CITY OF KIRKLAND
CITY COUNCIL

James Lauinger, Mayor • Joan McBride, Deputy Mayor • Dave Asher • Mary-Alyce Burleigh
Jessica Greenway • Tom Hodgson • Bob Sternoff • David Ramsay, City Manager

123 Fifth Avenue • Kirkland, Washington 98033-6189 • 425.587.3000 • TTY 425.587.3111 • www.ci.kirkland.wa.us

AGENDA
KIRKLAND CITY COUNCIL MEETING
City Council Chamber
Tuesday, September 1, 2009
7:30 p.m. – Regular Meeting

COUNCIL AGENDA materials are available on the City of Kirkland website www.ci.kirkland.wa.us, at the Public Resource Area at City Hall or at the Kirkland Library on the Friday afternoon prior to the City Council meeting. Information regarding specific agenda topics may also be obtained from the City Clerk's Office on the Friday preceding the Council meeting. You are encouraged to call the City Clerk's Office (587-3190) or the City Manager's Office (587-3001) if you have any questions concerning City Council meetings, City services, or other municipal matters. The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's Office at 587-3190, or for TTY service call 587-3111 (by noon on Monday) if we can be of assistance. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Council by raising your hand.

EXECUTIVE SESSIONS may be held by the City Council to discuss matters where confidentiality is required for the public interest, including buying and selling property, certain personnel issues, and lawsuits. An executive session is the only type of Council meeting permitted by law to be closed to the public and news media

ITEMS FROM THE AUDIENCE provides an opportunity for members of the public to address the Council on any subject which is not of a quasi-judicial nature or scheduled for a public hearing. (Items which may not be addressed under Items from the Audience are indicated by an asterisk*.) The Council will receive comments on other issues, whether the matter is otherwise on the agenda for the same meeting or not. Speaker's remarks will be limited to three minutes apiece. No more than three speakers may address the Council on any one subject. However, if both proponents and opponents wish to speak, then up to three proponents and up to three opponents of the matter may address the Council.

P - denotes a presentation from staff or consultant

1. *CALL TO ORDER*
2. *ROLL CALL*
3. *STUDY SESSION*
4. *EXECUTIVE SESSION*
5. *SPECIAL PRESENTATIONS*
   - *a.* King County Councilmember Jane Hague
   - *b.* Kirkland Dog Off-leash Group (KDOG) Donation
   - *c.* Green Tips
6. *REPORTS*
   - *a. City Council*
     - (1) Regional Issues
   - *b. City Manager*
     - (1) Calendar Update
7. *COMMUNICATIONS*
   - *a. Items from the Audience*
   - *b. Petitions*

8. CONSENT CALENDAR

a. Approval of Minutes: August 4, 2009

b. Audit of Accounts:

Payroll $

Bills $

GENERAL CORRESPONDENCE Letters of a general nature (complaints, requests for service, etc.) are submitted to the Council with a staff recommendation. Letters relating to quasi-judicial matters (including land use public hearings) are also listed on the agenda. Copies of the letters are placed in the hearing file and then presented to the Council at the time the matter is officially brought to the Council for a decision.

c. General Correspondence

(1) Randy Altig, Regarding Waterfront Street Ends

(2) Phillip Combs, Regarding Annexation Zoning

(3) Pat Harris, Regarding City Street Trees

(4) Patty Sorenson, Regarding Construction at 1112 1st Street

d. Claims

(1) Linda C. Horning

(2) Pathway Medical Technologies, Inc.

(3) Patricia A. Puckett

ORDINANCES are legislative acts or local laws. They are the most permanent and binding form of Council action, and may be changed or repealed only by a subsequent ordinance. Ordinances normally become effective five days after the ordinance is published in the City's official newspaper.

e. Award of Bids

f. Acceptance of Public Improvements and Establishing Lien Period

g. Approval of Agreements

RESOLUTIONS are adopted to express the policy of the Council, or to direct certain types of administrative action. A resolution may be changed by adoption of a subsequent resolution.

(1) Resolution R-4772, Authorizing the City Manager to Execute an Interlocal Agreement Between the King County Flood Control Zone District and the City of Kirkland for Opportunity Fund Projects

(2) Resolution R-4773, Approving a Sewer Facility Agreement with Wong Kirkland LLC and Authorizing the City Manager to Sign Said Agreement on Behalf of the City of Kirkland

(3) Resolution R-4774, Approving a Water Facility Agreement with Wong Kirkland LLC and Authorizing the City Manager to Sign Said Agreement on Behalf of the City of Kirkland

h. Other Items of Business

(1) Ordinance No. 4203, Relating to Business Activity in City Parks and Amending the Title of Kirkland Municipal Code Section 11.80.100

(2) Setting Public Hearing Date for 2010 – 2015 Transportation Improvement Program (TIP)

P - denotes a presentation from staff or consultant

(3) Report on Procurement Activities

PUBLIC HEARINGS are held to receive public comment on important matters before the Council. You are welcome to offer your comments after being recognized by the Mayor. After all persons have spoken, the hearing is closed to public comment and the Council proceeds with its deliberation and decision making.

9. PUBLIC HEARINGS

10. UNFINISHED BUSINESS

a. Council Goals

b. Ordinance No. 4204 and its Summary, Annexing Pursuant to RCW 35A.14.120 Et Seq. Certain Unincorporated Territory Described in the Property Owners Petition for Annexation; Providing for the Assumption of the Existing Indebtedness; and Zoning Said Territory in Accordance with Section 10.45 of Ordinance No. 3719, as Amended, the Kirkland Zoning Code (Bridle View Annexation)

c. Potential Annexation Update

NEW BUSINESS consists of items which have not previously been reviewed by the Council, and which may require discussion and policy direction from the Council.

11. NEW BUSINESS

a. Development Services Process Improvements Summary Report - P

b. 2009-2014 Capital Improvement Program Update

c. Request for Verizon/Frontier Cable Franchise Transfer and Approve Funding

d. Amending Title 26 of the Kirkland Municipal Code:

(1) Ordinance No. 4205 and its Summary, Relating to Use of Right of Way for Communications Purposes and Repealing and Reenacting Title 26 of the Kirkland Municipal Code

(2) Ordinance No. 4206 and its Summary, Relating to Cable Franchising and the Provision of Cable Services Within the City of Kirkland

(3) Ordinance No. 4207 and its Summary, Relating to Cable Consumer Protection Within the City of Kirkland

e. Authorizing Correspondence to King County on Metro Transit Funding

12. ANNOUNCEMENTS

13. ADJOURNMENT

P - denotes a presentation from staff or consultant

CITY OF KIRKLAND
Department of Parks & Community Services
505 Market Street, Suite A, Kirkland, WA 98033 425.587.3300
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Jennifer Schroder, Director

Date: August 6, 2009

Subject: Kirkland Dog Off-leash Group (KDOG) presentation of donation

The K.D.O.G. organization produced the ***Go Dog Go*** event on July 25, 2009 at Crestwoods Park to provide a free event for the community and to help fund the purchase of dog waste bags. The Parks Department spends approximately $10,000 annually on dog waste bags.

Jean Guth will represent KDOG in presenting a check to the City.

Attached is an event brochure which lists all of the day's activities.

Attachment: Go Do, Go! Brochure

Schedule of Events

MAIN STAGE

10-10:30 Creekside Critter Care
Dog Breath Yoga Demonstration
10:30-11 Diane Rich Dog Training and Eastside Veterinary Associates "ask the experts"
11:00 Paddy Wag photography Dog/ Owner look alike contest
11:15 Scentsy Best Trick Contest
11:30 Dooley's Doghouse Best Tail Wag
11:45 DERMagic's Best Kiss
Clean Your Plate canned food eating contest
12:00 0-12lb dogs sponsored by MoonDog Embroidery
12:15 13-25lb dogs sponsored by Denny's Pet World
12:30 26-55lb dogs sponsored by Denny's Pet World
12:45 55lb+ dogs sponsored by Happy Hound Hotel
1:00 ING Best Costume—special prize for best orange colored costume
1:15 Heart Strings Petsitting and At Home Vet's Highest Jumper
1:30 Bow Wow Fun Towne's team relay race
1:45 Ahimsa Dog Training "Most Doggie Zen" can your dog resist the temptation?

Contest Details at www.kdog.org

2:00 Reading by Wendy Wahman of her book "Don't Lick the Dog - Making Friends with Dogs"
2:30 KDOG Charity Raffle Drawing

All Day Activities

Cascade Classic FDDO Canine Disc Championship
www.woofd2.com
Every-buddy's Agility Fun Demonstrations
www.everybuddysagility.com
Cascade Comets Flyball Demonstrations
www.cascadecomets.com
Rally Obedience Demonstrations
Alison D. White www.daneoutreach.org

All the Best Pet Care Bobbing for tennis balls

Invisible Fence NW Dog and Owner Musical Chairs

Thanks to our sponsors:

A Canine Experience
Ace Frames
Ahimsa Dog Training
All the Best Pet Care
At Home Vet
Bark Busters
Bio-Logic Vet
Blue Dog Bakery
Bow Wow Fun Towne
Canidae
City of Kirkland
Critter Doctor
DERMagic Skin Care
Denny's Pet World
Dooley's Doghouse
Diane Rich Dog Training
Dining Dog Café
Droolz Organics
Eastside Veterinary Associates
Fidos Flushables
Grizzly Pet Products
Hands to Paws Animal Massage
Happy Hound Hotel
Heads to Tails Grooming Spa
Heart Strings Petsitting
Heavenly Spa
ING
Invisible Fence NW
KDOG
Kakaduty Leashes
Kyjen
Maid Brigade
Mercy Vet
Merrick
MoonDog Embroidery
Mutt Mitt
NW School of Animal Massage
Paddywag Photography
Pawsitively Art
Petlane
Petstages
Pooper Trooper
Resort at Forbes Creek
Scentsy
Science Diet
Smiley Dog
WOOFD^2
Zany Doodles

Go Dog, Go!

Kirkland Canine Festival 2009

Free Admission
Contests
Games
Demonstrations
Vendors

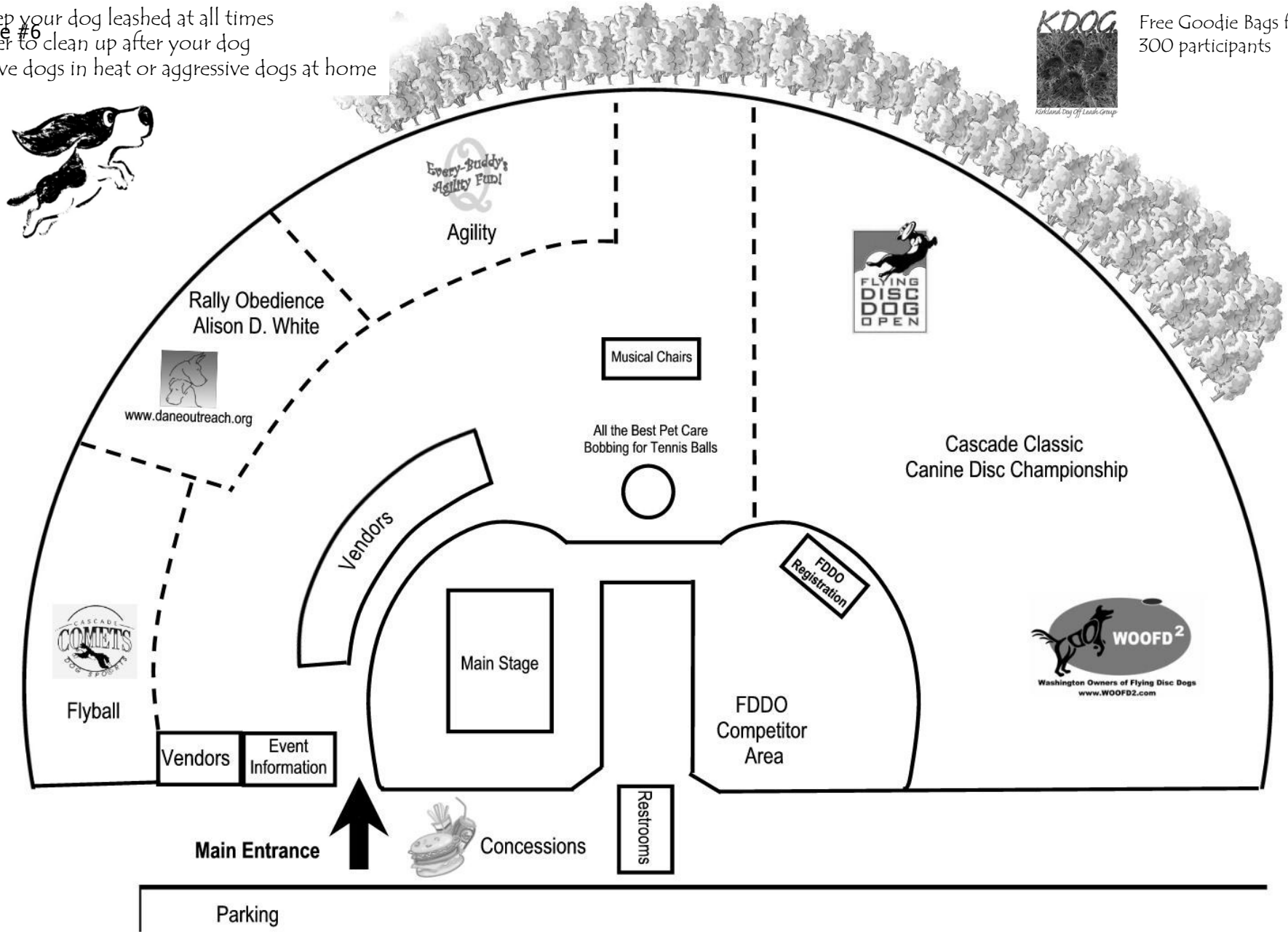
Crestwoods Park
1818 6th st.
July 25th, 2009
10am-3pm

CITY OF KIRKLAND WASHINGTON

KDOG
Kirkland Dog Off Leash Group

Please keep your dog leashed at all times
Remember to clean up after your dog
Please leave dogs in heat or aggressive dogs at home

Free Goodie Bags for the first 300 participants



VENDORS:

A Canine Experience
All the Best Pet Care
Anandi's Laboratory / Pepo Park
Bark Busters
Bow-Wow-Fun Towne
Bulldog Haven NW
BYNICOLA.com
Cardiff's Lodge
City of Kirkland
Delta Society
DERMagic
Diane Rich Dog Training
Denny's Pet World
Dining Dog Café / a day at doggie beauty
Dooley's Doghouse
Droolz Organics
Eastside Veterinary Associates
Every-buddy's Agility fun
Fidos Flushables
Genii Blue the Clown
Hands to Paws small animal massage
Happy Hound Hotel
Haute Portraiture
Heart Strings Petsitting/ At Home Vet
Heavenly Spa
ING
Invisible Fence NW
Kakaduty leashes
Kimmi Designs
k-nine couture
Methow Dog
MoonDog Embroidery
Muttmanagers
NW School of Animal Massage
Paddy Wag Pet Photography
Pat Colyar
Pawsitively Art
Petlane / Holycow critters
Pet Impressions Photography/ K-9 POV
Puget Sound Greyhound Adoption
Puppy Manners
Reading with Rover
Resort at Forbes Creek
Seattle Humane Society
Scentsy
Steady Companion
Wet Noses
Zany Doodles

KIRKLAND CITY COUNCIL REGULAR MEETING MINUTES
August 04, 2009

1. CALL TO ORDER

2. ROLL CALL

ROLL CALL:
Members Present: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.
Members Absent: None.

3. SPECIAL STUDY SESSION

a. Utility Tax/Budget Follow-up

Joining Councilmembers for this discussion in addition to City Manager Dave Ramsay were Director of Finance and Administration Tracey Dunlap, Financial Planning Manager Sandi Hines, and Senior Financial Analyst Sri Krishnan.
Also contibuting to the conversation were Network and Operations Manager Donna Gaw, Director of Public Works Daryl Grigsby, City Attorney Robin Jenkinson, Director of Fire and Building Fire Chief Kevin Nalder, Chief of Police Eric Olsen, Director of Parks and Community Services Jennifer Schroder, Director of Human Resources Bill Kenny, Director of Planning and Community Development Eric Shields, and Intergovernmental Relations Manager Erin Leonhart.

4. EXECUTIVE SESSION

a. To Discuss Labor Negotiations

5. SPECIAL PRESENTATIONS

a. Building Services Manager Tom Phillips Named Washington Association of Building Officials 2009 Building Official of the Year

b. Government Finance Officers Association (GFOA) Distinguished Budget Presentation Award for the Biennium Beginning January 1, 2009

c. Twenty Year Service Awards to Firefighters: Firefighter Tom Bach, Captain Pat Hund, Lieutenant Troy McKinney, Firefighter William Henderson,

Captain Dave Walker, Firefighter Cliff Oleszko, Firefighter Joe Ruljancich, Firefighter Pat McManus

Mayor Lauinger introduced his visiting granddaughter, Beth Nolte, from Springfield, Oregon.

6. REPORTS

a. City Council

(1) Regional Issues

Councilmembers shared information regarding the Market Neighborhood Association picnic; King Conservation District; Kirkland Criterium Bicycle event; Juanita Bay Park Rangers appreciation letters; and the I-405 Mayors Advisory Group meeting.

b. City Manager

(1) Shoreline Master Program Timeline

(2) Calendar Update

7. COMMUNICATIONS

a. Items from the Audience

Barbee Pigott
Doyne Alward
Robert Gershmel
Scott Brady
Srivani
Wendy Fawcett
Courtney Titus
Katherine Winder
Dan Winder
Kevin Harrang
Pascal Stolz
Alice Prince

b. Petitions

None.

8. CONSENT CALENDAR

a. Approval of Minutes: July 21, 2009

b. Audit of Accounts:
Payroll $2,073,999.20
Bills $ 828,620.82
run #843 check #'s 510358 - 510459
run #844 check #'s 510461 - 510615

c. General Correspondence

(1) Barry N. Brinkman, Regarding Verizon's Telephone and Video Services in Washington

(2) Jason and Lindsay Paquette, Regarding Condition of NE 124th and Suggestion for NE 116th

d. Claims

(1) Mersedeh Shahrazad-Schmidt

e. Award of Bids

f. Acceptance of Public Improvements and Establishing Lien Period

(1) 2008 Water System Improvement Project - North

The project was accepted as constructed by KarVel Construction Company and the lien period established.

g. Approval of Agreements

h. Other Items of Business

(1) Peter Kirk Community Center HVAC Replacement Project

Authorization was provided for the signing of funding approval forms allowing the State of Washington General Administration, Division of Facilities, Engineering and Architectural Services to provide Energy Conservation Project Management Services on behalf of the City of Kirkland for the Peter Kirk Community Center HVAC Replacement Project.

Motion to Approve the Consent Calendar.
Moved by Councilmember Mary-Alyce Burleigh, seconded by Councilmember Jessica Greenway
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway,

Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

9. PUBLIC HEARINGS

a. Bridle View Annexation

Mayor Lauinger opened the public hearing. Senior Planner Joan Lieberman-Brill provided an overview of the key issues.
Testimony was provided by:
Dan Winder
Katherine Winder
Rena Peterson
No further testimony was offered and the Mayor closed the hearing.

Motion to direct staff to return with an Ordinance for Council consideration of the Bridle View Annexation.
Moved by Councilmember Mary-Alyce Burleigh, seconded by Councilmember Jessica Greenway
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

Council recessed for a short break at 9:02 p.m.

10. UNFINISHED BUSINESS

a. Resolution R-4771, Providing for the Submission to the Qualified Voters of the City of Kirkland at the November 3, 2009, General Election of a Proposition to Increase the Utility Tax Imposed Upon Electrical Energy, Natural Gas, and Telephone Services from 6 Percent to 7.5 Percent in Order to Create a More Sustainable Budget for the Purpose of Maintaining Existing City Services, Including Public Safety and Parks

Council discussed and provided direction to staff on the Utility Tax Ballot Measure Explanatory Statement.

Motion to approve Resolution R-4771, entitlted "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND PROVIDING FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF THE CITY OF KIRKLAND AT THE NOVEMBER 3, 2009, GENERAL ELECTION OF A PROPOSITION TO INCREASE THE UTILITY TAX IMPOSED UPON ELECTRICAL ENERGY, NATURAL GAS, AND TELEPHONE SERVICES FROM 6 PERCENT TO 7.5 PERCENT IN ORDER TO

CREATE A MORE SUSTAINABLE BUDGET FOR THE PURPOSE OF MAINTAINING EXISTING CITY SERVICES, INCLUDING PUBLIC SAFETY AND PARKS."
Moved by Councilmember Dave Asher, seconded by Councilmember Mary-Alyce Burleigh
Vote: Motion carried 6-1
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.
No: Councilmember Jessica Greenway.

Motion to Approve language for the Private Utility Tax Ballot Measure Explanatory Statement
Moved by Councilmember Dave Asher, seconded by Deputy Mayor Joan McBride
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

b. City Council Goals

Intergovernmental Relations Manager Erin Leonhart facilitated Council discussion of goals and performance measures.

c. Flexpass Update and Approving Additional Funds

Public Works Director Daryl Grigsby provided an overview of proposed revisions to the Flexpass program as requested by Council for their consideration.

Motion to approve the staff recommendation.
Moved by Councilmember Dave Asher, seconded by Deputy Mayor Joan McBride
Vote: Motion carried 7-0
Yes: Councilmember Bob Sternoff, Mayor Jim Lauinger, Councilmember Jessica Greenway, Deputy Mayor Joan McBride, Councilmember Mary-Alyce Burleigh, Councilmember Dave Asher, and Councilmember Tom Hodgson.

d. Annexation Ballot Measure Explanatory Statement

Council discussed and provided direction to staff on the Annexation Ballot Measure Explanatory Statement.

Motion to Approve language for the Annexation Ballot Measure Explanatory Statement with a two word change: "to assess."
Moved by Councilmember Mary-Alyce Burleigh, seconded by Deputy Mayor Joan McBride
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

Motion to express the City Council's intent to assume the indebtedness of the King County Fire District 41 upon annexation of the currently proposed annexation area.
Moved by Deputy Mayor Joan McBride, seconded by Councilmember Mary-Alyce Burleigh
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

11. NEW BUSINESS

a. Annual Review and Appointment of Lodging Tax Advisory Committee Membership

Motion to Reappoint Tom Hodgson as Chair of the Lodging Tax Advisory Committee and to re-examine the selection process for other committee members.
Moved by Councilmember Dave Asher, seconded by Councilmember Jessica Greenway
Vote: Motion carried 4-3
Yes: Mayor Jim Lauinger, Councilmember Dave Asher, Councilmember Jessica Greenway, and Councilmember Tom Hodgson.
No: Deputy Mayor Joan McBride, Councilmember Mary-Alyce Burleigh, and Councilmember Bob Sternoff.

12. ANNOUNCEMENTS

None.

13. ADJOURNMENT

The Kirkland City Council special study session and regular meeting of August 4,

2009 was adjourned at 10:39 p.m.

City Clerk Mayor

CITY OF KIRKLAND
City Attorney's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Oskar Rey, Assistant City Attorney

Date: August 20, 2009

Subject: Draft Response Letter to Randy Altig Regarding Waterfront Street Ends

RECOMMENDATION:

Staff recommends that the Council authorize Mayor Lauinger to sign the attached letter to Randy Altig.

BACKGROUND:

Mr. Altig wrote a letter to the Council dated August 3, 2009, expressing concern about the waterfront street end permits issued by the City for Fourth Street West and Fifth Street West. Mr. Altig also requests that the street ends be opened for public use.

The City Council has previously determined that opening the street ends to public use would not be feasible under the current circumstances. The waterfront street end permits set forth a process by which the street ends could be opened to public use in the future.

There have been disputes over parking in recent years in the area where Fifth Street West intersects Fifth Avenue West. Fifth Avenue West is the existing private road that residents use to access their properties. Fifth Avenue West is not City right of way and Fifth Street West is unopened right of way. As a result, the City is not in a position to regulate parking in that area. The City has encouraged the residents with concerns over parking to resolve their differences through the Bellevue Mediation Program.

Kirkland City Council
123 5th Avenue
Kirkland, WA 98033

Date 8-3-09

Randy Altig
1852 1st Street
Kirkland, WA 98033
425-941-8478

RECEIVED
AUG 0 5 2009
CITY OF KIRKLAND
CITY MANAGER'S OFFICE

Dear Council Members:

Many problems have arisen regarding use of the public waterfront street ends on 5th Avenue West because of the decision the City made several years ago to lease the street end properties to private property owners. Unfortunately, the lease decisions have resulted in the loss of unique waterfront access for all Citizens of Kirkland. These city waterfront properties represent one of the most valuable assets that the citizens of Kirkland own. To continue to lease these multi-million dollar properties for $100.00 a month for the private use of just a few citizens is no longer acceptable.

Over the past 2 years, homeowners on 5th Avenue West have met with Council members and staff to talk about issues facing the street. Council members encouraged neighbors to go to mediation to try and resolve the issues. The result of mediation was that public access and public view access to these waterfront properties was denied by the lessees to the Kirkland Public.

The most disruptive issues are the lessees, who have been allowed to lease the waterfront street end properties for $100 per month, do not allow residents of the street to park along the properties as has been the custom since the property was developed in the 1900's. In addition they have erected tall fences with 14 foot hedges to block all view and access to the waterfront.

Once both of the 5th Avenue West street ends were leased, the lessees began issuing verbal assaults, along with threatening letters and notes, to anyone parking in the spaces which were once public parking spaces owned and controlled by the City of Kirkland.

The street end properties, which are lake front properties, are rightfully owned by the citizens of Kirkland. This is property which should have been kept open by the City for overflow parking on 5th Avenue West, to be used as turnaround areas for oversized and commercial vehicles, and as waterfront parks for all Kirkland citizens.

The public has been using 5th Avenue West for decades as a pedestrian

pathway to access the two 60 foot lake front street ends and Waverly Park. This history of use has given the public a prescriptive easement of this private street to access these properties. Now these lovely waterfront properties are no longer open to the public.

This issue affects all Kirkland citizens. Citizens should be able to enjoy the beauty of these water front properties. All residents of 5th Avenue West should be able to enjoy the properties and to use the public parking again.

The City of Seattle has required that all city owned waterfront street end properties be open to the public.

My request to the Kirkland City Council is to terminate the leases and make these two properties public again by opening them up as two natural, nature parks. These nature parks should be for the enjoyment of all who walk, run, drive, or bike down 5th Avenue West. This should be able to be done with very little money or time commitment on the part of the City as there are many volunteers that are willing to help beautify and maintain these valuable lands. Please consider turning these two waterfront properties into street end parks available for use by all Kirkland citizens, including the residents of 5th Avenue West.

Thank you for listening and I look forward to your reply.

Sincerely,

Randy Altig

September 1, 2009 **D R A F T**

Randy Altig
1852 First Street
Kirkland, WA 98033

Re: Waterfront Street Ends—Fourth Street West and Fifth Street West

Dear Mr. Altig:

Thank you for your letter to the Kirkland City Council dated August 3, 2009, in which you express concern about the use of the above-referenced waterfront street ends. Several years ago, the City reviewed its unopened waterfront street ends to determine which ones were suitable for opening to public use. The issuance of Right of Way Use Permits for Fourth Street West and Fifth Street West was the result of extensive consideration and deliberation by the City. A summary of process will be helpful in explaining the reasons for issuance of the permits by the City.

In 2003, the City Council asked the Kirkland Park Board to evaluate the possibility of developing unopened waterfront street ends for public access. At that time, Second Street West, Fourth Street West and Fifth Street West were the three remaining unopened waterfront street ends in Kirkland.

At a May 21, 2003, public meeting, the Park Board considered the feasibility of opening the rights of way to public use. After considering the recommendations of City staff and public comments, the Park Board recommended to the City Council that the Second Street West be opened to public use, and that recommendation has since been implemented.

With respect to Fourth Street West and Fifth Street West, it was recommended that the street ends should not be opened for public use. Access problems present the biggest impediment to public use. Fifth Avenue West, which runs roughly parallel to Lake Washington, is the only improved access route to the street ends. However, Fifth Avenue West is a private road and is not City right of way. The City does not control or maintain Fifth Avenue West—the residents do. At least some of the residents have taken the position that the general public is not authorized to use Fifth Avenue West.

The other two possible access points were found to be unsuitable. Both street ends run from Waverly Way down a steep slope to the waterfront. Providing access to the Lake by this method would be very expensive because of the steepness of the bluff. Access from the water by boaters (such as kayaks and canoes) is theoretically possible but potentially dangerous and would not result in enough use to warrant opening the street end.

Thus, the Park Board advised against public use but recommended that the adjoining property owners apply for permits in recognition of the fact that portions of their

landscaping and improvements are located in the unopened right of way. The City Council considered the Park Board recommendations at several public meetings, and ultimately decided to adopt the current permit system. The permits memorialize the fact that the street ends are City right of way and that the right of way is currently being used by the adjoining property owners. It also sets forth procedures by which the City may open the street ends to public use should it decide to do so in the future.

It is important to note that Fourth Street West and Fifth Street West are "unopened" rights of way. "Unopened" means that the right of way is reserved for public use, but has not been put to use as a street. From a legal standpoint, unopened rights of way may be used by the adjoining property owners until such time as the City opens the right of way to public use. In the City's view, the permits entered into confirm what was already the case: the adjoining property owners have the right to use the unopened street ends until such time as the City decides to open them. The City has decided not to open the street ends as a result of feasibility and cost concerns.

The City realizes that you are concerned about the loss of parking on Fifth Avenue West. The fact that Fifth Avenue West is privately owned is the reason why the City does not regulate parking on Fifth Avenue West. Since Fifth Avenue West is not City right of way and since Fifth Street West is unopened right of way, the City is not in a position to intervene with respect to any disputes over parking. As a result, the City has, in the past, suggested mediation between the affected property owners to resolve the dispute. The City continues to encourage mediation as a possible solution to the parking dispute and will provide whatever support or assistance it can in getting a mediation session set up if the affected property owners are interested in pursuing this option.

The City Council appreciates your concern, and if you would like additional information regarding the mediation program please contact Oskar Rey at (425)587-3030.

Sincerely,
Kirkland City Council

By: James L. Lauinger, Mayor

cc: Daryl Grigsby, Public Works Director
Oskar Rey, Assistant City Attorney

CITY OF KIRKLAND
City Attorney's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, Planning Director
Jeremy McMahan, Planning Supervisor

Date: August 21, 2009

Subject: Draft Response Letter to Phillip Combs Regarding Annexation Zoning

RECOMMENDATION:

Staff recommends that the Council authorize Mayor Lauinger to sign the attached letter to Phillip Combs.

BACKGROUND:

The City Council adopted zoning for the Proposed Annexation Area (PAA) on July 21, 2009 (O-4196). The e-mail correspondence from Mr. Combs urges the Council to reconsider its decision regarding the allowed height within the multi-family zones in the PAA. The current King County height limits allow 60' or more while Kirkland's limits in similar zones are 30'. The adopted zoning ordinance set the height in the PAA zones at a maximum of 35'.

From: Phillip Combs [mailto:Phillip@huntpacific.com]
Sent: Monday, July 27, 2009 4:52 PM
To: Annexation; KirklandCouncil; Jeremy McMahan; James Lauinger
Cc: Phillip Combs
Subject: RE: Planned Annexation Area (PAA) - Zoning and Modifications

Dear City Council and Mayor,

I urge you to review again the topic of the PAA and Zoning Modifications. I am disturbed by the decision of those who voted to approve the reduced zoning; most specifically for multifamily properties. I applaud those who spoke up and tried to defend the rights of those who had no representation there. Robert F Kennedy said, ""It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope." In this case:

- There was no outreach to the property owners; especially those impacted by this decision. How this could happen is tragic, why this would be allowed is irresponsible.
- The zoning could have been retained until a full review, assessment or comprehensive plan with facts about the proposed changes, but instead a decision was made to push forward without more information. The city, even the day after the decision was made, still did not know how many buildings this would impact.
- The numbers are few for these multifamily properties so doing an evaluation would have been prudent, yet still no communication was made with them or study was done. The negative impacts are much larger, even if you don't personally feel them, we do. I've noted some below, but owners lose value when zoning is reduced by roughly 40% plus. Owners can also become unable to secure financing, redevelop, restore following destruction (insurance) and so on when non-conforming.

With increased information, you would (hopefully) had made a better and different decision. You would find out that the property owners would have supported the affordable housing programs needed for the community (even though that was not the issue that was being voted on, it seemed to be important to those on the council). You would have found that the owners are generally in favor of protecting the views and waterfront. I am particular surprised that those on the council who are familiar with the importance of planning and community outreach did not show such in their votes.

I ask that you revisit at least this one issue of the PAA and allow the zoning King County stay in place until there has been an outreach to those impacted (multifamily property owners), community involvement and a comprehensive evaluation showing the impacts of such a down-zoning on those select properties. What does it hurt? Isn't that the right thing to do? The greatest leaders do not search for consensus but a mold consensus in the community.

Thanks for your service as leaders in the community.

Phil Combs
206-905-6086

From: KR Manager
Sent: Tuesday, July 21, 2009 3:40 PM
To: annexation@ci.kirkland.wa.us; citycouncil@ci.kirkland.wa.us; jmcmahan@ci.kirkland.wa.us
Cc: Phillip Combs
Subject: Planned Annexation Area (PAA) - Zoning and Modifications

Dear City Council,

I received a letter from a neighbor informing me of the final hearing planned on the subject of annexation in our community. I own property in the area but have not heard of this annexation proposal until now, which concerns me.

I have dropped what my plans were for the day to try to get up to speed on this subject, since hearing of the proposal. I have called the planning department, reviewed the proposals, read over some agendas and studied the maps of the areas.

The property I own is a multifamily property which maintains the unit/acre (or unit/sf) count, but is drastically cut in the height restrictions. There are buildings already over that height at approximately 40' (~5' higher than what is proposed), the property would also become a non-conforming use which is something that creates many layers of problems for property owners (e.g., building/renovation complications, refinancing, etc). If the proposed 35' height limits are approved, it prevents us from redeveloping that site to an improved use, rebuilding if destroyed or reinvesting by adding matching buildings. These changes are serious and impact the property owners significantly more than it seems has been treated.

Please, do not change or approve any changes that will have such significant negative impacts. If you must proceed with the annexation, leave the current zoning allowed by the county until a thorough comprehensive study and plan towards the best uses, zoning and restrictions can be evaluated. A comprehensive plan that takes into consideration current uses and conditions and plans. Please involve the owners of the properties, not just the occupants, as you proceed with the planning and execution of these plans.

I thank you for your time and diligent work. I know that these types of things can be divisive issues having worked on rezoning areas in the past, but with solid outreach, cooperation and leadership, it can be successfully done.

Sincerely yours,

Phillip Combs
206-905-6086

September 1, 2009 **D R A F T**

Phillip Combs

RE: Annexation Zoning

Dear Mr. Combs:

Thank you for your e-mail to the Kirkland City Council regarding zoning for the proposed annexation area in which you express specific concern about the proposed heights for multi-family zones. In the exercise of establishing zoning for the proposed annexation area, the City Council did have to weigh the relative advantages and disadvantages of applying Kirkland's rules or the County's rules. In our final decision, the result is a combination. In the case of the multi-family zones you reference, the City retained the County's densities and adopted a building height limit of 35 feet. This is higher than the City's comparable 30 foot height limit, but lower than the County's 60 foot limit. If structures are rendered nonconforming after annexation due to the change, note that Kirkland's rules allow ongoing repair and maintenance of the structures.

The City Council appreciates your input in this process. Be sure to visit the City's annexation page at http://www.ci.kirkland.wa.us/depart/CMO/Annexation.htm and sign up for e-mail updates. If you have any questions relative to the annexation zoning, please contact Jeremy McMahan at 425.587.3229 or jmmcmahan@ci.kirkland.wa.us.

Sincerely,

Kirkland City Council

by James Lauinger, Mayor

cc: Jeremy McMahan, Planning Supervisor

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director

Date: August 13, 2009

Subject: DRAFT RESPONSE LETTER TO MR. PAT HARRIS RE: CITY STREET TREES

RECOMMENDATION**:**

It is recommended that the City Council authorize Mayor James Lauinger to sign a letter as presented or modified responding to Mr. Pat Harris.

BACKGROUND DISCUSSION:

On July 29, 2009, a letter was received at the City, addressed to the Kirkland City Council, and authored by Mr. Pat Harris. In the letter, Mr. Harris expressed concerns regarding the irrigation and care for City street trees.

July 28, 2009

Kirkland City Council
125 5th Ave.
Kirkland, WA 98033

Kirkland City Council,

The City of Kirkland's decision not to irrigate streetscapes and parks is killing both newly planted and mature trees, along with the other adjacent landscaping. In a summer when there isn't a regional water shortage and our area is experiencing record temperatures, this is just a bone headed decision. There were other ways to save general funds. How about cut back on summer concerts in the park, or reduce even further the contributions to community events? You can always add back concerts next summer, but you can't replace mature trees as easily.

As a recognized Tree City USA, the city is demonstrating incredibly poor stewardship of a valuable resource. The "in your face" citizen decision not to water may save on water bills, but it will cost the city in respect to tree removal, stump grinding, tree replacement and tree monitoring. This was a penny wise, pound foolish decision. To add insult this decision, I am starting to see tree bags put on street trees that have already died. So, the city is paying for the labor to water dead trees. Makes sense to me.

I have called the City already and spoke with Wendy who assists with managing the street tree inventory. She said her budget has been slashed and she has an inadequate budget and staff to take care of the trees. Kirkland should take itself off the Tree City USA designation as long as they don't publicly finance and support a public street tree program. I pointed out to Wendy that I am seeing dead street trees throughout the city, and she was aware of many of the trees that I brought to her attention. Awareness is at least a start.

It is so ironic that the City of Kirkland has a tree ordinance that forces property owners to protect trees on their private property, while the city goes about killing trees on public right of ways and in our parks. It's also ironic that the City of Kirkland can't afford to water and given the incredibly high water rates that businesses and citizen's pay in Kirkland, it's almost understandable. Our participation in the Cascade Water Alliance has insured ever increasing water cost and now the Council wants to increase the utility taxes. Start watering the street trees and now park trees before even more are dead.

Sincerely,

Pat Harris

Pat Harris
427 Slater Street South
Kirkland, WA 98033

RECEIVED
JUL 2 3 2009
CITY OF KIRKLAND
CITY MANAGER'S OFFICE

September 1, 2009 **D R A F T**

Mr. Pat Harris
427 Slater Street South
Kirkland, Washington 98033

Subject: CITY STREET TREES

Dear Mr. Harris,

Thank you for your letter to the Kirkland City Council regarding concerns with the irrigation and health of City street trees. In a period of declining resources, it is important for us to hear from citizens about their priorities for City services.

As a part of ongoing challenges with the 2009-10 budget, the Public Works Department was compelled to develop more than $1,000,000 worth of reductions in service levels and expenditures. In addition, the Department was also asked to find $500,000 more in order to permanently fund critical programs that were previously only funded on an annual basis which the community and Council deemed too important to be cut from the budget. Both of these actions were taken to address the City's overall General Fund shortfall. As you can imagine, they have required difficult decisions and trade-offs.

One program that has experienced significant reductions is the Public Grounds seasonal staff, their supplies, and their associated irrigation budget. One of this work group's principal work objectives is the care of the City's tree inventory. As a result of funding reductions, Public Works was required to take a thorough look at the program's operations and processes. As your letter points out, street trees are a significant amenity and an important City priority. Because of this, it was decided to irrigate public spaces where it was critical for the survival of street trees and landscape materials and that grass areas for the most part are not being irrigated. While the overall irrigation has been dramatically reduced, every attempt to maintain our street tree inventory is underway including the addition of environmentally conscious individual water bags. Staff has been filling them weekly dependent on the ambient temperature but even with our limited resources, we attempt to maximize the lifespan and health of our tree inventory with creative, sustainable and available options.

A significant part of the City Arborist's work program is to monitor the health of the street tree inventory. We agree with your observations and have found that some trees are experiencing defoliation due to stressful conditions, but analysis of their branches and trunks indicate that they are still alive. It has also been our experience that each year the City loses trees to vehicle collisions, insects, disease or other trauma, and those are consequences of owning and maintaining an urban canopy. The City has approximately 21,000 street trees and, as you correctly point out, they are a stated priority of the City. However, as you know this has been an unusually hot summer. That heat, combined with the reduction in seasonal staff and utilities budgets, has required our staff to be diligent and creative in fulfilling their duties.

We welcome your input and if you have specific locations of concern, please contact Wendy Kremer at (425) 587-3908.

Sincerely,

Kirkland City Council

By: James L. Lauinger, Mayor

Cc: Daryl Grigsby, Public Works Director
Wendy Kremer, Public Grounds Supervisor
Deb Powers, City Arborist

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Bill Reed, Senior Development Plans Examiner
Daryl Grigsby, Director of Public Works
Rob Jammerman, Development Engineering Manager

Date: August 20, 2009

Subject: Draft response letter to Ms. Patty Sorenson regarding construction at 1112 1st Street

RECOMMENDATION**:**

It is recommended that the City Council authorize Mayor James Lauinger to sign a letter as presented or modified responding to Ms. Patty Sorenson.

BACKGROUND DISCUSSION:

On July 11, 2009, a letter was received at the City, addressed to the Mayor and City Council, authored by Ms. Patty Sorenson. In the letter, she expressed concern regarding a project immediately west of her home, across a vacated alley, where a new single family residence is currently under construction.

Patricia Sorenson
118 11th Ave.
Kirkland, WA 98033
425 827-3679
psorenson@verizon.net

July 11, 2009

Dear City Manager and Board of Appeals,

I am a retired teacher who has resided at this address for over 30 years, and has worked diligently to maintain my property. I have maintained the alley between my property and the neighbors' for all of those years. I am writing this letter in frustration and disappointment. My concerns are regarding the building of the home at 1022 1st Street and specifically with the mother in law apartment/garage being constructed across the unopened alley from my property. The allowance by the city to change the elevation of the alley for the construction of this garage has caused a safety hazard and poses a liability issue for my property. My two concerns are the erosion of my property and the liability the 90-degree drop off from my property to the level of the garage poses.

In November of 2004, the city granted a relinquishment of the east 8 feet of the unopened alley abutting the west boundary of my property. The city retained a utility and pedestrian easement down. According to those agreements, I am not allowed to construct anything permanent on my property. I feel the city has a responsibility to insure the integrity of my property and assure that I am protected from liability due to the elevation change.

The city has allowed the builder to construct his garage/ mother-in-law abutting the alley. His garage has been constructed and sits about 3 feet below the level of the existing alley yet meets the height restrictions to the maximum allowed! That means there will be a drop off from my property to allow him a turning radius to get out of his garage. I have been to the city to complain or see how this was allowed to occur and ask how it will be finalized. I have complained of encroachment, but I get no solid answers from Mr. Reid. His response is that the architect made a mistake, and city has the right to do this due to the easement. He seems to think that the installation of the new drainage system, paid for by the builder is something we should all be grateful for. However, we were all content with the old system. The new construction demanded that this be installed or the newly constructed garage would flood. Well, that is because it is about 3 feet below where it should be. I find it extremely distressing that the architect's mistake and the rulings of the public works department are being allowed to impact the safety and property rights of those of us that have resided along the alley for the last 30 some years.

The buildings appear massive and almost completely fill the lot. By today's codes, I don't believe this is even a conforming lot size and find it difficult to believe that the city has allowed that amount of coverage for the lot as well as the three feet below the existing level of the alley. The garage is at maximum height, but has changed the existing landscape. How is that possible?

I encourage you to please look at this construction site at 1022 1st Street and note the safety, liability, and erosion concerns. It is only blocks away from City Hall. I await a response from you via e-mail or phone. I would like a response to the questions listed below.
Please note the photos enclosed to clarify my concerns.

