Everett City Council Agenda
6:30 P.M. Wednesday May 4, 2016
City Council Chambers

Roll Call

Pledge of Allegiance

Approval of Minutes: April 27, 2016

Mayor's Comments

Council Comments/Liaison Reports

Administration Update on prior business

City Attorney

Citizen Comments

COUNCIL BRIEFING AGENDA: (These items come before the City Council serving as a Council Committee of the Whole and are likely to be scheduled at a future meeting.)

(1) CB 1604-22– 1st Reading –Adopt the Proposed Ordinance relating to Tax Administration, amending Ordinance No. 3385-14 (Chapter 3.19 EMC) as amended. (3rd and final reading on 5-18-16).

Documents: CB 1604-22.pdf

PROPOSED ACTION ITEMS:

(2) CB 1604-20– 2nd Reading – Adopt the Proposed Ordinance adding portion of Waterfront Place Redevelopment area to Multiple Family Property Tax Exemption Program. (3rd and final reading and public hearing on 5-11-16).

Documents: CB 1604-20.pdf

(3) CB 1604-21– 2nd Reading – Adopt the Proposed Ordinance related to Disclosing Intimate Images, amending and adding a new section to Ordinance No. 1145-85 as amended (Chapter 10.18 EMC) and amending Ordinance No. 1521-88 as amended (Section 10.23.050 EMC). (3rd and final reading on 5-11-16).

Documents: CB 1604-21.pdf

CONSENT ITEMS:

(4) Adopt Resolution No. ____ authorizing claims against the City of Everett in the amount of $1,666,493.00 for the period of April 16, 2016 through April 22, 2016.

Documents: Res-85.pdf

(5) Adopt Resolution No. ____ authorizing payroll claims against the City of Everett in the amount of $3,711,197.01 for the period ending April 16, 2016.

Documents: payroll-58.pdf

(6) Authorize the closure of Wall Street, between Colby and Hoyt Avenues on May 14, 2016, 8 a.m. to 3 p.m., for a Safety Tips for Families event sponsored by Imagine Children's Museum.

Documents: Safety Tips.pdf

(7) Authorize the closure of Grand Avenue, between California Street and Hewitt Avenue on June 18, 2016, 11 a.m. to 7 p.m., for a Craft Fair sponsored by the Sno-Isle Food Co-op in partnership with the Everett Maker's market.

Documents: Craft Fair.pdf

ACTION ITEMS:

(8) CB 1604-16– 3rd and final Reading – Adopt the Proposed Ordinance relating to the Inchoate Crimes of Criminal Attempt, Criminal Solicitation, and Criminal Conspiracy, amending and adding a new section to Ordinance No. 1145-85, as amended (Chapter 10.10 EMC).

Documents: CB 1604-16.pdf

(9) CB 1604-17– 3rd and final Reading – Adopt the Proposed Ordinance creating a Special Construction Fund entitled "Main Library-Window Replacement", Fund 342, Program 019, authorizing the design and construction to replace the existing wood windows.

Documents: CB 1604-17.pdf

(10) CB 1604-18– 3rd and final Reading –Adopt the Proposed Ordinance closing a Special Improvement Project entitled "Pedestrian Signals at Casino Road and Rucker Avenue, "Fund 303, Program 086, as established by Ordinance No. 3160-09.

Documents: CB 1604-18.pdf

(11) CB 1604-19– 3rd and final Reading – Adopt the Proposed Ordinance closing Special Improvement Project entitled, "Evergreen Way and Pecks Drive – Intersection Safety," Fund 303, Program 099, as established by Ordinance No. 3321-13.

Documents: CB 1604-19.pdf

(12) Authorize the Mayor to sign the Professional Services Agreement with Triangle Associates, Inc. to provide environmental classroom presentations in the Everett Water Service Area I the amount of $135,990.00.

Documents: Triangle-2.pdf

(13) Authorize the Mayor to sign Amendment No. 2 to the Agreement to Use City Property with Canteen Vending

Documents: Canteen-2.pdf

(14) Authorize the Mayor to sign the Joint Law Enforcement Operations Task Force Obligation with the United States Department of Justice, Marshals Service for Cost Reimbursement regarding Joint Law Enforcement Operations in the amount of $6,000.00.

Documents: Marshal.pdf

Executive Session

Adjourn

Everett City Council agendas can be found, in their entirety, on the City of Everett Web Page at

www.everettwa.gov/citycouncil.

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at 425 257-8703.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Ordinance Relating to Tax Administration, amending Ordinance No. 3385-14 (Chapter 3.19 EMC), as amended

5/4/16	Briefing
	Proposed Action
	Consent
	Action
5/4/16	First Reading
5/11/16	Second Reading
5/18/16	Third Reading
	Public Hearing
	Budget Advisory

COUNCIL BILL #	CB1604-22
Originating Department	Finance
Contact Person	Susy Haugen
Phone Number	425-257-8612
FOR AGENDA OF	May 4, 2016

Initialed by:
Department Head
CAA db
Council President

Location	Preceding Action	Attachments	Department(s) Approval
	Budget Committee 4/6/16	Ordinance	Finance, Legal

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

This Amending Ordinance contains several updates that will clarify certain business processes and implement a new license renewal fee for small businesses domiciled within the city limits of Everett. Proposed changes include:

- removing the business license exemption for businesses under small contracts with the City;
- clarifying that the reduced mid-year license fee only applies to businesses that begin doing business after July 1;
- restating the measurement period for license renewal fees; and
- clarifying the procedures for annual Consumer Price Index (CPI)-based increases in license fees.

RECOMMENDATION:

Adopt Ordinance Relating to Tax Administration, amending Ordinance No. 3385-14 (Chapter 3.19 EMC) as amended.

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- restating the measurement period for license renewal fees; and
- clarifying the procedures for annual Consumer Price Index (CPI)-based increases in license fees.

RECOMMENDATION:

Adopt Ordinance Relating to Tax Administration, amending Ordinance No. 3385-14 (Chapter 3.19 EMC) as amended.

ORDINANCE NO._____

An Ordinance Relating to Tax Administration, amending Ordinance No. 3385-14 (Chapter 3.19 EMC), as amended.

WHEREAS, the City's Tax Administration Code, Chapter 3.19 EMC, requires modifications periodically to clarify or update the tax administration process; and

WHEREAS, the Everett City Council wishes to add a new category to the annual business license renewal fee schedule to aid small businesses within the city limits of Everett; and

WHEREAS, there are additional housekeeping issues that will serve to clarify and improve the tax administration process;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 1 of Ordinance No. 3385-14 (EMC 3.19.030), which reads as follows:

3.19.030 Registration/license certificates.

A. Licensing. Except for those persons under contract with the city, which contracts are exempt under Section 3.19.040(D), any person, so engaging in a business activity within the city whether taxable or not, shall apply for and obtain from the city clerk, upon payment of the fee provided in this section, a business license. Such applicant shall complete an application form for such business license upon such forms as provided by the office of the city clerk and shall accompany such application with the required fee. Such business license shall be personal and nontransferable. If a taxpayer transacts business at two or more locations within the city, the taxpayer must obtain additional business licenses for each additional location and pay the required additional location fee annually.

B. License Control. Each business license shall be numbered and shall show the name, place and character of the business of the taxpayer and such other information as the office of the clerk deems necessary and shall be posted in a conspicuous place at the place of business for which it is issued.

C. License Duration. Each business license issued by the office of the clerk will be valid from January 1st to December 31st of a calendar year, so long as the taxpayer pays the tax accrued to the city. If a taxpayer changes its place of business, the taxpayer must return its existing business license to the office of the clerk and the office of the clerk will issue a new business license for the new place of business with the same expiration date as the taxpayer's existing license and without an additional charge.

D. License Restrictions. No person shall engage in any business taxable under this chapter without being registered in compliance with the provisions of this chapter, except that the office

of the clerk, by general regulation, may provide for the issuance of temporary business licenses to a temporary place of business without requiring the payment of any fee. No person to whom a business license has been issued may allow any person for whom a separate business license is required to operate under or to display his/her business license. No person may operate under or display a business license issued by the city to another taxpayer.

E. License Fees.

1. Registration Fee. A registration fee of seventy-five dollars will be due at the time of filing an application for a business license. If the application for a business license is filed between July 1st and December 31st, the registration fee will be thirty-seven and one-half dollars.

2. Additional Location Fee. For each additional location at which a taxpayer transacts business, the taxpayer will pay a fee of twenty dollars per year at the time of registration. If the application for an additional location is filed between July 1st and December 31st, the additional location fee will be ten dollars.

3. Renewal Fee. A renewal fee will be due prior to January 1st of each year. For businesses with a gross income of less than twenty thousand dollars in the preceding year, the annual renewal fee is twenty-five dollars. For businesses with a gross income of twenty thousand dollars or more in the preceding year, the annual renewal fee is seventy-five dollars. The renewal fee for each additional location will be twenty dollars.

4. Fee Adjustment. Prior to mailing renewal notices, but no later than December 31, 2014, and annually thereafter, the office of the clerk shall administratively adjust the fees provided for herein in an amount equal to the annual change in the June to June Consumer Price Index (CPI-U) (1982-84=100) for the Seattle-Tacoma-Bremerton area as published by the United States Department of Labor (CPI). To calculate the adjustment, the current rate will be multiplied by one plus the annual change in the CPI. If the annual change in CPI is negative, no adjustment shall be made for the year. The amount of the fees so calculated will be rounded to the nearest whole dollar.

F. License Renewal. Prior to January 1st of each year, a taxpayer desiring to renew its license must submit a renewal form and the renewal fee to the office of the clerk. The renewal form must indicate any changes to the taxpayer's name, location, or character of business, or affirm that there have not been any changes. Any taxpayer failing to make payment on or prior to January 1st will be subject to penalties in the following amounts:

1. Ten percent of the current renewal fee, as adjusted in subsection (E)(4) of this section, if the payment is not received on or before the last day of the month following the expiration date.

2. Twenty percent of the current renewal fee, as adjusted in subsection (E)(4) of this section, if the payment is not received on or before the last day of the second month following the expiration date.

3. All business licenses issued subsequent to the initial license period will be deemed renewal licenses if there has been no discontinuance of the taxpayer's operations or activities. Nonpayment by the taxpayer of taxes or business license fees when due during the term of any

license will constitute grounds for revocation of, or the refusal to renew, said license. (Ord. 3385-14 § 1, 2014: Ord. 2809-04 § 1 (part), 2004)

is hereby amended to read as follows:

3.19.030 Registration/license certificates.

A. Licensing. ~~Except for those persons under contract with the city, which contracts are exempt under Section 3.19.040(D),~~ A~~a~~ny person, so engaging in a business activity within the city whether taxable or not, shall apply for and obtain from the city clerk, upon payment of the fee provided in this section, a business license. Such applicant shall complete an application form for such business license upon such forms as provided by the office of the city clerk and shall accompany such application with the required fee. Such business license shall be personal and nontransferable. If a taxpayer transacts business at two or more locations within the city, the taxpayer must obtain additional business licenses for each additional location and pay the required additional location fee annually.

B. License Control. Each business license shall be numbered and shall show the name, place and character of the business of the taxpayer and such other information as the office of the clerk deems necessary and shall be posted in a conspicuous place at the place of business for which it is issued.

C. License Duration. Each business license issued by the office of the clerk will be valid from January 1st to December 31st of a calendar year, so long as the taxpayer pays the tax accrued to the city. If a taxpayer changes its place of business, the taxpayer must return its existing business license to the office of the clerk and the office of the clerk will issue a new business license for the new place of business with the same expiration date as the taxpayer's existing license and without an additional charge.

D. License Restrictions. No person shall engage in any business taxable under this chapter without being registered in compliance with the provisions of this chapter, except that the office of the clerk, by general regulation, may provide for the issuance of temporary business licenses to a temporary place of business without requiring the payment of any fee. No person to whom a business license has been issued may allow any person for whom a separate business license is required to operate under or to display his/her business license. No person may operate under or display a business license issued by the city to another taxpayer.

E. License Fees.

1. Registration Fee. A registration fee of seventy-five dollars will be due at the time of filing an application for a business license. If the application for a business license is filed between July 1st and December 31st, and the registrant's first day of business is July 1st or later, the registration fee will be thirty-seven and one-half dollars.

2. Additional Location Fee. For each additional location at which a taxpayer transacts business, the taxpayer will pay a fee of twenty dollars per year at the time of registration. If the application for an additional location is filed between July 1st and December 31st, the additional location fee will be ten dollars.

3. Renewal Fee. A renewal fee will be due prior to January 1st of each year. For businesses located outside the city limits of Everett with total ~~a~~ world-wide gross income of less than twenty thousand dollars in the first three quarters of the year preceding the license year, plus the fourth quarter of the year prior to the preceding year, the annual renewal fee is twenty-five dollars. For businesses located within the city limits of Everett with total world-wide gross income of less than twenty thousand dollars in the first three quarters of the year preceding the license year, plus the fourth quarter of the year prior to the preceding year, the annual renewal fee is ten dollars. For all businesses with total~~a~~ world-wide gross income of twenty thousand dollars or more in the first three quarters of the year preceding the license year, plus the fourth quarter of the year prior to the preceding year, the annual renewal fee is seventy-five dollars. The renewal fee for each additional location will be twenty dollars. Measurement period example:

License Year	Gross Earnings Measurement Period
2017	4th Quarter 2015 3rd Quarter 2016 2nd Quarter 2016 1st Quarter 2016

4. Fee Adjustment. The~~Prior to mailing renewal notices, but no later than December 31, 2014, and annually thereafter, the~~ office of the clerk shall administratively adjust the fees provided for herein annually in an amount equal to the annual change in the June to June Consumer Price Index (CPI-U) (1982-84=100) for the Seattle-Tacoma-Bremerton area as published by the United States Department of Labor (CPI), compounded from the base year of 2015. ~~.~~To calculate the adjustment, the ~~current~~ rate established in Section 3.19.030 E.3. will be multiplied by one plus the compounded annual change in the CPI between the current year and 2015. If the annual change in CPI is negative, no adjustment shall be made for the year. The amount of the fees so calculated will be rounded to the nearest whole dollar.

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2. Twenty percent of the current renewal fee, as adjusted in subsection (E)(4) of this section, if the payment is not received on or before the last day of the second month following the expiration date.

3. All business licenses issued subsequent to the initial license period will be deemed renewal licenses if there has been no discontinuance of the taxpayer's operations or activities. Nonpayment by the taxpayer of taxes or business license fees when due during the term of any license will constitute grounds for revocation of, or the refusal to renew, said license. (Ord. 3385-14 § 1, 2014: Ord. 2809-04 § 1 (part), 2004)

Section 2. Section 2 of Ordinance No. 3385-14 (EMC 3.19.040), which reads as follows:

3.19.040 When due and payable—Reporting periods—Monthly, quarterly, and annual returns—Threshold provisions or relief from filing requirements—Computing time periods—Failure to file returns.

A. Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by this chapter shall be due and payable in quarterly installments. At the director's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return.

B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

C. Tax returns must be filed and returned by the due date whether or not any tax is owed. Returns not received on or before the due date are subject to penalties and interest in accordance with this chapter.

D. For purposes of the tax imposed by Chapter 3.24, any person whose value of products, gross proceeds of sales or gross income of the business subject to tax after all allowable deductions is equal to or less than twenty thousand dollars in the current calendar year or five thousand dollars in the current quarter shall file a return, declare no tax due on their return, and submit the return to the director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due, except in those specific instances wherein the person claiming exemption under the provisions of this subsection is under contract for personal/professional services with the city which contract is less than five thousand dollars for a quarterly period or twenty thousand dollars if on an annual reporting basis.

E. A taxpayer who commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.

F. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter, the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or city or federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or city or federal legal holiday.

G. If any taxpayer fails, neglects or refuses to make his or her return as and when required in this chapter, the director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base his or her estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the city by the taxpayer. The director shall notify the taxpayer by mail of the amount of tax so

determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable. (Ord. 2809-04 § 1 (part), 2004)

is hereby amended to read as follows:

3.19.040 When due and payable—Reporting periods—Monthly, quarterly, and annual returns—Threshold provisions or relief from filing requirements—Computing time periods—Failure to file returns.

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the city by the taxpayer. The director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable. (Ord. 2809-04 § 1 (part), 2004)

Section 3. **Severability.** Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. **Conflict.** In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 5. **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 number and any references thereto.

