



City Council Regular Meeting Agenda

Puyallup City Council Chambers

333 S Meridian, Puyallup 98371

Tuesday, June 5, 2018

6:30 PM

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA

Council Requested Additions:

- \$275 Incentive for New Family-Wage Jobs (Palmer/Swanson)

1. CONSIDERATION OF MINUTES

- 1.a Minutes of the May 1, 2018 meeting
[May 1, 2018 - Draft Minutes.docx](#)

2. PRESENTATIONS AND PROCLAMATIONS

- 2.a Presentation by WSDOT Staff relating to the 167 Extension Project
[SR 167 Mega Project Folio Sept. 2015](#)
[The Final Four Miles](#)

CITIZEN COMMENTS

3. CONSENT AGENDA

- 3.a Authorize the purchase of property located on Deer Creek to support NPDES Permit and TMDL implementation
[Purchase and Sale Agreement](#)
[Boundary Line Adjustment](#)

4. ORDINANCES

- 4.a First Reading of an ordinance amending the Puyallup Municipal Code relating to Critical Areas
[Ordinance 21.06 Critical Areas](#)
- 4.b First Reading of an ordinance updating the Puyallup Municipal Code relating to sewer connection requirements
[Sewer Suspension Ordinance - Draft](#)
[RCW 35A.21.390](#)

- 4.c Second Reading of an ordinance updating the Puyallup Municipal Code relating to small cell wireless facilities
 - 1) [City Council Memo, Small Cell Wireless Code Changes, E. Zana](#)
 - 2) [Puyallup comment letter, Verizon Wireless, signed](#)
 - 3) [Small Cell Wireless Draft ordinance](#)
 - 4) [City Council- Small Cell Wireless staff report-04-17-18](#)
 - 5) [Planning Commission Public Hearing Minutes-FINAL-02-28-18](#)

5. RESOLUTIONS

- 5.a Approve a resolution appointing members to the Lodging Tax Advisory Committee
[Resolution - LTAC Appointments 2018](#)

6. CONSIDERATIONS AND REQUESTS

- 6.a Authorize the extension of a professional services agreement with American Traffic Solutions (ATS)
[Final Contract Extension ATS 2018-2023 - 6-5-2018 agenda](#)

7. OTHER BUSINESS

CITY MANAGER'S REPORT

COUNCIL REPORTS

MAYOR'S REPORT

EXECUTIVE SESSION

ADJOURNMENT

The City Council Chambers is wheelchair accessible. Those needing assistance with hearing devices should contact the City Clerk's Office (253-841-5480) the Friday preceding the meeting.



City Council Agenda Item Report

Submitted by: Steve Kirkelie

Submitting Department: City Manager's Office

Meeting Date: 6/05/2018

Subject:

Council Requested Additions:

- \$275 Incentive for New Family-Wage Jobs (Palmer/Swanson)

Presenter:

Mayor John Palmer

Recommendation:

Pursuant to Rule 2.6, decide whether to add the proposed agenda item to the approved agenda, and if so, determine its location in the approved agenda. If added to the agenda, staff recommends this item be placed under Considerations and Requests as Item No. 5.b.

Background:

The Mayor agreed to participate in the Pierce County and City's initiative to offer incentives for new family wage jobs. The general initiative is a one-time job credit in 2019 available to any business, new or old, that creates at least five "family-wage" jobs paying a minimum of \$65,000 a year. It was recognized that each city would need to design the initiative to meet its circumstances and identify an appropriate funding source. In agreeing to participate, the Mayor agreed to make a proposal to the City Council. The Mayor is proposing the City offer a \$275 property tax abatement for each new qualifying job, with a particular focus on the City's business park (MP) zone.

Council Direction:

Fiscal Impacts:

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Mary Winter

Submitting Department: City Clerk's Office

Meeting Date: 6/05/2018

Subject:

Minutes of the May 1, 2018 meeting

Presenter:

Recommendation:

Consider and approve the minutes from the City Council Regular Meeting of May 1, 2018.

Background:

Council Direction:

Fiscal Impacts:

ATTACHMENTS

**City of Puyallup
Regular City Council Meeting
May 1, 2018**

(These minutes are not verbatim. The meeting was recorded, and copies of the recording are retained for a period of six years from the date of the meeting and are available upon request.)

COUNCILMEMBERS PRESENT: Mayor Palmer, Deputy Mayor Swanson, Councilmember Door, Councilmember Farris, Councilmember Jacobsen, Councilmember Kastama, and Councilmember Johnson

APPROVAL OF THE AGENDA

Council Action: A motion was made by Deputy Mayor Swanson, second by Councilmember Johnson, to amend and approve the agenda with the addition of an executive session to discuss personnel issues. The motion passed 4-3 (Palmer/Door/Farris)

PRESENTATIONS AND PROCLAMATIONS

National Historic Preservation Month

Mayor Palmer presented a National Historic Preservation Month proclamation to Mr. Kris Stamon, Vice-Chair of the Design Review and Historic Preservation Board.

Mr. Stamon thanked the council for their efforts to support historic preservation in the city. He also announced two upcoming community events, Mother's Day Tea at the Meeker Mansion and a presentation regarding the history of the Washington State Fair.

Daisy Award – Good Samaritan Hospital Nurses

Chief Nurse Executive Elizabeth Fiegel introduced the newly implemented DAISY Award program to honor extraordinary nurses in the MultiCare Health System, as nominated by patients, patients' families and co-workers.

Beth Schubert, Chairperson of Clinical Practice Council introduced Good Samaritan nurse Alicia Hulse and presented her with the award.

Presentation by Pierce County Prosecutor Mark Lindquist

Pierce County Prosecutor Mark Lindquist presented a public safety update to Council. He highlighted three innovative initiatives of his office including an Elder Abuse Unit to prevent elder abuse crimes, High Priority Offender Program which uses technology and data to identify and focus on chronic offenders, and the use of conspiracy charges to prosecute gang violence in the county.

Mr. Lindquist apprised the council that he had filed a lawsuit against pharmaceutical companies responsible for the current opioid crisis in Pierce County and the country. He also responded to a variety of council questions regarding drug court and striking the balance between an aggressive and a compassionate approach to crime.

CITIZEN COMMENTS

Ms. Amy Pelligrini, on behalf of AT&T, expressed gratitude to the city's planning staff for their work on the extensive Puyallup Municipal Code update relating to small cell wireless facilities.

Ms. Jeannie Venzone expressed her dismay at comments made by city staff with regard to her parents' property issues and comments during Planning Commission meetings.

Mr. Chris Chisholm presented his compilation of crime rate statistics in the city. He deduced that the presence of homeless social service providers was responsible for a steady decline in crime since 2014.

Mr. Matt Perry, representative of Puget Sound Energy (PSE), announced that PSE would pass on its entire tax savings from the federal tax cuts and job acts to its customers. Customers can expect to save up to \$7 on their monthly bill.

Ms. Jessie Gamble thanked the city, on behalf of Master Builders Association, for their work on the planned development zones item.

Mr. David Degroot shared his opinions regarding small cell wireless facilities and requested the council to defer their vote until further examination of the item.

Ms. Karla Struble spoke against the RS-8 rezoning of her neighborhood and discussed the impacts of additional development on city infrastructure.

Ms. Patty Gratz protested the placement of portable toilets in downtown Puyallup as they were becoming a hub for drug activity and gathering place for the homeless.

Mr. Robin Ordonez commented on recent news articles about former Mayor Knutsen and about Deputy Mayor Swanson.

Mr. Curtis Thiel thanked Deputy Mayor Swanson, Councilmember Kastama and Councilmember Door for their work on the municipal code amendment exempting non-profit organizations from admissions tax.

CONSENT AGENDA

Authorize an Amendment to the Contract with Gray & Osborne, Inc. for construction management of the 4th and River Road Lift Station project

Award a Construction Contract to Gary Harper Construction Inc. for the 4th and River Road Lift Station Upgrades

Council Action: A motion was made by Councilmember Johnson, second by Deputy Mayor Swanson, to approve the consent agenda. The motion passed 7-0.

PUBLIC HEARINGS

Public Hearing and consideration of a resolution altering the Final Plat of Fruitland View Estates

At 7:48 p.m., Mayor Palmer opened the public hearing.

Seeing that no one wished to speak, Mayor Palmer closed the public hearing at 7:48 p.m.

Council Action: A motion was made by Councilmember Jacobsen, second by Councilmember Door, to approve a resolution altering the Final Plat of Fruitland View Estates.

RESOLUTION NO. 2354

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON. This resolution approves an alteration to the Final Plat of Fruitland View Estates.

ORDINANCES

First reading of an ordinance amending Chapter 5.04.020 of the Puyallup Municipal Code relating to Admissions Tax

Deputy Mayor Swanson noted that the ordinance clarifies council's intent to exempt activities conducted by non-profit organizations from the application of the tax.

Council Action: A motion was made by Councilmember Johnson, second by Councilmember Door, to approve first reading of the ordinance. The motion passed 7-0.

First reading of an ordinance amending the Official Zoning Map removing Planned Development zones

Assistant Planner Rachel Brown presented a brief background of the proposal to rezone Planned Development parcels and its impact on the neighborhood's development potential. She elaborated on the proposed rezoning details of five neighborhoods including Peach Park, Crystal Ridge, La Grande, Leone Heights, and Stewart Crossing Area.

Ms. Brown and Development Services Director Tom Utterback responded to a variety of council questions about the Stewart Crossing rezoning.

Council Action: A motion was made by Councilmember Farris, second by Deputy Mayor Swanson, to approve first reading of the ordinance. The motion passed 7-0.

Second reading of an ordinance updating the Puyallup Municipal Code relating to small cell wireless facilities

Council discussed a variety of topics touching on state legislation, first mover advantage and its impact on the city's economic development, cell tower placement options and preference for antenna equipment design.

Council Action: A motion was made by Councilmember Door, second by Councilmember Kastama, to defer second reading of the ordinance to the May 22nd council meeting. The motion passed 7-0.

COUNCIL REPORTS

Councilmember Johnson expressed his appreciation for the close-knit Puyallup community and their love for the city.

Councilmember Farris promised to respond to Ms. Jeannie Venzone's e-mails and apologized for a previous flippant remark.

Councilmember Kastama reported on the success of his first neighborhood meeting. He announced that he planned on having four additional meetings to keep citizens informed about various city related issues.

Deputy Mayor Swanson complimented Puyallup Police for managing the Shaw Road closure and the resultant traffic on other city streets. He urged citizens to assist the police by informing them of any instances of speeding on detour routes or through residential neighborhoods. He also acknowledged Parks & Recreation staff for their management of a new children's soccer program.

MAYOR'S REPORT

Mayor Palmer spoke of his participation in the Emergency Department's presentation on the health effects of volcanic ash. He invited citizens to attend an upcoming Aging Expo organized by Pierce College and the official opening of the Foothills Trail between Buckley and South Prairie.

Council Action: At 9:10 p.m., a motion was made by Deputy Mayor Swanson, second by Councilmember Jacobsen to extend the meeting until 9:45 p.m.

EXECUTIVE SESSION

At 9:10 p.m., Mayor Palmer announced that the council would recess into executive session to discuss the performance of a public employee, with the possibility of action. City Manager Kevin

Yamamoto, Assistant City Manager Steve Kirkelie, Personnel Director Katie Ortega, Mayor Palmer and council members recessed into executive session.

At 9:45 p.m. Mayor Palmer extended the meeting to 10:00 p.m.

At 10:00 p.m., Mayor Palmer extended the meeting to 10:10 p.m.
The executive session ended at 10:13 p.m., with no action taken and the meeting was adjourned.

ADJOURNMENT – 10:13 p.m.

DRAFT



City Council Agenda Item Report

Submitted by: Kevin Yamamoto

Submitting Department: City Manager's Office

Meeting Date: 6/05/2018

Subject:

Presentation by WSDOT Staff relating to the 167 Extension Project

Presenter:

WSDOT Representative Craig Stone

Recommendation:

Consider a presentation from representatives of the Washington State Department of Transportation; and authorize the City Manager to enter into a memorandum of understanding with WSDOT, which confirms Puyallup's commitment to provide local matching funds in the amount of \$2 million for the SR 167 portion of the Puget Sound Gateway Project.

Background:

See the attachment, "The Final Four Miles".

Council Direction:

Fiscal Impacts:

ATTACHMENTS

Connecting Washington Project

In 2015 the Legislature approved the Connecting Washington funding package, funding \$16 billion of highway construction and preservation activities, fish passage projects, and ferry terminal and boat construction. The package allocated \$933 million to build the initial phase of the SR 167 Completion project. The funds will allow environmental work to be completed, obtain permits, purchase remaining right of way, and construct the project. The funding is allocated from July 2015 through June 2029, meaning work on this project will occur over a 14-year period.

Progress Steps

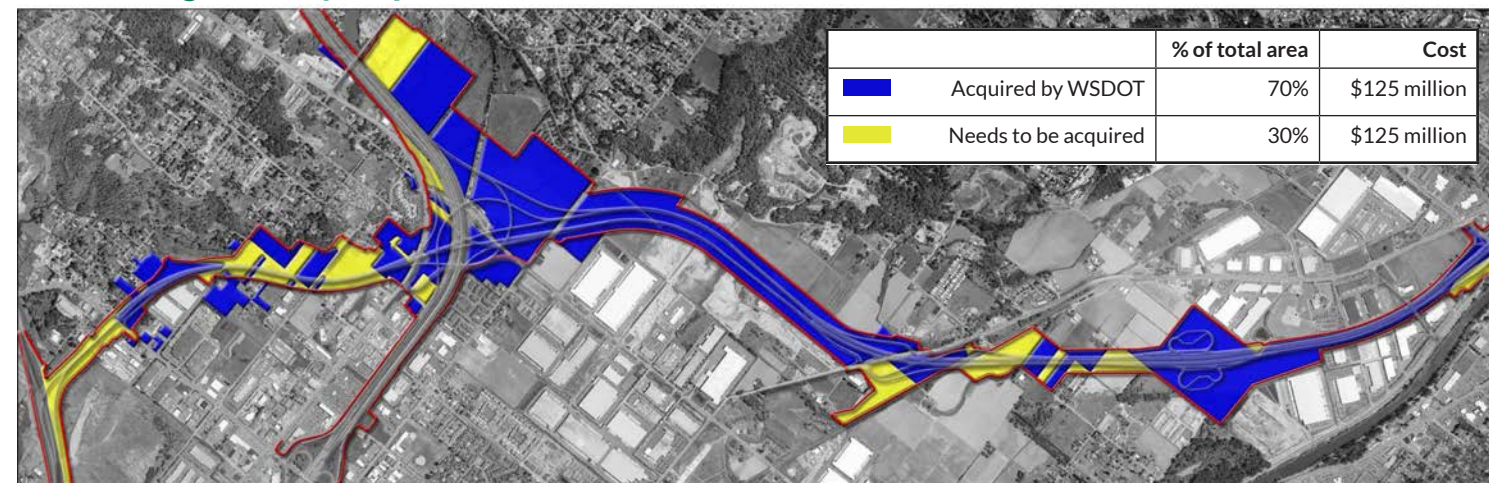
WSDOT must:

- conduct Access Hearing;
- purchase remaining right of way;
- update environmental documentation;
- select a design builder;
- complete final highway design;
- obtain necessary permits;
- construct the project.

The table below highlights past and future funding sources used by WSDOT to fund this project.

Funding by Source	Spent to Date
2003 Gas Tax (Nickel Funding)	\$59.6 million
2005 Gas Tax (Partnership Funding)	\$70.2 million
Other State Funds	\$8.5 million
Federal Funds*	\$22.1 million
Local Funds	\$0.5 million
Connecting Washington	\$933 million
*TEA-21 High Priority, SAFETEA-LU, National Corridors	

Status of Right of Way Acquisition



Acquired by WSDOT Needs to be acquired Proposed project footprint

WSDOT estimates that procuring the remaining parcels, updating environmental documentation and completing highway design will take approximately four years. Constructing the project will take an additional six years.

MORE INFORMATION

Steve Fuchs, Project Manager

360-357-2623

FuchsS@wsdot.wa.gov

www.wsdot.wa.gov/Projects/SR167/Completion/

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Title VI Notice to Public: It is the Washington State Department of Transportation's (WSDOT) policy to assure that no person shall, on the grounds of race, color, national origin

or sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its federally funded programs and activities. Any person who believes his/her Title VI protection has been violated, may file a complaint with WSDOT's Office of Equal Opportunity (OEO). For additional information regarding Title VI complaint procedures and/or information regarding our non-discrimination obligations, please contact OEO's Title VI Coordinator at (360) 705-7082.

SR 167 Completion



Project History

Planning for a complete State Route 167 began as early as the 1950s when the Department of Highways identified interchanges and freeway corridors for Interstate 5 and State Routes 167, 410 and 512. In the 1960s, the I-5/Port of Tacoma Road interchange was constructed to provide a future connection to SR 167. Active planning and construction on numerous sections of SR 167 continued through the 1980s, at which point SR 167 became a four-lane facility from Interstate 405 in Renton to Puyallup. Non-freeway arterials (North Meridian and River Road) joined Puyallup with I-5.

In the 1970s, planning efforts to complete SR 167 to I-5 slowed, pending property ownership clarifications. In 1976, WSDOT issued a study analyzing traffic congestion related to SR 167's termination at North Meridian (SR 161), and recommended a

new SR 167 alignment be added to the Puget Sound Council of Governments Transportation Improvement Plan.

In 1988, the Cascade Corridor Task Force (of the Economic Development Board for Tacoma-Pierce County) recommended completing SR 167 to I-5 near Fife. In 1989, property ownership was resolved and this allowed the completion of SR 167 to move forward. In 1990, the Washington State Legislature provided funds to further analyze the potential corridor and start the Environmental Impact Statement.

Engineering, environmental analysis and land-acquisition activities geared up in 2003 with \$59.6 million in Nickel Gas Tax revenues and in 2005 with \$70.2 million in Transportation Partnership funds. Those monies have been used to complete environmental documentation, choose a preferred corridor, and secure 70% of the properties needed to complete the corridor. The preferred corridor completes

four miles of SR 167 to I-5 and includes five interchanges. It also includes an almost-two-mile-long connection between I-5 and SR 509 near the Port of Tacoma.

In 2010 and 2011, the Washington State Legislature mandated that WSDOT undertake two separate studies on the feasibility of funding the SR 167 corridor with tolls. Both studies are complete and results from both have been presented to the Legislature. The latter study, entitled the "Comprehensive Tolling Study," was completed in 2013 and looked specifically at what potential revenues could be generated from tolling the corridor. The study concluded that tolling revenues could provide up to \$65 million for initial capital investments, and cover 100% of the maintenance and operating expenses for the facility once built.

In 2015, the Legislature approved funding for project construction through the "Connecting Washington Account."

Project Timeline

1990	2012	2012-2015	2015	2019	2019	2029
Major Accomplishments Tier 1 EIS 1999 Tier II EIS 2006 2003 Nickel Funding 2005 Partnership Funding Advanced design Purchased 70% of right of way Tolling Feasibility Study Comprehensive Tolling Study Puget Sound Gateway concept emerged			Project on hold pending funding	Update NEPA EIS Access Hearing Advance project design Prepare Design/Build Request for Qualifications and Request for Proposals Purchase remaining right of way Obtain permits		Phased construction

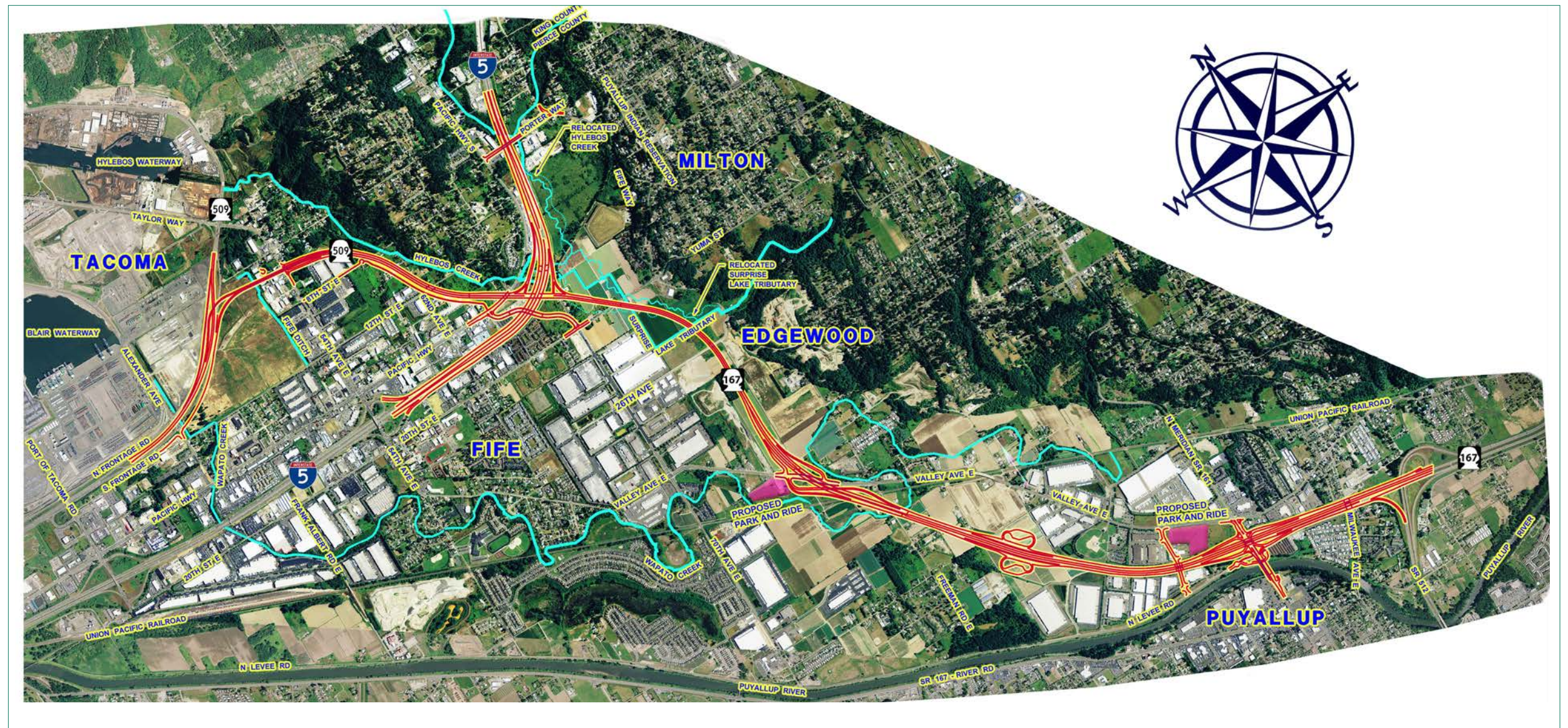
Project concept

The SR 167 Completion project will build the remaining four miles of SR 167 between SR 161 (Meridian) and I-5, completing a long-planned connection to I-5. This project also includes a 2-mile new connection from I-5 to SR 509. These improvements will provide two lanes in each direction from Tacoma to Puyallup. The project will also build five interchanges located at SR 509, 54th Avenue, I-5, Valley Avenue and SR 161 (Meridian). The environmental documentation for the project includes the ability to add HOV lanes in the future.

Benefits

The highway completion would relieve congestion on local roads and other highways by providing new travel options. It would:

- add up to 79,000 long-term regional jobs* from enhanced transportation;
**An Economic Assessment of the SR 167 Extension Project, Final Report: April 5, 2007, Berk & Associates, Seattle, WA*
- add up to 4,200 short-term regional jobs supporting design and construction of highway completion;
- move freight faster, more safely and more economically;
- improve regional mobility;
- enhance surface water quality and improve stream habitat feeding into Commencement Bay;
- complete a highway segment designated as part of the National Highway System providing defense access, continuity and emergency capabilities during times of national emergency.



The Final Four Miles

Portions of what is now known as State Route 167 were added to Washington's highway system as early as 1913. Additional portions were added in the 1920s and 1930s, but the final four mile segment between Puyallup and Interstate 5 (Tacoma) has never been completed.

Washington State commenced planning efforts to complete State Route 167 in the 1950s. Subsequently, various events and efforts occurred in furtherance of the project:

- In the 1960s, the I-5/Port of Tacoma Road interchange was constructed to provide a future connection to SR 167.
- Active planning and construction on numerous sections of SR 167 continued through the 1980s, at which time SR 167 became a four lane highway.
- In the 1970s, planning efforts to complete SR 167 to I-5 slowed, due to property ownership issues. Despite the property issues, in 1976, WSDOT issued a study analyzing traffic congestion related to SR 167's termination at North Meridian (SR 161), and recommended a new SR 167 alignment be added to the Puget Sound Council of Governments Transportation Improvement Plan.
- In 1988, the Cascade Corridor Task Force (of the Economic Development Board for Tacoma-Pierce County) recommended completing SR 167 to I-5 near Fife.
- In 1989, property ownership issues were resolved and this allowed the SR 167 project to move forward.

In 1990, the Washington State Legislature allocated funds to further analyze the potential corridor, and start environmental review. Engineering, environmental analysis and land-acquisition activities began occurring with more intensity in 2003—all of which were made possible by the \$59.6 million in Nickel Gas Tax revenues, and in 2005 with \$70.2 million in Transportation Partnership funds. Those funds were used to complete environmental documentation, choose a preferred corridor, and secure 70% of the properties needed to complete the corridor.

In 2010 and 2011, the Washington State Legislature mandated that WSDOT undertake two separate studies on the feasibility of funding the SR 167 corridor with tolls. The latter study, entitled the "Comprehensive Tolling Study," was completed in 2013 and concluded that tolling revenues could provide up to \$65 million for initial capital investments, and cover 100% of the maintenance and operating expenses for the facility once built.

After significant stakeholder lobbying efforts (port districts, cities, counties, chambers of commerce, freight mobility organizations, etc.), the Legislature approved funding for the Puget Sound Gateway project through the "Connecting Washington Account." The project is funded over a 16 year period, and the SR 167 portion of the funding package is comprised of the following:

- Connecting Washington: \$841 million
- Local Funding: \$70 million (includes local matching funds)

- Toll Funds: \$95 million
- Total: \$1,006 million

Of the local funding dollars, a portion will come local partner matches. In fact, Puyallup's portion of the match funding is \$2 million. WSDOT estimates that Puyallup will receive about \$966,000 in construction sales tax revenue for the SR 167 project. If Puyallup allocates the sales tax revenue to its match obligation, Puyallup will need to set aside an additional \$1.1 million (approximately) over the next number of years, prior to construction of the SR 167 segment, which is scheduled to begin in 2025.

In order to ensure funding commitments, the Legislature directed that WSDOT and local project stakeholders enter into a memorandum of understanding that identifies a schedule for stakeholders to provide matching funds. The MOU must be finalized by July 1, 2018.

The MOU is not the document that legally obligates Puyallup to pay a local match. As indicated above, the MOU demonstrates local commitments to the project. A subsequent document, an interlocal agreement, will be used to formally establish local match funding obligations.

Intersection of Meridian and SR 167

Insofar as Puyallup is concerned, the operational effectiveness of the intersection of Meridian and SR 167 is the most important aspect of the Gateway Project. Thus, Puyallup (and its appointed and elected officials, both local and state) have advocated strongly for inclusion of a full single point urban interchange (SPUI) with western ramps within the project scope. More specifically:

- Puyallup strongly desires that the project scope include a full SPUI, both eastern and western ramps; rather than eastern ramps only
- WSDOT's analysis shows that the full SPUI would significantly improve the operational effectiveness of the SR167/Meridian intersection
- To include the full SPUI in the scope of the project, the cost will be about \$20 million

Of course, Puyallup must fulfill its local match obligation (\$2 million) in order for the project scope to include the full SPUI at the intersection of Meridian and SR 167.



City Council Agenda Item Report

Submitted by: Joy Rodriguez

Submitting Department: Stormwater Engineering

Meeting Date: 6/05/2018

Subject:

Authorize the purchase of property located on Deer Creek to support NPDES Permit and TMDL implementation

Presenter:

Hans Hunger, City Engineer

Recommendation:

Authorize the City Manager to purchase 1.37+/- acres of land from Ivan and Ila Zbaraschuk (portion of tax parcel 0420351043) for \$46,500 in support of NPDES Stormwater Permit implementation, in a form as substantially approved by the City Attorney.

Background:

Deer Creek is a perennial stream that runs through Puyallup with headwaters crossing from unincorporated Pierce County near 106th Street E/33rd Ave SE. Deer Creek flows into the Puyallup River just upstream of the 512 overpass. Efforts to support water quality improvement in Deer Creek relate to NPDES permit requirements, fish habitat, and stormwater controls.

In the mid-Deer Creek area (12th Avenue SE, west of Shaw Road) is a section of the creek with opportunity for acquisition. The property located at 2606 12th Avenue SE is owned by Dr. Ivan and Ila Zbaraschuk. Staff have been working with Dr. Zbarschuck to explore interest in the southern portion of his property (identified on the attached maps). The southern portion of the site is wetlands and is close to Deer Creek's current alignment. This property, would serve multiple benefits for the City and surrounding residents.

The City currently owns the parcel immediately to the west of this site (parcel 0420355027), which has had several restoration efforts to create a riparian buffer. The three homes immediately to the north of this parcel are frequent victims of localized flooding during heavy rain events wherein Deer Creek flows exceed the capacity and natural flow direction of a poorly designed and aligned culvert in 27th Street SE. Dr. Zbaraschuk's house was elevated when it was built and is generally not at risk to this localized stream flooding.

To the east of this site are the former Flaherty parcels purchased by the City in 2011 (Parcels 0420355011 & 0420351009). These properties were purchased for potential future to address stream and riparian restoration needs and other stormwater improvements in the area.

Purchasing the southern portion of Dr. Zbaraschuk's property will allow connecting the two City parcels and allow for a comprehensive and coordinated restoration of this section of Deer Creek. The focus of the then-possible Deer Creek Restoration project on the combined properties would include water quality, riparian restoration, continuation of removal of

Salmon passage barriers, and reduction in localized flooding events. These efforts would fit into our Stormwater Program Plan by addressing TMDL requirements, upgrading infrastructure for capacity and stream/Salmon passage.