- Why wasn't his garage constructed so the final project would meet the existing level of the original alley?
- Why wasn't the city checking this during construction?
- What will be installed to assure that my property doesn't erode due to this difference in height?
- What is the city doing to assure that this size of home and detached garage are not allowed on such a small lot?
- What will the city do to assure that I hold no liability due to the change in elevation from my property level to that of the garage?

Thank you for taking the time to read this and reply. I have lived in this city and supported the parks, schools, and government. I want to feel that my support has not been overlooked.

Sincerely,

Patricia Sorenson

Patricia Sorenson

September 1, 2009 **D R A F T**

Ms. Patty Sorenson
118 11th Avenue
Kirkland, WA 98033

SUBJECT: Impact on Vacated Alley from Construction at 1112 1st Street

Dear Ms. Sorenson:

Thank you for the letter to the Kirkland City Council regarding the new single-family home under construction at 1112 1st Street. According to City records, the new house is directly west of your house. Your letter raises several concerns and the City would like to offer the following responses:

- ***Why wasn't the garage constructed so the final project would meet the existing level of the original alley?*** The City does not have a code requirement for this. The City reviews the permit to be sure the driveway access is functional. The completed driveway for the new home will be functional and will meet all applicable City code requirements. The garages of many homes do not match the level of the street providing access because the home is either lower or higher in elevation than the street providing access.

- ***What is going to be done to prevent erosion along your shared property line?*** In conjunction with the final grading and installation of the concrete driveway, a short retaining wall will be required along the cut bank that exists today. Staff anticipates that the retaining wall will be less than 3 feet high.

- ***What is the City doing to assure that this size of home and detached garage are not allowed on such a small lot?*** The building plans submitted to the City were reviewed by City staff and were in compliance with all relevant Zoning Codes governing the development of single family residential lots (for code references see Kirkland Zoning Code, Chapters 15 and 115.) If you would like to discuss these codes in more detail, please call the Planning Department at 425-587-3235.

- ***What can be done to address your concerns about safety and liability along your shared property line?*** Contractors are responsible to keep and maintain a safe work site. Staff has asked the contractor to install some temporary fencing along the east side of the driveway, which he has complied with. Staff will continue to monitor the site for safety when they are on-site conducting inspections. If necessary, the City will require the applicant/owner to install permanent safety measures at the edge of your property. The extent and type of permanent safety measures will be determined after the final driveway and retaining wall are completed.

Again, thank you for your letter. If you would like to discuss the driveway and retaining wall in more detail, please call Rob Jammerman, Development Engineering Manager, at 425-587-3845.

Sincerely,

Kirkland City Council

By: James L. Lauinger, Mayor

Cc: Daryl Grigsby, Public Works Director
Eric Shields, Planning Director

CITY OF KIRKLAND
Department of Finance and Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Kathi Anderson, City Clerk

Date: August 24, 2009

Subject: CLAIM(S) FOR DAMAGES

RECOMMENDATION
It is recommended that the City Council acknowledge receipt of the following Claim(s) for Damages and refer each claim to the proper department (risk management section) for disposition.

POLICY IMPLICATIONS
This is consistent with City policy and procedure and is in accordance with the requirements of state law (RCW 35.31.(040).

BACKGROUND DISCUSSION
The City has received the following Claim(s) for Damages from:

(1) Linda C. Horning
9901 NE 134th Ct. #3
Kirkland, WA 98034

Amount: Unspecified amount

Nature of Claim: Claimant states injury resulted when a raised edge on the side of the roadway caused a fall.

(2) Pathway Medical Technologies, Inc.
10801 120th Ave NE
Kirkland, WA 98033

Amount: $765.52

Nature of Claim: Claimant states damage to property resulted from the water supply being shut off.

(3) Patricia A. Puckett
306 13th Ave
Kirkland, WA 98033

Amount: $270.20

Nature of Claim: Claimant states damage resulted from accrued charges for a yard waste container that had been returned.

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Jenny Gaus, Environmental Services Supervisor

Date: August 21, 2009

Subject: Interlocal Agreement for 2008-2009 King County Flood Control Zone District Opportunity Fund Projects

RECOMMENDATION:

It is recommended that Council pass the attached resolution (Attachment A) authorizing the City Manager to sign the Interlocal Cooperation Agreement between the King County Flood Control Zone District (KCFCZD) and the City of Kirkland for Opportunity Fund Projects (Attachment B).

BACKGROUND DISCUSSION:

The KCFCZD is a quasi-municipal corporation that was created in April 2007 in order to address regionally significant flood problems. The KCFCZD designated that 10% of the District's annual property tax revenues be put in an Opportunity Fund to be allocated to municipalities based on that municipality's proportional contribution to the overall King County assessed valuation, as collected.

For Kirkland, the Fund can provide approximately $100,000 per year. Funds can be "banked" or used each year. The funds can be used for flood control or stormwater control improvements pursuant to a comprehensive plan. They can also be used for cooperative watershed management actions for the purposes of water supply, water quality, and water resource and habitat protection and management, provided that salmon habitat protection is linked to construction of a flood or stormwater project.

Applications for projects that will use the funds are due in the fall of each year. This first year, the interlocal agreement process was delayed, because it is the initial year of the opportunity fund. In future years, projects will be approved by KCFCZD in March of each year, and the City can sign an interlocal agreement soon thereafter.

For 2008-2009 funds, the following Kirkland project applications were approved by the KCFCZD Board of Supervisors:

- 122nd Avenue NE Low Impact Development stormwater facilities: $50,000
- Juanita Creek flood storage/habitat program: $50,000
- Regional detention in the Forbes Creek watershed: $100,000

The 2008-2009 projects were approved by Council in October of 2008. The following are brief descriptions of each project:

122nd Ave NE Low Impact Development (LID) stormwater facilities:

The Lake Washington School District is rebuilding Lake Washington High School, and as part of that work, the District is required to provide frontage improvements on 122nd Ave NE between NE 75th and NE 80th Streets. This location is ideal for LID facilities for a number of reasons including the fact that it is a highly visible location and adjacent to a school which will serve as a good community education platform. In this situation, the LID facilities were designed to treat more flow than required for just the School redevelopment making them slightly more expensive than traditional facilities which would have been part of the required frontage improvements. In order to insure that the LID facilities are built, Kirkland is contributing $50,000 in KCFCZD money to pay for the difference between traditional and LID stormwater facilities. Construction of the LID facilities is currently underway. An interlocal agreement concerning transfer of funds from Kirkland to the Lake Washington School District to fund LID features will be presented to Council shortly.

Juanita Creek flood storage/habitat program:

This program will include partnering with property owners on Juanita Creek to construct projects that will provide flood relief and habitat improvement while protecting structures. Further details of this proposed program will be presented to Council for consideration once it is developed. First-year efforts will include detailed identification of opportunities for increasing flood storage and habitat quality along the Creek, work with property owners to determine the type of partnership that would be most beneficial to both parties, and development of criteria for prioritizing projects. This program would supplement the "private streambank stabilization" projects that are currently part of the surfacewater CIP and would identify opportunities for improvement of habitat and water quality in addition to fixing acute maintenance problems on Juanita Creek.

Regional detention in the Forbes Creek watershed:

This project would reduce erosion and improve habitat in the Forbes Creek watershed by detaining stormwater in a pond or other type of facility. Most of the Forbes watershed was developed before stormwater controls were required, and existing high flows are continually damaging aquatic habitat. Regional detention may be required as part of a WSDOT solution to flooding in the NE 116th/I-405 interchange, and WSDOT has indicated that they may be looking to Kirkland for partnership on such an effort. This project is currently on the unfunded portion of the surfacewater CIP.

Attachment A:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE KING COUNTY FLOOD CONTROL ZONE DISTRICT AND THE CITY OF KIRKLAND FOR OPPORTUNITY FUND PROJECTS

Attachment B:

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE KING COUNTY FLOOD CONTROL ZONE DISTRICT AND THE CITY OF KIRKLAND FOR OPPORTUNITY FUND PROJECTS

RESOLUTION R-4772

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE KING COUNTY FLOOD CONTROL ZONE DISTRICT AND THE CITY OF KIRKLAND FOR OPPORTUNITY FUND PROJECTS.

WHEREAS, THE King County Flood Control Zone District is a quasi municipal corporation of the State of Washington founded in April 2007; and

WHEREAS, it is the purpose of the District to protect public health and safety, regional economic centers, public and private properties and transportation corridors; and

WHEREAS, Overarching countywide strategies and objectives of the District include improving levee protection through major commercial, industrial and residential areas, improving flood water conveyance and capacity, reducing hazards by removing flood, erosion, and landslide prone residential structures, providing safe access to homes and businesses by protecting key transportation routes, minimizing creation of new risks to public safety from development pressure; and

WHEREAS, the District allocated 10 percent of the District's annual property tax revenues for a sub-regional opportunity fund to be used by King County municipalities; and

WHEREAS, the District Board of Supervisors determined that eligibility of projects for opportunity funds be based on consistency with RCW 86.15.035 and RCW 39.34.190 for salmonoid habitat protection be lined to the construction of a flood or stormwater project; and

WHEREAS, The District Board of Supervisors approved Kirkland's applications for use of 2008-209 funds for the 122nd Ave NE Low Impact Development Stormwater Facilities, the Juanita Creek Flood Storage/Habitat Program, and Regional Detention in the Forbes Watershed,

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City an interlocal agreement substantially similar to the Agreement attached hereto as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 2009.

_____
Mayor

Attest:

_____
City Clerk

INTERLOCAL COOPERATION AGREEMENT BETWEEN THE KING COUNTY FLOOD CONTROL ZONE DISTRICT AND THE CITY OF KIRKLAND FOR OPPORTUNITY FUND PROJECTS

THIS INTERLOCAL COOPERATION AGREEMENT is entered into between the CITY OF KIRKLAND, a municipal corporation of the State of Washington ("City"), and the KING COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi municipal corporation of the State of Washington ("District") ("Parties" or when singular "Party"), and shall be effective upon execution by the Municipality and the District.

Article I. Recitals.

In April 2007, the King County Council, as authorized by chapter 86.15 RCW, created the District as a quasi-municipal corporation. The King County Council members ex officio constitute the Board of Supervisors of the District, the governing body of the District.

In Resolution FCZD 2008-15.2, the Board of Supervisors approved the District's 2009 budget and annual work program, and allocated 10 percent of the District's annual property tax revenues for a sub-regional opportunity fund to be used by King County municipalities . The Board of Supervisors further determined that eligibility of projects for opportunity funds be based on consistency with chapter 86.15 RCW; provided that expenditures under RCW 86.15.035 and RCW 39.34.190 for salmonid habitat protection be linked to the construction of a flood or stormwater project. The Board of Supervisors also allocated the opportunity funds to a municipality based on that municipality's proportional contribution to the overall King County assessed valuation, as collected.

In Resolution FCZD 2009-01.1, the Board of Supervisors included the projects and activities described in Attachment A to this Agreement in an amendment to the District's annual budget and work program for the year 2009.

The Board of Supervisors desires to have the City implement its approved opportunity fund projects and activities for the years 2008 and 2009, as well as the projects and activities that are approved for the City in subsequent District annual budgets and work programs. The City desires to implement such projects and activities, and to receive opportunity funds to finance in whole or in part such projects and activities.

The City and the District are authorized to enter into this Agreement pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act), and agree as follows:

Article II. Definitions.

2.1 Eligibility Criteria. The term "Eligibility Criteria" means one of the two following criteria that Projects shall meet to qualify for Opportunity Funds:

2.1.1. Under RCW 86.15.110, Opportunity Funds may be expended for either flood control improvements or stormwater control improvements that are extended, enlarged, acquired or constructed, provided that the City has developed a comprehensive plan of development for flood control or for stormwater control, respectively, and the improvement contributes to the objectives of the plan. For flood control improvements, such plan shall be submitted to and approved by the Department of Ecology. In addition, for newly constructed improvements, the City shall develop preliminary engineering studies and plans, and such plans and studies shall be filed with the District's engineer. For all projects, the City shall provide cost estimates and underlying data and shall describe the benefit provided by the improvement.

2.1.2. Pursuant to the criteria in RCW 86.15.035 and RCW 39.34.190, as modified by Resolution FCZD 2008-15.2, District funds may be expended for cooperative watershed management actions, including watershed management partnerships and other intergovernmental agreements, for the purposes of water supply, water quality, and water resource and habitat protection and management, provided that Opportunity Funds expended for salmon habitat protection shall be linked to the construction of a flood or stormwater project, and provided further that all such funds shall be used for the implementation of watershed management plans, including but not limited to the following:

a. Watershed plans developed under chapter 90.82 RCW;
b. Salmon recovery plans developed under chapter 77.85 RCW;
c. Watershed management elements of comprehensive land use plans developed under the growth management act, chapter 36.70A RCW;
d. Watershed management elements of shoreline master programs developed under the shoreline management act, chapter 90.58 RCW;
e. Nonpoint pollution action plans developed under the Puget Sound water quality management planning authorities of chapter 90.71 RCW and chapter 400-12 WAC;
f. Other comprehensive management plans addressing watershed health at a WRIA level or sub-WRIA basin drainage level;
g. Coordinated water system plans under chapter 70.116 RCW and similar regional plans for water supply; and
h. Any combination of the foregoing plans in an integrated watershed management plan.

The authority to use funds for implementation of these plans is broadly construed to include:

1. Coordination and oversight of watershed management plan implementation, including funding a watershed management partnership for this purpose;
2. Technical support, monitoring, and data collection and analysis;
3. Design, development, construction, and operation of projects included in the plan; and
4. Conducting activities and programs included as elements in the plan.

2.2 Project. The term "Project" or "Projects" means specific projects or activities that meet the Eligibility Criteria of this Agreement, are approved by the Board of Supervisors in a resolution approving the annual budget and work program, or amendment thereto, and are described in an attachment to this Agreement that is approved pursuant to this Agreement.

2.3 Opportunity Funds. The term "Opportunity Funds" means the funds made available by the Board of Supervisors to the municipalities within King County for implementation of Projects. For each of the years 2008 and 2009, these funds represent 10 percent of property tax revenues collected for each of those years, and are available to individual municipalities based on the proportional amount that municipality's assessed valuation as collected (as determined by the King County Assessor's office) bears to the entire amount of assessed valuation in all of King County (as determined by the King County Assessor's office). For the years after 2009, this term means District funds that are designated as "Opportunity Funds" by the Board of Supervisors in either a resolution approving the District's annual budget and work program or a separate resolution.

2.4 Service Provider. The term "Service Provider" means the Water and Land Resources Division of the King County Department of Natural Resources and Parks.

Article III. Duration of Agreement--Survival of Agreement.

This Agreement shall be effective upon execution by both Parties, and shall remain in effect until terminated by one or both of the Parties. Either Party may terminate this Agreement by providing written notice of termination to the other Party no less than sixty (60) days prior to the effective date of termination. This Agreement also may be terminated

upon mutual agreement of the Parties expressed in writing. Sections 4.2, 5.2, 5.3, 5.4, 5.5, 6.3, 6.4 and 6.5 and Article VII shall survive any termination of this Agreement.

Article IV. Conditions of Agreement.

4.1 Project Descriptions. The initial approved Projects are described in Attachment A, which is incorporated by reference. Subsequent approved Projects shall be described in new Attachments to this Agreement that are approved through the amendment process of Section 7.2.2, which Attachments shall be incorporated by reference into this Agreement.

4.2 Use of Funds. The City shall use Opportunity Funds distributed pursuant to this Agreement only for expenses related to the Projects.

Article V. Responsibilities of City.

5.1 Project Application and Description. The City may submit an application for distribution of Opportunity Funds within a period of time designated by the Service Provider and on a form approved by the Service Provider. As part of the application to receive Opportunity Funds, the City shall submit to the Service Provider the following information for each proposed Project:

5.1.1. Name of proposed project or activity;

5.1.2. Description of the flooding, stormwater, or watershed management problem to be addressed (one to two paragraphs);

5.1.3. Description of how the proposed project or activity will address the problem (one to two paragraphs);

5.1.4. Type of project or activity (e.g., feasibility study, design, construction, acquisition, programmatic activities, etc.);

5.1.5. Description of how the project or activity satisfies the "Eligibility Criteria," as defined in this Agreement;

5.1.6. Identification of the plan (flood control, stormwater control, or watershed management) that includes the Project;

5.1.7. Product/deliverable and, for constructed Projects, design plans or studies; and

5.1.8. Schedule, milestones, costs and budget for each Project, consistent with the requirements of this Agreement.

The schedule for a Project shall provide for the expenditure of Opportunity Funds within two years after the commencement date of the Project. The City shall submit a request for distribution of Opportunity Funds after an actual expenditure is incurred for the Project, provided that the City may request distribution of up to 10 percent of Opportunity Funds for a Project upon approval of a Project by the Board of Supervisors. After approval of the Project by the Board of Supervisors, the application form, as approved by the Board of Supervisors, shall become an attachment to this Agreement through the amendment process in Section 7.2.2.

5.2 City Obligations for Projects. The City shall implement the Project as described and provided for in the approved attachment to this Agreement. Upon receipt, the City shall deposit Opportunity Funds in a separate account, which shall accrue interest at the rate earned by the City on its investments. To request a distribution of Opportunity Funds, the City shall submit to the Service Provider such information and proof of expenditure as requested by the Service Provider.

5.3. Projects Seeking Opportunity Funds Beyond Current Appropriation Year. The City may request distribution of Opportunity Funds beyond the appropriation year for the District's budget and annual work program, provided that District approval of such distribution of Opportunity Funds shall not be construed as nor constitute a District obligation or commitment to appropriate Opportunity Funds for the Project beyond the approved appropriation year. The District shall have no obligation to provide Opportunity Funds beyond the appropriation year for the District's budget and annual work program, provided that the District shall distribute to the City after such appropriation year any Opportunity Funds that were allocated to the City in such appropriation year and in previous years and that have not been distributed to the City.

5.4 Reporting.

5.4.1. Until the Project is completed or all Opportunity Funds for a Project have been spent, the City shall provide semi-annually to the Service Provider brief written reports describing the progress on and status of the Project and any other relevant information that the Service Provider may request to determine compliance with this Agreement.

5.4.2. Upon completion of a Project, or upon expenditure of all of the Opportunity Funds for the Project, whichever occurs first, the City shall submit a final report to the Service Provider within 90 days of such completion or expenditure. The final report shall contain a summary of all Project expenditures, copies of invoices if requested by the Service Provider, a description of the Project status and accomplishments, and other relevant information requested by the Service Provider to verify compliance with this Agreement. The final report also shall contain a certification that all Opportunity Funds

provided to the City were expended solely on the Project in accordance with this Agreement and the Project approval. If a Project is not completed prior to termination of this Agreement, a report as described in this Section shall be provided to the Service Provider within 90 days of such termination. All records relating to a Project shall be retained by the City for a minimum of seven years, unless required by law to be retained for a longer period, in which case the longer period shall apply.

5.5 City obligations upon Project completion or termination. As consideration for receipt Opportunity Funds to implement the Project, the City agrees that:

5.5.1. If the Project involves developing a report or study, undertaking a study or collecting data, or producing written or electronic materials of any kind, copies of all such materials shall be provided upon request to the District or the Service Provider; and

5.5.2. If the Project involves the acquisition, extension, enlargement, or construction of a physical improvement, the City shall take ownership of, and shall be obligated to operate, maintain, and repair such improvement for the ordinary expected useful life of such improvement.

5.5.3 If the City terminates a Project, and the City has not expended all of the Opportunity Funds paid in advance pursuant to Section 6.3, the City shall return to the Service Provider the remaining Opportunity Funds within 60 days of the close of the calendar year in which the Project was terminated. Such returned Opportunity Funds shall be credited to the City's Opportunity Fund account, and may be used on future approved Projects, provided that if the Board of Supervisors has terminated the Opportunity Fund program at that time, the returned Opportunity Funds may be used by the District for District projects and activities.

Article VI. Responsibilities of District.

6.1 Upon timely submission of a Project application by the City, the Service Provider will review the application, provide reasonable and appropriate feedback, and consider including the Project as an element of the District's annual budget and work program.

6.2 If the Board of Supervisors approves the Project application by including the Project in the District's annual budget and work program, or an amendment thereto, the Service Provider shall attach a copy of the Project application as approved to this Agreement and it shall become a part hereof.

6.3 The District, through the Service Provider, shall distribute Opportunity Funds, up to the remaining amount of the City's total Opportunity Fund allocation, after City expenditure of funds for a Project as set forth in the approved schedule for the Project, provided that upon request of the City, the District shall pay up to 10 percent of the total Opportunity Funds allocated for a Project upon approval of an attachment to this Agreement. The Service Provider shall pay the Opportunity Funds after confirming that the expenditures have been made consistent with the Project approval and schedule.

6.4 The District assumes no obligation for future support of Projects meeting the Eligibility Criteria except as expressly set forth in this Agreement.

6.5 The District shall have no obligation to provide Opportunity Funds beyond the appropriation year for the District's budget and annual work program, provided that the District shall distribute to the City after such appropriation year any Opportunity Funds that were allocated to the City in such appropriation year and in previous years and that have not been distributed to the City.

Article VII. Other Provisions.

7.1 Hold Harmless and Indemnification.

7.1.1. The District assumes no responsibility for the direct payment of any compensation, fees, wages, benefits or taxes to or on behalf of the City, its employees, contractors or others by reason of this Agreement. The City shall protect, indemnify and save harmless the District, its officers, agents, employees and the Service Provider from any and all claims, cost and whatsoever occurring or resulting from (1) the City's failure to pay any compensation, fees, wages, benefits or taxes, and (2) the supplying to the City of works services, materials or supplies by City employees or agents or other contractors or suppliers in connection with or in support of performance of this Agreement.

7.1.2. The City further agrees that it is financially responsible for and will repay the District all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts by the City, its officers, employees, agents or representatives.

7.1.3. The City shall protect, indemnify and save harmless the District from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees or agents in connection with the implementation of the terms of this Agreement and/or implementation of the Projects. For purpose of this Agreement only, the City agrees to waive the immunity granted it for industrial insurance claims pursuant to Washington Statute Chapter 51 to the extent necessary to extend its obligations under this paragraph to any claim, demand, or cause of action brought by or on behalf of any employee, including judgments, awards and costs arising therefrom including attorney's fees.

7.2 Amendment.

7.2.1. This Agreement may be modified by written instrument approved by the City Council and the District Board of Supervisors and signed by the Parties.

7.2.2. This Agreement also may be modified by additional attachment for Projects subsequently approved by the Board of Supervisors. After approval of a Project in the District's annual budget and work program, or amendment thereto, the Project application as approved shall become an attachment to this Agreement and shall constitute an amendment to this Agreement without further action by either Party.

7.3 Contract Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this Agreement. No waiver shall be effective unless made in writing.

7.4 No Third Party Rights. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party.

7.5. Entirety. This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the projects and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this Agreement.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces put forth below:

_____

By_____
Mayor (or City Manager or Executive)
Date:_____

Approved as to form:

_____
Municipal Attorney

KING COUNTY FLOOD CONTROL
ZONE DISTRICT

Kjersti Lund
Executive Director
Date: 4/20/09

Acting under the authority of
Resolution FCD2008-14.1

ATTACHMENT A

KING COUNTY FLOOD CONTROL DISTRICT

King County Water Land Resource Division
River and Floodplain Management

King County

Sub-Regional Opportunity Fund Project Application

Application Due Date: December 8, 2008

Jurisdiction: City of Kirkland

1) Do you wish to forego the receipt of your Opportunity Fund allocation this year, allowing it to accrue for a future year? ☐ Yes ☒ No

2) Would you prefer to apply your Opportunity Funds toward an existing project on the District's 6-year CIP? ☐ Yes ☒ No If Yes, please provide the name of the project:

If you said Yes to either (1) or (2) above, you do not need to complete the remainder of this form.

3) Proposed project or activity name and location: 122nd Ave NE Low Impact Development Stormwater Facilities

4) Description of the flooding, stormwater, or linked watershed management problem that this project or activity will address (1500 character maximum):

Lake Washington High School is redeveloping, and will be required to provide street improvements on 122nd Ave NE between NE 75th Street and NE 80th Street as part of that work. This work requires installation of flow control and water quality treatment facilities to serve the street. The school is within the Forbes Creek basin, which has experienced significant development that occurred without any stormwater quantity or quality control. This has led to flooding and water quality problems at various locations in the basin. The school has proposed use of Low Impact Development stormwater facilities such as porous concrete sidewalks and bioretention areas. The cost of these facilities is significantly over the cost of conventional facilities, though they provide the additional benefits of reduced volume of runoff and added treatment of stormwater (i.e. beyond what is required). This site is highly visible and would serve as an excellent demonstration project for other row improvements. The City proposes under this project to support use of LID facilities by contributing up to $50,000 of FCZD toward the project.

5) Description of how the proposed activity will address the problem outlined in number 2 (1500 character maximum):

Funding would support use of LID facilities that reduce overal stormwater volumes in the Forbes Creek basin. This project would be a companion to the Forbes Creek Regional Detention study, in that it would provide a snapshot of how LID could be used to meet stormwater control goals in the basin.

6) Type of Activity:	☐ Feasibility Study	☒ Project Design	☒ Project Construction	☐ Property Acquisition
	☐ Programmatic – identify:			
	☐ Other – identify:			

7) Describe how the proposed project or activity satisfies the eligibility criteria for at least one of the three categories listed in Section III of the attached document (1500 character maximum):

The project would constitute stormwater control improvements that would be constructed under Kirkland's 2005 Surface Water Master Plan. Thus, it would satisfy Item 2 of the eligibility requirements.

8) Identify the management plan (i.e. flood control, stormwater control, or watershed management) within which implementation of the project or activity is an element or is recommended:

The Kirkland 2005 Surface Water Master Plan recommends use of LID.

9) Identify deliverables and any relevant design plans or studies (for construction projects):

Project is expected to be constructed in summer of 2009.

10) Identify a timeline for this project from inception to completion. List any relevant milestones, and provide a rough estimate of project costs and budget:

produce preliminary engineering studies and plans, and file these with the Flood District's engineer

Coordinate with Lake Washington School District to maximize the volume reduction and water quality improvement aspects of the 112nd Ave NE street improvements

Consctruct LID improvements summer of 2009.

Estimated overall cost of the stormwater improvements is $395,000. $50,000 of FCZD funds would go to support creation of LID stormwater facilities in lieu of traditional stormwater facilities.

For Informational Purposes Only: We wish to inform the Flood Control District Board of Supervisors on how Opportunity Funds leverage other resources, and we appreciate any information you are willing to provide in this regard. If you plan to partner with other jurisdictions to conduct a project or otherwise intend to use your Opportunity Fund allocation to leverage grant funds or other surface water management funds, please provide us with this information (1200 character limit):

For Internal Use Only

	Authorized Signature
☐ Project Eligible and Accepted	
☐ Project Ineligible	

KING COUNTY FLOOD CONTROL DISTRICT

King County Water Land Resource Division
River and Floodplain Management

King County

Sub-Regional Opportunity Fund Project Application

Application Due Date: December 8, 2008

Jurisdiction:

1) Do you wish to forego the receipt of your Opportunity Fund allocation this year, allowing it to accrue for a future year? ☐ Yes ☒ No

2) Would you prefer to apply your Opportunity Funds toward an existing project on the District's 6-year CIP? ☐ Yes ☒ No If Yes, please provide the name of the project:

If you said Yes to either (1) or (2) above, you do not need to complete the remainder of this form.

3) Proposed project or activity name and location: Juanita Creek flood storage study

4) Description of the flooding, stormwater, or linked watershed management problem that this project or activity will address (1500 character maximum):
The Juanita Creek watershed experiences flooding during medium to large storm events that impacts structures near the creek and threatens public safety, partially as a result of lack of floodplain storage. This study would identify opportunities for increasing flood storage along the creek, and would identify methods by which the City could partner with private property owners to leverage dollars in constructing flood storage projects.

5) Description of how the proposed activity will address the problem outlined in number 2 (1500 character maximum):
This project will develop a list of capital projects that would increase floodplain storage. The study also would develop methods for partnering with private property owners to construct projects, thus leveraging FCZD and city dollars.

6) Type of Activity:	☒ Feasibility Study	☐ Project Design	☐ Project Construction	☐ Property Acquisition
	☐ Programmatic – identify:			
	☐ Other – identify:			

7) Describe how the proposed project or activity satisfies the eligibility criteria for at least one of the three categories listed in Section III of the attached document (1500 character maximum):
This project is a stormwater control improvement project that satisfies item 2 of the eligibility requirements.

8) Identify the management plan (i.e. flood control, stormwater control, or watershed management) within which implementation of the project or activity is an element or is recommended:
This project is being implemented as part of Kirkland's 2005 Surface Water Master Plan.

9) Identify deliverables and any relevant design plans or studies (for construction projects):
A study report would be the main deliverable for the project.

10) Identify a timeline for this project from inception to completion. List any relevant milestones, and provide a rough estimate of project costs and budget:

1st quarter 2009 Conduct RFP process, select consultant
2nd quarter 2009 Develop scope, budget, and contract with consultant
3rd and 4th quarter 2009 Identify opportunities through field visits and hydraulic modeling, interview property owners to develop partnership methods
4th quarter 2009 Produce study report

It is estimated that this work will cost a maximum of $50,000. Costs will be refined once a consultant is selected.

For Informational Purposes Only: We wish to inform the Flood Control District Board of Supervisors on how Opportunity Funds leverage other resources, and we appreciate any information you are willing to provide in this regard. If you plan to partner with other jurisdictions to conduct a project or otherwise intend to use your Opportunity Fund allocation to leverage grant funds or other surface water management funds, please provide us with this information (1200 character limit):

For Internal Use Only

	Authorized Signature
☐ Project Eligible and Accepted	
☐ Project Ineligible	

KING COUNTY FLOOD CONTROL DISTRICT

King County Water Land Resource Division
River and Floodplain Management

King County

Sub-Regional Opportunity Fund Project Application

Application Due Date: December 8, 2008

Jurisdiction: City of Kirkland

1) Do you wish to forego the receipt of your Opportunity Fund allocation this year, allowing it to accrue for a future year? ☐ Yes ☒ No

2) Would you prefer to apply your Opportunity Funds toward an existing project on the District's 6-year CIP? ☐ Yes ☒ No If Yes, please provide the name of the project:

If you said Yes to either (1) or (2) above, you do not need to complete the remainder of this form.

3) Proposed project or activity name and location: Regional Detention in Forbes Creek Watershed

4) Description of the flooding, stormwater, or linked watershed management problem that this project or activity will address (1500 character maximum):
High stormwater flows have caused flooding of the NE 116th Street/I-405 interchance leading to public safety concerns during even small storm events. WSDOT is taking the lead on addressing flooding within the interchange, but it will be necessary for the City to provide stormwater detention so that WSDOT does not just move the flooding problem downstream.

5) Description of how the proposed activity will address the problem outlined in number 2 (1500 character maximum):
This study will identify potential locations, and will develop conceptual design for stormwater detention facilities that will aid in reducing flooding and the impacts of high flows in the Forbes Creek basin.

6) Type of Activity:	☒ Feasibility Study	☐ Project Design	☐ Project Construction	☐ Property Acquisition
	☐ Programmatic – identify:			
	☐ Other – identify:			

7) Describe how the proposed project or activity satisfies the eligibility criteria for at least one of the three categories listed in Section III of the attached document (1500 character maximum):
This project satisfies item 2, as it is a stormwater improvement project that is being conducted under the City's 2005 Surface Water Master Plan. Please see attached pages from the plan.

8) Identify the management plan (i.e. flood control, stormwater control, or watershed management) within which implementation of the project or activity is an element or is recommended:
The project is recommended in Kirkland's 2005 Surface Water Master Plan.

9) Identify deliverables and any relevant design plans or studies (for construction projects):
Deliverable will be a report that includes evaluation of feasibility and that details conceptual designs for regional detention locations.

10) Identify a timeline for this project from inception to completion. List any relevant milestones, and provide a rough estimate of project costs and budget:

The following is a project schedule:

1st quarter 2009: Conduct Request For Proposals (RFP) process
2nd quarter 2009: Develop scope and contract with consultant, finalize study cost
3rd and 4th quarter 2009: Conduct feasibility analysis
3rd and 4th quarter 2009: Develop conceptual design and cost estimate for one or a combination of locations
1st quarter 2010: Write report on results of study

Estimated cost for consultant is up to $100,000 (subject to refinement). Costs for Kirkland staff time and resources will not be charged to the project.

For Informational Purposes Only: We wish to inform the Flood Control District Board of Supervisors on how Opportunity Funds leverage other resources, and we appreciate any information you are willing to provide in this regard. If you plan to partner with other jurisdictions to conduct a project or otherwise intend to use your Opportunity Fund allocation to leverage grant funds or other surface water management funds, please provide us with this information (1200 character limit):

For Internal Use Only

	Authorized Signature
☐ Project Eligible and Accepted	
☐ Project Ineligible	

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587-3800
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: John A. Burkhalter, P.E., Senior Development Engineer
Rob Jammerman, Development Engineering Manager
Daryl Grigsby Public Works Director

Date: July 10, 2009

Subject: CITY COUNCIL RESOLUTION APPROVING A SEWER FACILITY AGREEMENT WITH WONG KIRKLAND LLC

RECOMMENDATION:

It is recommended that the City Council approve the attached resolution authorizing the City Manager to execute a Sewer Facility Agreement with Wong Kirkland LLC

POLICY IMPLICATIONS:

The City of Kirkland is authorized pursuant to Chapter 35.91 RCW to enter into a Sewer Facility Agreement (also known as a Sewer Latecomers' Agreement) allowing developers to receive compensation for the installation of public sewer main line extensions, i.e. persons connecting to the extensions are required to pay a portion of the construction costs as a condition of connection. These latecomers' fees are calculated based on the number of lots being served: dividing the total number of lots served into the total cost of the sewer extensions which yields the latecomers' charge per lot. Fifteen percent (15%) of the sewer latecomers' fee is retained by the City of Kirkland for administering the agreement and eighty-five percent (85%) of the fee is returned to the developer. The agreement is valid for 15 years and is administered by the Department of Public Works.

BACKGROUND DISCUSSION:

Wong Kirkland LLC installed approximately 255 lineal feet of sewer main line extension along NE 108th St. and 121st Pl NE. This public sewer main extension provides sewer service to various parcels. A Sewer Facility Agreement has been filed with the Department of Public Works to receive reimbursement for the sewer. Any property owner applying for connection to the sewer main will be required to pay $6,334.25 per lot plus normal City of Kirkland sewer connection fees.

Upon Approval of the resolution and subsequent signing by the City Manager, the agreement will be sent to King County for recording. Finally, notice of latecomers' connection charges will be sent to each property owner included in the agreement.

cc: City Attorney

RESOLUTION R-4773

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A SEWER FACILITY AGREEMENT WITH WONG KIRKLAND LLC AND AUTHORIZING THE CITY MANAGER TO SIGN SAID AGREEMENT ON BEHALF OF THE CITY OF KIRKLAND.

WHEREAS, the improvement of public health is furthered by adequate sewer systems; and

WHEREAS, the Washington State Legislature enacted the Municipal Water and Sewer Facilities Act (RCW 35.91.010 et seq.) in furtherance of this goal and authorizing municipalities to enter into agreements of this nature; and

WHEREAS, The City of Kirkland concludes entering into this agreement will promote this goal; and

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City the Sewer Facility Agreement between the City and Wong Kirkland LLC. A copy of this Agreement is attached as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____,2009

_____
MAYOR

Attest:

_____
City Clerk

SEWER FACILITIES AGREEMENT PURSUANT TO CHAPTER 35.91 REVISED CODE OF WASHINGTON

THIS AGREEMENT made and entered into this day, pursuant to RCW Chapter 35.91, between the City of Kirkland, a non-charter optional code city, hereinafter referred to as "City" and Wong Kirkland LLC hereinafter referred to as "Developer":

WITNESSETH

Section 1. Developer does hereby agree to construct, at its sole expense, the SEWER FACILITIES described in EXHIBIT 1, attached hereto and by this reference incorporated herein, all in accordance with the specifications and standards of the City of Kirkland pertaining to sewer construction and installation.

Section 2. Upon completion of said sewer facilities to the satisfaction of the Kirkland Director of Public Works, and acceptance thereof by the City of Kirkland, said facility shall become the property of the City of Kirkland and a part of its sewer system with full power of the City of Kirkland to charge for its use such sewer connection and service rates and charges as the City of Kirkland may be authorized by law to establish, and all further maintenance operation costs of said facility shall be borne by the City of Kirkland.

Section 3. The benefit area to be served by said facility is described and designated on EXHIBIT 2 attached to this agreement and by this reference incorporated herein. Said Exhibit is a map showing the total benefit area and delineating thereon that portion of the benefit area owned by Developer. EXHIBIT 3 attached to this agreement and by this reference incorporated herein is a listing of each lot or parcel within the benefit area including the lot or parcel legal description and the lot of parcel's "pro rata share" of the cost of construction of the sewer facilities. EXHIBIT 4 identifies those lots or parcels owned by Developer and not subject to the provisions of Section 4 of this agreement.

Section 4. Any owner of any real property located within the benefit area (other than those properties designated in EXHIBIT 2 as Developer's properties) who shall hereafter tap into or use said sewer facility (including not only connecting directly into, but also to users connecting laterals or branches connected thereto) shall, prior to such tap in or use, pay to the City of Kirkland, in addition to any connection or other change required by the ordinances of the City of Kirkland to be paid upon connecting to a sewer facility, their fair pro rata share of the cost of construction of said facility.

Section 5. For the purposes of determining such "fair pro rata share" the cost of construction of said facility shall be considered to be $6334.25, provided, however, the City may adjust said cost to reflect the true and final cost of construction of said facility. The "FAIR PRO RATA SHARE" of the cost of construction as designated on EXHIBIT 3, and is hereby approved by the City of Kirkland.

Section 6. Within sixty (60) days after receipt by the City of any "fair pro rata share," the City shall disburse said sum, less fifteen (15) percent thereof to be retained by the City of Kirkland to cover costs of administering the provisions of this agreement, to Developer at 16541 Redmond Wy #273 Redmond 98052 until such time as Developer shall have received the total sum of $8,076.17, or the expiration of fifteen (15) years from the date of this agreement, whichever event shall first occur. Thereafter, any amount of charge made or received by the City to tap into or use said facility shall be retained by the City. It shall be the duty of the Developer to advise the City of any change in the Developer's mailing address.

Section 7. The provisions of this agreement shall not be effective as to any owner of real property designated in EXHIBIT 3, other than Developer, until such time as this agreement shall have been recorded in the Office of the King County Department of Elections and Records and then only as to such real property owners as tap into or connect into said facility subsequent to such recording. City shall not be required to disburse any "fair pro rata share" to Developer which may not be lawfully collected from such real property owner at the time said real property taps into or connects to said facility.

Section 8. In the event the cost, or any part thereof, of a or sewer improvement, whether local or general, is or will be assessed against the owners of real property and such improvement will be connected into or will make use of the facility constructed pursuant to this agreement and the cost thereof was not contributed to by the owners of said real property, there shall be included in the Engineer's estimate for the hearing or any such improvement, separately itemized, and in such assessments, a sum equal to the amount provided for in this agreement as a fair pro rata share due from such owners in accordance with the provisions of this agreement.

Section 9. No person, firm, or corporation, other than Developer's, as to the real property identified as owned by Developer in EXHIBIT 4 hereto, shall be granted a permit or authorized to tap into or use said facility or extensions thereof without first paying their fair pro rata share as herein provided.

DATED at Kirkland, Washington, this _____ day of _____, _____.

