c) all attorneys' fees, expert witness fees and costs of interested parties in the condemnation required to be reimbursed to such parties pursuant to RCW 8.25.070 and .075 or otherwise. Seller shall reimburse such costs and expenses to Purchaser on a monthly basis within thirty (30) days of presentation of invoices reasonably evidencing such costs. This section shall supersede the terms of Clause (i) of Section 9.1 of this Agreement with regard to the Vacant Property. Nothing herein shall require the Seller to reimburse Purchaser for costs incurred in negotiating this Agreement, which shall be the responsibility of Purchaser.

3.2 Waiver of Seller's Reimbursement Right. As further consideration for Purchaser's obligations hereunder, Seller waives the right to reimbursement of any attorneys' fees, expert witness fees and costs to which it may otherwise be entitled pursuant to RCW 8.25.070 or .075.

4. Option to Purchase School Building Property. Seller, in consideration for Purchaser's covenants and obligations herein, grants to Purchaser the exclusive option to purchase the School Building Property (the "Option"). The Option shall expire on May 31, 2000 (the "Option Expiration Date"). The Option may be exercised at any time on or before the Option Expiration Date by providing written notice to Seller of Purchaser's exercise of the Option. Upon exercise of the Option, such exercise shall be irrevocable, subject only to Seller's compliance with the conditions precedent, covenants and agreements herein. The purchase of the School Building Property, and the Seller's conduct on such property prior to and after the Option Exercise Date, shall be governed by the purchase terms described in Sections 5 through 24 of the Agreement. At any time after the date of this Agreement and prior to the Option Expiration Date, Purchaser shall have the right to file in the title records of Pierce County, Washington, a Memorandum of Option substantially in the form of Exhibit D, attached hereto and incorporated herein by this reference. Seller agrees to promptly execute such Memorandum of Option at Purchaser's request.

5. Purchase and Sale of the School Building Property. Upon the terms and conditions hereinafter set forth, Seller agrees to sell and Purchaser agrees to purchase the School Building Property together with:

5.1 All rights, licenses, privileges, easements, rights of way, hereditaments and appurtenances to the School Building Property and improvements ("Improvements") to the School Building Property, if any, other than those to be removed pursuant to the terms of Section 13.9 and 13.11 (herein referred to collectively as the "Rights");

5.2 All of Seller's right, title, and interest in and to any other intangible property now or hereafter owned by Seller in connection with the Property, the Improvements, and the Rights, including, without limitation, all of Seller's rights under all permits and licenses, zoning approvals, certificates of occupancy, lien waivers, contracts, utility arrangements, and other documents and agreements relating to the development, construction, ownership, operation, and occupancy thereof (herein referred to collectively as the "Intangible Property"); and

5.3 All of Seller's right, title and interest in and to any street or road abutting the Property, if any;

The above notwithstanding, Purchaser shall not be entitled to any ownership interest in any portable school building currently located on the School Building Property, all of which Seller agrees to remove no later than the beginning of Demolition, as described in Section 13.11.

6. Purchase Price and Payment for School Building Property.

6.1 **Purchase Price.** The total purchase price for the School Building Property (the "Purchase Price") shall be the difference between (i) Two Million Five Thousand Dollars and No Cents (\$2,005,000.00) and (ii) the amount required to be paid (whether into the registry of the Court or otherwise, but not including closing costs and expenses to be paid by Purchaser) for the Vacant Property. Purchaser shall deliver at Closing the Purchase Price in cash in the form of a wire transfer of immediately available funds.

6.2 **Prorations.** At the Closing, the Purchaser shall pay to Seller, in cash, by wire transfer of immediately available funds, or by cashier's or certified check acceptable to Seller, the net amount, if any, payable to Seller in excess of the Purchase Price for any prorations provided for in Section 10 below.

7. **Closing Date for School Building Property.** The closing of the purchase and sale of the School Building Property (the "School Building Closing") shall be held no later than December 20, 2000 (the "School Building Closing Date") in the offices of the Escrow Agent in Seattle, Washington at a time and on a date to be designated by the Purchaser by written notice delivered to Seller not less than ten (10) days prior to the designated date for the School Building Closing. In the event that Purchaser fails to so designate such time, then the School Building Closing shall be held at 10:00 a.m. If the Purchaser fails to designate a date, then the School Building Closing shall be held on December 20, 2000. The above notwithstanding, at any time the Seller shall have completed its pre-closing obligations required by Section 13, including but not limited to the storage tank removal and Demolition, and is otherwise prepared to satisfy all

requirements of the School Building Closing, Seller may accelerate the School Building Closing Date to any date not less than ninety (90) days after providing the Purchaser written notice of Seller's desired earlier School Building Closing Date.

8. Deliveries at Closing of School Building Property.

8.1 Seller's Deliveries. At Closing, Seller shall convey to Purchaser good and marketable fee simple title to the School Building Property by statutory warranty deed (the "Deed"), duly executed and in recordable form and insurable as such by Commonwealth Land Title Company, Seattle, Washington on an ALTA Form B Owner's form of title insurance policy, or if Purchaser so desires and pays any additional premium, an ALTA Extended Policy (the "Title Policy"). Title to the School Building Property shall be conveyed by Seller to Purchaser free of all liens, leases and encumbrances other than the Permitted Exceptions, as defined in Section 15.4 hereof. Seller shall deliver to Purchaser at Closing, the following documents (all of which shall be duly executed and acknowledged where required and, unless otherwise agreed, deposited with the Escrow Agent):

8.1.1 The Deed;

8.1.2 The Title Policy, or the irrevocable commitment of the title insurer in writing to Purchaser to deliver same in a form satisfactory to Purchaser;

8.1.3 A Blanket Bill of Sale, Transfer and Assignment in a form satisfactory to Purchaser, whereby Seller shall assign to Purchaser all of Seller's right, title, and interest in and to the Rights, the Intangible Property, (to the extent assumed by Purchaser) and the warranties that may exist with regard to tangible equipment left on the School Building Property or warranties as to work completed on the School Building Property;

8.1.4 Such recordable documentation as Purchaser may request extinguishing the easement described in Section 1.11;

8.1.5 A standard owner's affidavit, evidence of Seller's authority to sell the Property and proof of the power and authority of the individuals executing and delivering the instruments and certificates described herein to act for and bind the party which they purport to represent, and such other instruments and documents, such as lien waivers, mechanic's lien indemnities, and certificates of good standing, as shall be reasonably necessary for the consummation of the sale and conveyance of the School Building Property to Purchaser or which shall be reasonably required by Purchaser's title insurer as a condition to its insuring Purchaser's good and marketable fee simple title to the School Building Property free of any exceptions (including, without limitation, the "standard printed exceptions") other than the Permitted Exceptions;

8.1.6 A certificate restating and reaffirming Seller's representations and warranties pursuant to Section 14 hereof, with such changes as shall be necessary to make such representations true, complete, and accurate as of the date and time of Closing;

8.1.7 To the extent any Due Diligence Materials (as that term is defined in Section 13.1) supplied to Purchaser were copies, originals of such materials (if in the possession of Seller) shall be delivered to Escrow Agent by Seller; and

8.1.8 Such other documents, if any, as may be reasonably requested by Purchaser to enable Purchaser to consummate and close the transactions contemplated by this Agreement pursuant to the terms and provisions and subject to the limitations hereof.

8.2 Plans and Permits. Seller shall deliver to Purchaser at Closing such plans and specifications, site plans, building and development permits, certificates of occupancy, operating permits, and other documents as shall be in the possession of Seller or to which Seller has reasonable access and which relate to the development, construction, governmental compliance, occupancy, operation, or demolition of Improvements on the School Building Property.

8.3 Possession. Possession of the School Building Property shall be delivered by Seller to Purchaser at the School Building Closing.

9. Closing Costs Related to Properties. The expenses of Closing shall be paid as follows:

9.1 Purchaser's Costs. Purchaser shall pay (i) the fees and expenses of the legal and other advisors and consultants of Purchaser, (ii) one-half of the escrow and recording fees, (iii) all title endorsements requested by Purchaser, and (iv) all sales taxes (if any) respecting any tangible personal property transferred (collectively "Buyer's Closing Expenses").

9.2 Seller's Costs. Seller shall pay (i) the fees and expenses of the legal and other advisors and consultants of Seller except as otherwise agreed to herein, (ii) all costs, expenses, fees and charges for the Title Report (as defined in Section 15.1), and the premiums for a ALTA Owner's Title Policy, (iii) real estate excise tax, if any, relating to the Property, and (iv) one-half of the escrow and recording fees (collectively "Seller's Closing Expenses").

10. Prorations, Security Deposits and Additional Improvements Related to School Building Property. The following items shall be prorated between Purchaser and Seller as of midnight of the day immediately preceding the Closing Date; such prorations favoring Purchaser shall be credited against the Purchase Price payable by Purchaser at Closing, and such prorations favoring Seller shall be payable by Purchaser at Closing in addition to the cash portion of the Purchase Price payable by Purchaser at Closing:

10.1 Any applicable City, state, and county ad valorem taxes for the calendar year of Closing based on the ad valorem tax bill for the Property, if then available, for such year, or if not, then on the basis of the ad valorem tax bill for the Property for the immediately preceding year. Should such proration be based on such ad valorem tax bill for the immediately preceding year, and should such proration prove to be inaccurate on receipt of the ad valorem tax bill for the Property for the year of Closing, either Seller or Purchaser may demand a payment from the other correcting such misapportionment. Taxes for all years prior to the calendar year of Closing shall be paid by Seller at or prior to Closing;

10.2 Utility charges, including water, telephone, cable television, garbage, storm drainage, sewer, electricity and gas, and maintenance charges, if any, for sewers. In conjunction with such prorations, Seller will notify, or cause to be notified, all utilities servicing the Property of the change of ownership and direct that all future billings be made to Purchaser at the address of the Property with no interruption of service. Seller shall use its best efforts to procure final meter readings for all utilities as of the Closing Date and to have such bills rendered directly to Seller. Any utility deposits previously paid by Seller shall remain the property of Seller, and to the extent necessary for Seller to receive such payments, Purchaser shall pay over such amounts to Seller at Closing and take assignment of such deposits;

10.3 All other proratable items as are customarily apportioned upon the transfer of similar property (i.e., all income and expenses related to the normal operation, maintenance and repair of the Property) including, without limitation, any periodic fees relating to licenses and permits being assumed by Purchaser, but no fees or expenses related to the demolition of Improvements on the School Building Property shall be prorated between Purchaser and Seller as of Closing.

10.4 Said prorations shall be based on the actual number of days in each month and twelve (12) months in each calendar year. Any post closing adjustment due either party shall be promptly made.

The parties shall reasonably agree on a final prorations schedule prior to the Closing and shall deliver the same to Escrow Agent. All such prorations shall be fair and equitable so that income and expense items with respect to the period prior to and including the Closing Date will be for Seller's account and income and expense items with respect to the period following the Closing Date will be for Buyer's account. If, following the Closing, either party discovers an error in the prorations statement, it shall notify the other party and the parties shall promptly make any adjustment required. Based in part on the prorations statement, Escrow Agent shall deliver to each party at the Closing a closing statement containing a summary of all funds, expenses and prorations passing through escrow.

11. Reserved.

12. Conditions Precedent to Purchaser's Obligation to Close.

12.1 Conditions to Purchase of Vacant Property. Purchaser's obligation to acquire the Vacant Property, shall be conditioned upon the satisfaction, or waiver by Purchaser, of the following conditions:

12.1.1 Approval of this Agreement and of the condemnation of the Vacant Property by the Gig Harbor City Council;

12.1.2 Completion by Seller of all deliveries required of Seller prior to the Vacant Property Closing;

12.1.3 Completion by Purchaser of the condemnation process described in Section 1;

12.1.4 That there has been no breach by Seller of any of the covenants in Section 13, or elsewhere in the Agreement;

12.1.5 That there has been no breach by Seller of the warranties in Section 14; and

12.1.6 Each of the warranties in Section 14 applicable to the Vacant Property is true and correct as of the Vacant Property Closing Date, as if made on the Vacant Property Closing Date.

12.2 Conditions to Purchase of School Building Property. Purchaser's obligation to purchase the School Building Property, shall be conditioned upon the satisfaction by Seller, or waiver by Purchaser of the following conditions:

12.2.1 Approval of this Agreement by the Gig Harbor City Council;

12.2.2 Completion by Seller of all deliveries required of Seller prior to the School Building Property Closing;

12.2.3 Completion by Purchaser of the condemnation of the Vacant Property as provided in Section 1;

12.2.4 That there has been no breach by Seller of any of the covenants in Section 13 or elsewhere in the Agreement;

12.2.5 That there has been no breach by Seller of the warranties in Section 14; and

12.2.6 Each of the warranties in Section 14 is true and correct as of the School Building Closing Date, as if made on the School Building Closing Date.

13. Seller's Covenants.

13.1 Due Diligence Materials. Seller agrees to provide Purchaser with all documents, reports, information and studies related to the Properties that Purchaser may request within five (5) days of such request, and shall provide all of the due diligence materials described in Exhibit C, attached hereto and incorporated herein by this reference, (collectively, the "Due Diligence Materials"), within five (5) days of the execution of this Agreement.

13.2 Operation of Properties. As to each of the Properties, until Closing, Seller shall:

13.2.1 (i) Operate and maintain the Property in a businesslike manner, substantially in accordance with all federal, state and local laws, ordinances and requirements, and (ii) make any and all normal, ordinary repairs and replacements reasonably required, substantially in accordance with Seller's past practices, (iii) with regard to the Vacant Property only, deliver the Property to Purchaser at Closing in its present condition, normal wear and tear excepted. In the event of any loss or damage to the Properties prior to Closing, Section 18.2 shall control.

13.2.2 Enter into only those third party contracts which are necessary to operate the School Building Property and the Vacant Property in its ordinary course prior to each respective Closing. In all cases, any such contracts shall be terminated at or prior to Closing.

13.2.3 Duly and punctually pay all taxes, assessments, utility charges and rents affecting the Properties.

13.3 Right of Inspection. At all times prior to Closing Seller shall (i) permit Purchaser and such persons as Purchaser may designate to undertake such investigations and inspections of the Properties (including, without limitation, physical invasive testing) as Purchaser may in good faith require to inform itself of the condition or operation of the Properties and (ii) provide Purchaser with complete access to Seller's files, books and records relating to the ownership and operation of the Properties, including, without limitation, contracts, permits and licenses, zoning information, and other Due Diligence Materials, during regular business hours upon reasonable advance notice. Seller agrees to cooperate in connection with the foregoing and agrees that Purchaser, its agents, employees, representatives or contractors shall be provided promptly upon request such information as shall be reasonably necessary to examine the Properties and the condition thereof.

13.4 Encumbrances. At no time prior to Closing shall Seller encumber the Properties or any portion thereof with any encumbrances, liens or other claims or rights (except such as may exist as of the date hereof) unless (i) such encumbrances are necessary or unavoidable, in the

reasonable business judgment of Seller, for the conduct of Seller's operation of a school on the School Building Property (which in no case shall include mortgages, deeds of trust or other voluntary security interests), (ii) Seller discloses the same to Purchaser in writing and (iii) Seller covenants to remove (and does remove) the same prior to or at Closing. Seller agrees to provide Purchaser evidence of lien releases in connection with the Demolition (as defined in Section 13.11), or with regard to any other liens on the Properties prior to the Closing Date.

13.5 Material Changes. Seller shall (i) promptly notify Purchaser of the occurrence of any fact, circumstance, condition or event that would cause any of the representations made by Seller in this Agreement no longer to be true or accurate and (ii) deliver to Purchaser any notices of violation of law received by Seller prior to Closing.

13.6 Contract Compliance. Seller shall take all actions required of it in order to effectuate properly the purpose and intent of this Agreement, and, without limitation, Seller shall take all actions and make all deliveries required of it at the Closing.

13.7 Additional Improvements. Seller shall not enter into any agreements regarding additional improvements to be made to the Property following the Effective Date and prior to Closing, without the prior approval from Purchaser.

13.8 Compliance with Applicable Law. Seller agrees to initiate, direct, conduct and implement Hazardous Substance (as defined in Section 14.4.1) activities, including any necessary encapsulation or removal of asbestos containing materials, on the Properties until the date of Closing in compliance with all applicable federal, state and local laws or regulations. Seller shall not permit or cause, as a result of any intentional or unintentional act or omission on the Seller's part, or on the part of any agent of the Seller, or any third party, any Release or further Release of Hazardous Substances on the Property.