Section 6. **General Duty.** It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

_____

Ray Stephanson, Mayor

ATTEST:

Sharon Fuller, City Clerk

Passed:_____

Valid:_____

Published:_____

Effective Date:_____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance Adding a portion of the Waterfront Place redevelopment area to the Multiple Family Property Tax Exemption program, and Amending Ordinance No. 2347-98, as amended (EMC Chapter 3.78)

	Briefing
	Proposed Action
	Consent
05/11/16	Action
04/27/16	First Reading
05/04/16	Second Reading
05/11/16	Third Reading
05/11/16	Public Hearing

COUNCIL BILL #	CB1604-20
Originating Department	Planning
Contact Person	Allan Giffen
Phone Number	(425) 257-8725
FOR AGENDA OF	April 27, 2016
	May 4, 2016
	May 11, 2016

Initialed by:
Department Head
CAA db
Council President

Location	Preceding Action	Attachments	Department(s) Approval
Port of Everett Waterfront Place Redevelopment	City Council master plan approval January 21, 2015	Ordinance	Planning, Legal

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The City Council approved the master plan for Waterfront Place in January, 2015. The master plan includes areas where residential development is allowed. The Port of Everett has asked the City to establish the Multiple Family Property Tax Exemption area for a portion of the redevelopment plan (two parcels) that will be developed with mixed use retail and housing in the next phase of development. The cost of constructing rental housing on a fill site, combined with the plan to locate the required off-street parking within a parking structure, makes residential development infeasible in the current and foreseeable rental housing market in Everett. The property tax exemption would appear to make development of multiple-family housing economically viable.

The proposed ordinance establishes an "urban center" for the entire Waterfront Place development area, and a "residential targeted area" in a portion of the urban center in which the property tax exemption would apply.

RECOMMENDATION (Exact action requested of Council):
Adopt Ordinance Adding a portion of the Waterfront Place redevelopment area to the Multiple Family Property Tax Exemption program, and Amending Ordinance No. 2347-98, as amended (EMC Chapter 3.78).

ORDINANCE NO. _____

An Ordinance Adding a portion of the Waterfront Place redevelopment area to the Multiple Family Property Tax Exemption program, and Amending Ordinance No. 2347-98, as amended (EMC Chapter 3.78)

WHEREAS, the City Council finds the following:

1. In January, 2015, the Everett city council adopted Planned Development Overlay Zone and master plan for the Waterfront Place redevelopment area on property owned by the Port of Everett.
2. The purpose of the Waterfront Place redevelopment plan is to transform the waterfront property from its former industrial use to a high quality mixed use neighborhood with substantial public open space and public access to the shoreline, commercial, residential and public uses in a master planned new neighborhood.
3. The approved master plan includes areas for the development of up to 660 multiple family dwellings in various locations within the redevelopment area.
4. Housing is an integral component to the overall development, including the economic viability of the non-residential elements of Waterfront Place, such as restaurant and retail uses.
5. The Port of Everett development strategy for the first phase of housing within Waterfront Place is to sell land to a private housing developer for the purpose of building multiple family dwellings within mixed use buildings containing commercial uses on the ground floor and housing on upper floors.
6. The entire 65 acre upland area within Waterfront Place consists of fill that has been placed on former tidelands that has been used for maritime related industrial uses for decades.
7. The Port of Everett has cleaned up soils contaminated by the previous industrial uses of the area and replaced contaminated materials with clean fill.
8. Construction of multiple story buildings on this type of fill requires more costly foundation systems than constructing on native soils.
9. This more costly method of construction creates an economic challenge to the viability of building housing in the Waterfront Place redevelopment area, given the projected rents that can be supported by the Everett rental market for the near to mid-term future.
10. The City established the Multiple Family Property Tax Exemption program in 1998 to encourage residential redevelopment in the downtown urban center, which has resulted in

the construction of nearly 1,000 housing units in an area that had experienced little housing development in the preceding twenty years prior to the creation of the program.

11. RCW 84.14.010 defines areas eligible for designation as "urban centers" where the Multiple Family Property Tax Exemption is intended to be used to stimulate housing development in targeted areas where a mix of uses and adequate urban infrastructure exists.
12. As a planned new mixed use neighborhood, the area lacks sufficient desirable residential housing despite the need for additional housing in Everett.
13. The City has been asked by the Port of Everett to expand the City's Multiple Family Property Tax Exemption program to the first phase of planned housing development in Waterfront Place in order to make redevelopment of multiple family housing within the corridor more viable financially.
14. Expanding the eligible area for the Multiple Family Property Tax Exemption program to include the area will create a financial incentive to develop quality housing as intended by EMC Chapter 3.78.
15. The area proposed to be included in the Multiple Family Property Tax Exemption program is limited to the first phase of housing development within Waterfront Place.
16. Certain amendments to EMC Chapter 3.78 are necessary to expand the City's Multiple Family Property Tax Exemption program to this area to encourage the development of housing that will benefit Everett.
17. RCW 84.14.040 requires the City to adopt a Resolution to establish a hearing date, and to provide public notice of the public hearing a minimum of 7 days and not more than 30 days prior to the date the City Council will consider the Ordinance to establish the North Broadway Urban Center.
18. Notice of the City Council public hearing was provided in the Daily Herald within the time frame required by RCW 84.14.040.

WHEREAS, the City Council concludes the following:

1. The notice for public hearing has met the requirements of RCW 84.14.040.
2. The proposed amendments to EMC Chapter 3.78 will encourage the development of desirable residential housing in the planned Waterfront Place mixed use urban center.
3. The areas within the designated urban center area lack sufficient available, attractive, convenient, desirable, and livable residential housing to meet the needs of the public who would be likely to live in the urban center, if such places to live were available.
4. The additional housing opportunity in the targeted area will assist in achieving the stated purposes of RCW 84.14.007, to encourage increased residential opportunities within the targeted area of the city, and stimulate the construction of new multifamily housing that will increase and improve residential opportunities within the urban centers.

5. The proposed amendment is consistent with the policies of the Everett Growth Management Comprehensive Plan and will promote densities called for in this Planned Development Overlay zone.
6. The proposed amendment is consistent with RCW Chapter 84.14.
7. The proposed amendment is in the best long term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 3 of Ordinance No. 2347-98, as amended (EMC Chapter 3.78.030.M, Definition of "Urban center"), which reads as follows:

> "Urban center" means (1) the Downtown Area, (2) the compact identifiable sections of the E-1 MUO zones, and (3) the North Broadway Urban Center, as each is described in Section 3.78.150 of this chapter, where urban residents may obtain a variety of products and services including, but not limited to, shops, offices, banks, restaurants, governmental agencies, transit service, and a mixture of uses and activities that may include housing, recreation, cultural activities, commercial or office uses.

is hereby amended to read as follows:

> "Urban center" means (1) the Downtown Area, (2) the compact identifiable sections of the E-1 MUO zones, ~~and~~ (3) the North Broadway Urban Center, and (4) the Waterfront Place Urban Center, as each is described in Section 3.78.150 of this chapter, where urban residents may obtain a variety of products and services including, but not limited to, shops, offices, banks, restaurants, governmental agencies, transit service, and a mixture of uses and activities that may include housing, recreation, cultural activities, commercial or office uses.

Section 2. Section 7.D of Ordinance No. 2347-98, as amended (EMC 3.78.070.D), which reads as follows:

D. Project Eligibility. A proposed project must meet the following requirements for consideration for a property tax exemption:

1. Location. The project must be located within the residential targeted area as designated pursuant to Section 3.78.150.

2. Tenant Displacement—Building Code Deficiency.

a. Tenant Displacement. If the property proposed to be rehabilitated is not vacant prior to application, an applicant must provide each existing tenant housing of comparable size, quality, and price and a reasonable opportunity to relocate.

b. Building Code Deficiency. Existing dwelling units proposed for rehabilitation must fail to comply with one or more requirements of the State Building Code as adopted by the city or the

International Property Maintenance Code as adopted by the city as each are set forth in EMC Title 16.

3. Size. The project must include a minimum of:

a. Eight multifamily housing units in the downtown urban center, twenty multifamily housing units in the E-1 MUO urban centers, and twenty multifamily housing units in the North Broadway urban center; or

b. Eight units of rehabilitated multifamily housing; provided, that conversion of buildings originally constructed as single-family dwellings to multiple-family dwellings shall not be eligible for the property tax exemption provided herein; and further provided, that existing multifamily housing that has been vacant for twelve months or more does not have to provide additional units so long as the project provides at least eight units of rehabilitated multifamily housing.

4. Permanent Residential Housing. At least fifty percent of the space designated for multifamily housing must be provided for permanent residential occupancy, as defined in Section 3.78.030(J) and only that portion of the space designated for multifamily housing shall be eligible for the exemption provided for herein.

5. Proposed Completion Date. New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application, plus any extension of time granted under Section 3.78.090(B).

6. Compliance with Guidelines and Standards. The project must be designed to comply with the city's comprehensive plan, building, housing and zoning codes, design guidelines, and any other applicable regulations in effect at the time the applicant submits a fully completed application to the director. For the duration of the exemption granted under this chapter, the property shall have no violations of applicable zoning requirements, land use regulations, or building and housing ordinance requirements for which a notice of violation has been issued and is not resolved by compliance, withdrawal or other final resolution. The project must also comply with any other standards and guidelines adopted by the city for the residential targeted area in which the project will be developed.

7. Off-Street Parking.

a. The project must provide all required parking spaces on site, unless otherwise specifically authorized by the city council as a pilot program or demonstration project, or as may be allowed by a master plan adopted under the Institutional Overlay Zone as provided by Chapter 19.33B.

b. The parking requirements for multiple-family dwellings of the Everett zoning code are applicable to multifamily residences provided for in this chapter.

c. The term "parking spaces on site" means that all the parking required under applicable city codes and requirements shall be off-street parking and provided on the property subject to the application for tax exemption hereunder or on any contiguous parcel owned by the applicant and not separated by a street, alley, other public right-of-way, or property not owned by the applicant. The planning director may authorize the parking area for a multifamily residence which is subject to the application for tax exemption hereunder to be located on a contiguous parcel which is separated from the multifamily residence site by an alley, if topographic, environmental or space constraints prevent vehicle parking and maneuvering from being placed on the location otherwise required by this chapter. In approving the on-site parking on any parcel contiguous to the multifamily residence site, including any approved parcel separated by an alley, the planning director shall require the owner to execute and record a covenant running with the land, acceptable to the city attorney, dedicating such parking area to parking use, to terminate only in the event that the owner's use which created the need for the parking on the owner's property is abandoned, discontinued or otherwise terminated, or the owner provides parking in a contiguous alternate location which is acceptable to and approved by the city.

8. Building Materials. The planning director shall have the authority to, in consultation with the building official, promulgate minimum standards for the quality of building materials to be used on projects seeking the property tax exemption.

9. Design Requirements within the Downtown Area.

a. A project outside the B-3 zone, and any project in the B-3 zone that does not otherwise use at least two bonus elements provided in Section 19.22.020(E) to qualify for floor area ratio or building height bonuses, shall include one bonus element provided in Section 19.22.020(E) for each ten dwelling units or portion thereof, up to a maximum of three bonus elements. Any bonus element constituting a use that is not otherwise permitted in the zone in which the property is located may not be used to satisfy this requirement.

b. Projects in the B-3 zone that use at least two of the bonus elements in Section 19.22.020(E) to qualify for floor area ratio or building height bonuses shall provide one additional bonus element provided in Section 19.22.020(E) for each twenty dwelling units or portion thereof, up to a maximum of three additional bonus elements, unless the director determines that it is infeasible and the building otherwise provides high quality architectural design and building materials.

c. As an alternative to the bonus elements provided in subsection (D)(9)(a) or (D)(9)(b) of this section, the applicant may propose other design elements that enhance the livability of the project and/or the city's urban center. Such proposals shall be subject to approval by the planning director, and the director shall have the authority to require changes to the proposed alternative to promote design quality and further the goals and objectives of the downtown plan. Such improvements or design measures must be in addition to the requirements of the city's zoning, building or housing codes, including but not limited to:

(1) Special treatment or use of specific architectural elements on building facades;

(2) Special emphasis to accentuate building entrances;

(3) Special treatment to enhance the streetscape;

(4) Special treatment of building lobbies or foyers for the comfort, convenience and safety of residents;

(5) Cleaning, repair, painting, or other functional improvements to existing buildings;

(6) Removal of nonconforming signs from buildings or lots;

(7) Preservation and/or restoration of historical elements of existing buildings in accordance with the Secretary of the Interior's standards for historic buildings;

(8) Special design treatment to promote or enhance compatibility with the function, design or location of improvements on surrounding properties.

10. Design Requirements within the E-1 MUO (Mixed Use Overlay) Zone and the North Broadway Urban Center.

a. A multiple-family housing development within the E-1 MUO (Mixed Use Overlay) zone or the North Broadway urban center with a minimum of twenty dwelling units shall be eligible for the property tax exemption as provided in this chapter, provided it meets all of the standards of this chapter and at least two of the following requirements:

(1) It provides a minimum of two hundred square feet of on-site common open space per dwelling unit accessible to the residents of the development. A minimum of one-half of this space shall be provided at or near the ground level, and shall be improved as required by the zone in which the property is located. The remainder of this open space area may be provided in one or more roof-top or terrace open space areas having a minimum horizontal dimension of twenty feet measured in any direction.

(2) It provides a minimum of two hundred square feet of on-site common space per dwelling unit accessible for general use by residents and customers of mixed use commercial and residential development on site, improved as required by the zone in which the property is located.

(3) It locates all required off-street parking for the residential dwelling units within a parking structure either below or above grade.

(4) It provides off-site pedestrian-oriented street frontage improvements consistent with the standards of the zone in which the property is located on at least one adjacent site equivalent to

the amount of frontage that the subject property has on Evergreen Way or Broadway, as applicable. This section shall only apply for off-site improvements to properties that do not already meet the standards of the zone in which the property is located.

(5) For properties in the E-1 MUO zone, it provides, with the authorization of other owners of affected properties, a new pedestrian connection through other properties to abutting neighborhoods in a manner that, in the judgment of the planning director and city engineer, substantially improves pedestrian circulation between Evergreen Way and the abutting neighborhood. Such pedestrian connections shall be improved to standards appropriate for the safety of pedestrians and the security of abutting properties, as determined by the city engineer.

(6) It provides a minimum of ten percent of all dwelling units as affordable to households with a household income at or below fifty percent of median family income, adjusted for size, and a minimum of ten percent of all dwelling units as affordable to households with a household income between fifty percent and eighty percent of median family income, adjusted for size. Rental rates in such affordable housing shall not exceed thirty percent of the household's monthly income for rent and utilities, excluding telephone, Internet and television utility services.

b. Combination of Amenities. An applicant may propose a combination of amenities using a different standard than those described in subsection (D)(10)(a) of this section, and the planning director may approve a combination of amenities if such a combination results in a benefit to the public and/or the residents of the development at least equivalent to providing only one of the amenities listed in subsection (D)(10)(a) of this section. For example, an applicant may propose one hundred fifty square feet of open space per dwelling unit and seventy-five percent of the required off-street parking within a structure for consideration by the planning director. The director must evaluate the quality of the proposed design of the combination of two or more amenities to determine if they provide benefits to the public or residents that are at least as great as providing just a single amenity listed in subsection (D)(10)(a) of this section.

is hereby amended to read as follows:

D. Project Eligibility. A proposed project must meet the following requirements for consideration for a property tax exemption:

1. Location. The project must be located within the residential targeted area as designated pursuant to Section 3.78.150.

2. Tenant Displacement—Building Code Deficiency.

a. Tenant Displacement. If the property proposed to be rehabilitated is not vacant prior to application, an applicant must provide each existing tenant housing of comparable size, quality, and price and a reasonable opportunity to relocate.

b. Building Code Deficiency. Existing dwelling units proposed for rehabilitation must fail to comply with one or more requirements of the State Building Code as adopted by the city or the International Property Maintenance Code as adopted by the city as each are set forth in EMC Title 16.

3. Size. The project must include a minimum of:

a. Eight multifamily housing units in the downtown urban center, twenty multifamily housing units in the E-1 MUO urban centers, and twenty multifamily housing units in the North Broadway urban center or the Waterfront Place urban center; or

b. Eight units of rehabilitated multifamily housing; provided, that conversion of buildings originally constructed as single-family dwellings to multiple-family dwellings shall not be eligible for the property tax exemption provided herein; and further provided, that existing multifamily housing that has been vacant for twelve months or more does not have to provide additional units so long as the project provides at least eight units of rehabilitated multifamily housing.

4. Permanent Residential Housing. At least fifty percent of the space designated for multifamily housing must be provided for permanent residential occupancy, as defined in Section 3.78.030(J) and only that portion of the space designated for multifamily housing shall be eligible for the exemption provided for herein.

5. Proposed Completion Date. New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application, plus any extension of time granted under Section 3.78.090(B).