CITY OF KIRKLAND:	DEVELOPER:
_____	_____
CITY MANAGER FOR THE City of Kirkland KIRKLAND WHO IS AUTHORIZED TO EXECUTE THIS AGREEMENT ON BEHALF OF SAID CITY BY VIRTUE OF RESOLUTION NO. _____	By: _____
	By: _____

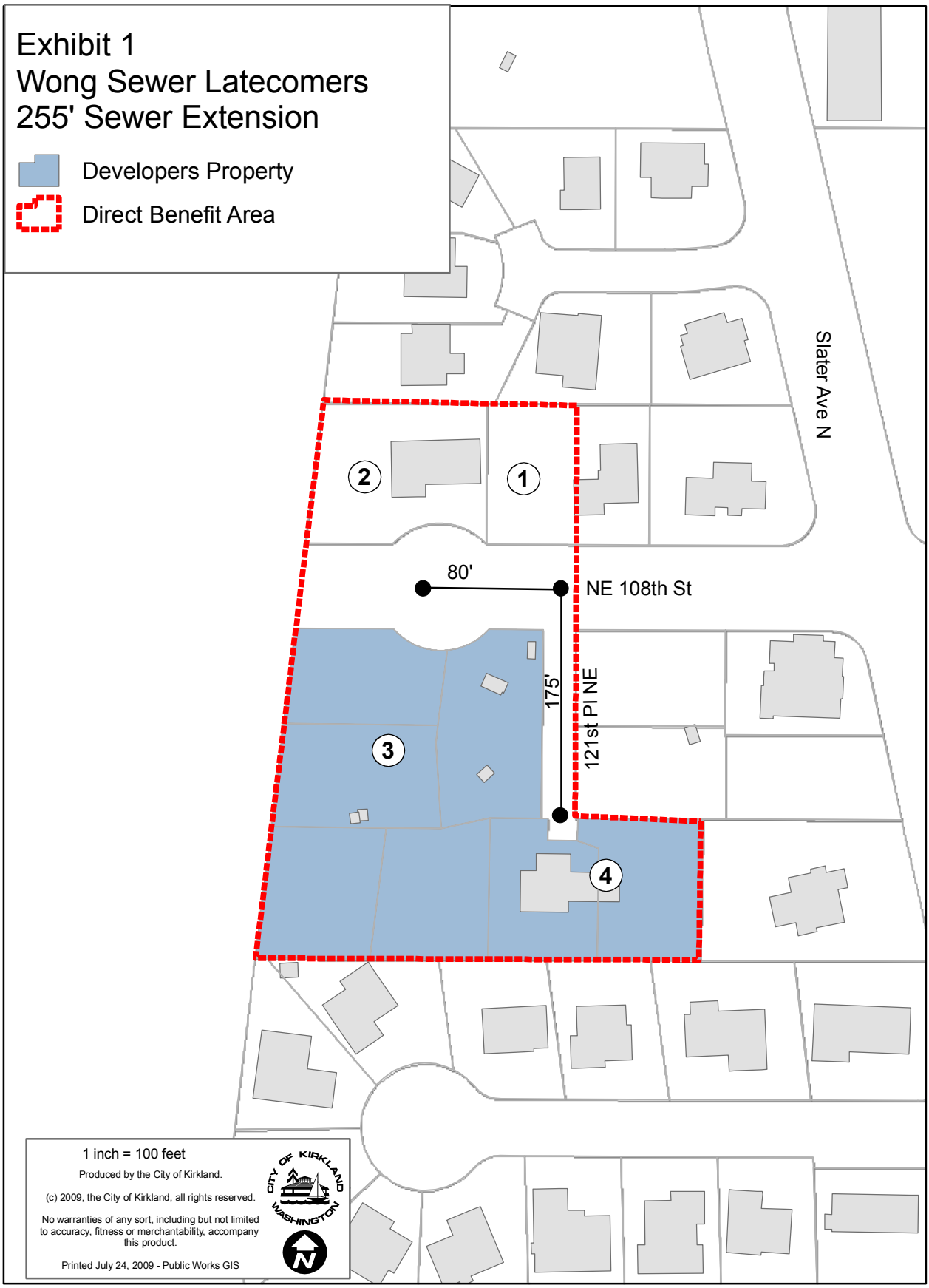


Exhibit 1
Wong Sewer Latecomers
255' Sewer Extension
Developers Property
Direct Benefit Area
Slater Ave N
NE 108th St
121st Pl NE
80'
175'
1
2
3
4
1 inch = 100 feet
Produced by the City of Kirkland.
(c) 2009, the City of Kirkland, all rights reserved.
No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.
Printed July 24, 2009 - Public Works GIS
CITY OF KIRKLAND WASHINGTON
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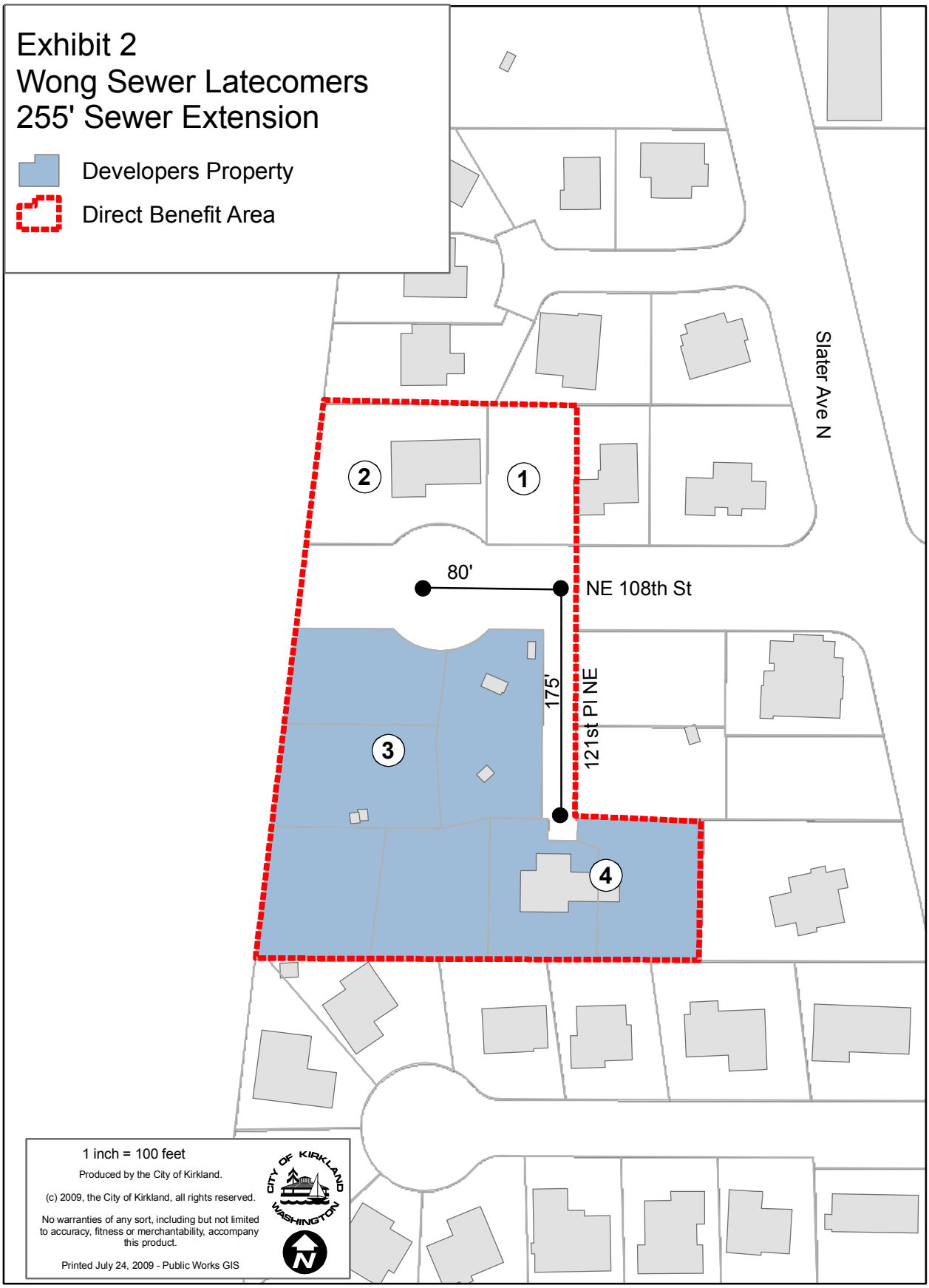
Exhibit 2
Wong Sewer Latecomers
255' Sewer Extension
Developers Property
Direct Benefit Area
Slater Ave N
NE 108th St
121st Pl NE
80'
175'
1
2
3
4
1 inch = 100 feet
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CITY OF KIRKLAND WASHINGTON

Wong Sewer Latecomers

EXHIBIT 3

Ref No.	Tax/Parcel No.	Owner/Address	Abbreviated Legal Description	Lots	Cost per Lot	Total Cost	Reimburse Developer @ 85%	Reimburse City @ 15%
1	389310-1041	Vera E. Lillig 12114 NE 108th St Kirkland, WA 98033	Kirkland-Juanita Acre TRS Lot 2 of KCSP #878150 AF # 7906140833 SD Plat DAF - POR Beg at SE Cor of 53 TH N 00-17-14 W 100 ft to TPOB TH S 89-10-41 W 286.9 ft m/l TH S 05-42-00 W 100.7 ft to S LN SD TR TH Ely Alg SD S LN 371.1 ft to NXN of Wly LN CO RD Nwly Alg SD LN 103.2 ft TAP 45.8 ft N 89-10-41 E of TPOB TH Wly to TPOB.	0.5	$6,334.25	$3,167.13	$2,692.06	$475.07
2	389310-1043	Nooshin Khalili 12106 NE 108th Pl Kirkland, WA 98034	Kirkland-Juanita Acre TRS Lot 3 of KCSP #878150 AF # 7906140833 SD Plat DAF - POR Beg at SE Cor of 53 TH N 00-17-14 W 100 ft to TPOB TH S 89-10-41 W 286.9 ft m/l TH S 05-42-00 W 100.7 ft to S LN SD TR TH Ely Alg SD S LN 371.1 ft to NXN of Wly LN CO RD Nwly Alg SD LN 103.2 ft TAP 45.8 ft N 89-10-41 E of TPOB TH Wly to TPOB.	1.0	$6,334.25	$6,334.25	$5,384.12	$950.14
			TOTALS	**1.5**	**$12,668.51**	**$9,501.38**	**$8,076.17**	**$1,425.21**

Cost of Sewer Construction	
Construction Cost	$48,010.66
Permit Fees	$5,830.50
Total	$53,841.16

Calculation of the Cost Per Lot

100% of Total Cost Shall be borne by the Total Number of Lots (TNL)

Therefore the following is the cost per lot:

(Total Cost/TNL)) = $53,814.16/ 8.5 = $6,334.25

Wong Developers Assessment Roll

Exhibit 4

Ref No.	Tax/Parcel No.	Owner/Address	Abbreviated Legal Description	Total Lots	Cost per Lot	Total Cost
3	663990-0014	Wong Kirkland LLC 21012 108th Ave SE Kent, WA 98051	Parishs Garden TRS Unrec Lots 1 - 5 Kirkland SPL05-00006 Rec# 20070109900008 SD SP Lying Ely of SR 405 Sly of NE 108th St & Nly of Slater manor Plat in NE 1/4 of SW 33-26-05 AKA Lot 4 KC SP 1079023 Rec# 8010020683	5	$6,334.25	$31,671.27
4	663990-0012	Merit Homes Inc. 7545 126th Ave NE Kirkland, WA 98033	Parishs Garden TRS Unrec PP Act 39954532 Mobile Home Lot 3 of KCSP #1079023 Rec #8010020683 SD Plat DAF - Beg N 88-06-00 E 30 ft & S 01-23-45 E 30 ft of NW Cor of NE 1/4 of SW 1/4 of Sec 33-26-05 TH S 01-23-45 E 232.5 FT TH N 88-06-00 E 781.82 ft to W MGN of Blvd TH Nly Alg SD W MGN 233.46 ft to PT N 88-06-00 E from Beg TH S 88-06-00 W 727.21 ft to Beg Less POR Conv to State of Washington for hwy under AF #4597190 AKA TR 1 Parishs Garden TRS Unrec	2	$6,334.25	$12,668.51
			TOTALS	**7**	**$12,668.51**	**$44,339.78**

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587-3800
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: John A. Burkhalter, P.E., Senior Development Engineer
Rob Jammerman, Development Engineering Manager
Daryl Grigsby Public Works Director

Date: July 10, 2009

Subject: CITY COUNCIL RESOLUTION APPROVING A WATER FACILITY AGREEMENT WITH WONG KIRKLAND LLC

RECOMMENDATION:

It is recommended that the City Council approve the attached resolution authorizing the City Manager to execute a Water Facility Agreement with Wong Kirkland LLC

POLICY IMPLICATIONS:

The City of Kirkland is authorized pursuant to Chapter 35.91 RCW to enter into a Water Facility Agreement (also known as a Water Latecomers' Agreement) allowing developers to receive compensation for the installation of public water main line extensions, i.e. persons connecting to the extensions are required to pay a portion of the construction costs as a condition of connection. These latecomers' fees are calculated based on the number of connections of the property being served: dividing the total number of connections into the total cost of the water extensions yields the latecomers' charge per connection. Fifteen percent (15%) of the water latecomers' fee is retained by the City of Kirkland for administering the agreement and eighty-five percent (85%) of the fee is returned to the developer. The agreement is valid for 15 years and is administered by the Department of Public Works.

BACKGROUND DISCUSSION:

Wong Kirkland LLC installed approximately 370 lineal feet of 8 inch water main line extension along NE 108th St. and 160 lineal feet of 4 inch water main line along 121st Pl. NE. This public water main extension provides water service to various parcels. A Water Facility Agreement has been filed with the Department of Public Works to receive reimbursement for the water. Any property owner applying for connection to the water main will be required to pay $5,928.72 per connection plus normal City of Kirkland water connection fees.

Upon approval of the resolution and subsequent signing by the City Manager, the agreement will be sent to King County for recording. Finally, notice of latecomers' connection charges will be sent to each property owner included in the agreement.

CC: City Attorney

RESOLUTION R-4774

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A WATER FACILITY AGREEMENT WITH WONG KIRKLAND LLC AND AUTHORIZING THE CITY MANAGER TO SIGN SAID AGREEMENT ON BEHALF OF THE CITY OF KIRKLAND.

WHEREAS, the improvement of public health is furthered by adequate water systems; and

WHEREAS, the Washington State Legislature enacted the Municipal Water and Sewer Facilities Act (RCW 35.91.010 et seq.) in furtherance of this goal and authorizing municipalities to enter into agreements of this nature; and

WHEREAS, The City of Kirkland concludes entering into this agreement will promote this goal; and

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City the Water Facility Agreement between the City and Wong Kirkland LLC. A copy of this Agreement is attached as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____,2009

_____
MAYOR

Attest:

_____
City Clerk

ATTACHMENT 1

WATER FACILITIES AGREEMENT PURSUANT TO CHAPTER 35.91 REVISED CODE OF WASHINGTON

THIS AGREEMENT made and entered into this day, pursuant to RCW Chapter 35.91, between the City of Kirkland, a non-charter optional code city, hereinafter referred to as "City" and Wong Kirkland LLC hereinafter referred to as "Developer":

WITNESSETH

Section 1. Developer does hereby agree to construct, at its sole expense, the WATER FACILITIES described in EXHIBIT 1, attached hereto and by this reference incorporated herein, all in accordance with the specifications and standards of the City of Kirkland pertaining to water construction and installation.

Section 2. Upon completion of said water facilities to the satisfaction of the Kirkland Director of Public Works, and acceptance thereof by the City of Kirkland, said facility shall become the property of the City of Kirkland and a part of its water system with full power of the City of Kirkland to charge for its use such water connection and service rates and charges as the City of Kirkland may be authorized by law to establish, and all further maintenance operation costs of said facility shall be borne by the City of Kirkland.

Section 3. The benefit area to be served by said facility is described and designated on EXHIBIT 2 attached to this agreement and by this reference incorporated herein. Said Exhibit is a map showing the total benefit area and delineating thereon that portion of the benefit area owned by Developer. EXHIBIT 3 attached to this agreement and by this reference incorporated herein is a listing of each lot or parcel within the benefit area including the lot or parcel legal description and the lot of parcel's "pro rata share" of the cost of construction of the water facilities. EXHIBIT 4 identifies those lots or parcels owned by Developer and not subject to the provisions of Section 4 of this agreement.

Section 4. Any owner of any real property located within the benefit area (other than those properties designated in EXHIBIT 2 as Developer's properties) who shall hereafter tap into or use said water facility (including not only connecting directly into, but also to users connecting laterals or branches connected thereto) shall, prior to such tap in or use, pay to the City of Kirkland, in addition to any connection or other change required by the ordinances of the City of Kirkland to be paid upon connecting to a water facility, their fair pro rata share of the cost of construction of said facility.

Section 5. For the purposes of determining such "fair pro rata share" the cost of construction of said facility shall be considered to be $5928.72, provided, however, the City may adjust said cost to reflect the true and final cost of construction of said facility. The "FAIR PRO RATA SHARE" of the cost of construction as designated on EXHIBIT 3, and is hereby approved by the City of Kirkland.

Section 6. Within sixty (60) days after receipt by the City of any "fair pro rata share," the City shall disburse said sum, less fifteen (15) percent thereof to be retained by the City of Kirkland to cover costs of administering the provisions of this agreement, to Developer at 16541 Redmond Wy #273 until such time as Developer shall have received the total sum of $20,157.64, or the expiration of fifteen (15) years from the date of this agreement, whichever event shall first occur. Thereafter, any amount of charge made or received by the City to tap into or use said facility shall be retained by the City. It shall be the duty of the Developer to advise the City of any change in the Developer's mailing address.

Section 7. The provisions of this agreement shall not be effective as to any owner of real property designated in EXHIBIT 3, other than Developer, until such time as this agreement shall have been recorded in the Office of the King County Department of Elections and Records and then only as to such real property owners as tap into or connect into said facility subsequent to such recording. City shall not be required to disburse any "fair pro rata share" to Developer which may not be lawfully collected from such real property owner at the time said real property taps into or connects to said facility.

Section 8. In the event the cost, or any part thereof, of a or water improvement, whether local or general, is or will be assessed against the owners of real property and such improvement will be connected into or will make use of the facility constructed pursuant to this agreement and the cost thereof was not contributed to by the owners of said real property, there shall be included in the Engineer's estimate for the hearing or any such improvement, separately itemized, and in such assessments, a sum equal to the amount provided for in this agreement as a fair pro rata share due from such owners in accordance with the provisions of this agreement.

Section 9. No person, firm, or corporation, other than Developer's, as to the real property identified as owned by Developer in EXHIBIT 4 hereto, shall be granted a permit or authorized to tap into or use said facility or extensions thereof without first paying their fair pro rata share as herein provided.

DATED at Kirkland, Washington, this _____ day of _____, _____.

CITY OF KIRKLAND:

_____

CITY MANAGER FOR THE City of Kirkland KIRKLAND WHO IS AUTHORIZED TO EXECUTE THIS AGREEMENT ON BEHALF OF SAID CITY BY VIRTUE OF RESOLUTION NO. _____

DEVELOPER:

_____

By: _____

By: _____

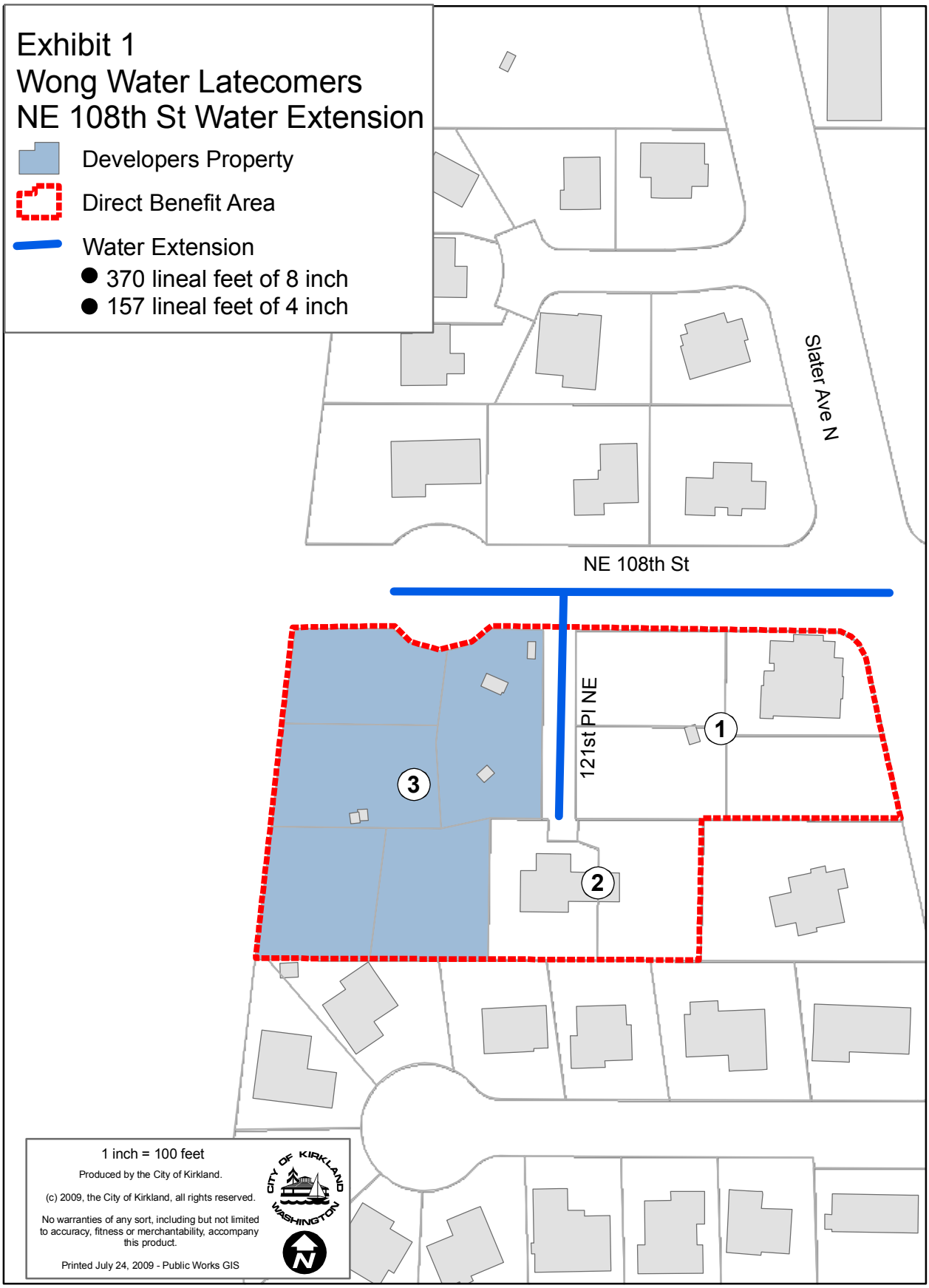
Exhibit 1
Wong Water Latecomers
NE 108th St Water Extension
Developers Property
Direct Benefit Area
Water Extension
370 lineal feet of 8 inch
157 lineal feet of 4 inch
Slater Ave N
NE 108th St
121st Pl NE
1
2
3
1 inch = 100 feet
Produced by the City of Kirkland.
(c) 2009, the City of Kirkland, all rights reserved.
No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.
Printed July 24, 2009 - Public Works GIS
CITY OF KIRKLAND WASHINGTON

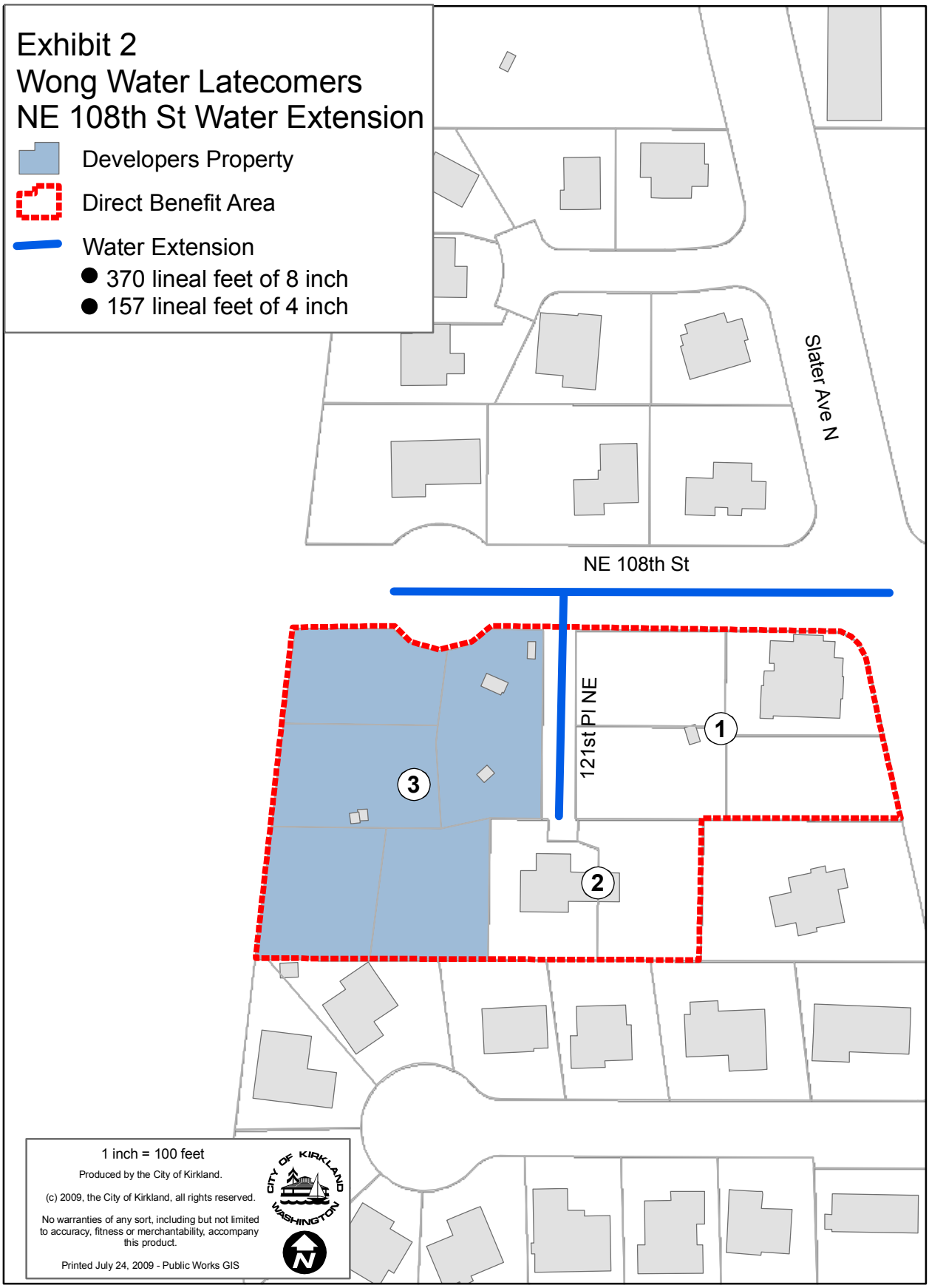
Exhibit 2
Wong Water Latecomers
NE 108th St Water Extension
Developers Property
Direct Benefit Area
Water Extension
370 lineal feet of 8 inch
157 lineal feet of 4 inch
Slater Ave N
NE 108th St
121st Pl NE
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Printed July 24, 2009 - Public Works GIS
CITY OF KIRKLAND WASHINGTON

Wong Water Latecomers

EXHIBIT 3

Ref No.	Tax/Parcel No.	Owner/Address	Abbreviated Legal Description	Total Connections	Cost per Connection	Total Cost	Reimburse Developer @ 85%	Reimburse City @ 15%
1	663990-0010	Samira Samimi 12209 NE 108th St Kirkland, WA 98033	Parishs Garden TRS Unrec Lot 1 of KCSP #1079023 Rec #8010020683 SD Plat DAF - Beg N 88-06-00 E 30 ft & S 01-23-45 E 30 ft of NW Cor of NE 1/4 of SW 1/4 of Sec 33-26-05 TH S 01-23-45 E 232.5 FT TH N 88-06-00 E 781.82 ft to W MGN of Blvd TH Nly Alg SD W MGN 233.46 ft to PT N 88-06-00 E from Beg TH S 88-06-00 W 727.21 ft to Beg Less POR Conv to State of Washington for hwy under AF #4597190 AKA TR 1 Parishs Garden TRS Unrec	4	$5,928.72	$23,714.87	$20,157.64	$3,557.23
			TOTALS	**4.0**	**$5,928.72**	**$23,714.87**	**$20,157.64**	**$3,557.23**

Cost of Water Construction

Construction Cost	$61,236.89
Permit Fees	$3,979.00
Total	$65,215.89

Calculation of the Cost Per Connection

100% of Total Cost Shall be borne by the Total Number of Connections (TNC)

Therefore the following is the cost per connection:

(Total Cost/TNC)) = $65,215.89/ 11 = $5,928.72

Wong Developer's Assessment Roll

Exhibit 4

Ref No.	Tax/Parcel No.	Owner/Address	Abbreviated Legal Description	Total Connections	Cost per Connection	Total Cost
2	663990-0012	Merit Homes Inc. 7545 126th Ave NE Kirkland, WA 98033	Parishs Garden TRS Unrec PP Act 39954532 Mobile Home Lot 3 of KCSP #1079023 Rec #8010020683 SD Plat DAF - Beg N 88-06-00 E 30 ft & S 01-23-45 E 30 ft of NW Cor of NE 1/4 of SW 1/4 of Sec 33-26-05 TH S 01-23-45 E 232.5 FT TH N 88-06-00 E 781-82 ft to W MGN of Blvd TH Nly Alg SD W MGN 233.46 ft to PT N 88-06-00 E from Beg TH S 88-06-00 W 727.21 ft to Beg Less POR Conv to State of Washington for hwy under AF #4597190 AKA TR 1 Parishs Garden TRS Unrec	2	$5,928.72	$11,857.43
3	663990-0014	Wong Kirkland LLC 21012 108th Ave SE Kent, WA 98051	Parishs Garden TRS Unrec Lots 1 - 5 Kirkland SPL05-00006 Rec# 20070109900008 SD SP Lying Ely of SR 405 Sly of NE 108th St & Nly of Slater manor Plat in NE 1/4 of SW 33-26-05 AKA Lot 4 KC SP 1079023 Rec# 8010020683	5	$5,928.72	$29,643.59
			TOTALS	**7**	**$11,857.43**	**$41,501.02**

CITY OF KIRKLAND
City Attorney's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Oskar Rey, Assistant City Attorney

Date: August 3, 2009

Subject: Amending the Title of KMC 11.80.100 Regarding Business Activities in Parks

RECOMMENDATION:

Staff recommends that the Council adopt the attached Ordinance amending the title of Kirkland Municipal Code ("KMC") Section 11.80.100 regarding business activities in City parks.

BACKGROUND:

At its July 7, 2009 meeting, the Council adopted Ordinance 4197, which amended KMC 11.80.100 relating to business activities in parks. In the course of its deliberations, the Council noted that the title of KMC 11.80.100 had not been amended to reflect the changes to the text of that regulation. The attached ordinance would change the title of KMC 11.80.100 from "Selling refreshments and merchandise" to "Business activities in parks."

ORDINANCE 4203

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO BUSINESS ACTIVITY IN CITY PARKS AND AMENDING THE TITLE OF KIRKLAND MUNICIPAL CODE SECTION 11.80.100.

The City Council of the City of Kirkland do ordain as follows:

Section 1. The Title of Kirkland Municipal Code Section 11.80.100 is hereby amended to read as follows:

11.80.100 ~~Selling refreshments or merchandise~~Business activity in parks.
It is unlawful to conduct any type of business activity in any park without first entering into a concession contract according to the rules and regulations of the park and recreation department therefor with the city. As used in this Section, "business activity" shall include, but not be limited to the following:

(1) Sale of food, beverages or merchandise;
(2) Providing classes or other forms of instruction for a fee or other valuable consideration; or
(3) Use of park facilities for advertising any business, product or service.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

CITY OF KIRKLAND
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: August 20, 2009

Subject: 2010 – 2015 TRANSPORTATION IMPROVEMENT PROGRAM (TIP) - SET PUBLIC HEARING DATE

RECOMMENDATION:

It is recommended that the City Council establish September 15, 2009 as the date to hold a public hearing on the proposed 2010-2015 TIP.

BACKGROUND DISCUSSION:

The purpose of the hearing is to provide an opportunity for the public to comment and provide input on City transportation projects. Adoption of a six-year TIP is in accordance with RCW 35.77.010 and 47.26.210 and is used to designate transportation projects which are eligible for federal, state and/or local funding.

For the most part, the projects that are identified in the 2010-2015 TIP mirror the transportation element of the 2009-2014 CIP (revised) with projects identified in 2015 as continuation of 2014 projects or annual programs. The TIP also includes projects that are identified in the 117 street operating fund (loop detector replacement and sidewalk repair, etc.).

The proposed 2010–2015 TIP is being presented to the Kirkland Transportation Commission on September 23, 2009.

CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Barry Scott, Purchasing Agent

Date: August 20, 2009

Subject: REPORT ON PROCUREMENT ACTIVITIES FOR COUNCIL MEETING OF SEPTEMBER 1, 2009

This report is provided to apprise the Council of recent and upcoming procurement activities where the cost is estimated or known to be in excess of $50,000. The "Process" column on the table indicates the process being used to determine the award of the contract.

The City's major procurement activities initiated since the last report, dated July 9, 2009, are as follows:

	Project	Process	Estimate/Price	Status
1.	Everest Park Grandstand Project	Invitation for Bids	$350,000 - $450,000	Advertised on 8/25. Bid opening scheduled for 9/17.
2.	Janitorial Services Contract	Cooperative Purchase	$115,253.43* per year	Bids were solicited using Janitorial Services Contracting Program offered by the WA State Department of General Administration.

*Under our current contract, the City is paying approximately $172,815 per year, for normal janitorial services. So, the new contract should result in considerable savings for the City. With the new contract, the City will be purchasing its own "green" cleaning supplies from the State Contract supplier rather than relying on the janitorial service to provide these supplies. It is estimated that the annual expenditure for the janitorial supplies will be approximately $3,100.

Please contact me if you have any questions regarding this report.

CITY OF KIRKLAND
City Manager's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Marilynne Beard, Assistant City Manager

Date: August 23, 2009

Subject: COUNCIL GOALS

RECOMMENDATION:

City Council continues their discussion of City Council goals and performance measures.

BACKGROUND DISCUSSION:

At the July 21 and August 4 Study Sessions, Council discussed performance measures for seven of the ten goal areas. The City Manager suggested that the Council continue their discussion during regular meetings, addressing one or two goals in each meeting. Staff recommends that Council discuss goals related to the remaining goals areas -- Parks and Community Services, Financial Stability, and Dependable Infrastructure.

An additional study was originally scheduled for September 1, however, it was rescheduled to September 15. Staff recommends that Council complete edits on the final three goal areas during the regular meeting on September 1 and discuss Council edits and notes from the July 21, August 4 and September 1 meetings at the September 15 Study Session. Notes from July 21 and August 4 Council meetings will be provided prior to the September 1st meeting.

V. Parks and Community Services

Value Statement: Kirkland values an exceptional park, open space and recreation system that provides a wide variety of opportunities aimed at promoting the community's health and enjoyment.

Goal: To provide recreational opportunities that enhance the health and wellness of the community.

Performance Measures:

Develop a funding plan to complete capital projects.
Maintain our current system.
Develop a funding plan to construct a Health and Wellness community center.
Support goals of environmental stewardship.

Possible Performance Measures Suggested by Departments:

- *Maintain the number of volunteers who participate in the restoration of natural areas within Kirkland parks.*
- *Expand the non-motorized trails within the park system by 1800 linear feet.*
- *90% of households will rate neighborhood park and recreation facilities as satisfactory or better.*
- *Offer a wide variety of recreation programs for all ages and abilities with a minimum of 2500 courses offered per year maintaining a rate of 17,000 enrollments.*

VII. Financial Stability

Value Statement: Citizens of Kirkland enjoy a high quality of core services that meet the community's priorities.

Goal Statement: Provide a sustainable level of core services that are funded from predictable revenue.

Performance Measures:
Credit rating.
Level of Rainy Day Fund.
Survey of citizen priorities.
Survey of citizen satisfaction with service levels.

Possible Performance Measures Suggested by Departments:

- *Maintain AAA credit rating*
- *Rainy Day Reserves funded at least 80% of target*
- *Obtain the Government Financial Officers Association (GFOA) award for the Comprehensive Annual Financial Report (CAFR) and budget document.*
- *Audits have no findings*

X. Dependable Infrastructure

Value Statement: Kirkland has a well-maintained and sustainable infrastructure.

Goal Statement: To provide and maintain a sustainable integrated infrastructure system.

Performance Measures:
Pavement condition index at 65% or higher.
Dollars invested per capita as compared to national benchmark
Number of claims due to failing infrastructure

Possible Performance Measures Suggested by Departments:

- *Attain Pavement Condition Index of 70% or higher for major and minor arterial streets*
- *Attain Pavement Condition Index of 65% or higher for collectors and neighborhood streets*
- *Sustain capital and reserve levels as determined by fiscal policies for adequate annual investment in utility infrastructure*
- *90% of respondents to survey are satisfied with the maintenance of active transportation facilities (bike lanes, ped flags, in-pavement lights, etc)*
- *Reduce number of water main failures caused by fatigue or age each year*

CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3225
www.ci.kirkland.wa.us

MEMORANDUM

To: **Dave Ramsay, City Manager**

From: **Joan Lieberman-Brill, AICP, Senior Planner**

Date: **August 19, 2009**

Subject: **BRIDLE VIEW ANNEXATION ORDINANCE ADOPTION (FILE ANNO7-00001)**

RECOMMENDATION

Adopt the proposed ordinance approving the Bridle View Annexation.

BACKGROUND DISCUSSION

On August 4, 2009 the City Council held a public hearing to consider the Bridle View Annexation and directed staff to bring back an ordinance approving the annexation and setting an effective date at a future meeting. Four people spoke at the hearing; three in favor of the annexation, and one expressing her concern that this annexation be regulated the same as the proposed Kingsgate, Juanita, and Finn Hill Annexation.

The proposed ordinance establishes an effective annexation date of October 2, 2009. This allows sufficient time for city staff to conduct an annexation census prior to the annexation effective date.

Following the August 4 Council meeting, the Cascade Water Alliance Board approved a resolution to eliminate capital facility charges for the Bridle View Annexation. Consequently, the annexation is now ready to be adopted.

The Council packet prepared for the August public hearing can be viewed at:
http://www.ci.kirkland.wa.us/Assets/City+Council/Council+Packets/080409/9a_PublicHearing.pdf

Cc:
Bridle View Annexation Committee
File ANN07-00001

ORDINANCE 4204

AN ORDINANCE OF THE CITY OF KIRKLAND ANNEXING PURSUANT TO RCW 35A.14.120 ET SEQ. CERTAIN UNINCORPORATED TERRITORY DESCRIBED IN THE PROPERTY OWNERS PETITION FOR ANNEXATION; PROVIDING FOR THE ASSUMPTION OF THE EXISTING INDEBTEDNESS; AND ZONING SAID TERRITORY IN ACCORDANCE WITH SECTION 10.45 OF ORDINANCE NO. 3719, AS AMENDED, THE KIRKLAND ZONING CODE.

Whereas, a Petition for Annexation (circulation of which was authorized pursuant to Kirkland Resolution No. 4749) signed by owners of not less than 60% in value of the property in the annexation area according to the assessed valuation for general taxation of the property described in said Petition has been filed with the City and found to be valid in form; and

Whereas, pursuant to State Law, said proposed annexation has been approved by the King County Boundary Review Board; and

Whereas, pursuant to RCE 35A.14.120 et seq., a public hearing on said proposed annexation was held before the City Council on August 4, 2009; and

Whereas, pursuant to the State Environmental Policy Act RCW 43.21C.222, annexations are exempt from SEPA; and

Whereas, the Kirkland City Council finds said proposed annexation to be within the public interest,

NOW, THEREFORE, be it ordained by the City Council of the City of Kirkland as follows:

Section 1. The unincorporated territory of King County, hereinafter described in Section 4, is hereby annexed to the City of Kirkland.

Section 2. Said territory shall be subject to the existing indebtedness of the City of Kirkland as of the effective date of this annexation ordinance.

Section 3. Said territory shall be zoned in accordance with Section 10.45 of the Kirkland Zoning Code, Ordinance 3719 as amended, which provides that upon annexation to the City, property will be deemed to be zoned with a classification the same as, or as nearly comparable as possible, with the classification that

the property was zoned immediately prior to annexation. Pursuant to said section of the Kirkland Zoning Code, the zoning for the annexed territory is hereby declared to be as set forth in this section and the Director of the Department of Planning and Community Development is hereby directed to make the necessary modifications and extensions of the Zoning Map of the City of Kirkland to so reflect. The real property described in Section 4 shall, under the Zoning and Land Use Policies and Regulations of the City of Kirkland, be zoned RSX 35.

Section 4. The territory annexed to the City of Kirkland by this ordinance is depicted on Exhibit A and is described as follows:

Bridle View Annexation Legal Description

That portion of the southwest quarter of Section 10, Township 25 North, Range 5 East, Willamette Meridian, in King County, Washington and further described as follows:

Beginning at the southwest corner of Section 10, Township 25 North, Range 5 East, Willamette Meridian, in King County, Washington;

Thence easterly, along the south line of said Section 10, a distance of 1312.50 feet, more or less, to the east line of the west half of the southwest quarter of said Section 10, also being the Redmond City Limits as established by Redmond Ordinance #309;

Thence northerly, along said east line, to the easterly extension of the north line of the Plat of Bridle View, as recorded in Volume 74 of Plats, on Page 59, records of King County, Washington, also being the Redmond City Limits as established by Redmond Ordinance #967;

Thence westerly, along said easterly extension, and the north line thereof, to the east line of the west 660 feet of the southwest quarter of said Section 10; also being the Redmond City limits as established by Redmond Ordinance #1578

Thence continuing westerly, along said north line and city limits, a distance of 90.50 feet.

Thence northerly, along said city limits, to the south margin of the Redmond City Limits as established by Redmond Ordinance # 2285, also being the south margin of the widened Old Redmond Rd.;

Thence westerly, along said south margin and its westerly extension to the west line of said Section 10;

Thence southerly, along said west line, to the true point of beginning.

EXCEPT that portion of the 132nd Avenue NE right-of-way as previously annexed under City of Kirkland Ordinance # 3064.

Section 5. The Director of Administration and Finance (ex officio City Clerk) is hereby directed to file certified copies of this annexation ordinance with the King County Council and with the State of Washington Office of Financial Management, together with such additional offices as may be required by law or regulation.

Section 6. This ordinance and annexation shall be effective upon the effective date of this ordinance which shall be October 2, 2009, which is more than 5 days after the date of passage of this ordinance and publication as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 1st day of September, 2009.

Signed in authentication thereof this 1st day of September, 2009.

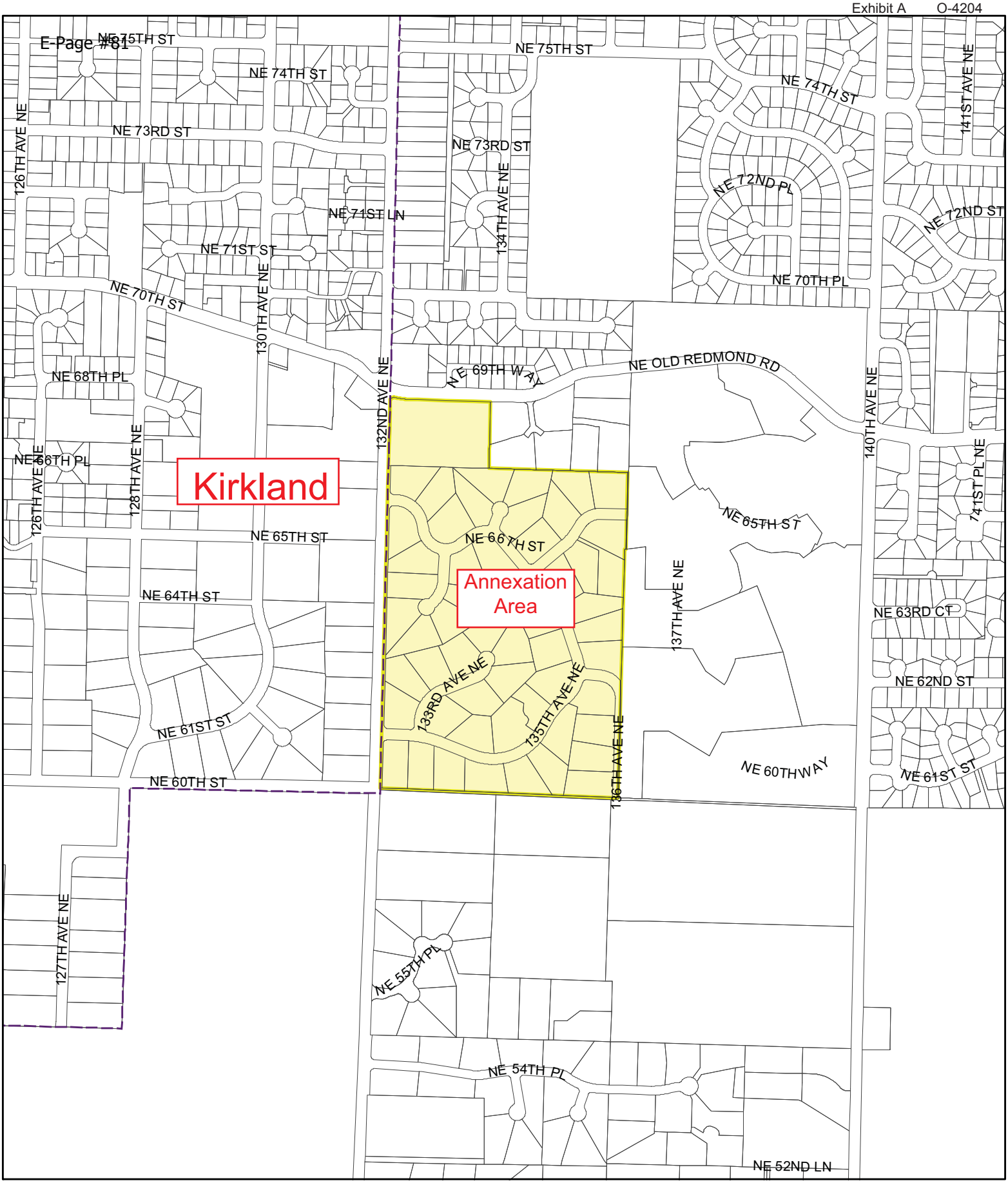
_____
Mayor

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney



Overview Map

Kirkland City Limits

parcel

Annexation Boundary

Produced by the City of Kirkland.
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No warranties of any sort, including
but not limited to accuracy, fitness or
merchantability, accompany this product.

1:8,000

PUBLICATION SUMMARY
OF ORDINANCE NO. 4204

AN ORDINANCE OF THE CITY OF KIRKLAND ANNEXING PURSUANT TO RCW 35A.14.120 ET SEQ. CERTAIN UNINCORPORATED TERRITORY DESCRIBED IN THE PROPERTY OWNERS PETITION FOR ANNEXATION; PROVIDING FOR THE ASSUMPTION OF THE EXISTING INDEBTEDNESS; AND ZONING SAID TERRITORY IN ACCORDANCE WITH SECTION 10.45 OF ORDINANCE NO. 3719, AS AMENDED, THE KIRKLAND ZONING CODE.).

SECTION 1. Identifies the location of the annexation area in King County as further described in Section 4 and annexes that area.

SECTION 2. Provides that the annexation area will assume the existing indebtedness of the City of Kirkland upon the annexation effective date..