13.9 Removal of Heating Oil Underground Storage Tanks. The Initial Studies (as defined in Section 14.4.1) have identified two underground heating oil storage tanks on the Property. The Seller agrees to excavate and remove these two underground heating oil storage tanks (and any other underground storage tanks that may exist on the Properties) at its cost prior to Closing, and if necessary, to complete all remediation (other than long-term monitoring required by applicable law) of any contaminated ground water and/or soil. The excavation and removal activities shall be completed no later than November 1, 2000. Seller shall perform the excavation and removal activities in accordance with applicable federal, state and local laws and regulations, including, but not limited to, the Model Toxics Control Act (Chapter 70.105D RCW) and the regulations promulgated there under (Chapter 173-340 WAC). Seller shall, prior to Closing, provide to Purchaser copies of all contracts, reports and other documents relating to the excavation and removal activities, and the Seller shall provide to Purchaser, immediately upon completion of such removal and remediation and prior to Closing, complete documentation verifying that such removal and remediation has been performed in compliance with any applicable federal, state or local law, statute, regulation or ordinance.

13.10 Notification to Purchaser of Release. If the Seller's removal of the underground storage tanks disclose a release or any contamination of the soil and/or ground water by any Hazardous Substance (as that term is defined in Section 14.4.1 below), or if the Seller's activities during removal of the underground storage tanks cause any release or contamination on the Property by Hazardous Substances, the Seller shall, within twenty four (24) hours of the Seller's awareness of such release, verbally notify the Purchaser, by telephoning the Mayor or the City Administrator at (206) 851-8136. If the release occurs during the weekend or a holiday, and compliance with this subsection is not possible, the Seller shall notify the Mayor and/or City Administrator by 9:00 a.m. on the next work day, and follow-up such verbal notification in writing within three (3) days. In the event of any Release of Hazardous Substances in violation of any federal, state or local law or regulation relating to Hazardous Substances, including the activities described in this subsection, the Seller shall be responsible, at its own cost, to correct any and all such violations or perform all required work to bring the Property into compliance prior to Closing. The Seller shall provide the Purchaser with copies of agreements, reports, notices, writs, injunctions, decrees, orders or judgments relating to the Properties and shall notify the Purchaser of any administrative or judicial proceedings or investigations or pending or threatened litigation relating to the Property.

13.11 Removal of School Building and All Other Improvements. Commencing no later than July 1, 2000, Seller shall at its own expense, demolish and remove all improvements on or underneath the School Building Property, including any building foundations, leaving the School Building Property level, filled, graded and stable, without material hazards, and with proper buffering to prevent improper water or soil runoff (the "Demolition"). Seller shall have leave all utilities serving the property properly capped and clearly marked at the School Building Property line. Demolition and disposal of all debris, materials and Hazardous Substances shall be carried out in compliance with all federal, state, and local laws and regulations regarding demolition, grading and soil retention, including, but not limited to, the Health and Safety Rules for Asbestos Projects (Chapter 49.26 RCW) and the regulations promulgated thereunder (Chapter 295-65 WAC), and the Seller shall properly dispose of debris from the property in licensed disposal facilities, in compliance with all federal, state and local laws or regulations applicable to any Hazardous Substances. The Demolition shall be complete no later than December 1, 2000.

13.12 Access. The Purchaser and its authorized representative(s) shall have the right to inspect the School Building Property during all stages of Demolition and during the removal of all underground storage tanks. The Purchaser shall have reasonable access to all documents in the Seller's possession relating to the Property, including documents relating to the presence, use, storage, treatment, generation, transportation, removal or disposal of Hazardous Substances, on the Properties. The Seller hereby agrees to cooperate with the Purchaser in the conduct of the Purchaser's due diligence, and to confirm, if possible, when requested by the Purchaser, the accuracy of information relied upon by the Seller. The Purchaser, its agents, consultants and representatives agree to keep confidential any and all information received from the Seller, its agents, consultants and representatives, unless otherwise required to disclose such information by law.

13.13 Assessments. If, at the time of Closing, the Properties, or any part thereof shall be or shall have been affected by an assessment or assessments (other than ad valorem property taxes for the current calendar year) that are or may become payable and which are then a charge or lien (or, if payable in installments, the first installment of which is then a charge or lien, or has been paid), then for purposes of this Agreement such assessment or assessments, including assessments (or installments thereof) which are to become due and payable after Closing, shall be deemed due and payable and to be liens against the Property and shall be paid and discharged by Seller at Closing.

14. Seller's Representations and Warranties.

Seller hereby represents and warrants to Purchaser as follows:

14.1 Title to Property. Seller owns fee simple title to the Property, free and clear of all restrictions, liens, easements, mortgages, covenants, exceptions and restrictions of any kind, Uniform Commercial Code financing statements, security interests, and other encumbrances, except for the Permitted Exceptions (as described in Section 15.4), and those strips of land which may be within the boundaries of the Properties but not owned by Seller, which Seller shall resolve to Purchaser's satisfaction on or before Closing.

14.2 Utilities. All water, sanitary sewer, telephone, electric, storm drainage, gas, and other utilities required for the use and operation of the Property enter the Property through adjoining public streets or through easements which benefit and run with title to the Property. Storm water from the Property is discharged from the Property so as not to create any nuisance to, or violate the rights of, other landowners.

14.3 Governmental Permits. To the best of Seller's knowledge, Seller has obtained all governmental permits, licenses, and certificates known by Seller to be required for the development, construction, occupancy and use of the Property as a school facility as presently used and configured and all of such permits, licenses and certificates are in good standing. Seller has no actual knowledge of any violations of law, state, municipal or county ordinances, or other legal requirements with respect to the Property (or any part thereof) or with respect to the use, occupancy, or construction thereof. To the best of Seller's knowledge, the Improvements and the current use and operation thereof comply with all zoning, comprehensive planning and other laws. To the best of Seller's knowledge, there is no present plan, study or effort by any governmental authority or agency or any private party or entity (other than Purchaser) which in any way affects or would affect the continued authorization of the current use and operation of the Property.

14.4 Hazardous Substances on the Property.

14.4.1 Definitions. (a) "Hazardous Substances" means any hazardous, toxic or dangerous substance, waste or materials that are regulated under any federal, state or local law pertaining to environmental protection, contamination, remediation or liability. The term includes,

without limitation, (a) any substances designated a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), the Model Toxics Control Act (Chapter 70.105D RCW), the Hazardous Waste Management Act (Chapter 70.105 RCW), and regulations promulgated thereunder, as these statutes and regulations shall be amended from time to time, and (b) any substances that, after being released into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through the food chain, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and/or genetic abnormalities in humans, plants or animals. For the purposes of this definition, the term "Hazardous Substances" includes, but is not limited to, petroleum-related chemicals, asbestos-containing material and lead paint.

(b) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, air, soils, surface water and ground water.

(c) "Initial Studies" means the following studies commissioned by Purchaser and reviewed and not disputed by Seller, regarding Hazardous Substances on the Property: "A Survey and Assessment of Asbestos and Hazardous Materials and Risk Assessment," performed by Carl A. Mangold, dated February, 1997, and "Level 1 Environmental Site Assessment and Lead Based Paint Sampling" by Nowicki & Associates, dated December of 1996.

14.4.2 Presence of Hazardous Substances. Other than those Releases of Hazardous Substances identified in the Initial Studies, there has been no release or disposal of any substance or material at the Property, generation, storage or disposal of which is regulated under the Comprehensive Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*, or any comparable law, regulation, ordinance or order of any governmental body (including, but not limited to, any law, regulation, ordinance or order relating to the above ground or underground discharge of hydrocarbons), and no previous owner has stored, generated or disposed of any such material at the Property. Seller has obtained (and is in compliance, or will be in compliance by Closing, with) all permits, licenses and other authorizations which are required under all federal, state and local environmental requirements customarily known to and followed by operators of school buildings and parking lots similar to the Property, and located in the area in which the Property is located, including any such laws, regulations or ordinances relating to emissions, discharges, Releases or threatened Releases of materials into the environment (including ambient air, surface water, ground water or land) or otherwise relating to the use, treatment, storage, disposal, transport or handling of such materials. There is not constructed, placed, deposited, stored, disposed of or located on the Property (i) any PCBs or transformers, capacitors, ballasts or other equipment which contains dielectric fluid containing PCBs; or (ii) any insulating material containing urea formaldehyde; and the Property is not subject to hazardous condition due to the presence of an electromagnetic field within or affecting the Property.

14.4.3 Violations. Seller has not received any notice of, and is not aware of, any actual or alleged violation with respect to the Property of any federal, state or local statute,

ordinance, rule, regulation or other law pertaining to Hazardous Substances and no action or proceeding is pending before or appealable from any court, quasi-judicial or administrative agency relating to Hazardous Substances emanating from, caused by or affecting the Property.

14.5 Asbestos and Other Dangerous Materials. The Initial Studies have disclosed that the School Building Property contains asbestos which may, if not properly handled, pose a threat to the health of the building users and occupants. Seller has supplied Purchaser with all reports, studies, or analyses commissioned, in the possession of, or available to, Seller with regard to such materials.

14.6 Disposal of Hazardous Substances Used in Operation of Property. To the extent that trash is or has been temporarily stored on the Property in garbage cans, dumpsters, and other refuse containers, and to the extent cleaning and maintenance supplies commonly used in connection with the operation of a school building facility or parking lot on the Properties are or have been stored on the Properties, said materials have been properly handled so as not to constitute a hazardous condition and have been handled, stored, used and disposed of in accordance with all applicable federal, state, and local laws, regulations and ordinances.

14.7 Underground Storage Tanks. Other than the two underground storage tanks disclosed in the Initial Studies, to the best of Seller's knowledge the Properties do not contain any underground tanks for the storage of fuel oil, gasoline, and/or other petroleum products or by-products.

14.8 No Assessments. No assessments have been made against the Property that are unpaid, whether or not they have become liens.

14.9 Boundary Lines of Property. To the best of Seller's knowledge, the improvements located upon the Property are located entirely within the boundary lines of the Property, and to the best of Seller's knowledge there are no disputes concerning the location of the lines and corners of the Property.

14.10 Litigation. Seller has no actual knowledge of any, and there is no actual or pending litigation or proceeding by any organization, person, individual, or governmental agency against Seller with respect to the Properties or against the Properties. There are no outstanding claims on Seller's insurance policies which relate to the Property. Seller has not received any notice of any claim of noncompliance with any laws, from any government body or any agency, or subdivision thereof bearing on the construction of the Improvements, the landscaping or the operation, ownership or use of the Property.

14.11 No Violation. The execution, delivery and performance of Seller's obligations under this Agreement and the consummation of the transactions contemplated hereby (i) will not result in a breach or violation of, or result in the acceleration of any indebtedness under (or adverse change in) any contract, agreement or instrument to which Seller is a party or which affects the

Property or any part thereof and (ii) do not require any consent, approval or other authorization of any persons, entity or authority not previously obtained. To the best of Seller's knowledge, there do not exist any violations of any declaration of covenants, conditions and restrictions with respect to the Property, nor is there any existing state of facts or circumstances or condition or event which could, with the giving of notice or passage of time, or both, constitute such a violation.

14.12 Authorization. Seller has the full right and authority to enter into this Agreement and consummate the sale, transfers and assignments contemplated herein; and each of the persons signing this Agreement and any other document or instrument contemplated hereby on behalf of Seller is authorized to do so. All the documents executed by Seller which are to be delivered to Purchaser at Closing are and at the time of Closing will be duly authorized, executed, and delivered by Seller, are and at the time of Closing will be legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms, subject, however, to federal and state laws affecting creditors' rights, principles of equity and public policy.

14.13 Seller's Books. All Due Diligence Materials and any other materials delivered to Purchaser by Seller are true, correct and complete copies of the documents in Seller's files. The materials are, to the best of Seller's knowledge, (i) all of Seller's books, records and files relating to the operation and maintenance of the Properties and the Hazardous Substances on the Properties; and (ii) were prepared and maintained in the ordinary course of Seller's operation and maintenance of the Property and are not misleading.

14.14 Liens. All expenses in connection with the construction of the Property and any reconstruction, repair and restoration of the Property have been fully paid, such that there is no possibility of any mechanics' or materialmen's liens being asserted or filed in the future against the Property in respect of any activities undertaken prior to the Closing. As of Closing, there will be no liens against the Properties, as a result of the Demolition, removal of underground storage tanks, or otherwise.

14.15 Defects. Seller has not failed to disclose in full any physical defect or condition of disrepair whether concealed or visible, with respect to the Properties of which it has knowledge.

14.16 True and Accurate Representations. No representation or warranty of Seller contained in this Agreement contains or at Closing (as if restated as of the Closing Date) will contain an untrue statement of material fact, or omits or at Closing will omit to state a material fact necessary to make the statements and facts contained therein not misleading. If any event or circumstance occurs which renders any of Seller's representations or warranties herein untrue or inaccurate in any material respect, then Seller shall notify Purchaser of the event or circumstance when Seller becomes aware of it.

Seller will refrain from taking any action which would cause any of the foregoing representations and warranties to become incorrect or untrue at any time prior to the date of Closing.

At the Closing, Seller shall reaffirm and restate such representations and warranties, subject to disclosure of any changes in facts or circumstances which may have occurred since the date hereof. Such restated representations and warranties shall survive the Closing. If any change in any foregoing representation is a material change, and Seller does not elect to cure all such material changes prior to Closing, then notwithstanding anything herein to the contrary, Purchaser, at its sole option, may either (i) close and consummate the acquisition of the Property pursuant to this Agreement, reserving any and all legal and equitable rights Purchaser may have as a result of such material change, (ii) take any necessary action to specifically enforce Seller's obligations hereunder, including but not limited to the removal of underground storage tanks and the Demolition, or (iii) terminate this Agreement by written notice to Seller, deliver the Earnest Money in accordance with Section 17.3 hereof, and thereafter neither of the parties hereto shall have any rights or obligations hereunder whatsoever, except such rights or obligations that, by the express terms hereof, survive any termination of the Agreement.

15. Title Examination and Objections.

15.1 Title Review. Seller shall cause Commonwealth Land Title Company (the "Title Company") to furnish to Purchaser, at Seller's expense, a title insurance commitment, on an ALTA approved form for the Property (the "Title Report"). Purchaser shall have fifteen (15) days after receipt of such Title Report to conduct an examination of Seller's title to the Property and to give written notice to Seller of any title matters, which affect title to the Properties and which are unacceptable to Purchaser (the "Title Objections"). If Purchaser fails to object to any matter which is of record as of the date hereof prior to the expiration of such fifteen (15) day period, then, except with respect to any security instrument or lien affecting the Properties, Purchaser shall be deemed to have waived its right to object to any such matter and all of such matters shall be deemed a permitted title exception for purposes of this Agreement (collectively, with those matters described in Section 15.4, the "Permitted Exceptions"). After Purchaser's initial examination of Seller's title to the Properties, Purchaser may re-examine title and may have surveys prepared or updated at any time and from time to time up to and through the Closing Date and may give Seller notice of any additional Title Objections disclosed thereby which were not of record or described in the Title Report on the record date of Purchaser's original examination. Upon receipt from the Purchaser of a written notice of any Title Objection, together with a copy thereof, the Seller shall, within fifteen (15) days of receiving such notice, provide written notice to Purchaser that Seller (a) will satisfy or correct, at Seller's expense, such Title Objection, or (b) refuses to satisfy or correct, in full or in part, such Title Objection, stating with particularity which part of any Title Objection will not be satisfied. The above notwithstanding, Seller may not refuse to satisfy security interests, liens or other monetary encumbrances affecting the Properties. As to those Title Objections which Seller agrees to satisfy or cure, or is required to satisfy or cure, Seller shall, on or before the Closing Date, (i) satisfy, at Seller's expense, security interests, liens or other monetary encumbrances affecting the Property (and all of Seller's obligations under or relating to each of the foregoing), and (ii) satisfy or correct, at Seller's expense, all other Title Objections affecting the Properties.

15.2 Failure to Cure. In the event Seller fails to satisfy or cure any Title Objection of which it is notified, whether or not Seller has provided timely written notice that it refuses to satisfy or correct such objections, then on or before the Closing Date, the Purchaser shall by written notice to the Seller elect one of the following:

15.2.1 To accept Seller's interest in the Property subject to such Title Objections, in which event such Title Objections shall become part of the Permitted Exceptions, and to close the transaction contemplated hereby in accordance with the terms of this Agreement; provided that in the event any such Title Objections results from a breach by Seller of the covenants contained in Section 13 hereof, a monetary charge or lien, or from a Title Objection other than a monetary charge or lien for which Seller has not given timely notice of its refusal to satisfy or correct, (i) such acceptance by Purchaser of Seller's interest in the Property shall be without prejudice to Purchaser thereafter seeking monetary damages from Seller for any such matter which Seller shall have failed to so correct, and (ii) if such Title Objection is a monetary charge or lien which can be satisfied or cured by the payment of a liquidated sum of money, Purchaser may cause such Title Objection to be so cured or satisfied by paying the same out of the condemnation proceeds or purchase price from the sale of the Vacant Property or from the Purchase Price to be paid with regard to the School Building Property; or

15.2.2 To terminate this Agreement in accordance with Section 17 hereof; provided, however, that if the Purchaser elects to terminate this Agreement because of the existence of any Title Objection which results from a breach by Seller of its covenants under Section 13 hereof, or any other Title Objection which Seller is required to satisfy or correct, Purchaser's cancellation shall be without prejudice to the Purchaser's rights under Section 19 below.