6. Compliance with Guidelines and Standards. The project must be designed to comply with the city's comprehensive plan, building, housing and zoning codes, design guidelines, and any other applicable regulations in effect at the time the applicant submits a fully completed application to the director. For the duration of the exemption granted under this chapter, the property shall have no violations of applicable zoning requirements, land use regulations, or building and housing ordinance requirements for which a notice of violation has been issued and is not resolved by compliance, withdrawal or other final resolution. The project must also comply with any other standards and guidelines adopted by the city for the residential targeted area in which the project will be developed.

7. Off-Street Parking.

a. The project must provide all required parking spaces on site, unless otherwise specifically authorized by the city council as a pilot program or demonstration project, or as may be allowed by a master plan adopted under the Institutional Overlay Zone as provided by Chapter 19.33B, or as may be allowed by a master plan adopted under the Planned Development Overlay Zone as provided by Chapter 19.29.

b. The parking requirements for multiple-family dwellings of the Everett zoning code are applicable to multifamily residences provided for in this chapter, except as may be allowed by a master plan adopted under the Institutional Overlay Zone as provided by Chapter 19.33B, or as may be allowed by a master plan adopted under the Planned Development Overlay Zone as provided by Chapter 19.29.

c. The term "parking spaces on site" means that all the parking required under applicable city codes and requirements shall be off-street parking and provided on the property subject to the application for tax exemption hereunder or on any contiguous parcel owned by the applicant and not separated by a street, alley, other public right-of-way, or property not owned by the applicant. The planning director may authorize the parking area for a multifamily residence which is subject to the application for tax exemption hereunder to be located on a contiguous parcel which is separated from the multifamily residence site by an alley, if topographic, environmental or space constraints prevent vehicle parking and maneuvering from being placed on the location otherwise required by this chapter. In approving the on-site parking on any parcel contiguous to the multifamily residence site, including any approved parcel separated by an alley, the planning director shall require the owner to execute and record a covenant running with the land, acceptable to the city attorney, dedicating such parking area to parking use, to terminate only in the event that the owner's use which created the need for the parking on the owner's property is abandoned, discontinued or otherwise terminated, or the owner provides parking in a contiguous alternate location which is acceptable to and approved by the city.

8. Building Materials. The planning director shall have the authority to, in consultation with the building official, promulgate minimum standards for the quality of building materials to be used on projects seeking the property tax exemption.

9. Design Requirements within the Downtown Area.

a. A project outside the B-3 zone, and any project in the B-3 zone that does not otherwise use at least two bonus elements provided in Section 19.22.020(E) to qualify for floor area ratio or building height bonuses, shall include one bonus element provided in Section 19.22.020(E) for each ten dwelling units or portion thereof, up to a maximum of three bonus elements. Any bonus element constituting a use that is not otherwise permitted in the zone in which the property is located may not be used to satisfy this requirement.

b. Projects in the B-3 zone that use at least two of the bonus elements in Section 19.22.020(E) to qualify for floor area ratio or building height bonuses shall provide one additional bonus element provided in Section 19.22.020(E) for each twenty dwelling units or portion thereof, up to a maximum of three additional bonus elements, unless the director determines that it is infeasible and the building otherwise provides high quality architectural design and building materials.

c. As an alternative to the bonus elements provided in subsection (D)(9)(a) or (D)(9)(b) of this section, the applicant may propose other design elements that enhance the livability of the project and/or the city's urban center. Such proposals shall be subject to approval by the planning director, and the director shall have the authority to require changes to the proposed alternative to promote design quality and further the goals and objectives of the downtown plan. Such improvements or design measures must be in addition to the requirements of the city's zoning, building or housing codes, including but not limited to:

(1) Special treatment or use of specific architectural elements on building facades;

(2) Special emphasis to accentuate building entrances;

(3) Special treatment to enhance the streetscape;

(4) Special treatment of building lobbies or foyers for the comfort, convenience and safety of residents;

(5) Cleaning, repair, painting, or other functional improvements to existing buildings;

(6) Removal of nonconforming signs from buildings or lots;

(7) Preservation and/or restoration of historical elements of existing buildings in accordance with the Secretary of the Interior's standards for historic buildings;

(8) Special design treatment to promote or enhance compatibility with the function, design or location of improvements on surrounding properties.

10. Design Requirements within the E-1 MUO (Mixed Use Overlay) Zone and the North Broadway Urban Center.

a. A multiple-family housing development within the E-1 MUO (Mixed Use Overlay) zone or the North Broadway urban center with a minimum of twenty dwelling units shall be eligible for the property tax exemption as provided in this chapter, provided it meets all of the standards of this chapter and at least two of the following requirements:

(1) It provides a minimum of two hundred square feet of on-site common open space per dwelling unit accessible to the residents of the development. A minimum of one-half of this space shall be provided at or near the ground level, and shall be improved as required by the zone in which the property is located. The remainder of this open space area may be provided in one or more roof-top or terrace open space areas having a minimum horizontal dimension of twenty feet measured in any direction.

(2) It provides a minimum of two hundred square feet of on-site common space per dwelling unit accessible for general use by residents and customers of mixed use commercial and

residential development on site, improved as required by the zone in which the property is located.

(3) It locates all required off-street parking for the residential dwelling units within a parking structure either below or above grade.

(4) It provides off-site pedestrian-oriented street frontage improvements consistent with the standards of the zone in which the property is located on at least one adjacent site equivalent to the amount of frontage that the subject property has on Evergreen Way or Broadway, as applicable. This section shall only apply for off-site improvements to properties that do not already meet the standards of the zone in which the property is located.

(5) For properties in the E-1 MUO zone, it provides, with the authorization of other owners of affected properties, a new pedestrian connection through other properties to abutting neighborhoods in a manner that, in the judgment of the planning director and city engineer, substantially improves pedestrian circulation between Evergreen Way and the abutting neighborhood. Such pedestrian connections shall be improved to standards appropriate for the safety of pedestrians and the security of abutting properties, as determined by the city engineer.

(6) It provides a minimum of ten percent of all dwelling units as affordable to households with a household income at or below fifty percent of median family income, adjusted for size, and a minimum of ten percent of all dwelling units as affordable to households with a household income between fifty percent and eighty percent of median family income, adjusted for size. Rental rates in such affordable housing shall not exceed thirty percent of the household's monthly income for rent and utilities, excluding telephone, Internet and television utility services.

b. Combination of Amenities. An applicant may propose a combination of amenities using a different standard than those described in subsection (D)(10)(a) of this section, and the planning director may approve a combination of amenities if such a combination results in a benefit to the public and/or the residents of the development at least equivalent to providing only one of the amenities listed in subsection (D)(10)(a) of this section. For example, an applicant may propose one hundred fifty square feet of open space per dwelling unit and seventy-five percent of the required off-street parking within a structure for consideration by the planning director. The director must evaluate the quality of the proposed design of the combination of two or more amenities to determine if they provide benefits to the public or residents that are at least as great as providing just a single amenity listed in subsection (D)(10)(a) of this section.

11. Design Requirements in the Waterfront Place Urban Center. A multiple family housing development within the Waterfront Place Urban Center is eligible for the property tax exemption provided in this chapter provided it meets the development standards and design guidelines of the approved master plan adopted under the Planned Development Overlay Zone process of Chapter 19.29.

Section 3. Section 15 of Ordinance No. 2347-98, as amended (EMC 3.78.150) is amended by the addition of the following, which shall be codified as EMC 3.78.150.D. For the purposes of clarity and consistency with prior ordinances, the exhibit attached to this ordinance is marked as Exhibit D.

D. Waterfront Place Urban Center. The area declared the Waterfront Place urban center of the city of Everett is legally described below, and depicted as the Waterfront Place Urban Center on Exhibit D of this ordinance.

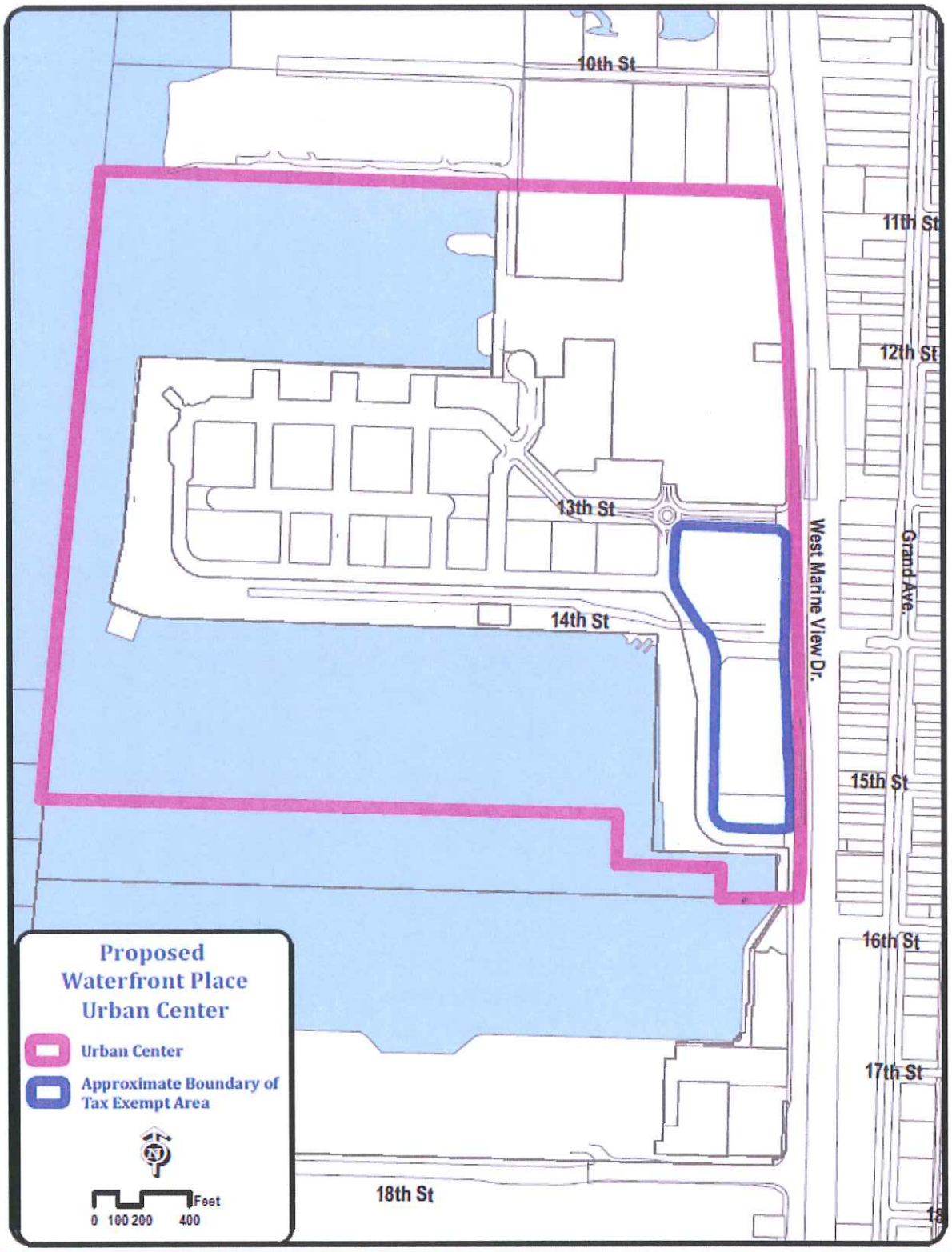
LEGAL DESCRIPTION

That portion of Tide Lands conveyed to The Everett Land Company by the State of Washington in that certain instrument recorded in Volume 30 of Deeds starting at page 162, under Auditor's File No. 24048, records of Snohomish County, Washington, in and fronting Government Lots 2 and 3 of Section 18, Township 29 North, Range 5 East of the Willamette Meridian, described as follows: Commencing at the Standard City Monument at the intersection of 14th Street and Grand Avenue, which monument is shown on Plat of Everett, Division "R", according to the Plat thereof recorded in Volume 6 of Plats, page 33, records of Snohomish County, Washington, and which monument is positioned 14.00 feet North and 22.00 feet East of the intersection of the center lines of said streets, and from said monument the Standard City Monument at the intersection of 14th Street and Rucker Avenue, as shown on said plat, bears South 89°52'00" East a distance of 354.13 feet, and from said monument the Standard City Monument at the intersection of 14th Street and Wetmore Avenue, as shown on said plat, bears South 89°52'00" East a distance of 1396.16 feet; thence North 89°52'00" West, along the monument line of 14th Street projected Westerly, which monument line is 14.00 feet North of the center line of 14th Street, as measured at right angles to said center line, a distance of 369.16 feet to the center line of that certain road known as Marine View Drive; thence continuing North 89°52'00" West a distance of 217.29 feet to the point of intersection of said monument line with the Westerly Margin of the Northern Pacific Railway Company right of way; thence North 1°15'00" West, along said Westerly Margin, a distance of 1481.43 feet to the True Point of Beginning; thence North 89°52'00" West a distance of 2154.56 feet to the point of intersection with the Government Pierhead Line; thence South 3°41'45" West, along said Government Pierhead Line, a distance of 2124.28 feet; thence North 89°41'40" East a distance of 1950.45 feet; thence South 0°18'20" East a distance of 170.62 feet; thence North 89°41'40" East a distance of 354.78 feet; thence South 0°18'20" East a distance of 102.17 feet; thence North 89°41'40" East a distance of 215.66 feet to the point of intersection with the Westerly Margin of said Marine View Drive; thence in a Northerly direction, along said Westerly Margin of Marine View Drive, on the following courses: North 0°26'58" West a distance of 263.60 feet, North 1°44'43" West a distance of 285.96 feet, South 88°15'17" West a distance of 6.00 feet, North 1°44'43" West a distance of 230.62 feet, South 89°50'10" East a distance of 6.00 feet, North 1°44'43" West a distance of 46.00 feet, North 89°52'00" West a distance of 6.00 feet, North 1°44'43" West a distance of 64.00 feet, South 89°52'29" East a distance of 6.00 feet, North 1°44'43" West a distance of 3.00 feet to the point of intersection of said Westerly Margin with said Monument line of 14th Street projected Westerly; thence North 1°44'43" West, along said Westerly Margin, a distance of 26.01 feet to the point of intersection of said Westerly Margin with the North Margin of said 14th Street projected Westerly; thence in a Northerly direction, along said Westerly Margin of Marine View Drive, on the following courses: North 1°44'29" West a distance of 17.10 feet, North 89°52'29" West a distance of 6.00 feet, North 1°44'29" West a distance of 295.04 feet; thence North 1°52'10" East a distance of 95.27 feet; thence North 1°44'29" West, along said Westerly Margin, a distance of 215.66 feet; thence on a curve, to the left, of said Westerly Margin, having a radius of 11314.19 feet, through a central angle of 4°07'25", an arc distance of 814.25 feet; thence North 5°51'54" West, along said Westerly Margin, a distance of 5.13 feet to the North Margin of 11th Street projected Westerly; thence North 89°52'00" West, along said North Margin projected Westerly, a distance of 135.01 feet to said Westerly Margin of the Northern Pacific Railway Company right of way; thence North 1°15'00" West, along said Westerly Margin, a distance of 15.01 feet to the True Point of Beginning.
All containing 119.62 acres, more or less.

SUBJECT TO Easements of Record, Also SUBJECT TO City Street Rights of Way.
082003, 231920, CML-LS

Exhibit D

Waterfront Place Urban Center and Proposed Multi-Family Property Tax Exemption Area



Section 4. The residential targeted area in which the property tax exemption shall apply is the area within the Waterfront Place Urban Center depicted on Exhibit D of this ordinance labeled as "Approximate Boundary of Tax Exempt Area," which is proposed Parcel A9 and Parcel A10 of a tentative Binding Site Plan and which comprises a portion of Section 18 of T.29N, R. 5E, W.M., situated in the city of Everett, Washington. However, the residential targeted area and its property tax exemption shall not become effective until a Binding Site Plan is recorded with the Snohomish County Auditor, and a legal description of the recorded parcels within the residential targeted area is provided to the City Clerk and approved by the Planning Director. Such approval shall not be given if any of parcels so legally described are located outside of the area marked as "Approximate Boundary of Tax Exempt Area" in Exhibit D to this ordinance. Upon such approval, the legal description of the residential targeted area parcels shall be added to the codified version of Exhibit D to this ordinance. Accordingly, Section 15.D of Ordinance No. 2347-98, as amended (EMC 3.78.070.D), which reads as follows:

D. Residential Targeted Area Designated. The areas hereby declared to be the residential targeted area of the city of Everett are the areas depicted on Exhibits A, B and C, which are attached to the ordinances codified in this section, and which are legally described in subsections A, B and C of this section.

is hereby amended to read as follows, and shall be codified as EMC 3.78.150.E:

E. Residential Targeted Area Designated. The areas hereby declared to be the residential targeted area of the city of Everett are:

(1) the areas depicted on Exhibits A, B, and C, which are attached to the ordinances codified in this section, and which are legally described in subsections A, B and C of this section; and

(2) the area depicted as the Tax Exempt Area in Exhibit D to this ordinance.