SECTION 3. Provides that the annexation area will be zoned RSX 35, the most comparable classification that the property was zoned immediately prior to annexation.

SECTION 4. Provides the legal description of the annexation area.

SECTION 5. Directs the Director of Finance and Administration through the City Clerk to file certified copies of the annexation ordinance with the King County Council, the State of Washington Office of Financial Management, and other entities as required by State law.

SECTION 6. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Kirkland Municipal Code 1.08.017 and establishes the effective date as October 2, 2009 which is at least five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the ____ day of _____, 20__.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

_____
City Clerk

CITY OF KIRKLAND
City Manager's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Marilynne Beard, Assistant City Manager

Date: August 25, 2009

Subject: POTENTIAL ANNEXATION UPDATE

RECOMMENDATION:

City Council receives an update on annexation work items and approves a letter to King County requesting transition funding.

BACKGROUND DISCUSSION:

The purpose of this memo is summarize activities that have taken place since the last update and to present additional information on four policy issues.

On July 9, 2009 the Boundary Review Board approved the City's annexation proposal. The time frame for filing an appeal to their decision in Superior Court ended on August 10, 2009 and no appeal was filed. At their July 21 meeting, the City Council approved a resolution requesting that the King County Council place a measure on the November 3 ballot regarding the question of annexation. At the July 21 meeting, the City Council also approved an ordinance establishing zoning for the annexation area which will be included as a component of the ballot measure in November. The City Council's request was approved by the King County Council at their July 27 meeting and so the measure will be placed on the November 3 ballot.

Committees were appointed to write pro and con statements for the annexation ballot measure which will appear in the voters' pamphlet. On August 4, Council reviewed the proposed explanatory statement for the voters' pamphlet. A number of annexation-related issues are being considered simultaneously to this process. Staff will be preparing an informational mailer for the annexation area residents providing information about the potential annexation. The mailer will be reviewed by legal staff and the Public Disclosure Commission before it is presented to the public.

The remainder of this memo will address four specific areas of study – fire and emergency medical service transition, provision of solid waste and recycling services in the PAA, further consideration of a possible effective date and a request to King County for transition funding.

Fire and Emergency Medical Transition

City staff is continuing to meet with the Woodinville Fire and Life Safety Fire District (WFLS) regarding a plan for service transition should the annexation be approved by voters. Two staff groups with representatives from the District and the City are meeting on a regular basis to identify service delivery options and related issues and to develop financial data that would be needed for an interlocal agreement. Staff from the City and WFLS jointly selected Berk and Associates to assist with development of financial information.

The District and the City are also engaged in a voluntary mediation process to facilitate discussion of the potential transition. Two mediation sessions were held, one on July 12 and another on August 17. In the interim, staff work continues on data development. Agreement was reached during mediation as to work products that would be completed before the next scheduled mediation session. The mediation services are being provided by the King County Dispute Resolution Center (DRC) under an existing interlocal agreement between the City and the DRC.

The City Council also requested information about the City's obligation under new legislation to maintain existing service levels in the PAA. The legislation cited is SSB 5808 which provides for an interlocal method of annexation, potential transfer of fire service employees from districts to the annexing city and provision for continuity of service levels during transition. The specific section related to maintenance of service levels in code cities is shown below:

> *NEW SECTION.* ***Sec. 10.*** *A new section is added to chapter 35A.14 RCW to read as follows:*
> *(1) If any portion of a fire protection district is proposed for annexation to or incorporation into a code city, both the fire protection district and the code city shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporation at the earliest reasonable opportunity.*
> *(2) An eligible employee may transfer into the civil service system of the code city fire department by filing a written request with the code city civil service commission and by giving written notice of the request to the board of commissioners of the fire protection district. Upon receipt of the request by the civil service commission, the transfer of employment must be made. The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the code city fire department when appropriate positions become available. Employees who are not immediately hired by the code city shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.*
> *(3)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:*
> *(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If*

the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;
(ii) Retirement, vacation, sick leave, and any other accrued benefit;
(iii) Promotion and service time accrual; and
(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.
(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.
(4) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection
(3)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.
(5) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred.

NEW SECTION. ***Sec. 11.*** *A new section is added to chapter 35A.14 RCW to read as follows:*
Upon the written request of a fire protection district, code cities annexing territory under this chapter shall, prior to completing the annexation, issue a report regarding the likely effects that the annexation and any associated asset transfers may have upon the safety of residents within and outside the proposed annexation area. The report must address, but is not limited to, the provisions of fire protection and emergency medical services within and outside of the proposed annexation area. A fire protection district may only request a report under this section when at least five percent of the assessed valuation of the fire protection district will be annexed.

NEW SECTION. ***Sec. 12.*** *A new section is added to chapter 35A.92 RCW to read as follows:*
Code cities conducting annexations of all or part of fire protection districts shall, at least through the budget cycle, or the following budget cycle if the annexation occurs in the last half of the current budget cycle, in which the annexation occurs, maintain existing fire protection and emergency services response times in the newly annexed areas consistent with response times recorded prior to the annexation as defined in the previous annual report for the fire protection district and as reported in RCW 52.33.040. If the code city is unable to maintain these service levels in the newly annexed area, the transfer of firefighters from the annexed fire protection district as a direct result of the annexation must occur as outlined in section 10 of this act.

The legislation requires the City to continue to meet existing response times provided by the existing fire district through the term of the City's budget cycle or provide for a transfer of district employees. Practically speaking, the City has already agreed in principle to hiring any Woodinville firefighters that may be laid off as a result of the annexation. The number of new firefighters budgeted in the annexation model (9 FTE) is more than the number of firefighters

estimated by Woodinville to be impacted by the annexation (6-8 FTE). The City also plans to maintain or improve response times and several service delivery models are being explored with Woodinville to assure response times are met. Further interpretation has been requested from the Municipal Research and Services Center regarding the requirements of this new law.

The City has made every effort to maintain open lines of communications with the district to develop a workable and financially sustainable service transition recommendation. Woodinville district staff has been most helpful in these discussions and we anticipate continued productive planning efforts.

Solid Waste and Recycling Services

A staff subcommittee is working with the City's solid waste contractor regarding transition of solid waste disposal and recycling services. Transition of solid waste services is governed in part by State law as well as contractual provisions in agreements between the City and its waste hauler. There are a number of complex legal, operational and policy issues related to solid waste services.

- One of the policy issues relates to the prohibition against self-hauling garbage within the city limits (also called "mandatory garbage" because the prohibition effectively requires all residents and businesses to pay for solid waste and recycling services). Under King County, PAA residents are not required to subscribe to curbside pick-up but may self-haul to transfer stations. Approximately 10% of PAA residents currently self-haul.

- Another issue is the transition from the current hauler for the area (Allied Waste) and the City's exclusive waste hauler (Waste Management). There will be a need for the City's hauler to "ramp up" to provide service to the PAA including acquisition of new equipment, hiring new personnel and establishing new accounts.

- Finally, there is an issue regarding customer billing services and a decision as to whether the City wants to continue to bill for solid waste and recycling services on the bimonthly utility bill or have the solid waste contractor provide billing services for all City residents (both for the existing city customers and new PAA customers).

Prior to bringing a discussion and recommendation the City Council, the staff needs to fully explore the legal and service ramifications of the City's policy choices with regard to solid waste service transition and better understand Waste Management's concerns about assuming responsibility for the area.

Effective Date of Annexation

At the June 16 Council study session, staff presented a discussion regarding possible effective dates for annexation. The two driving factors considered in the staff analysis were financial/cash flow impacts and the time frame needed to hire and train police officers to serve the area. If PAA residents vote to annex, the City Council is required to establish an effective date for annexation following the certification of the election results in late November or early December.

An additional factor raised by a resident of the PAA (Toby Nixon) relates to the impact on the eligibility of PAA residents to file for the City Council election. The June 16 study session focused on two possible effective dates – April 1 and July 1, 2011. Because the July 1 effective date creates a slightly better financial outcome, the Council indicated a preference for that date. Mr. Nixon asked for clarification with regard to the relationship between the effective date and the candidate filing period since 2011 will be a City Council election year. The filing period will be in early June. If the effective date is not until July 1, PAA residents will not be eligible to file for election. For this reason, Mr. Nixon asked City Council to reconsider its preferred effective date – changing it to April 1 – in order to allow PAA residents to be eligible to file for the 2011 City Council election.

Funding Request from King County

Several years ago, the City requested funding assistance from King County to help defray the transition costs of annexation. The County offered the City a total of $1.5 million in County General Fund incentive funding, $500,000 in street drainage funds and $500,000 in Real Estate Excise Tax for parks capital needs. The annexation incentive fund of $10 million has since been dispersed and any remaining amount was reappropriated for other purposes. Nonetheless, the City Council may still want to request assistance from King County to assist with transition services, projects or costs. Although the County's financial situation is dire, there may be uncommitted cash resources, particularly from special purpose (i.e. capital) funding sources that may be available. The attached draft letter includes a request for funding of pre-annexation costs as well as a request to complete all planned and funded capital projects in the PAA. After Council review, the letter (as edited) can be forwarded to King County. Any funding assistance would be secured through an interlocal agreement between the City and King County.

September 2, 2009 **D R A F T**

The Honorable Kurt Triplett
King County Executive
701 Fifth Avenue Ste 3210
Seattle, WA 98104

Dear Executive Triplett:

As you are aware, the Kirkland City Council has been actively pursuing the potential annexation of the three neighborhoods to our north. The City's potential annexation area (PAA) represents a major increase in population and land area and will require a significant investment of resources.

At their April 7, 2009 meeting, the City Council voted to proceed with filing an annexation proposal with the Boundary Review Board declaring our intent to annex Kirkland's PAA and on July 9, 2009 the Boundary Review Board approved the City's annexation proposal. At their July 21 meeting, the City Council approved a resolution requesting that the King County Council place a measure on the November 3 ballot regarding the question of annexation and the King County Council approved Kirkland's request.

With the decision to proceed with annexation vote, the City of Kirkland would like to request a financial offer letter outlining the County's commitment to provide assistance to Kirkland's annexation efforts. We cannot emphasize enough the importance of a partnership approach to the annexation issue. Kirkland's PAA is one of the largest remaining unincorporated urban areas in King County. The size and scope of Kirkland's PAA presents significant start-up and transition challenges. The City is undertaking a thorough operational planning effort to ensure a smooth transition, and we appreciate the continued assistance that your staff has provided during this planning phase. We will need the County as a strong financial partner if citizens in the PAA vote to proceed with annexation.

The City is aware of the County's financial challenges. Kirkland faces similar challenges. We understand that annexation of large unincorporated urban areas is one of the solutions to the County's budget problem. The City is looking for any kind of financial or in-kind assistance that can be provided during the transition phase of the annexation.

Infrastructure Funding Needs

Previously, the City identified over $17.8 million in unfunded capital projects in the PAA that were of concern including road and surface water projects. Recognizing the County's current financial difficulties, the City understands that funding for all of these projects is unrealistic. We do believe that it is the County's responsibility to complete projects that are currently funded in the County's Capital Improvement Program. In light of the County's current plans to address some of these needs, we request confirmation of the County's commitment to complete its

currently funded transportation and surface water projects in the annexation area. The City requests assurance that these projects will be complete before the potential annexation date.

The City also requests consideration of providing capital funding from dedicated sources as a means to address future capital needs. Special purpose reserves such as impact fees, real estate excise tax, road funds and surface water reserves could be transferred to the City to the extent that those revenues were raised from the annexation area.

Transition Funding

In order to provide a smooth transition to service delivery in the annexation area, the City will need to begin hiring new staff prior to the effective date of annexation and prior to receiving revenue from the area. Some services will be phased in as resources become available to the City. However, public safety services are essential, and the City will be staffing up to be prepared to provide police service on the effective date of annexation. State annexation funding will be accessed to defray some of these costs; however, in order to maximize the availability of state funding, the City will need to be cautious about accessing the funds too quickly. Our 2010 funding need for Public Safety alone is $1.33 million. We are requesting any assistance possible from King County to assist in the transition process including General Fund contributions and/or transfer of assets such as surplus properties that do not have operational.

As you know, the City Council carefully scrutinized this annexation because of the magnitude of the issues and its significance to the future of our community. The State of Washington is a critical partner in the annexation effort and the State's 10-year annexation financial assistance will help with essential transition funding if we move forward with annexation. We are hopeful that the County will be a financial partner in this mutual effort as well. Thank you for your consideration.

Sincerely,
Kirkland City Council

by James Lauinger, Mayor

cc: Metropolitan King County Councilmembers
ATTN: Thomas Bristow, Interim Chief of Staff
Saroja Reddy, Policy Staff Director
Anne Noris, Clerk of the Council
Frank Abe, Communications Director
Beth Goldberg, Deputy Director, Office of Management and Budget (OMB)
Elissa Benson, Deputy Director, Office of Strategic Planning and Performance Management
Karen Freeman, Senior Policy Analyst
Dave Ramsay, City Manager
Marilynne Beard, Assistant City Manager

Council Meeting: 09/01/2009
Agenda: New Business
Item #: 11. a.

CITY OF KIRKLAND
Development Services
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Tom Phillips, Building Services Manager
Rob Jammerman, Development Engineering Manager
Nancy Cox, Development Review Manager

Date: September 1, 2009

Subject: DEVELOPMENT SERVICES PROCESS IMPROVEMENTS SUMMARY REPORT

Recommendation:

It is recommended that the City Council review this report outlining the many process improvements that have been implemented during the last 18 months by Development Services (Building, Fire, Planning, and Public Works Departments), and the attached Executive Summary from the Latimore Company regarding their work on Kirkland's Subdivision and Land Surface Modification Permit processes (the entire report from the Latimore Company can be viewed at:
http://www.ci.kirkland.wa.us/Assets/Public+Works/Public+Works+PDFs/Dev+Group/Development+-+Latimore+Report.pdf
Mr. Latimore will provide a presentation to the City Council covering his study of our permitting process.

Background Discussion:

Development Services has been working with the Latimore Company on permit process improvements since 2007. Their first project was to review the single-family Building Permit process and identify and implement improvements to this process. This project was completed in 2008 and most of the identified improvements have been implemented. The second project was to identify land surface modification and subdivision permit process improvements. This second project is now complete and an executive summary from the Latimore Company is attached.

Below is a description of all of the process improvements that have been implemented or are underway. Some of the process improvements were identified by the Latimore Company and some were identified and implemented by staff independent of the Latimore study.

PROCESS IMPROVEMENTS

Building Permits

Residential Review Team – A plan is in place and office space has been dedicated for a Residential Review Team. Once the number of new single-family permits begins to increase, the team consisting of staff from each development services department, will begin to meet on a weekly basis to coordinate and prioritize the review of single family residences as well as meeting with customers.

Electronic Plan Submittal – Staff has been exploring ways to accommodate the submittal of plans electronically. We participated in a Request for Proposal (RFP) with the eCityGov Alliance to find a vendor that will provide the online resources. As a result of the RFP process, it was decided that the eCityGov Alliance will provide this service instead of an outside vendor. While we are waiting for eCityGov Alliance program to start, we have initiated a pilot program to test software and review procedures. A review station has been set up in the Building Department that is being shared by the three departments.

Wireless Field Computers – Building Inspectors, Public Works Inspectors, and Planning Code Enforcement Officers have been assigned wireless computers that allow real time access and updating to permit information and communication with City Hall. We are also developing a correction writing program that will allow correction notices to be easily created and automatically entered into Advantage. They can also be printed in the field then printed or emailed to the customer.

Residential Cover Sheet – A common cover sheet for permit plans submittals is being finalized. The cover sheet organizes all city submittal requirements into a simplified format for the applicant and the city reviewer. The eCityGov Alliance is also reviewing our cover sheet and plans to create a regionally shared version of it. Our goal is to have the electronic permit application linked to the cover sheet and automatically create the cover sheet for each permit.

Combined Plan Review Letter – A joint plan review correction letter has been developed that lists all city comment/corrections in one document. The letter also provides a space for the applicant's response to each item, which allows the letter to be used as a checklist when the applicant submits their revised plans. By insuring that the applicant has responded to all of the revisions, the number of incomplete permit re-submittals is reduced.

New Review Checklists – Each department has reviewed and revised the checklists they use to review plans. Reviewers in each department are using the same checklist for better consistency.

Survey Policy – Development Services adopted a survey policy about a year ago. The policy describes when property line and topographic surveys are required and what must be included in permit applications. The purpose of the policy was to clarify for applicants and staff what is needed to ensure consistent and accurate plan reviews because many construction projects are designed to the minimum setbacks and maximum heights.

Revised Height Calculations - As a result of a code amendment passed in 2008, there are two methods to calculate Average Building Elevation (ABE). The new method is a simplified version of the existing method and is a time-saver for applicants and staff.

Floor Area Ratio (FAR) Clarification – Planning staff has discussed the fine points of FAR calculations to improve consistency during plan review. A handout is being prepared to assist customers.

Single Family Air Conditioner and Generator Permits – To expedite review of these permits, the Planning Department checks for setbacks and sensitive areas at the counter instead of requiring a formal plan review. Most of the permits are cleared this way with no further Planning review.

Early Submittal of Land Surface Modification (LSM) Permits – Applicants applying for a subdivision may choose to apply for their LSM permit while their subdivision is being reviewed. The benefit to the applicants that choose to do this is that they can be ready to start construction shortly after their project receives subdivision approval. Previously, applicants could not apply for an LSM permit until after they received subdivision approval. About 25% of our subdivision customers take advantage of this process improvement.

Green Building Program – Staff has developed a program to encourage green building. New Single-Family Building Permits that meet green building standards receive expedited review. In addition, the Public Works Department has worked with several developers to encourage the use of Low Impact Development (LID) techniques. In one particular case the Public Works Department expedited the review of a land surface modification permit for a 25-lot plat in exchange for the voluntary use of LID techniques such as rain gardens, pervious sidewalks, and individual lot infiltration systems.

Land Use Permits

Integrated Development Plan (IDP) – A new process for subdivision, LSM and building permit review and approval has been developed by the Latimore Company. The IDP offers three review options depending on the customer's ability to provide information early. For example, if the customer can commit to building footprints and tree removal at the time of subdivision application then the process will be accelerated. It can even be further accelerated if this information is presented during the pre-submittal stage. The IDP documents the development plan for the customer and City and is the blueprint used in subsequent LSM and building permit reviews. When an IDP is used, the number of tree plan submittals can be reduced from 3 to 1.

Streamlined Staff Report – Preparation of a streamlined short plat staff report is planned. It will be checklist-style which is similar to the Administrative Design Review staff report template.

Public Notice Changes – Staff has completed code amendments that change the way public notice is provided. Public notice signs will contain a single laminated notice throughout the life of the permit. A website that will enable customers to easily find the most current notice will be painted on the boards. Notices, decisions and reports will be distributed by email when possible.

Code Changes

Consolidated Code Enforcement – A project is underway to review all code enforcement rules in the Municipal Code and consolidate these to the greatest extent possible. At the same time, staff is exploring enforcement methods used by other cities and considering recommending changes to the Council.

Updating Tree Regulations – Another project is underway to reorganize KZC Chapter 95. The amendments will include some new ideas like the IDP noted above as well as clarifications that are needed.

New Land Surface Modification (LSM) Rules – Development Services has completed a consolidation of LSM rules used by the three departments into one new Kirkland Municipal Code chapter.

Relaxed Permit Expiration Timelines – In June, 2007 the permit expiration deadlines for LSM and building permit applications were relaxed to reduce the number of extension requests.

One Year Permit Extensions - In March 2009, the Municipal Code was revised to allow one year extensions on most Building and LSM permits or applications. This revision, which expires at the end of 2009, was requested by developers to help keep their projects active during the economic slowdown.

Monitoring Performance

Activity Reports – Each Development Services department prepares regular permit reports comparing current year's activities with previous year's activities. These are posted on Kirklandpermits.net.

Dashboard Report – Development Services is implementing a recommendation from Kurt Latimore called the Dashboard Report. This detailed Excel report tracks all permit applications from submittal to issuance and enables reviewers and supervisors to see the status of a permit or workloads at a glance. It also places a priority on each permit based on assigned goals per permit type.

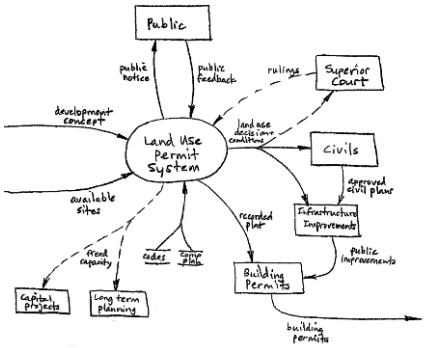
Online Resources

Advantage Replacement – Development Services is working with the eCityGov Alliance and five other cities to develop an RFP for the joint purchasing of a new permit tracking software. We have already hired a consultant to develop high level needs and a cost assessment. We are now starting Phase II which will include the creation and issuance of an RFP as well as the selection of a vendor.

Enhanced Use of MyBuildingPermit.com (MBP) – We have been working closely with the eCityGov Alliance to expand the types of permits that are available through the MBP site. This means the Planning and Public Works departments will be playing a much larger role in the MBP portal.

Kirkland Developers Partnership Forum – The Kirkland Developers Partnership Forum was launched about 3 years ago. The forum was created to promote better communication between the City and development customers. The forum is a "list serve" that customers subscribe to and we now have over 220 members. We use the forum to send information to our customers regarding code amendments, permit review and inspection process changes, and invitations to meetings and training. Several meetings have been held with forum members to help staff better understand the challenges that the development community faces when they design, permit, and construct a project. Many members have also attended City-hosted Low Impact Development and Sustainability training. We have received many accolades from our customers for hosting this forum.

Attachment (1)



The Latimore Company, LLC
11805 Ingraham Road
Snohomish Washington 98290
(360) 805-2999 • (888) 650-2999
klatimore@thelatimoreco.com
latimorecompany.com

July 3, 2009

Kirkland Subdivision and LSM Process Assessment Findings & Recommendations

Executive Summary

The Fire & Building, Planning & Community Development (PCD), and Public Works departments launched an initiative in 2007 to improve the predictability, efficiency and collaboration of the City's single-family residential (SFR) building permit process to meet review timeline goals and to optimize procedures ahead of implementation of a next-generation permit tracking system. While subsequently implementing these improvements, the departments expanded their scope to include the residential subdivision and land surface modification process that creates the new parcels for these homes. This allows optimization of the process from subdivision inception all the way through home occupancy. The Latimore Company, the consulting firm that conducted the original process assessment in 2007 performed this expanded assessment, while guiding the implementation of the original SFR recommendations.

This expanded, 38-page assessment identified eight strengths of the overall residential development process, including a best-in-class rating for the City's pre-submittal collaboration.

Sanitary Sewer Conditions:

1. The applicant shall extend the existing public sewer system to provide sanitary sewer service for each lot within the proposed project. Extend an 8" sewer main along 122nd Ave. NE from the north property line to the south property line of lot 2 and terminate the extension with a manhole.

2. From the sewer manhole, extend a 6 inch side sewer to serve lot 1 and to serve the lot to the south at 12056 NE 70th St. The side sewer will need to be encompassed in a 10 ft wide side sewer easement unless it is directly adjacent the ROW in which case it can be reduced to 5 ft in width.

3. Provide a 10 ft wide private sewer easement along the north property line of lot 2. At the northwest and northeast corner of the lot the easement shall be widened to approximately 15 ft in width so that a future side sewer can be installed without impacting the existing trees. The applicant shall contact the owner of the property address 12046 NE 70th St. to see if they would like to pay to have the side sewer installed at the time of construction in this subdivision.

Kirkland is particularly rigorous in the research done to foresee what the specific conditions of subdivision approval would be at the site the applicant is proposing to develop. For example, rather than stating that certain sewer improvements are required, or that sewer lines would have to be extended along a certain roadway, Kirkland takes it a level deeper to specify dimensions by lot

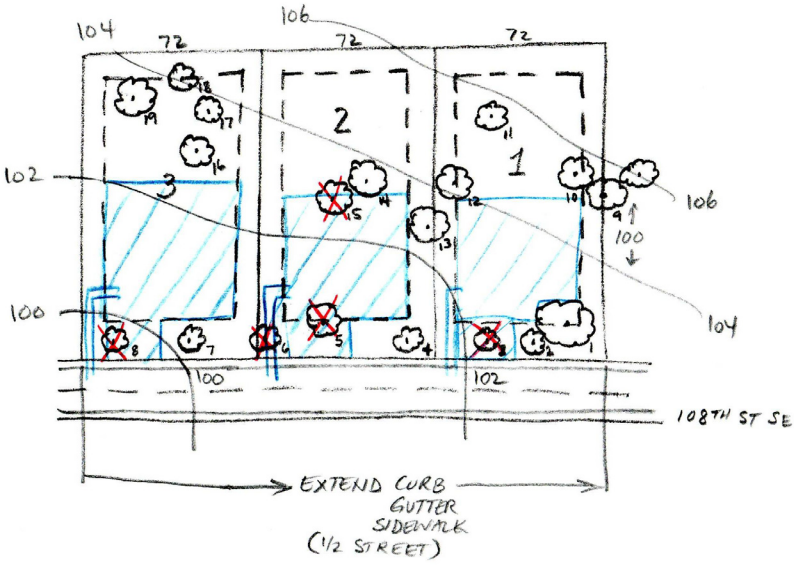
number as shown. Most jurisdictions would stop by Item 1 in the example. Several in the *Kirkland Developers Partnership*, who were asked for feedback and suggestions for the process, gave top marks to the Public Works Department for the depth of their pre-submittal scoping of infrastructure requirements, which are the most expensive unknowns for prospective applicants.

The seven other strengths are:

1. A digital model of the City's water system for real-time fire flow prediction.
2. Nine-lot short plats, rather than triggering full plat provisions at only five lots.
3. Accessory dwelling unit provisions, that include depiction on the main house plans.
4. The interdepartmental development review committee that coordinates internal reviews.
5. A centralized building and LSM permit counter that frees a Public Works technician for plan review.
6. Performance bonding and incremental bond release that improves working capitalization for developers.
7. Kirklandpermits.net that provides online status and electronic public commenting.

To build on these strengths and improve the overall residential process, six enhancements are recommended. These improvements target the Planning and Forestry processes particularly, as analysis indicates and applicants confirm that the pacing aspect of the broader residential subdivision process is Planning/Forestry approval. This arises largely from the currently incremental tree preservation approach and the inherent project management responsibility of planners for land use actions.

Of particular value is adoption of an Integrated Development Plan (IDP), packaged with three new service options. This will allow prepared applicants to execute the residential development process faster and more efficiently. These same improvements ease and distribute the currently concentrated Forestry workload.



For an IDP, the applicant drafts a sketch that shows the proposed lot configuration, frontage improvement areas, utility service routings, topography, and existing trees. The applicant and City team would use this information to reach agreement on how to reasonably access and service the lots, and would use this as a basis for indicating trees that would need to be removed to install these services.

The applicant could elect to go further at this point, and specify building footprint locations. The team would then use these footprints (crosshatched in the figure) to identify any additional grading work and tree removal that would be needed to

accomplish home construction in these locations. Alternative layouts and setback variances to improve tree retention could be discussed as well.

With agreement on the Integrated Development Plan (IDP), the applicant and review team have created the predictability that applicants are seeking and have built a tool for managing site trees throughout the process. Further, construction efficiency can be improved through greater use of the LSM to prepare the sites for home placement. Code changes are underway to provide for these improvements.

The four other improvements are:

1. A short plat staff-report template like currently used for administrative design reviews.
2. Peer review to improve consistency of planning reviews.
3. Expansion of new internal tracking reports to better manage all applications to the City's network of review timelines.
4. Increased urban forester capacity.

The next step is implementation of these recommendations, many of which are logical extensions of the improvements implemented for SFR building permit efficiency. The IDP process is developed and ready for first project use. The three new processing options are also ready to go. The Latimore Company can continue to work with the team to monitor and optimize these new high performance tools.

A short plat staff report template could be prepared in short order. The Latimore Company can produce this for the team. Peer review could begin immediately.

Expansion of the Latimore Dashboard© functionality to manage all applications to the City's various review timelines is a relatively straightforward extension of the logic the City IT crew has already built into Tidemark Advantage©. A small training effort, launched with an all-team briefing on how the new system works, should bring the rest of the team on board quickly.

Boosting Forestry review capacity is a more involved step that starts with cross-training of planners for a supporting role, but could be expanded to add arborist certifications for a full contribution. Greatest return on investment is likely to be forester-led cross training. This is best accomplished by increasing the current Forestry position to full time. Outside review options could also be explored to maintain performance during high demand periods.

Lastly, extending these improvements to commercial, multifamily and mixed-use developments is recommended. These subdivision and LSM improvements added to the SFR building permit improvements are scalable to the non-residential side of our process. They would be shaped to deliver best performance for these types of projects that tend to have more parallel activities, complex building and fire reviews, design review, intensified traffic, landscaping, and solid waste analysis, more involved occupancy punch lists, and other nuances. The Latimore Company is here to help, and thanks the City for this opportunity to work with the development services departments to improve the predictability, efficiency and collaboration of these services.

Council Meeting: 09/01/2009
Agenda: New Business
Item #: 11. b.

CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
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MEMORANDUM

To: Dave Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Sandi Hines, Financial Planning Manager

Date: August 24, 2009

Subject: **Amendment of the 2009-2014 Capital Improvement Program**

RECOMMENDATION:

City Council review the amendment to the 2009 to 2014 Capital Improvement Program (CIP).

BACKGROUND DISCUSSION:

The purpose of the mid-biennium review is to acknowledge changes made since adoption and to make any further changes needed to bring the CIP up-to-date. Revised CIP summaries are attached along with a reconciliation of each section of the CIP showing the major increases and decreases between the original and revised CIP (Attachments A and B respectively). The majority of the modifications in the revised CIP reflect changes to existing projects with the addition of a few new projects.

Revenue Status

The recession has negatively impacted the City's receipts of Real Estate Excise Tax (REET) and impact fee revenues significantly. Due to the reduced revenue, a more detailed review than usual of REET and impact fee revenues was done as part of the CIP update. Adjustments had to be made to projects within the Transportation and Parks categories in order to balance the 2009-10 years of the revised CIP within current funding resources.

REET revenues for the period of 2005-2007 averaged $3.3 million per year (for each component - REET 1 and REET 2). In 2008, the amount dropped in half to $1.6 million and the current projection for 2009 is $1.0 million each for REET 1 and REET 2. The 2009-14 CIP was planned with an assumption of $1.575 million for 2009, which means a shortfall in current revenue of $575,000 in 2009 for REET 1 and REET 2 each. However, after reviewing the projects funded for 2009 and 2010, and the current balance of REET reserves, it is recommended that no changes need to be made at this point to the CIP.

A related side note to the REET 1 reserves concerns facility financing. The REET 1 reserve has been identified previously as a source for facility expansion financing. Facility planning is underway, but in light of the current economic times and the pending outcome of annexation, facility financing will be revisited when the needs are more thoroughly vetted and the answer to annexation needs, if any, is known. The 2011-16 CIP process will begin in the spring of 2010 and

both of these outstanding issues will be better understood at that time in order to do a review of facility financing options.

Also hard hit by the recession are impact fee revenues, both for transportation and parks. This revenue source has been much more unpredictable over the past years than REET revenue, but on average the transportation impact fees have been $650,000 per year for the period of 2005-2007. In 2008 transportation impact fees continued, and beat that average, by coming in at $680,000. It is important to note that this is after a large increase in the fees themselves that took place effective February 2008. The current projection for transportation impact fees for 2009 is $500,000. This would point to the fact that development activity was down in 2008 but the increased fees made up the difference; however, the level of activity has dropped even more in 2009 and the increased fees are not able to mitigate the impact.

As with the original 2009-2014 CIP, the transportation category for 2009-10 is balanced within the updated transportation impact fee projections; however, starting in 2011 the total amount of projects planned that need impact fee funding is over budget. Given that impact fees are paid by development (growth) and the projects that are funded by impact fees are for new capacity to meet the needs of growth, it correlates that the network would not need to be built as quickly over the next six year period and projects could be delayed. As described below, several projects were delayed until 2011 to recognize the decreased transportation impact fee revenue. A new CIP will be prepared in 2010 (for 2011-2016), and the expectation is to have a better assessment as to development activity and the rate at which impact fees are being received in order to plan for the latter years of 2011 and beyond. If impact fees exceed estimates during 2010, they can be set aside to help fund projects starting in 2011.

Park impact fees averaged $140,000 from 2005-2007 and with the increased fees that were effective February 2008, revenues received in 2008 were $201,500. Like the transportation impact fees, the decrease in development activity was mitigated in 2008 by the higher fees. The projection for 2009 is consistent with the previous average at $150,000 despite the higher fees showing a decrease in activity. It is important to note that per the 2007 Impact Fee study, park impact fees are committed to paying 100% of the McAuliffe Park debt service and 89.3% of the Teen Center debt principal first. Any revenue received above the amount needed for debt service would be allocated to the CIP. With the revenue shortfall projected for 2009, the park impact fee revenue will not cover the debt service costs for the Teen Center and McAuliffe Park. An adjustment will be brought to the Council at the Mid-Biennial Update for the amount needed from REET 1 reserves to cover the shortfall.

The following table summarizes the planned and projected impact fee revenues.

	2009 Budget	2009 Year-to-Date	2009 Estimate	2009 Shortfall
Transportation				
CIP	1,234,000	370,913	500,000	(734,000)
Total Transportation	**1,234,000**	**370,913**	**500,000**	**(734,000)**
Parks				
Debt Service	276,065	121,548	150,000	(126,065)
CIP	0	0	0	0
Total Parks	**276,065**	**121,548**	**150,000**	**(126,065)**

An additional funding note relates to the general source funding of the CIP. As part of the original 2009-14 CIP and the 2009-10 Budget, sales tax funding was diverted from the CIP to the operating budget to fund ongoing staff positions that had been funded through the CIP until that point. The redirection of the sales tax was necessary in order to maintain ongoing service levels

that were needed for several of the major technology systems (e.g. the financial system and GIS); however, it did reduce the amount of funding available to the CIP. No additional changes are recommended at this time. Attachment C lists the projects funded by general purpose revenues. The following table summarizes the planned funding sources for the 2009-14 CIP.

Revised 2009 to 2014 CIP
Average Annual Current Revenue (in 1,000s of dollars)

Dedicated Revenue	Transpor - tation	Surf. Wtr/ Transp.	Surface Water	Utilities	Parks	Public Safety	General Gov't*	Total
Gas Tax**	544							544
Sales Tax	270						300	570
Utility Connection Chgs***				865				865
Utility Rates***		950	1,588	2,291			150	4,979
Real Estate Excise Tax 1**	567				1,134			1,701
Real Estate Excise Tax 2**	1,701							1,701
Impact Fees**	2,104							2,104
Interest Income						250	550	800
Total	**5,186**	**950**	**1,588**	**3,156**	**1,134**	**250**	**1,000**	**13,264**

* General Government section includes the Technology and Facilities categories and the Neighborhood Connection program.
** Indicates revenue sources that are legally restricted to capital purposes.
***For utility capital purposes only; utility funding in General Government category is for utility portion of GIS project.

Projects "Funded Not Started" & Project Closures

In June 2009, Council was provided lists of CIP projects that were "Funded Not Started" or were "To Be Closed/Repurposed". Review of these projects was done to determine whether there were general purpose funds in CIP projects that could be available to help with the operating budget deficit. Through that review process, and during this CIP update process, it has been determined that there are general purpose funds that can be redirected to the General Fund. Greater detail about the individual projects that were "funded not started" can be found in the project category sections later in this memo. The following table summarizes the project categories and the funding available to be redirected to the General Fund and other sources.

CIP Category	Funding Balance Available	Redirected to General Fund	Redirected to Other Purposes	Notes Regarding Funds Redirected to Other Purposes
Funded Not Started				
Public Safety	229,900	229,900	0	
Technology	217,500	19,900	197,600	Major Systems Repl. Reserve
To Be Closed				
Public Safety	254,900	254,900	0	
Technology	172,600	7,600	165,000	Major Systems Repl. Reserve
Neigh. Connections	25,000	25,000	0	
Total	**899,900**	**537,300**	**362,600**	

Summary of Project Changes

TRANSPORTATION

- **Modified Projects** – Due to timing opportunities, funding source changes and the reduction in CIP revenue being received, eight Transportation projects have been modified for this update. Highlights of each are as follows:

    - **100th Avenue NE and 99th Place NE Sidewalk (CNM0060)** - Funding in 2009 is reduced by $200,000 due to favorable bids received. The funding being reduced was planned from two sources - $100,000 from REET 2 reserves and $100,000 from Surface Water fees related to transportation projects.

    - **Kirkland Way Sidewalk (CNM0063)** – This project remains in the unfunded category, but the cost has increased from $414,500 to $1,414,500 due to a change in scope that increased the length of the project from 550 feet to 1,600 feet and included work within the BNSFRR undercrossing at Railroad Avenue.

    - **Park Lane Sidewalk (CNM0064)** – This project started in 2008 with funding for a corridor study of Park Lane and the final recommendations of that study will be presented to Council this fall. The $119,000 of funding recommended in the CIP update is to begin implementation of the first phases of the study, with the balance of the project remaining in the unfunded category.

    - **Central Way Pedestrian Enhancements (CNM0065)** – Funding for this project in the original 2009-14 CIP was in 2013-14 and it is being recommended to move the project up to 2009-11 to recognize the award of Pedestrian and Bicycle Safety Program State funding of $198,000. The City match of $180,000 is funded by REET 2 revenue and Surface Water fees related to transportation projects.

    - **12th Avenue School Walk Route Enhancements (CNM0066)** – The project start date moves up from 2010 to 2009 to take advantage of available Transportation Improvement Board (TIB) funding of $200,000. City funding for this project was previously approved starting in 2010; with the addition of the State funding a small amount of City funding is now needed in 2009 ($40,000) and is funded by Surface Water fees related to transportation projects.

    - **3 Projects on NE 85th Street Delayed** – Intersection improvement projects at NE 85th and 132nd Avenue NE (CTR0078), 114th Avenue NE (CTR0079) and 124th Avenue NE (CTR0080) will be delayed one year in their completion. All three of these projects had approved transportation impact fee funding in 2010 as the final budgeted year for the projects. Due to the decrease in transportation impact fee revenue, final funding for all three projects is being delayed one year until 2011 and is consistent with the overall NE 85th Street project.

- **New Projects** – Four new projects were added to the revised CIP due to new grant funding and to address City responsibility on the Transit Center project.

    - **Elementary School Walk Route Enhancements (CNM0067)** – The City has been awarded $498,000 in State grant funding to construct walk route enhancements at 7 elementary schools. City matching funds of $700,000 are to be funded from Surface Water fees related to transportation projects ($367,000) and transportation reserves (REET 2 at $333,000). This project is slated to begin in 2010.

- **6th Street & Central Way Intersection Improvements (CTR0100)** – This new project is to construct dual left turn lanes on westbound Central Way to southbound 6th Street and is funded almost entirely by a $2 million State appropriation. City funding of $50,000 is needed in 2009 to begin engineering work, with the balance of engineering and construction funded by the State money in 2010-11.

- **Downtown Transit Center – Local Portion (CTR0101)** – As presented to the Council in June 2009, funding is needed for small construction and community outreach activities that fall on the responsibility of the City related to the Transit Center being constructed by Sound Transit. At the meeting in June, Council approved the use of $64,000 from the General Capital Contingency and $23,000 from the Surface Water Transportation-related Reserve. This project formally acknowledges the funding in the CIP.

- **Growth & Transportation Efficiency Center (GTEC) Enhancements (CTR0102)** – The City has been awarded a Federal grant of $686,000 to implement GTEC enhancements for employers with less than 50 individuals. This project will involve capital-related and non-capital items, but is being placed in the CIP due to the large Federal grant and the $57,000 matching funds needed. The $57,000 is recommended to be funded by the REET 2 grant match reserve.

SURFACE WATER UTILITY

- No modifications, additions or deletions are recommended to the Surface Water category for this CIP update.

UTILITIES

- **Modified Projects** – Four projects are being modified in the Utilities portion of the CIP to reflect arising needs and revised costs.

  - **Renaming Two Projects** – Two water projects in the unfunded category are being renamed to better reflect revised scope and timing with sewer main replacements in the area. The 120th Avenue NE Water Main Replacement (CWA0097) is being changed to the NE 80th Street Water Main Replacement Phase 3 with the scope to reflect coordination with the NE 80th Street Sewer Main Replacement Phase 3 (CSS0076) which is currently planned to start in 2012. The second project was titled NE 85th St/132nd Avenue NE Water Main Replacement (CWA0140) and is being changed to the NE 80th Street Water Main Replacement Phase 2 which will coordinate with the NE 80th Street Sewer Main Replacement Phase 2 (CSS0067) project scheduled to being in 2012 also.

  - **120th Ave NE/NE 73rd Street Water Main Replacement (CWA0107)** – This project was originally scheduled to begin in 2014 and is being recommended to move up to 2009 to coordinate with the Lake Washington High School expansion project. Funding for the $827,000 project is recommended from the Utility Capital Reserves, which are fully funded and able to handle the funding requirement.

  - **Market Street Sewer Main Replacement (CSS0046)** – Funding budgeted for 2009 in the amount of $652,000 is no longer required due to lower than anticipated construction costs. The funding is being recommended to be returned to the Utility Capital Reserves and the project will be removed from the 2009-14 CIP.

PARKS

- **Modified Projects** – Only one project in the Parks category is being modified with this CIP update. **Juanita Beach Park Development (CPK0119)** funding for 2009 is increasing by $500,000 to recognize additional State funding awarded to the City. The funding will be primarily utilized to construct wetland mitigation areas and water quality enhancements related to Phase 1 of the park redevelopment.

PUBLIC SAFETY

- **Modified Projects** – Three Public Safety projects have been modified as part of the CIP update – one that was originally included in the 2009-14 CIP and two projects funded previously.

    - **Critical Ham Radio Equipment (CPS0069)** – As part of the Final 2009-14 CIP, this project was moved to the unfunded category while the City applied for grant funding. The City did not receive award of grant funding so this project is being recommended to be funded in 2010 again for $57,000. The previous interest income funding available for this project was set aside when the project was moved to the unfunded category and is still available to fund this project in 2010.

    - **Disaster Response Portable Generators (CPS0065)** - This project was funded and approved as part of the 2008-13 CIP in the year 2008. The project was funded with general purpose interest income at $150,000, and although nothing has been spent to date, staff has been working on the necessary agreements with community partners for the placement of the portable generator hook-up sites. The Council Finance Committee and full Council reviewed in June projects that had been funded but not started as part of the budget balancing strategy discussion. This project was directed to be placed on hold with the full funding redirected towards the General Fund. The project is being placed in the unfunded category and staff will hold any agreements reached with community partners until funding is secured in the future to complete the project. A grant application has been made to fund this project.

    - **Water Rescue Boat (CPS0024)** – The Water Rescue Boat was a funded and approved project as part of the Revised 2006-11 CIP in the year 2007. Like the portable generators, work on the operational plan for the boat was underway but no expenditures have taken place. This project was funded at $109,450, with $79,900 of general purpose interest income and $29,550 of Fire District #41 contribution. Council directed that this project be put on hold also with the $79,900 redirected towards the General Fund. The Fire District contribution that was already received in 2007 will be adjusted to the 2010 contract as part of the reconciliation for 2009. This project moves to the unfunded category.

An item worth noting that is indirectly related to a CIP project is the need for supplies related to planning for a potential pandemic outbreak of the H1N1 Swine Flu. Although this is an emergency preparedness operating expense and not a CIP project, an emergency preparedness CIP project is projected to have cost savings of $54,000 that could be repurposed for the pandemic supplies. The Fire and Police departments are working together to develop a list of supplies needed and the cost and more information will be brought to the Council at a later date.

GENERAL GOVERNMENT

- **Technology** – Three Technology projects are being modified during this CIP update, which were funded in earlier CIP processes.