Council Direction:

Fiscal Impacts:

Funding for this acquisition including negotiated purchase price and relevant transaction costs and fees is provided by existing stormwater funds budgeted for the restoration of Deer Creek

ATTACHMENTS

- [Purchase and Sale Agreement](#)
- [Boundary Line Adjustment](#)

REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this “Agreement”) is entered into as of _____, 2018, between Ivan and Ila Zbaraschuk, a married couple (“Seller”), and City of Puyallup, a Municipal Corporation (“Buyer”).

For valuable consideration, the receipt and sufficiency of which is acknowledged, Seller and Buyer agree as follows:

1. **Property.** Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, the following:

1.1 **Land.** Those certain parcels of real property located in the City of Puyallup, Pierce County, Washington, more particularly described in Exhibit A attached to this Agreement, together with all mineral, oil, gas, hydrocarbon substances, development rights, air rights, water rights, and water stock owned by Seller relating to the real property; all easements and rights of way owned by Seller that are appurtenant to the real property or any improvements on the real property, and any appurtenance, or the operation, use or enjoyment of any of the foregoing, all rights of Seller in and to streets, sidewalks, alleys, driveways, parking areas, and areas adjacent thereto or used in connection therewith and any land lying in the bed of any existing or proposed street adjacent to such land (collectively the “Land”);

1.2 **Improvements.** N/A;

1.3 **Personal Property.** N/A;

1.4 **Plans, Permits and Contracts.** All Leases and all guaranties thereof; all surveys of, and environmental reports with respect to, the Real Property; all plans, specifications, engineering drawings, and prints relating either to the construction of the Improvements or to future development and expansion of existing Improvements (the “Plans”); all keys for the Property, identified by lock; copies of all historical books and records of Seller relating to the ownership and operation of the Property; all licenses and permits pertaining to the Property, to the extent assignable, (the “Permits”); all warranties upon the Improvements and Personal Property; all service, maintenance, management and operating agreements affecting the Property (to the extent Buyer elects to assume such) (the “Contracts”);

The Land and Improvements which constitute real property are collectively referred to in this Agreement as the “Real Property.” All of the property described in this Section 1, both real and personal, is collectively referred to in this Agreement as the “Property.”

2. **Deposit; Purchase Price.**

2.1 **Deposit.** Within two (2) business days after the date on which the last party executes this Agreement (the “Effective Date”), Buyer shall execute and deliver to First American Title Insurance Company in Puyallup, Washington (“Title Company”), as escrow agent for the closing of this transaction, a promissory note (the “Earnest Money Note”) in the amount of Nine

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

thousand five hundred dollars (\$9,500) in the form attached hereto as Exhibit B. At Closing, the Earnest Money Note shall be converted to cash and shall be applied to the Purchase Price.

2.2 **Purchase price.** Subject to the adjustment described in Section 2.3, the total purchase price for the Property (the "Purchase Price") will be Forty-Six Thousand Five Hundred Dollars (\$46,500) of which the Earnest Money is a part. The Seller will pay closing costs and the Buyer will pay excise taxes. The Purchase Price, including the Earnest Money, will be paid to Seller in cash through escrow at closing.

2.3 **Adjustment of price on basis of survey.** N/A

3. **ALTA Survey.** N/A.

4. **Assignment of Leases, Plans, Permits and Contracts.** N/A

5. **Title to Real Property.**

5.1 **Conveyance.** At closing Seller shall convey to Buyer fee simple title to the Real Property by duly executed and acknowledged statutory warranty deed (the "Deed"), free and clear of all defects and encumbrances and subject only to those exceptions that Buyer approves pursuant to Section 5.2 below (the "Permitted Exceptions").

5.2 **Preliminary commitment.** Buyer shall order a preliminary commitment for an owner's standard coverage policy of title insurance (or, at Buyer's election, an owner's extended coverage policy of title insurance) in the amount of the Purchase Price to be issued by Title Company and accompanied by copies of all documents referred to in the commitment (the "Preliminary Commitment"). Buyer shall advise Seller by written notice what exceptions to title, if any, are disapproved by Buyer ("Disapproved Exceptions") within fifteen (15) days of receipt of the Preliminary Commitment and legible copies of all exceptions to title shown in the Preliminary Commitment. All monetary encumbrances other than nondelinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Exceptions or (ii) Seller elects not to remove Disapproved Exceptions. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Exceptions. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer.

If Seller elects not to remove any nonmonetary Disapproved Exemptions, Buyer will have until the expiration of the Feasibility Study Period to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those exceptions, or to terminate this Agreement. If Seller gives notice that it will cause one or more nonmonetary exceptions to be removed but fails to remove any of them from title on or before the Closing Date, Buyer will have the right to either (i) elect to terminate this Agreement by written notice to Seller or (ii) proceed with the purchase, with an abatement of the Purchase Price equal to the actual cost of removing

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

from title those exceptions not approved by Buyer, and to take the Property subject to those exceptions.

If the Title Company issues a supplement to the Preliminary Commitment, the procedure set forth in this Section 5.2 will apply to such supplement, except that Buyer will have seven (7) days to notify Seller of its disapproval of any new exceptions, and Seller will have five (5) days to give Buyer notice that Seller will either remove or not remove any new Disapproved Exceptions. If Buyer elects to terminate this Agreement under this Section 5.2, the escrow will be terminated, the Deposit must be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement except as otherwise provided in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

5.3 **Title policy.** Seller shall cause Title Company to issue to Buyer at closing an extended coverage owner's policy of title insurance insuring Buyer's title to the Real Property in the full amount of the Purchase Price subject only to the Permitted Exceptions (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

6. **Conditions to Closing.**

6.1 **Due diligence materials.** Seller shall provide to Buyer, or make available to Buyer for inspection, as soon as possible (but in any event no later than five (5) days after the Effective Date) all materials specified in this Section 6.1 that exist and that are in Seller's actual possession or that Seller knows exist and to which Seller has access (collectively, the "Due Diligence Materials"). If Seller thereafter discovers any additional items that should have been included among the Due Diligence Materials, Seller shall promptly deliver them to Buyer. Due Diligence Materials will include:

- (a) copies of any existing and proposed easements, covenants, restrictions, agreements or other documents that, to Seller's knowledge, affect title to the Real Property and that are not disclosed by the Preliminary Commitment;
- (b) all surveys, plats or plans relating to the Real Property;
- (c) all leases for the Real Property, or any portion thereof;
- (d) all existing service contracts pertaining to items such as janitorial, trash removal, maintenance, snow removal, laundry service, extermination and similar services;
- (e) all labor contracts affecting the Real Property;
- (f) all agreements for the rental of equipment used in connection with the normal operation of the Property;

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

(g) all warranties and guarantees affecting any portion of the Property;

(h) notice of any existing or threatened litigation affecting or relating to the Property and copies of any pleadings with respect to that litigation;

(i) all Permits;

(j) (i) all environmental assessment reports with respect to the Real Property that were performed or are being performed by or for Seller, (ii) any raw data that relates to the environmental condition of the Real Property, (iii) any governmental correspondence, orders, requests for information or action and other legal documents that relate to the presence of Hazardous Material (as defined in Section 11.1.2) on, in or under the Real Property, and (iv) any other information material to the environmental condition or potential contamination of the Real Property; and

(k) all documents described on Exhibit C not otherwise listed in this Section 6.1.

6.2 Feasibility study.

6.2.1 **Three-day period.** On or before three (3) days from the Effective Date (the “Feasibility Study Period”), Buyer shall conduct a review with respect to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer’s intended use (the “Feasibility Study”).

The Feasibility Study may include all inspections and studies Buyer deems necessary or desirable, in its sole discretion. Buyer and Buyer’s agents, representatives, consultants, architects and engineers will have the right, from time to time, from and after the date of this Agreement to enter onto the Real Property and make borings, drive test piles and conduct any other tests and studies that may be necessary or desirable to ascertain the condition and suitability of the Real Property for Buyer’s intended use. Such tests and inspections are to be performed in a manner not disruptive to tenants or to the operation of the Property. Buyer shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released.

6.2.2 **Extension of feasibility study period.** N/A

6.2.3 **Termination of agreement.** Buyer will have the right to terminate this Agreement if, in Buyer’s good faith judgment, the Real Property is not suitable for Buyer’s intended use or does not meet Buyer’s intended investment objectives. Buyer’s right to terminate must be exercised by delivering written notice of its election to Seller on or before the expiration of the Feasibility Study Period as it may be extended pursuant to Section 6.2.2. In the event Buyer does not complete the purchase, Buyer shall return the Real Property as near as is practicable to its original condition. If Buyer terminates this Agreement pursuant to this Section 6.2.3, the

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

Deposit will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for Buyer's obligations to indemnify Seller under this Section 6.2.5.

6.2.4 Confidentiality of studies and reports. Prior to closing of the purchase of the Property, Buyer will not distribute or divulge the information or materials it and its agents and consultants may generate in connection with the Feasibility Study to other persons except as may be required by law or as may be necessary or desirable in connection with Buyer's evaluation of the Property and its suitability; provided, that during this time period no information or materials concerning wetlands or environmental matters will be divulged to any governmental entity without Seller's consent, unless required by law. If Buyer elects not to purchase the Property, Buyer agrees that, except as may be required by law, it will not further divulge or further distribute the information and materials except with Seller's consent. Notwithstanding the foregoing, if Buyer elects not to purchase the Property, and if Seller requests copies of the written reports and studies prepared for Buyer in connection with its Feasibility Study, then Buyer will deliver to Seller copies of the final reports and studies. Buyer will, in that event, cooperate reasonably with Seller to coordinate Seller's communications with the consultants, provided Buyer will not be obligated to bear any costs or expend more than a reasonable period of time in doing so.

6.2.5 Buyer's indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable attorneys' fees) in connection with all liens, claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer or its agents or employees in exercising its rights under the right of entry granted in this Section 6.2, except for claims resulting from Seller's negligence.

6.3 Buyer's contingencies. Buyer's obligation to purchase the Property is expressly contingent upon the following:

6.3.1 Feasibility Study. Buyer's approval, prior to expiration of the Feasibility Study Period, of the suitability of the Property as a result of the Feasibility Study;

6.3.2 Survey. N/A;

6.3.3 Environmental condition. Buyer's approval, prior to expiration of the Feasibility Study Period, of the environmental condition of the Real Property pursuant to Section 11;

6.3.4 Title Policy. Buyer's receipt of Title Company's firm commitment to issue, upon closing, the Title Policy as described in Section 5;

6.3.5 Permits and other authorization. Buyer's receipt, prior to closing, of an approved boundary line revision of the property and all building permits, curb cut permits, sewer permits, sign permits and such other permits, approvals and authorizations, including zoning

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

and subdivision approval if necessary, from all governmental agencies with jurisdiction over the real property, that are required for Buyer's intended use of the real property – Seller agrees to cooperate in completing the pending boundary line revision process, including signing of any and all applications or other documents necessary to process a boundary line revision;

6.3.6 **Utilities.** N/A;

6.3.7 **Financing.** N/A;

6.3.8 **Representations and warranties.** All of Seller's representations and warranties contained in or made pursuant to this Agreement being true and correct when made and as of the Closing Date;

6.3.9 **Seller's compliance.** Seller's timely performance of all of its obligations under this Agreement; provided, however, that Seller will be given notice of any failure on its part to perform obligations pursuant to Seller's warranties made in Section 10.1 and those obligations required of it during the Feasibility Study Period, and will have a period of time that is reasonable under the circumstance to cure its nonperformance; and

6.3.10 **Tenant Estoppels.** N/A.

The foregoing conditions are collectively referred to in this Agreement as "Buyer's Contingencies."

6.4 **Satisfaction/waiver of buyer's contingencies.** Buyer's Contingencies are solely for the benefit of Buyer. If any of Buyer's Contingencies are not timely satisfied, Buyer will have the right at its sole election either to waive any of them in writing and proceed with the purchase or to terminate this Agreement. If Buyer elects to terminate this Agreement, the escrow will be terminated, the Deposit must immediately be returned to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one-half (1/2) of the cost of terminating the escrow.

7. **Closing.**

7.1 **Closing date.** This transaction will be closed in escrow by Title Company acting as escrow agent ("Escrow Agent"). The closing will be held at the offices of Title Company on or before that date which is _____, 2018 (3) days after the end of the Feasibility Study Period as that period may be extended pursuant to Section 6.2.2, but in any event no later than _____, 2018 (the "Closing Date"). If closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Deposit to the party entitled to receive it as provided in this Agreement and return all documents to the party that deposited them.

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

7.2 **Closing.**

7.2.1 **Seller's escrow deposits.** On or before the Closing Date, Seller shall deposit into escrow the following:

- Affidavit;
- (a) the duly executed and acknowledged Deed;
 - (b) a duly executed and completed Real Estate Excise Tax Affidavit;
 - (c) N/A;
 - (d) N/A;
 - (e) N/A;
 - (f) N/A;
 - (g) the originals of all tenant leases of the Property;
 - (h) a rent roll of the Property dated no more than five (5) business days prior to Closing and certified by Seller as true and accurate along with a certification as to common area maintenance, insurance tax security deposits and other tenant charges collected by Seller;
 - (i) a nonforeign affidavit pursuant to Section 1445 of the Internal Revenue Code;
 - (j) any other documents, instruments, records, correspondence and agreements called for hereunder that have not previously been delivered;
 - (k) a letter, executed by Seller, advising all tenants on the Property that the Property has been sold to Buyer;
 - (l) a certificate reaffirming as of the Closing Date that all of Seller's representations and warranties under this Agreement are true and correct; and
 - (m) keys to the Property.

7.2.2 **Buyer's escrow deposits.** On or before the Closing Date, Buyer shall deposit into escrow the following:

- (a) cash or immediately available funds in an amount sufficient to pay the Purchase Price, plus closing costs,
- (b) a duly executed and completed Real Estate Excise Tax Affidavit;

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

(c) any other documents or instruments Buyer is obligated to provide pursuant to this Agreement (if any) in order to close this transaction, and

(d) a certificate reaffirming as of the Closing Date that all of Buyer's representations and warranties under this Agreement are true and accurate.

7.2.3 Additional instruments and documentation. Seller and Buyer shall each deposit any other instruments and documents that are reasonably required by Escrow Agent or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.

7.3 Closing costs.

7.3.1 Seller's costs. N/A.

7.3.2 Buyer's costs. Buyer shall pay for a policy of title in the full amount of the Purchase Price and additional premium, if any, attributable to the extended coverage owner's policy of title insurance (if elected by Buyer) and any endorsements required by Buyer, State of Washington real estate excise taxes applicable to the sale, the cost of recording the Deed and the Title Company's escrow fee.

7.4 Foreign Investment in Real Property Tax Act. The parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued thereunder (the "Regulations"). If Seller is not a "foreign person" (as defined in the Regulations), Seller shall deliver to Buyer through escrow a nonforeign certificate as prescribed by the Regulations, properly executed and in form and content satisfactory to Buyer. If Seller is a "foreign person" or fails or refuses to deliver the nonforeign certificate, or if Buyer receives notice, or has actual knowledge, that the nonforeign certificate is false, a tax equal to 10% of the Purchase Price will be withheld through escrow and paid by Escrow Agent to the Internal Revenue Service in the manner prescribed by the Regulations, unless withholding is reduced or excused in the manner prescribed by the Regulations.

In the event of any withholding, Seller's obligations to deliver title and close this transaction will not be excused or otherwise affected.

8. Adjustments and Prorations. The following adjustments and prorations will be made as of 12:01 a.m. on the Closing Date (with Buyer either responsible for or entitled to a credit for, as the case may be, the actual Closing Date).

8.1 Property rents. N/A.

8.2 Security deposits. N/A.

8.3 Property taxes. All property taxes payable in the year of closing and assessments approved by Buyer, if any, will be prorated as of the Closing Date.

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

8.4 **Utilities.** All gas, electric and other utility charges will be prorated as of the Closing Date.

8.5 **Insurance.** The cost of insurance premiums and any amount held in any impound account by any lender with prospective property will be prorated on the Closing Date and Buyer shall reimburse Seller for the prepaid portion thereof.

8.6 **Accounts payable.** Except as may be otherwise agreed by Seller and Buyer in writing, all sums due for accounts payable that were owing or incurred in the maintenance or operation of the Property prior to the Closing Date will be paid by Seller on or prior to the Closing Date or adequate provisions reasonably satisfactory to Buyer will be made in respect to such payment. Seller agrees to indemnify and hold Buyer harmless with respect to all such obligations. Buyer shall furnish to Seller for payment promptly following receipt any bills to be paid by Seller. Except as may otherwise be agreed to by Seller and Buyer in writing, all accounts payable incurred on or after the Closing Date with respect to the Property will be paid by Buyer and Buyer agrees to indemnify Seller with respect thereto.

9. **Seller's Covenants.**

9.1 **Covenant to operate and maintain.** Prior to the Closing Date, Seller shall maintain, repair, manage and operate the Property in a businesslike manner in accordance with Seller's prior practices and Seller shall not dissipate any portion of the Property. Seller shall keep the Property insured in accordance with Seller's prior practices up to the Closing Date.

9.2 **Operations and contracts prior to closing.** N/A.

10. **Representations and Warranties.**

10.1 **Seller's representations and warranties.** Seller represents and warrants to Buyer as follows:

- (a) Seller has full power and authority to convey the Property to Buyer.
- (b) To the best of Seller's knowledge, the Property is now, or will be as of the Closing Date, in compliance in all material respects with all applicable zoning, land-use, building, construction, subdivision and other local, state and federal laws, ordinances and regulations and with all existing covenants, conditions, restrictions and easements.
- (c) To the best of Seller's knowledge, all Due Diligence Materials and other instruments and documents delivered to Buyer pursuant to this Agreement (the "Warranted Materials") are complete and accurate originals or copies, and Seller shall advise Buyer in writing of any inaccuracies in the Warranted Materials as Seller becomes aware of them. With respect to all other instruments and documents delivered or required to be delivered to Buyer by Seller pursuant to this Agreement, Seller has not purposefully altered or withheld any of them.
- (d) Seller has not received notice of any special assessment or condemnation proceedings affecting the Property.

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

(e) To the best of Seller's knowledge, there is no litigation pending or threatened against Seller (or any basis for any claim) that arises out of the ownership of the Property and that might materially and detrimentally affect (i) the use or operation of the Property for Buyer's intended use, or (ii) the ability of Seller to perform its obligations under this Agreement, or (iii) the value of the Property.

(f) Seller is a married couple duly organized and validly existing under the laws of the state of Washington. This Agreement and all documents executed by Seller that are to be delivered to Buyer at closing are, or at the time of closing will be, (i) duly authorized, executed and delivered by Seller, (ii) legal, valid and binding obligations of Seller, (iii) sufficient to convey title (if they purport to do so), and (iv) in compliance with all provisions of all agreements and judicial orders to which Seller is a party or to which Seller or all or any portion of the Property is subject.

(g) N/A.

(h) N/A.

(i) Seller has received no notice of any failure of Seller to comply with any applicable governmental requirements in respect of the use, occupation and construction of the Property, including, but not limited to, environmental, fire, health, safety, zoning, subdivision and other land use requirements that have not been corrected to the satisfaction of the appropriate governmental authority, and Seller has received no notice of, and has no knowledge of, any violations or investigation relating to any such governmental requirement.

(j) Seller has received no notice of any default or breach by Seller under any covenants, conditions, restrictions, rights of way or easements that may affect Seller in respect to the Property or may affect the Property or any portion thereof and no such default or breach now exists.

(k) No building or other improvement encroaches on the real property, nor does any building or improvement that is a part of the real property encroach on lands of others or any public or private road or right of way.

(l) To Seller's knowledge there has been no default or any claim of default and no event has occurred that with notice or lapse of time or both would constitute a default under any tenant lease and to Seller's knowledge no tenant has asserted or has any defense set off or claim with respect to its tenancy pursuant to the Lease any law or otherwise.

(m) There are no leases affecting any part of the Property other than those delivered to Buyer pursuant to Section 6.1 and there are no written or oral promises, understandings or agreements between Seller and any tenant or occupant of the Property that have not been disclosed by Seller as part of the materials provided by Buyer.

(n) To Seller's knowledge there are no permits, licenses or consents required by any governmental authority in connection with the use and occupancy of the Property

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

except those previously obtained by Seller and delivered to Buyer, and Seller knows of no local improvement districts proposed which will affect the Property.

(o) Except as disclosed in writing by Seller to Buyer, the Property is not affected by any statute or governmental regulation of any kind that limits the right to increase rents, requires the renewal of leases or grants a right to purchase to any tenant.

(p) All public utilities required for the operation of the Property either enter the Property through adjoining public streets or, if they pass through adjoining private lands, do so in accordance with valid public easements or private easements that will inure to the benefit of Buyer on the Closing Date.

(q) N/A.

(r) N/A.

(s) Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

(t) All of the representations, warranties and covenants of Seller contained in this Agreement are true and correct as of the Effective Date and as of the Closing Date and will survive the closing of the transaction contemplated by this Agreement.

10.2 **Buyer's representations and warranties.** Buyer represents and warrants to Seller as follows:

(a) Buyer is a Municipal Corporation, duly organized and validly existing under the laws of the state of Washington; this Agreement and all documents executed by Buyer that are to be delivered to Seller at closing are, or at the time of closing will be (i) duly authorized, executed and delivered by Buyer, (ii) legal, valid and binding obligations of Buyer, and (iii) in compliance with all provisions of all agreements and judicial orders to which Buyer is a party or to which Buyer is subject.

(b) In connection with its Feasibility Study, Buyer will inspect those aspects of the Property, including, without limitation, its physical condition, that Buyer deems necessary in order to make a determination whether to purchase the Property.

(c) As of the date of this Agreement, Buyer is not aware of any default by Seller of any representation or warranty set forth in this Agreement.

11. **Hazardous Materials.**

11.1 **Definitions.**

11.1.1 **Definition of "Environmental Laws".** "Environmental Laws" means any federal, state or local laws, ordinance, permits or regulations, or any common law, regarding health, safety, radioactive materials or the environment, each as amended, and any

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

regulations promulgated thereunder, guidance and directives issued with respect thereto, or policies adopted by the applicable authorities thereunder.

11.2 **Definition of “Hazardous Materials”**. “Hazardous Materials” means: (i) any radioactive materials; (ii) any substance or material the transportation, storage, treatment, handling, use, removal or release of which is subject to any Environmental Law; or (iii) any substance or material for which standards of conduct are imposed under any Environmental Law. Without limiting the generality of the foregoing, “Hazardous Materials” includes: asbestos and asbestos-containing materials (whether or not friable); urea-formaldehyde in any of its forms; polychlorinated biphenyls; oil, used oil; petroleum products and their by-products; lead-based paint; radon; and any substances defined as “hazardous waste,” “hazardous substances,” “pollutants or contaminants,” “toxic substances,” “hazardous chemicals,” “hazardous pollutants,” or “toxic chemicals” “under any law, statute, ordinance or regulation governing environmental matters or hazardous materials.

11.3 **Compliance with Environmental Laws**. Seller represents and warrants that:

(a) Seller has no actual knowledge of the release or presence of any Hazardous Material on, in, from or onto the Real Property;

(b) Seller has not generated, manufactured, refined, transported, stored, handled, disposed of or released any Hazardous Materials on the Property, nor has Seller permitted the foregoing;

(c) To the best of Seller’s actual knowledge, Seller has obtained all approvals and caused all notifications to be made as required by Environmental Laws;

(d) To the best of Seller’s actual knowledge, Seller has not received any notice of any violation of any Environmental Laws;

(e) To the best of Seller’s actual knowledge, no action has been commenced or threatened regarding Seller’s compliance with any Environmental Laws;

(f) To the best of Seller’s actual knowledge, no tanks used for the storage of any Hazardous Materials above or below ground are present or were at any time present on or about the Real Property; and

(g) To the best of Seller’s actual knowledge, no action has been commenced or threatened regarding the presence of any Hazardous Materials on or about the Real Property.

11.4 **No waiver of liability**. Seller has not released or waived and will not release or waive the liability of any previous owner, lessee or operator of the Real Property or any party who may be potentially responsible for the presence or removal of Hazardous Materials on

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

or about the Real Property. Seller has made no promises of indemnification regarding Hazardous Materials to any party.

11.5 Indemnification. Seller agrees to defend (with counsel approved by Buyer), fully indemnify and hold entirely free and harmless Buyer from and against all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) that are imposed on, paid by or asserted against Buyer or its successors or assigns, by reason or on account of, or in connection with, or arising out of (a) the presence or suspected presence of Hazardous Materials in the soil, groundwater or soil vapor on or about the Real Property, or (b) the migration of any Hazardous Materials from or onto the Real Property, or (c) the violation of any Environmental Law, and, with respect to (a), (b) and (c), that existed as of or prior to the Closing Date and did so in violation of Seller's representations set forth in Section 11.3 above. This indemnification of Buyer by Seller includes, without limitation, costs incurred in connection with any of the following:

(a) any investigative or remedial action involving the presence of Hazardous Materials on or about the Real Property or releases of Hazardous Materials from the Real Property;

(b) any allegations made by any governmental authority or any private citizen or entity or group of citizens or entities as to the violation of any Environmental Laws involving the Real Property or the operations conducted thereon; and/or (c) any injury or harm of any type to any person or entity or damage to any property arising out of, in connection with or in any way relating to (i) the generation, manufacture, refinement, transportation, treatment, storage, recycling, disposal or release, or other handling of Hazardous Materials on or about the Real Property or pursuant to the operations conducted thereon, and/or (ii) the violation of any Environmental Laws, and/or (iii) the contamination of the Real Property.

11.6 Environmental inspection. During the Feasibility Study Period, Buyer will have the right to take soil and water samples (including groundwater samples) from the Real Property, and to test and analyze those samples to determine the extent of any contamination of the soils and water (including groundwater) on or about the Real Property. If, based on the results of those inspections and/or tests, Buyer determines that the condition of the Real Property is unsatisfactory or if Buyer believes that its ownership of the Real Property would expose Buyer to undue risks of government intervention or third-party liability, Buyer may, without liability, cancel the purchase of the Property and terminate this Agreement.

12. Casualty Loss. Following the occurrence of any event prior to the Closing Date, causing damage to or destruction of the Property or any portion of the Property, Seller shall promptly notify Buyer of such occurrence. Under any such circumstances the provisions of this Section 12 will apply.

12.1 Minor casualty loss. N/A.

12.2 Substantial casualty loss. N/A.

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

12.3 **Eminent domain.** N/A.

13. **Possession.** Seller shall deliver possession of the Property to Buyer on the Closing Date.

14. **Events of Default.**

14.1 **By Seller.** If there is an event of default under this Agreement by Seller (including a breach of any representation, warranty or covenant), Buyer will be entitled (a) in addition to all other remedies available at law or in equity, to seek specific performance of Seller's obligations under this Agreement or (b) to terminate this Agreement by written notice to Seller and Escrow Agent. If Buyer terminates this Agreement, the escrow will be terminated, the entire Deposit must immediately be returned to Buyer, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement except that Seller shall pay any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

14.2 **By Buyer.** IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY, THE EARNEST MONEY DEPOSIT MADE BY BUYER WILL BE FORFEITED TO SELLER AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER FOR SUCH FAILURE.

Seller's Initials

Buyer's Initials

15. **Notices.** Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by certified or registered mail, return receipt requested. All notices must be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Seller: Ivan and Ila Zbaraschuk
2606 12th Ave SE
Puyallup, WA 98371

Buyer: City of Puyallup
333 South Meridian
Puyallup, WA 98371

with a copy to: Joseph N. Beck, City Attorney
333 South Meridian
Puyallup, WA 98371

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Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit at any post office in the United States of America, and if delivered via facsimile, the same day as verified, provided that any verification that occurs after 5:00 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9:00 a.m. on the following business day.

16. **Brokers and Finders.** N/A.

17. **Amendments.** This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. **Continuation and Survival of Representations and Warranties.** All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of Closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of twelve (12) months. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

19. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Washington.

20. **Entire Agreement.** This Agreement and the exhibits to it constitute the entire agreement between the parties with respect to the purchase and sale of the Property, and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement.

21. **Attorney's Fees.** If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy court proceeding.

22. **Time of the Essence.** Time is of the essence of this Agreement.

23. **Exclusivity.** Seller shall not market the Property actively until after the expiration of the Feasibility Study Period and then only if Buyer elects not to proceed with the purchase of the Property.

24. **Waiver.** Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

25. **Nonmerger.** The terms and provisions of this Agreement, including, without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under this Agreement.

26. **Assignment.** Buyer shall not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed. Seller shall consent to an assignment of this Agreement to (i) the parent of Buyer, or to a wholly-owned subsidiary of Buyer or of such parent, or (ii) to any corporation or other entity with which Buyer may be merged or consolidated, provided that the net worth of the resulting corporation is at least equal to the net worth of Buyer as of the Effective Date. If Buyer is a publicly-held corporation, the sale or trade of Buyer's stock will not be considered an assignment for purposes of this Section 26.

27. **Negotiation and Construction.** This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

28. **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period will be deemed to end at 5 p.m., Pacific Time.

29. **Section 1031 Exchange.** Each party agrees to cooperate with the other and/or the other's principals in effectuating a like-kind exchange under Section 1031 of the Internal Revenue Code. Each party shall execute such documents as may be necessary or appropriate to assist with a contemporaneous or deferred exchange arrangement requested by the other on the conditions that the non-requesting party will have no liability whatsoever in connection with such exchange, the non-requesting party will not be required to incur any expense in connection therewith and that the requesting party indemnifies and holds the non-requesting party harmless from any such liability or expense, including all of the non-requesting party's costs and attorney fees related thereto.

30. **Exhibits.** The following exhibits are attached to and made a part of this Agreement by this reference.

EXHIBIT A — Legal Description & Map

EXHIBIT B — Earnest Money Note

IN WITNESS WHEREOF, the parties have executed this Agreement intending to be bound by its terms and conditions.

SELLER:
The Zbaraschuk's

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

Dated: _____

Ivan Zbaraschuk

Dated: _____

Ila Zbaraschuk

BUYER:
City of Puyallup

Dated: _____

Kevin J. Yamamoto
City Manager

Approved as to form:

Attest:

Joseph Beck
City Attorney

Mary Winter
City Clerk

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

EXHIBIT A

LEGAL DESCRIPTION

“THE SOUTH 235.66 FEET OF THE NORTH 480 FEET OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION THIRTY-FIVE (35), TOWNSHIP TWENTY (20) NORTH AND RANGE FOUR (4) EASH OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, LYING NORTH OF THE CREEK; EXCEPT THE EAST 30 FEET THEREOF CONVEYED TO THE CITY OF PUYALLUP IN DEED RECORDED MARCH 19, 2001 UNDER RECORDING NO. 200103190673 SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.”