15.3 Removal of Liens. Notwithstanding anything to the contrary herein contained, Seller covenants and agrees that at or prior to Closing, Seller shall (i) pay in full and cause to be canceled all loan security documents which encumber the Properties as of the date hereof, and as of the Closing Date, and (ii) pay in full and cause to be canceled and discharged or otherwise bond and discharge as liens against the Properties all mechanics' and contractors' liens which encumber the Properties as of the date hereof or which may be filed against the Properties after the date hereof and on or prior to the Closing Date. In the event Seller fails to cause such liens and encumbrances to be paid and canceled at or prior to Closing, Purchaser shall be entitled to pay such amount to the holder thereof as may be required to pay and cancel same, and to credit against the Purchase Price the amount so paid.

15.4 Permitted Exceptions. Section 15.1 notwithstanding, Purchaser may not object to the following title matters, all of which shall be considered "Permitted Exceptions": (a) real property taxes or assessments due after Closing; (b) easements consistent with Purchaser's intended use of the Property; (c) reserved oil and/or mineral rights; (d) rights reserved in federal patents or state deeds; and (e) governmental building and land use regulations, codes, ordinances and statutes.

16. **Escrow Agent.** In performing any of its duties hereunder, the Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for willful default or breach of trust, and it shall accordingly not incur any such liability with respect (i) to any action taken or omitted in good faith upon advice of its counsel or (ii) to any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement. The Escrow Agent is hereby specifically authorized to refuse to act except upon the written consent of Seller and Purchaser. Seller and Purchaser hereby agree to indemnify and hold harmless the Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation and counsel fees and disbursements, which may be imposed upon the Escrow Agent or incurred by the Escrow Agent in connection with its acceptance or the performance of its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof. In the event of a dispute between Seller and Purchaser sufficient in the discretion of the Escrow Agent to justify its doing so, the Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction all money or property in its hands under this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement. Any such legal action may be brought in such court as the Escrow Agent shall determine to have jurisdiction thereof. Seller and Purchaser shall bear all costs and expenses of any such legal proceedings.

17. **Default.** If a party (the "Defaulting Party") fails or refuses to perform its obligations under this Agreement or if the sale and purchase of the Property contemplated by this Agreement is not consummated on account of the Defaulting Party's default hereunder, then Escrow Agent shall (after receiving notice from the non-Defaulting Party and then giving the Defaulting Party ten (10) prior days written notice) refund any monies deposited by the non-Defaulting Party, and return any documents deposited with Escrow Agent by the non-Defaulting Party, on demand, without prejudice to any other legal rights or remedies of the non-Defaulting Party hereunder. In the event Seller is the Defaulting Party hereunder, Purchaser shall have, in addition to any right or remedy provided hereunder, the right to seek specific performance of this Agreement, or other equitable remedies against Seller in the event that Seller wrongfully fails or refuses to perform any covenant or agreement of Seller hereunder.

18. **Condemnation or Destruction.**

18.1 **Condemnation.** Seller hereby represents and warrants that Seller has no knowledge of any action or proceeding pending or instituted for condemnation or other taking of all or any part of the Properties by friendly acquisition or statutory proceeding by any governmental entity other than the City of Gig Harbor, Washington. Seller agrees to give Purchaser immediate written notice of such actions or proceedings that may result in the taking of all or a part of the Properties. If prior to Closing all or any part of the Properties is subject to a bona fide threat or is

taken by eminent domain or condemnation, or sale in lieu thereof, then Purchaser, by notice to Seller given within twenty (20) calendar days of Purchaser's receiving actual notice of such threat, condemnation, or taking by any governmental entity other than the City of Gig Harbor, Washington, may elect to terminate this Agreement. In the event Purchaser continues or is obligated to continue this Agreement, Seller shall at Closing, assign to Purchaser its entire right, title and interest in and to any condemnation award. During the term of this Agreement, Seller shall not stipulate or otherwise agree to any condemnation award without the prior written consent of Purchaser.

18.2 Damage or Destruction. Prior to Closing, the risk of loss of or damages to the Properties by reason of any insured or uninsured casualty shall be borne by Seller.

18.3 Termination. If this Agreement is terminated, neither party hereto shall have any further rights or obligations under this Agreement whatsoever, except for such rights and obligations that, by the express terms hereof, survive any termination of the Agreement.

18.4 Postponement of Closing. The date of Closing shall be postponed, if necessary, to permit the full running of the twenty (20) day period described in Section 18.1 above.

19. Indemnification.

19.1 Seller's Indemnity. Seller shall indemnify and defend Purchaser (including its elected officials, managers, employees and agents) and hold it harmless from and against any material claim, loss, liability and expense, including attorneys' fees and court costs (collectively, "Claims") incurred by Purchaser on account of (a) Claims by persons or entities other than Purchaser arising out of or in connection with the ownership, operation or maintenance of the Properties by Seller, or any fact, circumstance or event which occurred prior to the Closing Date, including the release, threatened release or existence of Hazardous Substances on the Properties, i.e., regardless of whether they were disclosed in the Initial Studies; and (b) Claims resulting from or arising directly or indirectly, in whole or in part, out of the breach of any representation, warranty, covenant or agreement of Seller contained in this Agreement. Notwithstanding any language to the contrary in this Agreement, Seller agrees to indemnify, defend and hold Purchaser harmless from and against any and all claims, liabilities, losses, penalties, remediation costs and expenses (including attorneys' and consultants' fees and costs) that Purchaser may incur or have asserted against it as a result of Seller's breach of the warranties in this Agreement. At Purchaser's option, Seller shall promptly undertake any remediation required as a result of such breach at Seller's expense.

19.2 Purchaser's Indemnity. Purchaser shall indemnify and defend Seller (including its officials, officers, employees and agents) and hold it harmless from and against any material claim, loss, liability and expense, including reasonable attorneys' fees and court costs (collectively, "Claims") incurred by Seller on account of (a) Claims by persons or entities other than Seller arising out of or in connection with the ownership, operation or maintenance of the Properties by Purchaser, or any fact, circumstance or event (other than one caused directly or indirectly by Seller's breach of this Agreement) which occurs after the Closing Date; and (b) Claims resulting

from or arising directly or indirectly, in whole or in part, out of the breach of any representation, warranty, covenant or agreement of Purchaser contained in this Agreement.

20. Assignment. Neither party shall be entitled to assign its right, title, and interest herein to any third party without the written consent of the other party to this Agreement. Any approved assignee shall expressly assume all of the assigning party's duties, obligations, and liabilities hereunder but shall not release the assigning party from its liability under this Agreement.

21. Representations Regarding Brokers. Seller and Purchaser each represent and warrant to the other that neither has employed, retained or consulted any broker, agent, or finder in carrying on the negotiations in connection with this Agreement or the purchase and sale referred to herein. Seller and Purchaser shall each indemnify and hold the other harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments and damages (including costs and reasonable attorneys' fees incurred in connection with the enforcement of this indemnity) which may be asserted or recovered against the indemnified party on account of any brokerage fee, commission or other compensation arising by reason of the indemnitor's breach of this representation and warranty.

22. Subsequent Attachment of Exhibits. Any exhibit to this Agreement which is not attached hereto upon execution of this Agreement, shall be agreed to in form and content by legal counsel to Seller and legal counsel to Purchaser no more than fifteen (15) days after the Effective Date. The parties shall jointly submit such agreed exhibits to the Escrow Agent for attachment to the Agreement.

23. Notices. All notices, demands, and any and all other communications which may be or are required to be given to or made by either party to the other in connection with this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand, sent by fax, sent by registered or certified mail, return receipt requested, or sent by recognized overnight courier service to the addresses set out below or at such other addresses as specified by written notice and delivered in accordance herewith. Any such notice, request, or other communication shall be considered given or delivered, as the case may be, on the date of hand, fax, or courier delivery or on the date of deposit in the United States mail as provided above. However, the time period within which a response to any notice or request must be given, if any, shall commence to run from the date of actual receipt of such notice, request, or other communication by the addressee thereof.

SELLER: Peninsula School District No. 401, Pierce County
14015 - 62nd Avenue N.W.
Gig Harbor, WA 98332
Attn: Dr. Mark Mitrovich, Superintendent
Phone No.: (253) 857-6171
Fax No.: (253) 857-3575

with a copy to: John Biggs

Peninsula School District
14015-62nd Avenue N.W.
Gig Harbor, WA 98332
Phone No.: (253) 857-6171
Fax No.: (253) 857-3575

PURCHASER: City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335
Attn: Mark Hoppen, City Administrator
Phone #: (206) 851-8136
Fax #: (206) 851-8563

with a copy to: Ogden Murphy Wallace
2100 Westlake Center Tower
1601 Fifth Avenue
Seattle, WA 98101-1681
Attn: Carol A. Morris
Phone #: (206) 447-7000
Fax #: (206) 447-0215

24. Miscellaneous.

24.1 Governing Law; Construction. This Agreement shall be construed and interpreted under the laws of the State of Washington. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. At each place where the words "Property," "Closing," and "Closing Date" are used herein, it shall refer to the Vacant Property or the School Building Property and their respective closings and closing dates unless the context otherwise requires.

24.2 Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

24.3 Rights, Powers and Privileges. Except as expressly provided under the terms of this Agreement (including Section 19.1) above, all rights, powers and privileges conferred hereunder upon the parties shall be cumulative but not restrictive of those given by law.

24.4 Waiver. No failure of either party to exercise any power given either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no

custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

24.5 Time. Time is of the essence in complying with the terms, conditions and agreements of this Agreement.

24.6 Entire Agreement. This Agreement contains the entire agreement of the parties hereto and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

24.7 Survival. Each of the covenants, agreements, representations and warranties herein shall survive the Closing and shall not merge at Closing with any deed, bill of sale, or other document of transfer.

24.8 Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns.

24.9 Time Periods. If the time period by which any right, option, or election provided under this Agreement must be exercised or by which any acts or payments required hereunder must be performed or paid, or by which the Closing must be held, expires on a Saturday, Sunday, legal or bank holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day.

24.10 Severability. If a court of competent jurisdiction invalidates a portion of this Agreement, such invalidity shall not affect the remainder.

24.11 Modifications. Any amendment to this Agreement shall not be binding upon any of the parties to this Agreement unless such amendment is in writing duly executed by each of the parties affected thereby.

24.12 Attorneys' Fees. If Buyer or Seller institute suit concerning this Agreement, the prevailing party or parties is/are entitled to court costs and reasonable attorneys' fees. In the event of a trial, the amount of attorneys' fees shall be fixed by the court. The venue of any suit shall be in Pierce County, Washington.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under seal by their respective duly authorized representatives on the dates indicated below, to be effective as of the date and year first above written.

PURCHASER:

CITY OF GIG HARBOR, WASHINGTON

By: _____
Its _____

SELLER:

PENINSULA SCHOOL DISTRICT

By: _____
Its _____

ESCROW AGENT:

COMMONWEALTH LAND TITLE COMPANY

By: _____
Its _____

Address: _____

EXHIBITS

- A School Building Property Legal Description
- B Vacant Property Legal Description
- C Due Diligence Materials
- D Memorandum of Option
- E Vacant Property Easement

EXHIBIT A

School Building Property Legal Description

PARCEL "A":

Commencing at the intersection of the Easterly line of the Wollochet-Gig Harbor County Road with the South line of the North half of the Northwest quarter of the Southwest quarter of SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington;
Thence Northeasterly 742.50 feet along the Easterly line of said road to a point 99.00 feet Southeasterly from the intersection of the Easterly line of said road with the North line of the Southwest quarter of said Section 8;
Thence East 050 feet to the East line of the Northwest quarter of the Southwest quarter of said Section 8 and the true point of beginning of this description;
Thence South 580 feet;
Thence West 530 feet;
Thence North 580 feet;
Thence East 530 feet to the true point of beginning.

PARCEL "B":

Commencing at the intersection of the Easterly line of the Wollochet-Gig Harbor County Road with the South line of the North half of the Northwest quarter of the Southwest quarter of SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington;
Thence Northeasterly 742.50 feet along the Easterly line of said road to a point 99.00 feet Southeasterly from the intersection of the Easterly line of said road with the North line of the Southwest quarter of said Section 8;
Thence East 320 feet to the true point of beginning of this description;
Thence South 284.2 feet;
Thence West 153.3 feet;
Thence North 284.2 feet;
Thence East 153.3 feet to true point of beginning.

PARCEL "D":

Beginning on the South line of the North half of the Northwest quarter of the Southwest quarter of SECTION 8, TOWNSHIP 21 NORTH; RANGE 2 EAST of the W.M., in Pierce County, Washington, at a point 383.9 feet East of the intersection of said South line with the Easterly line of Wollochet-Gig Harbor County Road.

EXHIBIT A

(cont'd)

said point being the Southeast corner of the Baseball Grounds Tract;
Thence East on said South line 360 feet, more or less, to a point 530 feet West of the Southeast corner of said North half of the Northwest quarter of the Southwest quarter;
Thence North parallel with the East line of said North half of the Northwest quarter of the Southwest quarter 295.8 feet;
Thence West parallel with the said South line 330 feet, more or less, to the Northeast corner of said Baseball tract;
Thence Southerly along the East line thereof, 295.8 feet to point of beginning.

PARCEL "E":

Commencing at the intersection of the Easterly line of the Wollochat Gig Harbor County Road, with the South line of the North half of the Northwest quarter of the Southwest quarter of SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST of the Willamette Meridian, in Pierce County, Washington;
Thence Northeasterly along said East line 362.5 feet, more or less, to the Northwest corner of property conveyed to Norman Kimball, Frank Novak and Joseph Hynes, as Trustee for the Eagles Baseball Club of Gig Harbor, Washington by instrument recorded under Recording No. 299093, records of Pierce County, Washington, said point being the point of beginning;
Thence continuing Northeasterly along the Easterly line of said County Road to intersect the South line of property conveyed to August Crumroy by instrument recorded under Recording No. 613767, records of Pierce County, Washington;
Thence East along the South boundary line of said Crumroy Tract to the Northwest corner of property conveyed to Peninsula School District No. 401 of Pierce County, Washington, by instrument recorded under Recording Number 1584657, records of Pierce County, Washington;
Thence South of the West line of said School District Tract to the North boundary of property conveyed to F. L. Dortch, by instrument recorded under Recording No. 381742, records of Pierce County, Washington;
Thence Westerly along the North boundary lines of said Dortch Tract and the North boundary of the Baseball Grounds Tract to to the point of beginning.

EXCEPT that portion thereof conveyed to the Peninsula Consolidated School District No. 401, by instrument recorded under Recording No. 1660450, records of Pierce County, Washington.

ALSO EXCEPT that portion thereof, conveyed to Texaco, Inc., a Delaware corporation, by deed recorded April 6, 1973 under Recording No. 2494233, records of Pierce County, Washington, described as follows:

EXHIBIT A

(cont'd)

That portion of the Northwest quarter of the Southwest quarter of SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST, Willamette Meridian, in Pierce County, Washington, described as follows:

Beginning at the intersection of the Southeasterly margin of the Wollochet-Gig Harbor County Road with a line which is parallel with and 30 feet Northeasterly from when measured at right angles to the FR 3 Survey Line as shown on Washington State Highway right of way Map SR 16, MP 8.34 to MP 18.87, Narrows

Bridge to Olympic Drive, Sheet 9, of 62 Sheets, latest Revision date October 1, 1970;

Thence North 38 degrees 56 minutes 09 seconds East along said Southeasterly margin 150.60 feet;

Thence South 51 degrees 03 minutes 51 seconds East 125.00 feet;

Thence South 56 degrees 56 minutes 09 seconds West 144.76 feet of the South line of the North half of said subdivision;

Thence North 88 degrees 34 minutes 25 seconds West along said South line 51.02 feet to a point on the aforesaid line which is parallel with the FR 3 Survey Line;

Thence North 34 degrees 04 minutes 36 seconds West along said parallel line 88.36 feet to the point of beginning.