    - The **Maintenance Management System Upgrade (CGG0006702)** was funded and approved as part of the 2008-13 CIP in the year 2008. The project was funded at $79,600 with $19,900 funded by general purpose sales tax and interest income and $59,700 funded by the Water/Sewer and Surface Water Utilities; however, it has been determined that the project would need an additional $131,000 to be completed. The additional funding would be split between general purpose sources and the utilities, but that is still a draw of $65,500 on already scarce general purpose funding sources. The Public Works and IT staff have discussed the timing and need for this project in light of the additional cost and have determined that the upgrade can be delayed. The current version is still being supported by the vendor and staff can function with the current system for a few more years. This project was also on the "Funded Not Started" list provided to the Council in June. The $19,900 of general purpose funding will be redirected to the General Fund and the utility funding remains in the utility reserves. The project moves to the unfunded category as part of the 2009-14 CIP update.

    - **PermitPlan System Replacement (CGG0006501)** – This project started in 2008 and has additional funding budgeted in the 2009-14 CIP in years 2009-10. It has been identified that the cost of this system replacement will be much greater than originally planned in the range of an additional $500,000 to $1 million, but no definitive cost is known at this time. The project is recommended to remain in the 2009-14 CIP as is, while better timing and cost estimates are researched. There are two projects previously funded that will not be moving forward whose funding is recommended to be set aside in the Major Systems Replacement Reserve for the future needs of the PermitPlan system replacement.

        - **Police Automated Vehicle Location System (CGG0006201)** was funded in 2006-07 as part of the Revised 2006-11 CIP. This project was not completed during those years because of the then-pending NORCOM outcome. With the start up of NORCOM, this project will be taken over by that agency and is no longer a need of the City. The project was funded at $144,600 with general purpose sales tax.

        - **The Parks Work Order System (CGG0006801)** was funded and approved as part of the 2008-13 CIP in the year 2008 at $53,000 from general purpose sales tax. This project is tied in with the upgrade of the Maintenance Management System upgrade and can be delayed as well. This project moves to the unfunded category as part of the 2009-14 CIP update.

- **Facilities** – Only two Facility projects are modified for the revised CIP and both are life-cycle replacement projects.

    - **Maintenance Center Bldg Air Compressor (CGG0009*)** - The air compressor at the Maintenance Center that is needed to operate several pieces of equipment and machinery is not functioning properly and in need of repair. The repairs would be costly and staff recommended replacing it rather than repairing it. The original replacement date was 2016 and this revision would move the replacement up to 2009. The cost is $4,400 and is funded by sinking fund reserves that have been paid by the operating departments and set aside for such equipment replacements.

- **Fire Station #26 Interior Lighting (CGG0008*)** – The lighting at Fire Station #26 was scheduled to be replaced in 2009 as part of the original 2009-14 CIP. After a review of all life-cycle projects by staff, it was determined that the lighting at that fire station is in good condition and does not need to be replaced this year. The project was funded at $22,400 in 2009 and is being recommended to be delayed until the next replacement period is due in 2015. The funding for this project was from sinking fund reserves and the $22,400 will be returned to the reserve for future projects.

The table below summarizes the Revised 2009-14 CIP, both the funded 6 year program and the longer term needs that are unfunded.

	6-year Funded CIP	**Unfunded CIP**	**Total CIP**
Transportation	50,817,000	199,809,000	250,626,000
Parks	9,180,900	76,000,000	85,180,900
Public Safety	1,586,200	490,000	2,076,200
General Government	43,632,000	19,544,700	63,176,700
Subtotal	**105,216,100**	**295,843,700**	**401,059,800**
Surface Water	6,176,900	6,609,500	12,786,400
Water/Sewer	30,356,800	66,953,000	97,309,800
Utilities Subtotal	**36,533,700**	**73,562,500**	**110,096,200**
Grand Total	**141,749,800**	**369,406,200**	**511,156,000**
Original 2009-14 CIP	***137,342,700***	***368,056,200***	***505,398,900***
Difference	***4,407,100***	***1,350,000***	***5,757,100***

Next Steps

Based on Council direction after their review of the 2009-14 CIP update, staff will make changes and bring back a revised 2009-14 CIP update for Council's further consideration at a future meeting, if needed. The changes outlined for this 2009-14 CIP update will be brought back to the Council for formal adoption in December with the Mid-Biennial Review adjustments. With the CIP and budget cycles now coinciding, the CIP adjustments are held until the operating budget is reviewed in case there are changes that need to take place between the operating and capital budgets.

The next full CIP review process will be for 2011-2016 and will start in the spring of 2010. A thorough review of all funding sources will be completed for current and long-term future projects with what is hoped to be a better economic forecast.

Cc: Department Directors

City of Kirkland
Revised 2009-2014 Capital Improvement Program

TRANSPORTATION PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2009	2010	2011	2012	2013	2014	2009-2014 Total	Funding Sources: Current Revenue	Reserve	Debt	External Source
ST 0006	Annual Street Preservation Program		2,000,000	2,000,000	2,500,000	2,000,000	2,000,000	2,000,000	12,500,000	12,500,000			
ST 0057	NE 120th Street Roadway Extension (East Section)	1,609,000	1,232,000		1,232,100	2,530,100			4,994,200	3,014,170	640,400		1,339,630
ST 0059	124th Ave NE Roadway Improvements (North Section)	1,757,500	224,000						224,000	224,000			
ST 0080	Annual Striping Program		250,000	250,000	250,000	250,000	250,000	250,000	1,500,000	1,500,000			
ST 8888	Annual Concurrency Street Improvements					2,272,000	2,522,000	2,799,400	7,593,400	5,308,100			2,285,300
ST 9999	Regional Inter-Agency Coordination		25,000	25,000	25,000	25,000	25,000	25,000	150,000	150,000			
NM 0012	Crosswalk Upgrade Program		70,000		70,000		70,000		210,000	210,000			
NM 0034	NE 100th St at Spinney Homestead Park Sidewalk		56,000						56,000	19,600	36,400		
NM 0044	116th Avenue NE Sidewalk (Highlands)	176,000	568,000	333,000					901,000	671,000	230,000		
NM 0051	Rose Hill Business Dist. Sidewalks	3,528,300	310,000	500,000					810,000	810,000			
NM 0057	Annual Sidewalk Maintenance Program		200,000	200,000	200,000	200,000	200,000	200,000	1,200,000	1,200,000			
NM 0060*	100th Avenue NE/99th Place NE Sidewalk	220,000	294,000						294,000	72,900	71,100		150,000
NM 0064+	Park Lane Sidewalk	60,000	119,000						119,000	58,000	61,000		
NM 0065*	Central Way Ped. Enhancements (Phase II-So. Side)		200,000	178,000					378,000	180,000			198,000
NM 0066*	12th Avenue Sidewalk		100,000	270,000	102,000				472,000	40,000	232,000		200,000
NM 0067	***Elementary School Walk Route Enhancements***			***400,000***	***798,000***				***1,198,000***	***367,000***	***333,000***		***498,000***
NM 8888	Annual Non-Motorized Program					1,100,000	1,100,000	1,100,000	3,300,000	3,300,000			
TR 0078*	NE 85th St/132nd Ave NE Intersection Imprv (Phase I)	2,066,900	22,500		475,000				497,500	497,500			
TR 0079*	NE 85th St/114th Ave NE Intersection Improvements	2,533,300	28,700		604,000				632,700	632,700			
TR 0080*	NE 85th St/124th Ave NE Intersection Improvements	1,385,300	158,000		144,000				302,000	158,400	143,600		
TR 0085	NE 68th St/108th Ave NE Intersection Improvements	650,000	672,000						672,000	562,000	50,000		60,000
TR 0091	NE 124th St/124th Ave NE Intersection Imprv (Phase III)	300,000			492,800	547,000	1,366,200	1,516,600	3,922,600	3,922,600			
TR 8888	Annual Concurrency Traffic Improvements					1,798,400	1,996,300	2,215,900	6,010,600	3,268,300			2,742,300
TR 0100	***6th Street/Central Way Intersection Improvements***		***50,000***	***1,000,000***	***1,000,000***				***2,050,000***		***50,000***		***2,000,000***
TR 0101	***Downtown Transit Center - Local Portion***		***87,000***	***-***					***87,000***	23,000	***64,000***		
TR 0102	***Growth & Transportation Efficiency Cntr (GTEC) Enh.***			***300,000***	***443,000***				***743,000***		***57,000***		***686,000***
Total Funded Transportation Projects		**14,286,300**	**6,666,200**	**5,456,000**	**8,335,900**	**10,722,500**	**9,529,500**	**10,106,900**	**50,817,000**	**38,689,270**	**1,968,500**	**0**	**10,159,230**

Notes
* = Modification in timing and/or cost (see Project Modification/Deletion Schedule for greater detail)
+ = Moved from unfunded status to funded status
" = Moved from funded status to unfunded status
^ = Possible Sidewalk Bond project
Shaded year(s) = Previous timing
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City of Kirkland
Revised 2009-2014 Capital Improvement Program

TRANSPORTATION PROJECTS

Unfunded Projects:

Project Number	Project Title	Total
ST 0055	98th Avenue NE Bridge Replacement	10,196,000
ST 0056	132nd Avenue NE Roadway Improvements	25,170,000
ST 0060	118th Avenue NE Roadway Extension	6,440,000
ST 0061	119th Avenue NE Roadway Extension	5,640,000
ST 0062	NE 130th Street Roadway Extension	10,004,000
ST 0064	124th Ave NE Roadway Widening Imprv (So. Sect'n)	30,349,000
ST 0070	120th Ave NE/Totem Lake Plaza Roadway Imprvmnts	3,000,000
ST 0072	NE 120th St Roadway Improvements (West Section)	5,870,000
ST 0073	120th Avenue NE Roadway Extension	16,392,000
ST 0077	NE 132nd St Rdwy Imprv.-Phase I (West Section)	1,348,000
ST 0078	NE 132nd St Rdwy Imprv-Phase II (Mid Section)	316,000
ST 0079	NE 132nd St Rdwy Imprv-Phase III (East Section)	1,119,000
NM 0001	116th Ave NE (So. Sect.) Non-Motorz'd Facil-Phase II	6,028,700
NM 0007	NE 52nd Street Sidewalk	1,068,600
NM 0024	Cross Kirkland Trail	6,107,400
NM 0026	NE 90th Street Sidewalk (Phase II)	2,584,200
NM 0030	NE 90th Street/I-405 Pedestrian/Bicycle Overpass	3,740,700
NM 0031	Crestwoods Park/BNSFR Ped/Bike Facility	2,505,000
NM 0037	130th Avenue NE Sidewalk	833,600
NM 0041	Forbes Valley Pedestrian Facility	1,996,600
NM 0045	NE 95th Street Sidewalk (Highlands)	571,500
NM 0047	116th Avenue NE Sidewalk (South Rose Hill)	422,100
NM 0048	NE 60th Street Sidewalk	4,979,800
NM 0056	NE 90th Street Sidewalk (Phase I)	1,165,700
NM 0061	NE 104th Street Sidewalk	1,763,500
NM 0062	19th Avenue Sidewalk	814,200
NM 0063*	Kirkland Way Sidewalk	1,414,500
NM 0064*	Park Lane Pedestrian Corridor Enhancements	1,277,200
TR 0056	NE 85th Street HOV Queue Bypass	841,000
TR 0057	NE 124th Street HOV Queue Bypass	1,722,000
TR 0065	6th Street/Kirkland Way Traffic Signal	692,000
TR 0067	Kirkland Way/BNSFR Abutment/Intersection Imprv	6,917,000
TR 0068	Lake Washington Boulevard HOV Queue Bypass	6,580,000
TR 0072	NE 116th Street Eastbound HOV Queue Bypass	7,337,000
TR 0073	NE 70th Street Eastbound HOV Queue Bypass	1,702,000
TR 0074	NE 85th Street Westbound HOV Queue Bypass	1,775,000
TR 0075	NE 124th Street Westbound HOV Queue Bypass	1,275,000
TR 0082	Central Way/Park Place Center Traffic Signal	327,900
TR 0084	100th Ave NE/NE 124th St Intersection Improvements	2,230,000
TR 0089	NE 85th St/132nd Ave NE Intersection Imp (Phase II)	1,825,700
TR 0090	Lake Washington Blvd/NE 38th Place Intersection Imp	2,948,100
TR 0092	NE 116th St/124th Ave NE N-bound Dual Lft Turn Lanes	1,717,000
TR 0093	NE 132nd St/Juanita H.S. Access Rd Intersect'n Imp	916,000
TR 0094	NE 132nd St/108th Avenue NE Intersect'n Imp	618,000
TR 0095	NE 132nd St/Fire Stn Access Dr Intersect'n Imp	366,000
TR 0096	NE 132nd St/124th Ave NE Intersect'n Imp	5,713,000
TR 0097	NE 132nd St/132nd Ave NE Intersect'n Imp	889,000
TR 0098	NE 132nd St/ 116th Way NE (I-405) Intersect'n Imp	300,000
Total Unfunded Transportation Projects		**199,809,000**

Prior Year(s) Funding (Budget to Actuals):

Project Number	Project Title	Budget	Actual	Balance
ST 0057	NE 120th Street Roadway Extension (East Section)	1,609,000	411,245	1,197,755
ST 0059	124th Ave NE Roadway Improvements (North Section)	1,757,500	205,897	1,551,603
NM 0001	116th Ave NE (So. Sect.) Non-Motorz'd Facil-Phase II	469,000	299,465	169,535
NM 0044	116th Avenue NE Sidewalk (Highlands)	176,000	140,247	35,753
NM 0051	Rose Hill Business Dist. Sidewalks	3,528,300	1,112,867	2,415,433
NM 0060*	100th Avenue NE/99th Place NE Sidewalk	220,000	65,316	154,684
NM 0064*	Park Lane Pedestrian Corridor Enhancements	60,000	35,156	24,844
TR 0078*	NE 85th St/132nd Ave NE Intersection Imprv (Phase I)	2,066,900	321,635	1,745,265
TR 0079*	NE 85th St/114th Ave NE Intersection Improvements	2,533,300	341,075	2,192,225
TR 0080*	NE 85th St/124th Ave NE Intersection Improvements	1,385,300	220,419	1,164,881
TR 0085	NE 68th St/108th Ave NE Intersection Improvements	650,000	105,007	544,993
TR 0091	NE 124th St/124th Ave NE Intersection Imprv (Phase III)	300,000	0	300,000
Total Prior Year(s) Funding (Budget to Actuals):		**14,755,300**	**3,258,329**	**11,496,971**

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City of Kirkland
Revised 2009-2014 Capital Improvement Program

SURFACE WATER MANAGEMENT UTILITY PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2009	2010	2011	2012	2013	2014	2009-2014 Total	Funding Source: Current Revenue	Reserve	Debt	External Source
SD 0047	Annual Replacement of Aging/Failing Infrastructure		200,000	200,000	200,000	200,000	200,000	200,000	1,200,000	1,200,000			
SD 0051	Forbes Creek/KC Metro Access Road Culvert Enh.	232,200					733,700		733,700	780,700			
SD 0053	Forbes Creek/Coors Pond Channel Grade Controls	260,200				101,000	570,700	184,200	855,900	855,900			
SD 0058	Surface Water Sediment Pond Reclamation Phase II					115,400	603,200	114,200	832,800	832,800			
SD 0065	Cochran Springs/Plaza at Yarrow Pt Flood Control	60,000	145,800						145,800	145,800			
SD 0067	NE 129th Place/Juanita Creek Rockery Repair					115,500	223,300		338,800	338,800			
SD 8888	Annual Streambank Stabilization Program					57,700		165,800	223,500	223,500			
SD 9999	Annual Storm Drain Replacement Program					922,600		923,800	1,846,400	1,846,400			
Total Funded Surface Water Management Utility Projects		**552,400**	**345,800**	**200,000**	**200,000**	**1,512,200**	**2,330,900**	**1,588,000**	**6,176,900**	**6,223,900**	**0**	**0**	**0**

Unfunded Projects:

Project Number	Project Title	Total
SD 0046	Regional Detention In Forbes and Juanita Creek Basins	2,810,200
SD 0048	Cochran Springs / Lake Washington Blvd Crossing Enh	1,627,100
SD 0055	Forbes Creek / 98th Avenue NE Riparian Plantings	75,500
SD 0059	Totem Lake Boulevard Flood Control Measures	1,136,200
SD 0068	128th Ave NE/NE 60th Street To NE 64th St Drainage Imp	270,300
SD 0070	Juanita Creek Watershed Enhancement Study	50,000
SD 0537	Streambank Stabilization Program – NE 86th Street	640,200
Total Unfunded Surface Water Management Utility Projects		**6,609,500**

Prior Year(s) Funding (Budget to Actuals):

Project Number	Project Title	Budget	Actual	Balance
SD 0051	Forbes Creek/KC Metro Access Road Culvert Enh	232,200	88,092	144,108
SD 0053	Forbes Creek/Coors Pond Channel Grade Controls	260,200	84,147	176,053
SD 0059	Totem Lake Boulevard Flood Control Measures	490,900	74,754	416,146
SD 0065	Cochran Springs/Plaza at Yarrow Pt Flood Control	60,000	79,779	(19,779)
SD 0537	Streambank Stabilization Program – NE 86th Street	60,000	21,228	38,772
Total Prior Year(s) Funding (Budget to Actuals):		**1,103,300**	**348,000**	**755,300**

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City of Kirkland
Revised 2009-2014 Capital Improvement Program

WATER/SEWER UTILITY PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2009	2010	2011	2012	2013	2014	2009-14 Total	Funding Source: Current Revenue	Reserve	Debt	External Source
WA 0090	Emergency Sewer Pgm Watermain Replacement Pgm		50,000		50,000		50,000		150,000	150,000			
WA 0093	Vulnerability Analysis Facility Upgrades	70,000	297,900						297,900	297,900			
WA 0094*	North Reservoir Seismic Upgrades & Recoating	840,000	1,450,000	1,109,000					2,559,000	1,403,000			1,156,000
WA 0107	***120th Ave NE/NE 73rd St Watermain Replacement***		***500,000***	***327,000***					***827,000***		***827,000***		
WA 0116	132nd Av NE/NE 80th St Watermn Replacement					328,600	3,503,400		3,832,000	682,000		3,150,000	
WA 0117	20th Avenue Watermain Replacement		200,000	335,100					535,100	535,100			
WA 0141	9th Avenue Watermain Replacement		200,000	230,200					430,200	430,200			
WA 0142	Third Street Watermain Upgrade		100,000						100,000	100,000			
WA 8888	Annual Watermain Replacement Program							457,600	457,600	457,600			
WA 9999	Annual Water Pump Station/System Upgrade Pgm							823,600	823,600	823,600			
SS 0056	Emergency Sewer Construction Program		1,400,000		1,400,000		1,400,000		4,200,000		4,200,000		
SS 0067	NE 80th Street Sewermain Replacement (Phase II)					1,230,200	1,992,900	4,515,300	7,738,400	7,738,400			
SS 0074	Sewer System Telemetry Upgrades		150,000						150,000	150,000			
SS 0075	Inflow And Infiltration Reduction Program		200,000						200,000	200,000			
SS 0076	NE 80th Street Sewermain Replacement (Phase III)					1,230,200	1,992,900	1,654,600	4,877,700	4,877,700			
SS 8888	Annual Sanitary Pipeline Replacement Program					492,100			492,100	492,100			
SS 9999	Annual Sanitary Pump Station/System Upgrade Pgm					344,500	996,500	1,345,200	2,686,200	2,686,200			
Total Funded Water/Sewer Utility Projects		**910,000**	**4,547,900**	**2,001,300**	**1,450,000**	**3,625,600**	**9,935,700**	**8,796,300**	**30,356,800**	**21,023,800**	**5,027,000**	**3,150,000**	**1,156,000**

Unfunded Projects:

Project Number	Project Title	Total
WA 0052	108th Avenue NE Watermain Replacement	1,584,000
WA 0057	116th Avenue NE Watermain Replacement	2,731,000
WA 0096	NE 83rd Street Watermain Replacement	450,000
WA 0097*	NE 80th Street Watermain Replacement (Phase III)	1,201,000
WA 0098	126th Ave NE/NE 83rd & 84th St/128th Ave NE Watermain Replcmnt	1,197,000
WA 0104	111th Ave NE/NE 62nd St-NE 64th St Watermain Replcmnt	1,493,000
WA 0108	109th Ave NE/NE 58th St Watermain Replacement	504,000
WA 0109	112th Ave NE Watermain Replacement	1,179,000
WA 0111	NE 45th St And 110th/111th Ave NE Watermain Replcmnt	1,303,000
WA 0113	116th Ave NE/NE 70th-NE 80th St Watermain Replcmnt	2,858,000
WA 0119	109th Ave NE/111th Way NE Watermain Replacement	2,304,000
WA 0122	116th Avenue NE/NE 100th Street Watermain Replacement	1,506,000
WA 0123	NE 91st Street Watermain Replacement	453,000
WA 0128	106th Ave NE-110th Ave NE/NE 116th St-NE 120th St Watermain Replcmnt	2,305,000
WA 0129	South Reservoir Recoating	981,000
WA 0132	7th Avenue/Central Avenue Watermain Replacement	907,000
WA 0133	Kirkland Avenue Watermain Replacement	446,000
WA 0134	5th Avenue S/8th Street S Watermain Replacement	1,420,000
WA 0135	NE 75th Street Watermain Replacement	711,000
WA 0138	NE 72nd St/130th Ave NE Watermain Replacement	1,476,000
WA 0139	6th Street S Watermain Replacement	584,000
WA 0140*	NE 80th Street Watermain Replacement (Phase II)	2,863,000
SS 0051	6th Street South Sewermain Replacement	804,000
SS 0052	108th Avenue NE Sewermain Replacement	5,110,000
SS 0068	124th Avenue NE Sewermain Replacement	1,315,000
SS 0069	1st Street Sewermain Replacement	3,945,000
SS 0070	5th Street Sewermain Replacement	1,354,000
SS 0071	6th Street Sewermain Replacement	308,000
SS 0072	Kirkland Avenue Sewermain Replacement	1,980,000
SS 0077	West Of Market Sewermain Replacement	21,681,000
Total Unfunded Water/Sewer Utility Projects		**66,953,000**

Prior Year(s) Funding (Budget to Actuals):

Project Number	Project Title	Budget	Actual	Balance
WA 0093	Vulnerability Analysis Facility Upgrades	70,000	10,005	59,995
WA 0094*	North Reservoir Seismic Upgrades & Recoating	840,000	80,203	759,797
Total Prior Year(s) Funding (Budget to Actuals):		**910,000**	**90,208**	**819,792**

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City of Kirkland
Revised 2009-2014 Capital Improvement Program

PARK PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2009	2010	2011	2012	2013	2014	2009-2014 Total	Funding Source: Current Revenue	Funding Source: Reserve	Funding Source: Debt	Funding Source: External Source
PK 0049	Open Space and Pk Land Acq Grant Match Program		100,000						100,000		100,000		
PK 0056	Forbes Lake Park Development	75,000		877,500					877,500	877,500			
PK 0066	Park Play Area Enhancements		100,000	100,000	50,000	100,000	100,000	50,000	500,000	500,000			
PK 0078 600	A.G. Bell Elementary Playfields Improvements						200,000		200,000	200,000			
PK 0078 800	International Comm. School Playfield Improvements					300,000			300,000	300,000			
PK 0087	Waverly Beach Park Renovation			75,000	957,600				1,032,600	1,032,600			
PK 0113	Spinney Homestead Park Renovation				50,000	690,500			740,500	740,500			
PK 0115	Terrace Park Renovation						76,300	323,700	400,000	400,000			
PK 0119*	Juanita Beach Park Development	550,000	2,150,000				850,000	472,300	3,472,300	2,522,300			950,000
PK 0121	Green Kirkland Forest Restoration Program		50,000	50,000	50,000	50,000	50,000	50,000	300,000	300,000			
PK 0124	Snyder's Corner Park Site Development					75,000		425,000	500,000	500,000			
PK 0125	Dock Renovations	100,000			50,000				50,000	50,000			
PK 0131	Park and Open Space Acquisition Program	835,000	118,000	118,000	118,000	118,000	118,000	118,000	708,000				708,000
Total Funded Park Projects		**1,560,000**	**2,518,000**	**1,220,500**	**1,275,600**	**1,333,500**	**1,394,300**	**1,439,000**	**9,180,900**	**7,422,900**	**100,000**	**0**	**1,658,000**

Unfunded Projects:

Project Number	Project Title	Total
PK 0086	Totem Lake Neighborhood Park Acquisition & Development	2,500,000
PK 0095 100	Heritage Park Development - Phase III & IV	2,500,000
PK 0096	Ohde Avenue Park Development	250,000
PK 0097	Reservoir Park Renovation	500,000
PK 0099	N. Juanita (East) Neighborhood Park Acquisition/Development	2,500,000
PK 0100	N. Juanita (West) Neighborhood Park Acquisition/Development	2,500,000
PK 0101	N. Rose Hill Neighborhood Park Acquisition/Development (North)	2,500,000
PK 0102	N. Rose Hill Neighborhood Park Acquisition/Development (Central)	2,500,000
PK 0103	Market Neighborhood Park Acquisition/Development	3,500,000
PK 0108	McAuliffe Park Development	7,000,000
PK 0114	Mark Twain Park Renovation	750,000
PK 0116	Lee Johnson Field Artificial Turf Installation	1,500,000
PK 0117	Lake Avenue West Street End Park Enhancement	100,000
PK 0122 100	Community Recreation Facility Construction	42,000,000
PK 0126	Watershed Park Master Planning & Park Development	1,100,000
PK 0127	Kiwanis Park Master Planning & Park Development	1,100,000
PK 0128	Yarrow Bay Wetlands Master Planning & Park Development	1,600,000
PK 0129	Heronfield Wetlands Master Planning & Development	1,600,000
Total Unfunded Park Projects		**76,000,000**

Prior Year(s) Funding (Budget to Actuals):

Project Number	Project Title	Budget	Actual	Balance
PK 0056	Forbes Lake Park Development	75,000	70,653	4,347
PK 0119*	Juanita Beach Park Development	550,000	472,479	77,521
PK 0125	Dock Renovations	100,000	0	100,000
PK 0131	Park and Open Space Acquisition Program	835,000	508,117	326,883
Total Prior Year(s) Funding (Budget to Actuals):		**1,560,000**	**1,051,249**	**508,751**

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City of Kirkland
Revised 2009-2014 Capital Improvement Program

PUBLIC SAFETY PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2009	2010	2011	2012	2013	2014	2009-2014 Total	Funding Source: Current Revenue	Reserve/ Prior Year	Debt	External Source
PS 0061	Mobile Data Computers Replacement		227,300						227,300		168,200		59,100
PS 0062	Defibrillator Unit Replacement				272,000				272,000	228,480			43,520
PS 0063	Breathing Air Fill Station Replacement			159,100					159,100	117,730			41,370
PS 0066	Thermal Imaging Cameras Replacement					133,000			133,000	98,420			34,580
PS 0067	Dive Rescue Equipment Replacement						63,100		63,100	46,690			16,410
PS 0068	Local Emergency/Public Communication AM Radio					127,500			127,500	127,500			
PS 0069+	Critical Ham Radio Equipment			57,000					57,000	57,000			
PS 0070	Permanent Information Displays		220,000						220,000	206,900	13,100		
PS 0071	Self Contained Breathing Apparatus (SCBA)							327,200	327,200	242,130			85,070
Total Funded Public Safety Projects		**0**	**447,300**	**216,100**	**272,000**	**260,500**	**63,100**	**327,200**	**1,586,200**	**1,124,850**	**181,300**	**0**	**280,050**

Unfunded Projects:

Project Number	Project Title	Total
PS 0025''	Water Rescue Boat	115,000
PS 0043	Emergency Power (Site to be Determined)	220,000
PS 0065''	Disaster Response Portable Generators	155,000
Total Unfunded Public Safety Projects		**490,000**

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ATTACHMENT A

City of Kirkland
Revised 2009-2014 Capital Improvement Program

GENERAL GOVERNMENT PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2009	2010	2011	2012	2013	2014	2009-2014 Total	Funding Source: Current Revenue	Reserve/ Prior Year	Debt	External Source
TECHNOLOGY													
GG 0006 100	Geographic Information Systems		243,000	266,000	160,700	227,300	292,700	350,400	1,540,100	1,540,100			
GG 0006 110	Records Management System	961,300	144,900	160,800					305,700	305,700			
GG 0006 160	Finance and HR System Modules		88,400	83,200	113,600	113,300	58,900	60,300	517,700	517,700			
GG 0006 202	Fire RMS System Replacement					92,000			92,000		92,000		
GG 0006 300	Local and Wide Area Networks		280,000	507,200	428,500	670,800	396,000	427,600	2,710,100	2,563,000	147,100		
GG 0006 301	Disaster Recovery System Improvement	150,000			133,900		68,900	178,200	381,000	381,000			
GG 0006 302	Help Desk Clientele System Replacement	100,000	31,100						31,100		31,100		
GG 0006 501	Permit Plan System Replacement	50,000	356,800	214,200					571,000		571,000		
GG 0006 803	Recreation Registration System Replacement				88,900				88,900		88,900		
FACILITIES													
GG 0008*	Electrical, Energy Management & Lighting Systems		49,700	55,600	141,500	57,200	25,700	42,600	372,300		372,300		
GG 0009*	Mechanical/HVAC Systems Replacements		56,600	37,800	48,700	7,100	24,200	186,500	360,900		360,900		
GG 0010	Painting, Ceilings, Partition & Window Replacements		265,700	229,200	476,600	62,400	20,600	321,000	1,375,500		1,375,500		
GG 0011	Roofing, Gutter, Siding and Deck Replacements		66,100				9,600	865,500	941,200		941,200		
GG 0012	Flooring Replacements		101,700	133,400	41,300	100,500	16,800	134,200	527,900		527,900		
GG 0035	City Hall & Public Safety Expansion	750,000	3,000,000	6,592,000	11,632,800	11,981,800			33,206,600	800,000	8,792,000	23,614,600	
GG 0037 001	Maintenance Center Expansion - Phase 1			50,000					50,000		50,000		
CITYWIDE													
GG 0023	Neighborhood Connection Program				140,000	140,000	140,000	140,000	560,000	400,000	160,000		
Total Funded General Government Projects		**2,011,300**	**4,684,000**	**8,329,400**	**13,406,500**	**13,452,400**	**1,053,400**	**2,706,300**	**43,632,000**	**6,507,500**	**13,509,900**	**23,614,600**	**0**

Unfunded Projects:

Project Number	Project Title	Total
GG 0006 125	Standard Reporting Tool	135,000
GG 0006 130	Customer Relationship Management System	414,000
GG 0006 203	Police CAD & RMS System Replacement	1,400,000
GG 0006 207	Police ProAct Unit NCIC Handheld Computers	52,000
GG 0006 401	Utility Billing/Cashiering System Replacement	491,700
GG 0006 402	Financial System Replacement	1,500,000
GG 0006 701	Fleet Management Systems Replacement	80,000
GG 0006 702"	Maintenance Management System Upgrade	82,000
GG 0006 801"	Parks Work Order System	55,000
GG 0006 804	Wireless in the Parks Expansion	335,000
GG 0037 002	Maintenance Center Expansion - Phase 2	15,000,000
Total Unfunded General Government Projects		**19,544,700**

Prior Year(s) Funding (Budget to Actuals):

Project Number	Project Title	Budget	Actual	Balance
GG 0006 110	Records Management System	961,300	858,228	103,072
GG 0006 301	Disaster Recovery System Improvements	150,000	115,083	34,917
GG 0006 302	Help Desk Clientele System Repl.	100,000	0	100,000
GG 0006 501	Permit Plan System Replacement	50,000	8,738	41,262
GG 0035	City Hall & Public Safety Expansion	750,000	0	750,000
Total Prior Year(s) Funding (Budget to Actuals):		**1,261,300**	**982,049**	**279,251**

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ATTACHMENT B

Revised 2009 - 2014 CIP
PROJECT ADDITIONS, MODIFICATIONS & DELETIONS

Project Type/Title	Project #	Addition/Modification/Deletion
TRANSPORTATION		
Street:		
No additions, changes or deletions to Street Projects		
Non-Motorized:		
100th Avenue NE/99th Place NE Sidewalk	NM 0060	Total project cost decreased from $714,000 to $514,000 due to favorable bids received.
Kirkland Way Sidewalk	NM 0063	Total project cost increased from $414,500 to $1,414,500 due to a scope change; project remains unfunded.
Park Lane Sidewalk	NM 0064	Partial funding of $119,000 in 2009 of overall project; balance remains unfunded.
Central Way Pedestrian Enhancements	NM 0065	Moved from 2013-14 to 2009-11 to recognize award of Pedestrian & Bicycle Safety Program State grant of $198,000; total project cost decreased from $525,900 to $378,000.
12th Avenue School Walk Route Enhancements	NM 0066	Moved from 2010-12 to 2009-11 to recognize TIB funding of $200,000; total project cost decreased from $624,100 to $472,000.
Elementary School Walk Route Enhancements	NM 0067	New project; total project cost of $1,198,000 including State grant funding of $498,000.
Traffic Improvement:		
NE 85th St/132nd Ave NE Intersection Improvements	TR 0078	Delayed completion year and impact fee funding from 2010 to 2011.
NE 85th St/114th Ave NE Intersection Improvements	TR 0079	Delayed completion year and impact fee funding from 2010 to 2011.
NE 85th St/124th Ave NE Intersection Improvements	TR 0080	Delayed completion year and impact fee funding from 2010 to 2011.
6th Street & Central Way Intersection Improvements	TR 0100	New project; total project cost of $2.05 million including State funding of $2 million.
Downtown Transit Center - Local Portion	TR 0101	New project to recognize local portion activities related to the Transit Center; total project cost of $87,000.
Growth & Transp. Efficiency Center (GTEC) Enhanc.	TR 0102	New project; total project cost of $743,000 including Federal funding of $686,000.

Six Year Funding Reconciliation - Transportation Projects (in 000's)

Adopted Total Transportation Projects		$ 47,120
100th Avenue NE/99th Place NE Sidewalk	$ (200)	
Park Lane Sidewalk	119	
Central Way Pedestrian Enhancements	(148)	
12th Avenue School Walk Route Enhancements	(152)	
Elementary School Walk Route Enhancements	1,198	
NE 85th St/132nd Ave NE Intersection Improvements	-	
NE 85th St/114th Ave NE Intersection Improvements	-	
NE 85th St/124th Ave NE Intersection Improvements	-	
6th Street & Central Way Intersection Improvements	2,050	
Downtown Transit Center - Local Portion	87	
Growth & Transp. Efficiency Center (GTEC) Enhanc.	743	
Subtotal of Revisions		3,697
Revised Total Transportation Projects		$ 50,817

ATTACHMENT B

Project Type/Title	Project #	Addition/Modification/Deletion
SURFACE WATER MANAGEMENT		
No additions, changes, or deletions to the Surface Water CIP		

Six Year Funding Reconciliation - Surface Water Management Projects (in 000's)

Adopted Total Surface Water Management Projects		$ 6,177
	$ -	
Subtotal of Revisions		-
Revised Total Surface Water Management Projects		$ 6,177

Project Type/Title	Project #	Addition/Modification/Deletion
UTILITIES		
Water:		
NE 80th St Watermain Replacement Phase 3	WA 0097	Project name changed from "120th Ave NE Watermain Replacement"; project remains in unfunded category.
120th Ave NE/NE 73rd St Watermain Replacement	WA 0107	Moved from 2014 to 2009 to coordinate with the Lake Washington High School expansion; project funded at $827,000 from utility capital reserves.
NE 80th St Watermain Replacement Phase 2	WA 0140	Project name changed from "NE 85th St/132nd Ave NE Watermain Replacement"; project remains in unfunded category.
Sewer:		
Market Street Sewermain Replacement	SS 0046	Total project decreased from $1,858,600 to $1,206,000 due to lower than anticipated construction costs; project removed from the 2009-14 CIP.

Six Year Funding Reconciliation - Utility Projects (in 000's)

Adopted Total Utility Projects		$ 30,182
120th Ave NE/NE 73rd St Watermain Replacement	$ 827	
Market Street Sewermain Replacement	(653)	
Subtotal of Revisions		174
Revised Total Utility Projects		$ 30,356

ATTACHMENT B

Project Type/Title	Project #	Addition/Modification/Deletion
PARKS		
Juanita Beach Park Development	PK 0119	Total project cost increased from $3,522,300 to $4,022,300 with addition of $500,000 of State grant funding in 2009.

Six Year Funding Reconciliation - Parks Projects (in 000's)

Adopted Total Parks Projects		$ 8,681
Juanita Beach Park Development	$ 500	
Subtotal of Revisions		500
Revised Total Parks Projects		$ 9,181

Project Type/Title	Project #	Addition/Modification/Deletion
PUBLIC SAFETY		
Critical Ham Radio Equipment	PS 0069	Moved from unfunded category to funded category due to grant funding not being awarded; total project cost of $57,000 funded by interest income.

Six Year Funding Reconciliation - Public Safety Projects (in 000's)

Adopted Total Public Safety Projects		$ 1,529
Critical Ham Radio Equipment	$ 57	
Subtotal of Revisions		57
Revised Total Public Safety Projects		$ 1,586

Project Type/Title	Project #	Addition/Modification/Deletion
GENERAL GOVERNMENT		
Technology:		
Maintenance Management System Upgrade	GG 0006 702	Project funded in previous CIP and moved to unfunded category as part of 2009-14 CIP update.
Parks Work Order System	GG 0006 801	Project funded in previous CIP and moved to unfunded category as part of 2009-14 CIP update.
Facilities:		
Maintenance Center Bldg Air Compressor	GG 0009*	Moved from 2016 to 2009 due to equipment failing; funded by life cycle sinking fund reserves.
Fire Station #26 Interior Lighting	GG 0008*	Delayed from 2009 to 2015 due to equipment in good condition and not needing replacement; funding returned to the life cycle sinking fund reserves.

Six Year Funding Reconciliation - General Government Projects (in 000's)

Adopted Total General Government Projects		$ 43,653
Maintenance Center Bldg Air Compressor	4	
Fire Station #26 Interior Lighting	(25)	
Subtotal of Revisions		(21)
Revised Total General Government Projects		$ 43,632

ATTACHMENT C

Revised 2009-14 CIP

Projects Funded by General Purpose Revenues for 2009-2010

CIP Category	Total Funded	Interest		Sales Tax		Gas Tax		Subtotal Gen Purpose Revenue		Reserves & Prior Year Savings		Total	
CIP Project	2009-2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010
Transportation													
Street Preservation Program	4,000,000	-	-	270,000	270,000	534,000	545,000	804,000	815,000	-	-	804,000	815,000
Public Safety													
Mobile Data Computers Repl.	227,300	-	-	-	-	-	-	-	-	168,200	-	168,200	-
Breathing Air Fill Station Repl.	159,100	-	117,730	-	-	-	-	-	117,730	-	-	-	117,730
Critical Ham Radio Equipment	57,000	-	57,000	-	-	-	-	-	57,000	-	-	-	57,000
Permanent Information Displays	220,000	206,900	-	-	-	-	-	206,900	-	13,100	-	220,000	-
Information Technology													
Geographic Information Systems	509,000	87,900	76,800	5,100	39,200	-	-	93,000	116,000	-	-	93,000	116,000
Records Management System	305,700	-	-	144,900	160,800	-	-	144,900	160,800	-	-	144,900	160,800
Finance and HR System Modules	171,600	88,400	83,200	-	-	-	-	88,400	83,200	-	-	88,400	83,200
Local and Wide Area Networks	787,200	247,730	449,780	-	-	-	-	247,730	449,780	32,270	57,420	280,000	507,200
Help Desk Clientele System Repl.	31,100	-	-	-	-	-	-	-	-	31,100	-	31,100	-
Permit Plan System Replacement	571,000	-	-	-	-	-	-	-	-	356,800	214,200	356,800	214,200
Facilities													
City Hall & Public Safety Expansion	9,592,000	-	-	-	-	-	-	-	-	3,000,000	6,592,000	3,000,000	6,592,000
Total	**16,631,000**	**630,930**	**784,510**	**420,000**	**470,000**	**534,000**	**545,000**	**1,584,930**	**1,799,510**	**3,601,470**	**6,863,620**	**5,186,400**	**8,663,130**

CITY OF KIRKLAND
Information Technology Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3050
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Brenda Cooper, Chief Information Officer

Date: August 18th, 2009

Subject: VERIZON/FRONTIER TRANSFER

RECOMMENDATION

City Council receives a presentation from the Information Technology Department concerning the request received from Verizon Communications, Inc. ("Verizon") on June 1, 2009, to transfer its cable franchise to Frontier Communications Corporation ("Frontier").

We are also asking that Council approve the expenditure of up to $54,750 for legal counsel, financial experts and for work with other jurisdictions regarding the transfer.

BACKGROUND DISCUSSION

Verizon has been offering television service across its fiber lines in the community since October of last year. On the first of June, Verizon delivered a request to us to approve a transfer of the Cable Franchise to Frontier. While there is some dispute about the amount of time that we have to act on the request, the narrowest interpretation of our time window is 120 days, which requires action by the end of September.

We have two goals for the City Council at this meeting. The first is to update the Council on the cable franchise transfer analysis and help clarify the City's obligations in the transaction. This presentation covers that element which the City controls of the pending sale of Verizon's telecommunications assets, except for wireless, in 14 states, including Washington and Oregon. We ask to be able to first give the presentation in its entirety so that potentially affected citizens will have a chance to understand the issues. After the presentation, we will welcome questions from the Council. The second goal is to discuss cooperation with other local jurisdictions and the funding for legal counsel to assist us in evaluating this transfer.

It is important to understand that the City of Kirkland does not have jurisdiction or authority over most aspects of the Verizon sale to Frontier. Federal law provides timeline requirements the City must follow, and the City's own franchise agreement and regulatory ordinance detail the specific framework for review of a cable franchise transfer. While the City has the ability, and the responsibility as the regulator, to grant or deny the transfer of the cable franchise, the City does not have the ability to regulate the telephone or broadband sections of the Verizon system in any manner. The Washington Utilities and Transportation Commission (WUTC) will have to take action on the telephone portion of the transfer.

This transfer could have a significant effect on the community, particularly if Frontier (a relatively small, rural telephone operator) does not have the legal, financial, and technical ability to fulfill its Kirkland

franchise obligations. Therefore, it is important that we complete a responsible evaluation of the transaction. Verizon and Frontier are required to provide the City with a federal application and any other information the City requires.

After reviewing Verizon's application, the City submitted a detailed request for information to the companies. In early July, Verizon and Frontier provided the City with some answers. However, many answers raised additional questions and some questions went unanswered or the City was told the information was confidential. Verizon has said it will provide access to the confidential information but has not done so as of August 19. Once staff has completed a review of the application and the supporting information, the staff will discuss with Verizon and Frontier what, if any, consideration the companies' will provide to alleviate staff-identified risks to the City. Based on the outcome of those discussions/negotiations, staff will recommend City Council action concerning the transfer. Possible recommendations include approval, denial, or potentially a recommendation of an approval that includes new terms that help us ensure Frontier meets its obligations. For example, in the cable area we would like reasonable assurances that Frontier will be able to deliver channel line-ups, customer service, and complete the FiOS system build-out that are substantially similar to those of Verizon. It should be noted that we do not have direct regulatory authority over channel delivery, but for the purpose of approving the transfer, Frontier could contractually bind itself to a minimum level of performance in this area. We may also need assurance that Verizon will continue to support Frontier's cable TV performance by providing some of its national video distribution facilities to Frontier.