DRAFT

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

EXHIBIT B

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, on behalf of the CITY of Puyallup, a municipal corporation of the State of Washington, does hereby promise to pay to the order of Ivan and Ila Zbaraschuk, jointly, the sum of **Forty-Six Thousand Five Hundred Dollars (\$46,500.00)**, without interest, payable upon closing of the real property sale transaction, in accordance with and subject to the terms and conditions described in the attached Purchase and Sale Agreement between the Promisor, as Buyer, and Payee, as Seller, for a portion of the real estate located in Pierce County, State of Washington, generally located at 2606 12th Ave SE, in Puyallup, Washington, and legally described as follows:

“THE SOUTH 235.66 FEET OF THE NORTH 480 FEET OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION THIRTY-FIVE (35), TOWNSHIP TWENTY (20) NORTH AND RANGE FOUR (4) EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, LYING NORTH OF THE CREEK; EXCEPT THE EAST 30 FEET THEREOF CONVEYED TO THE CITY OF PUYALLUP IN DEED RECORDED MARCH 19, 2001 UNDER RECORDING NO. 200103190673 SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.”

If this note is placed in the hands of an attorney for collection and the City of Puyallup is not the prevailing party, the City of Puyallup promises and agrees to pay attorney’s fees (and, if applicable, costs of suit) to the holder of the note in a reasonable sum.

DATED at Puyallup, Washington, this _____ day of _____, 2017.

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

SIGNED:

Kevin Yamamoto, City Manager
CITY OF Puyallup
333 South Meridian
Puyallup, Washington 98371

DRAFT

INITIALS: Buyer _____ Date _____ Seller _____ Date _____

EXHIBIT C

None.

DRAFT

ACKNOWLEDGMENT

We, the undersigned, attest that we are the contract purchasers or owners in fee simple and have a real interest in the land represented on this boundary line revision. We have no real interest in any land contiguous to any part of the land included in this boundary line revision. This boundary line revision is made in accordance with our desires.

Signatures of Property Owner(s)

State of Washington)
) SS
County of Pierce)



On this day personally appeared before me _____ to me known to be the individual(s) described in and who executed the within and foregoing instrument under my hand and seal this ____ day of _____, 20____.

Notary public in and for the State of Washington Residing at: _____

Notary Seal

ACKNOWLEDGMENT

We, the undersigned, attest that we are the contract purchasers or owners in fee simple and have a real interest in the land represented on this boundary line revision. We have no real interest in any land contiguous to any part of the land included in this boundary line revision. This boundary line revision is made in accordance with our desires.

Signatures of Property Owner(s)

State of Washington)
) SS
County of Pierce)



On this day personally appeared before me _____ to be the individual(s) described in and who executed the within and foregoing instrument under my hand and seal this ____ day of _____, 20____.

Notary public in and for the State of Washington Residing at: _____

Notary Seal

CITY OF PUYALLUP BOUNDARY LINE REVISION NO. _____

A PORTION OF NE 1/4, SECTION 35 TOWNSHIP 20 N. RANGE 4 E.

ORIGINAL TRACT ASSESSOR'S PARCEL NO.'S
040355027, 0403551043

PLANNING DIVISION

PLANNING DIRECTOR DATE

COUNTY ASSESSOR - TREASURER

I hereby certify that all state and county taxes heretofore levied against the lot line adjusted property described hereon, according to the books and records of my office, have been fully paid and discharged.

ASSESSOR - TREASURER DATE

AUDITOR'S CERTIFICATE

Filed for record this ____ day of _____, 20____,

at the request of _____

Auditor's Fee No. _____

DEPUTY COUNTY AUDITOR

NAME AND ADDRESS - ORIGINAL TRACT OWNER

Parcel A Name: CITY OF PUYALLUP

Address: 1243 25TH ST SE

City / State / Zip: PUYALLUP, WA, 98372 Phone: _____

Parcel B Name: IVAN AND ILA ZBARASCHUK

Address: 2606 12TH AVE SE

City / State / Zip: PUYALLUP, WA, 98372 Phone: _____

Existing Zoning: LOW URBAN DENSITY SINGLE-FAMILY RESIDENCIAL

Source of Water: PUYALLUP

Sewer System: PUYALLUP

Width and Type of Access: 30', 40', AND 60' RIGHT OF WAY

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the survey recording act at the request of the city of Puyallup.

this ____ day of _____, 20____.

Certificate No. 29294 MICHAEL R. BOWEN REGISTERED LAND SURVEYOR

NOTES

- 1. THE PRESENT LOCATION OF DEER CREEK WAS DETERMINED BY FIELD SURVEY ON FEBRUARY 22, 2016 WITHIN THE AREA WHERE THE CREEK REPRESENTS A BOUNDARY. THE REMAINDER OF THE SHOWN CREEK WAS PLACED USING PIERCE COUNTY GIS DATA.

BASIS OF BEARINGS

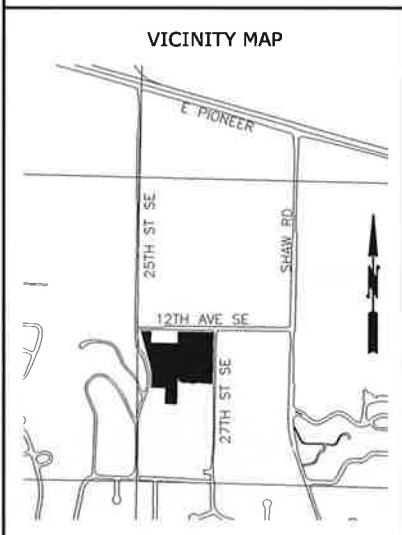
THE EAST-WEST CENTERLINE OF SECTION 35 WITH A BEARING OF N 87°39'33" W AS CALCULATED FROM THE LOCATION OF FOUND MONUMENTS

BASIS OF VERTICAL DATUM

THE ELEVATIONS AND CONTOURS SHOWN ARE FROM PIERCE COUNTY GIS, (NAVD 88).

REFERENCES

- 1. SHORT PLAT RECORDING NUMBER 200311175003, RECORDED NOVEMBER 17, 2003



*FUTURE PERMITS
The land contained in this boundary line revision is not a guarantee that future permits will be granted for any structure development within a lot affected by a boundary line revision.



ORIGINAL PARCEL DESCRIPTIONS

PARCEL A (APN 0420355027)
LOT 1, CITY OF PUYALLUP SHORT PLAT NO. 03-81-008, RECORDED NOVEMBER 17, 2003 UNDER RECORDING NO. 200311175003, IN PIERCE COUNTY, WASHINGTON. SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL B (APN 0420351043)
THAT PORTION OF THE NORTH 480 FEET OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION THIRTY-FIVE (35), TOWNSHIP TWENTY NORTH AND RANGE FOUR (4) EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, LYING NORTH OF THE CREEK; EXCEPT THE NORTH 40 FEET FOR 12TH AVENUE SOUTHEAST; ALSO EXCEPT THE EAST 30 FEET THEREOF CONVEYED TO THE CITY OF PUYALLUP IN DEED RECORDED MARCH 19, 2001 UNDER RECORDING NO. 200103190673 SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

REVISED PARCEL DESCRIPTIONS

PARCEL A
LOT 1, CITY OF PUYALLUP SHORT PLAT NO. 03-81-008, RECORDED NOVEMBER 17, 2003 UNDER RECORDING NO. 200311175003, IN PIERCE COUNTY, WASHINGTON. SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

TOGETHER WITH THAT PORTION OF THE SOUTH 235.66 FEET OF THE NORTH 480 FEET OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION THIRTY-FIVE (35), TOWNSHIP TWENTY (20) NORTH AND RANGE FOUR (4) EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, LYING NORTH OF THE CREEK;

EXCEPT THE EAST 30 FEET THEREOF CONVEYED TO THE CITY OF PUYALLUP IN DEED RECORDED MARCH 19, 2001 UNDER RECORDING NO. 200103190673 SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

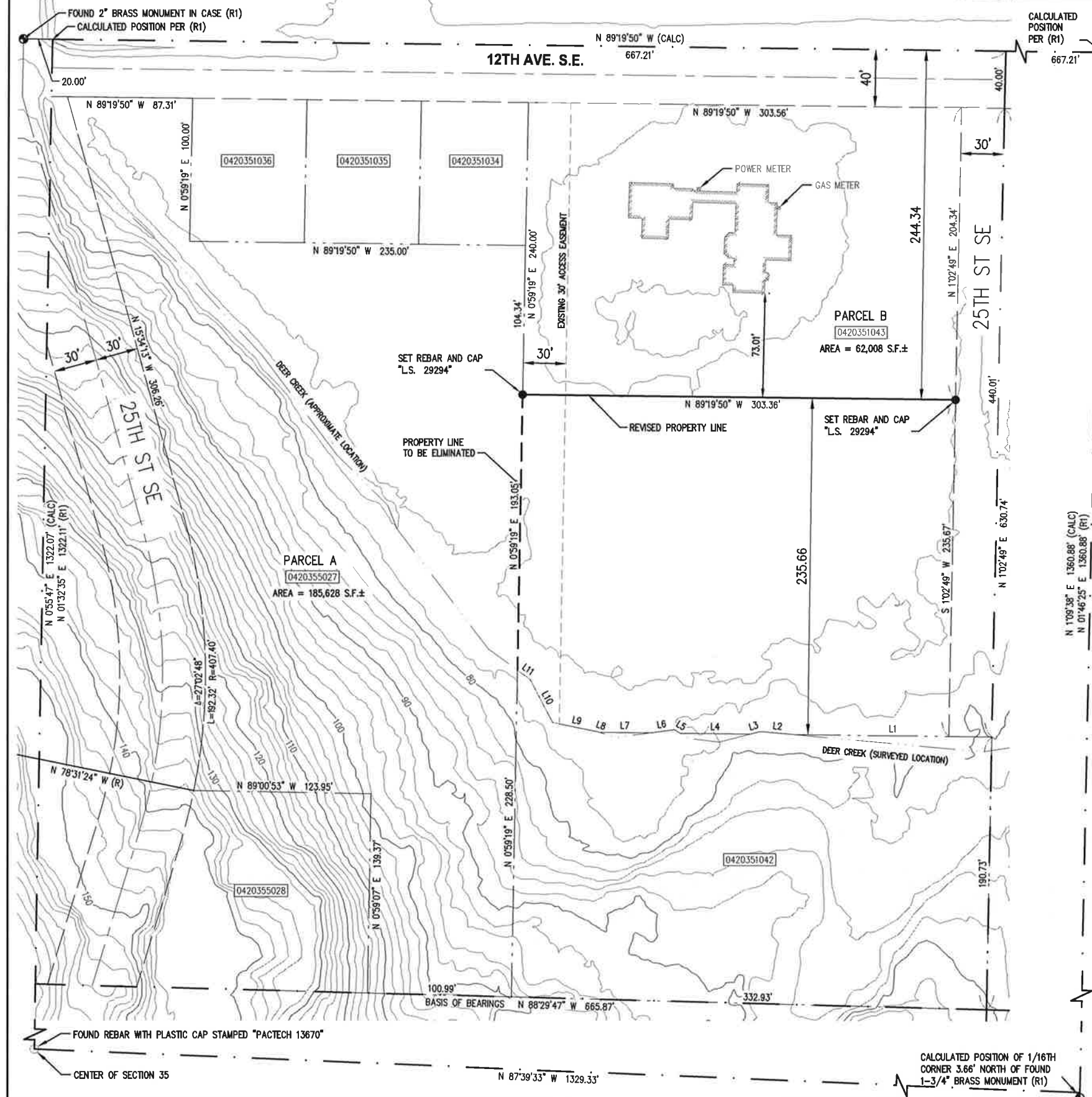
PARCEL B
THE NORTH 244.34 FEET OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION THIRTY-FIVE (35), TOWNSHIP TWENTY (20) NORTH AND RANGE FOUR (4) EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON,

EXCEPT THE NORTH 40 FEET FOR 12TH AVENUE SOUTHEAST;

ALSO EXCEPT THE EAST 30 FEET THEREOF CONVEYED TO THE CITY OF PUYALLUP IN DEED RECORDED MARCH 19, 2001 UNDER RECORDING NO. 200103190673 SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

INDEXING INFORMATION:

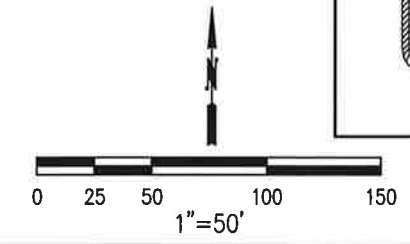
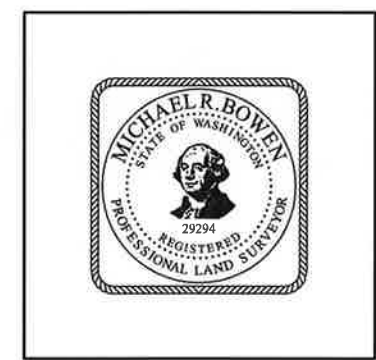
SW 1/4, NE 1/4, SEC. 35, T 20 N, R 4 E, W.M.



LEGEND

- FOUND MONUMENT IN CASE
- FOUND REBAR AND CAP AS NOTED
- SET REBAR AND CAP, LS 29294
- PROPERTY LINE
- CENTER LINE
- RIGHT-OF-WAY LINE
- SECTION LINE
- CREEK
- (RX) REFERENCE NUMBER
- 123456789 ASSESSOR'S PARCEL NUMBER

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 89°19'50" W	138.60'
L2	N 84°47'33" W	23.63'
L3	N 75°27'53" E	7.13'
L4	N 89°19'50" W	49.28'
L5	N 57°05'34" W	4.57'
L6	N 82°24'20" E	16.97'
L7	N 89°19'50" W	35.91'
L8	N 71°28'43" W	0.64'
L9	N 78°32'34" W	32.74'
L10	N 27°50'31" W	33.99'
L11	N 53°49'47" W	11.07'





City Council Agenda Item Report

Submitted by: Katie Baker

Submitting Department: Development Services

Meeting Date: 6/05/2018

Subject:

First Reading of an ordinance amending the Puyallup Municipal Code relating to Critical Areas

Presenter:

Katie Baker, AICP, Senior Planner

Recommendation:

Approve first reading of an ordinance amending the critical areas ordinance, PMC 21.06, and declaring the periodic update process complete.

Background:

The state Growth Management Act (GMA) and the Department of Commerce require the city to ensure our development regulations are consistent with changes in state law at the same time that we complete periodic review of our comprehensive plan. We completed the comp plan portion of the update in late-2015 and identified critical areas ordinance amendments that would take place a few months later in association with our Shoreline Master Program update. That update was completed in January 2016. It was our belief that once the SMP was adopted, that concluded our state-required periodic update of comp plan and development regulations.

However, we recently became aware that we are considered “out of compliance” by the Department of Commerce because our final ordinance did not include language stating that the periodic update process is complete. We then completed a full audit of our critical areas regulations and found that some relatively minor amendments were needed, primarily to the definitions for two subject areas – fish and wildlife habitat conservation areas and geologically hazardous areas (PMC Articles X and XII). Additionally, we received review comments from the State Department of Ecology pertaining to updated wetlands guidance and so also incorporated recommended amendments to Article IX Wetlands. Two other minor modifications are proposed to Article XII regulating geologically hazardous areas to more clearly reflect the department's practical application of the code during permit review.

Again, these proposed amendments to the critical areas ordinance are relatively minor and intended to bring our regulations up-to-date with state law and current guidance from the regulating state agencies, with minimal anticipated impacts to development proposals. As required by state law and the Department of Commerce, adoption of this ordinance is the final action that is required to declare our comprehensive plan update process complete and bringing us into GMA compliance, a requirement for grant funding eligibility. Staff will be on-hand at the upcoming meeting to answer any questions regarding the nature of the proposed amendments.

Council Direction:

Fiscal Impacts:

This is a minor code text amendment and there are no fiscal impacts anticipated.

ATTACHMENTS

- [Ordinance 21.06 Critical Areas](#)

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PUYALLUP
amending Puyallup Municipal Code Sections 21.06.210,
21.06.1010, 21.06.1020, 21.06.1070, 21.06.1080,
21.06.1210, 21.06.1230, and 21.06.1260.

WHEREAS, the City of Puyallup is required to plan under the Growth Management Act, Revised Code of Washington (RCW) Chapter 36.70A; and

WHEREAS, on September 19, 1994, the City of Puyallup adopted a Comprehensive Plan by Ordinance No. 2411, in compliance with the Growth Management Act; and

WHEREAS, RCW 36.70A.130(4) requires the City of Puyallup to conduct a review of its comprehensive plan and development regulations and make revisions as needed to ensure compliance with the requirements of the Growth Management Act; and

WHEREAS, the City has undertaken such update of its comprehensive plan and passed Ordinance 3102 adopting the comprehensive plan on November 25, 2015, and

WHEREAS, the City updated various portions of its critical areas regulations, which included amendments to wetland regulations through passage of Ordinance 3101, amendments to stormwater management regulations through passage of Ordinance 3130, and amendments to frequently flooded areas through passage of Ordinance 3134; and

WHEREAS, the City has reviewed the Department of Commerce Critical Areas checklist and identified additional amendments to regulations pertaining to fish and wildlife habitat conservation areas and geologically hazardous areas; and

WHEREAS, the City has provided the draft code amendments to the Department of Commerce on May 4, 2018, to circulate to other state agencies for a 14-day review period, in accordance with RCW 36.70A.106; and

WHEREAS, environmental impacts of the Comprehensive Plan and the proposed 2015 amendments to the Plan and Municipal Code were reviewed as follows: 1) a final EIS for the 1994 Comprehensive Plan was issued September 9, 1994; and 2) a Determination of Non-Significance (DNS) Addendum (to prior City determinations) and supplemental EIS was issued on July 8, 2015; and 3) a Determination of Non-Significance was issued on May 15, 2018, and was circulated for comments to affected tribes and agencies with jurisdiction; and

WHEREAS, the amendments in this ordinance are needed to meet the requirements of the Growth Management Act and RCW 36.70A.130 (4) and are in the best interest of the City as a whole.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. *Code Amendments.* Sections 21.06.210, 21.06.1010, 21.06.1020, 21.06.1070, 21.06.1080, 21.06.1210, 21.06.1230, and 21.06.1260 of the Puyallup Municipal Code are amended as set out in the attached Exhibit A and hereby made a part of this ordinance.

Section 2. *Periodic Review.* The adoption of these amendments to the City’s critical areas code, in addition to prior amendments to the Comprehensive Plan and development regulations in 2015, 2016, and 2017, signifies that the City of Puyallup has completed the 2015 periodic review and update of the City’s comprehensive plan and development regulations as required by RCW 36.70A.130.

Section 3. *Corrections.* The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. *Severability.* All sections in this ordinance are hereby deemed severable. Any section found invalid or unconstitutional by a court of law with jurisdiction shall not be deemed to invalidate or find unconstitutional other sections in this ordinance.

Section 5. *Effective Date.* This ordinance shall become effective five days after publication in the official newspaper of the City of Puyallup.

DATED this ____ day of June, 2018.

John Palmer, Mayor

ATTEST:

Mary Winter, City Clerk

APPROVED AS TO FORM:

Joseph N. Beck, City Attorney

PUBLISHED: June ____, 2018 – The Tacoma News Tribune

**Chapter 21.06
CRITICAL AREAS**

Sections:

Article I. Purpose and General Provisions

- 21.06.110 Purpose.
- 21.06.120 Intent.
- 21.06.130 Findings.
- 21.06.140 Identification and mapping of critical areas.
- 21.06.150 Protection of critical areas.
- 21.06.160 Limited density transfer from critical area buffers.

Article II. Definitions

- 21.06.210 Definitions.

Article III. Applicability/Regulated Activities

- 21.06.310 Applicability of provisions.
- 21.06.320 Regulated activities.
- 21.06.330 Nonconforming uses.

Article IV. Exemptions and Exceptions

- 21.06.410 Exempt activities.
- 21.06.420 Public agency and utility exception.
- 21.06.430 Reasonable use exception.
- 21.06.440 Exception for minor new developments in buffers.

Article V. Critical Area Reporting Requirements and Permit Process

- 21.06.510 Preapplication conference.
- 21.06.520 Critical area identification form.
- 21.06.530 General critical area report requirements.
- 21.06.540 Consultant qualifications and city review.
- 21.06.550 Permit process.

21.06.560 Appeals of director's determination.

Article VI. Mitigation

21.06.610 General mitigation requirements.

21.06.620 General mitigation plan requirements.

21.06.630 Mitigation monitoring.

21.06.640 Innovative mitigation.

21.06.650 Surety to ensure implementation, maintenance, and monitoring.

Article VII. Enforcement

21.06.710 Unauthorized critical area alterations.

21.06.720 Penalties.

Article VIII. Critical Area Protective Measures

21.06.810 Critical area signs and fencing.

21.06.820 Notice on title.

21.06.830 Critical area tracts.

21.06.840 Building setbacks.

Article IX. Wetlands

21.06.910 Designation, mapping, and rating.

21.06.920 Performance standards – Alteration of wetlands.

21.06.930 Performance standards – Wetland buffer widths.

21.06.940 Performance standards – Wetland buffer uses.

21.06.950 Critical area report requirements for wetlands.

21.06.960 Wetland mitigation – General requirements.

21.06.970 Wetland mitigation – Replacement ratios.

21.06.980 Wetlands mitigation – Additional types of mitigation.

Article X. Fish and Wildlife Habitat Conservation Areas

21.06.1010 Designation, mapping, and rating.

- 21.06.1020 Performance standards – Alteration of fish and wildlife habitat conservation areas.
- 21.06.1030 Performance standards – Alteration of streams and riparian habitats.
- 21.06.1040 Performance standards – Alteration of nonriparian habitats.
- 21.06.1050 Performance standards – Stream and riparian buffer widths.
- 21.06.1060 Nonriparian habitat area buffer widths.
- 21.06.1070 Critical area report requirements for fish and wildlife habitat conservation areas.
- 21.06.1080 Mitigation standards for fish and wildlife habitat conservation areas.

Article XI. Critical Aquifer Recharge Areas

- 21.06.1110 Designation, mapping and rating.
- 21.06.1120 Performance standards – Alteration of critical aquifer recharge areas.
- 21.06.1130 Performance standards – Specific uses.
- 21.06.1140 Performance standards – Prohibited uses.
- 21.06.1150 Critical area report requirements for critical aquifer recharge areas.

Article XII. Geologically Hazardous Areas

- 21.06.1210 Designation, mapping, and classification.
- 21.06.1220 General standards – Alteration of geologically hazardous areas.
- 21.06.1230 Performance standards – Alteration of landslide and erosion hazard areas.
- 21.06.1240 Performance standards – Landslide and erosion hazard area buffers.
- 21.06.1250 Performance standards – Seismic hazard areas.
- 21.06.1260 Performance standards – Volcanic hazard areas.
- 21.06.1270 Critical area report requirements for geologically hazardous areas.

...

Article II. Definitions

21.06.210 Definitions.

For purposes of this chapter, the following definitions shall apply:

...

(40) “Erosion hazard areas” are those areas identified by the U.S. Department of Agriculture’s Natural Resources Conservation Service or identified by a special study as having a “moderate to severe,” “severe,” or “very severe” erosion potential. means lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) as having “severe” or “very severe” erosion hazards. These include, but are not limited to, the following group of soils when they occur on slopes of 15 percent or greater: Alderwood gravelly sandy loam, Indianola gravelly loam, Kapowsin gravelly loam, Kitsap silt loam (KpD), and Xerochrepts.

...

(48) ~~“Fish and wildlife habitat areas” means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). These areas include:~~

- ~~(a) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;~~
- ~~(b) Habitats of local importance, including but not limited to areas designated as priority habitat by the Department of Fish and Wildlife;~~
- ~~(c) Streams and surface waters within the jurisdiction of the state of Washington; and~~
- ~~(d) Land essential for preserving connections between habitats and open spaces.~~

“Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term.

- (a) These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. These areas also include locally important habitats and species as determined by the City.
- (b) “Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be locally important by the City.

- (c) These areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

...

(57) “Geologically hazardous areas” means areas that ~~may not be suited to development consistent with public health, safety or environmental standards,~~ because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. processes as designated by WAC 365-190-080(4). ~~Types of geologically hazardous areas include: erosion, landslide, seismic, and volcanic hazards.~~

...

(143) “Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, ~~retention facilities,~~ wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands include those artificial wetlands intentionally created to mitigate wetland impacts.

...

Article IX. Wetlands

21.06.910 Designation, mapping, and rating.

(1) Wetlands are those areas identified through any and all technical wetland delineation manuals as required by RCW 36.70A.175. Wetland delineations will be conducted in accordance with the current manual(s) required to be utilized by the Department of Ecology, including federally approved Army Corps of Engineers manual(s) and regional supplements. All areas within the city meeting the criteria in the approved federal manual and applicable regional supplements, regardless of any formal identification,

are hereby designated critical areas and are subject to the provisions of this chapter. Ponds and other open water bodies shall also be subject to the provisions of this chapter.

(2) The approximate location and extent of previously identified wetlands are shown on the city's adopted critical area maps. These maps are to be used as a guide for the city, project applicants and/or property owners, and shall be updated as new wetlands are identified. The city's maps do not represent to show all possible wetlands within city boundaries. The actual location of a wetland's boundary shall be determined through field investigation by a qualified professional applying the methods and procedures in the approved federal manual and applicable regional supplements.

(3) Wetlands shall be rated and regulated according to the categories defined by the most current Washington Department of Ecology Wetland Rating System for Western Washington. This document contains the methods for determining the wetland category based on the following criteria:

(a) Category I. Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than one acre; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than one acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

(b) Category II. Category II wetlands are: (1) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (2) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

(c) Category III. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between one-tenth and one acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

(d) Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

(4) All wetlands shall be regulated and subject to the provisions of this chapter regardless of size, except for Category III wetlands less than 2,500 square feet if the wetland is not associated with a riparian corridor or part of a wetland mosaic and Category IV wetlands less than 10,000 square feet. Impacts will be allowed to Category III wetlands between 2,500 square feet and 3,000 square feet, if the following criteria are met as detailed in an approved critical area report demonstrating:

- (a) The wetland is not associated with a riparian corridor;
- (b) The wetland is not part of a wetland mosaic;
- (c) The wetland does not score six ~~five~~ points or greater for habitat in the Western Washington Wetland Rating System form;
- (d) The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife; and
- (e) The impacts are fully mitigated in accordance with any conditions from the state Department of Ecology and/or U.S. Army Corps (USACE). This exemption does not relieve the applicant/property owner from permits required by the state Department of Ecology and/or U.S. Army Corps (USACE). The applicant/property owner shall provide proof of applicable approvals, exemptions and/or permits obtained from the state Department of Ecology and/or U.S. Army Corps (USACE) prior to the city approving any construction permits for the subject fill action.

21.06.920 Performance standards – Alteration of wetlands.

(1) Activities and uses shall be prohibited from wetlands and wetland buffers, except as provided for in this chapter. All feasible and reasonable measures shall be taken to avoid and minimize impacts. These actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and implementation of the performance standards contained in this chapter. Alteration of wetlands shall be permitted only in accordance with an approved critical area report and mitigation plan.

The applicant shall demonstrate that all of the following actions have been considered and implemented in terms of avoidance and mitigation sequencing:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- (f) Monitoring the impact and taking appropriate corrective measures.

(2) Adverse impacts to wetland functions and values and to associated buffers shall be avoided. Where impacts cannot be avoided, the applicant shall implement appropriate compensatory mitigation according to the provisions of PMC 21.06.610 and 21.06.960.

(3) Alteration of Category I wetlands is prohibited.

(4) Alteration of Category II, III, and IV wetlands may be permitted in accordance with an approved critical area report and mitigation plan, and only when the applicant demonstrates that:

- (a) The basic project purpose cannot reasonably be accomplished without the wetland alteration; and
- (b) There are no reasonable or practical alternatives to the alteration including on-site design or acquisition of additional area.

21.06.930 Performance standards – Wetland buffer widths.

(1) Wetland buffer areas shall be established for all development proposals and activities adjacent to wetlands to determine the need for the buffer to protect the integrity, function and value of the wetland. The director shall determine appropriate buffer widths based upon the wetland rating form and critical

area report prepared pursuant to PMC 21.06.950. Wetland buffers shall be measured perpendicular to the wetland edge as marked in the field. Except as otherwise permitted by this chapter, buffers shall consist of an undisturbed area of native vegetation.

(2) The standard buffer widths required by this chapter are considered to be the minimum required and presume the existence of a dense native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. The standard buffer widths assume that the buffer area contains no more than 20 percent invasive plant coverage in the buffer area. If the vegetation is inadequate, then the buffer width shall be increased and/or the buffer managed (e.g., invasive plant removal and monitoring) and planted to maintain or improve the buffer functions. The following standard buffer width requirements are established:

(a) Wetland buffer widths shall be determined based on the adjacent land use activities as follows:

Level of Impact from Proposed Land Use	Types of Land Use Based on Common Zoning Designations
High	<ul style="list-style-type: none"> • Commercial development • Industrial development • Institutional • Retail sales • Residential (more than 4 units/acre) • Conversion to high intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.)