Section 5. **Severability.** Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 6. **Conflict.** In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 7. **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 number and any references thereto.

Section 8. **General Duty.** It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

_____
Ray Stephanson, Mayor

ATTEST:

_____
CITY CLERK

Passed:_____

Valid:_____

Published:_____

Effective Date:_____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance Relating to Disclosing Intimate Images, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.18 EMC), and Amending Ordinance No. 1521-88 as amended (Section 10.23.050 EMC)

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing

COUNCIL BILL #	CB1604-21
Originating Department	Legal
Contact Person	Flora Diaz
Phone Number	425-257-7012
FOR AGENDA OF	April 27, 2016

Initialed by:
Department Head _____
CAA dd
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
		Ordinance (final, redlined)	Legal

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

This proposed ordinance adopts into the Everett Municipal Code (EMC) a new gross misdemeanor crime created in the 2015 legislative session (RCW 9A.86.010) regarding the wrongful disclosure of intimate images, colloquially referred to as "revenge pornography."

As a gross misdemeanor, it is punishable by a maximum penalty of 364 days in jail and a $5,000.00 fine.

This proposed ordinance would also incorporate the new wrongful disclosure of intimate images crime into the City's definition of Harassment (EMC 10.23.050). This means that the municipal court may better protect the public by issuing protection orders restraining a person charged with the crime of wrongful disclosure of intimate images from contacting the victim.

Finally, this proposed ordinance would adopt a new misdemeanor crime pursuant to EMC 10.18.020 for aiding/abetting the commission of the new wrongful disclosure of intimate images crime.

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance Relating to Disclosing Intimate Images, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.18 EMC), and Amending Ordinance No. 1521-88 as amended (Section 10.23.050 EMC).

ORDINANCE No._____

AN ORDINANCE Relating to Disclosing Intimate Images, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.18 EMC), and Amending Ordinance No. 1521-88 as amended (Section 10.23.050 EMC).

Whereas, in the 2015 legislative session, the State of Washington created a new law criminalizing the wrongful disclosure of intimate images, RCW 9A.86.010. Commission of this crime under State law is a gross misdemeanor; and

Whereas, the City of Everett has the power to provide for the punishment of all practices dangerous to public health or safety, and to make necessary for the preservation of public health, peace and good order and to provide for the punishment of all persons charged with violating any city ordinances; and

Whereas, this new criminal law is related to existing criminal laws against Telephone Harassment and Cyberstalking, Chapter 10.18 EMC, and the Everett City Council therefore deems it appropriate to codify this new criminal law within Chapter 10.18 EMC; and

Whereas, the Everett City Council deems it appropriate for the City of Everett criminal laws to incorporate corresponding State law, that the City of Everett may prosecute such crimes;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Ordinance No. 1145-85, as amended by Ordinance No. 3067-08, Section 1 and by Ordinance No. 2449-00, Section 1, is hereby amended by the addition of the following section which will be codified as EMC 10.18.027:

Disclosing intimate images.

A. A person commits the crime of disclosing intimate images when the person knowingly discloses an intimate image of another person and the person disclosing the image:

1. Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private;

2. Knows or should have known that the depicted person has not consented to the disclosure; and

3. Knows or reasonably should know that disclosure would cause harm to the depicted person.

B. This section does not apply to:

1. Images involving voluntary exposure in public or commercial settings; or

2. Disclosures made in the public interest including, but not limited to, the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

C. This section does not impose liability upon the following entities solely as a result of content provided by another person:

1. An interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2);

2. A provider of public or private mobile service, as defined in section 13-214 of the public utilities act; or

3. A telecommunications network or broadband provider.

D. It shall be an affirmative defense to a violation of this section that the defendant is a family member of a minor and did not intend any harm or harassment in disclosing the images of the minor to other family or friends of the defendant. This affirmative defense shall not apply to matters defined under RCW 9.68A.011.

E. For purposes of this section:

1. "Disclosing" includes transferring, publishing, or disseminating, as well as making a digital depiction available for distribution or downloading through the facilities of a telecommunications network or through any other means of transferring computer programs or data to a computer;

2. "Intimate image" means any photograph, motion picture film, videotape, digital image, or any other recording or transmission of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts:

a. Sexual activity, including sexual intercourse as defined in RCW 9A.44.010 and masturbation; or

b. A person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or post-pubescent female nipple.

F. The crime of disclosing intimate images is a gross misdemeanor.

G. Nothing in this section is construed to:

1. Alter or negate any rights, obligations, or immunities of an interactive service provider under 47 U.S.C. Sec. 230; or

2. Limit or preclude a plaintiff from securing or recovering any other available remedy.

Section 2. Section 33 of Ordinance No. 1145-85, as amended by Section 2 of Ordinance No. 3067-08 (EMC 10.18.020), which reads as follows:

Permitting telephone or electronic communications device to be used for telephone harassment or cyberstalking.

Any person who knowingly permits any telephone or electronic communications device under his control to be used for any purpose prohibited by Section 10.18.010 or section 2 of this Ordinance shall be guilty of a misdemeanor.

Be and the same is hereby amended to read as follows:

Permitting telephone or electronic communications device to be used for telephone harassment, ~~or~~ cyberstalking, or disclosure of intimate images.

Any person who knowingly permits any telephone or electronic communications device under his control to be used for any purpose prohibited by Section 10.18.010, ~~or section 2 of this Ordinance~~ 10.18.025, or section 1 of this ordinance shall be guilty of a misdemeanor.

Section 3. Section 1 (part) and Section 6 of Ordinance No. 1521-88, as amended by Section 5 of Ordinance No. 3067-08 (EMC 10.23.050), which reads as follows:

Crimes included in harassment.

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

A. Harassment (Chapter 10.23);

B. Telephone Harassment (Section 10.18.010);

C. Assault (Section 10.16.040);

D. Reckless Endangerment (Section 10.16.040);

E. Coercion (Section 10.16.040);

F. Criminal Trespass in the First Degree (Section 10.68.030);

G. Criminal Trespass in the Second Degree (Section 10.68.040);

H. Criminal Mischief (Section 10.66.040);

I. Interference with Property (Section 10.66.020);

J. Stalking (Section 10.16.050);

K. Cyberstalking (Section 3 of this Ordinance).

L. Violation of a temporary, permanent, or final protective order issued pursuant to chapter 7.90, 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW).

Be and the same is hereby amended to read as follows:

Crimes included in harassment.

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

A. Harassment (Chapter 10.23);

B. Telephone Harassment (Section 10.18.010);

C. Assault (Section 10.16.040);

D. Reckless Endangerment (Section 10.16.040);

E. Coercion (Section 10.16.040);

F. Criminal Trespass in the First Degree (Section 10.68.030);

G. Criminal Trespass in the Second Degree (Section 10.68.040);

H. Criminal Mischief (Section 10.66.040);

I. Interference with Property (Section 10.66.020);

J. Stalking (Section 10.16.050);

K. Cyberstalking (Section ~~3 of this Ordinance~~10.18.025);~~.~~

L. Disclosing Intimate Images (Section 1 of this Ordinance).

~~L~~M. Violation of a temporary, permanent, or final protective order issued pursuant to chapter 7.90, 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW).

Section 4. Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby

declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Section 5. General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 6. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 7. 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.

_____

Ray Stephanson, Mayor

ATTEST:

_____

City Clerk

Passed:

Valid:

Published:

Effective Date:

RESOLUTION NO._____

Be it Resolved by the City Council of the City of Everett:

That the claims against the City of Everett for the period April 16, 2016 through April 22, 2016 having been audited and approved, have been paid and the disbursements have been made against the proper funds in payment thereof, as follows:

Fund	Department	Amount
001	City Council	2,706.40
002	General Government	7,478.46
003	Legal	1,480.61
004	Administration	4,901.98
005	Municipal Court	427.48
007	Human Resources	1,279.45
009	Misc Financial Funds	43,739.16
010	Finance	1,091.12
015	Information Technology	2,533.19
021	Planning & Community Developmer	3,111.79
022	Neighborhoods & Community Servi	207.78
024	Public Works-Engineering	9,148.33
026	Animal Shelter	1,006.73
027	Senior Center	443.49
031	Police	9,529.91
032	Fire	8,208.46
038	Facilities/Maintenance	586.76
	TOTAL GENERAL FUND	**97,881.10**

Fund	Department	Amount
101	Parks & Recreation	14,841.67
110	Library	26,742.97
112	Community Theater	5,521.50
114	Conference Center	3,022.77
120	Public Works-Streets	786.05
145	Real Property Acquisition	951.88
146	Property Management	95,135.60
149	Senior Center Reserve	410.40
152	Cum Reserve-Library	5,770.86
153	Emergency Medical Services	449,198.17
156	Criminal Justice	1,443.15
197	CHIP Loan Program	13,932.98
198	Community Dev Block Grants	7,350.26
303	PW Improvement Projects	64.00
401	Public Works-Utilities	110,956.97
402	Solid Waste Utility	1,310.40
425	Public Works-Transit	431,903.67
430	Everpark Garage	214.82
440	Golf	20,916.39
501	MVD-Transportation Services	726.21
503	Self-Insurance	187,409.09
505	Computer Reserve	5,366.31
507	Telecommunications	24,435.66
508	Health Benefits Reserve	6,416.67
637	Police Pension	62,300.69
638	Fire Pension	44,498.60
661	Claims	46,120.16
663	Investment Earnings	864.00
	TOTAL CLAIMS	**1,666,493.00**

Passed and approved this _____day of _____ , 2016.

_____
Councilperson Introducing Resolution

_____
Council President

RESOLUTION NO. _____

Be it resolved by the City Council of the City of Everett:

That the payroll of the employees of the City of Everett as of April 16, 2016, and checks issued April 22, 2016, having been audited, be and the same is hereby approved and the proper officers are hereby authorized and directed to charge checks on the Payroll Fund in payment thereof:

Fund	Department	Gross Payroll	Employer Contributions
001	Legislative	10,556.08	$5,866.54
003	Legal	$58,012.40	21,634.93
004	Administration	52,662.95	16,262.50
005	Municipal Court	52,300.43	20,985.93
007	Personnel	44,976.81	16,404.07
010	Finance	52,600.36	20,580.06
015	Information Technology	51,354.54	19,757.58
021	Planning & Community Dev	38,973.96	13,489.72
022	Neighborhoods & Community Svcs	3,245.52	1,270.34
024	Public Works	142,138.32	54,546.36
026	Animal Shelter	32,987.72	12,684.18
027	Senior Center	11,232.73	4,610.03
031	Police	806,394.22	240,617.00
032	Fire	592,802.33	168,790.65
038	Facilities/Maintenance	62,595.52	28,207.49
101	Parks & Recreation	192,136.96	73,890.80
110	Library	118,434.38	41,014.01
112	Community Theatre	7,145.22	2,858.73
120	Street	67,739.57	28,507.54
153	Emergency Medical Services	173,743.78	45,955.29
197	CHIP	9,034.00	3,909.14
198	Community Dev Block	6,504.96	2,250.63
401	Utilities	664,957.69	255,970.70
425	Transit	358,667.14	154,116.10
440	Golf	29,994.92	10,428.43
501	Equip Rental	60,343.67	25,550.43
507	Telecommunications	9,660.83	3,984.05
		$3,711,197.01	$1,294,143.23

_____
Councilperson Introducing Resolution

Passed and approved this _____ day of _____, 2016.

_____
Council President

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Street Closure – Safety tips for Families

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Department	City Clerk
_____	Consent	Contact Person	Sharon Fuller
_____	Action	Phone Number	425 257-8609
_____	First Reading	FOR AGENDA OF	May 4, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		

Initialed by:
Department Head _____
CAA db
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Wall Street, between Colby and Hoyt Avenues		Special Event Application	Police, Fire, Streets, Traffic Engineering, Transit

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The Imagine Children's Museum is requesting the closure of Wall street, between Colby and Hoyt Avenues on May 14, 2016, 8 a.m. to 3 p.m., for a Safety Tips for Families event.

RECOMMENDATION (Exact action requested of Council):
Authorize the closure of Wall Street, between Colby and Hoyt Avenues on May 14, 2016, 8 a.m. to 3 p.m., for a Safety Tips for Families event sponsored by Imagine Children's Museum.

(2)

SPECIAL EVENT APPLICATION

Event Type: ___ Street Closure ___ Parade ___ Walk/Run ___ Other (_____)

Event Date: 5.14.16 **Event Time:** 11:00 – 2:00

Closure Time: 8AM – 3 PM

Event Description: Safety tips for families

Location of Event: IMAGINE CHILDREN'S MUSEUM

Sponsoring Organization: _____

Address: 1502 WALL street **City & State** Everett, WA

Contact Person: Ranirere **Phone No.** 425.258.1006 xt 1023

We **require** that you inform the neighborhood and businesses of the street closure prior to obtaining approval.

What method will be used to inform the impacted parties of the street closure? IN person

If applicable, answer the following:
Approx. # of participants: 1000 Persons Ø Animals 10 Vehicles
Type of Animals _____

Assembly area (streets) Request street closure of WALL street from Colby to Hoyt

Portion of street to be used: X Full width ___ Half ___ Other

*Attach a **map** showing route of parade or run/walk.

Official Use

	Admin.	Traffic	Police	Fire	Transit	Streets
Approved:		✓	✓	✓	✓	✓
Rejected:						

Special Conditions: _____

Comments: _____

Council agenda date: ___/___/___ City Council approval: ___/___/___

Permit _____ TR # _____

3

Indemnification, Hold Harmless, and Certification

As a material inducement and consideration for the City granting this approval, the Applicant, on behalf of the sponsoring organization, hereby agrees to defend, indemnify and hold harmless the City from and against any and all Claims for personal injury, death, property damage or destruction, arising from, relating to, or resulting from the Event that is the subject of this approval.

"City" shall mean the City of Everett, its officers, employees and agents.

"Claims" shall mean any actions, demands, suits, obligation or liability for payment of damages, fees, and costs, including, but not limited to, attorney's fees, expert witness fees, court costs and other legal expenses.

Provided, however, this agreement to defend, indemnify and hold harmless the City shall not apply to Claims arising out of bodily injury or death or property damage or destruction caused by the sole negligence or willful misconduct of the City.

As Applicant, I certify that 1) the information provided on this application is true and correct; and 2) I am duly authorized by the sponsoring organization to make this application and enter into this agreement, on behalf of the sponsoring organization, to defend, indemnify and hold harmless the City.