Since the original filing did not provide complete information and because this is a complex corporate transfer, the City Council is unlikely to be able to take definitive action by the end of September. If the companies will not agree to additional time for City consideration, the City should plan to act in the 120 days. Staff will probably recommend that Council deny the transfer "without prejudice" which will force Verizon to resubmit the transfer request and restart the 120 day clock. This is, however, not a foregone conclusion at this time. We are continuing to evaluate information as Verizon provides it to us.

The City is working with other Northwest jurisdictions where Verizon is making the same request. At this time, the other jurisdictions all feel reasonably similarly; we share the same basic questions and concerns regarding this franchise transfer. That said, we have retained our ability to act independently.

Because we have needed outside counsel to help us interpret complex telecommunications rulings and laws, we have been incurring expenses associated with this transfer. Our telecommunication KMC (Title 26) states that any cable company requesting a transfer must pay our costs of evaluating the transfer. However, Verizon has so far refused to acknowledge that obligation. We anticipate that the cost incurred by the time of the meeting on September 1st will be approximately $25,000, and that further work will be required to support the document analysis, negotiations and Council recommendation. We will continue to pursue reimbursement from Verizon. We will be looking to Council to provide direction regarding further study of this matter and, potentially, to authorize additional funding.

FISCAL NOTE

CITY OF KIRKLAND

Source of Request

Brenda Cooper, Chief Information Officer

Description of Request

Request funding of $54,750 from the Contingency Fund for legal counsel and financial consultant assistance needed related to the proposed transfer by Verizon of its cable franchise agreement with the City to Frontier Communications.

Legality/City Policy Basis

Fiscal Impact

One-time use of $54,750 of the Contingency Fund. The reserve is able to fully fund this request.

Recommended Funding Source(s)

	Description	2010 Est End Balance	Prior Auth. 2009-10 Uses	Prior Auth. 2009-10 Additions	Amount This Request	Revised 2010 End Balance	2010 Target
Reserve	Contingency Fund	2,324,515	0	0	54,750	2,269,765	4,915,571
Revenue/Exp Savings							
Other Source							

Other Information

Prepared By	Sandi Hines, Financial Planning Manager	Date	August 24, 2009

Council Meeting: 09/01/2009
Agenda: New Business
Item #: 11. d.

CITY OF KIRKLAND
Information Technology Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3050
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Janice Perry, MultiMedia Communications Manager
Brenda Cooper, Chief Information Officer

Date: September 1, 2009

Subject: Title 26 Updates

Recommendation

City Council adopt the attached ordinances Amending Title 26, the Telecommunications Chapter of the Kirkland Municipal Code.

Background/Discussion

Overall Purpose of the Revisions:

Telecommunications and Cable Television Providers operating in the City of Kirkland are subject to various levels of regulation by various levels of government. The City currently consolidates the exercise of its regulatory authority over these companies and their behavior in the rights-of-way in KMC Title 26. As the telecommunications world and state and federal law have evolved, existing Title 26 has become dated. In several places, it is obsolete or inconsistent with preemptive actions by the state and federal authorities. In others, existing Title 26 fails to implement existing City authority to best protect the interests of the City in managing the rights-of-way and protecting consumers.

The proposed ordinances address these problems in several ways:

1. Conforms the City's regulation of communications right-of-way users in Title 26 to current state and federal law requirements and obligations;
2. Consolidates and updates the City's exercise of its authority to regulate cable television operators, including the awarding of franchises; and
3. Establishes minimum cable television consumer protection requirements;

The Existing Regulatory Framework:

Cable operators inside the City of Kirkland are regulated via a series of tools applied by different levels of government.

- The Federal Communications Commission (FCC) and the federal Communications Act of 1934 (which includes the Cable Television Act of 1984 as amended) preempts some state and local authority, sets some minimum requirements for local cable franchises, and leaves broad areas of cable regulation to local government.

- The State of Washington regulates telephone services and establishes certain requirements local governments must follow in permitting use of rights of way.

- The City regulates cable television operators. A local cable franchise authority (e.g., the City of Kirkland) has two tools available to exercise its regulatory authority over a cable operator: the Franchise Agreement contract and local police power regulations and ordinances.

- The City regulates and manages the City's rights-of-way.

Now that Verizon is offering cable television services, the City must reconcile its authority over cable services with the Washington Utilities and Transportation Commission (WUTC) pre-emptive regulation of voice and data services over the same telephone company network.

As the City exercises its right-of-way and cable television regulatory authority, it must balance which issues should be dealt with through ordinance (one size DOES fit all) and which issues should be left to contract (different provisions for different companies). The cable operators typically want the cable franchise contract to dominate the relationship, seeking to prevent the City from acting unilaterally through ordinance. For that reason, the City's agreements with both Comcast and Verizon make the terms of the cable franchise agreement controlling over the KMC, and where the contracts are silent, then the KMC applies.

Recent History:

In January 2006, City Council adopted amendments to Title 26 to reflect modifications in federal and state legislation, and to conform the City's right-of-way management policies to the cable franchise agreement negotiated with Comcast that same year.

This action was taken after the proposed amendments were distributed to the companies affected by the ordinance; the three larger ones being Comcast, Puget Sound Energy (PSE) and Verizon. Comments were received from Comcast and Verizon. Where appropriate to improve clarity, operation, and minimize the administrative burden on the City and the companies, staff recommended changes to the proposed ordinances based on comments received. We did not however, incorporate changes which would have limited the City's authority or prevented the City from requiring submission of information it needs to properly manage the rights-of-way.

Since the 2006 KMC amendments, more changes have occurred in federal and state communications and cable television regulations. And the federal courts have clarified the reach and scope of several federal statutes and rules.

In addition, Verizon came into town as a new provider of cable television services and requested a cable franchise. Because Verizon is primarily a telephone system provider and is regulated by the state for most of its activities, current Title 26 is both confusing and ambiguous (some portions apply only to Comcast, some to Comcast and Verizon, and others to neither). Verizon refused to accept the Comcast franchise agreement or even to use that document as a starting place. Thus the final Verizon Franchise Agreement document is somewhat different than Comcast agreement, even though every effort was made to keep the two companies on reasonably equal competitive footing. Since the KMC and franchise documents work together, we now need to change the KMC to exercise the City's regulatory authority in a manner consistent with the two cable franchises.

We hired the same law firm that assisted on the Verizon franchise, Miller & Van Eaton, to modify the KMC since they already knew the franchise well.

The staff once again distributed these proposed draft ordinances to the companies now in the City's rights-of-way for their review and comment. The three larger ones are Comcast, Puget Sound Energy (PSE) and Verizon. Comments were received from Verizon. Where appropriate to improve the clarity, operation, and minimize the administrative burden on the City and the companies, we made changes to the ordinances based on comments received. We did not however, incorporate changes which would limit the City's authority or prevent the City from requiring information it needs to properly manage the rights of way.

What Changed?

Taken together, the changes are generally more numerous than substantive. Most are editorial and reformatting changes as the proposed ordinances now assemble related topics into common sections, and segregate the City's cable television regulatory function from the right-of-way management function. The following list includes most of the more substantive changes:

- Title 26 is now the Communications Rights-of-Way Ordinance, Title 30 is the Cable Ordinance and Title 31 is the Cable Consumer Protection Ordinance.

  The previous version of Title 26 was unclear about who it applied to when. Also different topics such as customer service requirements for cable operators and right of way management requirements for competitive telephone companies were grouped into one fairly confusing document. Rather than one large Title, we have broken it into three separate ordinances: right of way authorization and use by communications companies generally, cable television-specific regulation, and cable television consumer protection.

  The scope or applicability of each ordinance is somewhat different. The ROW ordinance applies to all communications companies occupying the rights-of-way, including telecommunications carriers and cable television operators. The consumer protection ordinance applies only to cable operators but does extend, potentially, to their non-cable services.

  The changes provide more clarity as to which requirements apply to which type of service providers.

- The ordinances establish right-of-way registration requirements and (where relevant) application criteria and regulations for all communications companies working in the rights-of-way.

- New wording assures that if a franchisee bundles cable service with non-cable service, the franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the franchise fee payments required under this ordinance and the cable franchise agreement.

- The ordinances require that facility owners must comply with our street regulations, such as tree laws (i.e. overhead lines), and traffic management during construction. These are examples of clarifications – our street tree and traffic management laws would apply whether or not we called it out here, but this makes it easier for a company to understand its responsibilities.

- The ordinances now require that any owner or permittee conducting work in the rights-of-way must obtain a use permit. The ordinance does permit major right-of-way occupants to get a master use permit.

- The ordinances add consumer protection language which establishes minimum standards for cable operator performance of customer services, such as telephone wait times, customer installations, written disclosure of policies, and customer billing practices.

Examples of changes Verizon requested but which we did not incorporate:

- Verizon claims it is exempt from the need for a master permit and from the registration requirement because it is a telephone company which, based on its acquisition of GTE assets, was grandfathered in the Washington State constitution.

    - The proposed ordinance preserves the City's rights and is consistent with current state law. The ordinance does not require action contrary to any company's constitutional rights. If Verizon, its successors or other companies can prove the constitutional exemption, we would allow it for them.

    - The registration requirement is not an assertion by the City that Verizon must get the City's prior permission to operate in the City. Registration is a reasonable exercise of the City's right-of-way management authority to identify and coordinate activities in the rights-of-way.

- Verizon opposes the requirement to provide maps of its facilities in the rights-of-way, as required in 26.7.2. Verizon makes several arguments, including that the additional charges related to filing the maps violate state law and the requirement to provide maps is unduly burdensome. We believe the City can collect reasonable administrative fees related to its regulatory functions, and appropriate planning and management of rights-of-way requires knowledge of the location of the existing facilities. The ordinance does not require disclosure of competitively sensitive information (like fiber counts, or the technical capability of the facilities). We believe it is important to our work as regulators and as protectors of the public rights-of-way to understand what and where facilities are in our rights of way. This can be of particular importance in an emergency.

- Verizon wants the City to pay all costs of forced relocation of facilities in the rights-of-way. Washington law specifies the terms under which various parties pay relocation costs and the ordinance is consistent those state requirements.

- Verizon objects to financial penalties for failing to perform duties under this ordinance. Verizon claims the state law which prohibits the City from assessing a fee on telephone company use of the rights-of-way as a prohibition against financial penalties. We believe that a financial penalty for non-compliance is a regulatory action and not the imposition of a fee for use.

These are simply examples. There are other areas where we and Verizon disagree. However, it should be noted that we also accepted many of Verizon's suggested changes which are in the ordinances which are presented to you here. Some examples include:

- Accepting a number of suggestions that clarify the relationship between state telephone regulatory authority and City rights-of-way management authority;
- Rewording the minimum insurance requirements to allow combinations of insurances to reach required limits;
- Changes in the administration of right-of-way coordinating activities, like notice periods prior to construction and rights to participate in joint trenching activities, and coordination with facility locator services to make working in the City more efficient and less costly to the providers;
- New language that allows companies to protest findings that we may make against them (for example, it allows them to contest a stop work order).

Conclusion:

The proposed ordinances have been reviewed by our Multimedia Services Manager, Public Works, the Chief Information Officer, the City Attorney's Office, and our outside legal counsel. The drafts have been provided to those businesses most likely affected, and one of them made significant comment, to which we have responded. On balance we believe that these revised ordinances represent changes consistent with the City's authority under existing state and federal laws, and that the proposed ordinances will be easier for everyone from cable consumers to telephone companies to interpret and follow. The staff recommendation is that Council pass these ordinances.

ORDINANCE NO. 4205

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO USE OF RIGHT OF WAY FOR COMMUNICATIONS PURPOSES AND REPEALING AND REENACTING TITLE 26 OF THE KIRKLAND MUNICIPAL CODE.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Title 26 of the Kirkland Municipal Code is hereby repealed.

Section 2. A new Title 26 of the Kirkland Municipal Code, entitled "Right of Way--Communications" is hereby adopted to read as follows:

Chapter 26.04
PURPOSE

Sections:
26.04.010 Purpose.

26.04.010 Purpose
The purpose of this title is to:

(a) Permit and manage reasonable access to the rights-of-way of the city for communications purposes on a nondiscriminatory basis;

(b) Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of right-of-way use;

(c) Encourage the provision of advanced and competitive communications services on the widest possible basis to the businesses, institutions and residents of the city;

(d) Promote competition in communications;

(e) Conserve and manage the limited physical capacity of the rights-of-way held in public trust by the city;

(f) Minimize unnecessary local regulation;

(g) Ensure that the city's current and ongoing costs of granting and regulating private access to and use of the rights-of-way are fully paid by the persons seeking such access and causing such costs;

(h) Ensure that all owners of communications facilities within the city comply with the applicable ordinances, rules and regulations of the city;

(i) Ensure that the city can continue to fairly and responsibly protect the public health, safety and welfare;

(j) Enable the city to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

Chapter 26.08
DEFINITIONS AND RULES OF CONSTRUCTION

Sections:

26.08.010 Rules of construction
26.08.020 Defined terms

26.08.010 Rules of construction

(a) For the purposes of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended; words not defined therein shall be given the meaning set forth in ESSB 6676; and words not defined therein shall have their common and ordinary meaning.

(b) When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; the masculine gender includes the feminine gender, and vice versa.

(c) The words "shall" and "will" are mandatory, and "may" is permissive.

(d) The term "written" shall include electronic documents.

26.08.020 Defined terms

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

(b) "City" means the city of Kirkland.

(c) "City Manager" means the city manager, or the city manager's lawfully appointed designee.

(d) "City property" means all real property now or hereafter owned by the city whether in fee ownership or other interest.

(e) "Claims" means all actions, costs, damages, demands, expenses, fines, injuries, judgments, liabilities, losses, penalties, suits, fees, attorneys' fees, and costs.

(f) "Communications" means information services, telecommunications, video, or similar services.

(g) "Department" means the department of public works.

(h) "Director" means the director of the department of public works, or his or her designee.

(i) "Facility" means all appurtenances or tangible things owned, leased, operated, or licensed by an owner or provider.

(j) "Master permit" means a grant from the city authorizing an owner to make use of the rights-of-way for a specified purpose, other than a cable franchise.

(k) "Master permittee" means a person who has received a master permit from the city.

(l) "Obstruction" means any object or structure that blocks or impedes the construction or maintenance of public works, including private facilities that provide communications services to customers; shrubbery or plants of any kind; and storage materials.

(m) "Overhead facilities" means facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

(n) "Owner" means a person who owns facilities that are installed or maintained in the rights-of-way of the city for communications purposes. To the extent consistent with state law, the term "owner" excludes any governmental or non-profit entity that owns facilities installed or maintained in the rights-of-way of the city for communications purposes if such facilities are combined with facilities owned by the city in such a way that any right-of-way activities affecting the facilities of such governmental or non-profit entity would also affect the city's facilities.

(o) "Permit" means a master permit or use permit.

(p) "Permittee" means a master permittee or use permittee.

(q) "Person" means corporations, companies, associations, firms, partnerships, limited liability companies, government entities, other entities and individuals.

(r) "Personal Wireless Facilities" shall have the same meaning as in 47 U.S.C. § 332(c)(7)(C)(ii), which states as of the date of enactment of this title that this term means facilities for the provision of personal wireless services.

(s) "Personal Wireless Service" shall have the same meaning as in 47 U.S.C. § 332(c)(7)(C)(i), which states as of the date of enactment of this title that this term means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

(t) "Provider" means an owner whose facilities in rights-of-way are used to provide communications to customers in the city.

(u) "Right-of-way work" means any construction, installation, maintenance, repair, removal, or other work with respect to facilities in or on the surface or subsurface of rights-of-way.

(v) "Rights-of-way" means land acquired or dedicated for public roads and streets. It does not include (a) state highways; (b) structures, including poles and conduits, located within the right of way; (c) federally granted trust lands or forest board trust lands; (d) lands owned or managed by the state parks and recreation commission; (e) federally granted railroad rights of way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use; or (f) parks or other public property not used as a public right-of-way.

(w) "State" means the state of Washington.

(x) "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

(y) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.

(z) "Use permit" means the authorization by which the city grants permission to an owner or provider to enter and access specified right-of-way for the purpose of installing, maintaining, repairing, or removing identified facilities.

(aa) "Use permittee" means a person who has received a use permit from the city under this title.

(bb) "Washington Utilities and Transportation Commission" or "WUTC" means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the state of Washington to the extent prescribed by law.

(cc) "Wireless" means communications using radio frequency or optical emissions to complete one or more communications paths in whole or in part among originating and receiving points without other tangible physical connection, including without limitation radio and unguided optical waves, and the apparatus used for such transmission.

(dd) "Wireline" means communications using conducted electromagnetic or optical emissions by, over, or within a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

Chapter 26.12
APPLICABILITY

Sections:

26.12.010 Persons subject to this title
26.12.020 Authorizations required by persons subject to this title

26.12.010 Persons subject to this title

All owners, providers, master permittees, and use permittees shall be subject to this title.

26.12.020 Authorizations required by persons subject to this title

(a) Any owner must have a master permit prior to installing or maintaining any facilities in the rights-of-way for communications purposes, except as provided in subsections 26.12.020(b) and 26.12.020(c).

(b) Any owner that shows that it has a cable franchise from the city need not obtain a master permit pursuant to this title for its use of the rights-of-way for cable service. It must obtain a master permit pursuant to this title if it uses the rights-of-way for any purposes other than cable service.

(c) Any owner that shows that the state of Washington has granted it the right to operate within the city's rights-of-way without the city's consent may, but is not required to, obtain a master permit pursuant to this title. A person asserting such a state grant consistent with RCW 35.99.010, shall register with the city pursuant to Chapter 26.16 of this title and, in so doing, provide the city with a statement, and supporting documentation, detailing the basis for the assertion of a state-wide grant.

(d) An owner placing wireless facilities in the city's rights-of-way shall comply with the provisions of 26.20.080.

(e) Any owner or permittee conducting right-of-way work in the rights-of-way must obtain a use permit pursuant to this title.

(f) Owners, permittees, and providers that do not require authorizations pursuant to Section 26.12.020 may nonetheless be required to register with the city pursuant to Section 26.16.010.

Chapter 26.16
REGISTRATION

Sections:

26.16.010 Registration required
26.16.020 Purpose of registration
26.16.030 Exception to registration

26.16.010 Registration required

All owners and permittees, and all providers that offer or provide communications to customers within the city, shall register with the city hereunder on forms provided by the Department. The information provided in this registration shall include the following:

(a) The identity and legal status (*e.g.*, corporation, partnership, limited partnership) of the registrant;

(b) The address and telephone number of the registrant;

(c) The name, address, telephone number, and electronic mail address of the officer, agent or employee responsible for the accuracy of the registration statement;

(d) A description of the registrant's existing or proposed facilities within the city;

(e) Information sufficient for the city to determine whether the registrant is subject to this title pursuant to Section 26.12.010;

(f) Information sufficient for the city to determine whether any communications services provided or to be provided by the registrant constitute an occupation or privilege subject to any municipal tax, permit, license or franchise fee;

(g) To the extent allowed by law, copies of the applicant's registration filed with the Washington Utilities and Transportation Commission pursuant to Chapter 480-121 WAC. Alternatively, applicant shall submit a statement detailing the basis (along with pertinent supporting materials) for its authorizations to provide telecommunications services or, in the further alternative, the reasons that registration with the WUTC is not required;

(h) To the extent allowed by law, information sufficient for the city to determine that the applicant has applied for and received any permit, operating license or other right or approvals required by the Federal Communications Commission to provide telecommunications services or facilities;

(i) If the registrant believes that it is not required to obtain a master permit or franchise from the city, the showing referred to in Section 26.12.020(b) or 26.12.020(c);

(j) Such other information as the city may reasonably require with respect to its authority to manage, regulate and control public rights-of-way.

26.16.020 Purpose of Registration

The registration requirement is an exercise of the City's police power to obtain information the City needs to effectively and efficiently plan,

organize and manage demands placed on its rights of way. Registration does not constitute a grant or deprivation of the right to occupy the rights of way, but simply provides the City with necessary information to manage the rights of way in a manner consistent with the City's rights under state law. The purpose of registration is to:

(a) Provide the city with accurate and current information necessary for the management and regulation of city right-of-way;

(b) Assist the city in enforcement of this title;

(c) Assist the city in the collection and enforcement of any municipal taxes, fees, or charges that may be due to the city; and

(d) Assist the city in monitoring compliance with local, laws.

26.16.030 Exception to Registration

A person which provides telecommunications services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control; provided, that such company or person does not use or occupy any rights-of-way of the city or other ways within the city, is excepted from the registration requirements pursuant to this title.

Chapter 26.20
MASTER PERMITS

Sections:

26.20.010 Authority granted by master permit
26.20.020 Treatment of franchises and licenses
26.20.030 Applications for master permits
26.20.040 Acceptance
26.20.050 Characteristics of master permits
26.20.060 Amendment of master permit
26.20.070 Renewal of master permit
26.20.080 Personal wireless facilities in rights-of-way
26.20.090 Use of poles and conduit
26.20.100 Removal

26.20.010 Authority granted by master permit

(a) Owners must obtain master permits pursuant to Section 26.12.020(a).

(b) A master permit authorizes the master permittee to use the rights-of-way, and only the rights-of-way, for a specified purpose. Use of city property other than the rights-of-way, including any use of city poles or other facilities, requires a separate site license from the city.

(c) A master permit shall state the specific purpose for which it authorizes the master permittee to use the rights-of-way. The issuance of a master permit does not relieve the applicant from obtaining any other legal authority that may be necessary to use the rights-of-way for any other purpose.

(d) A master permit shall apply either to wireline or to wireless use of the rights-of-way, but not both. If an owner wishes to install both sorts of facilities, it must obtain separate master permits. The master permit shall expressly state the type of facility to which it applies.

26.20.020 Treatment of franchises and licenses

Any franchise granted pursuant to Section 26.04.050 as amended in 2006, and any license granted pursuant to Section 26.04.040 as amended in 2006, shall be treated as a master permit for purposes of this title during the remainder of its term.

26.20.030 Applications for master permits

(a) An application for a master permit shall be submitted in the form and manner specified by the Department.

(b) An application for a master permit shall include the following information, as specified in the form provided by the Department:

(1) The information required in Section 26.16.010(a) through 26.16.010(c);

(2) A copy of the applicant's registration pursuant to Section 26.16.010 (which may be submitted simultaneously with the master permit application);

(3) Such other information as the city may reasonably require.

(c) Within twenty-eight calendar days after the date of submittal of the application, the city shall provide the applicant a written determination of whether the application is complete, and, if the application is not complete, what must be submitted by the applicant in order for the application to be complete. The procedures for approval of a license and the requirements for a complete application shall be available in written form.

(d) Within one hundred twenty days after receiving a complete application hereunder, the City Council shall make a determination granting or denying the application in whole or in part. The one-hundred-twenty-day period may be extended by a specific number of days or to a defined date by written agreement between the city and the applicant. The one-hundred-twenty-day period shall not apply in any case the City Council cannot reasonably act within the one-hundred-twenty-day period.

(e) The following standards shall apply when determining to grant or deny the application:

(1) The capacity of the rights-of-way to accommodate the applicant's facilities;

(2) The capacity of the rights-of-way to accommodate additional utility and telecommunications facilities if the application is granted;

(3) The damage or disruption, if any, to public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;

(4) The public interest in minimizing the cost and disruption of construction within the rights-of-way;

(5) The availability of alternate routes or locations that are reasonable for placement of the proposed facilities;

(6) Such other factors as may relate to the city's authority to manage, regulate and control public rights-of-way.

(f) If the application is denied, the determination shall include the reasons for denial. Denial of a master permit shall be supported by substantial evidence contained in a written record.

(g) If the application is approved, the city shall issue the permit as a written document with any conditions necessary to preserve and maintain the public health, safety, welfare, and convenience.

26.20.040 Acceptance

No master permit granted hereunder shall be effective until it has been approved by the city council by ordinance and the applicant has accepted the master permit, in writing, in a form acceptable to the city.

26.20.050 Characteristics of master permits

(a) A master permit shall be nonexclusive.

(b) No master permit shall be in effect for a term of more than ten years, unless a longer term is expressly specified in the master permit.

(c) If a master permittee does not provide communications to customers in the city, the master permit shall authorize the master permittee to use only those specific portions of the rights-of-way indicated in the master permit. If a master permittee does provide communications to customers in the city, the master permit may specify limited portions of the rights-of-way, or it may allow the master permittee to use any portion of the rights-of-way.

(d) In accepting any master permit, the permittee acknowledges that its rights hereunder are subject to the lawful exercise of the police power and zoning power of the city to adopt and enforce ordinances necessary to protect the safety and welfare of the public, and it agrees to comply with all applicable laws enacted by the city pursuant to such powers.

(e) No master permit shall convey any right, title or interest in rights-of-way, but shall be deemed authorization only to use and occupy the rights-of-way for the limited purposes and term stated in the master permit.

(f) No master permit shall excuse the master permittee from securing any further easements, leases, permits or other approvals that may be required to lawfully occupy and use rights-of-way.

(g) No master permit shall be construed as any warranty of title.

26.20.060 Amendment of master permit

(a) If a master permittee wishes to modify the conditions of the master permit, including the portions of the rights-of-way it is authorized to use and occupy, it shall make a new application to the city pursuant to the procedures set forth in Section 26.20.030.

(b) If a master permittee is ordered by the city to locate or relocate its facilities in rights-of-way not included in a previously granted master permit, the city shall grant an amendment making that change without further application.

26.20.070 Renewal of master permit

A person that wishes to renew its master permit hereunder shall, not more than one hundred eighty days nor less than ninety days before the expiration of the current master permit, make a new application to the city for an additional term pursuant to the procedures set forth in Section 26.20.030.

26.20.080 Personal wireless facilities in rights-of-way

(a) The city may impose a site-specific charge pursuant to an agreement with a service provider of personal wireless services for:

(1) The placement of new personal wireless facilities in the right-of-way regardless of height, unless the new facility is the result of a city-mandated relocation, in which case the city will not charge the service provider if the previous location was not charged;

(2) The placement of replacement structures when the replacement is necessary for the installation or attachment of personal wireless facilities, and the overall height of the replacement structure and the personal wireless facility is more than sixty feet; or

(3) The placement of personal wireless facilities on structures owned by the city located in the right-of-way; however, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures unless the structure is owned by the city.

(b) The city is not required to approve a permit for the placement of personal wireless facilities that meets one of the criteria in this section 26.20.080 absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location and zoning requirements. Costs of the arbitration, including compensation for the services of the arbitrator(s), must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses in connection with the arbitration proceeding.

26.20.090 Use of poles and conduit

(a) The city may, in accordance with RCW 35.99.070, require a telecommunications or cable service provider that is constructing, relocating or placing ducts or conduits in the rights-of-way to provide the city with additional duct or conduit and related structures necessary to access the conduit.

(b) Subject to such reasonable rules and regulations as may be prescribed by the pole owner and subject to the limitations prescribed by RCW 70.54.090 or any other applicable law, the city may post city signs on an owner's poles within the city.

(c) Subject to the owner's prior written consent, which may not be unreasonably withheld, the city may install and maintain city-owned overhead wires upon an owner's poles for communications purposes, subject to the following:

(1) Such installation and maintenance shall be done by the city at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as the owner may specify from time to time (including, without limitation, requirements accommodating its facilities or the facilities of other parties having the right to use the pole);

(2) The owner shall have no indemnification obligations in connection with any city-owned wires so installed and maintained;

(3) The owner shall not charge the city a fee for the use of such poles in accordance with this Section 26.20.090 as a means of deriving revenue therefrom; provided, however, that nothing herein shall require the owner to bear any cost or expense in connection with such installation and maintenance by the city.

(4) The owner shall not enter into an agreement with a third person which would require the owner to exclude the city or any other person from use of such poles.

(5) The owner may not condition the city's use of such poles on the city's acceptance of limitations on the purpose or use of the city's facilities.

26.20.100 Removal

(a) Within thirty days following written notice from the city, any owner of facilities in the city's rights-of-way that are not authorized pursuant to Section 26.12.020(a) through 26.12.020(c) way shall, at its own expense, remove such facilities from the rights-of-way. If such owner fails to remove such facilities, the city may cause the removal and charge the owner for the costs incurred. Facilities are unauthorized and subject to removal in the following circumstances:

(1) Upon termination of the owner's authorization under Section 26.12.020(a) through 26.12.020(c);

(2) If the facilities were constructed or installed without the prior grant of a franchise or master permit;

(3) Upon abandonment of a facility within the rights-of-way;

(4) If the facilities were constructed or installed at a location not permitted by the master permit or franchise.

(b) The city retains the right to cut or move any facilities located within the city's rights-of-way to the extent the city may determine such action to be necessary in response to any public health or safety emergency.

Chapter 26.24
USE PERMITS

Sections:

26.24.010 Use permit required
26.24.020 Applications for use permits
26.24.030 Maintenance permits
26.24.040 Surveyor
26.24.050 Duration and validity; non-transferability
26.24.060 Permit to excavate in recently paved rights-of-way
26.24.070 Permit to be available at site
26.24.080 Completion of construction
26.24.090 As-built drawings

26.24.010 Use permit required

(a) A person may not enter or use the rights-of-way for the purpose of installing, maintaining, repairing, or removing identified facilities without first obtaining a use permit from the Department.

(b) In the event of an unexpected repair or emergency, an owner may commence such repair and emergency response work as required under the circumstances, provided that the owner shall notify the Director as promptly as possible, either before such repair or emergency work begins or as soon thereafter as possible if advance notice is not practicable.

26.24.020 Applications for use permits

(a) An application for a use permit shall be submitted in the form and manner specified by the Department and must be signed by the owner or the agent of the firm that will actually be performing the work.

(b) An application for a use permit shall include the following information, as specified in the form provided by the Department:

(1) The information required in Section 26.16.010(a) through 26.16.010(c);

(2) A copy of, or specifically identifiable citation to, the applicant's registration pursuant to Section 26.16.010;

(3) A statement of, and citation to, the specific authority according to which the applicant is authorized to use and occupy the rights-of-way, including the category under which the applicant falls as outlined in Section 26.12.020(a) through 26.12.020(d);

(4) A statement that any land use application that must be considered in conjunction with the use permit has been filed with the city, and a copy of, or specifically identifiable citation to, each such application;

(5) A specific description of the portions of the rights-of-way that will be affected by the applicant's right-of-way work under the use permit;

(6) The location and route of all facilities to be installed on existing utility poles;

(7) The location and route of all facilities to be located under the surface of the ground, including line and grade proposed for the burial at all points along the route which are within the rights-of-way;

(8) The location of any other facilities to be constructed within the city, but not within the rights-of-way, in connection with the proposed right-of-way work, in accordance with applicable city building and land use regulations;

(9) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way;

(10) The location, dimension and types of any trees that will be impacted during construction within or adjacent to the rights-of-way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction; and

(11) Such other information as the city may reasonably require.

(c) If the applicant for a use permit has obtained a master permit or cable franchise from the city, the city shall act on the application within thirty days of receiving a complete application, unless the applicant consents to a different time period. For purposes of this paragraph, "act" means that the city makes the decision to grant, condition, or deny the use permit, or notifies the applicant in

writing of the amount of time that will be required to make the decision and the reasons for this time period. Such a notice shall state the amount of additional time required, and the reasons for the additional time. Conditioned or denied permits may be appealed to the city hearing examiner within fourteen days of the date of the permit or permit denial.

(d) Unless otherwise provided by law or by a master permit or franchise, no use permit shall be issued unless the applicant has paid all fees required pursuant to this title.

(e) The Director may approve, conditionally approve, or deny an application for a use permit.

(f) If an application is approved, the Director shall issue a use permit to the applicant.

(g) If an application is conditionally approved, the Director may condition the use permit with specified requirements that preserve and maintain the public health, safety, welfare, and convenience.

(h) If an application is denied, the Director shall advise the applicant by a written communication of the basis for the denial. Such basis shall include findings of fact and conclusions of law that support the denial.

(i) When the city in its capacity as a provider engages in any activity that includes right-of-way work in the paved portion of a right-of-way, the city need not obtain a use permit, but it shall keep a record of the date, location, purpose, and size of the right-of-way work.

26.24.030 Maintenance permits

(a) The Director may issue a maintenance permit on an annual basis to a provider instead of issuing individual use permits for activities in the rights-of-way covered by the maintenance permit.

(b) A maintenance permit covers:

(1) Emergency activity in the paved or unpaved area of the rights-of-way that is necessary for the preservation of life, health, or property or for the restoration of interrupted service; and

(2) Those non-emergency activities, excluding right-of-way work in or under the paved rights-of-way, that are specified in the permit, which may include:

(A) An activity that makes no material change to the footprint of the facility or to the surface or subsurface of right-of-way but disturbs or impedes traffic on a neighborhood access road;

(B) Replacing overhead facilities; or

(C) New individual services to a residence or building from existing facilities that are on the same side of the rights-of-way, so long as the activity related to the service does not exceed 300 feet.

26.24.040 Surveyor

If the use permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standards, the Director may require the use permittee to cause the location of its facilities to be verified by a registered Washington land surveyor. The use permittee, at its expense, shall relocate any facilities which are not located in compliance with use permit requirements.

26.24.050 Duration and validity; non-transferability

(a) A use permit other than a maintenance permit shall expire 90 days after issuance, but the Department may extend the expiration date for good cause.

(b) A use permit is not transferable.

26.24.060 Permit to excavate in recently paved rights-of-way

The Director may not issue a use permit to excavate in a public right-of-way that was reconstructed, repaved, or resurfaced in the preceding five-year period, unless the Director finds good cause for issuance. No use permit shall be issued to cut any right-of-way the surface of which is less than five years old, unless the use permittee overlays the surface of any rights-of-way that are cut by the use permittee.

26.24.070 Permit to be available at site

A use permit or a copy of the use permit shall be available for review upon request (at the work site or via a Web site accessible to the Department) for the duration of the activity allowed by the use permit.

26.24.080 Completion of construction

A use permittee shall promptly complete all right-of-way work so as to minimize disruption of the rights-of-way and other public and private property. All right-of-way work authorized by a use permit, including restoration, must be completed within ninety days of the date of issuance or by such other time as the city may specify in writing upon issuance of the use permit.

26.24.090 As-built drawings

In the event the permittee installs facilities for the city, the permittee shall provide the city with as-built or record drawings of the city facilities, submitted in formats as stipulated in the Kirkland Pre-Approved Plans and Policies.

Chapter 26.28
INSPECTION, REPORTS AND NOTICE

Sections:

26.28.010 Inspection of Right of Way Construction and Restoration Activities
26.28.020 Maps
26.28.030 Reports to the City
26.28.040 Notice to Department
26.28.050 Notice to Public

26.28.010 Inspection of Right-of-Way Construction and Restoration Activities

(a) The city or its designee may inspect all right-of-way construction and restoration activities and conduct any tests that the city finds necessary to ensure compliance with the terms of this title and any other applicable law or agreements.

(b) An owner shall allow the city or its designee to make such inspections referred to in subsection (a) at any time on at least ten days' notice or, in case of an emergency, on demand without prior notice.

26.28.020 Maps

Within three months after enactment of this title, each owner shall file with the Department existing plats or drawings that show the location of any underground facilities in the city's rights-of-way for which the owner has existing plats or drawings. Thereafter, on an annual basis, the owner shall file in the form required by the Department a full and complete survey, including descriptions and as-built maps, of the location of underground facilities installed in the city's rights-of-way in the previous year. All maps shall be submitted in formats as set forth in the Kirkland Pre-Approved Plans and Policies. If applicable law allows the city to keep electronic copies confidential, then each owner shall use its best efforts to provide electronic versions to the city in a format compatible, in the city's judgment, with the city's GIS system.

26.28.030 Reports to the City

(a) The city or its designee may require such reports and information as the city finds necessary to ensure compliance with the terms of this title and any other applicable law or agreements.

(b) Within ten days of receipt of a written request from the city manager, or such other reasonable time as the city manager may specify in writing, each owner, permittee or provider shall furnish the city manager with information sufficient to demonstrate:

(1) That it has complied with all requirements of this title;

(2) That all fees due the city in connection with the services and facilities provided by the owner, permittee or provider have been properly collected and paid; and

(3) That the owner, permittee or provider has furnished the city with all necessary information with respect to its facilities in city rights-of-way.

26.28.040 Notice to Department

For emergency activity, a use permittee shall notify the Department within 24 hours after completion of the right-of-way work. For non-emergency activities, the use permittee shall notify the Department at least five working days before the right-of-way work takes place. For both emergency and non-emergency activities, the use permittee shall provide information about the right-of-way work as required by the Department.

26.28.050 Notice to Public

(a) Except in the case of an emergency involving public safety or an outage, or service interruption to a large number of customers, an owner or permittee shall give reasonable advance notice to private property owners of construction work on or in adjacent rights-of-way, as provided in subsection (b) of this section.

(b) In particular, the following requirements shall apply to non-emergency activity in the city's rights-of-way when the activity adjoins residentially zoned and developed property and will not be completed and restored in a period of two weeks or less.

(1) A use permittee shall either:

(A) At least 72 hours before commencement of the right-of-way work, (i) post and maintain a notice that is located at the beginning and end points of the activity, and (ii) deliver notice to

each address in the area of the activity and within 175 feet of its boundaries; or

(B) At least 15 calendar days before commencement of the right-of-way work, provide written notice individually to each address in the area of the right-of-way work and within 175 feet of its boundaries.

(2) For good cause, the Director may require a use permittee to employ a combination of the notices required by Section 26.28.050(b)(1).

(3) The notices required by Section 26.28.050(b)(1) shall include the name, telephone number, and address of the owner and use permittee, a description of the work to be performed, the duration of the work, and the name, address, and telephone number of a person who will provide information to and receive complaints from any member of the public concerning the work. Posted notices shall be in a format and size acceptable to the Department.

Chapter 26.32
FEES

Sections:

26.32.010 Purpose
26.32.020 Registration fees
26.32.030 Master permit application fees
26.32.040 Use permit application fees
26.32.050 Other city costs
26.32.060 Appeal to hearing examiner
26.32.070 Compensation
26.32.080 Regulatory fees and compensation not taxes

26.32.010 Purpose

The purpose of the fees established in this chapter is to ensure the recovery of the city's direct and indirect costs and expenses, including, but not limited to, actual costs of city staff time and resources as well as any outside consultation expenses which the city reasonably determines are necessary. The fees set forth are in addition to any construction fees which may be required under Section 19.12.090 and Section 5.74 of the Kirkland City Code.

26.32.020 Registration fees

Each application for registration pursuant to Chapter 26.16 shall be accompanied by a fee in such amount as the city determines is required to cover all direct and indirect costs associated with the registration process.

26.32.030 Master permit application fees

(a) Prior to the acceptance of a master permit application by the city, the applicant shall participate in a pre-application conference with the city for the purpose of establishing the minimum application fee.

(b) The city shall establish a minimum application fee, based on the city's estimated reasonable costs in reviewing the application, after the conference referred to in Section 26.32.030(a). The minimum fee

may be up to two thousand five hundred dollars. The applicant shall deposit the minimum fee with the city within thirty days after the city notifies the applicant of the amount. This application fee shall be applied towards actual expenses and costs of the city.

(c) The City shall establish the final application fee after it acts on the application, reflecting the city's actual reasonable costs in reviewing the application. The city shall notify the applicant of the reimbursement amount and a description of the costs incurred by the city in reviewing the application. If the city's actual reasonable costs are less than the minimum application fee, the city shall refund the unused application fees, within thirty days after granting or denial of the permit. If the city's actual reasonable costs exceed the minimum application fee, the applicant shall reimburse the city within thirty days of receiving written notice from the city requesting reimbursement.

(d) An applicant that withdraws or abandons its application shall, within sixty days of its application and review fee payment, be refunded the balance of its deposit under this section, less (1) the registration fee; and (2) all reasonable costs and expenses incurred by the city in connection with the application.

(e) All disputes as to the amounts required shall be resolved by an appeal to a hearing examiner.

26.32.040 Use permit application fees

(a) Prior to issuance of a use permit, the use permittee shall pay a permit fee to be calculated in accordance with Section 5.74.040 and Section 19.12.090 of this code. The purpose of the use permit fee shall be to recover the city's actual direct and indirect construction plan review and inspection costs, as well as any damage or diminution of the value of the rights-of-way that result from the use permittee's right-of-way work.

(b) The recipient of an annual maintenance permit pursuant to Section 26.24.030 shall pay an annual permit fee set by the Department from time to time at a level sufficient to recover the city's annual costs as described in Section 26.32.040(a) for the recipient of the maintenance permit.

26.32.050 Other city costs

To the extent allowed by law, all owners, permittees, and providers shall, within thirty days after written demand therefor, reimburse the city for all direct and indirect costs incurred by the city in connection with any modification, amendment, renewal or transfer of a master permit.

26.32.060 Appeal to hearing examiner

Any applicant or permittee may initiate a review of the fees established in Sections 26.32.030 through 26.32.050 of this title. Within ten days of notice of the fee from the city, the applicant or permittee may appeal to the hearing examiner. Pursuant to the provisions of Chapter 3.34 of this code, the hearing examiner is authorized to review and make determinations as provided herein.

26.32.070 Compensation

To the extent permitted by law, each master permit granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property

pursuant to the master permit, provided that nothing in this title shall prohibit the city and a master permittee from agreeing upon the compensation to be paid.

26.32.080 Regulatory fees and compensation not taxes
The regulatory fees provided for in this title, and any compensation charged and paid for the rights-of-way provided for herein, are separate from and additional to any and all federal, state, local and city taxes as may be levied, imposed or due from an owner or provider or its customers or subscribers.

Chapter 26.36
WORK IN RIGHTS-OF-WAY

Sections:

26.36.010 Placement of facilities
26.36.020 Obstructions in rights-of-way
26.36.030 Completion of make-ready work.
26.36.040 Restoration
26.36.050 Relocation of facilities
26.36.060 Underground conversions
26.36.070 Maintenance
26.36.080 Compliance with applicable laws and standards
26.36.090 Traffic control plan
26.36.100 Coordination of right-of-way work
26.36.110 Damage to facilities
26.36.120 Obligations of developers

26.32.010 Placement of facilities

(a) All facilities placed by an owner in rights-of-way within the city shall be so located as to minimize interference with the proper use of rights-of-way and other public places, and to minimize interference with the rights or reasonable convenience of property owners who adjoin any of these rights-of-way.

(b) An owner with written authorization to install overhead facilities shall install its facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

(c) Whenever existing telephone, electric utilities, or telecommunications facilities are located or relocated underground within rights-of-way, an owner with written authorization to occupy the same rights-of-way must also locate or relocate its facilities underground.

(d) Whenever new telephone, electric utilities or telecommunications facilities are located underground within the city's rights-of-way, an owner that currently occupies or will occupy the same rights-of-way shall concurrently place its telecommunications facilities underground at its expense. The provider may seek reimbursement for its expenses pursuant to RCW 35.99.060 only by making a valid written request specifying the reason for the reimbursement and including evidence of the costs incurred.

(e) An owner or permittee shall utilize existing poles and conduit wherever possible. New poles (other than replacement poles)

will not be allowed without specific written authorization from the city manager.

26.36.020 Obstructions in rights-of-way

(a) A person who places or maintains an obstruction in, on, over, under or through the city's rights-of-way shall promptly shift, adjust, accommodate, or remove the obstruction on reasonable notice from the city.

(b) If a person fails or refuses to shift, adjust, accommodate, or remove an obstruction after reasonable notice, the Department may shift, adjust, accommodate, or remove the obstruction, and the Director may charge the person having or maintaining the obstruction for the cost of performing the work.

(c) Any opening or obstruction in the rights-of-way made by an owner in the course of its operation shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

26.36.030 Completion of make-ready work

To the extent consistent with state law, an owner shall have thirty days to perform any requested "make ready" work (work required to prepare the owner's poles or other facilities for attachment by another party) or alterations to its facilities upon request by persons authorized to use or be present in or upon the rights-of-way. If an owner fails to perform such work within thirty days, then the authorized persons may perform such "make ready" work or alterations at their own cost.