Level of Impact from Proposed Land Use	Types of Land Use Based on Common Zoning Designations
	<ul style="list-style-type: none"> • High intensity recreation (golf courses, ball fields, etc.) • Hobby farms
Moderate	<ul style="list-style-type: none"> • Residential (4 units/acre or less) • Moderate intensity open space (parks with biking, jogging, etc.) • Conversion to moderate intensity agriculture (orchards, hay fields, etc.) • Paved trails • Building of logging roads • Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	<ul style="list-style-type: none"> • Forestry (cutting of trees only) • Low intensity open space (hiking, bird-watching, preservation of natural resources, etc.) • Unpaved trails • Utility corridor

(b) Width of buffers needed to protect Category I wetlands (for wetlands scoring 23 points or more for all functions or having the “special characteristics” identified in the rating system):

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use (apply most protective if more than one criterion is met)
Natural Heritage Wetlands	Low – 125 ft Moderate – 190 ft High – 250 ft
Bogs	Low – 125 ft Moderate – 190 ft High – 250 ft
Forested	Buffer width to be based on score for habitat functions or water quality functions
Estuarine	Low – 100 ft Moderate – 150 ft High – 200 ft
Wetlands in Coastal Lagoons	Low – 100 ft Moderate – 150 ft High – 200 ft
High level of function for habitat (score for habitat 8 – 9 points)	Low – 150 ft Moderate – 225 ft High – 300 ft

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use (apply most protective if more than one criterion is met)
Moderate level of function for habitat (score for habitat ≥ 6 – 7 points)	Low – 75 ft Moderate – 110 ft High – 150 ft
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than ≥ 6 points)	Low – 50 ft Moderate – 75 ft High – 100 ft
Not meeting any of the above characteristics	Low – 50 ft Moderate – 75 ft High – 100 ft

(c) Width of buffers needed to protect Category II wetlands (for wetlands scoring 20 to 22 points for all functions or having the “special characteristics” identified in the rating system):

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use (apply most protective if more than one criterion is met)
High level of function for habitat (score for habitat 8 – 9 points)*	Low – 150 ft Moderate – 225 ft High – 300 ft
Moderate level of function for habitat (score for habitat 5 <u>6</u> – 7 points)	Low – 75 ft Moderate – 110 ft High – 150 ft
High level of function for water quality improvement and low for habitat (score for water quality 8 – 9 points; habitat less than 5 <u>6</u> points)**	Low – 50 ft Moderate – 75 ft High – 100 ft
Estuarine	Low – 75 ft Moderate – 110 ft High – 150 ft
Interdunal	Low – 75 ft Moderate – 110 ft High – 150 ft
Not meeting above characteristics	Low – 50 ft Moderate – 75 ft High – 100 ft

* Maintaining connections to adjacent and continuous habitat or wildlife corridors shall be considered.

** No additional discharge of untreated storm water permitted.

(d) Width of buffers needed to protect Category III wetlands (for wetlands scoring 16 to 19 points for all functions):

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use
Moderate level of function for habitat (score for habitat 5 – 7 points)* *If wetland scores 8 – 9 habitat points, use buffers for Category II.	Low – 75 ft Moderate – 110 ft High – 150 ft
Not meeting above characteristic	Low – 40 ft Moderate – 60 ft High – 80 ft

(e) Width of buffers needed to protect Category IV wetlands (wetlands scoring less than 16 points for all functions):

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use
Score for all three basic functions is less than 16 points	Low – 25 ft Moderate – 40 ft High – 50 ft

(3) The standard buffer widths of subsection (2) of this section may be decreased through the reduction measures of this section.

(a) The buffer widths recommended for land uses with “high intensity” impacts to wetlands can be reduced to those recommended for “moderate intensity” impacts under the following conditions:

(i) A relatively undisturbed vegetated corridor at least 100 feet in width is established, enhanced and/or protected (if adequate vegetation exists) between the wetland and any other upland priority habitats adjacent to the wetland as defined by the Washington State Department of Fish and Wildlife. The corridor shall be protected by a native growth protection easement or some other legal mechanism providing permanent protection.

(ii) A buffer enhancement plan, consistent with applicable mitigation report and monitoring requirements of this chapter, is submitted and approved in order to improve the functions of the buffer area to the maximum extent possible.

(iii) All applicable measures to minimize the potential impacts of different land uses on wetland habitat functions, as summarized in the following table, are applied to the development:

Examples of Disturbance	Examples of Measures to Minimize Impacts	Activities That Cause the Disturbance
Lights	Direct lights away from wetland	Parking lots, warehouses, manufacturing, high density residential
Noise	Place activity that generates noise away from the wetland	Manufacturing, high density residential
Toxic Runoff	Route all new untreated runoff away from wetland Covenants limiting use of pesticides within 150 feet of wetland Integrated pest management programs	Parking lots, roads, manufacturing, residential areas, application of agricultural pesticides, landscaping
Change in Water Regime	Infiltrate or treat, detain and disperse into buffer new runoff from surfaces	Any impermeable surface, lawns, tilling

Examples of Disturbance	Examples of Measures to Minimize Impacts	Activities That Cause the Disturbance
Pets and Human Disturbance	Fence around buffer Plant buffer with “impenetrable” natural vegetation appropriate for region	Residential areas
Dust	BMPs for dust	Tilled fields

(b) For all wetlands that score less than 206 points for habitat, the buffer width can be reduced to those required for moderate land use impacts if measures to minimize the impacts of different land uses on wetlands as summarized in the table above are applied.

The director has the authority to “average” buffer widths on a case-by-case basis where a qualified professional demonstrates that all the following criteria are met:

- (a) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;
- (b) The buffer averaging does not reduce the functions or values of the wetland;
- (c) The portion of the buffer subject to buffer averaging is less than 20 percent of the total buffer length on a project site; provided, that:
 - (i) The director may waive the 20 percent limitation when there are specific topographic conditions adjacent to the wetland that render portions of the buffer nonessential or ineffective in protecting wetland functions, and
 - (ii) The director finds that the averaging occurs parallel to the existing wetland boundary;
- (d) The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation;

(e) The buffer width for Category I and II wetlands is not reduced to less than 25 percent of the standard width; and

(f) The buffer width of a Category III or IV wetland with moderate habitat functions (~~five to nine~~ six to seven points for habitat) may be reduced to no less than ~~33~~25 percent of the standard buffer width. The buffer width of a Category III or IV wetland with low habitat functions (less than ~~five~~ six points for habitat) may be reduced to 35 feet.

(g) In any case where a reduced buffer width is applied consistent with the subsections above, the buffer shall be composed of a dense native plant community; if the buffer area contains over 20 percent coverage by invasive plant species, the applicant shall provide a vegetation management plan to remove those invasive plants, supplement the buffer area with native trees and shrubs and monitor the buffer area for a period of no less than three years to ensure eradication of invasive plants and establishment of new native plants from the buffer area. The enhanced functions must be documented to the satisfaction of the director through a functions and values analysis prepared by a qualified professional.

(4) The director may have the authority to increase the standard buffer width for any category of wetland on a case-by-case basis when such increase is necessary to protect the function and value of the wetland, protect significant habitat, or protect lands adjacent to the wetland from erosion and other hazards. The standard buffer widths assume a dense native plant community is present with less than 20 percent invasive plant coverage in the buffer area. In determining if buffer width increases are warranted, the director shall consult with the Departments of Ecology and/or Fish and Wildlife and shall consider the following information to be provided in a critical area report:

(a) The specific plant and animal composition of the wetland and subject buffer area; the project wetland biologist shall implement wider buffer areas where the buffer is composed of invasive plants that cover more than 20 percent of the buffer area, unless buffer management and enhancement actions are proposed to remove the invasive plants and manage the establishment of new native trees and shrubs over a three-year period through a buffer vegetation enhancement plan;

(b) The sensitivity of the plant and animal species in the wetland to disturbance from existing and proposed land uses;

- (c) The extent to which the wetland buffer is relied on to perform water quality functions such as sediment trapping and pollutant removal;
- (d) Whether the wetland supports wetland-dependent wildlife species or wildlife that require large dispersal areas or access to upland habitats for critical life stage needs;
- (e) The risk of altering the existing wetland functions if the standard buffers are used; and
- (f) Other information that the director deems pertinent to the subject wetland.

(5) The edge of the buffer area shall be clearly staked, flagged, and fenced prior to any site clearing and construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the department that buffer requirements of this chapter are met. Field-marking shall remain until all construction and clearing phases are completed, and removal of the markers has been granted by the city.

(6) Impervious surfaces shall not be constructed in wetland buffers within 50 feet of the wetland boundary except as provided for in this chapter.

21.06.940 Performance standards – Wetland buffer uses.

(1) Wetland buffers shall be retained in an undisturbed condition except that the following uses may be permitted within a wetland buffer when the applicant demonstrates to the satisfaction of the director that no adverse impact to the wetland functions and values will occur and appropriate mitigation is proposed per 21.06.610.

(a) Wells and necessary appurtenances, including a pump and appropriately sized pump house, but not including a storage tank, when all the following conditions are met:

- (i) There is no viable alternative to the well site outside of the buffer;
- (ii) The well is either an individual well serving only one residence or a Class B well serving a maximum of 15 connections and no more than 25 people;
- (iii) The well is more than 75 feet deep;

(iv) For Category I and II wetlands, the minimum distance from the well and appurtenances to the wetland edge is no less than 25 percent of the buffer width required by this chapter; and

(v) Access to the well or pump house is provided by existing trail or road, or by an unimproved access for maintenance vehicle(s).

(b) Public and private roadway crossings, including bridge construction and culvert installation in or across Category II, Category III and Category IV wetland buffers, if the director determines that such construction is necessary and cannot be accomplished in another location.

(c) City-approved storm water management facilities, limited to detention/treatment ponds, biofiltration facilities, infiltration systems, or other LID systems, may be allowed within the outer 25 percent of the standard buffer of a wetland; provided, that:

(i) Construction of the storm water facility does not impact a forested buffer community;

(ii) There is no other feasible location for the storm water facility;

(iii) The storm water facility is designed according to city standards, the adopted Stormwater Manual per PMC 21.10.040, and the discharge water meets state water quality standards and will not affect the hydroperiod of the wetland;

(iv) Construction of a storm water management facility in the buffer of a Category I wetland is prohibited;

(v) Storm water conveyance or discharge facilities such as dispersion trenches and outfalls may encroach into the inner 25 percent of a Category II, III or IV wetland buffer on a case-by-case basis when the director and city engineer determine that due to topographic or other physical constraints there are no feasible locations for these facilities in the outer buffer area; and

(vi) Altered areas are mitigated per PMC 21.06.610 and 21.06.960.

(d) Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

(e) Passive recreation facilities that are part of an interpretive trail system or environmental education program and designed in accordance with an approved critical area report and including walkways, wildlife viewing structures, and trails; provided, that they are located in the outer 25 percent of the buffer area and are constructed in such a manner to avoid disturbance of sensitive wildlife, feeding, roosting, breeding, or rearing sites, and meet the requirements of PMC 21.06.410(1)(d) and those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer 25 percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing nontreated pilings may be acceptable.

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Article X. Fish and Wildlife Habitat Conservation Areas

21.06.1010 Designation, mapping, and rating.

(1) Fish and wildlife habitat conservation areas are those areas identified as being of critical importance to the maintenance of fish, wildlife, or plant species. All areas within the city meeting these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

(2) The approximate location and extent of previously identified fish and wildlife habitat conservation areas are shown on the critical area maps adopted by the city, as most recently updated. These maps are to be used as a guide for the city, project applicants and/or property owners, and may be updated as new fish and wildlife habitat areas are identified. The city's maps may not represent to show all the fish and wildlife habitat conservation areas within the city. The actual location of a fish and wildlife habitat conservation area shall be determined through field investigation by a qualified professional applying the best available science.

(3) For purposes of this chapter, fish and wildlife habitat conservation areas shall include the following:

(a) Streams and their associated riparian habitat areas. Streams shall be designated Type I, Type II, Type III, and Type IV according to the following criteria:

(i) Type I streams are those streams identified and regulated as “Shorelines of the State” pursuant to WAC 173-18-310 and the City of Puyallup Shoreline Master Program. Within the city’s corporate limits and the urban growth area, Type I streams are the Puyallup River and Clarks Creek, below Maplewood Springs;

(ii) Type II streams are those natural streams that are not Type I streams and are either perennial or intermittent, and have known or potential use by anadromous or resident fish species, significant recreational value, or significant wildlife habitat functions. Potential use shall be determined based upon species life cycle requirements, habitat suitability, presence or lack of natural barriers, and a reasoned evaluation of current, historic, and future fish use by a qualified professional. Within the city’s corporate limits and the urban growth area, known Type II streams including but not limited to Deer Creek, Diru Creek, Meeker Ditch, Rody Creek, Silver Creek, Wildwood Creek, Woodland Creek, and Wapato Creek;

(iii) Type III streams are those streams with perennial or intermittent flow and are not used by anadromous fish; and

(iv) Type IV streams are those intermittent or ephemeral streams with channel width less than two feet taken at the ordinary high water mark, that are not used by anadromous fish or resident fish.

(b) Nonriparian habitat areas that support or have a primary association with:

(i) State or federally designated endangered, threatened, and sensitive species;

(ii) State priority habitats and areas associated with state priority species; or

(iii) Habitats and species of local importance including habitat corridors connecting habitat blocks and open spaces.

21.06.1020 Performance standards – Alteration of fish and wildlife habitat conservation areas.

(1) Alteration of fish and wildlife habitat conservation areas shall be prohibited, except as provided for in this chapter. All feasible and reasonable measures shall be taken to avoid and minimize impacts. These actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and implementation of the performance standards contained in this chapter. Alteration of fish and wildlife habitat conservation areas shall be permitted only in accordance with an approved critical area report and mitigation plan. The applicant shall demonstrate that all of the following actions have been considered and implemented in terms of avoidance and mitigation sequencing:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

(2) Adverse impacts to fish and wildlife habitat functions and values and their associated buffers shall be mitigated according to the provisions of PMC 21.06.610.

(3) Where impacts cannot be avoided, the applicant or property owner shall implement appropriate compensatory mitigation actions in compliance with the intent, standards, and criteria of PMC 21.06.620.

(4) No alteration is allowed that will result in a take of a listed threatened or endangered species as defined by the federal Endangered Species Act.

(5) New on-site sewage systems and individual wells may be permitted in a fish and wildlife habitat area or buffer only if it is accessory to an approved residential structure which it is not feasible to connect to a public sanitary sewer system.

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21.06.1070 Critical area report requirements for fish and wildlife habitat conservation areas.

(1) A critical area report for a fish and wildlife habitat conservation area shall contain an assessment of habitats in accordance with the requirements of this chapter. The report shall be prepared in accordance with the requirements described in PMC 21.06.530 and shall at a minimum describe the following:

- (a) All critical areas and buffers within 300 feet of the project area;
- (b) Habitat and life cycle requirements for species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area; and
- (c) Any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area.

(2) When appropriate due to the type of habitat or species present or the project area conditions, the director may also require the critical area report to contain additional information including, but not limited to, direct observations of species use or detailed surface and subsurface hydrologic features both on and adjacent to the site.

21.06.1080 Mitigation standards for fish and wildlife habitat conservation areas.

(1) Adverse impacts to riparian and nonriparian habitats, as determined by the director, shall be fully mitigated in accordance with the standards set forth in PMC 21.06.610. All mitigation shall be specified in a mitigation plan consistent with PMC 21.06.620 and this section.

(2) Mitigation for alterations to habitat areas shall achieve equivalent or greater biologic functions, and shall provide similar functions as those lost.

(3) Compensation in the form of habitat restoration or enhancement is required when a habitat is altered as a result of an approved project. Alterations shall not result in net loss of habitat area except when, upon the satisfaction of the director, it is determined that the lost habitat area provides minimal functions, as determined by a critical area report, and other replacement habitats provide greater benefits to the functioning of the affected species.

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Article XII. Geologically Hazardous Areas

21.06.1210 Designation, mapping, and classification.

- (1) Geologically hazardous areas are areas susceptible to erosion, landsliding, earthquake, volcanic activity or other potentially hazardous geological processes. Areas susceptible to these types of hazards are hereby designated as geologically hazardous areas and subject to the provisions of this chapter.
- (2) The approximate location and extent of previously identified geologically hazardous areas are shown in the city's critical area maps. These maps are to be used as a guide for the city, project applicants and/or property owners, and shall be updated as new critical areas are identified. They do not provide a definitive critical area designation.
- (3) Geologically hazardous areas shall be classified as follows:
 - (a) Erosion hazard area are those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service or identified by a special study as having a "moderate to severe," "severe," or "very severe" erosion potential.
 - (b) Landslide and erosion hazard areas include areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following:
 - (a) Areas of historic failures, such as:
 - (i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;
 - (ii) Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology Washington coastal atlas; or
 - (iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.
 - (b) Areas with all three of the following characteristics:

(i) Slopes steeper than fifteen percent;

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or groundwater seepage.

(c) Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk from snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

~~are areas of potential slope instability. Erosion hazard areas include those identified by the U.S. Department of Agriculture Natural Resources Conservation Service as having a moderate to severe, severe, or very severe erosion hazard because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to natural characteristics. Landslide and erosion hazard areas include areas with the following characteristics:~~

- ~~(i) Areas that have shown mass movement during the Holocene epoch (from 10,000 years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;~~
- ~~(ii) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;~~
- ~~(iii) Slopes having gradients steeper than 80 percent subject to rock fall during seismic shaking;~~
- ~~(iv) Areas potentially unstable because of stream incision or stream bank erosion;~~
- ~~(v) Areas located in a canyon, ravine, or on an active alluvial fan, presently or potentially subject to inundation by debris flows or flooding;~~
- ~~(vi) Any area with a slope of 40 percent or steeper and a vertical relief of 10 or more feet, except areas composed of consolidated rock and properly engineered manmade slopes/retained fill. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief;~~
- ~~(vii) Areas with a severe limitation for building development because of slope conditions, according to the Natural Resource Conservations Service; and~~
- ~~(viii) Areas meeting all three of the following criteria: (A) slopes steeper than 15 percent, except that slopes of less than 15 percent may be considered erosion hazard areas if they have certain unstable soil and drainage characteristics; (B) hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and (C) wet season springs or ground water seepage.~~

(b) Seismic Hazard Areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, or tsunamis lateral spreading, or surface faulting. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

(c) Volcanic Hazard Areas. Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity. Volcanic hazard areas shall be classified as Case I or Case II lahars per the definitions in PMC 21.06.210. Pyroclastic-flow hazard zones and inundation zones for Case I and II lahars are identified in the report Sedimentology, Behavior, and Hazards of Debris Flows at Mount Rainier, Washington, U.S. Geological Survey Professional Paper 1547, 1995. All volcanic hazard areas regulated under this code are located within lahar time travel zone 3.

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21.06.1230 Performance standards – Alteration of landslide and erosion hazard areas.

- (1) Alteration of slopes of 40 percent or greater shall be prohibited.

- (2) Development within all other erosion or landslide hazard areas and/or buffers shall be designed to meet the following basic requirements unless it can be demonstrated through a geotechnical study that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this chapter. This includes alteration of slopes less than 40 percent, including slopes of 15 percent or less that have unstable soil or drainage characteristics, which may be permitted pursuant to an approved critical area geotechnical report. The following basic development design standards must be met:
 - (a) The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

 - (b) The alteration will not increase the threat of the geological hazard to the project site or adjacent properties beyond predevelopment conditions, nor shall it result in a need for increased buffers on neighboring properties;

 - (c) The development will not increase or concentrate surface water discharge or sedimentation to adjacent sites beyond predevelopment conditions;

(d) Structures and improvements shall be located to minimize alterations to the natural contour of the slope and foundations shall be tiered where possible to conform to existing topography;

(e) The use of engineered retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes. Engineered retaining walls shall not exceed 15 feet in height and preferably should be less than eight feet in height. Riprap retaining walls should not exceed eight feet in height. Wherever possible, retaining walls should be designed as structural elements of the building foundation; and

(f) Development shall be designed to minimize impervious lot coverage. Use of common access drives and utility corridors is encouraged.

(3) Unless otherwise provided or as part of an approved alteration, removal of vegetation with soil-stabilizing functions from an erosion or landslide hazard area or related buffer shall be prohibited. Limited pruning or selective removal of dead, diseased or damaged branches; limited removal of specified branches that block views; and topping as shown on a landscape plan may be approved by the director if the activity will not adversely affect slope stability. Project design revisions to better accommodate the retention of vegetation with significant soil-stabilizing functions, including re-configuring development envelopes to accommodate mature trees, may be imposed by the director to meet the intent of this chapter. Identification of vegetation to be preserved shall be based upon the tree species, location and condition in addition to size. Disturbed areas of a site not used for buildings, roads and other improvements should be replanted as soon as feasible pursuant to an approved landscape plan.

(4) Seasonal Restriction. Clearing shall be allowed only from April 1st to October 31st of each year; provided, that the city may extend or shorten the designated dry season on a case-by-case basis depending on actual weather conditions.

(5) Utility Lines and Pipes. Utility lines and pipes shall be permitted in landslide and erosion hazard areas pursuant to PMC 21.06.420. The line or pipe shall either be located aboveground and properly anchored ~~and/or be otherwise~~ designed and located, as recommended by a geotechnical engineer, so that it will continue to function in the event of a landslide. Aboveground utility lines and pipes shall be located and designed to minimize potential risks associated with tree fall. The project geotechnical engineer shall consult with a certified arborist regarding tree preservation and protection during the design process.

(6) Storm water conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.

(7) Point Discharges. Point discharges from surface water facilities and roof drains onto or up-slope from an erosion or landslide hazard area shall be prohibited except as follows:

(a) Conveyed via continuous storm pipe downslope to a point where there are no erosion hazard areas downstream from the discharge; or

(b) Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed storm water runoff in the predeveloped state; or

(c) Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and storm water runoff, consistent with the requirements of the Stormwater Manual, and where it can be demonstrated that such discharge will not increase the saturation of the slope, as certified by a geotechnical professional.

(8) Subdivisions. The division of land in landslide and erosion hazard areas and associated buffers is subject to the following:

(a) Land that is located wholly within an erosion or landslide hazard area or its buffer may not be subdivided. Land that is located partially within an erosion or landslide hazard area or its buffer may be divided; provided, that each resulting lot has sufficient buildable area outside of, and will not affect, the erosion or landslide hazard or its buffer;

(b) Access roads and utilities may be permitted within the erosion or landslide hazard area and associated buffers if the director determines based on an approved critical area report that the road will not increase the risk to adjacent sites and that no other feasible alternative exists.

(9) Erosion control plans shall be required for all regulated activities within landslide and erosion hazard areas. The erosion control plans shall be consistent with the provisions of Chapter 21.14 PMC (Clearing, Filling and Grading) prepared pursuant to a plan approved by the city engineer. A master drainage plan shall be prepared for large projects as required and approved by the city engineer.

(10) Prohibited Development. On-site sewage disposal systems, including drain fields, shall be prohibited within landslide and erosion hazard areas and related buffers.

(11) A monitoring program shall be prepared and implemented for construction activities permitted in landslide and erosion hazard areas.

...

21.06.1260 Performance standards – Volcanic hazard areas.

(1) Construction of new critical facilities as defined in this chapter including essential facilities and hazardous facilities, as well as ~~special occupancy structures/covered assemblies~~ any building with occupancy of 1,000 persons or more as determined by the building official using the International Building Code, shall be prohibited in volcanic hazard areas, except that sewer collection facilities and other underground utilities not likely to cause harm to people or the environment if inundated by a lahar shall be allowed pursuant to the director's approval.

(2) Exemption. An applicant may make a written request to the emergency management director for an exemption of the construction prohibition as contained in subsection (1) of this section. The emergency management director shall be the individual designated pursuant to PMC 2.31.050 and is hereby authorized to receive the request pursuant to this section. The emergency management director shall review such a request and shall make recommendations for either the approval or denial of the request to the development services administrator. The development services administrator shall give substantial deference to the recommendation of the emergency management director. The applicant shall bear the burden of establishing all of the following conditions to the satisfaction of the emergency management director in order for an exemption to be granted:

(a) That the critical facility has a satisfactory critical alert notification system in place which coordinates with local and regional emergency monitoring systems;

(b) That the proposed critical facility has an emergency evacuation plan which adequately demonstrates the ability to evacuate all expected occupants in a lahar situation to an acceptable area outside of the volcanic hazard lahar area, in coordination with city emergency management plans; and

(c) That the critical facility has procedures in place to ensure the emergency evacuation plan is maintained over the life of the critical facility and that occupants of the critical

facility are involved in periodic drills and/or other instruction regarding those emergency evacuation procedures.

(3) An aggrieved party can appeal the development services administrator's decision in accordance with Chapter 20.87 PMC, however, the hearing examiner, in reviewing and issuing a decision of any appeal pursuant to this section, shall grant the emergency management director's recommendation substantial deference.

...



City Council Agenda Item Report

Submitted by: Rob Andreotti

Submitting Department: Public Works

Meeting Date: 6/05/2018

Subject:

First Reading of an ordinance updating the Puyallup Municipal Code relating to sewer connection requirements

Presenter:

Rob Andreotti, Public Works Director

Recommendation:

Conduct first reading of an ordinance that amends PMC 14.08.070 to authorize the Public Works Director to suspend sewer connection requirements under criteria established in state law, namely RCW 35A.21.390.

Background:

Under PMC 14.08.070, property owners must connect to the City's sewer system when the system is established within 300 feet of the owner's property, and the owner's septic system is in need of substantial repair. PMC 14.08.070 contains no authority to waive or suspend this connection requirement.

As contemplated under state law, RCW 35A.21.390, there are circumstances under which a suspension or waiver of a sewer connection requirement may be justified. For example, such circumstances can include prohibitive costs to connect to the sewer system; lack of a financial assistance program; and public health, environmental, surface and ground water pollution or system performance considerations.

The attached ordinance, as amended, authorizes the Public Works Director to suspend sewer connection requirements under criteria established in RCW 35A.21.390 until the property is conveyed to another person or entity. The associated process, as reflected in the ordinance, requires the owner to sign a document that is recorded on the title to the property so that subsequent purchasers are notified that the property will require a sewer connection. Such notice will allow prospective purchases to account for the sewer connection requirement when negotiating a purchase price.

Council Direction:

Fiscal Impacts:

N/A

ATTACHMENTS

- [Sewer Suspension Ordinance - Draft](#)
- [Updated PMC 14.08.070](#)

- [RCW 35A.21.390](#)

Ordinance No. _____

An Ordinance of the City of Puyallup amending Chapter 14.08, Sewer System Regulations, to authorize the Director of Public Works to suspend sewer connection requirements when justified under criteria set forth in RCW 35A.21.390.

WHEREAS, the City Puyallup owns and operates sanitary, water and storm and surface water utilities;

WHEREAS, Puyallup Municipal Code (PMC) section 14.08.070 requires a connection to the City sewer system when the system is established within 300 feet of an owner's property;

WHEREAS, PMC 14.08.070 does not allow for suspension or waiver of its requirements, even if justified under RCW 35A.21.390;

WHEREAS, the Council desires to authorize the Public Works Director to suspend the sewer connection requirement when justified under the consideration criteria in RCW 35A.21.390;

NOW THEREFORE, the City Council of the City of Puyallup ordains as follows:

Section 1. Puyallup Municipal Code 14.08.070 is amended as follows (underlining indicates addition):

14.08.070 Connection required.

(1) The city has determined that it is necessary for the protection of the public health that owners of property within the city be required to connect their industrial, commercial, business and residential establishments to the wastewater treatment system and to cease to use all other methods of sewage disposal; provided, that such establishment is within 300 feet of the nearest sewer main and is capable of being served by and through the municipal wastewater treatment system.

(2) In the event any owner of property fails or refuses to make such a connection upon being requested by the city, the city may take such lawful action as necessary to effect such connection.

(3) In the event the municipal wastewater treatment system is expanded so that a sewer main is established within 300 feet of a previously improved parcel of property which has in use some alternate method of wastewater treatment disposal, then the owner shall not be required to connect to the municipal wastewater treatment system until the owner's alternate method of sewage disposal requires substantial repair or the owner desires to expand wastewater treatment capacity, at which time subsections (1) and (2) of this section shall be complied with fully.

(4) Notwithstanding the foregoing, the Director of Public Works, in consultation with the City Engineer, is authorized to suspend the foregoing sewer connection

requirement for an owner of a septic system that requires substantial repair when:

(a) the owner would have standing pursuant to the criteria in RCW 35A.21.390(1)(a) through (c);

(b) a suspension of the connection requirement is justified based on the considerations in RCW 35A.21.390(3)(a) through (d); and

(c) the owner replaces or repairs and maintains the septic system so that it is no longer failing or in need of substantial repair.

(5) A suspension of the foregoing sewer connection requirement shall expire when (a) the property that is served by the septic system, or an interest in the property, is conveyed to another person or entity, or (b) the Director of Public Works determines that suspension is no longer justified based on the considerations in RCW 35A.21.390(3), or (c) the septic system fails or requires substantial repair, whichever occurs earlier.

(6) A suspension of the sewer connection requirement by the Director of Public works shall be memorialized in writing, signed by the owner, and recorded with the county auditor.

Section 2. A summary of this ordinance shall be published as required by law. This Ordinance shall take effect and be in force five (5) days after final passage and publication, as provided by law.

Passed and approved by City Council of the City of Puyallup at regularly scheduled open public meeting on the _____ day of _____, 2018.

John Palmer
Mayor

Approved as to form:

Attest:

Joseph N. Beck
City Attorney

Mary Winter
City Clerk

Published: _____
Effective: _____

RCW 35A.21.390

Failing septic systems—Connection to public sewer systems—Appeals process.

(1) A city with an ordinance or resolution requiring, upon the failure of an on-site septic system, connection to a public sewer system must, in accordance with this section, provide an administrative appeals process to consider denials of permit applications to repair or replace the septic system. The administrative appeals process required by this section applies only to requests to repair or replace existing, failing on-site septic systems that:

- (a) Were made for a single-family residence by its owner or owners;
- (b) Were denied solely because of a law, regulation, or ordinance requiring connection to a public sewer system; and
- (c) Absent the applicable law, regulation, or ordinance requiring connection to a public sewer system upon which the denial was based, would be approved.

(2) If the city has an administrative appeals process, the city may, subject to the requirements of this section, use that process. The administrative appeals process required by this section, however, must be presided over by the legislative body of the city or by an administrative hearings officer.

(3) The administrative appeals process required by this section must, at a minimum, consider whether:

(a) It is cost-prohibitive to require the property owner to connect to the public sewer system. In complying with this subsection (3)(a), the city must consider the estimated cost to repair or replace the on-site septic system compared to the estimated cost to connect to the public sewer system;

(b) There are public health or environmental considerations related to allowing the property owner to repair or replace the on-site septic system. In complying with this subsection (3)(b), the city must consider whether the repaired or replaced on-site septic system contributes to the pollution of surface waters or groundwater;

(c) There are public sewer system performance or financing considerations related to allowing the property owner to repair or replace the on-site septic system; and

(d) There are financial assistance programs or latecomer agreements offered by the city or state that may impact a decision of the property owner to repair or replace the on-site septic system.