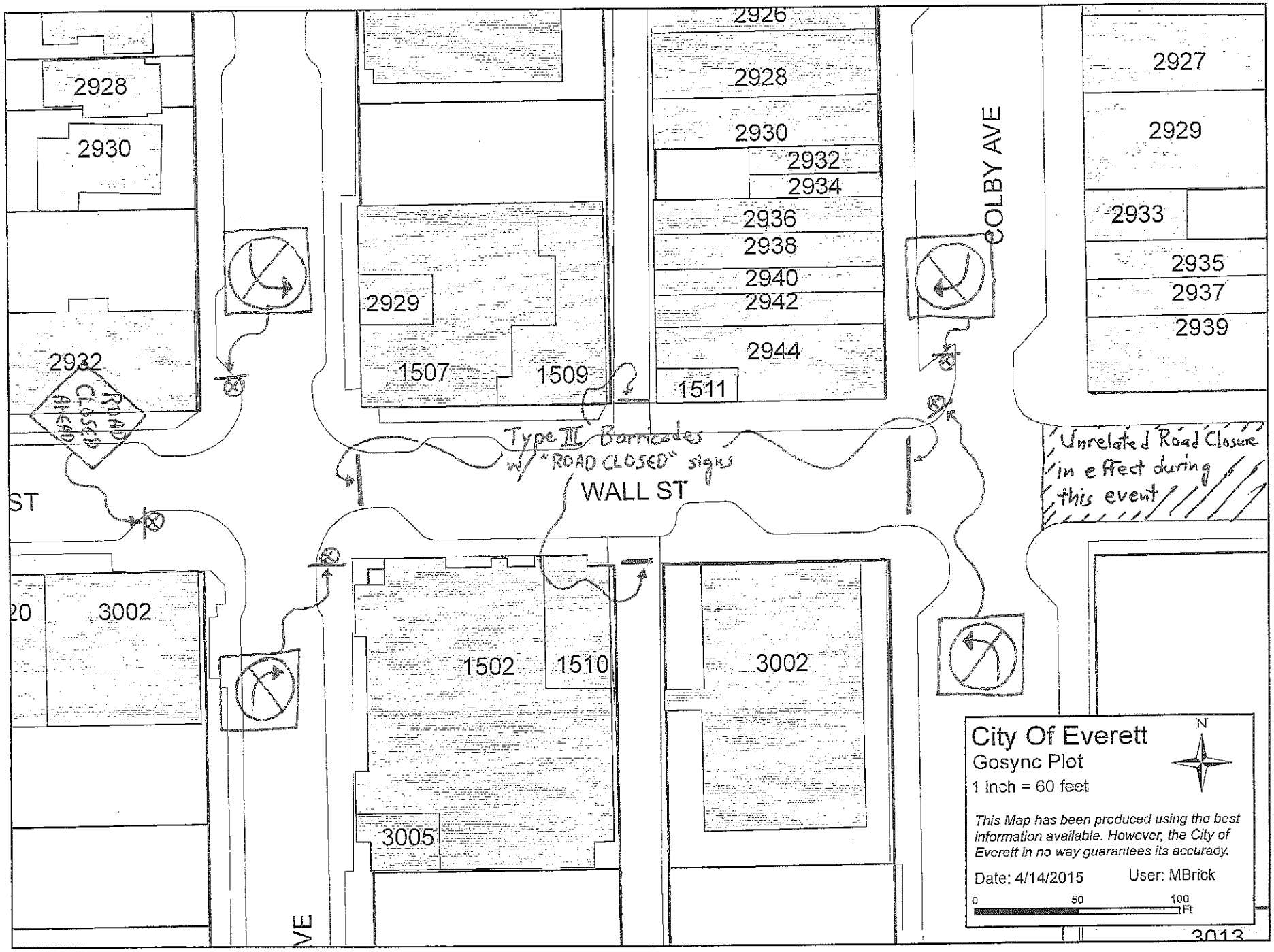
Ramere — 4.12.16
Signature — Date

Ramiere
Printed Name

IMAGINE Children's Museum — 425.258.1006 xt 1023
Organization Representing — Phone No.

List businesses/residences impacted by this event. You must also obtain an approval signature from each business/resident indicating they concur with the closure.

Business/Residence	Signature of approval
1. Browns Catering LLC	[illegible]
2.	
3.	
4. Petershagen Insurance	Lei Austin
5.	
6.	
7. Studio Donna	[illegible]


2928
2930
2932
Road Closed Ahead
2929
1507
1509
2926
2928
2930
2932
2934
2936
2938
2940
2942
2944
1511
COLBY AVE
2927
2929
2933
2935
2937
2939
Type III Barricades w/ "ROAD CLOSED" signs
WALL ST
Unrelated Road Closure in effect during this event
ST
20
3002
1502
1510
3002
3005
VE
3013
City Of Everett
Gosync Plot
1 inch = 60 feet
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This Map has been produced using the best information available. However, the City of Everett in no way guarantees its accuracy.
Date: 4/14/2015
User: MBrick
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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Street Closure – Craft Fair

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Department	City Clerk
_____	Consent	Contact Person	Sharon Fuller
_____	Action	Phone Number	425 257-8609
_____	First Reading	FOR AGENDA OF	May 4, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		

Initialed by:
Department Head _____
CAA db
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Grand Avenue, between California Street and Hewitt Avenue		Special Event Application	Police, Fire, Streets, Traffic Engineering, Transit

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The Sno-Isle Food Co-op in partnership with the Everett Maker's market is requesting the closure of Grand Avenue, between California Street and Hewitt Avenue on June 18, 2016, 11 a.m. to 7 p.m., for a Craft Fair.

RECOMMENDATION (Exact action requested of Council):

Authorize the closure of Grand Avenue, between California Street and Hewitt Avenue on June 18, 2016, 11 a.m. to 7 p.m., for a Craft Fair sponsored by the Sno-Isle Food Co-op in partnership with the Everett Maker's market.

SPECIAL EVENT APPLICATION

Event Type: X Street Closure ___ Parade ___ Walk/Run ___ Other (_____)

Event Date: June 18th, 2016 **Event Time:** 1pm-6pm

Closure Time: 11am-7pm

Event Description: Craft fair, in partnership with the Everett Maker's Market

Location of Event: 2804 Grand Ave.

Sponsoring Organization: Sno-Isle Food Co-op

Address: 2804 Grand Ave. **City & State** Everett, WA

Contact Person: Erin Treat **Phone No.** 425-259-3798

We **require** that you inform the neighborhood and businesses of the street closure **prior** to obtaining approval.

What method will be used to inform the impacted parties of the street closure? _____
Fliers, verbal communication with building managers and business owners

If applicable, answer the following:
Approx. # of participants: 200 Persons 5-10 Animals ___ Vehicles
Dogs Type of Animals

Assembly area (streets) Grand Ave.

Portion of street to be used: X Full width ___ Half ___ Other

*Attach a **map** showing route of parade or run/walk.

Official Use

	Admin.	Traffic	Police	Fire	Transit	Streets
Approved:		✓	✓	✓	✓	✓
Rejected:						

Special Conditions: _____

Comments: _____

Council agenda date: ___/___/___ City Council approval: ___/___/___

Permit _____ TR # _____

Indemnification, Hold Harmless, and Certification

As a material inducement and consideration for the City granting this approval, the Applicant, on behalf of the sponsoring organization, hereby agrees to defend, indemnify and hold harmless the City from and against any and all Claims for personal injury, death, property damage or destruction, arising from, relating to, or resulting from the Event that is the subject of this approval.

"City" shall mean the City of Everett, its officers, employees and agents.

"Claims" shall mean any actions, demands, suits, obligation or liability for payment of damages, fees, and costs, including, but not limited to, attorney's fees, expert witness fees, court costs and other legal expenses.

Provided, however, this agreement to defend, indemnify and hold harmless the City shall not apply to Claims arising out of bodily injury or death or property damage or destruction caused by the sole negligence or willful misconduct of the City.

As Applicant, I certify that 1) the information provided on this application is true and correct; and 2) I am duly authorized by the sponsoring organization to make this application and enter into this agreement, on behalf of the sponsoring organization, to defend, indemnify and hold harmless the City.

Signature _____ Date 4/4/16

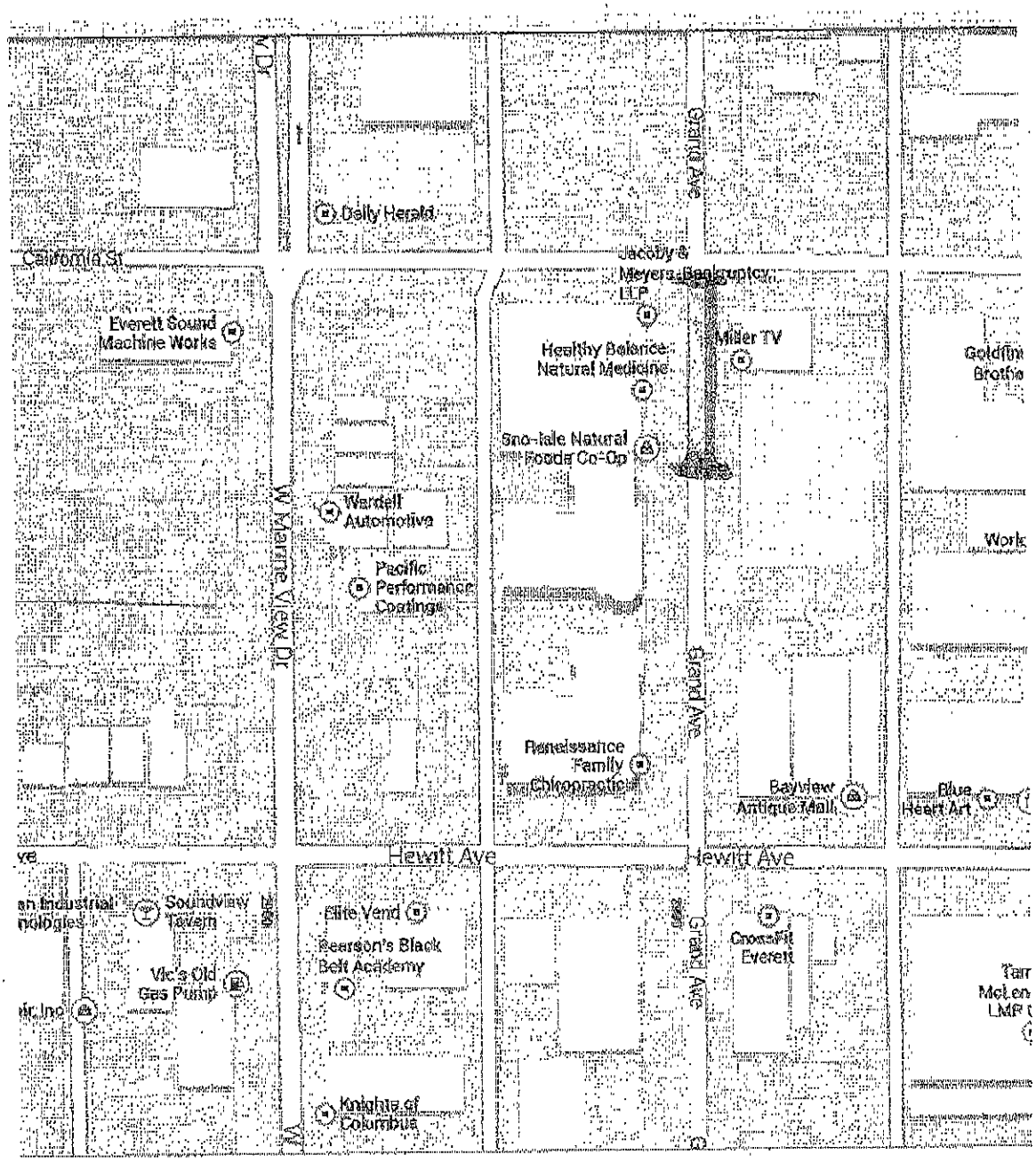
Erin Treat
Printed Name

Sno-Isle Food Co-op
Organization Representing

425-259-3798
Phone No.

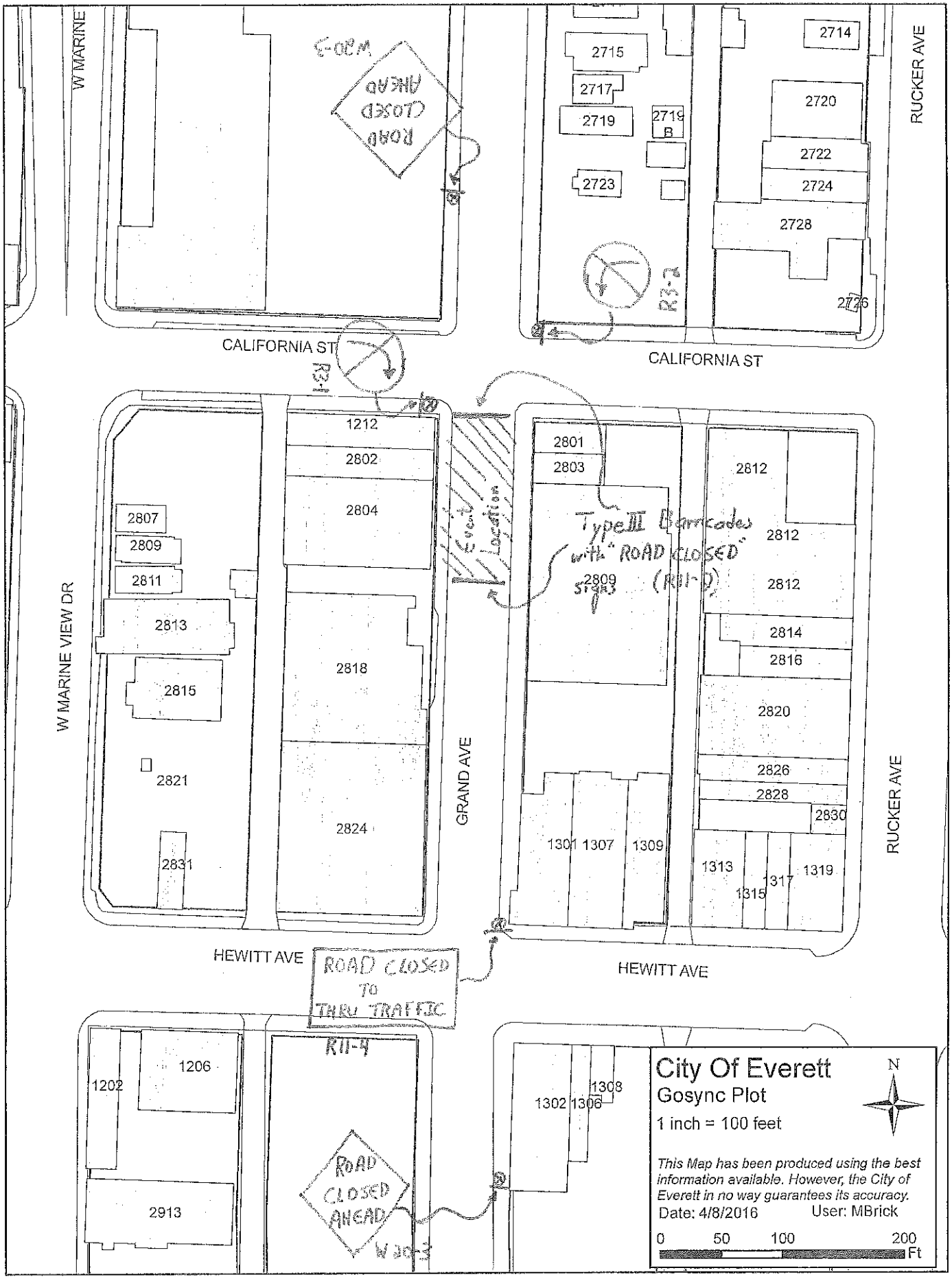
List businesses/residences impacted by this event. You must also obtain an approval signature from each business/resident indicating they concur with the closure.

Business/Residence	Signature of approval
1. Nautica Apartments	
2. Sunken Ship Tattoo	
3. Sonty Credit	
4.	
5.	
6.	
7.	



We would like to close only a section of the street, directly in front of our building, as indicated above.

Thank you.


W MARINE
CALIFORNIA ST
CALIFORNIA ST
RUCKER AVE
2714
2715
2717
2719
2719 B
2720
2722
2723
2724
2728
2726
W MARINE VIEW DR
1212
2802
2804
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2812
2814
2816
2820
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2809
1301
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1319
GRAND AVE
RUCKER AVE
HEWITT AVE
HEWITT AVE
Event Location
Type III Barricades with "ROAD CLOSED" signs (R11-4)
ROAD CLOSED TO THRU TRAFFIC
R11-4
ROAD CLOSED AHEAD
W20-3
1202
1206
2913
1302
1306
1308
City Of Everett
Gosync Plot
1 inch = 100 feet
N
This Map has been produced using the best information available. However, the City of Everett in no way guarantees its accuracy.
Date: 4/8/2016
User: MBrick
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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance Relating to the Inchoate Crimes of Criminal Attempt, Criminal Solicitation, and Criminal Conspiracy, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.10 EMC)

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing

COUNCIL BILL #	CB1604-16
Originating Department	Legal
Contact Person	Hil Kaman
Phone Number	425-257-8762
FOR AGENDA OF	April 20, 2016

Initialed by:
Department Head _____
CAA db
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
		Ordinance (final, redlined)	Legal

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

State law has changed since our ordinance relating to the inchoate crimes of criminal attempt, criminal solicitation, and criminal conspiracy was last updated.

This proposed ordinance would adopt the Revised Code of Washington sections relating to criminal attempt, criminal solicitation, and criminal conspiracy to make this section of the Everett Municipal Code consistent with State law.

Case law has also changed since this ordinance was last updated, requiring the addition of a new section regarding Class C felonies in the Revised Code of Washington. This update is important because criminal attempt of a class C felony is a gross misdemeanor.

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance Relating to the Inchoate Crimes of Criminal Attempt, Criminal Solicitation, and Criminal Conspiracy, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.10 EMC).

ORDINANCE No._____

AN ORDINANCE Relating to the Inchoate Crimes of Criminal Attempt, Criminal Solicitation, and Criminal Conspiracy, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.10 EMC).