26.36.040 Restoration

(a) No owner or permittee shall take any action or allow any action to be done which may permanently impair or damage any rights-of-way or other property located in, on or adjacent thereto.

(b) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or any public or private property, the owner or permittee shall, in a manner acceptable to the city, replace, repair, and restore all paving, sidewalk, utility covers, survey monuments, driveway or surface of any rights-of-way, or other public or private property, that has been disturbed by the owner or permittee's activities in as good condition as before said work was commenced.

(c) In particular, and without limitation, all trees, landscaping and grounds removed, damaged or disturbed as a result of right-of-way work by owners or permittees shall be replaced or restored to the condition existing prior to performance of the work. An owner or permittee shall comply with all applicable provisions of the Kirkland Zoning Code and the Pre-Approved Plans regarding all trees, landscaping and grounds.

(d) If weather or other conditions do not allow for the complete restoration required hereunder, the owner shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the owner's sole expense, and the owner shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(e) All restoration work within the rights-of-way shall be done in accordance with landscape plans approved by the Director.

(f) Restoration pursuant to this section shall be at the owner's or permittee's cost and expense, except to the extent otherwise required by applicable law.

(g) In the event that the owner or permittee fails to complete any work required for the repair, protection, or restoration of the rights-of-way or private property, or any other work required by law or ordinance, within the time specified by and to the reasonable satisfaction of the city, the city, following notice and an opportunity to cure, may cause such work to be done. In such a case, the owner or permittee shall reimburse the city the cost thereof within thirty (30) days after receipt of an itemized list of such costs, or the city may recover such costs through any bond or other security instrument provided by the owner or permittee, except to the extent otherwise required by applicable law.

26.36.050 Relocation of facilities

(a) The city may require a grantee to relocate authorized facilities within the right-of-way when reasonably necessary for construction, alteration, repair or improvement of the right-of-way for the purpose of public health, welfare and safety, at no cost to the city, except to the extent otherwise required by applicable law.

(b) The city shall notify the owner as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date by which relocation must be completed, the city shall consult with the affected owners and consider the extent of the facilities to be relocated, the owners' service requirements, and the construction sequence required, within the city's overall project construction sequence and constraints, to safely complete the relocation. Owners shall complete the relocation by the date specified unless the city or a reviewing court establishes a later date for completion, after showing by an owner that the relocation cannot be completed by the date specified, using best efforts and meeting safety and service requirements.

(c) Subject to Section 26.36.050(d), whenever any person, other than the city or one of its departments or agencies, requires the relocation of an owner's facilities to accommodate work of such person within the franchise area, then owner shall have the right as a condition of any such relocation to require payment to owner, at a time and upon terms acceptable to owner, for any and all costs and expenses incurred by owner in the relocation of owner's facilities.

(d) Notwithstanding the provisions of Section 26.36.050(c), if the City reasonably determines and notifies the owner that the primary purpose of imposing such condition or requirement upon such person is to cause or facilitate the construction of a public works project to be undertaken within a segment of the franchise area on the city's behalf and consistent with the City's Capital Improvement Plan, Transportation Improvement Program or the Transportation Facilities Program, then only those costs and expenses incurred by the owner in reconnecting such relocated facilities with owner's other facilities shall be paid to owner by such person, and owner shall otherwise relocate its facilities within such segment of the franchise area in accordance with subsection (a) of this section.

(e) The city may require relocation of facilities at no cost to the city in the event of an unforeseen emergency that creates an immediate threat to public health, welfare and safety.

(f) If an owner is required to relocate, change or alter facilities hereunder and fails to do so, the city may cause such to occur and charge the owner for the costs incurred.

26.36.060 Underground conversions.

In the event that conversion of an owner's overhead facilities to underground is required for reasonably necessary for construction, alteration, repair, or improvement of the rights-of-way for purposes of public welfare, health, or safety (such as projects that may include, without limitation, road widening, surface grade changes or sidewalk installation), an owner, to the extent permitted by applicable law, shall bear the costs of converting the owner's facilities from an overhead system to an underground system as follows:

(a) Engineering – To ensure proper space and availability in the supplied joint trench, an owner shall pay for the work (time and materials) necessary to complete related engineering and coordination with the other utilities involved in the project.

(b) Cost(s) – An owner shall pay its proportionate share of the cost of labor and materials necessary to place its cables, conduits and vaults/pedestals in the supplied joint trench and/or stand-alone cable trench. If, however, the city's costs for owner are not agreeable to owner, then the owner shall have the right to hire its own contractor(s) to complete its work within the joint trench.

(c) If an owner decides to use its own contractor(s) to complete its portion of the work, then the owner and its contractor(s) are responsible for coordinating with the city to provide reasonable notice and time to complete the placement of the owner's cables, conduits and vaults/pedestals in the trench. If the owner fails to complete the above work within the time prescribed and to the city's reasonable satisfaction, the city may cause such work to be done and bill the reasonable cost of the work to the owner, including all reasonable costs and expenses incurred by the city due to the owner's delay. In such an event, the city shall not be liable for any damage to any portion of the owner's facilities. Within forty-five (45) days of receipt of an itemized list of those costs, the owner shall pay the city.

(d) Within the underground conversion area, an owner shall cooperate with the city and its contractor on any on-site coordination. The city shall be responsible for traffic control, trenching, backfill, and restoration of all work performed by its contractor. An owner shall be responsible for traffic control, trenching, backfill, and restoration of all work performed by its contractor for stand-alone cable trenches.

In the event a Local Improvement District (LID) has been created to fund a relocation or conversion project, an owner shall be reimbursed by the LID for all expenses incurred as a result of the project.

26.36.070 Maintenance

An owner of aerial facilities shall be required to trim trees upon and overhanging rights-of-way and other public places of the city so as to prevent the branches of such trees from coming in contact with the facilities of the owner, all trimmings to be done at the expense of the owner, except to the extent otherwise required by applicable law. An owner shall comply with all provisions of KMC Ch. 19.36 (Street Trees).

26.36.080 Compliance with applicable laws and standards

(a) All right-of-way work, including work by the city in its capacity as a provider, shall be performed in accordance with all applicable law and regulations, including, where applicable, the Occupational Safety and Health Act of 1970, as amended; the National Electrical Safety Code, prepared by the National Bureau of Standards; and the National Electrical Code of the National Board of Fire Underwriters.

(b) All right-of-way work shall comply with the requirements of the most recently adopted city Pre-Approved Plans and Policies, and in the event of a conflict between the aforesaid Pre-Approved Plans and Policies and this title, the standards of the Pre-Approved Plans and Policies shall control.

(c) All of an owner's facilities shall be installed in accordance with good engineering practice. All of an owner's facilities shall be maintained in a safe condition, in good order and repair, and in compliance with all applicable federal, state and local requirements.

(d) All safety practices required by law shall be used during construction, maintenance, and repair of an owner's facilities.

(e) An owner or permittee shall at all times employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(f) One Call. An owner or permitee shall maintain membership in good standing with the Utilities Underground Location Center or other similar or successor organization which is designated to coordinate underground equipment locations and installations. An owner shall abide by the State's "Underground Utilities" statutes (Chapter 19.122 RCW) and will further comply with and adhere to city regulations related to the One Call locator service program.

26.36.090 Traffic control plan

(a) All use permittees shall comply with the Manual on Uniform Traffic Control Devices with respect to traffic control. The city may require a traffic control plan demonstrating the protective measures and devices that will be employed.

(b) A use permittee shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of its right-of-way work.

26.36.100 Coordination of right-of-way work

(a) An owner or permittee shall joint trench or share bores or cuts and work with other owners or permittees so as to reduce the number of right-of-way cuts within the City, to the extent such joint work would not impose undue economic burdens or delay upon the owner or permittee.

(b) The city shall provide as much advance notice as reasonable of plans to open the rights-of-way to those providers who are current users of the rights-of-way or who have filed notice with the clerk of the city within the past twelve months of their intent to place facilities in the city.

(c) If applicable law allows the city to keep electronic copies confidential, then by the first day of February each year, each owner shall prepare and submit to the Department a plan, in a format specified by the Department, that shows all reasonably foreseeable

right-of-way work in the paved portion of the rights-of-way anticipated to be done in the next year, or a statement that no right-of-way work is proposed. The owner shall report to the Department promptly any changes in the plan as soon as those changes become reasonably foreseeable.

(1) The Department may disclose information contained in such a plan to another party only on a need-to-know basis in order to facilitate coordination and avoid unnecessary right-of-way work, or as otherwise required by law. If an owner clearly and appropriately identifies information contained in the plan as proprietary, a trade secret, or otherwise protected from disclosure, then to the maximum extent permissible under federal, state, and local laws applicable to public records, the Department may not disclose that information to the public. If the Department determines that information is not clearly or appropriately identified, the Department shall notify the owner that the Department intends to disclose the requested information unless ordered otherwise by a court.

(2) The Department shall review the annual plans submitted by owners and identify conflicts and opportunities for coordination of right-of-way work in the paved rights-of-way. Each applicant shall coordinate, to the extent practicable, with the city and with each potentially affected owner and permittee to minimize disruption in the rights-of-way.

(d) If a communication provider is to be placed underground in a new subdivision, the communication provider shall give written notice to other known providers in the area within which the property is located. Such notice shall be given at least 48 hours before commencement of trenching construction.

(e) The city may facilitate joint use of the property, structures, and appurtenances of each owner located in the rights-of-way and other public places, insofar as such joint use may be reasonable and practicable.

26.36.110 Damage to facilities

To the extent permitted by Washington law, the city shall not be liable for any damage to or loss of any facilities within the rights-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the rights-of-way by or on behalf of the city.

26.36.120 Obligations of Developers

A developer shall provide for underground facilities for providers to serve a development in accordance with applicable law for underground facilities. The developer shall execute all required agreements relating to the underground facilities, including easements, and provide proof to the city that the agreements have been executed.

Chapter 26.40
LIABILITY, INDEMNIFICATION AND SECURITY

Sections:

26.40.010 Warranty and liability

26.40.020 Insurance
26.40.030 Indemnification
26.40.040 Security fund
26.40.050 Construction bond
26.40.060 Work of contractors and subcontractors

26.40.010 Warranty and liability

(a) For a period of two years after satisfactory completion of work in a right-of-way, the owner and use permittee warrant and guarantee the quality of the work performed and are responsible for maintaining the site free from any defects resulting from the quality of the work and, in the event of such defects, for repairing or restoring the site to a condition that complies with all applicable law and regulations. Any repair or restoration during the warranty period shall cause the warranty period to run for one additional year beyond the original two-year period with respect only to what was repaired.

(b) The issuance of a use permit or any inspection, repair, suggestion, approval, or acquiescence of any person affiliated with the city does not relieve the owner or permittee from the warranty and liability provisions of this section, the indemnification provisions of Section 26.40.030, or any other term or condition of this title.

26.40.020 Insurance

(a) Unless otherwise provided by a master permit or franchise, each owner shall, as a condition of the grant, secure and maintain the following liability insurance policies (which may be evidenced by an acceptable certificate of insurance) insuring both the owner and the city, and its elected and appointed officers, officials, agents, representatives and employees, as additional insureds:

(1) Commercial general liability insurance with limits not less than five million dollars combined single limit for bodily injury (including death) and property damage; including premises operation, products and completed operations and explosion, collapse and underground coverage extensions;

(2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of three million dollars for each accident for bodily injury and property damage; and

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars for each accident/disease/policy limit.

(b) Commercial General Liability and Automobile Liability limits may be attained by a combination of primary and excess/umbrella liability insurance.

(c) The insurance policies required by this section shall be maintained at all times by the owner. Each such certificate of insurance shall contain the following endorsement:

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

Within ten days after receipt by the city of said notice, and in no event later than twenty days prior to said cancellation, the owner shall obtain and furnish to the city replacement insurance policies or a certificate of insurance meeting the requirements of this title.

26.40.030 Indemnification

(a) In addition to and distinct from the insurance requirements of this title, by accepting a permit each owner and permittee agrees to defend, indemnify and hold the city and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the acts, omissions, failure to act or misconduct of the owner or permittee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its facilities in the city, and in providing or offering services over the facilities, whether or not such acts or omissions are authorized, allowed or prohibited by this title or by an agreement made or entered into pursuant to this title; provided, however, that an owner or permittee shall not be required to indemnify the city to the extent the damages, loss and expenses are the result of negligence by the city or its employees, agents or contractors.

(b) The indemnification obligations assumed under a permit survive expiration of the permit and completion of the activities authorized by the permit.

26.40.040 Security fund

(a) Each owner shall establish a permanent security fund with the city by depositing the amount of up to fifty thousand dollars with the city in cash, an unconditional letter of credit, or other instrument acceptable to the city (the "security fund"), which fund shall be maintained at the sole expense of the owner so long as any of the owner's facilities are located within the rights-of-way. This security fund shall be separate and distinct from any other bond or deposit required under other code provisions or agreements.

(b) The owner shall deposit the security fund with the city on or before the effective date of its master permit, or, if the owner does not have a master permit, on or before the date the owner places in service its facilities in the rights-of-way.

(c) The security fund shall serve as security for the full and complete performance of the owner's obligations under this title and under any agreement between the owner and the city, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the owner to comply with the codes, ordinances, rules, regulations or permits of the city.

(d) Before any sums are withdrawn from the security fund, the city manager or designee shall give written notice to the owner:

(1) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the city has incurred by reason of the owner's act or default;

(2) Providing a reasonable opportunity for the owner to remedy the existing or ongoing default or failure, if applicable;

(3) Providing a reasonable opportunity for the owner to pay any moneys due the city before the city withdraws the amount thereof from the security fund, if applicable; and

(4) Stating that the owner will be given an opportunity to review the act, default or failure described in the notice with the city manager or designee.

(e) The owner shall replenish the security fund within fourteen days after written notice from the city that the city has withdrawn an amount from the security fund.

26.40.050 Construction bond

(a) This provision shall apply to any owner or permittee that is not required to provide a security deposit pursuant to Section 19.12.090 or a construction bond pursuant to Section 19.12.095.

(b) Unless otherwise provided in a master permit or franchise agreement, each use permittee shall deposit with the city, before a use permit is issued, a construction bond written by a surety acceptable to the city equal to at least one hundred percent of the estimated cost of the right-of-way work covered by the use permit.

(c) The construction bond shall remain in force until ninety days after substantial completion of the work, as determined by the Director, including restoration of rights-of-way and other property affected by the right-of-way work. However, in addition to the foregoing, the city reserves the right to require a maintenance bond pursuant to Chapter 175 of the Kirkland zoning code.

(d) The construction bond shall guarantee, to the satisfaction of the city:

(1) Timely completion of construction;

(2) Construction in compliance with applicable plans, permits, technical codes and standards;

(3) Proper location of the facilities as specified by the city;

(4) Restoration of the rights-of-way and other property affected by the right-of-way work;

(5) The submission of "as-built" maps after completion of right-of-way work as required by this title;

(6) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the right-of-way work.

26.40.060 Work of contractors and subcontractors

The contractors and subcontractors of an owner or permittee shall be licensed and bonded in accordance with the City's generally applicable regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by the owner or permittee itself. The owner or permittee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this title and other applicable laws. The owner or permittee shall be jointly and severally liable for all damage, and for correcting all damage, caused by its contractors or subcontractors. It is the responsibility of the owner or permittee to ensure that contractors, subcontractors or other persons performing work on the owner or permittee's behalf are familiar with the requirements of this title and other applicable laws governing the work they perform.

Chapter 26.44
ENFORCEMENT

Sections:

26.44.010 Enforcement procedures and remedies
26.44.020 Stop work order
26.44.030 Order to cure
26.44.040 Fines
26.44.050 Revocation
26.44.060 Standards for sanctions

26.44.010 Enforcement procedures and remedies

(a) If the city determines that an owner or permittee has failed to perform any obligation under this title or has failed to perform in a timely manner, the city may:

(1) Issue a stop work order pursuant to Section 26.44.020; and/or

(2) Issue an order to cure pursuant to Section 26.44.030.

(b) If the violation is contested (as provided in 26.44.020 and 26.44.030 below), the Director shall consider the written communication provided by the owner or permittee and shall notify same of his or her final decision in writing within a reasonable time period.

(c) If the violation has not been remedied or is not in the process of being remedied to the satisfaction of the city within a reasonable time period following the later of: (i) the expiration of the time period for contesting a violation; and (ii) the notification by the Director to the owner or permittee of his or her final decision in respect of a contestation of the violation, the city may:

(1) Enforce the provisions of this title through injunctive proceedings, an action for specific performance, or any other appropriate proceedings;

(2) Impose a fine upon the owner or permittee pursuant to Section 26.44.040;

(3) Assess against the owner or permittee any monetary damages provided for such violation in any agreement between the owner or permittee and the city;

(4) Assess and withdraw the amounts specified above from the owner's or permittee's security fund or other applicable security instrument;

(5) Revoke any master permit held by the owner or permittee pursuant to Section 26.44.050; or

(6) Pursue any legal or equitable remedy available under any applicable law or under any agreement between the owner or permittee and the city.

(d) Remedies available to the city for violations under this title and under a master permit or franchise agreement shall be construed, except as otherwise provided in this title, as cumulative and not alternative.

(e) An owner or permittee shall pay civil penalties or liquidated damages within 30 days after receipt of notice from the city.

(f) The filing of an appeal to any regulatory body or court shall not stay or release the obligations of an owner or permittee under applicable law or any agreements with the city.

(g) An assessment of liquidated damages or civil penalties does not constitute a waiver by the city of any other right or remedy they may have under applicable law or agreements, including the right to recover from the owner or permittee any additional damages, losses, costs, and expenses, including actual attorney fees, that were incurred by the city by reason of the violation. However, the city's election of liquidated damages under the franchise agreement shall take the place of any right to obtain actual damages over and above the payment of any amounts otherwise due. This provision may not be construed to prevent the city from electing to seek actual damages for a continuing violation if it has imposed civil penalties or liquidated damages for an earlier partial time period for the same violation.

26.44.020 Stop work order

(a) The Director may issue a stop work order, impose conditions on a use permit, or suspend or revoke a use permit if the Director determines that:

(1) A person has violated applicable law or regulations or any term, condition, or limitation of a permit;

(2) Right-of-way work poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare; or

(3) There is a paramount public purpose.

(b) The Director shall notify the owner or permittee of action taken under Section 26.44.020(a) by a written communication, and the owner or permittee shall comply immediately after receipt of the notice.

(c) A stop work order shall state the conditions under which work may be resumed and shall be posted at the site.

(d) The owner or permittee may contest the stop work order by providing to the Director a written communication detailing the grounds for such contestation, within 15 days of receipt of the stop work order. However, unless the Director promptly orders otherwise for good cause, the submission of such written communication does not excuse the owner or permittee from compliance with the stop work order pending resolution of the dispute.

26.44.030 Order to cure

(a) The Director may order an owner or permittee that has violated applicable law or regulations, or any term, condition, or limitation of a permit, to cure the violation within the time specified in the order.

(b) An order issued under this section shall warn the person that a failure to comply within the time specified makes the person subject to the imposition of a penalty not to exceed one thousand dollars ($1000.00) pursuant to the provisions of Section 1.04 of the Kirkland Municipal Code and to liability for any costs incurred by the Department to effectuate compliance.

(c) The owner or permittee may contest the cure order by providing to the Director a written communication detailing the grounds for such contestation within 15 days of receipt of the cure order. Unless the Director promptly orders otherwise for good cause,

the submission of such written communication excuses the owner or use permittee from compliance with the cure order pending resolution of the dispute.

(d) If the owner or permittee fails, neglects, or refuses to comply with an order issued under this Section 26.44.030 that involves right-of-way work, the Director may complete the right-of-way work or other work in the rights-of-way in any manner the Director deems appropriate, and the owner or use permittee shall compensate the Department for all costs incurred, including costs for administration, construction, consultants, equipment, inspection, notification, remediation, repair, and restoration. The cost of the work may be deducted from any construction bond or other security instrument of the owner or permittee. The Department's completion of right-of-way work or other work in the rights-of-way does not relieve the owner or permittee from the warranty and liability provisions of Section 26.40.010, the indemnification provisions of Section 26.40.030, or any other term or condition of this title.

26.44.040 Fines

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this title shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this title shall be subject to a fine of up to one thousand dollars or by imprisonment for a period of up to ninety days, or both such fine and imprisonment. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

26.44.050 Revocation

(a) A master permit granted by the city may be revoked for any one or more of the following reasons:

(1) Construction or operation at an unauthorized location;

(2) Material misrepresentation by or on behalf of an owner in any application to the city;

(3) Abandonment of facilities in the rights-of-way without the express written permission of the city;

(4) Failure to relocate or remove facilities as required in this title;

(5) Failure to pay fees or costs when and as due the city;

(6) Violation of a material provision of this title;

(7) Violation of a material term of a master permit or use permit.

(b) In the event that the city manager believes that grounds exist for revocation of a master permit, the master permittee shall be given written notice of the apparent violation or noncompliance, be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding thirty days from receipt of notice to furnish evidence on any or all of the following points:

(1) That corrective action has been, or is being, actively and expeditiously pursued to remedy the violation or noncompliance;

(2) That rebuts the alleged violation or noncompliance; and

(3) That it would be in the public interest to impose civil penalties or sanctions less than revocation.

(c) In the event that a master permittee fails to provide evidence reasonably satisfactory to the city manager as provided hereunder, the city manager shall make a preliminary determination as to whether an event of default by the master permittee has occurred and initially prescribe remedies in accordance with Section 26.44.060. In the event that a master permittee wishes to appeal such determination, it shall do so to the hearing examiner. In the event a further appeal is sought by the master permittee, it shall make such appeal to the city council. With respect to apparent violations or noncompliance, appeals provided for herein shall be made within fourteen days of a determination adverse to the master permittee. In any event, the city shall provide the master permittee with notice and a reasonable opportunity to be heard concerning the matter.

26.44.060 Standards for Sanctions

(a) In order to apply sanctions based on a master permittee's violation of or failure to comply with a material provision of this title, the master permit, or applicable codes, ordinances, statutes, rules or regulations, the city manager shall make a preliminary determination whether to revoke the master permit or to impose lesser sanctions or cure requirements, considering the nature, circumstances, extent and gravity of the violation, as reflected by one or more of the following factors:

(1) Whether the misconduct was egregious;

(2) Whether substantial harm resulted;

(3) Whether the violation was intentional;

(4) Whether there is a history of prior violations of the same or other requirements;

(5) Whether there is a history of overall compliance;

(6) Whether the violation was voluntarily disclosed, admitted or cured.

(b) The city manager shall issue a written decision containing findings of fact and conclusions of law supporting an action taken pursuant to Section 26.44.060(a).

Chapter 26.48
MISCELLANEOUS PROVISIONS

Sections:

26.48.010 Further rules and regulations
26.48.020 Captions
26.48.030 Severability
26.48.040 Costs

26.48.010 Further rules and regulations

The city manager or designee is authorized to establish further rules, regulations and procedures with respect to the city's authority to manage, regulate and control public rights-of-way for the implementation of this title. Except in cases of emergency, the city shall attempt to notify and provide an opportunity for comment to

persons who may be affected by rules, regulations and procedures adopted pursuant to this section.

26.48.020 Captions
The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of this title.

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

26.48.040 Costs
Except where otherwise expressly stated herein, all costs incurred by an owner or permittee in connection with any provision of this Ordinance shall be borne by the owner or permittee.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4205

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO USE OF RIGHT OF WAY FOR COMMUNICATIONS PURPOSES AND REPEALING AND REENACTING TITLE 26 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Repeals Title 26 of the Kirkland Municipal Code ("KMC").

SECTION 2. Adopts a new Title 26 of the KMC relating to the regulation and use of City right of way for communications purposes.

SECTION 3 Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2009.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

_____
City Clerk

ORDINANCE NO. 4206

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE FRANCHISING AND THE PROVISION OF CABLE SERVICES WITHIN THE CITY OF KIRKLAND.

The City Council of the City of Kirkland do ordain as follows:

Section 1. A new Title 30 of the Kirkland Municipal Code, entitled "Cable" is hereby adopted to read as follows:

Chapter 30.04
DEFINITIONS AND RULES OF CONSTRUCTION

Sections:

30.04.010 Rules of construction
30.04.020 Defined terms

30.04.010 Rules of construction

(a) For the purposes of this title, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

(b) When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; the masculine gender includes the feminine gender, and vice versa.

(c) The words "shall" and "will" are mandatory, and "may" is permissive.

30.04.020 Defined terms

(a) "Access channel" means any channel or portion thereof designated for access purposes or otherwise made available to transmit access programming.

(b) "City" means the city of Kirkland.

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

(d) "Facility" means all appurtenances or tangible things owned, leased, operated, or licensed by an operator of a cable system.

(e) "FCC" means the Federal Communications Commission, its designee, or any successor governmental entity thereto.

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

(g) "Franchise agreement" means the agreement entered into between the city and a cable operator that sets forth, subject to this title, the terms and conditions under which a franchise will be granted and exercised.

(h) "Franchise area" means the area of the city that a cable operator is authorized to serve by its franchise agreement.

(i) "Franchisee" means the person to whom or which a franchise is granted by the council under this chapter and the lawful successor, transferee or assignee of said person subject to such conditions as may be defined by city ordinance and the franchise agreement.

(j) "Gross revenues" shall have the meaning assigned to that term in a cable operator's franchise agreement. Franchise fees are not a tax and are included in gross revenues.

(k) "Person" means corporations, companies, associations, firms, partnerships, limited liability companies, government entities, other entities and individuals.

(l) "Rights-of-way" means land acquired or dedicated for public roads and streets. It does not include (a) state highways; (b) land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; (c) structures, including poles and conduits, located within the right of way; (d) federally granted trust lands or forest board trust lands; (e) lands owned or managed by the state parks and recreation commission; (f) federally granted railroad rights of way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use; or (g) parks or other public property not used as a public right-of-way.

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

(n) The term "written" shall include electronic documents.

Chapter 30.08
GRANT OF FRANCHISE

Sections:

30.08.010 Franchise required
30.08.020 Application for cable franchise
30.08.030 Franchise agreement
30.08.040 Public hearing
30.08.050 City action on franchise application
30.08.060 Reimbursement of application costs

30.08.070 Franchise conditions
30.08.080 Termination on account of certain assignments or appointments

30.08.010 Franchise required

The city may grant multiple nonexclusive cable franchises. No person may construct or operate a cable system in the city without a franchise granted by the city. No person may be granted a franchise without entering into a franchise agreement with the city pursuant to this title.

30.08.020 Application for cable franchise

(a) An applicant for a franchise to construct, operate, and maintain a cable system within the city shall file an application in a form prescribed by the city, accompanied by a nonrefundable filing fee in the amount determined by the city.

(b) The city may at any time request, and the applicant shall provide, such additional information as the city reasonably deems relevant to the city's consideration of the application.

30.08.030 Franchise agreement

Within a reasonable time after submission of an application, the city shall enter into negotiations with the applicant as to the terms and conditions of a franchise agreement.

30.08.040 Public hearing

Prior to the granting of an initial franchise, the city council shall conduct a public hearing to receive information and comments on the following:

(a) That the public will be benefited by the granting of a franchise to the applicant;

(b) That the terms of the proposed franchise promotes the needs and interests of the city and its citizens;

(c) That the applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a cable system in the franchise area;

(d) That the applicant will comply with all terms and conditions placed upon a franchisee by this title;

(e) That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities proposed in its application for a franchise;

(f) That there is sufficient capacity in the rights-of-way to accommodate the cable system;

(g) That the present and future use of the rights-of-way will be compatible and consistent with the use by the cable system;

(h) The potential disruption to existing users of the rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;

(i) Any other conditions that the city may reasonably deem appropriate.

30.08.050 City action on franchise application

If the city denies a cable franchise application, it shall issue a written decision stating its reasons for the denial.

30.08.060 Reimbursement of application costs

To the extent allowed by law, after an initial franchise is granted, the applicant shall remit to the city the amount of any actual costs incurred by the city over and above the filing fee referred to in Section 30.08.020(a), within thirty days after receipt of an invoice from the city specifying such costs.

30.08.070 Franchise conditions

Every cable franchise granted pursuant to this title shall be subject to the following conditions:

(a) Any franchise granted hereunder by the city shall authorize a franchisee, subject to the provisions herein contained and the provisions of its franchise agreement:

(1) To engage in the business of operating and providing cable service and the distribution and sale of cable service to subscribers within the city; and

(2) For the sole purpose of providing cable service, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any right-of-way, such amplifiers and appliances, lines, cables, fiber, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable system; and, in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons including but not limited to any public utility or other franchisee franchised or permitted to do business in the city. No privilege or exemption shall be granted or conferred upon a franchisee by any franchise, except those specifically prescribed therein, and any use of any right-of-way shall be consistent with any prior lawful occupancy of the right-of-way or any subsequent improvement or installation therein.

(b) In accepting any franchise, a franchisee acknowledges that its rights are subject to the legitimate rights of the police power of the city to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and it agrees to comply with all applicable general laws enacted by the city pursuant to such power.

(c) In addition to the inherent powers of the city to regulate and control any franchise it issues, the authority granted to it by federal law, and those powers expressly reserved by the city, or agreed to and provided for in a franchise, the right and power is hereby reserved by the city to promulgate such additional regulations as it may find necessary in the exercise of its lawful police powers.

(d) A cable franchise shall be subject to the right of the City to revoke the same for misuse, or failure to comply with any material provisions of this title, or any federal, state or local laws, ordinances, rules or regulations, or failure to comply with any material provision of the franchise agreement.

(e) If a cable franchise terminates, and the franchisee does not have authority independent of that franchise to maintain and operate its system in the city's rights-of-way, then, to the extent not inconsistent with 47 U.S.C. § 541(b)(3), the city may order the franchisee to remove its facilities from the franchise area within a reasonable period of time as determined by the city. In that case, any property owned by the franchisee and not removed from the rights-of-way within six (6) months from the date of the city's order shall be considered to have been abandoned by the franchisee and will become the property of the city to do with as it may choose. If a franchisee fails to remove its facilities as provided in this paragraph, the city may have the removal done at the franchisee's expense, and any cost incurred by the city in removing the franchisee's facilities from the city's rights-of-way or property will be a claim against the franchisee.

(f) The grant of a franchise by the city shall be non-exclusive. It shall not preclude the city from granting other or further franchises or permits, or preclude the city from using any rights-of-way or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the city to make such changes, as the city shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and thoroughfares and other public properties.

(g) The grant of a franchise shall be for a term as provided in the franchise agreement, which shall not exceed ten (10) years; provided, however, that the city may grant a cable franchise that contains a base term with performance standards which, if met, would extend the term of the cable franchise for a defined period of time up to fifteen (15) years.

(h) A franchisee shall, where practicable, use existing towers, poles, conduits, lines, cables and other equipment and facilities. Copies of all agreements for the use of such equipment and facilities with public utilities operating within the city shall be placed on file with the city immediately upon their execution. Where such facilities are not reasonably available from public utilities, a franchisee shall have the right to erect and maintain its own poles, conduits and related facilities in the rights-of-way as may be necessary for the proper construction, installation, and maintenance of its cable system, subject to applicable law.

(i) Nothing in a franchise agreement shall be deemed to waive the requirements of the various codes, laws, and ordinances of the city regarding permits, zoning, fees to be paid, or right-of-way management, or to take the place of any general license or permit required for the privilege of transacting or carrying on a business within the city as required by the ordinances and laws of the city, or

for attaching devices to poles or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights-of-way.

(j) No reference herein, or in any franchise agreement, to "rights-of-way" shall be deemed to be a representation or guarantee by the city that its interests or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in the city and as the city may have the undisputed right and power to give.

30.08.080 Termination on account of certain assignments or appointments

(a) To the extent not prohibited by the U.S. Bankruptcy Code, any franchise shall be deemed revoked one hundred twenty calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding; provided, however, that a franchise may be reinstated *at the city's sole discretion* if, within that one hundred twenty-day period:

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this title and the applicable franchise agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this title and the applicable franchise agreement, and such other conditions as may be established or as are required by applicable law.

(b) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a franchisee, the city may revoke the franchise, following a public hearing before city, by serving notice on the franchisee and the successful bidder, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty calendar days after serving such notice, unless:

(1) The city has approved the transfer of the franchise to the successful bidder; and

(2) The successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise agreement and this title, and such other conditions as may be established or as are required pursuant to this title or a franchise agreement.

Chapter 30.12
SYSTEM PERFORMANCE AND SERVICE

Sections:

30.12.010 System performance
30.12.020 Emergency override
30.12.030 Emergency power
30.12.040 Interconnection
30.12.050 Continuity of cable service
30.12.060 Programming

30.12.010 System performance

(a) A cable operator shall comply with all applicable technical standards regarding operation of the cable system, including but not limited to the technical standards set forth in 47 C.F.R. § 76.601.

(b) A cable operator shall develop, effect, and sustain a comprehensive routine preventive maintenance program to ensure adequate operating standards in conformance with FCC regulations.

30.12.020 Emergency override

At a minimum, a cable operator shall comply with federal laws and regulations requiring installation and maintenance of an emergency alert system (EAS).

30.12.030 Emergency power

The System shall have a backup power supply capable of operating and supplying standby emergency power for a period of at least four (4) hours in the event of a power loss.

30.12.040 Interconnection

(a) A cable operator shall design its cable system so that it may be interconnected with other cable systems or similar communications systems in the city and adjacent jurisdictions.

(b) Upon the request of the city, a franchisee shall initiate good-faith negotiations with any other franchisee or operator of a similar communications system to determine the practical economic feasibility of the establishment and operation of an interconnection link and how costs may be shared equally by such franchisees or operators for both construction and operation of such a link.

(c) The interconnection shall be made within sixty (60) days of an order by the city to proceed, unless for good cause shown by the franchisee, a reasonable time extension is granted by the city.

30.12.050 Continuity of cable service

If a franchisee transfers its cable system, the franchisee shall cooperate with the city and the transferee in maintaining continuity of service to all subscribers, such that, to the extent reasonably possible, subscribers receive continuous uninterrupted service.

If a cable franchise terminates, the franchisee shall cooperate with the city and any other providers of cable service in maintaining continuity of service to all subscribers, such that, to the extent reasonably possible, subscribers receive continuous uninterrupted service. This

provision shall not be construed to require the franchisee to continue to provide cable service after the termination date.

30.12.060 Programming
Upon request, a franchisee shall file with the city a listing of its programming and the tiers in which it is placed. Subject to federal law, a franchisee shall be responsive to the city's suggestions of general program categories such as sports, weather, news, educational, music, comedy, family or others that may be found to be of interest to the citizens of the city of Kirkland as determined from time to time in residential questionnaire polls.

Chapter 30.16
RATE REGULATION

Sections:
30.16.010 Rate regulation

30.16.010 Rate regulation
The city reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

Chapter 30.20
FRANCHISE FEE

Sections:
30.20.010 Payment of franchise fee
30.20.020 No accord or satisfaction
30.20.030 Late fees and interest
30.20.040 Discounts on bundled services

30.20.010 Payment of franchise fee
(a) During the term of any franchise granted pursuant to this title, the franchisee shall pay to city for the use of the rights-of-way, as well as the maintenance, improvements, and supervision thereof, a franchise fee as specified in the franchise agreement.

(b) Each payment shall be accompanied by supporting information, verified by an officer of the franchisee, containing a detailed, accurate statement of the franchisee's gross revenues and the computation of the payment amount, in the form and containing the information specified in the format attached to this title as Appendix A.

30.20.020 No accord or satisfaction
No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claims the city may have for further or additional sums due or payable as a franchise fee under the franchise agreement or for the performance of any other obligation of the

franchisee hereunder, or as an acknowledgement that the amount paid is the correct amount due.

30.20.030 Late fees and interest

(a) Any unpaid fees shall be subject to interest charges computed from the due date, at the maximum allowed rate as provided under state law until the date the city receives the payment.

(b) If any franchise fee payment is not made on or before the required date, the franchisee shall pay a late payment charge of five percent of the amount originally due, as a cost incidental to the enforcing of the franchise, in addition to the interest charge specified in subsection (a) of this section. This charge shall be applicable only with respect to late payment of an undisputed amount. If it is later determined as a result of a dispute or audit that there was an underpayment on a payment that was timely made, the five percent charge shall not be applicable.

30.20.040 Discounts on bundled services

If a franchisee bundles cable service with non-cable service, the franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the franchise fee payments required under this ordinance and its franchise agreement. In the event that the franchisee or any affiliate shall bundle, tie, or combine cable services (which are subject to the franchise fee) with non-cable services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on cable services, a *pro rata* share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges and they are reasonable, the *pro rata* share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this Section.

Chapter 30.24
PERFORMANCE REVIEW

Sections:

30.24.010 Periodic meetings
30.24.020 System evaluation

30.24.010 Periodic meetings

Upon request, a franchisee shall meet with designated city officials and/or designated representative(s) to review the performance of the franchisee. The franchisee shall designate an officer or employee who

is knowledgeable about the cable system and has decision-making authority with regard to the areas of concern identified by the city. The subjects may include, but are not limited to, customer service, technical issues or problems, franchise compliance and other areas of concern to the city regarding those items covered in the periodic reports and performance tests.

30.24.020 System evaluation

(a) In addition to periodic meetings, the city may require reasonable routine system evaluation sessions at any time during the term of a franchise, but not to exceed one evaluation per year. The city shall provide a franchisee thirty days' prior written notice of a system evaluation. Notwithstanding the foregoing, in the case of recurring problems, the city may conduct as many evaluations as are necessary.

(b) To assist in the preliminary evaluation, the city may enlist independent consultants to analyze the cable system and its performance and to submit a report of such analysis to the city.

(c) During an evaluation session, a franchisee shall fully cooperate with the city and shall provide within a reasonable time, without cost, such reasonable information and documents as the city may request to perform the evaluation.

(d) If, as a result of the evaluation session, or at any other time, the city determines that reasonable evidence exists of inadequate cable system performance, it may require a more detailed technical evaluation and analyses directed toward such suspected inadequacies. The report of such evaluation and analyses shall include at least:

(1) A description of the technical problems in cable system performance which precipitated the special tests;

(2) A description of what cable system components were tested;

(3) A description of the equipment used and the procedures employed in testing;

(4) The method, if any, by which such cable system performance problem was resolved;

(5) Any other information pertinent to said tests and analyses that may be required by the city, or determined when the tests are performed.

(e) If the tests indicate that the cable system is not in compliance with FCC standards or the requirements of the franchise, a franchisee shall reimburse the city for any costs involved in conducting such tests, as well as associated consultant fees and other expenses. Such fees or expenses shall not exceed fifteen thousand dollars for each evaluation. A franchisee shall have an opportunity to rebut any findings which illustrate noncompliance, and if the franchisee is found to be in compliance, then the city shall pay for the evaluation.

Chapter 30.28
REPORTS AND RECORDS

Sections:

30.28.010 Open books and records
30.28.020 Inspection of books and records
30.28.030 Rate schedule
30.28.040 Annual report
30.28.050 Communications with regulatory agencies
30.28.060 Confidentiality

30.28.010 Open books and records

(a) A franchisee shall manage all of its cable system operations in accordance with a policy of open books and records.

(b) The city shall retain throughout the life of any franchise the right to require such information pertaining to the operation of the franchise as it reasonably deems useful or necessary to ensure compliance with the terms of the franchise agreement and applicable law.

30.28.020 Inspection of books and records

(a) The city may inspect the records of a franchisee relating to the operation of the cable system in the franchise area during normal business hours. Such documents may include, but are not limited to, such information as financial records, subscriber records, and appropriate information and plans pertaining to a franchisee's operation in the city.

(b) Such inspections shall be conducted in a manner that will not unreasonably disrupt the franchisee's normal operations.

(c) If any books or records that relate to the cable system are not kept in the city, the franchisee shall pay all reasonable and necessary expenses incurred in making the inspection.

30.28.030 Rate schedule

Upon written request by the city, a franchisee shall submit a complete schedule of all present rates charged to all subscribers.

30.28.040 Annual report

A franchisee shall furnish an annual report of its activities as appropriate within ninety days of the end of its calendar year. Such report shall include:

(a) The most recent annual report;

(b) A copy of the 10-K Report, if required by the Securities and Exchange Commission;

(c) The number of homes passed;

(d) The number of subscribers with basic service;

(e) The number of subscribers with cable programming service, as that term is defined in 47 U.S.C. § 543(l)(2);

(f) The number of subscribers with premium services;

(g) The number of installations in the period;

(h) The number of disconnects in the period;

(i) A summary of escalated or repeated complaints received by category, length of time taken to resolve and action taken to provide resolution;

(j) A statement of its current billing practices and a sample copy of the bill format;

(k)A current copy of its subscriber service contract; and

(l) Such other reports as the city deems necessary.

30.28.050 Communications with regulatory agencies

(a) A franchisee shall file with the city all reports and materials submitted to or received from the following agencies by the franchisee or its affiliates that relate specifically to the cable system or could affect the franchisee's operations within the boundaries of the city: the FCC, the Security and Exchange Commission, and any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the franchisee's cable system.

(b) Materials filed with city pursuant to Section 30.28.050(a) shall be filed as follows: Materials submitted by the franchisee or an affiliate shall be filed with city at the time they are submitted to the receiving agency. Materials received by the franchisee shall be filed with city within thirty (30) days of the date they are received by the franchisee, except that if applicable law permits a response to such materials by the city and sets a deadline of sixty (60) or fewer days for the city's response, they shall be filed with city within five (5) days of the date they are received by the franchisee.

30.28.060 Confidentiality

(a) To the extent permitted by applicable law, the city shall maintain the confidentiality of any trade secrets or other proprietary information received from a franchisee, and such records shall be exempt from inspection under this section to the extent required by applicable law regarding subscriber privacy.

(b) If a franchisee clearly and appropriately identifies information as confidential or proprietary, then to the maximum extent permissible under applicable federal, state, and local laws related to public records, the city may not disclose that information to the public.

(c) If city determines that requested information is not clearly or appropriately identified, or that disclosure is otherwise required by law, city shall notify the franchisee that city intends to disclose the requested information unless ordered otherwise by a court.

Chapter 30.32
ENFORCEMENT

Sections:

30.32.010 Enforcement procedures and remedies
30.32.020 Fines
30.32.030 Revocation

30.32.040 Security fund

30.32.010 Enforcement procedures and remedies

(a) If the city determines that a cable operator has failed to perform any obligation under this title or has failed to perform in a timely manner, the city may make a written demand on the cable operator that it remedy the violation.

(b) If the violation is not remedied or in the process of being remedied to the satisfaction of the city within a reasonable time period following a written demand or order to cure, the city may:

(1) Enforce the provisions of this title through injunctive proceedings, an action for specific performance, or any other appropriate proceedings;

(2) Impose a fine upon the cable operator pursuant to Section 30.32.020;

(3) Assess against the cable operator any monetary damages provided for such violation in any agreement between the cable operator and the city;

(4) Assess and withdraw the amounts specified above from the cable operator's security fund or other applicable security instrument;

(5) Revoke the franchise pursuant to Section 30.32.030; or

(6) Pursue any legal or equitable remedy available under any applicable law or under any agreement between the cable operator and the city.

(c) Remedies available to the city for violations under this title and under a franchise agreement shall be construed, except as otherwise provided in this title, as cumulative and not alternative.

(d) A cable operator shall pay civil penalties or liquidated damages within 30 days after receipt of notice from the city.

(e) The filing of an appeal to any regulatory body or court shall not stay or release the obligations of a cable operator under applicable law or any agreements with the city.

(f) An assessment of liquidated damages or civil penalties does not constitute a waiver by the city of any other right or remedy it may have under applicable law or agreements, including the right to recover from the cable operator any additional damages, losses, costs, and expenses, including actual attorney fees, that were incurred by the city by reason of the violation. However, the city's election of liquidated damages under the franchise agreement shall take the place of any right to obtain actual damages over and above the payment of any amounts otherwise due. This provision may not be construed to prevent the city from electing to seek actual damages for a continuing violation if it has imposed civil penalties or liquidated damages for an earlier partial time period for the same violation.