(4) If the city, following the appeals process required by this section, determines that the property owner must connect the residence to the public sewer system, the property owner may, in complying with the determination and subject to approval of appropriate permits, select and hire contractors at his or her own expense to perform the work necessary to connect the residence to the public sewer system.

(5) Unless otherwise required by law, a city determination requiring the owner of a single-family residence with a failing on-site septic system to connect a residence to a public sewer system is not subject to appeal.

(6) For purposes of this section, "city" means a "code city" as defined in RCW [35A.01.035](#).



City Council Agenda Item Report

Submitted by: Tom Utterback

Submitting Department: Development Services

Meeting Date: 6/05/2018

Subject:

Second Reading of an ordinance updating the Puyallup Municipal Code relating to small cell wireless facilities

Presenter:

Tom Utterback & Elana Zana (Outside legal counsel)

Recommendation:

Conduct second reading of an ordinance adopting text amendments to Puyallup Municipal Code Sec. 20.59 (Wireless Communications) relating to small cell wireless facilities. Note: Council postponed action on this item from the May 1, 2018 council meeting.

Background:

Staff comments for 2nd reading on 6/5/18: On 5/1/18, City Council considered 2nd reading of this ordinance. At that time, Council deferred action given two items raised that evening: (1) some Councilmembers had questions about the merits of a possible code preference for siting small cells on metal poles vs. wooden poles and (2) a resident, David DeGroot, raised some concerns about possible small cell impacts in RS (single-family residential)-zone districts.

To help address these items, attached to this packet for 6/5/18 is a new memo (dated 5/23/18) prepared by Elana Zana, the City's outside legal counsel on wireless facilities. That memo presents further rationale for staff's recommendation that Council not include any further amendments on pole siting preferences. The memo also responds to several of Mr. DeGroot's points. As noted therein, staff is accepting of a further minor code amendment - in response to Mr. DeGroot's comment - to clarify small cell restrictions on RS zone residential parcels. Ms. Zana, who addressed Council at 1st reading of this ordinance, will attend the 6/5/18 Council meeting to respond to any questions. This packet also contains a new letter (dated 5/23/18) from a representative of Verizon Wireless, which addresses that carrier's concerns with a possible metal vs. wooden pole preference amendment.

Background: In May of 2017, City Council heard a study session briefing on the topic of "small cell" wireless facilities. Small cell wireless refers to smaller-scale antennas/support equipment which are increasingly being used by wireless providers. As opposed to "macro" facilities, which are larger antenna arrays mounted on tall towers or buildings, small cell devices can be placed on lower platforms such as utility poles and light standards. Puyallup joined a multi-city consortium to help us craft new code standards for the pending deployment of this technology in our City rights-of-way, while still protecting our infrastructure priorities. Our consortium lead attorney, Elana Zana of Ogden Murphy Wallace, took part in the Council study session last year.

In late 2017, City staff (Development Services, Engineering, Public Works and Legal) and

Ms. Zana began working with the Planning Commission on draft code amendments, which involve revisions to the City’s existing “Wireless Communications” zoning standards (PMC Section 20.59). Ms. Zana has also solicited input from private wireless providers during this process. While formulating these amendments, staff and the Planning Commission received comments from private carriers, as well input from PSE staff. The draft code amendments reviewed by the Planning Commission include:

- Updates to existing wireless code definitions to address unique small-cell features;
- Procedures for a new City “small cell permit” under which staff would administratively review these proposals, in concert with required franchise agreements;
- Standards for the placement of small cell antennas and support equipment on both utility poles (i.e. wooden poles owned by PSE, some of which have street lights) and light poles (i.e. metal standards owned by the City). This includes regulations on the size, number and design of antenna equipment. It also addresses small cell placement outside of rights-of-way.

The Planning Commission held multiple work sessions on this topic, culminating in a 2/28/18 public hearing, at which time they forwarded a recommendation that City Council approve the draft amendments contained within the attached ordinance. On April 17, City staff – along with Ms. Zana – gave a presentation on those recommended amendments during the first reading of the ordinance which passed unanimously. Please see the attached staff report for more background on this topic.

Council Direction:

Fiscal Impacts:

ATTACHMENTS

- [1\) City Council Memo, Small Cell Wireless Code Changes, E. Zana](#)
- [2\) Puyallup comment letter, Verizon Wireless, signed](#)
- [3\) Small Cell Wireless Draft ordinance](#)
- [4\) City Council- Small Cell Wireless staff report-04-17-18](#)
- [5\) Planning Commission Public Hearing Minutes-FINAL-02-28-18](#)

MEMORANDUM

DATE: May 23, 2018
TO: Puyallup City Council Members
FROM: Elana R. Zana, Special Counsel
RE: Questions Regarding Small Cell Wireless Code Modifications

This memorandum is aimed at addressing some questions that have arisen at the last two City Council meetings related to the proposed Small Cell Wireless Code modifications (“Small Cell Code”). It is my understanding that the City Council is generally in support of the Small Cell Code, however comments from both the industry and City residents raised some questions that required further information. Specifically, this memorandum addresses the following:

- Staff recommendation against the incorporation of a preference for the use of metal light standards versus wooden light standards for practical, legal and technical reasons;
- Responses to certain comments made by Mr. DeGroot related to the siting of cellular facilities in the RS zones.

1. Preference for the use of Light Standards in lieu of Wooden Utility Poles

At the first City Council meeting addressing the Small Cell Code, there was mention that small cell facilities on light standards appeared to be visually more attractive than small cells on wooden utility poles. Mayor Palmer inquired whether a hierarchy or a preference could be inserted into the code in order to encourage carriers to utilize light standards instead of wooden utility poles. After discussions with staff we recommend that such a preference not be included, for the following reasons:

1. The majority of City streets have either wooden utility poles or metal light standards. Though there are some exceptions, having a preference will not have a practical effect on the actual deployment of the small cell facilities because there would likely be a lack of choice between the available types of poles in most locations targeted for small cell placement.
2. Creating a preference will have downstream effects on the deployment of small cell facilities. Typical small cell deployments include a network batch of between 10-20 nodes. Within those batches are often both wooden and non-wooden poles which are dependent on location and neighborhood. A carrier defines the area in which it needs small cell coverage (termed a “polygon” by some carriers) and then submits its applications. This polygon does not coincide with neighborhood or zoning boundaries, but rather the carrier’s actual need and technological choices. Typically, an individual node (pole location) has about a 100-foot radius in which it can be located. If you change one node location it is likely to have a domino effect on the other node

locations. Even if the preference is applied to the first node location, it may not be available at the other node locations, or it may have a detrimental impact on deployment altogether. Too many changes may require the carrier to suspend deployment because they cannot meet their coverage needs due to the preference.

3. Many of the carriers already have contracts in place with Puget Sound Energy to rent their poles within the Puyallup rights of way. Though it is anticipated that the carriers will ask the City of Puyallup for a lease agreement to utilize its light standards, such an agreement has not yet been negotiated and will likely take several months. Further, City staff have not yet determined the logistics of leasing City-owned light standards, for example the construction of such small cell facilities, running fiber and electricity to those standards, and the impact of pole replacement on set back and lighting requirements (City staff has commenced researching how to solve these issues). Allowing small cells on wooden utility poles without a preference will enable a speedier deployment.
4. Small cell facilities are easier to place on wooden utility poles because in many instances the small cell facility can attach to the existing pole without pole replacement. Pole replacement can be burdensome on the rights-of-way because it means traffic interruption, as well as creating a new pole foundation. Though pole replacement may occur as well with wooden utility poles, it is likely a necessity for light standards.
5. Due to the City's ownership of the light standards, there could be a legal challenge under federal anti-trust law that the City is using its municipal power to steer the carriers to usage of its light standards and therefore increasing profits for the City. Use of a preference for use of City owned poles could trigger an anti-trust legal claim.

For the reasons listed above, City Staff recommend that the City Council approve the Small Cell Code without the inclusion of a preference for light standards over wooden utility poles.

2. Comments from Mr. DeGroot

At Council's May 1st meeting, a local resident (David DeGroot) made verbal comments raising questions with some proposed code standards, particularly relating to RS (single family residential) zone districts. It is my understanding that Mr. Utterback contacted Mr. DeGroot following the May 1st City Council Meeting to discuss his concerns. This memorandum does not address all his concerns; however, there were several comments that I wish to respond to, one of which includes a potential further code amendment to address a particular issue.

1. Public participation.

Mr. DeGroot's comment:

Page 15: (h) If the applicant includes small cell facility locations within a residential or mixed-use zone, the Director shall provide notice of a complete application for a small cell permit on the city's website with a link to the small cell permit application. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries.

The preceding section does not state where on the city website notices may be found, for how long they will be posted before action is taken, or whether emailed notice of applications will be provided to subscribers. It also does not say whether the applicant has any obligation as to whether or when to respond to citizen inquiries.

City Staff Response: The issue of public participation was discussed specifically with the Planning Commission. City staff asked the Planning Commission if it desired to have public participation with each small cell deployment and the Planning Commission agreed with staff's recommendation that notice is placed on the website, but that no formal notice requirement or response is needed. A primary concern related to public participation is honoring a request from a citizen not to place a small cell node in front of their house, this could then cause the node to move, within approximately 100 feet, to a location in front of another citizen's house. Since small cell facilities are expected in residential neighborhoods, it is quite possible that these types of complaints would pit the City against the residents and the residents against each other. Rather, the City has developed general design standards that are not location specific. Carriers are encouraged to create designs that cause the least visual impact.

2. Small Cell Facilities in Residential Zones.

Mr. DeGroot's comment:

Page 21: (p) Small cell facilities are not permitted on any residential structures, principal or accessory, in the RS zone.

The above restriction does not apparently include outbuildings such as sheds, carports or garages, nor does it prohibit freestanding facilities.

On February 12, 2018, following a Planning Commission meeting Mr. DeGroot specifically requested that small cell facilities not be allowed on private residential properties. The above section 8(p) was created to respond to his request. The use of the words "any residential structures" includes any outbuildings, carports, etc. that Mr. DeGroot raises. Further, though we believe Section 8(p) as written would not allow a new free-standing facility because it would be an accessory structure; however, City Staff is accepting of the following modification to 8(p) to further address this concern:

"Small cell facilities are not permitted on any property containing a residential use in the RS zone."

3. New Poles in the Rights-of-Way for Small Cell Facilities.

Mr. DeGroot's comment:

Page 21: (9) New Poles in the Rights-of-Way for Small Cell Facilities. (a) New poles within the rights-of-way are only permitted if the applicant can establish that: (i) The proposed small cell facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights-of-way such as a public park, public property, building, transmission tower or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure

This section says what the previous paragraph omitted – that these types of installations are permitted in RS neighborhoods and are preferred to installation on a public right-of-way. I feel that this is exactly backwards – that new poles should be restricted to roadsides and other public right-of-ways and not placed on residential properties at all.

Section 9 generally discourages new poles in the rights-of-way and creates a stricter review process before allowing new poles. There are safety concerns related to placing new poles in the rights-of-way, including traffic distractions and pedestrian clearance requirements. Further, there are aesthetic concerns with placing new poles in the rights-of-way. In the alternative, cellular facilities are traditionally placed outside of the right-of-way, and therefore Section 9 encourages carriers to look outside of the right-of-way for the small cell location. This includes the placement of a small cell on non-residential structures in a residential zone, such as a church or a grocery store. These alternative locations have been used for years for macro facilities in residential zones to provide those neighborhoods with cellular service. Section 9 does not encourage or permit these new poles on personal residences.

4. Macro Cell Facilities

Several of Mr. DeGroot’s comments and his proposed code revisions addressed macro facilities in the RS zone. During the process of drafting the small cell code, City Staff and the Planning Commission intentionally avoided revisiting the macro standards in order to focus the process on small cell facilities. Only minor changes are proposed to the macro standards to update the code to match the current zoning designations and to exempt small cell facilities from the macro standards. If the Council desires to modify the macro standards we recommend adding it to the City Planning workplan for 2019 and requesting Planning Commission review of those standards.

City Staff believes it has adequately addressed Mr. DeGroot’s concerns. City Staff recommend that the City Council approve 2nd reading of the Small Cell Code with the following revision to Section 8(p):

“Small cell facilities are not permitted on any property containing a residential use in the RS zone.”

If you have any questions in advance of the City Council meeting on June 5th please feel free to contact me at 206-447-7000 or via e-mail at ezana@omwlaw.com. In the alternative, I plan on attending the City Council meeting to address any questions or comments related to the Small Cell Code.

ERZ:

cc: Tom Utterback, Development Services Director
Joe Beck, City Attorney



May 23, 2018

Via Email to Tom Utterback, Director of Development Services
tomu@ci.puyallup.wa.us

Mayor John Palmer
Councilmember Tom Swanson
Councilmember Robin Farris
Councilmember Tim Kastama
Councilmember Julia Door
Councilmember Cynthia Jacobsen
Councilmember Dean Johnson

Re: Puyallup Wireless Code Update-Pole Type Preference

Mayor Palmer and Councilmembers-

Verizon would like to take this opportunity to thank your staff and Planning Commission for a collaborative effort to craft a small cell code that protects your community's aesthetic values while providing an efficient and technically feasible process to permit this new technology. While Verizon generally supports the code, as proposed, there is one remaining concern.

At your last meeting on the wireless code update, there was direction given to staff to draft and bring back a preference for non-wood poles over wood poles for small cell attachments. This will be difficult to administer and could result in the following unintended negative consequences:

- There will be very few instances where there will be a technically feasible choice of poles within a de minimus distance from each other. If the target pole has to move even 25-40 feet away, it can require reconfiguration of the polygon, which may have unintended consequences on aesthetics and be a disincentive the speedy roll out of small cells in Puyallup.

May 23, 2018
Page 2

- The diameter, height, as well as design, will have to increase to accommodate interior cabling. This can have a much larger visual impact than a wood pole small cell attachment.
- Federal law requires that municipalities not unreasonably discriminate against different carriers. The requirement that the first carrier must choose a more expensive non-wood pole modification gives an economic advantage to the second carrier, who will be free to select the wood pole option originally targeted by the first carrier.
- The space on and in metal light standards is limited and may not leave room for addition of 5G technology when it becomes commercially available.

For these reasons, Verizon requests that the Council not add the pole type preference, and adopt the draft code proposed at your last meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kim Allen', with a long horizontal flourish extending to the right.

Kim Allen
Wireless Policy Group, LLC on behalf of Verizon Wireless

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PUYALLUP
amending Chapter 20.59 (Wireless Communications) of the
Puyallup Municipal Code relating to Small Cell Wireless
Facilities.

Whereas, Chapter 20.59 of the Puyallup Municipal Code contains various zoning procedures and standards for regulating Wireless Communication facilities; and,

Whereas, technology associated with wireless communication is constantly evolving. Communication providers are beginning to utilize “small cell” wireless facilities to help implement pending 4G and 5G bandwidths and to address their customer’s cumulative data demand. This usage of small cell technology is expected to increase sharply in the future. Small cell wireless facilities have unique siting requirements which do not align with existing City zoning standards for larger “macro” wireless facilities; and

Whereas, the City, working with outside legal counsel and private wireless providers, have identified specific amendments to Chapter 20.59 of the Puyallup Municipal Code which can accommodate the pending deployment of small cell devices, particularly within public rights-of-way, while still protecting associated public infrastructure interests; and,

Whereas, the City Planning Commission held multiple meetings in late 2017 and early 2018, in which they familiarized themselves with small cell technology and reviewed draft code standards. This culminated in a duly-noticed public hearing being held on February 28, 2018, at which time the Planning Commission forwarded specific code amendment recommendations to the City Council; and,

Whereas, pursuant to the State Environmental Policy Act (“SEPA”), the City has issued a Determination of Nonsignificance (“DNS”) for this text amendment, pursuant to WAC 197-11 and Puyallup’s SEPA procedures; and,

Whereas, enacting these proposed code amendments is deemed to be in the public interest and will benefit the City as a whole, is not anticipated to adversely affect the City’s public facilities and services, and advances and supports the general health, safety, and welfare of the citizens of this City;

NOW THEREFORE, the City Council of the City of Puyallup ordains as follows:

Section 1. The recitals set forth in the preamble of this ordinance are hereby adopted as

findings of fact supporting the action taken herein.

Section 2. Chapter 20.59 of the Puyallup Municipal Code is hereby amended as contained in Exhibit A to this Ordinance:

Section 3. *Corrections.* The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, numbering, section/subsection numbers and any references thereto.

Section 4. *Publication.* A summary of this ordinance shall be published as required by law.

Section 5. *Severability - Construction.* If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance unless the invalidity destroys the purpose and intent of this ordinance. If the provisions of this ordinance are found to be inconsistent with other provisions of the Puyallup Municipal Code, this ordinance is deemed to control.

Section 6. *Effective Date.* This Ordinance shall take effect and be in force five days after its passage, approval, and publication as provided by law.

Passed and approved by City Council of the City of Puyallup at regularly scheduled open public meeting on the _____ of May, 2018.

John Palmer
Mayor

Approved as to form:

Attest:

Joseph N. Beck
City Attorney

Mary Winter
City Clerk

Published: _____

Effective: _____

EXHIBIT A

Chapter 20.59 WIRELESS COMMUNICATIONS

Sections:

- 20.59.001 Scope and purpose.
- 20.59.005 Words and phrases defined.
- 20.59.010 Wireless communication facilities in RS, ~~RM~~ and ~~RMCMX~~ zones.
- 20.59.020 Wireless communication facilities in OP, C, ~~MX~~, M, FAIR, ~~MED~~ and PF zones.
- 20.59.040 Performance standards.
- 20.59.050 Small Cell Facilities.

20.59.001 Scope and purpose.

In addition to the general purposes of the comprehensive plan and the zoning ordinance, this chapter is included to provide for a wide range of locations and options for wireless communication providers and users while minimizing the visually obtrusive characteristics associated with wireless communication facilities, and to encourage creative approaches in location, construction and treatment of such facilities in a manner which reduces the associated adverse visual and aesthetic impacts on the community.

20.59.005 Words and phrases defined.

- (1) "Accessory antenna device" means an antenna including, but not limited to, test, mobile and global positioning (GPS) antennas, which are less than 12 inches in height or width, excluding the support structure.
- (2) "Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.
 - (a) "Directional antenna" (also known as "panel" antenna) means an antenna which transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.
 - (b) "Omni-directional antenna" (also known as a "whip" antenna) means an antenna which transmits and receives radio frequency signals in a 360-degree radial pattern.
 - (c) "Parabolic antenna" (also known as a "dish" antenna) means an antenna which is a bowl-shaped device for the reception and/or transmission of radio frequency communication signals in a specific directional pattern.

(d) "Stealth antenna" means an antenna installed inside a nonantenna structure, or camouflaged to appear as a nonantenna structure.

(e) "Cannister antenna" means an antenna installed inside a canister.

(3) "Applicant" shall mean and refer to the person, and such person's successor in interest, owning and/or operating the facility proposed in an application.

(4) "Director" is the Development Services Director.

(5)(3) "Equipment shelter or cabinet" means a room, cabinet or building used to house equipment for utility or service providers.

(6)(4) "Facility" means an unstaffed site containing structural improvements for the transmission and reception of low-power radio signals consisting of antennas, support structure, equipment shelter or cabinet, or related equipment.

(7)(5) "Facility location" may include placement of facilities in one or more of the following manners:

(a) "Attached facility" means a facility that is affixed to an existing structure such as a building or water tower, and is not considered a component of the attached wireless communication facility.

(b) "Co-location facility" means a single-support structure such as a building, monopole or lattice tower to which more than one wireless communications provider mounts equipment.

(c) "Freestanding facility" means a facility which includes a separate support structure, including but not limited to monopoles, lattice towers, wood poles or guyed towers.

(8) "Light Pole" means a pole used primarily for lighting streets, parking areas, parks or pedestrian paths.

(9) "Ornamental Pole" means a City-owned decorative pole, which may provide lighting and which are described in the City Standards for Public Works Engineering and Construction Manual.

(10) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

(11)(6) "Related equipment" means all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, radio, cable, conduit and connectors.

(12) "Small cell facility" shall mean and refer to a personal wireless services facility that meets both of the following qualifications:

- a) Each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and
- b) Primary equipment enclosures are no larger than 17 cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and, if so located, are not included in the calculation of equipment volume: electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switch, and cutoff switch.

(13) "Small cell network" shall mean and refer to a collection of interrelated small cell facilities designed to deliver personal wireless services.

(14) "Traffic Signal Poles" means a pole that supports equipment used for controlling traffic, including but not limited to traffic lights, rapid flashing beacons, speed radar, and school zone flashers.

(15)(7) "Transmission tower (support structure)" means a freestanding structure, other than a building, on which communication devices are mounted. Support structure types include, but are not limited to, monopoles, lattice towers, wood poles or guyed towers.

(a) "Guyed tower" means a support structure, consisting of metal cross strips or bars, which is steadied by wire guys in a radial pattern around the tower.

(b) "Lattice tower" means a support structure consisting of metal cross strips or bars to support antennas and related equipment.

(c) "Monopole" means a facility consisting of a single, pole support structure.

(16) "Unified Enclosure" shall mean a small cell facility providing concealment of antennas and equipment within a single enclosure.

(17) "Utility Poles" shall mean wooden pole designated and used primarily for the support of electrical wires, telephone wires or television cable.

(18) "Wireless Communication Facilities" means facilities used for personal wireless services.

20.59.010 Wireless communication facilities in RS, and RM ~~and CMX~~ zones.

Wireless communication facilities, not including small cell facilities, permitted as principal or accessory uses are subject to the provisions of this chapter and the following requirements:

(1) Accessory antenna devices, parabolic antennas two feet in diameter or less, omni-directional antennas less than six feet in length, directional antennas five feet or less in height with a combined surface area of not more

than 580 square inches as viewed from any one point, and stealth antennas are permitted subject to the performance standards set forth in PMC 20.59.040 and subject to meeting the following criteria:

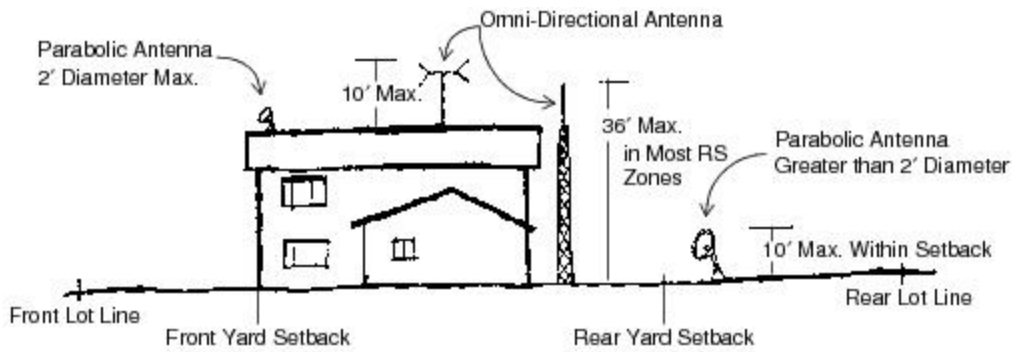
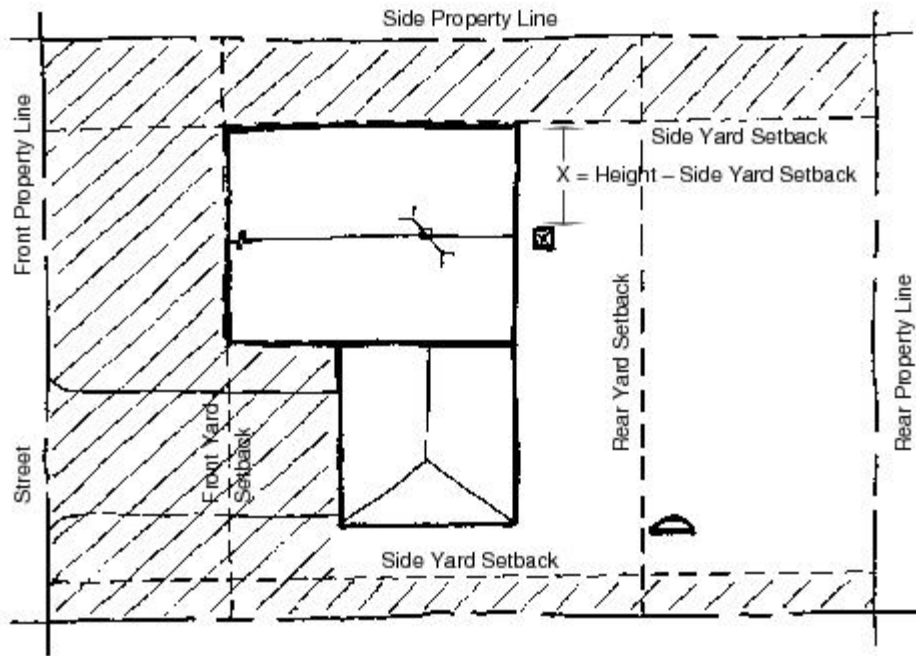
- (a) The antenna is attached to an existing structure; ~~and~~
- (b) The antenna does not extend more than 10 feet above the top of the structure; ~~and~~
- (c) The related equipment is not located in the right-of-way.

(2) Freestanding parabolic antennas greater than two feet in diameter and associated support structure are subject to the performance standards set forth in PMC 20.59.040 and subject to meeting the following criteria:

- (a) The antenna and associated support structure are not located within any required landscaped setbacks, front or side yard setback, or in the area located between the front setback line and the front of the building; and
- (b) The antenna and associated support structure does not extend more than 10 feet above the adjoining grade.

(3) Attached or freestanding antennas and associated support structures which are not specifically permitted under subsection (1) or (2) of this section or which exceed the associated criteria shall comply with the following requirements:

- (a) The antenna and support structure shall be subject to the maximum building height for the corresponding zone in which it is located as set forth in PMC 20.20.020(9) for RS-zoned property, PMC 20.25.020(8) for RM-zoned property; ~~and Chapter 20.31 PMC (building form standards, maximum specified height) for CMX-zoned property;~~ said height restriction shall not be subject to granting of a variance;
- (b) The antenna and associated support structure shall not be located within any required landscaped setback, front or side yard setback, or in the area located between the front setback line and the front of the building;
- (c) The antenna and associated structure shall comply with required building setbacks and shall be set back from the required side yard setback an additional one foot for each foot of height over 10 feet;
- (d) The antenna and associated structure shall comply with the performance standards set forth in PMC 20.59.040; and
- (e) No more than one freestanding support structure shall be permitted per lot.



Note: Only one freestanding antenna structure permitted per lot.

Example of Wireless Communication Facilities Located in RS, ~~RM~~ and ~~RMCMX~~ Zones

20.59.020 Wireless communication facilities in OP, C, ~~MX~~, M, FAIR, ~~MED~~ and PF zones.

Wireless communication facilities, not including small cell facilities, permitted as principal or accessory uses, or by conditional use permit, are subject to the provisions of this chapter and the following requirements:

- (1) Facilities as an Accessory Use in OP, C, ~~MX~~, M, FAIR, ~~MED~~ and PF Zones. The following facilities are permitted as accessory uses in OP, C, ~~MX~~, M, FAIR, ~~MED~~ or PF zones subject to compliance with the performance standards set forth in PMC 20.59.040 and the following requirements:

(a) Attached accessory antenna devices, parabolic antennas two feet or less in diameter, omni-directional antennas six feet or less in length, directional antennas five feet or less in height with a combined surface area of not more than 580 square inches as viewed from any one point, and stealth antennas, and not extending more than 15 feet above the roof surface of the structure; provided that the related equipment is not located in the right-of-way.

(b) Attached parabolic antennas greater than two feet in diameter, omni-directional antennas greater than six feet in length, and directional antennas greater than five feet in height with a combined surface area of more than 580 square inches as viewed from any one point shall also comply with the following requirements:

(i) The antenna and associated support structure shall be set back two feet from any exterior building wall for every one foot of height measured from the surface of the roof, except when incorporated as an architectural feature of the building or screened from view from any public right-of-way or residential zone;

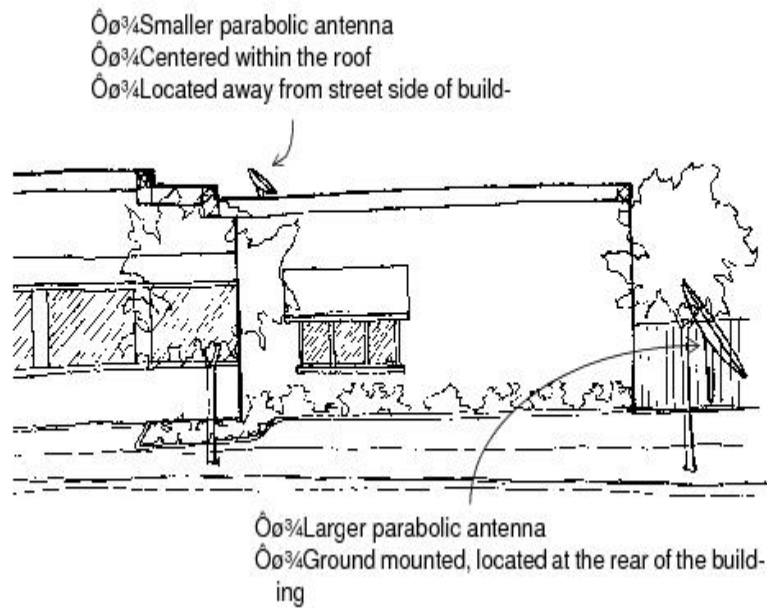
(c) Freestanding parabolic antennas and associated support structures shall be subject to the following criteria:

(i) The antenna and associated support structure are not located within any required landscaping, front or side yard setback, or in the area located between the front setback line and the front of the building;

(ii) The antenna and associated support structure does not extend more than 10 feet above the adjoining grade; and

(iii) The antenna and associated support structure is screened from view from any public right-of-way or residential zone in accordance with the screening requirements for exterior mechanical devices set forth in PMC 20.28.045(1) in OP zones, PMC 20.30.045(1) in C zones, PMC 20.31.040(1) in MX zones, PMC 20.35.035(1) in M zones, PMC 20.37.020(2) in FAIR zones, PMC

20.43.045(1) in MED zones and PMC 20.44.045 (1) in PF zones.