ALSO EXCEPT that portion appropriated by the State of Washington in Decree entered December 28, 1971 in Pierce County Superior Court Cause No. 205189.

ALSO EXCEPT that parcel of property referred to in the Agreement as the "Vacant Property," the legal description of which is attached to the Agreement as Exhibit B, which is incorporated herein by this reference.

ALL Situate in the County of Pierce, State of Washington.

EXHIBIT B

Vacant Property Legal Description

A PORTION OF LOTS 1A AND 2A OF THE GIG HARBOR ABANDONED MILITARY RESERVATION IN SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M. DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1A, SAID CORNER BEING AN EXISTING CONCRETE MONUMENT WITH A BRASS PLUG, SAID CORNER ALSO BEING THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE, ALONG THE EAST LINE OF SAID LOT 1A NORTH 02 DEGREES 24 MINUTES 12 SECONDS EAST FOR A DISTANCE OF 581.80 FEET TO A POINT WHICH BEARS SOUTH 02 DEGREES 24 MINUTES 12 SECONDS WEST A DISTANCE OF 78.57 FEET FROM THE NORTHEAST CORNER OF SAID LOT 1A; THENCE, PARALLEL WITH THE NORTH LINE OF SAID LOT 1A, NORTH 88 DEGREES 31 MINUTES 14 SECONDS WEST FOR A DISTANCE OF 54.73 FEET; THENCE SOUTH 22 DEGREES 51 MINUTES 28 SECONDS WEST FOR A DISTANCE OF 52.98 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 74 DEGREES 32 MINUTES 14 SECONDS AND A RADIUS OF 44.64 FEET FOR AN ARC DISTANCE OF 58.07 FEET; THENCE SOUTH 02 DEGREES 18 MINUTES 23 SECONDS WEST FOR A DISTANCE OF 200.45 FEET; THENCE NORTH 86 DEGREES 35 MINUTES 37 SECONDS WEST FOR A DISTANCE OF 434.25 FEET; THENCE NORTH 08 DEGREES 17 MINUTES 31 SECONDS EAST FOR A DISTANCE OF 22.61 FEET TO THE SOUTHWEST CORNER OF AN EXISTING BRICK BUILDING; THENCE ALONG THE FACE OF THE SAID BRICK BUILDING NORTH 42 DEGREES 41 MINUTES 14 SECONDS WEST FOR A DISTANCE OF 68.54 FEET TO THE NORTHWEST CORNER OF SAID BRICK BUILDING; THENCE NORTH 31 DEGREES 29 MINUTES 09 SECONDS WEST FOR A DISTANCE OF 7.47 FEET TO A METAL FENCE POST; THENCE NORTH 23 DEGREES 49 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 6.21 FEET TO A METAL FENCE POST; THENCE NORTH 11 DEGREES 20 MINUTES 42 SECONDS WEST 7.05 FEET TO A METAL FENCE POST; THENCE NORTH 82 DEGREES 52 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 91.18 FEET TO A POINT ON THE WEST LINE OF THAT PARCEL DEEDED FROM ELSIE JONES DIBBLE TO THE PENINSULA SCHOOL DISTRICT NO. 401 ON JANUARY 13, 1951 UNDER AUDITOR'S FILE NO. 1584667; THENCE ALONG THE WEST LINE OF SAID PARCEL SOUTH 01 DEGREE 28 MINUTES 46 SECONDS WEST FOR A DISTANCE OF 123.10 FEET TO A POINT ON THE NORTH LINE OF THAT PARCEL DEEDED FROM WILLIAM H. KIMBALL TO F.L. DORTCH ON APRIL 22, 1913 UNDER AUDITOR'S FILE NO. 381742; THENCE ALONG THE NORTH LINE OF THE LAST MENTIONED PARCEL NORTH 88 DEGREES 37 MINUTES 48 SECONDS WEST FOR A DISTANCE OF 180.29 FEET TO THE NORTHEAST CORNER OF THAT PARCEL DEEDED FROM THE J.H. GALBRAITH COMPANY TO THE TACOMA ORTHOPEDIC ASSOCIATION ON DECEMBER 29, 1986 UNDER AUDITOR'S FILE NO. 8612290521; THENCE ALONG A LINE WHICH WOULD INTERSECT THE SOUTH LINE OF SAID LOT 2A AT A POINT WHICH BEARS SOUTH 88 DEGREES 38 MINUTES 28 SECONDS EAST AT A DISTANCE OF 383.90 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 2A, SOUTH 15 DEGREES 20 MINUTES 36 SECONDS WEST FOR A DISTANCE OF 108.57 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF KIMBALL DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 34 DEGREES 04 MINUTES 48 SECONDS EAST FOR A DISTANCE OF 233.61 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 2A; THENCE ALONG THE SOUTH LINE OF SAID LOTS 2A AND 1A SOUTH 88 DEGREES 36 MINUTES 28 SECONDS EAST FOR A DISTANCE OF 782.53 FEET TO THE POINT OF BEGINNING AND THE TERMINUS POINT OF THIS DESCRIPTION.

EXHIBIT C

ADDITIONAL DUE DILIGENCE MATERIALS, IF ANY

1. Final "as-built" electrical, mechanical and structural plans and specifications for the Improvements and, to the extent any portion of the Property is under construction at Closing, any and all plans and specifications related hereto.
2. All engineering and environmental reports, including soils tests, reports of third party consultants and internal memoranda, with respect to the Property and all warranties and guaranties for the Property.
3. Evidence of Seller's authority to enter into this Agreement and to consummate the transaction contemplated herein.
4. Copies of notices of violations of any federal, state, municipal or other health, building, zoning, safety, environmental protection or other applicable code, law, ordinance, rule or regulation relating or applying to the Property received by Seller, whether or not such violations have been cured.
5. Copies of all other books and records and files of Seller relating to Seller's ownership and/or operation of the Property.
6. Other relevant documents or information as may reasonably be requested by Purchaser or its counsel; provided, however, that if Seller delivers the requested documents or information within five (5) days, there shall be no extension of the Due Diligence Period.

EXHIBIT D

Memorandum of Option

When Recorded Return To:

David Ellenhorn
Ogden Murphy Wallace, P.L.L.C.
2100 Westlake Center Tower
1601 Fifth Avenue
Seattle, WA 98101-2686
(206) 447-7000 • Fax: (206) 447-0215

MEMORANDUM OF OPTION TO PURCHASE REAL PROPERTY

Grantor: Peninsula School District
Grantee: City of Gig Harbor
Described Property: Portion of the Northwest quarter of the Southwest quarter of Section 8, Township 21 North, Range 2 East, WM in Pierce County, Washington

(hereafter the "Described Property", the legal description of which is identified in Exhibit A attached hereto and incorporated herein by this reference).

Assessor's Tax
Account Numbers: 02-21-08-3-140, 01-21-08-3-109, 02-21-08-3-110, 02-21-08-3-126,
02-21-08-3-127, 02-21-08-3-136, 02-21-08-3-136, 02-21-08-3-137,
02-21-08-3-138

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration the sufficiency and receipt of which are hereby acknowledged.

Conveyance of
Grantor's Interest: For the above-mentioned consideration, Grantor hereby sells and conveys to Grantee an option to purchase the Described Property, the terms of which are more particularly described below.

THIS MEMORANDUM OF OPTION TO PURCHASE REAL PROPERTY is made this _____ day of October, 1997, between PENINSULA SCHOOL DISTRICT, a Washington Municipal Corporation (Grantor) and THE CITY OF GIG HARBOR, a Washington Municipal Corporation (Grantee).

WITNESSETH:

GRANTOR AND GRANTEE hereby acknowledge that the parties hereto entered into an Option Agreement and Agreement for the Purchase and Sale of Henderson Bay Alternative High School in Gig Harbor, Washington (the "Agreement"), dated October ____, 1997, which Agreement includes an option to purchase the Described Property commencing October ____, 1997 and continuing until December 31, 2000, pursuant to the terms described in the Agreement. This Option is a covenant running with the land and is binding upon any subsequent holder of Grantee's interest in the Described Property.

Dated this _____ day of _____, 1997.

PENINSULA SCHOOL DISTRICT

CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he was authorized to
execute the instrument and acknowledged it as the _____ of Peninsula School
District, to be the free and voluntary act and deed of such party for the uses and purposes
mentioned in this instrument.

DATED: this _____ day of _____, 1997.

(Signature)

(Print Name)

NOTARY PUBLIC

My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he was authorized to
execute the instrument and acknowledged it as the _____ of the City of Gig
Harbor, to be the free and voluntary act and deed of such party for the uses and purposes
mentioned in this instrument.

DATED: this _____ day of _____, 1997.

(Signature)

(Print Name)

NOTARY PUBLIC

My appointment expires: _____

EXHIBIT E

Easement Description

Seller will be granted an easement for ingress and egress, including vehicular traffic, over a 20 foot wide area of the Vacant Property beginning at the corner of the Vacant Property marked "L4" and ending at the corner of the Vacant Property marked "L7" on that Record of Survey for the Peninsula School District, prepared by Thornton Land Surveying, Inc., Job No. 6291/6292 dated July, 1997. Such easement shall be extinguished and of no further force and effect upon the completion of the sale of the School Building Property to the Purchaser.

ORDINANCE NO. __

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ACQUISITION OF CERTAIN PROPERTY FOR THE PURPOSE OF CONSTRUCTING THE PROJECT COMMONLY KNOWN AS THE GIG HARBOR MUNICIPAL CAMPUS AND PARK PROJECT, TOGETHER WITH ALL NECESSARY AND RELATED WORK TO MAKE A COMPLETE IMPROVEMENT IN ACCORDANCE WITH APPLICABLE CITY STANDARDS, PROVIDING FOR THE CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND OR OTHER PROPERTY NECESSARY THEREFORE, AND DIRECTING THE CITY ATTORNEY TO PROSECUTE THE APPROPRIATE ACTION AND PROCEEDINGS IN THE MANNER PROVIDED BY LAW FOR SAID CONDEMNATION.

WHEREAS, the acquisition of property for the construction of the Gig Harbor Municipal Campus and Park Project is an important part of the City's long-range capital facilities planning; and

WHEREAS, the City has attempted to negotiate the purchase of all necessary property and/or property rights for the Project from the School District, as the property owner in possession of the Henderson Bay Alternative School Property (hereinafter the "Property"), but there is uncertainty regarding the interests of others in the property, which cannot easily be determined without a judicial proceeding designed to allow for the payment to all persons who can demonstrate to the Court that they have a compensable interest in the property; and

WHEREAS, in view of these difficulties, the City Council has determined to condemn the property and/or property rights necessary for completion of the Project; now, therefore,

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

Section 1. Need for Property. The public health, safety, necessity and convenience demand that the Gig Harbor Municipal Campus and Park Project, including acquisition of property and the construction of municipal structures and park improvements, and that certain property, as described in Exhibit A, attached hereto and by this reference incorporated herein, be condemned, appropriated, taken and damaged for the construction of said Project and improvements.

Section 2. Declaration of Necessity. The City Council of the City of Gig Harbor, after hearing the report of the City Staff, and reviewing the plan for the municipal campus structures and park improvements contemplated for the Project, hereby declares that the property described in Exhibit A, is necessary for public use, i.e., for the construction of the Gig Harbor Municipal Campus and Park Project.

Section 3. Authority of the City Attorney. The City Attorney is hereby authorized and directed to begin and prosecute the condemnation proceedings provided by law to condemn, take and appropriate the Property necessary to carry out the provisions of this ordinance.

Section 4. Effective date. This ordinance, being the exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

Section 5. Ordinance Passed Under Procedure in GHMC 1.08.020. Pursuant to GHMC 1.08.020, the City Council may take action on this ordinance on the day of its introduction, upon the affirmative vote of a majority plus one of the whole membership of the Council. On October 27, 1997, this ordinance was passed by at least a majority plus one of the whole membership of the City Council.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 10/23/97
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. _____

CAM157473.10/00085.050020

SUMMARY OF ORDINANCE NO. _____

of the City of Gig Harbor, Washington

On the ____ day of _____, 199__, the City Council of the City of Gig Harbor, Washington, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

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

DATED this ____ day of _____, 199__.

CITY ADMINISTRATOR, MARK HOPPEN

CAM157473.1Q/00085.050.020



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR *Wes Hill*
SUBJECT: SIX YEAR TRANSPORTATION IMPROVEMENT PROGRAM, 1998-2003
DATE: October 23, 1997

INTRODUCTION/BACKGROUND

Local agencies are required to prepare six-year transportation improvement programs under RCW 35.77.010, and to receive State funding, and Federal transportation funding under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), 23 USC. The proposed plan reflects the City of Gig Harbor Transportation Plan (December 1994), and has been updated to reflect anticipated transportation system improvement needs in the Westside and Gig Harbor North annexation areas as well as other areas of the City, and more current cost information. More definitive project information will be developed and available following completion of the Comprehensive Transportation Plan update scheduled for 1998.

Design of the East-West Road is underway and agreement on the alignment has been reached with the three property owners along the route. Design completion is contingent on resolution of Washington State Department of Transportation concerns relative to the spacing of the relocated Canterwood Boulevard-Burnham Drive intersection from the northbound SR-16 access ramps, and commitments for future improvements. Assuming that these issues are resolved by the end of January, construction will be underway in May or June.

The Rosedale Street Improvement Project design is also underway, with an anticipated construction start in June or July.

Pierce Transit has reached agreement with Tacoma Public Utilities for a new lease to accommodate the improvements to the Park and Ride facilities on Kimball Drive in conjunction with the Kimball Drive Park and Ride Expansion and Related Traffic Improvements Project. The traffic improvements include installation of a "priority" signal at the Kimball Drive-Pioneer Way intersection for emergency and transit vehicles, signal interconnect and related improvements to the signals at the Grandview Street and Stinson Avenue intersections with Pioneer Way, and repaving and channelization improvements in the segment of Pioneer Way between Grandview Street and Stinson Avenue, and the approach leg of Kimball Drive. Pierce Transit has obtained additional funding from the Federal Transit Administration. As a result, Pierce Transit has assumed lead agency status for design, with the City being responsible for construction contract administration. Pierce Transit will begin the consultant selection process after execution of an interlocal agreement between Pierce Transit and the City. This agreement is also essential for federal funding. Construction is anticipated to start in July based on completion of the consultant selection process and initiating the design work by January.

MAYOR WILBERT AND GIG HARBOR CITY COUNCIL

October 23, 1997

Page 2

Improvements to Bayridge Avenue will be incorporated with storm sewer and water main replacement. Construction on this project will begin in May.

Off-street parking improvements are proposed within the downtown business district contingent on reaching a lease agreement for the Tarabochia property on the south side of Tarabochia Street. Agreement has been reached to commence lease negotiations.

Miscellaneous projects on the 1997 program will respond to pavement, sidewalk, and storm drainage needs on a prioritized basis depending on location, severity, traffic volumes, safety, and funding.

FISCAL CONSIDERATIONS

Adoption of the Six Year Transportation Improvement Program does not directly affect the City's finances. The fiscal impacts will be reviewed during the annual budgeting process. Depending upon the availability of funds and other considerations, the Council may elect to fund more or fewer projects, and/or change project priorities.

RECOMMENDATION

Staff recommends that the Council move and approve the attached Six-Year Transportation Improvement Program (1998-2003) and the adopting resolution.



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

SIX-YEAR TRANSPORTATION IMPROVEMENT PLAN NARRATIVE 1998-2003

1) EAST-WEST (Borgen) ROAD: Swede Hill Interchange to Peacock Hill Avenue, Phase I

This project is an integral component of the Gig Harbor North annexation. This project is a cooperative venture with the property owners-developers along the project alignment, Pierce County and the City. The property owners-developers are providing the right-of-way, and Pierce County has agreed to cover up to \$1,000,000 of the Phase 1 project costs. The Phase 1 project will provide two travel lanes with left turn pockets in the segment from the SR-16 interchange at Swede Hill to Peacock Hill Avenue. This will relieve existing traffic congestion on City streets serving the area north and east of the City, and provide access for development in the annexation area. Agreement has been reached with the three landowners for the road alignment through their properties, and negotiations are continuing with the Washington State Department of Transportation to secure their approval to connect the improvements at the SR-16 overcrossing. In accordance with the agreements with Pierce County and the primary landowners along the route, Phase 1 work includes design of the ultimate five-lane section. Anticipated features for the fully developed street section include a landscaped median and planter strips, architectural lighting, water, sanitary sewer, storm sewer, and a bicycle lane, curb, gutter, and sidewalk on each side.