30.32.020 Fines

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this title shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this title shall be subject to a fine of up to one thousand dollars or by imprisonment for a period of up to ninety days, or both such fine and imprisonment. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

30.32.030 Revocation

(a) The city may revoke a cable franchise as a master permit pursuant to the provisions of KMC 26.44.050.

(b) In addition to the reasons stated in KMC 26.44.050(a), a cable franchise may be revoked for the following reasons:

(1) Failure to perform any material obligation under its franchise agreement or applicable law;

(2) Willful failure for more than three (3) days to provide continuous cable service; or

(3) Attempt to evade any material provision of the franchise agreement or applicable law, or to practice any fraud or deceit upon the city or subscribers.

30.32.040 Security fund

(a) Upon request by the city, each franchisee shall establish a permanent security fund with the city by depositing the amount of up to two hundred fifty thousand dollars (as specified in the franchise agreement) with the city in cash, a bond or other instrument acceptable to the city. This fund shall be maintained at the sole expense of the franchisee so long as it provides cable service in the city. This security fund shall be separate and distinct from any other bond, letter of credit, security or deposit required.

(b) This security fund may be utilized by the city for the following purposes: (1) reimbursement to the city by reason of a franchisee's failure to pay the city any sums due under the terms of this title or a franchise; (2) reimbursement to the city for reasonable costs and damages borne by the city to correct franchise violations not corrected by a franchisee after due notice; (3) monetary remedies or damages assessed against a franchisee due to default or violations of a franchise or this title; and (4) any other lawful purpose.

(c) If a franchisee is in default under this title or a franchise, or if a franchisee fails to pay the city any franchise fees, damages, or monetary sanctions, or if a franchisee fails to perform any of the conditions lawfully imposed by the city, the city may withdraw from the security fund an amount sufficient to compensate the city's costs and damages, with interest at the maximum legal rate under state law, or twelve percent, whichever is less.

(d) Upon such withdrawal, the city shall notify the franchisee in writing, by certified mail, of the amount and date thereof. Within thirty days of mailing notice to a franchisee that the city has withdrawn

funds from the security fund, a franchisee shall deposit such further bond or sum of money, or other security, as deemed sufficient to meet the requirements of this chapter.

Chapter 30.36
TRANSFERS

Sections:

30.36.010 Transfers

30.36.010 Transfers

A franchisee shall comply with all provisions of its franchise agreement regarding transfers, ownership and control.

Chapter 30.40
ADMINISTRATION

Sections:

30.40.010 Administration

30.40.010 Administration

The city council reserves the right to delegate its authority for franchise administration to a designated agent.

Chapter 30.44
MISCELLANEOUS PROVISIONS

Sections:

30.44.010 Captions
30.44.020 Severability
30.44.030 Costs
30.44.040 Compliance with applicable law
30.44.050 No recourse

30.44.010 Captions

The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of this title.

30.44.020 Severability

If any section, subsection, sentence, clause, phrase or portion of this title is for any reason held invalid or unenforceable by any court or agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

30.44.030 Costs
Except where otherwise expressly stated herein, all costs incurred by a franchisee or cable operator in connection with any provision of this title shall be borne by the franchisee or cable operator.

30.44.040 Compliance with applicable law
A cable operator shall comply with all applicable federal, state and local laws, rules and regulations, ordinances and resolutions, including those governing the monitoring and tapping of cablecast signal privacy, and the penalties for violation thereof.

30.44.050 No recourse
Without limiting the immunities that the city or other persons may have under applicable law, the franchisee shall have no recourse whatsoever against the city or its officers, officials, boards, commission, agents or employees for any loss, cost, expense or damage arising out of the exercise of its authority pursuant to any provisions or requirements of this title, the franchise agreement, or any franchise granted hereunder or because of its enforcement, except as may otherwise be provided herein.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4206

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE FRANCHISING AND THE PROVISION OF CABLE SERVICES WITHIN THE CITY OF KIRKLAND.

SECTION 1. Adopts a new Title 30 of the Kirkland Municipal Code relating to cable franchising and the provision of cable services within the City of Kirkland.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2009.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

_____
City Clerk

ORDINANCE NO. 4207

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE CONSUMER PROTECTION WITHIN THE CITY OF KIRKLAND.

The City Council of the City of Kirkland do ordain as follows:

Section 1. A new Title 31 of the Kirkland Municipal Code, entitled "Cable Consumer Protection" is hereby adopted to read as follows:

Chapter 31.04
DEFINITIONS AND RULES OF CONSTRUCTION

Sections:

31.04.010 Rules of construction
31.04.020 Defined terms

31.04.010 Rules of construction

(a) For the purposes of this title, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in the Kirkland Cable Ordinance, and, if not defined therein, the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

(b) When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; the masculine gender includes the feminine gender, and vice versa.

(c) The words "shall" and "will" are mandatory, and "may" is permissive.

31.04.020 Defined terms

(a) "Cable operator" shall have the meaning given that term in 47 U.S.C. § 522(5) or any successor provision.

(b) "City" means the City of Kirkland.

(c) "Complaint" means an initial or repeated customer expression of dissatisfaction, whether written or oral, or other matter that is referred beyond a customer service representative or to the city for resolution. This does not include routine inquiries and service requests.

(d) "Customer service representative" or "CSR" means any person employed by the cable operator to assist or provide service to customers, whether by answering telephone lines, answering customers' questions, or performing other customer service-related tasks.

(e) "Non-standard installation" means any installation other than a standard installation, as that term is defined in Section 31.04.020(i).

(f) "Normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include evening hours at least one night per week and/or some weekend hours.

(g) "Normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(h) "Service interruption" means the loss of picture or sound on one or more cable channels.

(i) "Standard" installation means an installation to subscriber premises that are located up to that distance from the existing distribution system specified in a franchise agreement as included in the normal charge for installation, or, if no such distance is specified in a franchise agreement, up to one hundred twenty-five feet (the "standard drop length").

(j) "Subscriber" shall mean any person who lawfully receives or will receive cable service from the cable operator.

(k) "System Outage" shall mean any Service Interruption affecting all channels.

(l) The term "written" shall include electronic documents.

Chapter 31.08
GENERAL PROVISIONS

Sections:

31.08.010 Policy
31.08.020 Cable operator duties
31.08.030 Scope of ordinance
31.08.040 Meeting standards specified by percentages of time
31.08.050 Initial grace period

31.08.010 Policy

(a) The cable operator shall be permitted to resolve citizen complaints prior to action or involvement by the city. If a complaint is not resolved by the cable operator to the citizen's satisfaction, the city may intervene.

(b) These standards are intended to be of general application; however, the cable operator shall be relieved of any obligations hereunder if it is unable to perform due to circumstances beyond its reasonable control, such as natural disasters. The cable operator may, and is encouraged to, exceed these standards for the benefit of its customers.

31.08.020 Cable operator duties
A cable operator shall satisfy the customer service standards set forth in this section and any additional or stricter requirements established by regulations of the FCC or other applicable federal, state, or local law or regulation.

31.08.030 Scope of ordinance
This title does not prevent or prohibit:

(a) The city and a cable operator from agreeing to customer service requirements that exceed the standards set forth in this title;

(b) The city from enforcing, through the end of a franchise term, pre-existing customer service requirements that exceed the standards set forth in this title or are contained in current franchise agreements;

(c) The city from enacting or enforcing any lawful customer service or consumer protection laws or regulations; or

(d) The establishment or enforcement of any law or regulation by the city concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in this title, a franchise agreement, or federal or state law.

31.08.040 Meeting standards specified by percentages of time
Where standards must be met a certain percentage of the time, as specified herein, a cable operator must adopt policies designed to meet those standards in all cases, and in no event shall intentionally violate the standards. However, the cable operator shall not be subject to penalties or liquidated damages if it unintentionally fails to meet the standards in particular cases, so long as the cable operator meets the standards the specified percentage of the time.

31.08.050 Initial grace period
Other than for violations of Chapter 31.40 and Chapter 31.44 of this title, a cable operator shall not be subject to penalties, liquidated damages, or other monetary sanctions for violations of the customer service standards set forth in this title that occur during the first six months after the operator first begins to provide cable service within the boundaries of the city, unless such violations involve fraud or willful misconduct.

Chapter 31.12
OFFICE AND TELEPHONE ACCESS AND COMPLAINTS

Sections:
31.12.010 Local business office
31.12.020 Telephone access
31.12.030 Complaints

31.12.010 Local business office

(a) A cable operator shall maintain at least one customer service center or a bill payment location on the Eastside. Service shall be available at least nine consecutive hours Monday through Friday,

and at least four consecutive hours on Saturdays, ending no earlier than one p.m. The cable operator shall provide customers the ability to remit payment by mail or in person at the service center or bill payment location.

(b) The customer service center or bill payment location must be accessible to all persons, including the elderly and persons with disabilities. Parking must be provided in a manner consistent with the Kirkland Municipal Code.

(c) The following services shall be available at the customer service center: the opportunity to pick up, exchange and return certain types of equipment, depending upon the size of the equipment; bill payment; and response to other customer inquiries and requests. Customers may pay cable bills at the bill payment location.

(d) The cable operator shall post a sign at the service center/bill payment location advising customers of its hours of operation.

31.12.020 Telephone access

(a) A cable operator shall maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week for service/repair requests. The cable operator shall have dispatchers and technicians on call twenty-four hours a day, seven days a week, including legal holidays.

(b) Qualified and trained customer service representatives will be available to respond to customer telephone and e-mail inquiries during normal business hours.

(c) After normal business hours, the access line may be answered by an answering service, an automated response unit ("ARU") or a voice response unit ("VRU"). Inquiries received after normal business hours shall be responded to by a trained company representative on the next business day.

(d) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(1) Measurement of the standard stated in Section 31.12.020(d) shall include all calls received by the cable operator at all call centers receiving calls from subscribers, whether they are answered by a live representative, answered by an ARU or VRU, or abandoned, and shall include all periods during which live representatives are available to answer calls, whether or not such periods occur during normal business hours.

(2) If a call is answered by an ARU or VRU, the standard stated in Section 31.12.020(d) shall be satisfied for a given call if the standard system includes an option to speak to a service representative, that option is presented to the caller within the first 30 seconds from the time the call is answered by the ARU, and, if that option is exercised, the caller is not required to wait more than 30 seconds to be connected to a service representative.

(e) Under normal operating conditions, a subscriber will receive a busy signal less than three (3) percent of the time.

31.12.030 Complaints

(a) The cable operator shall establish written procedures for receiving, acting upon, and resolving complaints without intervention by the city (except where necessary). Said written procedures shall describe a simple process by which any customer may submit a complaint by telephone, via the Internet, or in writing to the cable operator regarding a disputed matter, or an alleged violation of:

(1) Any provision of these standards;

(2) Any terms or conditions of the customer's contract with the cable operator; or

(3) Reasonable business practices.

(b) The cable operator's complaint procedures shall be filed with the city.

(c) Complaints by any subscriber may be filed with the cable operator in writing or delivered to the cable operator orally in person or by telephone.

(d) Any complaints regarding service interruption received from subscribers by the cable operator or referred to the cable operator by the city shall be investigated by the cable operator and service restored within seventy-two (72) hours of their receipt. In the event service is not restored within seventy-two (72) hours, the subscriber shall receive a credit pursuant to Section 31.24.030(b). Any complaints not regarding service interruption received from subscribers by the cable operator or referred to the cable operator by city shall be investigated and responded to by the cable operator within two business days of their receipt.

(e) For complaints other than service interruptions, if a complaint is sent to the cable operator by city, the cable operator shall respond to city and report on the status of that complaint within twenty-four hours of the time the city delivers the complaint to the cable operator.

(f) For complaints other than service interruptions, within fifteen days after receiving a complaint from a subscriber, the cable operator shall notify the subscriber of the results of its investigation and its proposed action or credit. The cable operator shall also notify the subscriber of the subscriber's right to file a complaint with the city in the event the subscriber is dissatisfied with the cable operator's decision, and shall explain the necessary procedures for filing such complaint with the city.

(g) A cable operator shall keep a maintenance service log that will indicate the nature of each complaint, the name of the employee of the cable operator receiving the complaint, the date and time it was received, the disposition of the complaint and the time and date thereof. In said log the cable operator shall state the specific steps taken by the cable operator to remedy the complaint. This log shall be made available by the cable operator for periodic inspection by the city.

(h) The procedure for reporting and resolving complaints shall be stated in writing by the cable operator to each subscriber at the time of initial installation of cable service to the cable system, at least annually thereafter, and at any time upon request. It shall also be publicized clearly on the cable operator's Web site.

Chapter 31.16
CABLE INSTALLATION AND REPAIR STANDARDS

Sections:

31.16.010 General service standards
31.16.020 Appointments
31.16.030 Installation standards measured on a quarterly basis
31.16.040 Extension of service
31.16.050 Response to service request
31.16.060 Charges for installation and service
31.16.070 Cable drops
31.16.080 Underground and above-ground installations

31.16.010 General service standards

(a) A cable operator shall render efficient cable service, make prompt repairs, and intentionally interrupt cable service on the cable system only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected subscriber's service problems, or as provided in subsection 31.16.010(d), only after a minimum of 48 hours prior notice to subscribers and the city of the anticipated cable service interruption.

(b) A cable operator shall maintain sufficient staff and facilities to handle properly and adequately respond to cable system maintenance, requests for service, and complaints.

(c) A cable operator shall maintain a duty roster of qualified technicians to respond to complaints or malfunctions of the cable system at other than normal office hours.

(d) A cable operator need not give notice to subscribers for planned maintenance that does not require more than two hours' interruption of cable service to at least fifty subscribers and that occurs between the hours of 12:00 midnight and 6:00 a.m., but shall give notice to the city no less than 24 hours prior to this kind of anticipated cable service interruption.

(e) In the event of a system outage (loss of reception on all channels) resulting from cable operator equipment failure affecting ten or more customers, the cable operator shall respond in accordance with its outage response procedures, and in no event more than two hours after the tenth customer call is received, and shall remedy the problem as quickly as possible.

(f) A cable operator shall begin working to restore service within two hours after it becomes aware of a service interruption affecting five percent or more of the subscribers within the boundaries of the Franchisors.

(g) A cable operator shall maintain a written log, which if stored in computer memory is capable of access and reproduction on hardcopy, of all cable service interruptions and requests for cable service.

31.16.020 Appointments

(a) Customers requesting installation of cable service or service to an existing installation may choose an appointment window consisting of a four-hour time block between eight a.m. and six p.m. or another block of time mutually agreed upon by the customer and the cable operator. These options shall be clearly explained to the

customer at the time of scheduling. A cable operator may also offer longer appointment windows so long as it offers the subscriber the specified four-hour time blocks as well.

(b) The date set by the cable operator for an appointment shall be no more than seven calendar days from the date of the request, unless the subscriber, after being informed of the subscriber's rights under this rule, specifically requests a later date.

(c) A cable operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

(d) A cable operator may not cancel an appointment with a subscriber after 5 p.m. on the business day preceding the appointment, except for appointments scheduled within twelve hours after the initial call.

(e) A cable operator may not require that a subscriber answer a telephone call or that the subscriber otherwise confirm availability before the cable operator commences an appointment. If a cable operator unsuccessfully attempts to contact the subscriber prior to arriving at the appointment, and then fails to keep the appointment, the cable operator's failure to reach the subscriber shall not excuse it from keeping the appointment.

(f) If a cable operator's representative is running late for an appointment with a subscriber and is not able to keep the appointment as scheduled, the subscriber shall be contacted. The appointment shall be rescheduled, as necessary, at a time convenient to the subscriber. If the customer is absent when the technician arrives, the technician shall leave hardcopy written notification of timely arrival.

31.16.030 Installation standards measured on a quarterly basis

Under normal operating conditions, each of the following standards shall be met by a cable operator no less than 95% of the time, measured on a quarterly basis:

(a) A cable operator shall complete a standard installation within seven business days after receipt of a request, excluding time required to obtain necessary permits, in all areas where trunk and feeder cable as been activated for cable service, provided, however, that if installation requires that fiber be terminated on the subscriber's premises and such termination has not yet been installed, a cable operator shall have seven days to install such termination, and the seven-day period for installation of cable service shall commence only after such termination is installed or the seven-day period for such termination has elapsed, whichever occurs first.

(b) Excluding conditions beyond the control of the cable operator, the cable operator will begin working on a service interruption promptly and in no event later than 24 hours after the interruption becomes known. The cable operator shall use its best efforts to correct service interruptions resulting from cable operator equipment failure by the end of the next day, but in no event longer than forty-eight hours. Work on other requests for service shall be commenced by the next business day after notification of the problem, and the work shall be completed within three business days from the date of the initial request. If for reasons beyond the cable operator's control the work cannot be completed in the required time even with the exercise of all due diligence, the cable operator shall complete the

work in the shortest time possible. A cable operator's failure to hire sufficient staff or to train its staff properly does not justify a cable operator's failure to comply with the required time period.

(c) If a customer experiences poor signal quality (whether it relates to a visual or audio problem) which is attributable to the cable operator's equipment, the cable operator shall respond and repair the problem no later than the day following the customer call, provided that the customer is available and the repair can be made within the allotted time. At the customer's request, the cable operator shall repair the problem at a later time that is convenient for the customer.

31.16.040 Extension of service

(a) A cable operator shall complete a non-standard installation within 60 days if the distribution system need not be extended for one-half mile or more to provide cable service, or within six months if an extension of the distribution system for one-half mile or more is required, excluding time required to obtain necessary permits.

(b) If a potential subscriber or the city requests an estimate of the cost of line extension to a location, a cable operator shall provide such a good-faith estimate within thirty (30) days from the date of such request.

31.16.050 Response to service request

(a) A cable operator has responded to a request for service under the provisions of this section when a technician arrives at the service location and begins work on the problem, or, if a technician's presence at the service location is not necessary to diagnose and cure the problem, when the cable operator has begun work on the problem elsewhere.

(b) If a subscriber is not home when the technician arrives, response is considered to have taken place if the technician leaves hardcopy written notification of the technician's arrival.

31.16.060 Charges for installation and service

(a) Except as federal law may otherwise provide, a cable operator may not charge a subscriber any cost other than its standard installation rate for a standard installation of a single outlet, unless the cable operator demonstrates to the city's satisfaction that extraordinary circumstances justify a higher charge.

(b) Except as federal law may otherwise provide, a cable operator may not charge a subscriber for a service call unless the service request can be demonstrated (1) both to have been repeated and not to have been based on a problem originating with the cable system, or (2) to involve subscriber negligence or misuse of equipment.

31.16.070 Cable drops

(a) Except as applicable law otherwise may require, if a drop exceeds the standard drop length, a cable operator may charge a subscriber for a cable operator's actual costs of labor and materials associated with installing the drop beyond the standard drop length if the drop length in excess of the standard drop length is necessary due to engineering requirements.

(b) If a customer requests a nonstandard residential installation, or the cable operator determines that a nonstandard

residential installation is required, the cable operator shall provide the customer in advance with a cost estimate and an estimated date of completion.

(c) The subscriber's preference for the point of entry into the residence shall be observed whenever feasible.

(d) Runs in building interiors shall be as unobtrusive as possible.

(e) A cable operator shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by the installation. The restoration shall be undertaken as soon as possible after the damage was incurred and shall be completed within no more than 30 days after the damage is incurred, subject to reasonable landscaping limitations.

31.16.080 Underground and above-ground installations

(a) In locations where a cable operator's system is underground, drops shall be placed underground as well.

(b) Except as federal law may otherwise require, in an area where a cable operator would be entitled to install a drop above ground, the cable operator, if requested by the homeowner, shall install the drop underground but may charge the homeowner the difference between the actual cost of labor and materials for the above-ground installation and the actual cost of labor and materials for the underground installation.

(c) Absent unusual circumstances, all underground cable drops from the curb to the home shall be buried at a depth of no less than twelve inches, and within a reasonable period of time from the initial installation, or at a time mutually agreed upon between the cable operator and the customer. In all instances, the cable operator must comply with the state's One Call requirements.

Chapter 31.20
COMMUNICATIONS WITH SUBSCRIBERS

Sections:

31.20.010 Written communications to subscribers
31.20.020 Annual notice to subscribers
31.20.030 Notification of changes
31.20.040 Telephone communication with customer service representatives
31.20.050 In-person communication with subscribers
31.20.060 Internet presence
31.20.070 Customer contract

31.20.010 Written communications to subscribers

The cable operator must take appropriate steps to ensure that all written cable operator promotional materials, announcements and advertising of cable service to subscribers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, the cable operator will take appropriate steps to ensure that prices and terms

are clearly and accurately disclosed to potential subscribers in advance of taking the order.

31.20.020 Annual notice to subscribers

At the time service is installed to a subscriber and at least once annually afterwards, and at any time on request, the cable operator shall provide each subscriber and the city with hardcopy written information (or, if the subscriber affirmatively requests the information in electronic form, electronic written information) concerning:

(a) Products and services offered;

(b) Prices, including a schedule of rates and charges, and options for programming services and conditions of subscription to programming and other services;

(c) Installation and service maintenance policies, delinquent subscriber reconnect and disconnect procedures, and any other of its policies applicable to subscribers;

(d) Written instructions on how to use the cable services and for placing a service call;

(e) Channel positions of programming carried on the cable system;

(f) The cable operator's billing, collection, disconnection and reconnections procedures and late charge procedures;

(g) The procedures for making inquiries or complaints, including the name, address, local telephone number, and e-mail address of the employee or agent to whom inquiries or complaints are to be addressed;

(h) The city official responsible for regulating the franchise, including the name, telephone number, and e-mail address of the official;

(i) The cable operator's business hours, legal holidays, and procedures for responding to inquiries after normal business hours, including Days, times of operation, and location of the customer service location and bill payment center.

(j) A copy of the service contract applicable to the subscriber, if any; and

(k) A written notice regarding subscriber's privacy rights pursuant to 47 U.S.C. § 551.

(l) Use and availability of parental control/lock-out devices and the cost, if any, for the use of such devices; and

(m) Special services or equipment available for subscribers with disabilities and explanations for how to obtain and use them.

31.20.030 Notification of changes

(a) A cable operator shall provide to all subscribers and to the city at least 30 days' hardcopy written notice before the implementation of any change in rates, programming services, channel positions, business hours, legal holidays, or procedures for responding to inquiries after normal business hours, unless such change is beyond the control of the cable operator, in which case the cable operator shall provide the maximum possible notice up to the 30 days specified herein.

(b) In addition to the requirement of Section 31.20.030(a), a cable operator shall give at least 30 days' hardcopy written notice to subscribers and to the city before implementing any rate or service change. Such notice shall state the precise amount of any rate change

and briefly explain in readily understandable fashion the cause of the rate change (*e.g.*, inflation, change in external costs, addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purpose of the carriage of digital broadcast signals, the operator need only identify for subscribers the television signal added and not whether that signal may be multiplexed during certain dayparts.

(c) At least five working days before distributing a subscriber notice, unless waived by the city, the cable operator shall provide to the city the specific points to be contained in a subscriber notice and the text of the subscriber notice, if available. If the text is not available, it shall be provided to the city as soon as it is available.

(d) A cable operator shall file with the city copies of all notices provided to subscribers.

31.20.040 Telephone communication with customer service representatives

(a) All CSRs shall identify themselves to callers immediately following the greeting during each telephone contact with the public. Each CSR, technician or employee of the cable operator in each contact with a subscriber shall state the estimated cost of the service, repair, or installation prior to delivery of the service or before any work is performed, and shall provide the subscriber with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work is to be performed.

(b) A customer service representative shall have the authority to provide credits, waive fees, schedule service appointments and change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the subscriber within twenty-four hours and attempt to resolve the problem within seventy-two hours or within such other time frame as is acceptable to the subscriber and the cable operator.

31.20.050 In-person communication with subscribers

(a) All officers, agents, and employees of the cable operator or its contractors or subcontractors who are in personal contact with subscribers shall wear on their outer clothing identification cards bearing their name and photograph. The cable operator shall make all reasonable efforts to account for all identification cards at all times.

(b) Every vehicle of the cable operator shall be visually identified to the public as working for the cable operator. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor or subcontractor, and shall be further identified as contracting or subcontracting for the cable operator.

31.20.060 Internet presence

A cable operator shall maintain an Internet web presence. Except for normal and regularly scheduled maintenance, the web site shall be available twenty-four hours and seven days a week under normal operating conditions. The following services shall be available on the web site: the ability to sign up for and/or disconnect service; and receive responses to other subscriber inquiries and requests.

31.20.070 Customer contract
The cable operator shall not enter into a contract with any subscriber that is in any way inconsistent with the terms of these customer service standards or the cable operator's franchise with the city.

Chapter 31.24
BILLING

Sections:
31.24.010 General standards
31.24.020 Refunds
31.24.030 Credits
31.24.040 Payment information; late fees
31.24.050 Deposits
31.24.060 Billing inquiries

31.24.010 General standards
(a) Bills shall be clear, concise, and understandable.
(b) Bills shall fully itemize cable services, equipment, and any other items for which a cable operator charges a subscriber, including basic and premium service charges and equipment charges.
(c) Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
(d) The first billing statement after a new installation or service change will be prorated as appropriate and will reflect any deposit.

31.24.020 Refunds
Refund checks to subscribers shall be issued promptly, but no later than:
(a) The earlier of the subscriber's next available billing cycle or 30 days following resolution of the refund request; or
(b) The return of all equipment supplied by the cable operator if cable service is terminated.

31.24.030 Credits
(a) Credits for cable service shall be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.
(b) The account of any subscriber shall be credited a prorated share of the monthly charge for cable service, upon the reasonably prompt request of a subscriber, or without a subscriber's request if the cable operator is aware of an outage and can identify the affected subscribers, if the subscriber is without cable service for a period that exceeds 12 hours during any 24-hour period, or cable service is substantially impaired for any reason for a period that exceeds 12 hours during any 24-hour period.
(c) The provisions of the preceding paragraph 31.24.030(b) do not apply if it can be documented that a subscriber seeks a refund for an outage or impairment that the subscriber caused, or a planned outage occurred between the hours of 12:00 midnight and 6:00 a.m. and the subscriber had prior notice.

31.24.040 Payment information; late fees

(a) A cable operator's billing statement shall show a specific payment due date not earlier than the midpoint of the period for which the cable service being billed is rendered, *e.g.*, the fifteenth day of a 30-day billing cycle.

(b) If a balance due is not received by thirty days after the end of the period for which the cable service being billed is rendered, the cable operator may assess a late fee in accordance with state and local law and judicial decisions.

(c) Any late fee shall appear on the following month's billing statement.

(d) A subscriber may not be charged a late fee or otherwise penalized for any failure by a cable operator, including a failure to timely or correctly bill the subscriber or a failure to properly credit the subscriber for a payment timely made.

31.24.050 Deposits

(a) A cable operator may require a reasonable, non-discriminatory deposit on equipment provided to subscribers, in addition to any allowable monthly rental fees.

(b) A subscriber deposit shall bear interest in accordance with applicable law or at the going rate, which may not be less than the interest rate then chargeable for unpaid federal income taxes (26 U.S.C. § 6621). All deposits, with interest, shall be returned to the subscriber within 30 days after return of the equipment.

31.24.060 Billing inquiries

If a subscriber requests a written response to a written billing inquiry, the cable operator shall respond in writing (in hardcopy if the subscriber so requests it or if the subscriber's request is in hardcopy) within 30 days of receipt.

Chapter 31.28
DISCONNECTION AND RECONNECTION

Sections:

31.28.010 Termination of cable service by subscriber
31.28.020 Cable operator duties
31.28.030 Return of equipment
31.28.040 Disconnection of cable service by operator
31.28.050 Reconnection of cable service

31.28.010 Termination of cable service by subscriber

(a) A subscriber may terminate or downgrade cable service at any time.

(b) Except as federal law may otherwise require, there will be no charge for disconnection. Any downgrade charges will conform to applicable law.

31.28.020 Cable operator duties

A cable operator will disconnect or downgrade any cable service for a subscriber who so requests within seven business days. No period of

notice before voluntary termination or downgrade of service may be required of subscribers by the cable operator, and the subscriber shall not be required to pay for the time which elapses from notification to actual disconnection.

31.28.030 Return of equipment

(a) A subscriber may be asked, but not required, to disconnect a cable operator's equipment and return it to the business office.

(b) If a cable operator fails to remove its property from a subscriber's premises within 60 days of the termination of cable service, the property shall be deemed abandoned unless the subscriber is responsible for the cable operator's failure to remove the property.

31.28.040 Disconnection of cable service by operator

(a) If a subscriber fails to pay a monthly subscriber fee or other fee or charge, a cable operator may disconnect the subscriber's cable service. However, the disconnection may not occur until after 35 days from the beginning of the period for which the cable service being billed is rendered, plus at least 10 days' advance hardcopy written notice to the subscriber of the intent to disconnect, given after the 35 days have elapsed. However, if the subscriber pays all amounts due, including any late charges, before the date scheduled for disconnection, the cable operator may not disconnect cable service.

(b) A cable operator may immediately disconnect a subscriber if the subscriber is damaging or destroying the cable operator's cable system or equipment. After disconnection, the cable operator shall restore cable service if the subscriber provides adequate assurance that the subscriber has ceased the practices that led to disconnection and paid all proper fees and charges, including any reconnect fees and amounts owed the cable operator for damage to its cable system or equipment.

(c) A cable operator may disconnect a subscriber who causes signal leakage in excess of federal limits. Disconnection may be effected either:

(1) After five days' hardcopy written notice to the subscriber, if the subscriber fails to take steps to correct the problem; or

(2) Without notice if signal leakage is detected originating from the subscriber's premises in excess of federal limits, provided that the cable operator shall immediately notify the subscriber of the problem and, once the problem is corrected, reconnect the subscriber.

31.28.050 Reconnection of cable service

(a) A cable operator shall reconnect cable service to a subscriber who wishes to have the subscriber's cable service restored if the subscriber first satisfies any previously owed obligations.

(b) The cable operator shall complete such reconnection within forty-eight hours.

Chapter 31.32
CHANGES IN CABLE SERVICE

Sections:

31.32.010 Notice of change of service
31.32.020 Charges for authorized cable services only
31.32.030 Requirement to purchase cable service other than basic service

31.32.010 Notice of change of service

When a cable operator substantially alters the cable service it provides to a class of subscribers, the cable operator shall provide each subscriber notice as required in Section 31.20.030, explain the substance and full effect of the alteration, and provide the subscriber with the right to choose to receive any combination of cable services offered by the cable operator.

31.32.020 Charges for authorized cable services only

A cable operator may not charge for any cable service or product that the subscriber has not affirmatively indicated the subscriber wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

31.32.030 Requirement to Purchase Cable Service Other than Basic Service

Subject to federal law, a cable operator that is not subject to effective competition may not require a subscriber to purchase a cable service other than basic service as a condition of purchasing premium or pay-per-view programming.

Chapter 31.36
PARENTAL CONTROL

Section:

31.36.010 Parental control

31.36.010 Parental control

Upon the request of a subscriber, a cable operator shall make available to each subscriber, either for rent or for purchase or both, the option of blocking the video and audio portion of any channel or channels of programming entering the subscriber's home. The control option shall be made available to all subscribers requesting it at the time that cable service is provided or within a reasonable time thereafter.

Chapter 31.40
RIGHTS OF INDIVIDUALS

Sections:

31.40.010 Discrimination prohibited
31.40.020 Privacy

31.40.010 Discrimination Prohibited

(a) In connection with rates, charges, facilities, rules, regulations and in all of a cable operator's services, programs or activities, and all of a cable operator's hiring and employment in the city, there shall be no discrimination by a cable operator or by a cable operator's employees, agents, contractors, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, creed, national origin, sexual orientation, marital status or the presence of any disability, including sensory, mental or physical handicaps (unless based upon a bona fide occupational qualification). This requirement shall include, but not be limited to, the following practices: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) Cable service shall not be denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

(c) A cable operator shall not violate any applicable federal, state or local law or regulation regarding nondiscrimination.

(d) Nothing in this section shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification would be entitled, or to prevent a cable operator from waiving or modifying connection and/or service charges on a nondiscriminatory basis during promotional campaigns.

31.40.020 Privacy

(a) A cable operator shall at all times protect the privacy rights of all subscribers under all applicable law, including, but not limited to, Section 631 of the Cable Act, 47 U.S.C. § 551.

(b) The cable operator shall not monitor cable television signals to determine the individual viewing patterns or practices of any subscriber without prior hardcopy written consent from that subscriber.

(c) A subscriber's "prior written or electronic consent" for purposes of Section 31.40.020(b) and 47 U.S.C. § 551 shall be obtained by a cable operator pursuant to a separate document with a prominent statement that the subscriber is providing such consent in full knowledge of the provisions of 47 U.S.C. § 551. Such written permission shall be for a limited period of time not to exceed one (1) year, which shall be renewable in writing at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the subscriber, without penalty of any kind, by delivering to the cable operator in writing, by mail or otherwise, the subscriber's decision to revoke the authorization. Any revocation shall be effective upon receipt by the cable operator.

(d) A subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A subscriber shall be provided reasonable opportunity to correct any error in such information.

Chapter 31.44
ANTI-COMPETITIVE ACTIONS

Sections:
31.44.010 Anti-competitive actions

31.44.010 Anti-competitive actions
A cable operator may not engage in unlawful acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service within the boundaries of the city.

Chapter 31.48
ENFORCEMENT

Sections:
31.48.010 Verification of compliance
31.48.020 Noncompliance with standards
31.48.030 Enforcement procedures

31.48.010 Verification of compliance
If the city has reason to believe that a cable operator may not be in compliance with the standards established in this title, the city, on reasonable notice, may require the cable operator to demonstrate compliance with the standards required in this title. The cable operator shall provide sufficient detail to permit the City to verify the extent of compliance.

31.48.020 Noncompliance with standards
The cable operator's noncompliance with any provision of these standards may be deemed by the city a franchise violation.

31.48.030 Enforcement procedures
(a) If the city determines that a cable operator has failed to perform any obligation under this title or has failed to perform in a timely manner, the city may make a written demand on the cable operator that it remedy the violation. If the violation is not remedied or in the process of being remedied to the satisfaction of the city within a reasonable time period following the demand, the city may:

(1) issue a civil citation for a civil infraction and impose a penalty not to exceed one thousand dollars ($1000.00);

(2) assess against the cable operator any monetary damages provided for such violation in its franchise agreement;

(3) assess and withdraw the amounts specified above from the cable operator's performance bond or other applicable security instrument;

(4) revoke the cable operator's cable franchise as provided in its franchise agreement; or

(5) pursue any legal or equitable remedy available under any applicable law or under the cable operator's franchise agreement.

(b) The following penalty amounts shall apply, in place of the amount specified in Section 31.48.030(a)(1), in assessing civil

penalties for customer service standards that are measured on a quarterly basis:

(1) For the first calendar quarter in which a cable operator does not meet the prescribed standard (a "noncompliant quarter"), the cable operator will be subject to a civil penalty in the amount of $1,500.

(2) For a second consecutive noncompliant quarter, a cable operator shall be subject to a civil penalty in the amount of $2,000.

(3) For each consecutive noncompliant quarter beyond the second, a cable operator shall be subject to a civil penalty in the amount of $4,000.

(c) Remedies available to the city for franchise violations under this title and under the franchise agreement shall be construed, except as otherwise provided in this title, as cumulative and not alternative.

(d) If civil penalties are assessed against a cable operator under this section, the cable operator is not subject to liquidated damages payable to the city for the same violation. If liquidated damages payable to city are assessed against a cable operator, the cable operator is not subject to civil penalties under this section for the same violation. If the city seeks actual damages for any violation, any civil penalties or liquidated damages recovered by the city for the same violation, including civil penalties or liquidated damages for partial time periods included in a longer time period for which actual damages are sought, shall be offset against any actual damages recovered by the city.

(e) A cable operator shall pay civil penalties or liquidated damages within 30 days after receipt of notice from the city.

(f) The filing of an appeal to any regulatory body or court does not stay or release the obligations of a cable operator under the franchise agreement and applicable law.

(g) An assessment of liquidated damages or civil penalties does not constitute a waiver by the city or the franchisors of any other right or remedy they may have under the franchise or applicable law, including the right to recover from the cable operator any additional damages, losses, costs, and expenses, including actual attorney fees, that were incurred by the franchisors or the city by reason of or arising out of the violation. However, the city's election of liquidated damages under the franchise agreement shall take the place of any right to obtain actual damages over and above the payment of any amounts otherwise due. This provision may not be construed to prevent the city from electing to seek actual damages for a continuing violation if it has imposed civil penalties or liquidated damages for an earlier partial time period for the same violation, subject to the offset specified in subsection (d) of this section.

Chapter 31.52
MISCELLANEOUS PROVISIONS

Sections:

31.52.010 Services for customers with disabilities
31.52.020 Notice/work

31.52.030 Captions
31.52.040 Severability
31.52.050 Costs

31.52.010 Services for customers with disabilities

(a) For any subscriber with a disability or who is otherwise mobility-impaired the cable operator shall at no charge deliver and pick up converters and other cable operator equipment at the subscriber's home. In the case of a malfunctioning converter or such other equipment, the technician shall provide another converter or such other equipment, hook it up and ensure that it is working properly, and shall return the defective converter or such other equipment to the cable operator.

(b) A cable operator shall work cooperatively with any services that allow hearing-impaired subscribers to contact the cable operator by telephone.

31.52.020 Notice/work

Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the cable operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed. In the case of an emergency, however, the cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property. Any work on private property shall be conducted in accordance with an agreement between the cable operator and the property owner. If damage is caused by any cable operator activity, the cable operator shall reimburse the property owner one hundred percent of the cost of the damage or replace or repair the damaged property to as good a condition as before the cable operator's activity commenced. Affected property owners shall be notified in advance of major construction or installation projects in adjacent rights-of-way.

31.52.030 Captions

The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of this title.

31.52.040 Severability

If any section, subsection, sentence, clause, phrase or portion of this title is for any reason held invalid or unenforceable by any court or agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

31.52.050 Costs

Except where otherwise expressly stated herein, all costs incurred by a cable operator in connection with any provision of this title shall be borne by the cable operator.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the

ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4207

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE CONSUMER PROTECTION WITHIN THE CITY OF KIRKLAND.

SECTION 1. Adopts a new Title 31 of the Kirkland Municipal Code relating to cable consumer protection within the City of Kirkland.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2009.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

_____
City Clerk

Council Meeting: 09/01/2009
Agenda: New Business
Item #: 11. e.

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

To: Dave Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
David Godfrey, P.E., Transportation Engineering Manager

Date: August 20, 2009

Subject: LETTER TO KING COUNTY ON METRO TRANSIT FUNDING

RECOMMENDATION:

It is recommended that the City Council authorize the Mayor to sign the attached letter.

BACKGROUND DISCUSSION:

At their July 22 meeting, the Transportation Commission discussed the Metro Transit budget shortfall. Metro staff was present to answer questions. This was a follow up to the April meeting where the Commission began its discussions, after receiving a presentation from Metro. It was clear that even with cost savings, keeping smaller reserves and other efficiencies, service will need to be reduced to balance the Metro budget. The Commission arrived at the following conclusions.

Build service around all day routes that perform well in one or more standard measures of effectiveness such as passengers carried per platform hour. Although this may not be the position of most eastside jurisdictions, it is likely to benefit Kirkland. Kirkland has several all day routes, 255 (between Brickyard P&R and Seattle), 230 (between Kingsgate and Bellevue/Redmond) and 245 (between Kirkland and Factoria via South Rose Hill and Overlake) that are strong performers. Developing a strong set of core routes was seen as preferable to, for example, reducing frequencies on all routes. The Commission felt strongly that a system of fewer routes with excellent service is preferable to a system of more routes of mediocre quality. A few high performing peak hour routes should complement all day service. Restructuring service along with cuts is also important. For example, as discussed previously by Council, if the Route 255 ended at Kingsgate P&R instead of Brickyard P&R, increased peak hour frequency could be provided with no additional service hours.

Give the highest priority to routes that serve dense, multi use areas where parking supply is limited and pay parking is in place. This is not to say that Kirkland or the eastside should not get its fair share of service. This strategy allows Kirkland to take

advantage of the land use patterns it has developed and encourages transit service where it works best.

Implement innovative programs for increasing revenue and decreasing costs. Recently produced information on cross-Lake ferries indicates that ridership will be low and costs to provide the service will be relatively high. After reviewing this information, the Commission recommends that new ferry service from Kirkland and other cities be delayed until it is more cost effective and that ferry district tax revenue be moved to fund Metro service. Most of the cost of an hour of transit service comes from the cost of providing the driver. Metro should examine these costs and others to see if savings can be achieved. There may be other creative ideas such as parking charges or extra charges for premium service that are worth further consideration. The Commission felt that it is reasonable for fares to cover 30% of Metro's operating expenses.

Continue to support partnerships that leverage funding. The SR 520 Urban Partnership Grant provides funding for additional coaches for the SR 520 corridor. It does not provide funding for service. Because of the benefits to Kirkland of Metro service on SR 520, and because tolling is scheduled to begin next year on SR 520, additional service is critical. The Commission supports using property tax (as authorized by the State Legislature) to provide this service. Although Rapid Ride (Metro's proposed Bus Rapid Transit) would not directly serve Kirkland, it allows Metro to leverage federal funding and follows the principle of providing high quality service on core routes.

The attached letter was reviewed and edited by the Transportation Commission.

September 3, 2009 **D R A F T**

Kurt Triplett, King County Executive
401 5th Avenue, Suite 800
Seattle, WA 98104

Dow Constantine, Chair, King County Council
516 3rd Avenue
Seattle, WA 98104

Dear Sirs:

Discussions are taking place across the County concerning solutions to Metro's budget crisis. We support your facilitation of such discussions. The following four principles are offered for your consideration as you continue to grapple with this difficult problem.

Build service around all day routes that perform well in one or more standard measures of effectiveness such as passengers carried per platform hour. This will focus service on routes that carry the most riders per dollar of expenditure. These routes tend to run on corridors that are destinations in themselves and that serve regional centers. They also tend to serve those who are transit dependent. In Kirkland such routes include 230, 245 and 255. We fear that reducing service uniformly, while it will spread out the impacts, will water down the remaining service and the entire system will be weaker. Maintaining some productive peak hour routes is also important to compliment all day service. Service restructures should complement cuts where appropriate to maximize the effectiveness of the system.

Give the highest priority to routes that serve dense, multi use areas where parking supply is limited and pay parking is in place. The Council continues to support additional service in Kirkland and on the Eastside, because the current subarea service allocation is far out of balance with subarea revenue generation. Within subareas, transit should serve the types of land use where it has the best chance to be effective. Downtown Kirkland is an excellent example of such an area.

Implement innovative programs for increasing revenue and decreasing costs. Based on ridership forecasts and projected costs, cross Lake Washington ferry routes are not a wise investment when compared to bus service. The County should redirect property tax revenue from the Ferry District to Metro. This should include increasing the fraction of operating expenses that comes from fares. Expecting fares to support 30% of operating expenses is higher than Metro's

current target, but is not unreasonable. King County should consider charging for parking at Park and Rides where occupancies are above 85%. Reducing expenses by cutting labor costs and reducing services that do not directly support increased ridership should also be part of a cost control strategy.

Continue to support partnerships that leverage funding. Because tolling will begin on SR 520 next year, the opportunity to increase Metro bus service across SR 520 through the Urban Partnership Agreement must not be lost. Coaches are being funded by the grant and service can be funded by exercising the property tax option given to Metro by the State Legislature. The Rapid Ride components of the voter approved Transit Now measure allow Metro to secure federal funds for capital elements and should continue to be funded.

Thank you once again for your consideration of these comments.

Sincerely,
Kirkland City Council

By James L. Lauinger, Mayor