Whereas, state law and case law regarding the inchoate crimes of criminal attempt, criminal solicitation, and criminal conspiracy have changed since this ordinance was last updated; and

Whereas, the City of Everett has the power to provide for the punishment of all practices dangerous to public health or safety, and to make necessary for the preservation of public health, peace and good order and to provide for the punishment of all persons charged with violating any city ordinances; and

Whereas, the Everett City Council deems it appropriate for the City of Everett criminal laws to match corresponding State law;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Ordinance No. 1145-85, Section 28, as amended by Ordinance No. 2369-99, Section 1 (EMC 10.10.010), which reads~~is hereby amended~~ as follows:

Criminal attempt.

A. A person is guilty of an attempt to commit crime if, with intent to commit a specific crime, he does any act which is a substantial step toward the commission of that crime.

B. If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.

C. An attempt to commit a crime is a:

1. Gross misdemeanor when the crime attempted is a class C felony;

2. Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor.

Be and the same is hereby amended to read as follows:

Criminal attempt.

~~A. A person is guilty of an attempt to commit crime if, with intent to commit a specific crime, he does any act which is a substantial step toward the commission of that crime.~~

~~B. If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.~~

~~C. An attempt to commit a crime is a:~~

~~1. Gross misdemeanor when the crime attempted is a class C felony;~~

~~2. Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor.~~

The following Revised Code of Washington (RCW) section is adopted by reference in all respects as though such section was set forth herein in full, as currently enacted or as hereafter amended or recodified: Chapter 9A.28.020 RCW, entitled "Criminal attempt."

Section 2. Ordinance No. 1145-85, Section 29 (EMC 10.10.020), which reads~~is hereby amended~~ as follows:

Criminal solicitation.

A. A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of an offense under the ordinances of the city, he offers to give or gives money or thing of value to another to engage in specific conduct which would constitute such offense or which would establish complicity of such other person in its commission or attempted commission had such offense been attempted or committed.

B. Criminal solicitation is a misdemeanor.

Be and the same is hereby amended to read as follows:

~~A. A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of an offense under the ordinances of the city, he offers to give or gives money or thing of value to another to engage in specific conduct which would constitute such offense or which would establish complicity of such other person in its commission or attempted commission had such offense been attempted or committed.~~

~~B. Criminal solicitation is a misdemeanor.~~

The following Revised Code of Washington section is adopted by reference in all respects as though such section was set forth herein in full, as currently enacted or as hereafter amended or recodified: Chapter 9A.28.030 RCW, entitled "Criminal solicitation."

Section 3. Ordinance No. 1145-85, Section 30 (EMC 10.10.030), ~~is~~ which reads ~~hereby amended~~ as follows:

Criminal conspiracy.

A. A person is guilty of criminal conspiracy when, with intent that conduct constituting an offense under the ordinances of the city be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

B. It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:

1. Has not been prosecuted or convicted; or

2. Has not been convicted of a different offense; or

3. Is not amenable to justice; or

4. Has been acquitted; or

5. Lacked the capacity to commit an offense.

C. Criminal conspiracy is a misdemeanor.

Be and the same is hereby amended to read as follows:

Criminal conspiracy.

~~A. A person is guilty of criminal conspiracy when, with intent that conduct constituting an offense under the ordinances of the city be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.~~

~~B. It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:~~

~~1. Has not been prosecuted or convicted; or~~

~~2. Has not been convicted of a different offense; or~~

~~3. Is not amenable to justice; or~~

~~4. Has been acquitted; or~~

~~5. Lacked the capacity to commit an offense.~~

~~C. Criminal conspiracy is a misdemeanor.~~

The following Revised Code of Washington (RCW) section is adopted by reference in all respects as though such section was set forth herein in full, as currently enacted or as hereafter amended or recodified: Chapter 9A.28.040 RCW, entitled "Criminal conspiracy."

Section 4. Ordinance No. 1145-85, as amended by Ordinance No. 2369-99, Section 1, is hereby amended by the addition of the following section which will be codified as EMC 10.10.040:

Adoption of RCW sections not specifically set forth.

All class C felony crimes set forth in the Revised Code of Washington (RCW) are hereby adopted by reference for the purposes of charging a gross misdemeanor for a violation of any of the crimes set forth in Chapter 10.10 EMC.

Section 5. Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Section 6. General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 7. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 8. 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.

_____

Ray Stephanson, Mayor

ATTEST:

_____

City Clerk

Passed:

Valid:

Published:

Effective Date:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance creating the special construction fund entitled "Main Library – Window Replacement", Fund 342, Program 019, authorizing the design and construction to replace the existing wood windows

	Consent	COUNCIL BILL #	CB160417
	Action	Originating Department	Facilities
4/20/16	First Reading	Contact Person	Chris Lark
	Second Reading	Phone Number	425-257-8846
	Third Reading	FOR AGENDA OF	April 20, 2016
	Public Hearing		

Initialed by:
Department Head
CAA db
Council President

Location	Preceding Action	Attachments	Department(s) Approval
2702 Hoyt Avenue	None	Ordinance	Facilities, Library

Amount Budgeted	$325,000.00	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	Fund 342, Program 019
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The existing wood windows at the Main Library date back to its original construction in the 1934. Time and the elements have taken their toll on the windows and they have rotted out to the point that water is infiltrating the building and damaging the existing plaster. This project is intended to replace all existing wood windows. Since the Main Library is on the Washington Heritage Register but not listed on the National Register or Everett Register, a formal review process of the replacements is not required. Facilities Department will, however, present the window design to the Everett Historical Commission prior to engaging in the bid process.

The estimated cost of the project is as follows:

Design	$ 24,000
Construction	$ 300,000
Project Costs	$ 1,000
TOTAL	$ 325,000

The source of funds will be CIP 1.

RECOMMENDATION:
Adopt an Ordinance creating the special construction fund entitled "Main Library – Window Replacement", Fund 342, Program 019, authorizing the design and construction to replace the existing wood windows.

ORDINANCE NO. _____

AN ORDINANCE creating the special construction fund entitled "Main Library Window Replacement Project", Fund 342, Program 019, authorizing the design and construction to replace the existing wood windows at the Main Library.

WHEREAS, the City Council has recognized the need to replace the existing wood windows located at 2702 Hoyt Avenue.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: A special construction fund is hereby established as Fund 342, Program 019 entitled "Main Library Window Replacement Project" to accumulate the design and construction costs required to replace the existing wood windows.

Section 2: Authorization is hereby granted to the Facilities/Property Management Director under the administration of the Mayor, to assume full responsibility for conducting all tasks and performing all necessary steps to accomplish the actions authorized by this Ordinance.

Section 3: The estimated cost of the project, including costs related to design, construction, equipment, and contract administration shall be determined at the completion of design development.

Section 4: The sum of $325,000.00 is hereby appropriated to Fund 342, Program 019 "Main Library Window Replacement Project".

A. Use of Funds

Design	$ 24,000
Construction	300,000
Project Costs	1,000
Total	$ 325,000

B. Source of Funds

CIP 1	$325,000

C. The appropriation shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned without the necessity of re-appropriation.

Section 5: The City Treasurer of the City of Everett is hereby authorized to negotiate a reasonable rate of interest and obtain temporary financing to satisfy interim construction costs. Temporary financing shall be redeemed as soon as reimbursement is received.

Section 6: Severability. If any provision of this ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that this ordinance would have been enacted without the provision so held unconstitutional or invalid and the remainder of this ordinance shall not be affected as a result of said part being unconstitutional or invalid.

CITY OF EVERETT

_____
Ray Stephanson, Mayor

Attest:

_____
Sharon Fuller, City Clerk

Passed:

Valid:

Published:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance closing a special improvement project entitled "Pedestrian Signals at Casino Road and Rucker Avenue," Fund 303, Program 086, as established by Ordinance No. 3160-09

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing
_____	Budget Advisory

COUNCIL BILL #	CB1604-18
Originating Department	Public Works
Contact Person	Ryan Sass
Phone Number	(425) 257-8942
FOR AGENDA OF	April 20, 2016

Initialed by:
Department Head _____
CAA db
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
Casino Road and Rucker Avenue	Ordinance No. 3160-09	Proposed Ordinance	Public Works

Amount Budgeted	$ 540,000	
Expenditure Required	$ 539,999	Account Number(s): PW 3405
Budget Remaining	$ 1	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
This project provided for the design and construction of two pedestrian traffic signals to improve the safety of transit riders crossing two high-volume arterial streets. One signal enhanced what was only a striped crosswalk across Casino Road, adjacent to the Swift Bus Rapid Transit (BRT) station on Evergreen Way.

The second signal was installed midblock on Rucker Avenue, adjacent to the Swift BRT station at the Everett Clinic. In addition to the two traffic signals, the project also constructed curb bulb-outs, Americans with Disability Act compliant curb ramps, and minor drainage work.

Total costs include design and construction of $442,874 and remaining balance transfer to Fund 119 of $97,125 for a total of $539,999.

The funding sources for the project were:

State Grant – HLP-PB09(008)	$ 399,999
Fund 119 – Street Improvements	140,000
Total Funds	$ 539,999

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance closing a special improvement project entitled "Pedestrian Signals at Casino Road and Rucker Avenue," Fund 303, Program 086, as established by Ordinance No. 3160-09.

ORDINANCE NO. _____

AN ORDINANCE closing a special improvement project entitled, "Pedestrian Signals at Casino Road and Rucker Avenue," Fund 303, Program 086, as established by Ordinance No. 3160-09

WHEREAS, the special improvement project entitled "Pedestrian Signals at Casino Road and Rucker Avenue" Fund 303, Program 086, was established to provide for identified improvements; and

WHEREAS, the purpose of the fund has been accomplished; and

WHEREAS, there are neither outstanding obligations of the fund to be paid nor uncollected revenues to be received;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1:

That the special improvement project entitled "Pedestrian Signals at Casino Road and Rucker Avenue" Fund 303, Program 086, as established by Ordinance No. 3160-09, be closed.

Section 2:

That the final expenses and revenues for the " Pedestrian Signals at Casino Road and Rucker Avenue" Fund 303, Program 086, are as follows:

A. Expenses

Design and Construction	$ 442,874	
Remaining Balance Transfer	97,125	
Total Expenses		$ 539,999

B. Source of Funds

State Grant – HLP-PB09(008)	$399,999	
Fund 119 – Street Improvements	140,000	
Total Revenues		$ 539,999

Section 3:

There are no financial transactions remaining.

RAY STEPHANSON, MAYOR

ATTEST:

CITY CLERK

Passed:

Valid:

Published:

Effective:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance closing a special improvement project entitled, "Evergreen Way and Pecks Drive - Intersection Safety," Fund 303, Program 099, as established by Ordinance No. 3321-13

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing
_____	Budget Advisory

COUNCIL BILL #	CB1604-19
Originating Department	Public Works
Contact Person	Ryan Sass
Phone Number	(425) 257-8942
FOR AGENDA OF	April 20, 2016

Initialed by:
Department Head _____
CAA ds
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
Evergreen Way and Pecks Drive	Final Acceptance: October 22, 2014	Proposed Ordinance	Public Works

Amount Budgeted	$411,000	
Expenditure Required	$268,209	Account Number(s): PW 3544
Budget Remaining	$142,791	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
This project constructed pedestrian and traffic signal safety improvements at the intersection of Evergreen Way and Pecks Drive. These improvements included left turn arrows, new traffic signal poles, traffic signal backplate visibility improvements, accessible pedestrian signals, street lighting improvements, pavement marking improvements, and Americans with Disability Act compliant curb ramps.

The project cost was significantly under the engineer's estimate due to utilizing existing conduits where available which avoided cutting and restoration expenses.

The funding source for this project was:
Federal Grant – Highway Safety Improvements (HSIP) $ 268,209

RECOMMENDATION (Exact action requested of Council):
Adopt an Ordinance closing a special improvement project entitled, "Evergreen Way and Pecks Drive - Intersection Safety," Fund 303, Program 099, as established by Ordinance No. 3321-13.

ORDINANCE NO. _____

AN ORDINANCE closing a special improvement project entitled, "Evergreen Way and Pecks Drive - Intersection Safety," Fund 303, Program 099, as established by Ordinance No. 3321-13

WHEREAS, the special improvement project entitled "Evergreen Way and Pecks Drive - Intersection Safety" Fund 303, Program 099, was established to provide for identified improvements; and

WHEREAS, the purpose of the fund has been accomplished; and

WHEREAS, there are neither outstanding obligations of the fund to be paid nor uncollected revenues to be received;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1:

That the special improvement project entitled "Evergreen Way and Pecks Drive - Intersection Safety" Fund 303, Program 099, as established by Ordinance No. 3321-13, be closed.

Section 2:

That the final expenses and revenues for the " Evergreen Way and Pecks Drive - Intersection Safety" Fund 303, Program 099, are as follows:

A. Expenses

Design and Construction	$ 268,209	
Total Expenses		$ 268,209

B. Source of Funds

Federal Grant – HSIP – 2791(005)	$ 268,209	
Total Revenues		$ 268,209

Section 3:

There are no financial transactions remaining.

RAY STEPHANSON, MAYOR

ATTEST:

CITY CLERK

Passed:

Valid:

Published:

Effective:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Professional Services Agreement with Triangle Associates, Inc. to provide environmental classroom presentations in the Everett Water Service Area.

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Department	Public Works
_____	Consent	Contact Person	Marla Carter
_____	Action	Phone Number	425-257-8875
_____	First Reading	FOR AGENDA OF	May 4, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		
_____	Budget Advisory	Initialed by:	
		Department Head	_____
		CAA	dh
		Council President	_____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
			Public Works

Amount Budgeted	$192,300	
Expenditure Required	$135,990	Account Number(s):UT 2908-410 401 5 400 1234 907 410 401 5 400 111 907 410
Budget Remaining	$56,310	
Additional Required		

DETAILED SUMMARY STATEMENT:

The Professional Services Agreement with Triangle Associates, Inc. will assist the City in meeting the education requirements of the Washington Department of Health Water Use Efficiency Rule, the City's water conservation plan and its National Pollutant Discharge Elimination System Phase II Storm Water Permit. These presentations are part of the City's education program for school-age children that will be presented in the 2016-2017 school year within the Everett Water Service Area. An estimated 765 classrooms will be visited.

The presentations will include "hands-on" activity stations where students learn about a variety of water related topics. The presentations integrate science and communication and meet the state of Washington Essential Academic Learning Requirements.

The maximum billable amount for these presentations is $135,990.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the Professional Services Agreement with Triangle Associates, Inc. to provide environmental classroom presentations in the Everett Water Service Area in the amount of $135,990.

U.S. Department of Justice
United States Marshals Service

Joint Law Enforcement Operations Task Force
Obligation Document

INSTRUCTIONS: See last page for detailed instructions.

SECTION 1: OBLIGATION

DOCUMENT CONTROL #: M-16-D86-O-000195

SECTION 2: PARTICIPATING AGENCIES

Notification to state and local agencies of funding provided in support of Joint Law Enforcement Operations, pursuant to the Memorandum of Understanding (MOU) between:

Everett Police Department

and

Western District of Washington (86)

All other terms and conditions of the MOU remain the same.

SECTION 3: PERIOD OF PERFORMANCE

March 28, 2016 to September 30, 2016

SECTION 4: APPROPRIATION DATA

FISCAL YEAR	ORGANIZATION	FUND	PROJECT	SOC / PURPOSE	DOLLAR AMOUNT
2016	AFF-B-OP	AFF-B-OP	JLEOTFS4	25302 - TFO Overtime	$6,000.00

Total Obligation Amount: **$6,000.00**

SECTION 5: DESCRIPTION OF OBLIGATION

Funds provided for the reimbursement of Task Force Officer overtime associated with the Joint Law Enforcement Operations (JLEO) pursuant to the Memorandum of Understanding between agencies.