2) ROSEDALE STREET: Harborview Drive to West of Shirley Avenue

Improvements on this federally funded project include pavement reconstruction; and widening to provide concrete curb and gutter on both sides, storm sewer improvements, asbestos-cement water main replacement, parking on one side or both sides of the street in the segment between Harborview Drive and Stinson Avenue, a bicycle lane and sidewalk on at least one side of the street, provisions for or landscaping and architectural street lights, and provisions for future signalization at the Stinson Avenue intersection. Design work commenced in 1997.

3) KIMBALL DRIVE PARK & RIDE EXPANSION & RELATED TRAFFIC IMPROVEMENTS:

This project will approximately double the capacity, restore deteriorated pavement, and construct a pedestrian-transit center, landscape buffer, lighting, storm sewer system, and related improvements for the Pierce Transit Park and Ride facility on Kimball Drive). The project also includes a new traffic signal at the Pioneer Way-Kimball Drive intersection, signal replacement at the Grandview Street-Pioneer Way intersection, signal improvements at the Stinson Avenue-Pioneer Way intersection, signal interconnect for signal coordination and priority signal control for emergency and transit vehicles, channelization, asbestos-cement water main replacement, and pavement restoration. Federal Aid, Pierce Transit, Fire District 5, and private funds are involved in this project. Pierce Transit will be the lead agency for design due to the source of design funding for their portion of the work, and the City will be the lead agency for construction contract inspection and administration.

4) BAYRIDGE AVENUE: Rosedale Street to Street End

This project will replace the existing failing pavement with a structural pavement section, including storm drainage system and outfall improvements. The work will be performed in conjunction with installation of a water main to provide for an eventual looped connection with the water main on Shirley Avenue and fire flow in this area.

5) KIMBALL DRIVE: Pioneer Way to Hunt Street

This project involves reconstruction of Kimball Drive to replace deteriorated pavement, and provide a primarily three-lane section with bicycle lanes along the entire segment; parallel on-street parking and landscaped median where feasible; storm drainage improvements; full curb, gutter, and sidewalk improvements on both sides; landscaped parking strips, architectural street lights, and other related improvement to accommodate additional vehicle and pedestrian traffic in this developed commercial corridor. Project construction will be deferred until additional funds are available to supplement developer contributions.

6) POINT FOSDICK DRIVE: 1,000-feet south of Olympic Drive to 44th Street (Private), Phase I

This project would complete the five-lane widening along the commercial frontages on Point Fosdick Drive and eliminate deteriorated portland cement concrete pavement, and narrow shoulders. The contemplated improvements include left-turn pockets/landscaped median, bicycle lanes, curbs, gutters, landscaped planter strips, sidewalks, and architectural lighting. This work would be coordinated with utilities to allow undergrounding of overhead facilities.

7) POINT FOSDICK DRIVE: 44th Street (Private) to City Limits

This project would widen Point Fosdick Drive to provide a three-lane parkway section extending to the City limits consistent with the Design Manual. The contemplated improvements include two through lanes, left-turn pockets/landscaped median, bicycle lanes, curbs, gutters, landscaped planter strips, sidewalks, and architectural lighting.

8) EAST-WEST (Borgen) ROAD: Traffic Signal at Canterwood Boulevard-Burnham Drive Intersection

This project will install an actuated traffic signal at the intersection of Canterwood Boulevard-Burnham Drive with the East-West Road to facilitate traffic flow based on estimated traffic volumes, and anticipated WSDOT requirements for connection to the SR-16 overcrossing at Swede Hill.

9) 38th AVENUE: 56th Street to Briarwood

This project will involve reconstruction and widening to provide a structural pavement section, including through and bicycle lanes, landscaped planter strips, sidewalks, and architectural lighting. This section serves a large residential area, and is a primary route to Goodman Middle School and Harbor Heights Elementary School.

10) 38th AVENUE: Briarwood to City Limits

This project will continue the reconstruction and widening of 38th Avenue, including through and bicycle lanes, landscaped planter strips, sidewalks, and architectural lighting. Work will be coordinated with Pierce County and the Peninsula School District to complete the improvements from the City limits to the school entrance, at a minimum.

11) OLYMPIC DRIVE: 950-feet east of Point Fosdick Drive to 38th Avenue

This project will widen Olympic Drive to a five-lane section to include left turn pockets/landscaped median, bicycle lanes, curbs, gutters, landscaped planter strips, sidewalks, and architectural lighting. At a minimum, the project would also include provisions for future signalization at the 56th Street-Olympic Drive intersersction. These improvements are anticipated necessary to accommodate current and future development, and increased traffic volumes.

12) VERNHARSEN STREET: Peacock Hill Avenue to City Limits

This project includes minor widening, pavement restoration and/or overlay, storm sewer, curb, gutter, and sidewalk(s). The project will be performed in one or more stages in conjunction with construction of water main improvements as shown in the Comprehensive Water Plan.

13) ROSEDALE STREET (Phase 2): SR-16 to City Limits (54th Ave. NW.)

This project will consist of reconstruction, overlay, and minor widening to provide a nominal two to three-lane section with bicycle lanes, curbs, gutters, and sidewalks on both sides of the street, storm sewer improvements, landscaping, architectural lighting, and related improvements. Improvements will include channelization, and provisions for future signalization at the Skansie Avenue-Rosedale Street intersection.

14) FRANKLIN AVENUE: Burnham Drive to Peacock Hill Avenue

The purpose of this project is to provide a pedestrian link with Burnham Drive, Peacock Hill Avenue and the Finholm-Fuller Street View Climb connection to North Harborview Drive. The street will be reconstructed to provide a full-paved width residential street section with storm drainage improvements, and curbs, gutters, sidewalks and landscaped planter strips on both sides of the street. The project will be performed in conjunction with replacement of the existing asbestos-cement water main, and will include traffic calming features appropriate to the residential setting.

15) FULLER STREET: Franklin Avenue to Prentice Avenue (See Franklin Avenue)

16) HARBORVIEW DRIVE: Soundview Drive to Street End

This project will be performed in conjunction with the Harborview Drive Street End Park improvement project, and replacement of the existing asbestos-cement water main. The improvements will consist of minor widening on the north end for parking, storm sewer system, curbs and gutters on both sides, sidewalk on one side, and architectural lighting. A landscaped planter strip may be included depending on space availability.

17) PRENTICE STREET: Burnham Drive to Fennimore Street

Improvements contemplated for this project are primarily intended to provide pedestrian linkages for the Harbor Ridge Middle School, and include minor widening, storm sewer system, curbs, gutters, sidewalks, landscaping, and architectural lighting.

18) BURNHAM DRIVE: Franklin Avenue to Harborview Drive

This reconstruction project will improve the profile for sight distance and will include minor widening, storm sewer system, asbestos-cement water main replacement, curbs, gutters, sidewalks, landscaping and architectural lighting.

19) BRIARWOOD: Point Fosdick Drive to 38th Avenue

Improvements included with this project would include a sidewalk on at least the south side to provide for separation of pedestrians and vehicles. Additional improvements could include a planter strip, traffic islands and other traffic calming features.

20) GRANDVIEW STREET: Stinson Avenue to Soundview Drive

This project will reconstruct the existing road and will include minor widening, curbs, gutters, sidewalk on at least one side, storm sewer improvements, asbestos-cement water main replacement, landscaping and architectural lighting.

21) 56th STREET: Olympic Drive to Point Fosdick Drive

This project will widen 56th Street to provide a three lane section, possibly with left-turn pockets/landscaped median, bicycle lanes, planter strips where feasible, and sidewalks to accommodate additional vehicle and pedestrian traffic in a developed commercial corridor.

22) ROSEDALE STREET (Phase 3): Shirley Avenue to SR-16

Work on this project will include reconstruction, overlay, and minor widening to provide a two-lane section with parallel on-street parking where feasible and desired; storm drainage, sanitary sewer, and water main improvements; concrete curb and gutter on both sides; a bicycle lane and sidewalk on one side of the street, and provisions for or landscaping and architectural street lighting.

23) JUDSON STREET: Pioneer Way to Soundview Drive

This project provides for reconstruction and possible realignment of the existing street to provide an aesthetic and "pedestrian-friendly" linkage between Pioneer Way and Soundview Drive. The project contemplates minor widening to provide for left-turn pockets or on-street parallel parking where feasible; curbs, gutters, and sidewalk on both sides; storm drainage and water main improvements; landscaped planter strips; and architectural lighting.

24) EAST-WEST ROAD: Peacock Hill Avenue to Crescent Valley Road

This project will extend the East-West Road further east to provide better access to the Gig Harbor North area and reduce traffic volumes on City streets in the north and west harbor areas.

25) SR-16 CROSSING AT HUNT STREET: Hunt Street to Hunt Street

The purpose of this project will be to relieve congestion at the SR-16 crossings-interchanges at Olympic Drive and Pioneer Way-Wollochet Drive by providing an alternate vehicle-pedestrian link between the commercial-residential areas on the west and east sides of SR-16. The design will need to consider existing street grades and building elevations, and the proposed Kimball Drive Connector.

26) KIMBALL DRIVE CONNECTOR: Hunt Street to Soundview Drive

This project will extend Kimball Drive south of Hunt Street to Soundview Drive to relieve existing and anticipated congestion on Soundview Drive, and at the SR-16 crossings at Olympic Drive and Pioneer Way-Wollochet Drive by providing route options.

27) DOWNTOWN PARKING LOT: Central Business District

This project will provide for additional off-street parking to augment existing public and private parking opportunities. Design will conform to the City's Design Guidelines. Design and construction contingent on City acquisition through donation or lease of a suitable parcel or parcels.

28) NORTH-SOUTH CONNECTOR: East-West Road to Peacock Hill Avenue

Continue negotiations and right-of-way acquisition for this future project.

29) FOSTER STREET: Stinson Avenue to Street End

This project will involve reconstruction to provide subdrainage and storm sewer improvements, a structural section, curbs and gutters on both sides, and a sidewalk on at least one side. The work will be performed in conjunction with replacement of the existing 10-inch asbestos-cement water main.

30) SELLERS STREET: Peacock Hill Avenue to North Harborview Drive

The purpose of this project will be to restore the deteriorated pavement surface with an asphalt concrete overlay and minor widening, provide traffic calming features if warranted, and install storm drainage improvements.

31) STREET LIGHTS: Minor and Collector Arterials

This project will install underground power and street lights in conformance with the City's Design Guidelines along minor and collector arterials to enhance vehicle and pedestrian safety, and neighborhood aesthetics.

32) REPAIR AND RESTORATION OF VARIOUS STREETS:

This project proposes to pave various roadway surfaces, and to improve storm drainage on various public streets throughout the City.

33) EMERGENCY



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: PLANNING-BUILDING STAFF
SUBJECT: PERMIT PROCESSING – TENANT IMPROVEMENT PERMITS AND
PROCESSING TIMES
DATE: OCTOBER 22, 1997

Background/Introduction

Council requested that Mr. James Pasin submit his concerns to the City regarding the time it took Planning-Building staff to process tenant improvement permits. Mr. Pasin's letter is attached. Staff has also attached two tables. Table 1 is a comparison of other jurisdiction's permit processing times compared to the City of Gig Harbor. Table 2 shows the city's average permit processing time in seven time increments.

Policy Issues

Title 19 of the Gig Harbor Municipal Code (which is based upon the Regulatory Reform Act of 1995) establishes permit processing procedures for the City of Gig Harbor. In general, permits must be issued within 120 days of the submittal of a complete application. Building permits are exempt from this time requirement.

Mr. Pasin states that, currently, it takes 4 to 6 weeks for approval of even a "simple" tenant improvements. In checking with the Building Official, tenant improvements are currently being processed in two to three weeks. The time it takes to process any permit is highly variable and is dependent upon many factors. The City, on the average, processes a tenant improvement permit in 15.3 days and a building permit 14.9 days. This is less than the norm for most jurisdictions in Pierce County, which is 16 days, average.

Fiscal Impact

Mr. Pasin has suggested several options to consider. These are:

1. Hire a permit processor to handle the expanding workload for commercial development.
2. Adopt an over-the-counter system for commercial tenant improvements similar to what is being used in Pierce County, City of Tacoma and others.
3. Modify the existing system to process tenant improvements in a separate date sequence order, rather than with all other permits.

Staff's response to the above, in order, is as follows:

1. Hiring a permit processor (a plan reviewer) is certainly the most expedient method of fast-tracking permits. It is also the most expensive as the person selected would have to be ICBO certified and would most likely be a full-time position (with benefits). Staff does not support this action at this time.
2. An over-the-counter system for commercial permits is certainly plausible, but not at the level of Tacoma or Pierce County Planning and Land Services. It would require that staff be available during certain periods of the week solely for this purpose. Over-the-counter review and issuance could only occur if the information submitted is complete. This would also require the careful development of “thresholds” as to which applications would or would not qualify for this expedited process. This could get complicated as tenant improvements are not a “seen one, seen all” permit review process. Using this method could also result in some delay to non-commercial permits as these would not be included in the review under the system proposed. Staff does not support this action.
3. Modifying the existing process so that sequence received is not the determinant on when a permit gets reviewed requires that the staff “pick and choose”. This is not as equitable as the current process as it effectively takes an application out of queue, at the expense of other applications. Although project “thresholds” could be established to determine which permit gets expedited, this assumes - incorrectly - that all tenant improvement permits are the same. To the contrary, the elements of tenant improvement review are highly variable. Staff does not support this action.

Plan of Action/Recommendation

Staff believes that an expedited system could be developed without additional expense that is fair and equitable to all applicants, regardless of whether the building permit application is a tenant improvement, a regular commercial plan check or a residential structure. Plan review could be a “dedicated” task assigned a certain time segment on a weekly basis. It would require that building staff (the Building Official and/or the Planning-Building Assistant) not be available to the general public so that a specific amount of plan review time can be allocated, without interruption. Essentially, all applications (residential or commercial) will be treated equally.

The amount of staff time allocated would depend upon the permit activity at the time, but a certain block of time (i.e. a Wednesday afternoon) would be reserved strictly for plan review. This will likely reduce permit processing time considerably. Should the situation arise that permit activity is reduced, the dedicated time could be reduced accordingly. It requires careful scheduling and monitoring, but this is certainly attainable.

Staff will implement this approach immediately and will evaluate it over a two-month period for its effectiveness. Staff will report to Council at the end of this period for an evaluation and critique of the process.

WESTSIDE BUSINESS CENTER

3212 50TH STREET COURT NORTHWEST  GIG HARBOR WA 98335-8256

Mr. Mark Hoppen
City Administrator
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

10/21/97

Re: Permit processing - Tenant Improvements
New and existing buildings

Dear Mark;

Concern:

The current system of processing building permits is on a date sequence order for all types of permits. This method of processing is currently taking four to six weeks for approval of even simple tenant improvements, which is not reasonable from a time or economic standpoint.

Problem:

Adding the permit processing time to build-out time results in a start to finish minimum of eight weeks for just a few feet of wall and a door. The result of this time delay is lost income to the property owner, tenant and the City of Gig Harbor. Prospective tenants do not understand why it takes so long and may seek space elsewhere, i.e. outside of Gig Harbor. Existing tenants want it "done yesterday" and may accuse the property owner of dragging their feet. The situation is not "business friendly" to use current buzzwords.

Solution(s):

1. Hire a permit processor to handle the expanding workload for commercial development.
2. Adopt an "over the counter" system for commercial tenant improvements similar to what is being used in the county, City of Tacoma and others.
3. Modify the existing system to process tenant improvements in a separate date sequence order, rather than with all other permits.

Per our discussions and my statements to the City Council, I wanted to bring awareness to the problem, so reasonable, timely changes may be implemented; resulting in benefits to the City, tenants and commercial property owners.

Thank you for your help in making needed changes to the permitting process.