Example of Parabolic Antenna Size, Placement, and Screening in OP, C, MX, M, FAIR, MED and PF Zones

(2) Facilities as a Permitted Use in OP, C, MX, M, FAIR, MED and PF Zones. The following facilities are permitted as a primary use in an OP, C, MX, M, FAIR, MED and PF zone subject to compliance with the performance standards set forth in PMC 20.59.040 and the following requirements:

(a) Attached accessory antenna devices, parabolic antennas two feet or less in diameter, omnidirectional antennas six feet or less in length, and directional antennas five feet or less in height with a combined surface area of not more than 580 square inches as viewed from any one point, and stealth antennas, and not extending more than 15 feet above the roof surface of the structure, provided that the related equipment is not located in the right-of-way;

(b) Attached parabolic antennas greater than two feet in diameter, omnidirectional antennas greater than six feet in length, directional antennas greater than five feet in height with a combined surface area of more than 580 square inches as viewed from any one point, and stealth antennas shall also comply with the following requirements:

(i) The antenna and associated support structure shall be set back two feet from any exterior building wall for every one foot of height measured from the surface of the roof, except when incorporated as an architectural feature of the building or screened from view from any public right-of-way or residential zone;

(c) Freestanding antennas and associated support structures shall be subject to the following criteria:

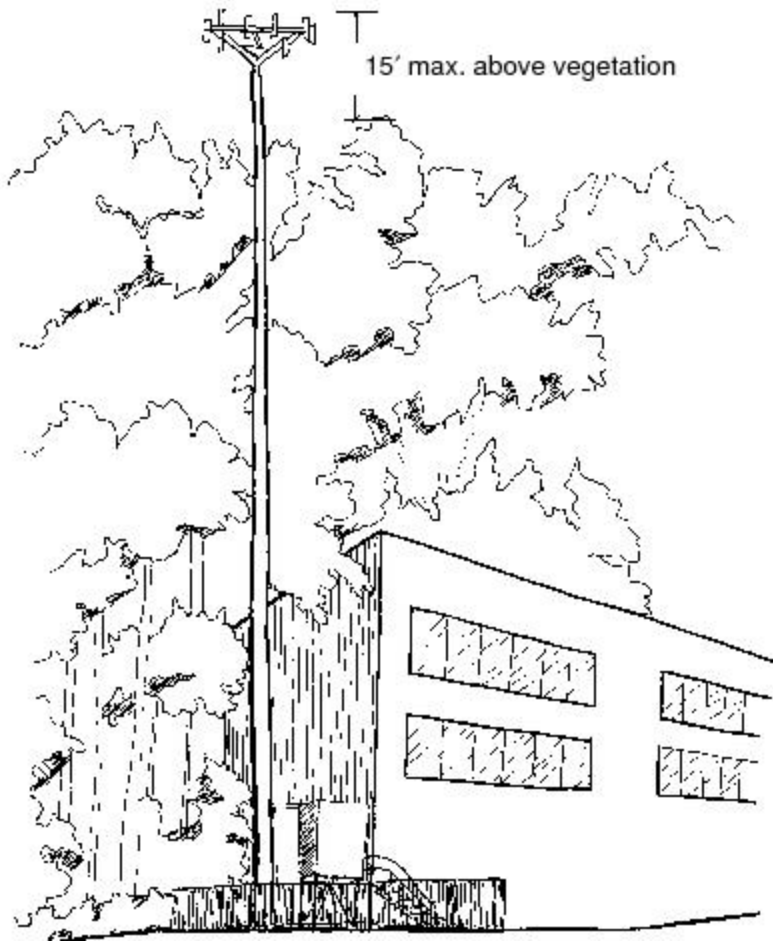
(i) The antenna and associated support structure are not located within any required landscaping, front or side yard setback, or in the area located between the front setback line and the front of the building;

(ii) The antenna and associated support structure complies with the maximum building height provisions and corresponding setbacks for buildings in the zone in which the antenna and structure are located, except as follows:

(A) If the associated support structure can be screened from view from public rights-of-way and residential zones by existing buildings or vegetation as determined by the ~~community development director~~Director or designee, the corresponding setback may be reduced; and

(iii) The equipment shelter or cabinet is screened from view from any public right-of-way or residential zone in accordance with the screening requirements for exterior mechanical devices set forth in PMC 20.35.035.

(3) Facilities as a Conditional Use in OP, C, MX, M, FAIR, MED and PF Zones. Freestanding antennas and associated support structures which exceed the maximum permitted building height, or encroach within required setbacks for the zone in which the antenna and structure are located except as permitted in subsection (2)(c)(ii)(A) of this section, or are not able to comply with one or more of the performance standards set forth in PMC 20.59.040 are only allowed upon issuance of a valid conditional use permit pursuant to Chapter 20.80 PMC.



Ø ¾ Maximum clearance above existing vegetation and/or building

Ø ¾ Located towards rear of building

Ø ¾ Located in close proximity to existing building and vegetation of similar scale

Example of Freestanding Monopoles/Towers in OP, C, M, MX, FAIR, MED and PF Zones

20.59.040 Performance standards.

The following special requirements and performance standards shall apply to any wireless communication structure or facility, except small cell facilities:

(1) Facility Preference. Proposed antennas, associated structures and placement shall be evaluated, based on available technologies, for approval and use in the following order of preference:

- (a) Stealth antennas;
- (b) Attached facilities, only when subsection (1)(a) cannot be reasonably accomplished;
- (c) Co-location facilities, only when subsection (1)(a) or (1)(b) cannot be reasonably accomplished;
- (d) Freestanding facilities which extend no more than 15 feet above adjacent existing vegetation or structures, only when subsections (1)(a), (1)(b) or (1)(c) cannot be reasonably accomplished; or

(e) Freestanding facilities which extend more than 15 feet above adjacent existing vegetation or structures, only when subsections (1)(a) through (1)(d) cannot be reasonably accomplished.

If the applicant chooses to construct new freestanding facilities, the burden of proof shall be on the applicant to show a facility of a higher order of preference cannot reasonably be accommodated on the same or other properties. The city reserves the right to retain a qualified consultant at the applicant's expense, to review the supporting documentation for accuracy;

(2) Co-Location. Shared use of support structures and other associated facilities by multiple parties is encouraged. Prior to city approval of any new freestanding transmission tower:

(a) The applicant shall provide proof of inability to locate on existing tower facilities in the immediate vicinity due to the following:

(i) Refusal of the tower owner to provide space at a fair rate of compensation; or,

(ii) The existing tower location or configuration is incompatible with the applicant's system.

(b) The applicant shall provide proof of notification and an offer of co-location opportunities to other service providers. As a condition of city approval of any new freestanding transmission towers, the applicant shall comply with the following requirements:

(i) The applicant shall agree to sign and record with the Pierce County auditor's office, a legally binding agreement limiting any co-location costs assessed to other carriers to a pro rata share of the ground lease, site acquisition cost, design, capital costs for construction of the tower including associated permitting costs, and reasonable maintenance, repair and replacement costs; and

(ii) The applicant shall size, design and construct the transmission tower and related equipment to accommodate future co-location, and shall ensure the availability of adequate space to accommodate associated equipment shelters/cabinets;

(3) Critical Areas. ~~Applicants shall avoid locating new~~ ~~No antennas shall be located~~ in a critical area or associated buffer required by the city's environmentally critical areas management ordinance.

(Chapter 21.06 PMC), except when determined to be exempt pursuant to Article IV of said ordinance. Where no feasible alternatives exist, private wireless facilities may be located in environmentally critical areas or critical area buffers upon a finding of minimum disturbance to the critical area;

(4) State and Federal Preemption. Federal law prohibits consideration of environmental effects of radio frequency emissions to the extent that the proposed facilities comply with the Federal Communications

Commission regulations concerning emissions. All other city regulations shall apply unless specifically preempted by state or federal authority;

(5) Visual Impacts. Wireless communication facilities shall be located and installed in such a manner so as to minimize the visual impact on the skyline and surrounding area in the following manner:

(a) Antennas may not extend more than 10 feet in RS, ~~RM~~ and ~~CMXRM~~ zones and 15 feet in all other zones, above their supporting structure, monopole, lattice tower, building or other structure, or surrounding vegetation;

(b) Site location and development shall preserve the pre-existing character of the surrounding buildings, land use and the zone district to the extent possible, while maintaining the function of the communications equipment. Wireless communication facilities shall be integrated through location, siting and design to blend in with the existing characteristics of the site through application of the following measures:

(i) Existing on-site vegetation shall be preserved insofar as possible or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area;

(ii) Location of facilities close to structures or vegetation of a similar height;

(iii) Location of facilities toward the center of the site, and location of roof-mounted facilities toward the interior area of the roof, in order to minimize view from adjacent properties and rights-of-way;

(iv) Location of facilities within interior side and rear yards; and

(v) Incorporation of the antenna, associated support structure and equipment shelter as a building element or architectural feature;

(c) Related equipment facilities used to house wireless communications equipment shall be located within buildings or placed underground when possible. When they cannot be located in buildings or placed underground, equipment shelters or cabinets shall be screened. Alternate methods for screening may include the use of building or parapet walls, sight-obscuring fencing and/or landscaping, screen walls or equipment enclosures; and

(d) Wireless communication facilities and related equipment facilities shall be of neutral colors such as white, gray, blue, black or green, or similar in building color in the case of facilities incorporated as part of

the features of a building, unless specifically required to be painted another color by a federal or state authority. Wooden poles are not required to be painted;

(6) Signage. No signage, message or identification other than the manufacturer's identification ~~is and FCC~~ required notices are allowed to be portrayed on any antenna, and permitted identification shall not exceed 10 percent of the surface area, and no signage or advertising shall be allowed above the height of the perimeter fencing except for the manufacturer's identification described above;

(7) Lighting and Security. Wireless communication facilities shall not be illuminated except for security reasons or unless required by a federal or state authority. Building-mounted lighting and aerial-mounted floodlighting shall be shielded from above in such a manner that the bottom edge of the shield shall be below the light source. Ground-mounted floodlighting or light projecting above the horizontal plane is prohibited between midnight and sunrise. All lighting, unless required by the Federal Aviation Authority (FAA) or other federal or state authority, shall be shielded so that the direct illumination is confined to the property boundaries of the light source;

(8) Noise. No equipment shall be operated so as to produce noise in violation of Chapter 6.16 PMC (Noise Control);

(9) Minor Modifications. Minor modifications to existing wireless communication facilities, including the installation of additional antenna(s), for which a valid conditional use permit exists (if one was required previously), may be approved by the ~~community development director~~ Director or designee, provided it is determined there is minimal or no change in the visual appearance and said modifications comply with the performance standards set forth in this chapter.

(a) Co-location on Existing Wireless Communication Facilities. In all zones except RS, ~~RM, MED~~ and ~~MXRM~~, an increase in height related to an existing, lawfully permitted wireless communication facility may be permitted administratively if such addition of height would not increase the existing height of such facility by more than 10 percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater. All other performance standards set forth in this chapter shall apply to such co-location height extension proposals, including the facility preference requirements of subsection (1) of this section and the visual impacts standards of subsection (5)(a) of this section;

(10) Abandonment or Obsolescence. Any wireless communication facility shall be removed by the facility owner or authorized agent within six months of the date it ceases to be operational or if the facility falls into disrepair. "Disrepair," as used in this section, refers to a facility or structure which has become so damaged or

deteriorated on account of age, the elements, wear and tear, or other cause, that it has become a threat to public safety or would constitute a public nuisance as defined in the Puyallup Municipal Code.

20.59.050 Small Cell Facilities.

In order to manage its right-of-way and the proliferation of small cell technology within the City in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the city while complying with the requirements of state and federal law, the city has adopted this process for the deployment of small cell technology. Small cell facilities are permitted in all zoning districts in the City, subject to the following special requirements and performance standards. PMC 20.59.040 shall not apply to small cell facilities. The application and records process described in Chapter 20.11 PMC shall not apply to the processing of small cell permit applications.

- (1) **Franchise.** An applicant is responsible for obtaining a franchise if the proposed small cell network is located within the rights-of-way. Administrative review of a small cell permit may occur in parallel with the franchise process; provided, however, that the small cell permit will not be issued until the applicant is granted a franchise by the city council.
- (2) **Application.** Applicants shall apply using the small cell permit application form and submit a fee deposit commensurate with the estimated administrative costs of processing the small cell permit application. The fee deposit level shall be set by the Director.
 - (a) The applicant shall provide a map identifying the geographic boundaries for the small cell deployment.
 - (b) The application shall provide specific locational information including GIS coordinates of all facilities, and specify whether and where small cell facilities are to be located on existing poles, or will utilize replacement poles, new poles, towers, existing buildings and/or other structures. Conduit and/or ground-mounted equipment necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Detailed schematics and visual renderings, including photo simulations, of the small cell facilities shall be provided by the applicant.
 - (c) The applicant must show that it has an underlying lease right or other authorization from the owner of the pole or structure for the installation of its small cell facilities on such pole or structure. For city-owned poles or structures, the applicant must obtain a lease agreement from the city.
 - (d) Up to twenty (20) sites may be specified in one small cell permit application for processing. The Director may allow up to five (5) additional sites in one application in order to consider small cell facility sites within one contiguous service area in one application.

- (e) If more than one application for a small cell permit is submitted by an applicant, they shall be considered in the order received. If multiple applications are submitted on the same date, the applicant shall indicate which application should be considered first.
- (i) Any element of a deployment which qualifies as an eligible facilities request shall be specifically designated by the applicant and may be addressed separately by the Director in order to comply with the requirements in Chapter 20.59A PMC.
- (f) The Director may approve, deny or conditionally approve all or any portion of the sites proposed in the small cell permit application. The denial of one or more small cell facility locations within a submission described in subsection (d) above shall not be the sole basis for a denial of other locations or the entire application for small cell facilities.
- (g) Any application for a small cell permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Chapter 21.04 PMC.
- (h) The applicant shall submit a sworn affidavit signed by an RF engineer with knowledge of the proposed project affirming that the small cell deployment will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the small cell facility will operate. If additional transmission facilities necessary to the small cell facility, such as microwave backhaul, are to be provided by a third party, then the small cell permit shall be conditioned on an RF certification showing the cumulative impact of the RF emissions of the entire installation. The applicant may provide one emissions report for the entire small cell deployment if the applicant is using the same small cell facility configuration for all installations within that batch, or may submit one emissions report for each subgroup installation identified in the batch.
- (i) The applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.
- (j) Applications filed under this title shall be numbered consecutively in the order of their filing, and shall become a part of the official records of the city. Copies of all notices, application materials, staff reports, and actions shall state the file number and be filed with the application.
- (k) Applicants shall submit a traffic control plan and information for right of way obstruction permit.

(3) Application Review.

- (a) Within 30 calendar days after receiving a small cell permit application, the Director shall mail, email, or provide in person a written determination to the applicant stating either:

 - (i) The application is complete; or
 - (ii) The application is incomplete and stating what is necessary to make the application complete, referencing the code provision, ordinance, application instruction or otherwise stated public procedure.

The Director shall notify the applicant within ten (10) days whether the supplemental information did not provide the information identified in the original notice delineating the missing information.

(b) The written determination shall also identify other agencies of local, state or federal governments that may have jurisdiction over some aspect of the application.

(c) An application shall be deemed complete if the Director does not provide a written determination to the applicant that the application is incomplete as provided in subsection (3)(a)(ii) of this section.

(d) The notice of final decision on a small cell permit application shall be issued consistent with any time period requirements established by state or federal law.

(e) Any applicant may withdraw an application at any time, provided the withdrawal is in writing and signed by all persons who signed the original application or their successors in interest. When a proper withdrawal is received, the application shall be deemed null and void. If such withdrawal occurs prior to the Director's decision then reimbursement of fees submitted in association with said application shall be prorated to withhold the amount of city costs incurred in processing the application prior to time of withdrawal. These city costs shall be based upon a determination by the Director of the total hours expended in project review from the time of project application to time of withdrawal, utilizing an hourly dollar amount for staff time as established by resolution. If such withdrawal is not accomplished prior to the Director's decision, there shall be no refund of all or any portion of such fee.

(f) Any applicant may revise an application. Such revision shall be deemed to supersede the prior application documents. If such revision is significant enough to require a revised administrative review, the Director may assess another application fee equal to the amount required to review that application

(g) Failure of an applicant to provide additional information as requested pursuant to subsection (3)(a)(ii) within sixty (60) days of notice by the Director shall be deemed a withdrawal of that application, unless an extension period has been approved by the Director.

(h) If the applicant includes small cell facility locations within a residential or mixed-use zone, the Director shall provide notice of a complete application for a small cell permit on the city's website with a link to the small cell permit application. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries.

(i) The Director, at his/her option, may allow an applicant to opt for expedited review. Absent such a request, the city will process applications on a first-come, first-served basis. An applicant requesting expedited review may select a third-party consultant from a list established by the city through requests for qualifications or may propose an independent reviewing entity for review by the city. Such entity shall be engaged pursuant to a third-party contract. The applicant shall be responsible for paying all costs incurred in the expedited review process. Nothing herein shall be deemed to require an applicant to utilize expedited review.

(4) Administrative Review Process.

- (a) A pre-application meeting is required prior to submitting an application for a small cell permit. The purpose of a pre-application meeting is to discuss the nature of the proposed deployment of the small cell network, review process and schedule, and applicable plans, policies and regulations. Upon written request from the applicant, the Director may waive the pre-application meeting.
- (b) The Director shall use the criteria listed in this Section when deciding upon the application. In addition, the Director may approve the application only if:
- (i) It is consistent with PMC 20.59.050 and the Comprehensive Plan; and
 - (ii) It is consistent with the purpose and intent of the zone in which the site is located; and
 - (iii) It is consistent with the public health, safety and welfare.
- (c) The Director shall approve, approve with conditions or modifications, or deny an application. The Director shall include any conditions to ensure consistency with City zoning and utility regulations, and may include mitigation measures proposed under SEPA, if applicable. The applicant carries the burden of proof that a preponderance of the evidence supports approval of the application or approval with conditions or modifications.
- (d) The Director shall distribute a written report supporting the decision and if approved shall issue the small cell permit. The report shall contain all of the following:
- (i) The Director's decision;
 - (ii) Any conditions included as part of the decision; and
 - (iii) Information regarding how the applicant can request a reconsideration of the Director's decision.
- (e) Administrative review decisions (and any reconsideration of that decision) and SEPA threshold determinations are final decisions, effective on the day issued. The Director's decision is the city's final decision on the application.
- (f) Appeal to Superior Court. A final decision by the Director may be appealed to Superior Court.
- (5) Utility Pole Design Standards.** Small cell facilities located on wooden utility poles shall conform to the following design criteria:
- (a) The utility pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small cell facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten (10) feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. Replacement wooden utility poles may either match the approximate color and materials of the replaced pole or shall be the standard new wooden utility pole used by the pole owner in the city.
 - (b) A pole extender may be used instead of replacing an existing pole, but may not increase the height of the existing pole by more than ten (10) feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to

provide sufficient separation and/or clearance from electrical and wireline facilities. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole. A "pole extender" as used herein is an object affixed between the utility pole and the antenna for the purpose of increasing the height of the antenna above the pole.

(c) Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the utility pole on which they are attached.

(d) Multiple antennas are permitted on a utility pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume, with a cumulative total antenna volume not to exceed nine (9) cubic feet, unless additional volume is technically necessary which in such cases the total volume may not exceed twelve (12) cubic feet. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness.

(e) Panel antennas shall not be mounted more than twelve (12) inches from the surface of the utility pole.

(f) A canister antenna may be mounted on top of a utility pole, which may not exceed the height requirements described in subsection 5(a) above. A canister antenna mounted on the top of a utility pole shall not exceed the diameter of the pole by more than twelve (12) inches, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the utility pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the utility pole.

(g) An omni-directional antenna may be mounted on the top of an existing utility pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.

(h) All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on utility poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.

(i) Equipment for small cell facilities must be attached to the utility pole, unless otherwise permitted to be ground mounted pursuant to subsection. (8)(a) The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure may not exceed seventeen (17) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed seventeen (17) cubic feet. The applicant is

encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, if such banners or road signs are allowed by the pole owner.

(j) An applicant who desires to enclose its antennas and equipment within a Unified Enclosure may do so, provided that such Unified Enclosure does not exceed four (4) cubic feet. To the extent possible the Unified Enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs. The Unified Enclosure may not be placed more than six (6) inches from the surface of the pole, unless a further distance is technically required and confirmed in writing by the pole owner.

(k) The visual effect of the small cell facility on all other aspects of the appearance of the utility pole shall be minimized to the greatest extent possible.

(l) The use of the utility pole for the siting of a small cell facility shall be considered secondary to the primary function of the utility pole. If the primary function of a utility pole serving as the host site for a small cell facility becomes unnecessary, the utility pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility and all associated equipment shall be removed.

(m) All cables and wires shall be routed through conduit along the outside of the pole. The outside conduit shall be colored or painted to match the pole. The number of conduit shall be minimized to the number technically necessary to accommodate the small cell.

(n) Glulam poles are specifically prohibited.

(o) There is no collocation requirement for small cell facilities located on utility poles.

(6) Small Cell Facilities Attached to Light Poles and Other Non-Wooden Poles. Small cell facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right of way or poles outside of the right of way shall conform to the following design criteria:

(a) Antennas and the associated equipment enclosures shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible or is incompatible with the pole design, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush mounted to the pole in a manner that integrates the equipment enclosure into the design of the pole and minimizes clutter and visual impact. If the equipment enclosure is permitted on the exterior of the pole, the applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole. For purposes of this section, "incompatible with the pole design" may include a demonstration by the applicant that the visual impact to the pole or the streetscape would be reduced by placing the antennas and equipment exterior to the pole.

(b) All conduit, cables, wires and fiber must be routed internally in the light pole. Full concealment of all conduit, cables, wires and fiber is required within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment.

- (c) Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.
- (d) The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole.
- (e) The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements, shall not be more than a 25% increase in the diameter of the existing pole measured at the base of the pole, and shall comply with the requirements in subsection (8)(e) below. If additional diameter is needed in order to conceal equipment within the base of the pole, then the applicant shall propose a concealment element design consistent with subsection (9)(c) below.
- (f) An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed the diameter of the pole by more than twelve (12) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.
- (g) The use of the light pole for the siting of a small cell facility shall be considered secondary to the primary function of the light pole. If the primary function of a light pole serving as the host site for a small cell facility becomes unnecessary, the light pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility and all associated equipment shall be removed.

(7) Small Cell Facilities Attached to Existing Buildings. Small cell facilities attached to existing buildings, shall conform to the following design criteria:

- (a) Small cell facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.
- (b) The interruption of architectural lines or horizontal or vertical reveals is discouraged.
- (c) New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.
- (d) Small cells shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.
- (e) Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.
- (f) Small cell facilities shall be painted and textured to match the adjacent building surfaces.

(8) General Requirements.

- (a) Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed underground or the applicant can demonstrate that pole mounted or underground equipment is technically infeasible. If the applicant builds an underground vault it should design such vault to allow for co-location of additional equipment. If ground mounted equipment is necessary, then the applicant shall submit a concealment element design, as described in subsection. (9)(c) Generators located in the rights of way are prohibited.
- (b) No equipment shall be operated so as to produce noise in violation of Chapter 6.16 PMC (Noise Control)
- (c) Small cell facilities are not permitted on traffic signal poles.
- (d) Small cell facilities are not permitted on ornamental poles, which are described in the City Standards for Public Works Engineering and Construction Manual.
- (e) Replacement poles and new poles shall comply with the American with Disabilities Act (ADA), city construction and sidewalk clearance standards, and state and federal regulations in order to provide a clear and safe passage within the rights-of-way.
- (f) Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.
- (g) A small cell permit shall not be required for routine maintenance and repair of a small cell facility within the rights-of-way, or the replacement of an antenna or equipment of similar size, weight and height, provided that such replacement does not defeat the concealment elements used in the original deployment of the small cell facility and does not impact the structural integrity of the pole. Right-of-way use permits may be required for such routine maintenance, repair or replacement.
- (h) The design criteria as applicable to small cell facilities described herein shall be considered concealment elements and such small cell facilities may only be expanded upon an eligible facilities request described in Chapter 20.59A PMC, when the modification does not defeat the concealment elements of the facility.
- (i) No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna, and any such signage on equipment enclosures shall be of the minimum amount possible to achieve the intended purpose; provided that, signs are permitted as concealment element techniques where appropriate.
- (j) Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element design, as described in subsection. (9)(c)
- (k) Side arm mounts for antennas or equipment are prohibited.

- (l) Any small cell facility shall be removed by the facility owner or authorized agent within six months of the date it ceases to be operational or if the facility falls into disrepair. "Disrepair," as used in this section, refers to a facility or structure which has become so damaged or deteriorated on account of age, the elements, wear and tear, or other cause, that it has become a threat to public safety or would constitute a public nuisance as defined in the Puyallup Municipal Code.
- (m) The preferred location of a small cell facility on a pole is the location with the least visible impact.
- (n) Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the building or pole upon which they are attached.
- (o) The City may consider the cumulative visual effects of small cells mounted on poles within the rights-of-way when assessing proposed siting locations so as to not adversely affect the visual character of the City.
- (p) Small cell facilities are not permitted on any residential structures, principal or accessory, in the RS zone.
- (q) The design standards in this Section 20.59.050 are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology, nor prohibits or has the effect of prohibiting the provision of personal wireless services.

(9) New Poles in the Rights-of-Way for Small Cell Facilities.

- (a) New poles within the rights-of-way are only permitted if the applicant can establish that:
 - (i) The proposed small cell facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights of way such as a public park, public property, building, transmission tower or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;
 - (ii) The proposed wireless communications facility receives approval for a concealment element design, as described in subsection(c);
 - (iii) The proposed wireless communications facility also complies with shoreline and SEPA, if applicable; and
 - (iv) No new poles shall be located in a critical area or associated buffer required by the City's environmentally critical areas management ordinance (Chapter 21.06 PMC), except when determined to be exempt pursuant to Article IV of said ordinance. Where no feasible alternatives exist, private wireless facilities may be located in environmentally critical areas or critical area buffers upon a finding of minimum disturbance to the critical area.

- (b) An application for a new pole in the right-of-way is subject to administrative conditional use permit review pursuant to Chapter 20.81 PMC.
- (c) The concealment element design shall include the design of the screening, fencing or other concealment technology for a tower, pole, or equipment structure, and all related transmission equipment or facilities associated with the proposed wireless communications facility, including but not limited to fiber and power connections.
- (i) The concealment element design should seek to minimize the visual obtrusiveness of wireless communications facility installations. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including to the extent technically feasible similar height. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color and texture — or the appearance thereof — as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure or otherwise integrated into the design of the structure.
- (ii) If the Director has already approved a concealment element design either for the applicant or another wireless communications facility along the same public right-of-way or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would overwhelm the pole design.
- (d) Even if an alternative location is established pursuant to subsection, (9)(a)(i) the Director may determine, pursuant to an administrative conditional use permit, that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the concealment element design, the City's Comprehensive Plan and the added benefits to the community.
- (e) Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the city to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and the overall height of the replacement pole and the proposed wireless communications facility is more than sixty (60) feet.



CITY OF PUYALLUP

Development Services

333 South Meridian

Puyallup WA 98371

To: City Council
From: Tom Utterback & Rachael Brown, Development Services Dept.
Re: **Small Cell Wireless Code Amendments**
Date: *City Council meeting of April 17, 2018*

INTRODUCTION

On April 17, 2018, City Council is being asked to consider first ordinance reading of code amendments to Puyallup Municipal Code (PMC) Sec. 20.59 (Wireless Communications) which will provide procedural and design standards for the placement of "small cell wireless" facilities in the City, including in public rights-of-way. This staff report briefly outlines this issue, including the Planning Commission review process.

City staff regularly interacts with telecommunication carriers regarding the placement of antennas and related equipment on property throughout the City. These antenna locations principally involve private properties. Such wireless facilities are regulated under PMC Sec. 20.59 of the zoning code. Separately, the City uses franchise agreements to coordinate the placement of telecommunication equipment within City rights-of-way, generally involving sub-surface conduits or above-ground lines.

Given changes in wireless technology and new Federal laws, we expect a surge in the usage of "small cell" wireless facilities by private carriers. Under Federal and expected new State laws, local jurisdictions must make rights-of-way available for small cell antenna placement. This involves the placement of small antennas and associated support equipment (e.g. electric meters, battery backups) on utility poles and/or light standards within Puyallup's public rights-of-way, which is not anticipated in our current franchise agreements or our code standards. To address this, Puyallup joined a multi-city regional consortium which has been doing advance work on this issue, including coordinating with wireless providers, in order to set-up local code standards to accommodate the pending deployment of this new cell technology while also safeguarding public priorities.

PROCESS TO DATE/PROPOSED AMENDMENTS

In 2017, City staff – including representatives of Development Services, Public Works, Engineering and Legal - began working actively with the Consortium, which is represented by attorneys with Ogden Murphy Wallace (OMW) in Seattle. OMW attorney Elana Zana has served as Puyallup's lead outside counsel on this topic. On 5/9/17, Ms. Zana led a study session presentation to City Council outlining the small cell issue and previewing our intent to draft local zoning standards to address the pending increase in usage. In late 2017, staff and Ms. Zana began working with the Planning Commission to familiarize them with small cell wireless and to

formulate draft code amendments; that Commission work extended into early 2018. During this process, input was also solicited from wireless providers and from other stakeholders (e.g. Puget Sound Energy, which owns most wooden utility poles in our rights-of-way) on potential code standards. Consortium members were also monitoring potential new State small cell legislation, as that may have resulted in pre-emptive measures for local jurisdictions.

After multiple work sessions and considering several iterations of possible code text, the Planning Commission held a noticed public hearing on 2/28/18, at which time they reviewed “final” draft amendments to PMC Sec. 20.59. Those proposed amendments consisted of the following:

- additions to the existing Definitions section of the City’s Wireless code (PMC Sec. 20.59.005) and a few minor revisions to other existing code sections;
- a new code section (PMC 20.59.050, “Small Cell Facilities”) that regulates the placement and external features of small cell facilities both in and outside of the right-of-way. This code section creates a new City “small cell permit” process which would authorize placement of small cell facilities in “batches”. If a small cell request involves City right of way, permits will not be issued until an applicant has a valid franchise agreement from the City.