SECTION 6: CONTACT INFORMATION

DISTRICT/RFTF CONTACT:	STATE/LOCAL CONTACT:
Name: Paul Baxley	Name: Captain Rod Sniffen
Phone: 206-370-8602	Phone: 425-257-8568
E-mail: Paul. Baxley@usdoj.gov	E-mail: rsniffen@everettwa.gov

SECTION 7: AUTHORIZATION

USMS Representative - Certification of Funds:

Signature: _____ Date: 3/28/2016

Stephen E. Blue, AO

Chief Deputy or RFTF Commander - Obligation Approval:

Signature: _____ Date: 3/28/2016

Paul Baxley, (A)CDUSM

Departmental Representative - Acknowledgement:

Signature: _____ Date: _____

[Type Name and Title]

Form USM-607
Rev. 11/13

United States Marshals Service
Violent Offender Task Force – Memorandum of Understanding

PARTIES AND AUTHORITY:
This Memorandum of Understanding (MOU) is entered into by the
EVERETT POLICE DEPARTMENT
and the United States Marshals Service (USMS) pursuant to 28 U.S.C. § 566(e)(1)(B). As set forth in the Presidential Threat Protection Act of 2000 and directed by the Attorney General, the USMS has been granted authority to direct and coordinate permanent USMS Violent Offender Task Forces consisting of Federal, state, and local law enforcement authorities for the purpose of locating and apprehending fugitives. The authority of the USMS to investigate fugitive matters as directed by the Attorney General is set forth in 28 USC § 566. The Director's authority to direct and supervise all activities of the USMS is set forth in 28 USC § 561(g) and 28 CFR 0.111. The authority of United States Marshals and Deputy U.S. Marshals, "in executing the laws of the United States within a State . . . [to] exercise the same powers which a sheriff of the State may exercise in executing the laws thereof" is set forth in 28 USC § 564. Additional authority is derived from 18 USC § 3053 and Office of Investigative Agency Policies Resolutions 2 & 15. *(See also)* "Memorandum for Howard M. Shapiro, General Counsel, Federal Bureau of Investigation" concerning the "Authority to Pursue Non-Federal Fugitives", issued by the U.S. Department of Justice, Office of Legal Counsel, dated February 21, 1995. *(See also)* Memorandum concerning the Authority to Pursue Non-Federal Fugitives, issued by the USMS Office of General Counsel, dated May, 1, 1995. *(See also)* 42 U.S.C. § 16941(a)(the Attorney General shall use the resources of federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements).

MISSION:
The primary mission of the task force is to investigate and arrest, as part of joint law enforcement operations, persons who have active state and federal warrants for their arrest. The intent of the joint effort is to investigate and apprehend local, state and federal fugitives, thereby improving public safety and reducing violent crime.

Each participating agency agrees to refer cases for investigation by the VOTF (Violent Offender Task Force). Cases will be adopted by the VOTF at the discretion of the District Chief Deputy. Targeted crimes will primarily include violent crimes against persons, weapons offenses, felony drug offenses, failure to register as a sex offender, and crimes committed by subjects who have a criminal history involving violent crimes, felony drug offenses, and/or weapons offenses. Upon receipt of a written request, the VOTF may also assist non-participating law enforcement agencies in investigating, locating and arresting their fugitives. Task force personnel will be assigned federal, state, and local fugitive cases for investigation. Investigative teams will consist of personnel from different agencies whenever possible. Participating agencies retain responsibility for the cases they refer to the VOTF.

Federal fugitive cases referred to the task force for investigation by any participating agency will be entered into the National Crime Information Center (NCIC) by the USMS or originating agency, as appropriate. State or local fugitive cases will be entered into NCIC (and other applicable state or local lookout systems) as appropriate by the concerned state or local agency.

SUPERVISION:
The VOTF will consist of law enforcement and administrative personnel from federal, state, and local law enforcement agencies. Agency personnel must be approved by the District Chief Deputy prior to assignment to the VOTF. Agency personnel may be removed at any time at the discretion of the District Chief Deputy.

Direction and coordination of the VOTF shall be the responsibility of the USMS District Chief Deputy. Administrative matters which are internal to the participating agencies remain the responsibility of the respective agencies. Furthermore, each agency retains responsibility for the conduct of its personnel.

A Task Force Advisory Committee, consisting of representatives of participating agencies and USMS district personnel, may be established at the discretion of the District Chief Deputy and will meet and confer as necessary to review and address issues concerning operational matters within the VOTF.

PERSONNEL:
In accordance with Homeland Security Presidential Directive 12, personnel assigned to the task force are required to undergo background investigations in order to be provided unescorted access to USMS offices, records, and computer systems. The USMS shall bear the costs associated with those investigations. Non-USMS law enforcement officers assigned to the task force will be deputized as Special Deputy U.S. Marshals.

Task force personnel may be required to travel outside of the jurisdiction to which they are normally assigned in furtherance of task force operations. State or local task force officers traveling on official business at the direction of the USMS shall be reimbursed directly by the USMS for their travel expenses in accordance with applicable federal laws, rules, and regulations.

REIMBURSEMENT:
If the Marshals Service receives Asset Forfeiture funding for either 1) overtime incurred by state and local investigators who provide full time support to USMS VOTF joint law enforcement task forces; or 2) travel, training, purchase or lease of police vehicles, fuel, supplies or equipment for state and local investigators in direct support of state and local investigators, the USMS shall, pending availability of funds, reimburse your organization for expenses incurred, depending on which category of funding is provided.

Reimbursement of overtime work shall be consistent with the Fair Labor Standards Act. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-1811-12, Step 1, of the general pay scale for the RUS. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted quarterly on a fiscal year basis, and which provides the names of the investigators who incurred overtime for the VOTF during the quarter; the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator, and the total quarterly cost.

The request for reimbursement must be submitted to the District Chief Deputy, who will review the request for reimbursement, stamp and sign indicating that services were received and that the request for reimbursement is approved for payment. Supporting documentation must accompany requests for reimbursement for equipment, supplies, training, fuel, and vehicle leases.

VEHICLES AND EQUIPMENT:
Notwithstanding the above, pending the availability of asset forfeiture funding and approval by the USMS in advance of any purchase, the USMS may reimburse the undersigned state or local agency for vehicles and equipment purchased in support of full time state and local investigators assigned to the VOTF involved in joint law enforcement operations. Such vehicle and equipment purchases are to be contracted for and titled in the name of the state or local law enforcement agency and must comply with requirements prescribed by the USMS pursuant to this MOU and applicable policies of the United States Department of Justice. Vehicles and equipment purchased by state and local law enforcement agencies with asset forfeiture monies provided by the USMS must remain available for exclusive use of the task force officers assigned to the VOTF by the undersigned participant agency for the duration of the task force. Upon termination of the agreement, usage and disposition of such vehicles are at the discretion of the undersigned state or local law enforcement agency.

Pending the availability of funds and equipment, the USMS will issue USMS radios, telephones, and other communication devices to each task force officer to be used for official VOTF business. All equipment used by or assigned to task force officers by the USMS or an agency will remain the property of the agency issuing the equipment and will be returned to that agency upon termination of the task force, or upon agency request.

RECORDS AND REPORTS:
Original reports of investigation, evidence, and other investigative materials generated, seized, or collected by the VOTF shall be retained by the agency in the VOTF responsible for the case. However, evidence may be turned over to other law enforcement agencies as appropriate. Copies of investigative reports and other materials may be provided to other agencies in accordance with applicable laws, rules, and regulations. Task force statistics will be maintained in the USMS Justice Detainee Information System (JDIS) - Warrant Information Network (WIN). Statistics will be made available to any participating agency upon request.

INFORMANTS:
Pending the availability of funds, the USMS may provide funding for the payment of informants. However, all payments of informants utilizing USMS funding shall comply with USMS policy.

USE OF FORCE:
All members of the VOTF shall comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-lethal devices. Copies of all applicable firearms, deadly force, and less-lethal policies shall be provided to the District Chief Deputy and each concerned task force officer. In the event of a shooting involving task force personnel, the incident will be investigated by the appropriate agency(s).

NEWS MEDIA
Media inquires will be referred to the District Chief Deputy. A press release may be issued and press conference held, upon agreement and through coordination with participant agencies' representatives. All press releases will exclusively make reference to the task force.

RELEASE OF LIABILITY:
Each agency shall be responsible for the acts or omissions of its employees. Participating agencies or their employees shall not be considered as the agents of any other participating agency. Nothing herein waives or limits sovereign immunity under federal or state statutory or constitutional law.

EFFECTIVE DATE AND TERMINATION:
This MOU is in effect once signed by a law enforcement participant agency. Participating agencies may withdraw their participation after providing 30 days advanced written notice to the District Chief Deputy U.S. Marshal.

District: WESTERN DISTRICT OF WASHINGTON

United States Marshal:

Mark Ericks		01-14-13
Print Name	Signature	Date

Participant Agency:

Name: EVERETT POLICE DEPARTMENT

Location (City & State): EVERETT, WA.

Phone: 425-257-8400

Participant Agency Representative:

Kathy Atwood, Chief		10/14/12
Print Name & Title	Signature	Date

Assistant Director, Investigative Operations Division:

William D. Snelson		1/23/13
Print Name	Signature	Date

AGREED:

CITY OF EVERETT, WASHINGTON

By: _____
Ray Stephanson, Mayor
Date: 1-7-2013

ATTEST:

_____
Sharon Fuller, City Clerk
Date: 1-7-2013

APPROVED AS TO FORM:

_____
James D. Iles, City Attorney
Date: 1/2/13

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Amendment No. 2 to the Agreement to Use City Property with Canteen Vending for vending machine placement on certain city property

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing
_____	Budget Advisory

COUNCIL BILL #	
Originating Department	Parks
Contact Person	Jeff Price
Phone Number	425-257-7314
FOR AGENDA OF	May 4, 2016

Initialed by:
Department Head _____
CAA db
Council President SM

Location	Preceding Action	Attachments	Department(s) Approval
Forest Park Floral Hall, Senior Center, Animal Shelter, and Swim Center	Approval of Amendment No. 1 on December 31, 2015	Amendment No. 2	Parks, Administration, Legal

Amount Budgeted	-0-	
Expenditure Required	-0-	
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

On December 15, 2010, City Council authorized the Mayor to enter into an agreement for Canteen Vending to use City property. Amendment No. 1 authorized Canteen Vending to continue to provide vending machine service at the Forest Park Swim Center and Floral Hall through December 31, 2016. Amendment No. 2 authorizes Canteen Vending to provide vending services at the Forest Park Swim Center, Senior Center, Animal Shelter through December 31, 2016.

The vending machine at Forest Park Floral Hall will be removed due to lack of business activity. Canteen Vending will increase its monthly payment to the City from $450 to $500 for the remainder of 2016.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign Amendment No. 2 to the Agreement to Use City Property with Canteen Vending.

AMENDMENT NO. 2
AGREEMENT TO USE CITY PROPERTY
BETWEEN THE CITY OF EVERETT
AND CANTEEN VENDING

This Amendment No. 2 is dated for reference purposes _____, 2016. It is by and between the City of Everett, a municipal corporation under the laws of the State of Washington ("City") and Canteen Vending ("Canteen").

RECITALS

A. The City and Canteen Vending are parties to the Agreement to Use City Property dated on or about February 4, 2011, amended by Amendment No. 1 dated December 31, 2015 (as amended, the "Agreement"). The term of the Agreement currently expires on December 31, 2016.

B. The City and the Canteen Vending desire to amend the Agreement for the purpose of making certain adjustments.

AGREEMENT

The City and Canteen Vending agree as follows:

1. The Agreement is modified so that the monthly fee under Section 5 of the Agreement is increased from $450 per month to $500 per month, which includes Lease Hold Tax, for the time period from May 6, 2016 to December 31, 2016.

2. For the time period from May 6, 2016 to December 31, 2016, Section 1 of the Agreement is modified to read as follows:

   > Canteen shall be permitted to place 2 vending machines, in an area specified by the City's agent, identified in Section 8, at the Animal Shelter. Canteen shall be permitted to place 2 vending machines, in an area specified by the City's agent, identified in Section 8, at the Senior Center. Canteen shall be permitted to place up to 3 vending machines, in an area specified by the City's agent at the Swim Center at Forest Park. The City's agent at his sole discretion may authorize in writing substitute vending machine locations.

   No later than May 15, 2016, Canteen shall remove the vending machine currently located at Floral Hall in Forest Park.

3. Regardless of the date(s) on which this Amendment is signed by the parties, the parties agree that the Agreement has been continuously in effect since the original execution of the Agreement.

4. All provisions in the Agreement shall remain in effect except as expressly modified by this Amendment.

CITY OF EVERETT
WASHINGTON

By: _____
Ray Stephanson, Mayor

_____
Date

CANTEEN VENDING

Signature: _____
Typed/Printed Name: _____
Title: _____

_____
Date

ATTEST:

_____
Sharon Fuller, City Clerk
Date: _____

APPROVED AS TO FORM:

_____
James D. Iles, City Attorney
Date: _____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Joint Law Enforcement Operations Task Force Obligation with the United States Department of Justice, Marshals Service for Cost Reimbursement regarding Joint Law Enforcement Operations

	Briefing
	Proposed Action
	Consent
X	Action
	First Reading
	Second Reading
	Third Reading
	Public Hearing
X	Budget Advisory

COUNCIL BILL #	
Originating Department	Police
Contact Person	D/C Jim Lever
Phone Number	(425) 257-8418
FOR AGENDA OF	May 4, 2016

Initialed by:
Department Head
CAA db
Council President

Location	Preceding Action	Attachments	Department(s) Approval
		Obligation for Cost Reimbursement Agreement, MOU	Legal, Police

Amount Budgeted	$	
Expenditure Required	$6,000	Account Number(s):
Budget Remaining	-0-	
Additional Required	$6,000	

DETAILED SUMMARY STATEMENT:

The United States Department of Justice, Marshals Service (USMS), is providing funding to the City of Everett Police Department to conduct and participate in joint law enforcement operations by cooperating in a comprehensive law enforcement effort to investigate and apprehend local, state and federal fugitives, thereby improving public safety and reducing violent crime.

To assist in meeting the goals of the joint task force effort, USMS has set forth permissible expenses to be reimbursed upon request under this agreement which may include overtime relating to Everett Police Department officers, investigative equipment, travel, and training during the program timeframe of March 28, 2016 through September 30, 2016. The maximum total amount for authorized reimbursement pursuant to the Agreement is $6,000.

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign the Joint Law Enforcement Operations Task Force Obligation with the United States Department of Justice, Marshals Service for Cost Reimbursement regarding Joint Law Enforcement Operations in the amount of $6,000.00.

CITY OF EVERETT
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into on this day of , , by and between the **CITY OF EVERETT**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and Triangle Associates, Inc., whose address 811 First Avenue, Suite 255, Seattle, Washington 98104, hereinafter referred to as the "Service Provider."

WHEREAS, the City desires to engage Service Provider to market, schedule and deliver classroom presentations that teach elementary, middle and high school students about water conservation in the Everett Water Service Area and that teach elementary, middle and high school students about wastewater, water quality and surface water/watershed protection in Everett and the Everett School District for the City of Everett; and

WHEREAS, Service Provider represented, and by entering into this Agreement now represents, that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner;

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

1. **Engagement of Service Provider**. In a competent and professional manner, Service Provider shall provide the following services (hereafter referred to as "Work"): The Service Provider will provide qualified classroom instructors, printed classroom materials, program supplies, marketing and administrative support needed to develop, market, schedule and administer this program to public and private schools located in the Everett Water Service Area. The program details are provided in the attached Scope of Work. Without a written directive of an authorized representative of the City, Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work between the City and Service Provider. If Service Provider's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then Service Provider expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City and Service Provider.

2. **Intellectual Property Rights**. Unless otherwise expressly agreed in writing, all intellectual property rights in works created pursuant to this Agreement, or for the City of Everett, belong to the City of Everett. Service Provider retains any intellectual property rights in works created by Service Provider prior to engagement, or not for its performance of this Agreement. Service Provider expressly represents and warrants that the Work shall be original and shall not infringe on another's copyright, or rights in trade or service marks. Service Provider agrees to defend and indemnify City from any and all claims and damages arising out of this Agreement or the Work created hereunder.

3. **Time of Beginning and Completion of Performance**. This Agreement shall commence as of the date of execution of this Agreement and shall be completed by June 30, 2017..

4. **Compensation**.

A. The City shall pay Service Provider only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment, and incidentals necessary to complete the Work.

B. Service Provider shall be paid such amounts and in such manner as follows: Upon completion of implementation each month, Service Provider will bill City of Everett for revisions, marketing and/or presentation work, as well as scheduling completed that month and will submit a presentation schedule listing the locations and dates of the completed presentations. See Exhibit A Scope of Work and Billable Rates. The bill will be submitted utilizing the term "Payment Due Upon Receipt."

C. Service Provider may receive payment as reimbursement for Eligible Expenses actually incurred. "Eligible Expenses" means those types and amounts of expenses approved for reimbursement by the City. If approval for reimbursement is not obtained from the City prior to Service Provider's incurring the expense, Service Provider acknowledges that the City retains the option not to reimburse Service Provider. Eligible expenses shall not exceed -0-.

D. Total compensation, including all services and expenses, shall not exceed a maximum of $135,990.

E. If Service Provider fails or refuses to accept direction or carry out the reasonable directions of the City in performance of its work, the City may, in addition to any other remedy, withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.