Sincerely,


James A. Pasin
Realty Management, LLC

A Survey of Other Jurisdictions Tenant Improvement Review Process and Processing Time

JURISDICTION	TIME TO PROCESS	NOTES
Tacoma	Within 7 days of request. See Notes.	Have project review meetings every Tue and Thurs (16 hours per week) with staff from various departments. Review all applications and approve administratively. Could be in as little as an hour. If something is missing, it goes into the standard plan-check – about 8 weeks.
Fife	1 to 2 weeks.	Depends upon the workload; small projects go first; fulltime plan checker.
Sumner	7 – 12 working days (2-3 weeks)	Same as regular permit ~ 2- 3 weeks
Puyallup	6 – 8 weeks; sometimes 10 weeks	Usually 8 – 10 weeks if complete
Steilacoom	2 weeks	TI and building permits; review is the same.
University Place	2 –3 weeks if it's a small project	One plan checker does this; does not do any field inspections or investigations
Fircrest	1-2 days for a TI; 2 weeks for a regular permit	One plan checker; does not do FM inspections
Sequim	2 weeks; 1 week if sent to contract consultant	
Port Orchard	10 –14 days for all building permits	Have 3 people on staff that review only building permit plans
Lacey	2–3 weeks fastest; 4-6 weeks generally	Has a computerized permit tracking system that “clocks” all permits
Pierce County Planning and Land Services	2-3 weeks if just an internal, no expansion; 4 weeks otherwise	Plan check staff.
City of Gig Harbor	2 weeks (15.3 days) average	Based upon 1997 building permit data
AVERAGE PROCESSING TIME	16 days	

Table 1 Average Processing Time of Tenant Improvement Permits

**CITY OF GIG HARBOR BUILDING PERMIT PROCESSING DATA FOR
1997**

Processing Time (Days)	No. of Building Permits	No. of Tenant Improvements
1 - 10	28	4
11 - 20	17	4
21 - 30	12	3
31 - 40	8	0
41 - 50	3	1
51 - 60	1	0
61+	3	0

Table 2 Number of permits processed within specific time frames

Processing time for all building permits: 14.9 days (mean)

Processing time for tenant improvement permits: 15.3 days (mean)

87% of all permits were issued within 5 weeks.
80% of all permits were issued within 3 weeks.
50% of all permits were issued within 2 weeks.

RECEIVED
OCT 20 1997
CITY OF GIG HARBOR

WASHINGTON STATE LIQUOR CONTROL BOARD-License Services
1025 E Union - P O Box 43075
Olympia WA 98504-3075

TO: MAYOR OF GIG HARBOR October 17, 1997

SPECIAL OCCASION # 073210 CLASS: GJK

WOMENS INTERCLUB CONCIL
8209 STINSON AVE
GIG HARBOR, WA 98335

DATE: NOVEMBER 1, 1997 TIME: 5PM TO 11:59PM

PLACE: GIG HARBOR YACHT CLUB - 8209 STINSON AVE, GIG HARBOR

CONTACT: GERALD BURTON - 253-265-3502

SPECIAL OCCASION LICENSES

- * G License to sell beer on a specified date for consumption at specific place.
- * J License to sell wine on a specific date for consumption at a specific place.
 Wine in unopened bottle or package in limited quantity for off premises consumption.
- * K Spirituous liquor by the individual glass for consumption at a specific place.

If return of this notice is not received in this office within 20 days (10 days notice given for Class I) from the date above, we will assume you have no objection to the issuance of the license. If additional time is required please advise.

1. Do you approve of applicant? YES___ NO___
2. Do you approve of location? YES___ NO___
3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? YES___ NO___

<u>OPTIONAL CHECK LIST</u>	<u>EXPLANATION</u>	YES___	NO___
LAW ENFORCEMENT	_____	YES___	NO___
HEALTH & SANITATION	_____	YES___	NO___
FIRE, BUILDING, ZONING	_____	YES___	NO___
OTHER:	_____	YES___	NO___

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 DESIGNEE

Note: *deadline date 10-28* *Any questions pls. call
Jan Harrell 360-753-3772*

MAYOR'S REPORT
October 27, 1997



WESTSIDE SUB-AREA PLANNING COMMITTEE RECOMMENDATIONS

The committee has been meeting regularly and produced a draft of recommendations for review at their October 7th meeting. These recommendations were the result of three intensive meetings of the committee during the month of September. Attached is a copy of the October 7th recommendations.

On October 21st the committee reviewed and reconsidered the recommendations of October 7th and are submitting the 2nd draft you see attached.

Attached you will also see a letter from the residents of Harborland Mobile Park at 38th Avenue and Hunt regarding their safety in accessing that intersection.

I am honoring their request to have that intersection served by a simple 4 way stop instead of the existing 2 way stop. Over 100 senior residents live in this comfortable neighborhood. I'm told it will take the Public Works crew about 30 minutes to install the 2 stop signs.

The 4-way stop shall remain until such time as numbers 5, 6 and 7 in the October 21st recommendations can be processed or other action is taken.

October 15, 1997

RECEIVED

TO: westside Planning Committee

OCT 21 1997

FROM: Harborland Mobile Park, corner of Hunt and 38th. CITY OF OAKLAND, CALIF.

After meeting with Mayor Gretchen Wilbert on October 1st at our monthly coffee, we wish to submit our feelings about the October 7th Recommendations Draft.

We are very interested and concerned about No. 6, regarding a 3 or 4 way stop at 38th and Hunt. St. Accidents and near accidents have been a great worry to us senior citizens who have to use this corner daily.

Also No. 5 is of great concern to us as the over-or-under pass on Hunt at Route 16 would greatly impact us. Many of us attended a DOT seminar in the fall of 1991 on this topic. Pictures were shown of a proposed overpass which would close off the main entrance into our park. The fire marshall has said that two entrances are required for safety.

Please consider sidewalks on 38th street from Hunt to 56th St., which would serve T.C.C., our senior Mobile Park and a number of residential areas.

Thank you for considering our requests.

Harborland Mobile Park Coffee Club

cc: Mayor Wilbert

Westside Sub-Area Planning Recommendations
DRAFT
October 7, 1997

1. Install sidewalks and curbing from Gig Harbor Motor Inn to the City Limits at Quail Run/Park (1998-99).
2. Improve and pave graveled portion of 50th Street Court NW and install sidewalks on at least the south side of the roadway. (1998-99). This will help relieve to traffic on Briarwood Lane, which is a major concern of the residents and would provide safe walking for residents and workers in the area.
3. Install sidewalks on at least the south side of Briarwood from Point Fosdick to 38th Avenue, with marked four way crosswalks at each intersection. (1998-99). This neighborhood is within the walking distance policy of the Peninsula School District, i.e., Goodman Intermediate and Harbor Heights Elementary. Extend sidewalks along 38th Avenue to the Schools.
4. Establish another ULID for the residential and commercial neighborhoods within the annexation area and outside the current ULID No. 2 to enable sewer connections by 2010. (1999-2000).
5. Study and establish a plan and time table for a master traffic flow system for the annexed area to include the two existing Highway 16 interchanges and the Hunt Street over/under crossing of Highway 16. (1998-2000).
6. Study and establish a plan and timetable for traffic control at; 1) Hunt and 38th Avenue and 2) 38th Avenue and Olympic. (1998). Consider a three or four-way stop at Hunt and 38th Street.
7. Widen Olympic Drive and 56th Street NW to 38th Avenue, to include curbing and sidewalks. (2000-2002)
8. Study and establish a public transportation plan, both short (one to five years) and long term (2010 to 2025), that includes bus stops, park and ride facilities and mass transit (RTA) stops. (1998-2000)
9. Review existing storm water systems and establish a master plan for their replacement or improvement (1998-1999). Work with Pierce County to control and manage storm water run-off from developments in the county outside the Westside which affect existing properties within the Westside.
10. Establish a Master plan for the development of "new" storm water systems required for the annexed area. (1999-2002)
11. With the appropriate agencies or companies develop a plan for the placement of all utilities and storm systems underground (1998-2002)

12. Implement increased police protection for both residential and commercial needs, based on the completed complement of officers. (1997)
13. Although it is outside the City Limits with the appropriate agencies determine the feasibility of extending 36th street from 38th Avenue to Point Fosdick as a through street in order to carry traffic to and from Highway 16. (1998-1999). If necessary, work with Pierce County to affect a connection of 36th Street with 38th Avenue. Also , this should be considered a potential mitigation measure should 24th Street be closed off to SR-16 as a result of a new or expanded bridge.
14. Visually Sensitive Areas/Visual nodes – Consider amendments to the Design Guidelines to permit enhanced design components as opposed to outright screening for the commercial areas near the interchanges. Amend design manual to define “enhanced or extensive design review.”
15. Noise abatement at the Narrows airport – Air traffic currently violates FAA regulations by using unauthorized approach vectors and altitude. Consider developing a standing committee as an oversite to enforce or recommend enforcement of FAA rules for offending aircraft.
16. Define an area within the Westside, which is suitable for a public park.
17. Concern about the County’s plan to install large concrete retention dams south of Quail Park as a storm water control device.
18. Amend the land use plan map for the Westside area as per the attached **{RESERVED}**



CITY OF GIG HARBOR
DEPARTMENT OF PLANNING AND BUILDING
3125 Judson Street, Gig Harbor, WA 98335
253-851-4278

FyR
gw

From: *RG* Ray Gilmore
To: Westside Subarea Planning Committee
Date: October 24, 1997
Subj.: Final Recommendations

The final recommendations of the Westside Committee are attached for your information. As advised by the committee, the subjects are in 4 categories for quick reference. I will introduce the list to the City Council at its November 10th meeting. As I informed committee members at the last meeting, some of the recommendations will require amendments to the City's Comprehensive Plan. Because State law limits comprehensive plan amendments to one time per year, consideration may only be given by the Planning Commission in 1998 as we have completed our plan amendment process for this year.

Please call me if you have any questions.

Westside Sub-Area Planning Committee Recommendations

STREETS, SIDEWALKS AND TRANSPORTATION

1. Install sidewalks and curbing from Gig Harbor Motor Inn to the City Limits at Quail Run/Park (1998-99).
2. Improve and pave the graveled portion of 50th Street Court NW and install sidewalks on at least the south side of the roadway (1998-99).
3. Install sidewalks on at least the south side of Briarwood from Point Fosdick to 38th Avenue, with marked four way crosswalks at each intersection. (1998-99). This neighborhood is within the walking distance of the Peninsula School District, i.e., Goodman Intermediate and Harbor Heights Elementary. Extend sidewalks along 38th Avenue to the Schools.
4. Consider using traffic circles on Briarwood Lane as a measure to control traffic flow.
5. Although it is outside the City limits, determine, with the appropriate agencies, the feasibility of extending 36th street from 38th Avenue to Point Fosdick as a through street in order to carry traffic to and from Highway 16. (1998-1999). If necessary, work with Pierce County to affect a connection of 36th Street with 38th Avenue. This will help relieve to traffic on Briarwood Lane, which is a major concern of the residents and would provide safe walking for residents and workers in the area. Also, this should be considered a potential mitigation measure should 24th Street be closed off to SR-16 as a result of a new or expanded bridge.
6. Study and establish a plan and time table for a master traffic flow system for the annexed area to include the two existing Highway 16 interchanges and the Hunt Street over/under crossing of Highway 16. (1998-2000).
7. Study and establish a plan and timetable for traffic control at; 1) Hunt and 38th Avenue and 2) 38th Avenue and Olympic. (1998).
8. Widen Olympic Drive and 56th Street NW to 38th Avenue, to include curbing and sidewalks. (2000-2002).
9. Study and establish a public transportation plan, both short (one to five years) and long term (2010 to 2025), that includes bus stops, park and ride facilities and mass transit (RTA) stops. (1998-2000).

SEWER AND STORM WATER

1. Establish another ULID for the residential and commercial neighborhoods within the annexation area and outside the current ULID No. 2 to enable sewer connections by 2010. (1999-2000).

2. Review existing storm water systems and establish a master plan for their replacement or improvement (1998-1999).
3. Work with Pierce County to control and manage storm water run-off from developments in the county outside the Westside which affect existing properties within the Westside. Establish a Master plan for the development of "new" storm water systems required for the annexed area (1999-2002).
4. With the appropriate agencies or companies develop a plan for the placement of all utilities and storm systems underground (1998-2002).

LAND USE

1. Visually Sensitive Areas/Visual nodes – Consider amendments to the Design Guidelines to permit enhanced design components as opposed to outright screening for the commercial areas near the interchanges. Amend design manual to define "enhanced or extensive design review."
2. Define an area within the Westside which is suitable for a public park.
3. Amend the City Zoning Map for the Westside Area (attached) to include an additional 22 acres as C-1 (general commercial) and 26 acres as B-2 (commercial-business). All areas affected are designated Commercial/Business on the City of Gig Harbor Comprehensive Plan Land Use Map.

ENFORCEMENT ISSUES

1. Implement increased police protection for both residential and commercial needs, based upon the completed complement of officers (1997).
2. Increase traffic surveillance on Briarwood Land.
3. Noise abatement at the Narrows airport – Air traffic currently violates FAA regulations by using unauthorized approach vectors and altitude. The City should inform the City of Tacoma (owner of the Tacoma Narrows Airport) that FAA rules are not being enforced.



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR
DATE: October 27, 1997
SUBJECT: Quarterly Finance Reports

Attached are the quarterly financial reports for the third quarter of 1997.

Total resources, including all revenues and beginning cash balances, are at 62% of the annual budget. Revenues, excluding cash balances, are at 86% of the annual budget while expenditures are at 31%.

Overall General Fund revenues (excluding beginning balance) are slightly below budget at 72% of the annual budget. Although sales tax receipts at 69% of budget are not keeping pace, it appears we will hit our budget of \$1.8 million. Property tax receipts, at 79% are exceeding budget, and, with two of the largest collection months – October and November on the horizon, we expect to exceed our annual budget for property taxes. At this time, it appears the General Fund will meet or exceed budgeted revenues for 1997.

General Fund expenditures are at 65% of budget. Non-departmental has expended 82% of budget. This includes transfers of \$500,000 to Property Acquisition, \$100,000 to '91 GO Bonds – Soundview, and \$100,000 to Storm Sewer. Remaining transfers budgeted are \$50,000 to Storm Sewer and \$100,000 to the Street Fund. Admin/Finance has expended 84% of budget due to legal fees. Through September legal fees are \$148,000 or 123% of budget. All other departments are below 75% of budgeted expenditures.

Street revenues are only 9% and expenditures 10% of budget because projects budgeted at \$3.5 million and related revenues have not yet been started.

We have received \$6,923 in Hotel-Motel taxes, which is 770% of budget. As the new motels open, this will become a significant revenue source.

Water and Sewer revenues are 81% and 67% of budget. Water expenditures are 72% of budget while Sewer expenditures are 55%. We should experience an increase in revenues in the 4th quarter. Both Water and Sewer should be near budgeted revenues. It appears we should be well within our expenditures budget for both Water and Sewer.

Cash balances appear adequate in all funds. We will have a budget amendment next month to increase Administrative/Finance to cover legal fees for the remainder of the year.

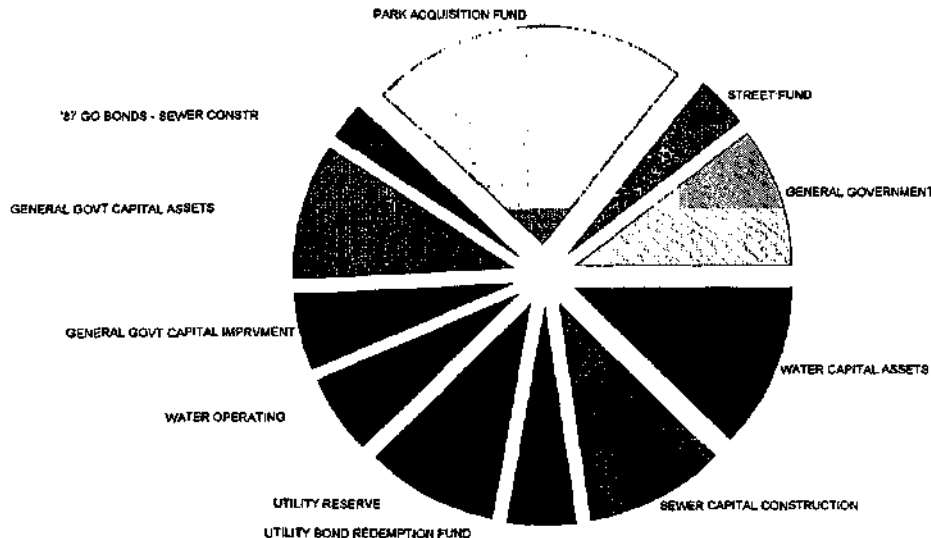
**CITY OF GIG HARBOR
CASH AND INVESTMENTS
YEAR TO DATE ACTIVITY
AS OF SEPTEMBER 30, 1997**

FUND NO.	DESCRIPTION	BEGINNING BALANCE	REVENUES	EXPENDITURES	OTHER CHANGES	ENDING BALANCE
001	GENERAL GOVERNMENT	\$823,100	\$2,204,936	\$2,462,090	(\$42,995)	\$522,950
101	STREET FUND	282,357	344,843	424,811	(7,641)	194,748
105	DRUG INVESTIGATION FUND	13,467	481	857	(1,466)	11,627
107	HOTEL-MOTEL FUND	4,399	6,923	140	-	11,182
109	PARK ACQUISITION FUND	682,058	537,309	8,978	-	1,210,389
200	'78 GO BONDS - FIRE	7,702	212	7,914	-	0
201	'75 GO BONDS - SEWER	5,103	211	-	-	5,314
203	'87 GO BONDS - SEWER CONSTR	38,389	117,348	16,893	(85)	138,760
208	91 GO BONDS - SOUNDVIEW DRIVE	6,756	101,688	23,666	(87)	84,690
301	GENERAL GOVT CAPITAL ASSETS	450,098	60,544	-	-	510,642
305	GENERAL GOVT CAPITAL IMPRVMEN	236,081	51,683	-	-	287,765
401	WATER OPERATING	386,580	519,642	549,905	(57,545)	298,773
402	SEWER OPERATING	65,477	631,568	586,609	(12,337)	98,100
407	UTILITY RESERVE	474,937	17,805	-	-	492,742
408	UTILITY BOND REDEMPTION FUND	300,085	374,266	479,966	64,828	259,213
410	SEWER CAPITAL CONSTRUCTION	574,229	238,736	287,876	5,310	530,398
411	STORM SEWER OPERATING	48,865	192,348	195,998	(10,626)	34,587
420	WATER CAPITAL ASSETS	406,475	353,447	138,933	(215)	620,774
605	LIGHTHOUSE MAINTENANCE TRUST	3,434	115	788	(205)	2,556
631	MUNICIPAL COURT	0	36,256	36,256	-	0
801	CLEARING CLAIMS	(0)	-	-	-	(0)
		<u>\$4,809,592</u>	<u>\$5,790,361</u>	<u>\$5,221,679</u>	<u>(\$63,066)</u>	<u>\$5,315,208</u>

**COMPOSITION OF CASH AND INVESTMENTS
AS OF SEPTEMBER 30, 1997**

	MATURITY	RATE	BALANCE
CASH ON HAND			\$300
CASH IN BANK		1.49%	52,331
LOCAL GOVERNMENT INVESTMENT POOL		5.52%	4,770,997
STUDENT LOAN MKT ASSN. (SALLY MAE)	06/01/98	6.10%	491,580
			<u>\$5,315,208</u>

Ending Cash Balances By Fund No.