The proposed standards differentiate the two main pole types within local rights-of-way: PSE-owned wooden utility poles (some of which also have light standards) and City-owned metal light poles. In both cases, the proposed standards would reduce the visual impact of clusters of wires, large equipment boxes, and antennas either by encouraging equipment to be internalized within metal poles or limiting the size/location of equipment externally attached to wooden poles. To enable flexibility in the camouflage intent for these facilities, applicants can deviate from strict design requirements if they can demonstrate that the proposal will have less or equal visual impact than a conforming design.

The proposed draft restricted small cell facilities from being placed on traffic signal poles, green ornamental light poles or on single-family structures (in single-family residential zones). The draft code encourages sites on existing utility poles or buildings to be considered before proposing the installation of a new pole in the right-of-way, as well as containing other measures to mitigate possible impacts.

During the code formulation process, the City received formal input from several wireless carrier reps, including T-Mobile, AT&T and Verizon, as well as other parties. On April 17th, staff will briefly highlight for City Council some of the key policy matters which were raised by private carriers during that Commission process.

ANALYSIS/RECOMMENDATION

ANALYSIS

PMC 20.91.010 sets forth the decision criteria that governs City-initiated zoning code amendments:

Any action amending this title shall be principally based upon the consistency of such amendment with the goals, objectives and policies of the Comprehensive Plan (NOTE: Staff comments follow each policy).

U-11.3 Where no feasible alternative exist, private utilities facilities may be located in environmentally critical areas and critical area buffers with minimum disturbance.

Proposed text PMC 20.59.050 (9aiv) addresses siting of new utility poles and small cell facilities in critical areas or associated buffers and is consistent with this Comp. Plan policy.

U-13.1 Private utility facilities shall be located where they generally correspond with the type of surrounding land uses with regard to the size of exposed apparatuses and the production of audible noise.

The proposed code seeks to accommodate the city's current and future telecommunications demand while still mitigating the visual impact of any exposed small cell apparatuses attached to structures in and outside of the right of way. The code also restricts small cells from being attached to single-family residential structures in the RS-zones, in order to address any potential land use incompatibility.

U-14.1 Coordinate joint usage of street rights-of-way for public and private utilities.

The proposed code section provides a streamlined process for coordinating the deployment of small cell telecommunications facilities in rights-of-way. It ensures that wireless equipment can be sited while also safeguarding the safety and aesthetics of the public infrastructure.

LU-33.2 Establish siting criteria to encourage location of services near transit hubs, protect surrounding uses and mitigate impacts of any specific facility to the neighborhood and the City.

The proposed criteria for siting and design of small cell facilities ensures that the location and external characteristics of facilities will be compatible with the neighborhoods and right-of-way by reducing the visual impacts of the facilities.

SEPA

SEPA review of the proposed code amendments was provided via issuance of a non-project Determination of Non-Significance (DNS).

RECOMMENDATION

On 2/28/18, the Planning Commission held a duly-noticed public hearing on the aforementioned draft Small Cell Wireless code amendments. ***After consideration of staff's report and public testimony, the Commission found that the proposed amendments did meet the above-cited adoption criteria and voted (4-0) to forward a recommendation of approval to City Council on the draft amendments.*** That recommendation did include two minor further code text changes, which are incorporated into the proposed City Council ordinance.

**City of Puyallup
Planning Commission
Puyallup City Hall – Council Chambers
February 28, 2018
6:30 PM**

(These minutes are not verbatim. The meeting was recorded, and copies of the recording are retained for a period of six years from the date of the meeting and are available upon request.)

PLANNING COMMISSIONERS PRESENT: Vice Chair Chris Larson, Donnie Juntunen, April Sanders, Art Seeley

PLANNING COMMISSIONERS ABSENT: Chair Pat McGregor, Laurie Larson

STAFF PRESENT: Director of Development Services - Tom Utterback; Senior Planner – Katie Baker; Assistant Planner – Rachael Brown; Administrative Assistant – Michelle Ochs

The meeting was called to order at 6:30 p.m. A quorum was established.

APPROVAL OF THE AGENDA

Ms. Sanders moved to approve the agenda, with a second by Mr. Seeley. The Commissioners unanimously approved the agenda.

CONSIDERATION OF THE MINUTES

November 15, 2017 & December 13, 2017

Ms. Sanders moved to approve the minutes as submitted, with a second by Mr. Juntunen. The Commissioners unanimously approved both sets of minutes.

AGENDA ITEMS

Public Hearing – Small Cell Wireless Facilities, Draft Code Amendments, PMC Sec. 20.59

(Recording start time 01:25)

Mr. Utterback gave a PowerPoint presentation on this item, and talked about current zoning standards, the current status of small cell wireless facilities in Puyallup, and the process of the draft code amendments to date. Mr. Utterback explained that the Planning Commission will hold a public hearing to consider potential code amendments to a section of the municipal code which deals with wireless communications. Mr. Utterback did a page-by-page review of proposed changes to existing sections of Puyallup Municipal Code (PMC) Sec. 20.59, as well as

the new, proposed code section. He noted that staff supported deleting one word (“existing”) from the first sentence of Sec. 20.59.050 (5-f). He also briefly went through the 2/27/18 comment letter from AT&T with the Commission, noting that it was the only written comments directed to the Commission for this hearing. Mr. Utterback explained the code amendment criteria to be met for Planning Commission’s recommendation.

- Mr. Seeley referenced proposed Sec. 20.59.050 (7), asking about any possible concerns by staff on “overloading” a building outside of right-of-way with too many antennas, Mr. Utterback explained that the proposed cumulative visual effects section for small cells mounted on poles would also apply to small cells attached to buildings, so that it allows staff to be comprehensive in or out of the right-of-way. Mr. Seeley asked if new Puget Sound Energy (PSE) utility poles will be wooden or metal, Mr. Utterback responded that staff’s understanding is that they will be wooden.

The public hearing for Small Cell Wireless Facilities opened at 7:06 p.m.

Linda Atkins – (Attorney for T-Mobile) - Ms. Atkins acknowledged the revisions made by staff in the draft code in response to her earlier comments, then made further comments regarding different proposed code sections.

Lelah Vaga – (Network Engineer for Verizon Wireless) - Ms. Vaga thanked staff for their work on the draft code and their consideration of the input given by the wireless providers during this process. Ms. Vaga explained why small cell wireless moving into Puyallup is so important because of the rapidly evolving technology.

Carol Tagayan – (Representative with AT&T)

Ms. Tagayan thanked the Commission for their work on the draft code, and echoed Ms. Vaga’s comments regarding the importance of this technology in Puyallup.

David DeGroot – 3021 26th Ave SE – Mr. DeGroot thanked staff for the code revisions made regarding earlier comments he had submitted, and made further comments regarding concerns about residential areas.

The Public Hearing for Small Cell Wireless Facilities closed at 7:21 p.m.

In response to Mr. DeGroot’s comments, Mr. Utterback stated that the Commission could consider the RM(multi-family) zone along with the RS (single-family) zone stated in Section 20.59.050 (8), subsection p. In response to a Commissioner question, Ms. Vaga commented that sometimes it is appropriate to place a macro site on a large apartment building, as it doesn’t affect the residents and doesn’t visually impact the neighborhood.

Scott Snyder, an attorney with Ogden Murphy Wallace and consortium counsel for the City, addressed comments made during the public hearing. Mr. Snyder suggested that the Commission add one further minor change to the end of proposed Sec. 20.59.050 (8-q).

The Commission made comments to the effect that the draft code strikes a good balance between the wireless providers needs and the public interests.

Mr. Juntunen made a motion to approve the draft code as written, with a second by Ms. Sanders.

After some discussion, Mr. Juntunen included these two text revisions in his motion:

- deleting the word “existing” in the opening sentence of Sec. 20.59.050, sub-section 5-f., as had been proposed by City Staff.
- adding additional verbiage to the end of Sec. 20.59.050, sub-section 8-o regarding that these standards not “prohibit” the provision of personal wireless service, as suggested by Mr. Snyder.

The Planning Commission voted, and the motion passed 4 – 0.

Public Hearing – Planned Development Rezones (Recording start time 01:02:51)

Ms. Brown gave a PowerPoint presentation, explaining what Planned Developments are, and why staff is proposing to replace them. Ms. Brown explained that they are proposing changes to the following Planned Developments: Peach Park, Crystal Ridge, La Grande, Leone Heights, and Stewart Crossing. Ms. Brown explained the criteria for approving the rezone, and the timeline towards completion.

The Public Hearing for Planned Development Rezones opened at 7:57 p.m.

Leonid Polischuk – 1501 5th St SE – Mr. Polischuk stated that he lives near the hospital and talked about concerns regarding heavy traffic, a question of an increase in property taxes, and why his area wouldn’t just be zoned commercial.

Glenn Markovits – 3306 24th Ave SE – Mr. Markovits stated he lives in Rodesco, adjacent to Crystal Ridge, and voiced concerns regarding high density and heavy traffic in the area with the Shaw Road project scheduled to start soon only contributing to the issues. Mr. Markovits also stated that he is concerned about possible future development in Crystal Ridge that would also contribute to the issues.

Helen Vajgert – 3920 15th Ave SE – Ms. Vajgert lives in Crystal Ridge and voiced concerns regarding density, possible future development, high crime rates, and heavy traffic.

Julie Buell – 1712 Amber Blvd SE – Ms. Buell asked what the benefit is of the rezoning to the City, and voiced concerns regarding heavy traffic.

Allen Zulauf – 2515 43rd St SE – Mr. Zulauf voiced concerns regarding increased density and traffic issues.

Mark McCoy – 3718 15th Ave SE – Mr. McCoy inquired as to why this proposed rezone is happening, that it appears to be for development reasons. Mr. McCoy asked if an exception could be made for the Crystal Ridge development.

The Public Hearing for Planned Development Rezone closed at 8:09 p.m.

Mr. Larson summarized the citizen comments and asked staff to respond. Ms. Brown stated that some of the green belts in Crystal Ridge are wetlands and it is against city, state and federal regulations to develop on it. Ms. Brown explained that staff is proposing these rezones to make it easier for residents of these Planned Developments to come in and get a permit for their existing parcels, that would otherwise have to get an approved Planned Development.

Mr. Utterback stated also that the PDR (Planned Residential Development) zone standards are very tailored to each of these Planned Developments, therefore making it more difficult for someone to look up in the City Code what they can do with their property.

Ms. Vajgert inquired as to whether someone could come in and purchase the houses abutting the houses in the Highlands, tear them down, and build townhomes in their place. Mr. Utterback responded that row townhouse development is not permitted by right in the proposed RS zone, plus the lots in that area would not be easily re-subdividable because of the RS-zone minimum lot size requirements.

Mr. Markovits commented again and asked if there could be an additional dwelling unit on properties. Mr. Utterback explained that accessory dwelling units are allowed in all residential zones with strict standards.

Several of the Commissioners stated that the greenbelt is protected and no development can happen whether it is zoned PDR or zoned RS.

Mr. Juntunen inquired as to what would happen if the Commission left Crystal Ridge out of the rezone, Mr. Utterback responded that if the Planning Commission and the City Council were to not act on Crystal Ridge, it would just remain zoned PDR.

Mr. Seeley made a motion to approve the rezones from PDR to RS as specified in Ms. Brown's presentation, with a second by Ms. Sanders.

Mr. Seeley explained that the protections from development of the wetlands exist whether these Planned Developments are zoned PDR or RS, and that rezoning these Planned Developments would also not affect traffic in these areas. Mr. Seeley also noted that the Crystal Ridge Homeowner's Association (HOA) would control the green belts regardless of the zoning proposal.

The Planning Commission voted, and the motion passed 4 -0.

OTHER COMMISSION BUSINESS

Mr. Utterback commented on the exiting Planning Commissioner that is leaving, Pat McGregor; and explained the status of possible incoming Commissioners.

Ms. Baker stated that the March 14, 2018 Planning Commission meeting is cancelled.

Mr. Larson informed the Commissioners of an upcoming Planning Short Course in Fife on March 21st, stating that it is free to sign up and is a very informative course.

ADJOURNMENT

The meeting was adjourned at 8:30 p.m.



City Council Agenda Item Report

Submitted by: Mary Winter
Submitting Department: City Clerk's Office
Meeting Date: 6/05/2018

Subject:

Approve a resolution appointing members to the Lodging Tax Advisory Committee

Presenter:

Councilmember Door

Recommendation:

Consider the recommendation of the Council Ad Hoc Appointments Committee to appoint members to the 2018 Lodging Tax Advisory Committee.

Background:

The Ad Hoc Appointments Committee interviewed candidates for three positions to be held by organizations that collect the tax and three positions to be held by organizations eligible to receive the tax funds.

Applications were solicited and received seven applications to serve on the Committee. Interviews were held on April 26th and May 1st.

The committee recommends that the Mayor, with the concurrence of the Council make the following appointments:

Representatives collecting the tax:

Brooke Bourn, Fairfield Inn
Joshua Goshorn, Best Western Premier Plaza
Francisco Manibusan, Hampton Inn & Suites

Representatives receiving the tax:

Jerome O'Leary, Puyallup/Sumner Chamber of Commerce
Jaime Vogt, Tacoma Regional Convention & Visitor Bureau AKA Travel Tacoma
Kerry Yanasak, Puyallup Main Street Association

Council Direction:

Fiscal Impacts:

ATTACHMENTS

- [Resolution - LTAC Appointments 2018](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, confirming appointments to the Puyallup Lodging Tax Advisory Committee

WHEREAS, in 1997, the Puyallup City Council adopted Resolution No. 1391, and therein established a lodging tax advisory committee pursuant to authority granted in RCW 67.28.1817; and

WHEREAS, the City Council felt it was appropriate to codify various provisions of Resolution No. 1391 as part of the Puyallup Municipal Code, through Ordinance No. 2901; and

WHEREAS, Section 2.14.020 of the Puyallup Municipal Code requires that the membership shall consist of seven members including the mayor, three representatives of businesses required to collect the tax and three representatives of organizations eligible to be funded by the revenue received; and

WHEREAS, the Puyallup Municipal Code provides in Section 2.14.030 that council shall review the membership of the Lodging Tax Advisory Committee annually and make changes as appropriate and that appointments of members to the said committee shall be made by the Mayor with the concurrence of the City Council; and

WHEREAS, the Mayor, with the support of the Appointments Committee, as provided in the "City of Puyallup Rules of Procedure," has recommended the appointment of the following individuals to the Lodging Tax Advisory Committee:

<u>Name</u>	<u>Term Expires</u>
Brooke Bourn, Collector	March 4, 2019
Joshua Goshorn, Collector	March 4, 2019
Francisco Manibusan, Collector	March 4, 2019
Jerome O'Leary, Recipient	March 4, 2019
Jaime Vogt, Recipient	March 4, 2019
Kerry Yanasak, Recipient	March 4, 2019

NOW THEREFORE, by adoption of this resolution the City Council confirms said appointments as listed.

Adopted by the City Council of the City of Puyallup at a regular meeting on the ____ day of June, 2018.

John Palmer
Mayor

ATTEST:

Mary Winter
City Clerk

APPROVED AS TO FORM:

Joseph N. Beck
City Attorney



City Council Agenda Item Report

Submitted by: Kari Lucey

Submitting Department: Police Department

Meeting Date: 6/05/2018

Subject:

Authorize the extension of a professional services agreement with American Traffic Solutions (ATS)

Presenter:

Scott Engle, Chief of Police

Recommendation:

Approve a five-year extension of the professional services agreement between the City and American Traffic Solutions (ATS) to operate a Traffic Safety/Red Light Photo Enforcement program, and authorize the City Manager to sign said agreement as approved by the City Attorney.

Background:

The City entered into a professional services agreement with ATS in March 2007 to operate the Traffic Safety/Red Light Photo Enforcement program. Since its inception the City has used the Red Light Photo Enforcement program as an efficient and effective tool for increasing public safety. The City currently operates 13 red-light cameras at six different intersections for photo enforcement.

The new contract allows the ability for the City to adopt a School Zone Speed Safety Program in the future if so desired.

Council Direction:

Fiscal Impacts:

The Red Light Photo Enforcement program results in approximately \$2.1 million revenue to support police services.

ATTACHMENTS

- [Final Contract Extension ATS 2018-2023 - 6-5-2018 agenda](#)

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement includes the attached Exhibits (“Agreement”) and is made by and between American Traffic Solutions, Inc. (“ATS”), with its principal place of business at 1150 N. Alma School Road, Mesa, AZ 85201, and the City of Puyallup, Washington, a municipal corporation of the state of Washington (“City”), with principal offices at 333 S. Meridian, WA 98371 (ATS and City individually, a “Party”, and collectively, the “Parties”). This Agreement sets forth the terms, conditions and obligations of the Parties.

WITNESSETH:

WHEREAS, the City desires to implement and operate a traffic safety camera system pursuant to Washington State Law 46.63.170 (the “Program”); and

WHEREAS, public convenience and necessity require the City to obtain the services of ATS which has photo enforcement implementation and operations experience and is a leading provider of photo enforcement systems with the City and across the country; and

WHEREAS, ATS has the exclusive knowledge, possession and ownership of certain equipment already installed in the City, and has licenses, and back-office processes through an automated web-based Citation processing system (collectively referred to as the “Axis™ System” or “Axis”) currently used by the City for its existing photo enforcement program; and

WHEREAS, the City finds ATS is qualified to perform and is experienced in providing the required services; and

WHEREAS, the City desires to engage ATS to provide traffic safety camera services, also known as photo enforcement services; and

NOW, THEREFORE, the Parties herein do mutually agree as follows:

The attached Exhibits include:

- EXHIBIT A.....SERVICE FEE SCHEDULE**
- EXHIBIT B.....SCOPE OF WORK**
- EXHIBIT C.....FORM NOTICE TO PROCEED**
- EXHIBIT D.....DMV SERVICES SUBSCRIBER AUTHORIZATION**

By signing below, the Parties agree to the terms and conditions of this Agreement together with the attached Exhibits. This Agreement contains the complete and exclusive statement of the agreement between the Parties relating to the matters referenced herein and replaces any prior oral or written representations or communications between the Parties. Each individual signing below represents that such individual has the requisite authority to execute this Agreement on behalf of the entity which such individual represents and that all the necessary formalities have been met.

[SIGNATURE PAGE ON FOLLOWING PAGE]

ACKNOWLEDGED AND AGREED TO BY:

AMERICAN TRAFFIC SOLUTIONS, INC.

CITY OF PUYALLUP, WASHINGTON

By: _____
Elizabeth Caracciolo Date
Senior Vice President/General
Manager, Government Solutions

By: _____
Name/Title Date

ATTEST:

By: _____
Name/Title Date

APPROVED AS TO FORM:

By: _____
Name/Title Date

This Agreement is effective on the date of execution by the last signatory to this cover page ("Effective Date").

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I. DEFINITIONS

As used in this Agreement, the following words and terms shall, unless the context otherwise requires, have the respective meanings provided below:

1. “**Approach**”: One (1) direction of travel on a road or a traffic intersection, including up to four (4) contiguous lanes controlled by up to two (2) signal phases.
2. “**Business Hours**”: Eight (8) hours per day, Monday through Friday, excluding weekends and holidays.
3. “**Business Rules**”: The Business Rules Questionnaire to be completed by City and delivered to ATS setting forth the business rules for the implementation and operation of the Program.
4. “**Camera System**” or “**Camera**”: A photo-traffic monitoring device consisting of one (1) rear camera, strobe and, if necessary, one (1) front camera with strobe for driver image, and traffic monitoring device (including the wiring associated with each) capable of accurately detecting a traffic infraction on up to four (4) contiguous lanes which records such data with one (1) or more images of such vehicle. “**Camera System**” shall, where the context requires, also include any enclosure or cabinet, wiring, and related appurtenances in which the equipment is stationed. “**Camera System**” may refer to either a red light or fixed site school zone speed safety camera system, depending on the context, and also includes any and all Camera Systems installed in the City and owned by ATS prior to the effective date of this Agreement.
5. “**Change Order Notice**”: Written notice from the City requesting changes to the work required to be performed or the addition of products or services to those required to the terms of this Agreement, setting forth in reasonable detail the proposed changes.
6. “**Change Order Proposal**”: A written statement from ATS describing the cost of the changes to the work or addition of products or services requested by City in a Change Order Notice.
7. “**Citation**”: A citation, notice of violation, notice of infraction or equivalent instrument issued by a competent state, county or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a Violation documented or evidenced in Axisis.
8. “**Designated Safety Zone**”: A designated safety zone in which a Camera System may be installed or deployed.
9. “**Event**”: An image captured of a potential Violation.
10. “**Fees**”: The amount payable by City to ATS for equipment, services, and maintenance as set forth in EXHIBIT A.
11. “**Fixed Site School Zone Speed Safety Camera System**”: A Camera System installed in a Designated Safety Zone.
12. “**Notice to Proceed**”: Written confirmation from City that ATS may proceed with the installation of a given Camera System, a form of which is attached as EXHIBIT C.
13. “**Owner**”: The owner(s) of a motor vehicle as shown by the motor vehicle registration records of the motor vehicle department or the analogous agency of another state or country, including a lessee of a motor vehicle under a lease of six months or longer.
14. “**Person**” or “**Persons**”: Any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.
15. “**Project Time Line**”: The initial schedule and timelines required to begin the implementation of City’s project, as mutually agreed upon by the Parties.

16. "**Red Light Safety Camera System**": A Camera System installed at an intersection Approach.
17. "**System**": A Camera System and the related Infrastructure.
18. "**Violation**": A failure to obey an applicable traffic law or regulation, including, without limitation, failure to obey a traffic signal, or operation of a motor vehicle in excess of the posted speed limit.

II. GENERAL TERMS AND CONDITIONS

1. ATS AGREES TO PROVIDE:

The scope of work identified in **EXHIBIT B**, Section 1.

2. CITY AGREES TO PROVIDE:

The scope of work identified in **EXHIBIT B**, Section 2.

3. TERM:

This Agreement shall commence upon the Effective Date and shall continue for a term of five (5) years beginning on June 6, 2018. This Agreement will automatically extend for consecutive five (5) year terms. However, City or ATS may terminate this Agreement at the expiration of any term by providing written notice of its intent not to extend the Agreement one hundred twenty (120) days prior to the expiration of the then-current term.

4. ASSIGNMENT:

Neither Party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. However, for business financing or other corporate reorganizational purposes, ATS may sell, assign, transfer or convey any interest in this Agreement in whole or in part without the written consent of City.

5. FEES AND PAYMENT:

City shall pay for all equipment, services and maintenance based on the fee schedule indicated in the **EXHIBIT A**, Service Fee Schedule 1.

5.1 City shall pay all Fees due ATS based upon invoices from the preceding month within thirty (30) days of submission. Late payments are subject to interest calculated at 1.5% per month on open balances. If City is more than sixty (60) days past due on payments to ATS, ATS may, in its sole discretion, either (i) withhold all transfers/sweeps of Citation payments to City until City becomes current on its payments or (ii) exercise any other remedies pursuant to Section 14(iii) of this Agreement for non-payment of Fees by City.

5.2 Invoices shall be in standard ATS format.

5.3 ATS's Fees will be fixed for the first five (5) year term of the Agreement; thereafter, unit prices will increase at the beginning of each five (5) year renewal term by the Consumer Price Index (CPI), according to the average change during the prior twelve (12) months in the CPI for All Urban Consumers (CPI-U) for U.S. City average, as published by the Bureau of Labor Statistics, U.S. Department of Labor for the Services category listed under Commodity and Service Group.

6. SITE SELECTION ANALYSIS:

Prior to installing any System, ATS may conduct a statistical analysis of each road or intersection Approach being considered for a System or Systems ("Site Selection Analysis") to assist City in determining which road or Approaches will be the most beneficial to City in pursuit of its traffic safety and enforcement goals. For any road or Approach recommended by City, ATS may deploy or install a System if a constructability analysis concludes a deployment or an installation is feasible. ATS makes no

representations or warranties that any Violation rate estimates will be predictive of actual future traffic Violation rates.

7. COMMUNICATION OF INFORMATION:

ATS will comply with reasonable requests from City for information obtained by ATS through operation of the Axis™ System. ATS reserves the right to assess a fee for such services. Unless ATS is deemed a "Custodian of Record", under applicable "Public Records Act" laws or similar laws, ATS will not be under any obligation to provide information directly to non-City requesting parties. Should ATS choose to respond to non-City requesting parties, ATS and City shall work collaboratively in a good faith effort to provide requested information in a timely manner, which good faith effort may include, but not be limited to, City's review and prior approval of ATS disclosing information.

8. CONFIDENTIAL INFORMATION:

No information given by ATS to City will be of a confidential nature, unless specifically designated in writing as proprietary or confidential by ATS ("ATS Confidential Information"). If, however, ATS does designate certain information as proprietary or confidential, City shall treat the ATS Confidential Information with the same degree of care and same restrictions as City treats its own proprietary and confidential information, but in no event with less than reasonable care and reasonable restrictions. City will use ATS Confidential Information solely in connection with its rights and obligations under this Agreement, and will not use ATS Confidential Information for any other purpose, including but not limited to any use to harm or injure ATS or in any other way detrimental to ATS. If City receives a request or becomes legally obligated or compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, other demand or request by governmental agency or the application of statutes, rules and regulations under the federal securities laws or similar process) to disclose any of the ATS Confidential Information, City will promptly provide ATS with written notice of such request or requirement before any disclosure, and will cooperate with ATS' reasonable efforts to obtain confidential treatment of the ATS Confidential Information. If a protective order or other confidential treatment is not obtained or if ATS waives its rights under this paragraph, City agrees to furnish only so much of the ATS Confidential Information as it is legally required to furnish and, where appropriate, to exercise its best efforts to obtain written assurances that confidential treatment will be accorded to the ATS Confidential Information. City will give ATS an opportunity to review the ATS Confidential Information prior to its disclosure, and City will allow ATS to participate in any related proceeding. However, nothing in this paragraph shall be construed contrary to the terms and provisions of any "Public Records Act" or similar laws, insofar as they may be applicable.

9. OWNERSHIP OF SYSTEM:

Under all circumstances, ATS shall retain ownership of all Camera Systems and the Axis™ System provided for use by the City under the terms and conditions of this Agreement. In order to carry out the purposes of this Agreement, for the term of this Agreement, ATS grants City a non-exclusive, non-transferable license to use the Axis™ System.

10. INDEMNIFICATION:

10.1 Indemnification by ATS. Subject to Section 10.3, ATS agrees to indemnify City and its managers, officers, directors, employees, agents, representatives and successors (individually a "City Party" and collectively, the "City Parties") against all claims, liabilities, obligations, losses, damages, penalties and judgments (collectively, "Losses"), which may be imposed on or incurred by any City Party arising out of or related to the gross negligence or willful misconduct of ATS, its employees or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the gross negligence or willful misconduct of any City Party.

10.2 Indemnification by City. Subject to Section 10.3, City hereby agrees to indemnify ATS and its direct and indirect subsidiaries, managers, officers, directors, employees, agents, representatives and successors (individually an "ATS Party" and collectively, the "ATS Parties") against any and all Losses which may be imposed on or incurred by any ATS Party arising out of or related to the gross negligence or willful misconduct of City, its employees, contractors or agents which result in death

or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the gross negligence or willful misconduct of ATS. Upon the termination of this Agreement and subject to Section 10.3, City agrees to indemnify ATS Parties against any and all Losses which may be imposed on or incurred by any ATS Party arising out of or related to (a) any claim, action or demand (a "Claim") related to the Systems, if City retains the Systems or (b) if City elects for ATS to remove the Systems pursuant to Section 15.2(iv), any Claim related to the foundation, conduit, or other below-grade infrastructure.

- 10.3 Indemnification Procedures. In the event of any Claim in respect of which any Party hereto seeks indemnification from the other, the Party seeking indemnification (the "Indemnified Party") shall give the Party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim and no Party shall have the right to enter into any settlement agreement that materially affects the other Party's material rights or material interests without such Party's prior written consent, which consent shall not be unreasonably withheld or delayed.
- 10.4 Limited Liability. In no event shall ATS's liability under this Agreement exceed the greater of \$1,000,000 or the average of the prior twelve (12) months of Fees paid by City pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, lost profits or consequential damages, however caused and on any theory of liability, arising out of or relating to this Agreement.

11. INSURANCE:

ATS shall maintain the following minimum scope and limits of insurance:

- 11.1 Commercial General Liability Insurance including coverage for bodily injury, property damage, premises and operations, products/completed operations, personal and advertising injury, and contractual liability with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 aggregate for the Term of this Agreement. Professional Liability insurance with minimum policy limits of \$1,000,000 for each occurrence, shall also be secured for any professional services being provided to that are excluded in the commercial general liability insurance. Umbrella or Excess Liability insurance may be used to reach minimum required coverage limits.
- 11.2 Workers' Compensation as required by the Industrial Insurance laws of Washington, and Employer's Liability Insurance with limits of not less than \$500,000 each accident. ATS shall at all times maintain Worker's Compensation insurance coverage in the amounts required by law, but shall not be required to provide such coverage for any actual or statutory employee of City.
- 11.3 Comprehensive Business Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by ATS with a minimum \$1,000,000 per occurrence combined single limit bodily injury and property damage.
- 11.4 City and its officers and employees, shall be named as additional insured on the comprehensive general liability policies provided by ATS under this Agreement on a non-contributory primary basis. ATS shall require any subcontractors doing work under this Agreement to provide and maintain the same insurance, which insurance shall also name City and its officers, employees, and authorized volunteers as additional insureds. The City's insurance policies shall not be a source for payment of any Contractor liability.
- 11.5 Certificates showing ATS is carrying the above described insurance, and evidencing the additional insured status specified above, shall be furnished to City prior to the Effective Date of this Agreement. Such certificates shall show that City will be notified in accordance with the

policy language relating to cancellations of such insurance policies. ATS shall forthwith obtain substitute insurance in the event of a cancellation.

11.6 City shall be responsible for vehicle insurance coverage on any vehicles driven by City employees. Coverage will include liability and collision damage.

11.7 ATS shall provide the City with written notice of any policy cancellation within two (2) business days of ATS receiving such notice.

11.8 The City does not represent that the minimum required insurance or insurance limits are adequate to cover all potential claims or related claim costs.

12. STATE LAW TO APPLY:

This Agreement shall be construed under and in accordance with the laws of the State of Washington.