5. **Termination of Contract**. City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by fax, mail, delivery or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, Service Provider shall be paid or reimbursed for: (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less all payments previously made; and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. Notices under this Section 7 shall be sent by the United States Mail to Service Provider's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by delivery. In addition, Notices may also be sent by any other method reasonably believed to provide Service Provider actual notice in a timely manner, such as fax. The City does not by this Section 7 waive, release, or forego any legal remedy for any violation, breach, or non-performance of any of the provision of this Agreement. At its sole option, City may deduct from the final payment due Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits. The City shall not pay Service Provider for any expenses incurred or work done following the effective date of termination unless authorized in writing by the City before the expenses are incurred or the work is done.

6. **Changes**. The City may, from time to time, unilaterally decrease the scope of the services of Service Provider to be performed hereunder. Such decrease in the scope of work (and resulting decrease in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as such and (c) become a part of this Agreement.

7. **Subletting/Assignment of Contracts**. Service Provider shall not sublet or assign any of the Work without the express, prior written consent of the City.

8. **Indemnification**.

A. Service Provider will defend and indemnify the City from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Service Provider relating to, or arising out of its performance of, this Agreement. Service Provider will defend and indemnify the City whether a Claim is asserted directly against the City, or whether a Claim is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The amount of insurance obtained by, obtainable by, or required of Service Provider does not in any way limit Service Provider's duty to defend and indemnify the City. The City retains the right to approve Claims investigation and counsel assigned to said Claim and all investigation and legal work regarding said Claim shall be performed under a fiduciary relationship to the City.

B. The Service Provider's obligations under this Section 8 shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Service Provider, its employees, subcontractors/subconsultants or agents and (b) the City, then the Service Provider's obligations under this Section 8 shall apply only to the extent allowed by RCW 4.24.115.

C. Solely and expressly for the purpose of its duties to indemnify and defend the City, Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Service Provider recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

D. As used in this Section 8: (1) "City" includes the City, the City's officers, employees, agents, and representatives; (2) "Claims" include all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, whether threatened, asserted or filed against the City, whether such Claims sound in tort, contract, or any other legal theory, whether such Claims have been reduced to judgment or arbitration award, irrespective of the type of relief sought or demanded (such as money or injunctive relief), and irrespective of the type of damage alleged (such as bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages); and (3) "Service Provider" includes Service Provider, its employees, agents, representatives and subcontractors. If, and to the extent, Service Provider employs or engages subcontractors, then Service Provider shall ensure that each such subcontractor (and subsequent tiers of subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as Service Provider pursuant to this Section 8.

9. **Insurance**. Service Provider shall procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, automobile liability insurance on all vehicles used by Service Provider in the performance of its duties under this Agreement. Proof of such insurance shall be provided to the City prior to performing any services hereunder. A statement certifying that no vehicle will be used in fulfilling this Agreement may be substituted for this insurance requirement.

10. **Independent Contractor**.

A. This Agreement neither constitutes nor creates an employer-employee relationship. Service Provider must provide services under this Agreement as an independent contractor. Service Provider must comply with all federal and state laws and regulations applicable to independent contractors including, but not limited to, the requirements listed in this Section 10. Service Provider agrees to indemnify and defend the City from and against any claims, valid or otherwise, made against the City because of these obligations.

B. In addition to the other requirements of this Section 10, if Service Provider is a sole proprietor, Service Provider agrees that Service Provider is not an employee or worker of the City under Chapter 51 of the Revised Code of Washington, Industrial Insurance for the service performed in accordance with this Agreement, by certifying to the following:

(1) Service Provider is free from control or direction over the performance of the service; and

(2) The service performed is outside the usual course of business for the City, or will not be performed at any place of business of the City, or Service Provider is responsible for the costs of the principal place of business from which the service is performed; and

(3) Service Provider is customarily engaged in an independently established business of the same nature as the service performed, or has a principal place of business for the service performed that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of this Agreement, Service Provider is responsible for filing a schedule of expenses, for the next applicable filing period, with the internal revenue service for the type of service performed; and

(5) By the effective date of this Agreement or within a reasonable time thereafter, Service Provider has established an account with the department of revenue and other state agencies, where required, for the service performed for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) By the effective date of this Agreement, Service Provider is maintaining a separate set of records that reflect all items of income and expenses of the services performed.

C. Any and all employees of Service Provider, while engaged in the performance of any Work, shall be considered employees of Service Provider only and not of the City, and any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Service Provider, while so engaged in any and all claims made by a third party as a consequence of any negligent act or omission on the part of Service Provider's employees, while so engaged on any of the Work, shall be the sole obligation and responsibility of Service Provider.

D. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

E. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by Service Provider and as to all duties, activities and requirements by Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

11. **Employment**. Service Provider warrants that it had not employed or retained any company or person, other than a bona fide employee working solely for Service Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

12. **Audits and Inspections**. At any time during normal business hours and as often as the City may deem necessary, Service Provider shall make available to the City for the City's examination all of Service Provider's books, records and documents with respect to all matters covered by this Agreement and, furthermore, Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

13. **City of Everett Business License**. Service Provider shall obtain a City of Everett business license prior to performing any work pursuant to this Agreement.

14. **State of Washington Requirements**. Service Provider shall register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

15. **Compliance with Federal, State, and Local Laws**. Service Provider shall comply with and obey all federal, state, and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

16. **Compliance with the Washington State Public Records Act.** Service Provider acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Service Provider. Service Provider shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Service Provider shall deliver to the City copies of all records relating to this Agreement or relating to the Work that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Agreement or relating to the Work, the City shall seek to provide notice to Service Provider at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Service Provider for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Agreement, Service Provider shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Service Provider to comply with this Section 16.

17. **Compliance with Grant Terms and Conditions.** Service Provider shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Service Provider's work hereunder.

18. **Waiver**. Any waiver by Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

19. **Complete Agreement**. This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

20. **Equal Employment Opportunity**. Service Provider shall not discriminate against any employee, applicant for employment, independent Service Provider, or proposed independent Service Provider, on the basis of race, color, religion, sex, age, disability, marital state, or national origin.

21. **Modification of Agreement.** This Agreement may be modified as provided in paragraph 6, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and Service Provider.

22. **Severability**. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, the remainder of the Agreement shall remain in full force and effect.

23. **Notices**.

A. Notices to the City of Everett shall be sent to the following address:

City of Everett
Attn.: Lori Tobin
3200 Cedar Street
Everett, WA 98201

B. Notices to Service Provider shall be sent to the following address:

Service Provider
Attn.: Janelle Lasher
811 First Avenue, Suite 255
Seattle, WA 98104

24. **Venue**. It is agreed that venue for any lawsuit arising out of this Agreement shall be Snohomish County.

25. **Governing Law**. The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement as of the date first above written.

	SERVICE PROVIDER: Please fill in the spaces and sign in the box appropriate for your business entity.
CITY OF EVERETT, WASHINGTON _____ Ray Stephanson, Mayor _____ Date	***Corporation*** Triangle Associates Inc. [Service Provider's Complete Legal Name] By: _____ Typed/Printed Name: Michael R. Lynn Its: Controller Date: 4/14/16
ATTEST: _____ Sharon Fuller, City Clerk _____ Date	***Partnership (general)*** _____ [Service Provider's Complete Legal Name] a Washington general partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
APPROVED AS TO FORM: _____ James D. Iles, City Attorney _____ Date	***Partnership (limited)*** _____ [Service Provider's Complete Legal Name] a Washington limited partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
	Sole Proprietorship _____ Typed/Printed Name: _____ Sole Proprietor: Date: _____
	Limited Liability Company _____ [Service Provider's Complete Legal Name] a Washington limited liability company By: _____ Typed/Printed Name: _____ Managing Member Date: _____

STATE RETIREMENT SYSTEMS FORM
ATTACHMENT TO PROFESSIONAL SERVICES AGREEMENT
ALL SERVICE PROVIDERS MUST COMPLETE AND SIGN THIS FORM

1. Does Service Provider have twenty-five (25) or more employees? ☐ Yes ☒ No
   IF YES: SKIP QUESTION 2, SKIP QUESTION 3, AND SIGN BELOW.
   IF NO: ANSWER QUESTIONS 2 AND 3.

2. If a Service Provider employee will perform Work under this Professional Services Agreement, did that employee retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☒ No

3. Answer the appropriate question below for Service Provider's business organization:

   Sole Proprietor. Did Service Provider retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☐ No

   Partnership. If a partner will perform Work under this Professional Services Agreement, did that partner retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☐ No

   Limited Liability Company. If a member will perform Work under this Professional Services Agreement, did that member retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☐ No

   Corporation. If a shareholder will perform Work under this Professional Services Agreement, did that shareholder retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☒ No

IF THERE IS A "YES" ANSWER TO ANY PART OF QUESTIONS 2 OR 3, AN ADDITIONAL QUESTIONNAIRE (AVAILABLE FROM HR OR LEGAL) MUST BE FILLED OUT AND SUBMITTED WITH THE CONTRACT.

Service Provider Name: Triangle Associates Inc.

Signature: [signature] Printed Name: Michael R. Lyons Title: President

(Retirement Form Approved by City Attorney's Office June 15, 2014)

Exhibit A
Scope of Work and Billable Rates

Scope of Work

Triangle Associates, Inc. (Triangle) will schedule and present classroom workshops to elementary, middle and high school students to support the City's regional water conservation program and local surface water/watershed protection and wastewater program.

During the 2016-2017 school year, the City agrees to pay Triangle for:

- Up to 620 water conservation presentations in elementary, middle and high school classrooms throughout the Everett Water Service Area. These presentations are designed to teach age appropriate methods of water conservation.

- Up to 95 surface water/watershed protection presentations in elementary, middle and high school classrooms in Everett and the Everett School District. These presentations are designed to provide a basic understanding of surface water and stormwater, watersheds and watershed protection.

- Up to 50 wastewater/water quality protection presentations in middle and high school classrooms in Everett and the Everett School District. These presentations are designed to provide a basic understanding of the wastewater treatment process and how wastewater impacts water quality.

Additionally, the City agrees to pay Triangle for updating and revising lessons and program materials, marketing programs to teachers and principals, and for collecting and summarizing teacher evaluations of the programs.

Billable Rates

The maximum billable amount for the water conservation school education program is $108,050 based on the following:

Water Conservation activities itemized:

- Up to $83,700 for classroom presentations based on 620 presentations at $135 per presentation.
- Up to $9,800 for revision of existing programs and program materials based on 140 hours at $70 per hour.
- Up to $10,850 for marketing the programs to teachers and principals and scheduling with teachers based on 155 hours at $70 per hour.
- Up to $1,600 for new and replacement program materials.

- Up to $2,100 for regular program evaluation and a final report based on 30 hours at $70 per hour.

The maximum billable amount of the surface water/watershed protection school education program is $18,945 based in the following:

Surface Water/Watershed Protection activities itemized:

- Up to $12,825 for classroom presentations based on 95 presentations at $135 per presentation.
- Up to $2,170 for revision of existing programs and program materials based on 31 hours at $70 per hour.
- Up to $2,100 for marketing the programs to teachers and principals and scheduling with teachers based on 30 hours at $70 per hour.
- Up to $1,220 for new and replacement program materials.
- Up to $630 for regular program evaluation and a final report based on 9 hours at $70 per hour.

The maximum billable amount of the wastewater/water quality protection school education program is $8,995 based in the following:

Wastewater/Water Quality Protection activities itemized:

- Up to $6,750 for classroom presentations based on 50 presentations at $135 per presentation.
- Up to $1,260 for revision of existing programs and program materials based on 18 hours at $70 per hour.
- Up to $985 for new and replacement program materials.

Itemized expenses are based on predicted program scheduling and needs. The City reserves the right to transfer funds between categories based on actual program scheduling and needs.

This Scope of Work does not represent any other contract-whether expressed or implied-between Triangle Associates, Inc. and Everett Public Works. Upon completion of implementation each month, Service Provider will bill Everett Public Works for development and/or presentation work completed that month and will submit a presentation schedule listing the locations and dates of the completed presentations. The bill will be submitted utilizing the term "Payment Due Upon Receipt."

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/19/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Leavitt Group Northwest
PO Box 9068
Tacoma WA 98490

CONTACT NAME: CL Central
PHONE (A/C, No, Ext): 866.298.0570 FAX (A/C, No): 866.298.0570
E-MAIL ADDRESS: clcnorthwest@leavitt.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Ohio Security Insurance Company	024082
INSURER B: Colony Group	39993
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Triangle Associates Inc
811 First Ave #255
Seattle WA 98104

COVERAGES CERTIFICATE NUMBER: 15/16 Master REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:	X	Y	BKS55302282	10/23/2015	10/23/2016	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG Damage to Rental Premises	$ 1,000,000 $ 1,000,000 $ 15,000 $ 1,000,000 $ 3,000,000 $ 3,000,000 $ 100,000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS X HIRED AUTOS SCHEDULED AUTOS X NON-OWNED AUTOS			BAS55302282	10/23/2015	10/23/2016	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $ $
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $ $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		BKS55302282 WA Stop Gap	10/23/2015	10/23/2016	PER STATUTE X OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 2,000,000
B	Professional Liability			EO1000919	7/13/2015	7/13/2016	Per Claim Deductible	1,000,000 5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Everett Schoold Project
City of Everett is named additional insured with respects to general liability on primary and non-contributory basis and waiver of subrogration per written contract with the named insured form CG88100413.

CERTIFICATE HOLDER

City of Everett
Public Works Dept.
3200 Cedar St.
Everett, WA 98201

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

D zcTrammell/DITRAM Diana Trammell

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph **2. Exclusions** of **Section I – Coverage A - Bodily Injury And Property Damage Liability,** exclusion **g. Aircraft, Auto Or Watercraft** does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability,**

Subparagraph **(2)** of exclusion **g. Aircraft, Auto Or Watercraft** is replaced by the following:

This exclusion does not apply to:

(2) A watercraft you do not own that is:

(a) Less than 52 feet long; and

(b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY – ELEVATORS

1. Under Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability,** Subparagraphs **(3), (4)** and **(6)** of exclusion **j. Damage To Property** do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to **Section IV – Commercial General Liability Conditions,** Condition **4. Other Insurance,** Paragraph **b. Excess Insurance:**

   The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph **2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:**

   a. The fourth from the last paragraph of exclusion **j. Damage To Property** is replaced by the following:

   Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

   (i) Premises rented to you for a period of 7 or fewer consecutive days; or

   (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

   Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

   A separate limit of insurance applies to this coverage as described in **Section III – Limits of Insurance.**

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b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance.**

2. Paragraph **6.** under **Section III – Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to:

a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage) -** Paragraph **9.a.** of **Definitions** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph **1. Insuring Agreement** of **Section I – Coverage C – Medical Payments,** Subparagraph **(b)** of Paragraph **a.** is replaced by the following:

(b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. Under **Supplementary Payments – Coverages A** and **B,** Paragraph **1.b.** is replaced by the following:

b. Up to **$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph **1.d.** is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **$500** a day because of time off from work.

G. ADDITIONAL INSUREDS - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph **2.** under **Section II – Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

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b. Premises or facilities rented by you or used by you; or

c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or

d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:

(1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;

(2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".

(3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:

a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or

(b) The construction, erection, or removal of elevators; or

(c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph **1.a.** above, a person's or organization's status as an additional insured under this endorsement ends when:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph **1.b.** above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph **1.c.** above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph **b.** of Condition **2. Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **Section IV – Commercial General Liability Conditions.**

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2. With respect to the insurance provided by this endorsement, the following are added to Paragraph **2. Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.

b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.

c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

d. "Bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the contract or agreement; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition **4. Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

a. The following is added to Paragraph **a. Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

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b. The following is added to Paragraph **b. Excess Insurance:**

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. ADDITIONAL INSUREDS - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition **2. Duties In The Event Of Occurrence, Offense, Claim or Suit:**

An additional insured under this endorsement will as soon as practicable:

a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;

b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and

c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III – Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES

Paragraph **2.a.(1)** of **Section II - Who Is An Insured** is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1) (a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1) (a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph **(d)**) does not apply.

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Paragraphs **(a)** and **(b)** above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision **J.** is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph **3.** of **Section II - Who Is An Insured** is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under **Section IV – Commercial General Liability Conditions,** the following is added to Condition **6. Representations:**

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under **Section IV – Commercial General Liability Conditions,** the following is added to Condition **2. Duties In The Event of Occurrence, Offense, Claim Or Suit:**

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph **1.** of **Section II – Who Is An Insured** or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under **Section V – Definitions,** Definition **3.** is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

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P. EXTENDED PROPERTY DAMAGE

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under **Section IV – Commercial General Liability Conditions**, the following is added to Condition **8. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

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