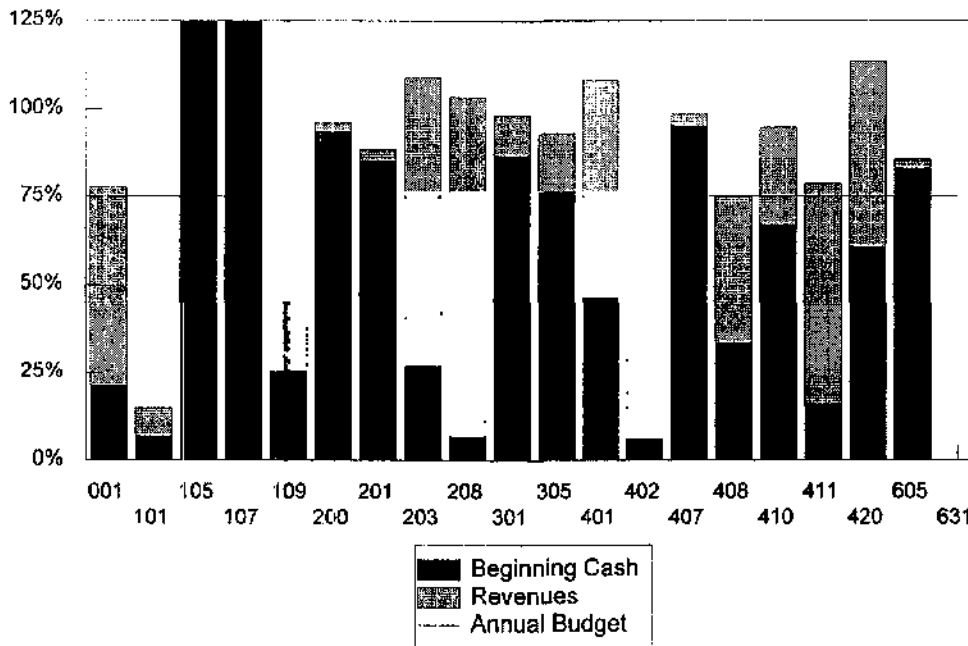


Smaller balances are excluded from chart

**CITY OF GIG HARBOR
YEAR-TO-DATE RESOURCE SUMMARY
AND COMPARISON TO BUDGET
FOR PERIOD ENDING SEPTEMBER 30, 1997**

FUND NO.	DESCRIPTION	ESTIMATED RESOURCES	ACTUAL Y-T-D RESOURCES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT	\$3,896,821	\$3,028,035	\$868,786	77.71%
101	STREET FUND	4,212,574	627,200	3,585,374	14.89%
105	DRUG INVESTIGATION FUND	8,200	13,949	(5,749)	170.11%
107	HOTEL-MOTEL FUND	3,500	11,322	(7,822)	323.48%
109	PARK ACQUISITION FUND	2,700,000	1,219,366	1,480,634	45.16%
200	'78 GO BONDS - FIRE	8,250	7,914	336	95.93%
201	'75 GO BONDS - SEWER	6,000	5,314	686	88.57%
203	'87 GO BONDS - SEWER CONSTR	143,200	155,738	(12,538)	108.76%
208	91 GO BONDS - SOUNDVIEW DRIVE	105,000	108,444	(3,444)	103.28%
301	GENERAL GOVT CAPITAL ASSETS	520,000	510,642	9,358	98.20%
305	GENERAL GOVT CAPITAL IMPROVEMENT	310,000	287,765	22,235	92.83%
401	WATER OPERATING	838,100	906,222	(68,122)	108.13%
402	SEWER OPERATING	1,065,744	697,045	368,699	65.40%
407	UTILITY RESERVE	500,000	492,742	7,258	98.55%
408	UTILITY BOND REDEMPTION FUND	896,786	674,351	222,435	75.20%
410	SEWER CAPITAL CONSTRUCTION	860,000	812,965	47,035	94.53%
411	STORM SEWER OPERATING	307,000	241,213	65,787	78.57%
420	WATER CAPITAL ASSETS	671,000	759,922	(88,922)	113.25%
605	LIGHTHOUSE MAINTENANCE TRUST	4,150	3,549	601	85.53%
631	MUNICIPAL COURT	-	36,256	(36,256)	NA
		\$17,056,325	\$10,599,953	\$6,456,372	62.15%

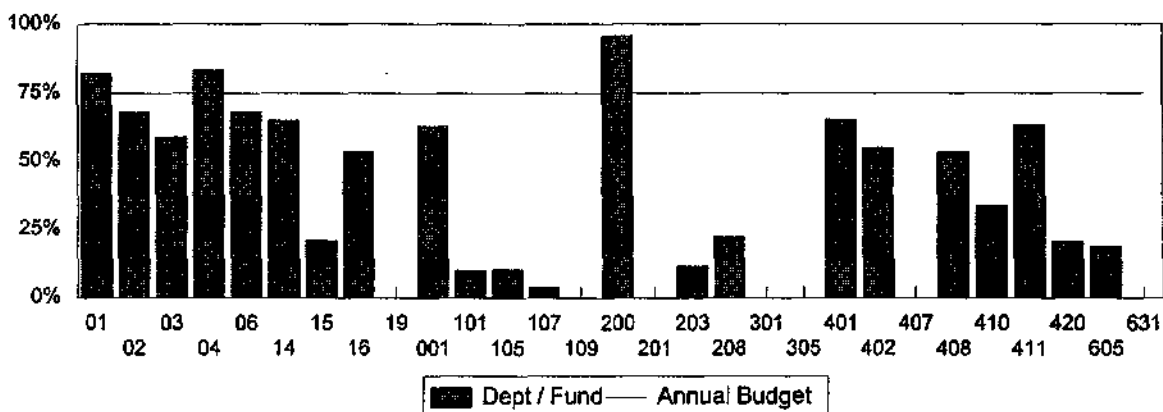
Resources as a Percentage of Annual Budget



**CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
AND COMPARISON TO BUDGET
FOR PERIOD ENDING SEPTEMBER 30, 1997**

FUND NO.	DESCRIPTION	ESTIMATED EXPENDITURES	ACTUAL Y-T-D EXPENDITURES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT				
01	NON-DEPARTMENTAL	\$951,464	\$783,997	\$167,467	82.40%
02	LEGISLATIVE	19,000	13,005	5,995	68.45%
03	MUNICIPAL COURT	248,395	147,095	101,300	59.22%
04	ADMINISTRATIVE/FINANCIAL	405,450	339,259	66,191	83.67%
06	POLICE	1,120,647	766,398	354,249	68.39%
14	COMMUNITY DEVELOPMENT	354,622	230,890	123,732	65.11%
15	PARKS AND RECREATION	560,550	118,626	441,924	21.16%
16	BUILDING	117,000	62,819	54,181	53.69%
19	ENDING FUND BALANCE	119,693	-	119,693	-
001	TOTAL GENERAL FUND	3,896,821	2,462,090	1,434,731	63.18%
101	STREET FUND	4,212,574	424,811	3,787,763	10.08%
105	DRUG INVESTIGATION FUND	8,200	857	7,343	10.45%
107	HOTEL-MOTEL FUND	3,500	140	3,360	4.00%
109	PARK ACQUISITION FUND	2,700,000	8,978	2,691,022	0.33%
200	'78 GO BONDS - FIRE	8,250	7,914	336	95.93%
201	'75 GO BONDS - SEWER	6,000	-	6,000	-
203	'87 GO BONDS - SEWER CONSTR	143,200	16,893	126,307	11.80%
208	91 GO BONDS - SOUNDVIEW DRIVE	105,000	23,666	81,334	22.54%
301	GENERAL GOVT CAPITAL ASSETS	520,000	-	520,000	-
305	GENERAL GOVT CAPITAL IMPROVEM	310,000	-	310,000	-
401	WATER OPERATING	838,100	549,905	288,195	65.61%
402	SEWER OPERATING	1,065,744	586,609	479,135	55.04%
407	UTILITY RESERVE	500,000	-	500,000	-
408	UTILITY BOND REDEMPTION FUND	896,787	479,966	416,821	53.52%
410	SEWER CAPITAL CONSTRUCTION	850,000	287,876	562,124	33.87%
411	STORM SEWER OPERATING	307,000	195,998	111,002	63.84%
420	WATER CAPITAL ASSETS	671,000	138,933	532,067	20.71%
605	LIGHTHOUSE MAINTENANCE TRUST	4,150	788	3,362	19.00%
631	MUNICIPAL COURT	-	36,256	(36,256)	NA
		\$17,046,326	\$5,221,679	\$11,824,647	30.63%

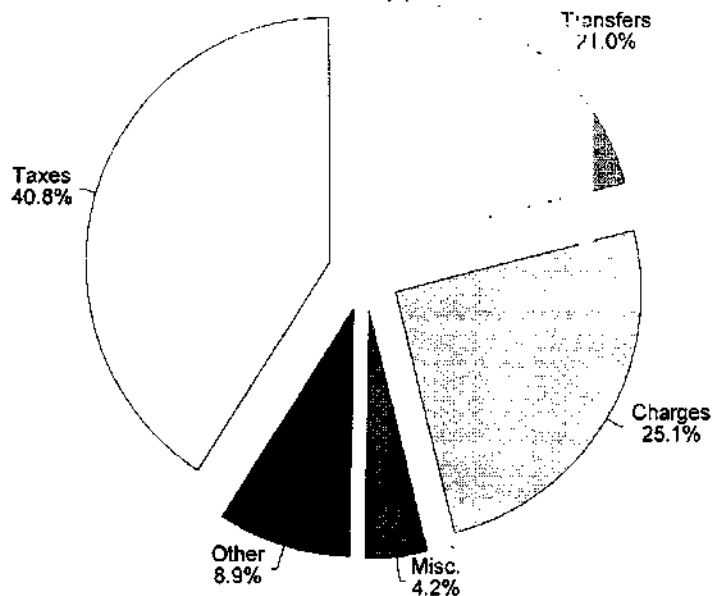
Expenditures as a Percentage of Annual Budget



**CITY OF GIG HARBOR
YEAR-TO-DATE REVENUE SUMMARY
BY TYPE
FOR PERIOD ENDING SEPTEMBER 30, 1997**

<u>TYPE OF REVENUE</u>	<u>AMOUNT</u>
Taxes	\$2,362,790
Licenses and Permits	99,657
Intergovernmental	170,198
Charges for Services	1,454,112
Fines and Forfeits	49,593
Miscellaneous	243,895
Non-Revenues	193,882
Transfers and Other Sources of Funds	1,216,236
Total Revenues	5,790,361
Beginning Cash Balance	4,809,592
Total Resources	<u>\$10,599,953</u>

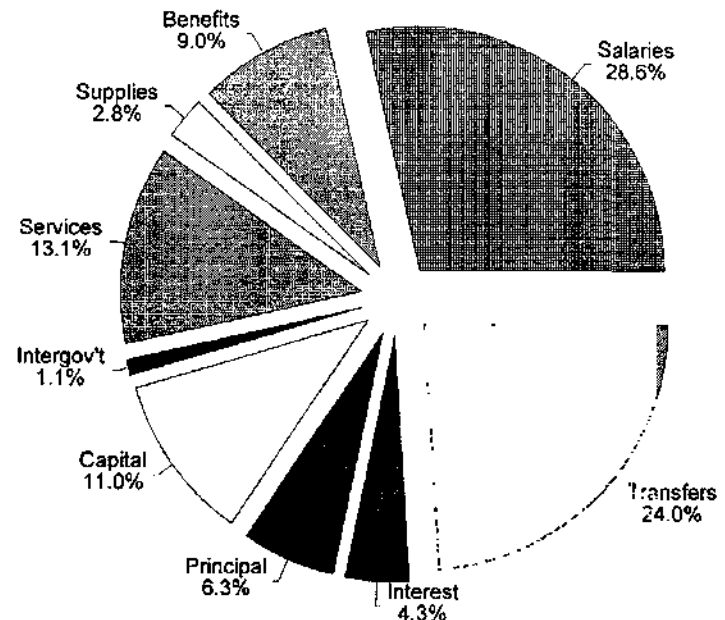
Revenues by Type - All Funds



**CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
BY TYPE
FOR PERIOD ENDING SEPTEMBER 30, 1997**

<u>TYPE OF EXPENDITURE</u>	<u>AMOUNT</u>
Wages and Salaries	\$1,490,420
Personnel Benefits	467,369
Supplies	144,929
Services and Other Charges	686,006
Intergovernmental Services and Charges	55,538
Capital Expenditures	572,148
Principal Portions of Debt Payments	327,501
Interest Expense	224,799
Transfers and Other Uses of Funds	1,251,166
Total Expenditures	5,221,679
Ending Cash Balance	5,315,208
Total Uses	<u>\$10,536,887</u>

Expenditures by Type - All Funds



CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
BY FUND TYPE
AS OF SEPTEMBER 30, 1997

	GENERAL GOVERNMENT	SPECIAL REVENUE	DEBT SERVICE	TOTAL GOVERNMENTAL	PROPRIETARY	FIDUCIARY	ACCOUNT GROUPS	TOTAL LL FUND TYPES
ASSETS								
CASH	\$6,765	\$23,674	\$2,430	\$32,868	\$19,762	-	-	\$52,631
INVESTMENTS	516,185	2,205,234	226,334	2,947,753	2,314,824	-	-	5,262,577
RECEIVABLES	22,386	13,142	6,736	42,264	2,648,447	-	-	2,690,710
FIXED ASSETS	-	-	-	-	11,689,794	-	5,765,376	17,455,170
OTHER	-	-	-	-	24,883	-	1,260,964	1,285,848
TOTAL ASSETS	\$545,336	\$2,242,049	\$235,500	\$3,022,885	\$16,697,711	-	\$7,026,341	\$26,746,936
LIABILITIES								
CURRENT	6,445	3,000	5,000	14,445	1,318,261	-	-	1,332,706
LONG TERM	8,810	8,810	4,516	22,136	3,169,590	-	1,260,964	4,452,690
TOTAL LIABILITIES	15,255	11,810	9,516	36,580	4,487,851	-	1,260,964	5,785,396
FUND BALANCE:								
BEGINNING OF YEAR	789,196	1,663,913	54,998	2,508,108	12,270,301	-	5,765,376	20,543,785
Y-T-D REVENUES	2,204,936	1,001,899	219,460	3,426,294	2,176,884	-	-	5,603,179
Y-T-D EXPENDITURES	(2,462,090)	(435,574)	(48,474)	(2,946,138)	(2,239,286)	-	-	(5,185,424)
ENDING FUND BALANCE	530,081	2,230,239	225,984	2,986,304	12,209,860	-	5,765,376	20,961,540
TOTAL LIAB. & FUND BAL.	\$545,336	\$2,242,049	\$235,500	\$3,022,884	\$16,697,711	-	\$7,026,341	\$26,746,936