13. DISPUTE RESOLUTION:

All disputes arising out of or in connection with the Agreement shall be attempted to be settled through good-faith efforts between senior management of both Parties. Following thirty (30) days of unsuccessful negotiation, the Parties shall participate in professionally-assisted mediation, with a mediator acceptable to both Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties. The Parties agree to fully exhaust administrative remedies before filing litigation.

14. CHANGE ORDERS:

City may from time to time request changes to the work required to be performed or the addition of products or services to those required to the terms of this Agreement by providing a Change Order Notice. Upon ATS's receipt of a Change Order Notice, ATS shall deliver a Change Order Proposal describing the cost, if any. Following City's receipt of the Change Order Proposal, the Parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes; the time, manner and amount of payment or price increases or decreases, as the case may be; and any other matters relating to the proposed changes. In the event that any proposed change involves only the addition of equipment or services to the existing Designated Intersection (as defined in **EXHIBIT B**) Approaches or the addition of Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in **EXHIBIT A** shall govern. Any failure of the Parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 13. Such Change Order shall not invalidate the procurement process or this Agreement nor relieve or release ATS or City of any of its obligations under this Agreement unless stated therein.

15. TERMINATION:

15.1 ATS's services may be terminated:

- (i) By mutual written consent of the Parties; or
- (ii) For Cause, by either Party where the other Party fails in any material way to perform its obligations under this Agreement.
 - a) Where City is in material breach of this Agreement for non-payment of Fees to ATS, then ATS may exercise any or all of the following remedies: (1) provide City written notice and ten (10) days to cure

before suspending performance and turning off ATS's cameras; (2) withhold payments to City, as described in Section 5.1; (3) terminate this Agreement for cause where City's account remains delinquent sixty (60) days after written notice; and (4) in addition to the foregoing, seek any other available remedies at law or equity

- b) Termination under this subsection for any reason other than non-payment of Fees by City is subject to the condition that the terminating Party notifies the other Party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other Party fails to cure the default within forty-five (45) days after receiving written notice. In the event of Termination by ATS under this subsection for breach by City (including non-payment of Fees), City shall pay ATS an early termination fee based on a price of \$76,660 per Camera System amortized over sixty (60) months on a straight-line basis. The amortization schedule for said costs shall be reduced by 1/60th for each month each Camera System is operational. Said another way, for every month a Camera System is operational, \$1,277 will be subtracted from the total \$76,660 early termination fee for each Camera System.
- (iii) Without Cause, by City upon ninety (90) days written notice to ATS. In the event City elects to terminate this Agreement without cause, for any Camera System installed subsequent to the Effective Date of this Agreement City shall pay ATS an early termination fee based on a price of \$76,660 per Camera System amortized over sixty (60) months on a straight-line basis. The amortization schedule for said costs shall be reduced by 1/60th for each month each Camera System is installed: Said another way, for every month a camera is installed, \$1,277 will be subtracted from the total \$76,660 early termination fee for each Camera System. Example: City signs Agreement in March of year 1 and installs one (1) Camera System that same month. City terminates the Agreement without cause in January of year 5. Fifty-eight (58) of the sixty (60) months having been depreciated, the City would owe ATS \$2,554 (\$1,277 x 2) for the early termination fee. This early termination fee also applies on an individual Camera System basis if the City were to remove a Camera System that was installed subsequent to the Effective Date of this Agreement and prior to the expiration of the then-current term of the Agreement. If the City was to remove a Camera System during the then-current term of the Agreement the City agrees to pay the early termination fee for the individual Camera System that was removed and the Agreement would remain effective.

15.2 Upon termination of this Agreement, including because it has reached the end of its term, the Parties recognize that City will have to process Events in the "pipeline", and that ATS accordingly must assist City in this regard. Accordingly, the Parties shall take the following actions and shall have the following obligations, which survive termination during the wind-down period:

- (i) City shall cease using the Axis System to capture Events.
- (ii) Unless it is unlawful to do so, ATS shall, for a period of ninety (90) days, continue to process all Events captured before termination and provide all services associated with processing in accordance with this Agreement and shall be entitled to a monthly fee of \$4,750 per Camera System. After such ninety (90) day period, ATS shall terminate all use of the Axis System for City's Program and upon such termination, the Axis System, including violationinfo.com website shall no longer be accessible to the City or violators.
- (iii) Except as provided for in Sections 8 and 15.2(iv) related to the Systems, City shall return or allow ATS to recover all provided equipment within a reasonable time not to exceed ninety (90) days.
- (iv) Upon City's request or if otherwise required by law, regulation, or administrative agency, and subject to the limitations set forth herein, ATS shall remove any and all Systems ATS installed in connection with ATS's performance of its obligations under this Agreement for the actual cost of the removal (presently estimated at approximately \$5,000 per System) plus an

additional 20% service fee (the "Removal Fee"). Such removal shall include but not be limited to housings, poles and Camera Systems. As part of the services performed for the Removal Fee, ATS shall restore the surface of City's property to substantially the same condition as such property was in immediately prior to this Agreement, except for foundation removal, which shall be left approximately flush with grade with no exposed bolts, or other hazards. Installed underground conduit, foundations, and other equipment shall not be required to be removed. City shall accept and observe any and all duties, obligations, or liabilities associated with the remaining foundation, conduit, or other below-grade Infrastructure.

- (v) Within one hundred twenty (120) days of termination of the Agreement, ATS shall provide City all evidence package data and information for all Violations currently maintained on the Axis System on behalf of City. The information shall be delivered in the standard ATS format to City on removable media. Upon delivery of said evidence package data and information City agrees that ATS is no longer under any obligation to maintain evidence package data or information and that any public records request for such information shall be responded to exclusively by City, as City will be the custodian of records for any and all Violations and related evidence package data and information.

15.3 In the event of termination by ATS for non-payment of Fees by City, ATS shall cease processing Events as of the date of termination.

16. AMENDMENTS TO THE AGREEMENT:

The Parties may from time to time consider it in their best interest to modify or extend terms, conditions or covenants of this Agreement; require modifications in the Scope of Work to be performed; or request the performance of additional services regardless of and without invalidating the process that was used to procure the services enumerated under this Agreement. If modifications result in additional costs to City, ATS will provide a written estimate of such. Any such addition, deletion, extension or modification, including any increase or decrease in the amount of ATS's compensation, which are mutually agreed upon by and between City and ATS shall be incorporated in written amendments to this Agreement. Such amendments shall not invalidate the procurement process or this Agreement nor relieve or release ATS or City of any of its obligations under this Agreement unless stated therein.

17. ADDITIONAL SERVICES:

During the term of this Agreement, from time-to-time ATS may propose certain new technologies for City to consider (e.g., school bus, bus lane, pedestrian, railroad, other undeveloped technologies, or Program enhancements) and, if so desired, City may procure from ATS the new technologies through an amendment to this Agreement upon terms to be mutually agreed upon.

18. LEGAL CONSTRUCTION:

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein. This Agreement shall be enforced to the maximum extent possible so as to give effect to the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable herein.

19. PRIOR AGREEMENT SUSPENDED:

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understanding, written or oral, between the Parties respecting the written subject matter.

20. LIMITED AGENCY:

ATS shall act as a limited agent of the City solely for purposes of (i) opening and maintaining bank accounts; (ii) access to DMV records; (iii) generating and administratively processing recorded images of Events as described in this Agreement and (iv) the Business Rules. Employees, contractors, agents and servants of ATS shall in no event be considered to be employees, agents (other than in the limited

capacity described herein), contractors or servants of City. This Agreement does not and shall not be interpreted as creating a general agency relationship between ATS and City.

21. FORCE MAJEURE:

Neither Party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence (an event of "Force Majeure"). Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. For the avoidance of doubt, road construction is not an event of Force Majeure. The Party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

22. TAXES:

Where required by law, ATS shall pay for and maintain in current status all taxes assessed against ATS that are necessary for contract performance. City agrees to pay State of Washington sales or use taxes on all applicable services and materials and agrees to furnish ATS with an exemption certificate where appropriate, and City agrees to reimburse ATS for any excise taxes if charged against ATS.

23. NOTICES:

Any notices or demand which, under the terms of this Agreement or under any statute, must or may be given or made by ATS or City shall be in writing and shall be given or made by personal service, first class mail, Federal Express, or by certified mail to the Parties at the following address:

City of Puyallup
333 S. Meridian
Puyallup, WA 98371
Attn: _____

American Traffic Solutions, Inc.
1150 N. Alma School Road
Mesa, Arizona 85201
Attn: Legal Department

24. SURVIVAL:

The following provisions of the General Terms and Conditions shall survive the termination of this Agreement: Sections 5, 8, 9, 10, 12, 13, 15, and this Section 24.

25. EXECUTION:

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by facsimile or ".pdf" transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or ".pdf" shall be deemed to be their original signatures for any purpose whatsoever.

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EXHIBITS ON FOLLOWING PAGES]

EXHIBIT A
SERVICE FEE SCHEDULE

1.0 **Description of Pricing**

Fees are based on per camera per month and are as follows:

Product Description	Fee per Camera per Month
1-2 Lane Red Light Safety Camera System – includes existing Camera Systems and Camera Systems installed subsequent to the effective date of this Agreement - the parties shall mutually agree on the number of units to be installed. Fee is for a single Camera System monitoring a single direction of travel.	\$3,500
3-4 Lane Red Light Safety Camera System – includes existing Camera Systems and Camera Systems installed subsequent to the effective date of this Agreement - the parties shall mutually agree on the number of units to be installed. Fee is for a single Camera System monitoring a single direction of travel.	\$3,750
1-4 Lane Fixed Site School Zone Speed Safety Camera System – includes existing Camera Systems and Camera Systems installed subsequent to the effective date of this Agreement - the parties shall mutually agree on the number of units to be installed. Fee is for a single Camera System monitoring a single direction of travel. Fee includes up to 800 issued infractions per camera per month.	\$4,750
<p>Service Fees: All Service Fees per Camera System above includes all costs required and associated with a Camera System installation for monitoring up to 4 lanes and two signal phases, routine maintenance, and use of Axis System for back-office operations. Includes camera equipment for monitoring up to 4-lanes and up to two (2) signal phases, installation, maintenance, Event processing services, DMV records access, First Class mailing of notice of infraction with return envelope, IVR call center support for general Program questions and public awareness Program support. This pricing applies to all Cameras installed within the first twelve (12) months of the term of this Agreement. Service fees for Cameras installed after the first 12 months of term of this Agreement shall be subject to a negotiated fee or extension of the term of this Agreement. Monthly service fee includes postage for the first class mailing of the 1st notice. Certified mail is extra and will be billed per unit as published by the US Postal Service (http://www.usps.com/prices/extra-services-prices.htm), plus a \$2.00 per unit service charge.</p>	
Fee for Optional Services	
1. Fee per 1 st notice of infraction issued above the first 800 per camera per month	\$5.00
2. Optional Public Relations Services: ATS may provide additional public relations services upon written request by City. These services may include advertising, media relations, and public relations consultants. The fee for such services shall be mutually agreed upon based on the scope of the public relations services to be provided	TBD
3. Video Retrieval Fee: ATS shall retrieve up to one (1) video per week at no cost to City. For all additional video retrievals, the fee is \$10.00 each.	\$10.00 per additional retrieval

EXHIBIT B
SCOPE OF WORK
Photo Enforcement (Red Light and Speed Enforcement)

1. ATS SCOPE OF WORK

1.1 ATS IMPLEMENTATION

- 1.1.1 ATS agrees to provide Camera System(s), use of the Axis System and related services to City as outlined in this Agreement, excluding those items identified in Section 2 titled "City Scope of Work". ATS and City understand and agree that new or previously unforeseen requirements may, from time to time, be identified and that the Parties shall negotiate in good faith to assign the proper Party the responsibility and cost for such items. In general, if work is to be performed by City, unless otherwise specified, City shall not charge ATS for the cost.
- 1.1.2 City and ATS will complete the Project Time Line within thirty (30) days of Agreement execution date, unless mutually agreed to otherwise by the Parties. ATS agrees to make every effort to adhere to the Project Time Line.
- 1.1.3 ATS will conduct a Site Selection Analysis of candidate sites. ATS will assist City in determining which Approaches will be the most beneficial to City in pursuit of its traffic safety and enforcement goals. Considerations may include collision history, community safety, police department staff review and engineering feasibility assessment. Camera System installations will be based on mutual agreement by City and ATS.
- 1.1.4 ATS will install or deploy Camera System(s) at a number of intersections or Designated Safety Zones to be mutually agreed upon between ATS and City after completion of Site Selection Analysis. In addition to any initial Designated Intersections or , the Parties may mutually agree to add additional Camera System(s) or Approaches, which shall be reflected in a written Notice to Proceed as set forth in **EXHIBIT C**.
- 1.1.5 ATS will operate each Camera System on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (e.g., Force Majeure event, etc.).
- 1.1.6 ATS's Communications Department will assist City with public information content and outreach campaign strategies. Depending upon the mutually agreed-upon strategy, ATS may provide public relations consultants, advertising, or media relations for an additional fee as described in **EXHIBIT A**.
- 1.1.7 ATS agrees to provide a secure website (www.violationinfo.com) accessible to Owners who have received notices of violation by means of a Notice # and PIN, which will allow Violation image and video viewing. As part of the secure website, a space will be provided for a Frequently Asked Questions (F.A.Q.) page approved by City. ATS will operate this secure website on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (e.g., Force Majeure event, etc.).
- 1.1.8 ATS will provide technician site visits to each Camera System, as needed, to perform maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wires; and, general system inspections and maintenance.
- 1.1.9 ATS shall actively maintain the System located at each Approach to ensure minimum standards as set forth in applicable law, or regulation, or ATS service level agreements, are met or exceeded. ATS shall take reasonable best efforts to repair a non-functional System within seventy-two (72) hours (excluding weekends and holidays) of determination of a malfunction, except for causes of Force Majeure.

1.2 ATS OPERATIONS

- 1.2.1 ATS shall implement and operate the Program in accordance with the provisions of this Agreement and the City's Business Rules.
- 1.2.2 If a warning period is required, ATS shall provide City with a one-time warning period up to thirty (30) days in length following the installation and activation of the first installed Camera System. City shall not be charged a fee for the warning period; however for any warning period exceeding thirty (30) days City shall be responsible for the normal monthly Service Fee.
- 1.2.3 ATS shall provide City with access to the Axis System, including image processing, first notice printing and mailing of Citation per chargeable event and a mailing of a text only reminder notice, a hearing scheduled letter, a hearing denied letter, an insufficient information letter, and a dismiss letter. The Axis System shall ensure each Citation or notice of infraction is delivered by First Class mail to the Owner within the statutory period. In the case of a transfer of liability by the Owner, the Axis System shall be setup to mail a Citation or notice of infraction to the driver identified in the affidavit of non-liability or by a rental car company.
- 1.2.4 Subsequent notices, other than those specified in Subsection 1.2.3 may be delivered by First Class or other mail means for additional compensation to ATS as agreed upon by the Parties.
- 1.2.5 The Axis System shall allow the law enforcement officer to apply the officer's electronic signature to the Citation when authorized to do so by an approving law enforcement officer.
- 1.2.6 ATS shall seek records from out-of-state vehicle registration databases and use such records to assist City in processing Citations. In its capacity as limited agent pursuant to the DMV Services Subscriber Authorization found in **EXHIBIT D**, ATS may seek records from out-of-state vehicle registration databases. ATS reserves the right to mail Citations to the address of the Owner obtained through the DMV, obtained through the National Change of Address (NCOA) database provided by the United States Postal Service, or obtained through other means including but not limited to skip tracing.
- 1.2.7 If City is unable to or does not desire to integrate Axis data to its adjudication system, ATS shall provide Axis as an adjudication processing module to allow City to review cases, related images, and other related information required to adjudicate the disputed Violation. The Axis System will also enable the court staff to accept and account for payments. Any costs charged by a third party vendor related to the provision of Axis data to the adjudication system are the responsibility of City.
- 1.2.8 The Axis System shall provide City with the ability to run and print standard system reports. ATS provides a robust suite of standard program reporting at no charge to clients with active programs. Upon notice to City, ATS reserves the right to modify the suite of standard program reporting available to City, so long as such change applies generally to Cities with similar programs. Customized reporting services are available upon written request. The fee for such services shall be mutually agreed upon based on the substance and form of the report to be provided.
- 1.2.9 During the twelve (12) month period following the installation of the first camera, upon ATS's receipt of a written request from City at least fourteen (14) calendar days in advance of a court proceeding, and if required by the court or prosecutor, ATS shall provide City with or train a local expert witness to testify in court on matters relating to the accuracy, technical operations, and effectiveness of the Camera System or the Axis™ System until judicial notice is taken. City shall use its best efforts to obtain judicial notice as soon as possible. If an ATS expert witness is required more than two (2) times during the twelve (12) month period, City shall reimburse ATS for any reasonable time and travel costs incurred for the additional dates.

- 1.2.10 In those instances where damage to a System (or sensors where applicable) is caused by (i) negligence on the part of ATS or its authorized agent(s), ATS shall bear the cost of repair or (ii) negligence or recklessness on the part of a driver or severe weather or other Force Majeure events, ATS and City shall bear the cost of repair equally with City reimbursing ATS for its portion of the cost of repair. For all other causes of damage, including road construction, City negligence, etc. City shall reimburse ATS for the cost of repair.
- 1.2.11 ATS shall provide a help-line to assist City with resolving any problems encountered regarding its Camera System and/or the Axis System. The help-line shall function during Business Hours.
- 1.2.12 As part of the Axis System, a website will be made available to allow alleged violators the ability to view their Citations online. This online viewing system shall include a link to the ATS payment website(s) and may offer the opportunity to download an affidavit of non-liability online. Online obtained affidavits, if approved by the court, may be directed to and processed by ATS processors and communicated to the court via the Axis transfer described above.
- 1.2.13 For video retrievals requested by City unrelated to enforcement of a Violation, including but not limited to investigation of a criminal matter, ATS will provide up to one (1) video retrieval per week at no cost to City. For each additional video retrieval, City shall pay a fee, pursuant to **EXHIBIT A** ("Video Retrieval Fee").

2. CITY SCOPE OF WORK

2.1 GENERAL IMPLEMENTATION REQUIREMENTS

- 2.1.1 Within seven (7) business days of the Effective Date of this Agreement, City shall provide ATS with the name, title, mailing address, email address and phone number of:
- A project manager with authority to coordinate City responsibilities under this Agreement;
 - Municipal Court manager responsible for oversight of all Court-related program requirements;
 - The police contact;
 - The court contact;
 - The person responsible for overseeing payments by violators (might be court);
 - The Prosecuting Attorney;
 - The City Attorney;
 - The finance contact (who receives the invoices and will be in charge of reconciliation);
 - The IT person for the police;
 - The IT person for the courts;
 - The public works and/or engineering contact responsible for issuing any/all permits for construction; and
 - Municipal Court manager responsible for oversight of all Court-related program requirements.
- 2.1.2 City and ATS shall complete the Project Time Line within thirty (30) calendar days of the Effective Date of this Agreement, unless mutually agreed to otherwise by the Parties. City shall make every effort to adhere to the Project Time Line.
- 2.1.3 In cooperation with ATS, City shall prepare the Business Rules for implementation and operation of the Program.
- 2.1.4 City shall direct the Chief of Police or approved alternate to execute the DMV Services Subscriber Authorization, attached as **EXHIBIT D**, to provide verification to the State Department of Motor Vehicles, National Law Enforcement Telecommunications System, or appropriate authority indicating that ATS is acting on behalf of City for the purposes of

accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 U.S.C. 2721, Section (b) (1) and as may otherwise be provided or required by any provision of applicable state law.

- 2.1.5 City is responsible for notifying ATS of any local legislative and/or ordinance changes in writing within forty-eight (48) hours of the first read of the proposed legislation. ATS will not be responsible for complying with any change in applicable local law, until such time as ATS has been notified by City in writing of the change in law.
- 2.1.6 City is responsible for all final jurisdictional issues.
- 2.1.7 Once a Notice to Proceed is granted to ATS in writing, City shall not issue a stop work order to suspend activity on the implementation process, unless City reimburses ATS for costs incurred up to the date the stop work order is issued.
- 2.1.8 Once a Camera System is installed and certified by ATS as operational, it shall be immediately put into service.
- 2.1.9 Pursuant to RCW §46.63.170(1)(a), City shall post an annual report of the number of traffic accidents that occurred at each location where an automated traffic safety camera is located as well as the number of notices of infraction issued for each camera and any other relevant information about the automated traffic safety cameras that the City deems appropriate on the City's web site.

2.2 STREETS AND TRAFFIC DEPARTMENT OPERATIONS

- 2.2.1 If City requests that ATS move a System to a new Approach after initial installation, City shall pay for the costs to relocate the System, which may be up to \$120,000 per System. City may not request the relocation of a site within the first year after installation.
- 2.2.2 If a construction or improvement project requires an installed Camera System to be deactivated or requires a Camera System, including imbedded sensors, to be moved or removed, City shall continue to pay the Service Fee and any costs for moving or removing the System, which may be up to \$120,000 per System. City may elect to reimburse ATS directly or ATS may recover its costs from Program funds in addition to its normal fee.
- 2.2.3 Prior to the installation of any System, City shall provide ATS information regarding any and all road construction or improvement projects scheduled during the term of this Agreement for any intersection Approach designated for System installation.
- 2.2.4 City will design, fabricate, install and maintain camera warning signs. If City cannot provide such signage, ATS will do so and City shall reimburse ATS for such costs.
- 2.2.5 City understands that proper operation of the System requires access to traffic signal phase connections. City, therefore, shall provide free access to traffic signal phase connections according to approved design. When traffic signal phase connections are not under the jurisdiction of City, it shall be City's responsibility to negotiate agreements with the owner or maintaining agency of the traffic signal controller and infrastructure in order to provide the required access to said phase connections and infrastructure and any costs associated with needed agreements shall be funded by City.
- 2.2.6 City understands that proper operation of the System sometimes requires attachment of certain items of detection equipment to existing signal masts, mast arms and/or other street furniture. City, therefore, shall provide free access to ATS to attach certain items of detection equipment to existing signal masts, mast arms and / or other street furniture for the proper operation of the System.
- 2.2.7 If available, City shall allow ATS to access power from existing City power sources at no cost and shall allow or facilitate access to traffic signal phase connections to a pull box,

pole base, or controller cabinet nearest to each System within City's jurisdiction. If these items are not made available, ATS may agree to cover these upfront costs and recover the costs from the collected revenue in addition to its normal fees. If existing power sources are not immediately available, City will allow ATS to use temporary power until the existing power is established. In situations where it is not possible to obtain electrical power from a pre-existing source, ATS may bear the costs for obtaining/routing power and recover the costs from the collected revenue in addition to its normal fees. When access to power facilities is not under the jurisdiction of City, the City shall assist ATS in negotiating any necessary agreements with the owner or maintaining agency of the power facility and infrastructure in order to provide required access to said power facilities and infrastructure. If power costs or running of conduit is cost-prohibitive at a certain location, as determined by ATS, the parties agree to work on finding another mutually agreeable location.

- 2.2.8 City shall not require ATS to provide installation drawings stamped by a licensed civil engineer. However, ATS work product and drawings shall be overseen and approved by an ATS PE and such deliverables shall conform to applicable engineering norms and reflect the details of installation work to be completed.
- 2.2.9 City shall approve or reject ATS submitted plans in a timely manner and shall make best efforts to as few as possible revisions beyond the initially submitted plans. City shall provide its best efforts in providing aid in achieving expeditious plan approvals when plans are being reviewed and permitted by any state and/or county agencies.
- 2.2.10 City, or any department of City, shall not charge ATS or its subcontractor(s) for building, construction, electrical, street use and/or pole attachment permits, including any fee for traffic control services during installation or maintenance of a System. ATS shall be responsible for any and all needed state and/or county permits.
- 2.2.11 City understands and agrees that time is of the essence and that public safety is at issue and shall issue all needed permits to ATS and its subcontractor(s) as soon as practical after plan approval. City shall provide its best efforts to aid in achieving expeditious permit issuance when permitted by any state and/or county agency.
- 2.2.12 If required by the submitted design for proper operation, City shall allow ATS to install vehicle detection sensors in the pavement of roadways within City's jurisdiction, as permitted. City shall provide its best efforts to aid in acquiring any and all required permission and permits when the roadway is under the jurisdiction of the state or county.
- 2.2.13 ATS may build needed infrastructure into any existing City-owned easement, conditioned upon approval from the City.
- 2.2.14 If use of private property right-of-way is needed, City shall assist ATS in acquiring permission to build in existing utility easements as necessary. If any fees are required in securing a private property right-of-way lease/rental the parties shall negotiate in good faith how the fees shall be paid or the parties may look for a different location.
- 2.2.15 City shall comply in all aspects with RCW §46.63.170(1)(b).

2.3 LAW ENFORCEMENT DEPARTMENT OPERATIONS

- 2.3.1 City shall process each Event in accordance with state law and/or municipality ordinances within three (3) business days of its appearance in the law enforcement review queue, using Aaxis to determine which Events constitute Violations that will be issued as Citations. In the event that City fails to process Events within this timeframe, ATS shall not be liable for failure of the Aaxis System to allow City to issue a notice or Citation within statutory timeframes.
- 2.3.2 For optimal utilization, City workstation computer monitors for Event review and approval should provide a resolution of 1280 x 1024.

- 2.3.3 For optimal data throughput, City workstations should be connected to a high-speed internet connection with bandwidth of T-1 or greater.
- 2.3.4 City shall provide signatures of all authorized law enforcement users who will review events and issue Citations on forms provided by ATS for setup of the Axis System to allow said users to apply their electronic signatures to a Citation.

2.4 COURTS OPERATIONS

- 2.4.1 If City does not provide payment processing services, City shall use the Axis System for payment processing services and the fees for such services shall be negotiated in good faith between the parties.
- 2.4.2 City shall provide a judge or hearing officer and court facilities to schedule and hear disputed Citations.
- 2.4.3 City shall provide the specific text required to be placed on the Citation or notice of infraction to be issued by City using the Axis System within thirty (30) days of the Effective Date of this Agreement.
- 2.4.4 City shall approve the Citation form within fifteen (15) days of receipt from ATS. ATS may make non-substantive formatting or incidental changes to the Citation without approval by City.
- 2.4.5 City shall handle inbound and outbound phone calls and correspondence from defendants who have questions about disputes and other issues relating to Citation adjudication. City may refer citizens with questions regarding the Camera System technology and processes to websites and/or toll free telephone numbers provided by ATS for that purpose.
- 2.4.6 City shall pursue delinquent collections of unpaid notices with an existing contractor or ATS.
- 2.4.7 Any potential, one-time, direct costs to ATS to develop an interface with the Court system will be initially paid by ATS and any such cost will be reimbursed to ATS from collected revenues in addition to the Fees in **EXHIBIT A**, Service Fee Schedule 1.

2.5 INFORMATION TECHNOLOGY DEPARTMENT OPERATIONS

- 2.5.1 In the event that remote access to the Axis System is blocked by City network security infrastructure, City's Department of Information Technology shall coordinate with ATS to facilitate appropriate communications while maintaining required security measures.

EXHIBIT C
FORM OF NOTICE TO PROCEED

Reference is made to the Standard Professional Services Agreement by and between American Traffic Solutions, Inc. ("ATS") and _____ ("City"), dated as of [date] (the "Agreement"). Capitalized terms used in this Notice to Proceed shall have the meaning given to such term in the Agreement.

City hereby designates this [first] phase implementation of cameras at designated intersections. ATS shall make its best efforts to install a Camera System within thirty (30) days of permits being granted and power delivered for each agreed-upon Approach, providing that City has received permission for all implementations in writing from any third-party sources.

Below is a list of locations provided by City, which have been analyzed based on traffic volumes, road geometry, and existing infrastructure and are believed to be locations at which a Camera System would increase public safety.

Execution of this Notice to Proceed by City shall serve as authorization for the installation of Camera Systems for all Approaches designated as follows:

Direction	Approach	Cross-street (if applicable)

City understands that implementation and installation of any Approach or location is subject to Site Selection Analysis and constructability results.

City recognizes the substantial upfront costs ATS will incur to construct and install the Systems for the above listed intersection approaches or locations. City agrees that the Systems authorized by this Notice to Proceed for the above-listed Approaches or locations shall remain installed and operational for the duration of the current term of the Agreement. ATS reserves the right to bill City for any upfront costs associated with the intersection approaches or locations listed above in the event City elects to cancel or suspend the installation.

IN WITNESS WHEREOF, City has executed this Notice to Proceed as of the date written below.

CITY OF PUYALLUP, WASHINGTON

By: _____
Name: _____ Date _____
Title: _____

ACKNOWLEDGED AND AGREED TO BY:

AMERICAN TRAFFIC SOLUTIONS, INC.

By: _____
Elizabeth Caracciolo Date _____
Senior Vice President/General
Manager, Government Solutions

EXHIBIT D
DMV SERVICES SUBSCRIBER AUTHORIZATION

Agency ORI:

DATE

NLETS
1918 W. Whispering Wind Dr.
Phoenix, AZ 85085

Attn: Steven E. Correll, Executive Director
Re: Authorization for American Traffic Solutions, Inc. to Perform MVD Inquiry

Dear Mr. Correll:

Please accept this letter of acknowledgement that an Agreement to perform automated enforcement between _____ and American Traffic Solutions, Inc. is or will be entered into and will be or is in force. As a requirement of and in performance of that Agreement between _____ and American Traffic Solutions, Inc., it will be necessary for American Traffic Solutions, Inc. to access NLETS motor vehicle data.

Please accept this letter as authorization from _____ for American Traffic Solutions, Inc. to run motor vehicle inquiries. This authorization is and will be in effect for the term of our Agreement with NLETS and any subsequent renewals.

This authorization will automatically expire upon the termination of the Agreement between _____ and American Traffic Solutions, Inc., and, such authorization is limited to violations detected by the automated enforcement camera systems. By completing the information below and signing this letter, I am stating that I am a member of the _____ and have the authority to empower American Traffic Solutions, Inc. to use ORI _____ for this function.

SUBSCRIBER INFORMATION

Subscriber Agency/Name _____

NLETS Agency ORI _____

Name/Title of Authorized Representative _____

Mailing Address _____

Telephone _____ **Fax** _____

Email _____

Signature of Authorized Representative _____

Date Signed _____