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 1997**

	SPECIAL REVENUE FUNDS								TOTAL SPECIAL REVENUE
	001 GENERAL GOVERNMENT	101 STREET	105 DRUG INVESTIGATION	107 HOTEL - MOTEL	109 PARK ACQUISITION	301 GENERAL GOVT CAPITAL ASSETS	305 GENERAL GOVT CAPITAL IMP	605 LIGHTHOUSE MAINTENANCE	
CASH	\$6,765	\$2,068	\$124	\$119	\$12,856	\$5,424	\$3,056	\$27	\$23,674
INVESTMENTS	516,185	192,679	11,503	11,063	1,197,533	505,218	284,708	2,529	2,205,234
RECEIVABLES	22,386	13,142	-	-	-	-	-	-	13,142
FIXED ASSETS	-	-	-	-	-	-	-	-	-
OTHER	-	-	-	-	-	-	-	-	-
TOTAL ASSETS	\$545,336	\$207,889	\$11,627	\$11,182	\$1,210,389	\$510,642	\$287,765	\$2,556	\$2,242,049
LIABILITIES									
CURRENT	\$6,445	\$3,000	-	-	-	-	-	(\$0)	\$3,000
LONG TERM	8,810	8,810	-	-	-	-	-	-	8,810
TOTAL LIABILITIES	15,255	11,810	-	-	-	-	-	(0)	11,810
FUND BALANCE:									
BEGINNING OF YEAR	789,196	276,047	12,002	4,399	682,058	450,098	236,081	3,229	1,663,913
Y-T-D REVENUES	2,204,936	344,843	481	6,923	537,309	60,544	51,683	115	1,001,899
Y-T-D EXPENDITURES	(2,462,090)	(424,811)	(857)	(140)	(8,978)	-	-	(788)	(435,574)
ENDING FUND BALANCE	530,081	196,079	11,627	11,182	1,210,389	510,642	287,765	2,556	2,230,239
TOTAL LIAB. & FUND BAL.	\$545,336	\$207,889	\$11,627	\$11,182	\$1,210,389	\$510,642	\$287,765	\$2,556	\$2,242,049

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 1997**

	DEBT SERVICE				
	200 78 GO BONDS FIRE	201 75 GO BONDS SEWER	203 87 GO BONDS SEWER CONST	208 91 GO BONDS SOUNDVIEW DR	TOTAL DEBT SERVICE
CASH	\$0	\$56	\$1,474	\$899	\$2,430
INVESTMENTS	0	5,258	137,286	83,790	226,334
RECEIVABLES	-	-	6,736	-	6,736
FIXED ASSETS	-	-	-	-	-
OTHER	-	-	-	-	-
TOTAL ASSETS	\$0	\$5,314	\$145,496	\$84,690	\$235,500
LIABILITIES					
CURRENT	-	\$5,000	-	-	\$5,000
LONG TERM	-	-	4,516	-	4,516
TOTAL LIABILITIES	-	5,000	4,516	-	9,516
FUND BALANCE:					
BEGINNING OF YEAR	7,702	103	40,525	6,668	54,998
Y-T-D REVENUES	212	211	117,348	101,688	219,460
Y-T-D EXPENDITURES	(7,914)	-	(16,893)	(23,666)	(48,474)
ENDING FUND BALANCE	0	314	140,980	84,690	225,984
TOTAL LIAB. & FUND BAL.	\$0	\$5,314	\$145,496	\$84,690	\$235,500

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 1997**

	PROPRIETARY							TOTAL PROPRIETARY
	401 WATER OPERATING	402 SEWER OPERATING	407 UTILITY RESERVE	408 89 UTILITY BOND REDEMPTION	410 SEWER CAP. CONST.	411 STORM SEWER OPERATING	420 WATER CAP. ASSETS	
CASH	\$2,641	\$1,663	\$1,057	\$1,709	\$5,633	\$466	\$6,593	\$19,762
INVESTMENTS	296,132	96,437	491,685	257,504	524,765	34,121	614,181	2,314,824
RECEIVABLES	133,436	107,612	1,550	2,332,221	50,387	23,242	-	2,648,447
FIXED ASSETS	1,796,036	6,775,654	-	-	2,545,514	572,590	-	11,689,794
OTHER	-	-	-	24,883	-	-	-	24,883
TOTAL ASSETS	\$2,228,244	\$6,981,366	\$494,292	\$2,616,317	\$3,126,299	\$630,418	\$620,774	\$16,697,711
LIABILITIES								
CURRENT	(\$0)	-	-	\$422,530	\$895,731	-	-	\$1,318,261
LONG TERM	18,939	72,891	-	3,068,000	-	9,761	-	3,169,590
TOTAL LIABILITIES	18,939	72,891	-	3,490,530	895,731	9,761	-	4,487,851
FUND BALANCE:								
BEGINNING OF YEAR	2,239,568	6,861,556	476,487	(617,586)	2,279,708	624,308	406,260	12,270,301
Y-T-D REVENUES	519,642	631,568	17,805	223,339	238,736	192,348	353,447	2,176,884
Y-T-D EXPENDITURES	(549,905)	(586,609)	-	(479,966)	(287,876)	(195,998)	(138,933)	(2,239,286)
ENDING FUND BALANCE	2,209,305	6,908,476	494,292	(874,212)	2,230,567	620,658	620,774	12,209,860
TOTAL LIAB. & FUND BAL.	\$2,228,244	\$6,981,366	\$494,292	\$2,616,317	\$3,126,298	\$630,418	\$620,774	\$16,697,711

CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 1997

	ACCOUNT GROUPS			
	FIDUCIARY 631 MUNICIPAL COURT	820 GENERAL FIXED ASSET GROUP	900 GENERAL L-T DEBT GROUP	TOTAL ACCOUNT GROUPS
CASH	-	-	-	-
INVESTMENTS	-	-	-	-
RECEIVABLES	-	-	-	-
FIXED ASSETS	-	5,765,376	-	5,765,376
OTHER	-	-	1,260,964	1,260,964
TOTAL ASSETS	-	\$5,765,376	\$1,260,964	\$7,026,341
LIABILITIES				
CURRENT	-	-	-	-
LONG TERM	-	-	1,260,964	1,260,964
TOTAL LIABILITIES	-	-	1,260,964	1,260,964
FUND BALANCE:				
BEGINNING OF YEAR	-	5,765,376	-	5,765,376
Y-T-D REVENUES	-	-	-	-
Y-T-D EXPENDITURES	-	-	-	-
ENDING FUND BALANCE	-	5,765,376	-	5,765,376
TOTAL LIAB. & FUND BAL.	-	\$5,765,376	\$1,260,964	\$7,026,341

LIMITED TAX GENERAL OBLIGATION BOND UPDATE



INVESTMENT SERVICES
INVESTMENT BANKING

October 27, 1997

PRELIMINARY FINANCING SCHEDULE

**CITY OF GIG HARBOR, WASHINGTON
\$1,990,000 (PRELIMINARY)
LIMITED TAX GENERAL OBLIGATION AND REFUNDING BONDS, 1997**

OCTOBER						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

NOVEMBER						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

<u>Date</u>	<u>Event</u>	<u>Responsibility</u>
October 27	Update to Council	UW
November 6	Market Bonds, CPA Verification of Escrow (Lock-in Interest Rates and Savings) Verbal Award	UW Issuer
November 10	Adopt Ordinance Purchase Contract Offered/Approved	Issuer UW/Issuer
Nov. 11 - Nov. 24	Distribute Closing Documents	BC
November 25	Close Issue	All Parties

Legend

*Issuer - City of Gig Harbor
BC - Bond Counsel (Preston Gates & Ellis, LLP)
UW - Underwriter (Dain Bosworth Incorporated)*

DISTRIBUTION LIST

**CITY OF GIG HARBOR, WASHINGTON
\$1,990,000 (PRELIMINARY)
LIMITED TAX GENERAL OBLIGATION AND REFUNDING BONDS, 1997**

ISSUER

Dave Rodenbach
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

Phone: (253) 851-8136
Fax: (253) 851-8563

BOND COUNSEL

Cynthia Weed
Preston Gates & Ellis LLP
5000 Columbia Seafirst Center
701 Fifth Avenue
Seattle, WA 98104-7078

Phone: (206) 623-7580
Fax: (206) 623-7022

UNDERWRITER

Dave Trageser, Vice President
Dain Bosworth Incorporated
1201 Third Avenue, Suite 2500
Seattle, WA 98101-3044

Phone: (206) 621-3106
Fax: (206) 621-3151
E-mail: dtrageser@dain.com

CPA VERIFICATION

Doug Carlisle
Causey Demgen & Moore
1801 California Street, Suite 4650
Denver, CO 80202

Phone: (303) 296-2229
Fax: (303) 296-3731

ESCROW TRUSTEE

Shirley Young
First Trust N.A.
601 Union Street, Suite 2120
P.O Box 24425
Seattle, WA 98101

Phone: (206) 461-4126
Fax: (206) 461-4175



"A2" RATING CONFIRMATION

 Moody's Investors Service

99 Church Street
New York, NY 10007

March 5, 1997

Mr. Tom Erlow, Finance Director
City of Gig Harbor
3185 Ludson Street, P.O. Box 145
Gig Harbor, WA 98335

Dear Mr. Erlow:

We wish to inform you that on March 4, 1997, Moody's Rating Committee assigned an **A2** rating to Gig Harbor's Limited Tax General Obligation bonds.

Moody's will monitor this rating and reserves the right, in its sole discretion, to revise or withdraw this rating at any time in the future.

The rating as well as any revisions or withdrawals thereof will be publicly disseminated by Moody's through normal print and electronic media and in response to oral requests to Moody's rating desk.

Should you have any questions regarding the above, please do not hesitate to contact me or the analyst assigned to this transaction, **Maureen** at 212-274-1735.

Sincerely,

Brad Gewehr
Vice-President/Assistant Director

BG:MAJ/jbe

cc: Mr. David Trageer, Vice President
Dain Bosworth
1201 Third Avenue, Suite 2500
Seattle, WA 98101



SAVINGS

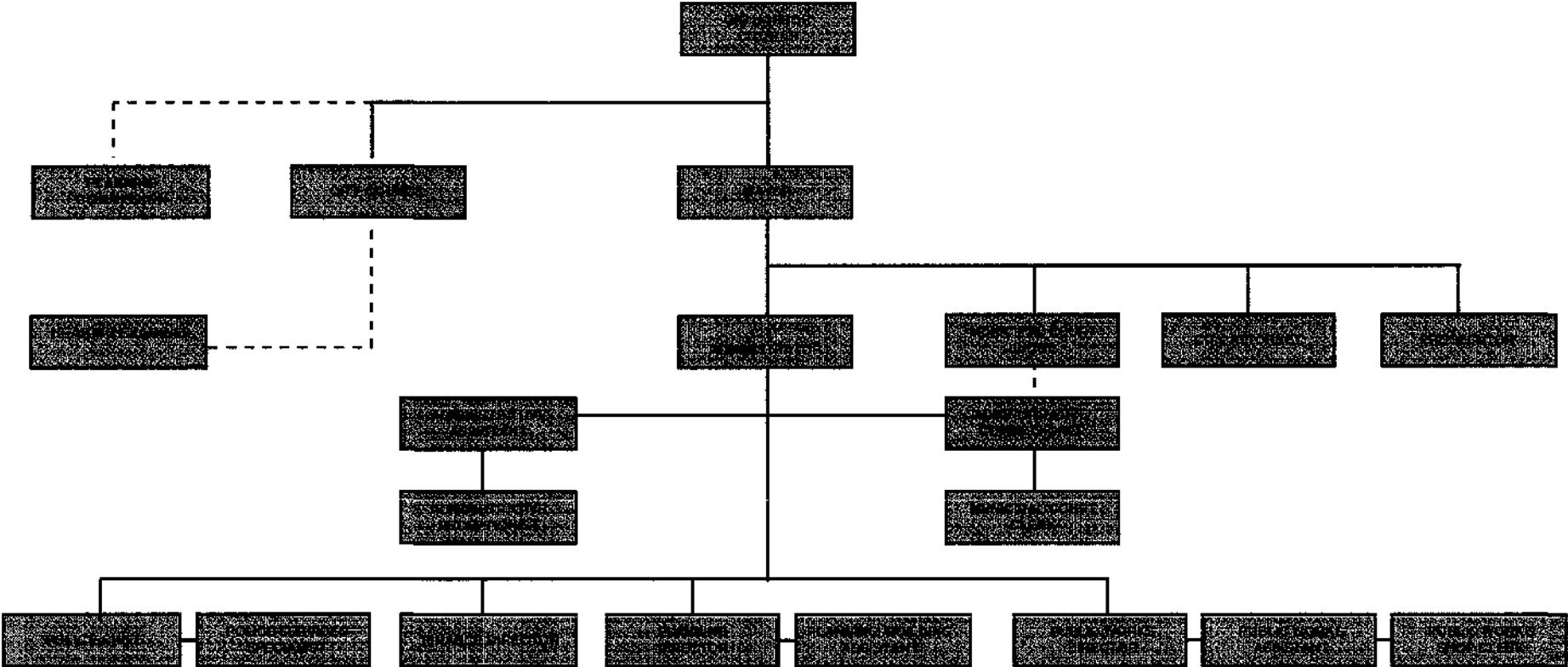
- ✓ **The rating upgrade saves approximately 25 basis points on a general obligation financing**
- ✓ **Savings will be realized on future general obligation bond issues**
- ✓ **This translates into about \$40,000 savings in principal and interest on the proposed 1997 bond issue**





RATING FACTORS

① Solid Management



Together we create a community of good neighbors

ATTN: Dave Trageser
Dain Bosworth

MOODY'S ASSIGNS A2 RATING TO GIG HARBOR, WASHINGTON'S LIMITED TAX GENERAL OBLIGATION BONDS

Gig Harbor WA
Municipality
Washington

Moody's Rating

Issue	Rating
Limited Tax General Obligation and Refunding Bonds, 1997	A2
Sale Amount	\$1,990,000.00
Expected Sale Date	11/06/97
Rating Description	General Obligation, Limited Tax

NEW YORK, October 27, 1997 -- Moody's has assigned an A2 rating to Gig Harbor's limited tax general obligation bonds based on high wealth indicators and a growing tax base, low levels of rapidly retired debt, and strong financial performance.

RECENT ANNEXATIONS EXPECTED TO BRING TAX BASE GROWTH AND FINANCIAL GAINS

Although small, the city's tax base has exhibited steady growth in recent years and is expected to grow an additional 45% in fiscal 1998 due to two recent annexations. The annexations, affecting areas to the north and west of the city, were approved in February 1997 and resulted from citizen-initiated efforts to obtain services, especially development of roads and public safety coverage. Officials anticipate a positive financial impact from the annexations as additional sales and property tax collections are expected to outpace the cost of providing expanded services.

The city is a relatively affluent community located a few miles northwest of Tacoma on Puget Sound. Tourism plays an important role in the local economy, but the city's central Puget Sound location enables many residents to commute to jobs as far south as Olympia and north to Seattle. Income levels and housing values are well above state norms.

LOW LEVELS OF RAPIDLY RETIRED DEBT; LIMITED CAPITAL NEEDS

Low direct debt levels are attributable to infrequent debt issuance, rapid payout and considerable funding of capital improvements on a pay-as-you-go basis. Upcoming capital needs are minimal, including road improvements in the annexed area to the north, to be funded from current revenues, and parklands acquisition if voters approve the issuance of unlimited tax bonds. Debt burden is well below median levels and is expected to remain low given expected tax base growth and full repayment of general obligation bonds within ten years.

STRONG FINANCIAL PERFORMANCE DESPITE PLANNED DRAW FOR CAPITAL SPENDING

City finances are strong, evidenced by recurring operating surpluses and growing General Fund balances that exceeded 33% of revenues in fiscal 1996. While planned capital spending has prompted recent transfers to a property

acquisition reserve, officials indicate that General Fund balances will be maintained above the city's policy level of 20% of expenditures. Adequate reserves must be maintained to mitigate exposure to fluctuations in sales taxes, the city's largest revenue source.

ANALYSTS:

Matthew Jones, Analyst, Public Finance Group, Moody's Investors Service

Kenneth Kurtz, Backup Analyst, Public Finance Group, Moody's Investors Service

CONTACTS:

Journalists: (212) 553-0376

Research Clients: (212) 553-1625

