GRANDVIEW CITY COUNCIL
COMMITTEE-OF-THE-WHOLE
MEETING AGENDA
TUESDAY, JULY 24, 2018

COMMITTEE-OF-THE-WHOLE MEETING – 6:00 PM **PAGE**

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT – At this time, the public may address the Council on any topic whether on the agenda or not, except those scheduled for public hearing.

4. NEW BUSINESS

A. Pros and Cons: Considering a Hearing Examiner System for Land Use Decision Making – Ken Harper, Attorney at Law 1-32
- Legal opinions from the Washington Cities Insurance Authority regarding the use of a Hearing Examiner for Land Use Decision-Making 33-56
- Grandview Municipal Code Chapter 2.50 Office of the Hearing Examiner 57-61

B. Resolution approving an amended Site Use Agreement between People For People and the City of Grandview Community Center 62-70

C. Fire Truck Purchase – USDA RD Loan Closing Documents 71
- Resolution accepting the 2019 KME Custom Pumper Fire Truck as complete 72
- Resolution authorizing and providing for the incurrence of indebtedness for the purpose of providing a portion of the cost of acquiring, constructing, enlarging, improving, and/or extending its purchase fire truck and equipment to serve an area lawfully within its jurisdiction to serve 73-75
- Ordinance providing for the issuance of a limited tax general obligation bond, in the principal amount of $550,000 to provide funds to purchase a new fire truck; fixing the form, terms and convenants of such bond; approving the sale of the bond to the United State of America, acting through the United States Department of Agriculture; and providing for other matters relating thereto 76-82

5. OTHER BUSINESS

6. ADJOURNMENT

Pros and Cons: Considering a Hearing Examiner System for Land Use Decisionmaking

City of Grandview
July 24, 2018

Kenneth W. Harper
Menke Jackson Beyer, LLP
www.mjbe.com

What are We Talking About?

Who Are They?

- Typically an attorney
- Hired by contract
- Independent of local elected officials, City staff, developers/opposition

What are We Talking About?

What Can They Do?

- Conduct initial hearings
- Conduct appeal hearings
- Make decisions/recommendations

What are We Talking About?

Like What?

- Zoning matters
- Preliminary plat applications
- SEPA appeals
- Other development permits
- Nuisance/junk vehicle abatement

What are We Talking About?

More Specifically:

- Conditional use permits
- Variances (eliminates Board of Adjustment)
- Shoreline permits
- Appeals of administrative decisions

What are We Talking About?

Most Frequently:

- Handle quasi-judicial decisionmaking (Planning Commission role?)
- Including consideration of appeals (City Council role?)
- But doesn't have to replace direct City Council appeals

What are We Talking About?

But Not:

- Area-wide rezoning
- Text amendments to zoning code
- Constitutional claims, unless specially authorized
- Claims for damages

What are We Talking About?

Legal Effect - Options:

- Recommendation to City Council
  - Then, City Council takes final action
- Final decision
  - Appealable to City Council in closed record proceeding
  - City Council considers record created by the Hearing Examiner

What are We Talking About?

Legal Effect - Options:

- For final decisions, all appeals go directly to Superior Court
- Not allowed for rezone decisions – RCW 35A.63.170(2)

What are We Talking About?

What are Others Doing?

- Richland: significant use
- Kennewick: significant use
- Pasco: significant use
- Selah: significant use
- Moxee: significant use
- Yakima: significant use
- Yakima County: significant use

How do Hearing Examiners Fit in the Process?

Differences in Kinds of Local Actions

- Permitting vs. planning
- a/k/a quasi-judicial vs. legislative

How do Hearing Examiners Fit in the Process?

Differences in Kinds of Local Actions: Quasi-Judicial Actions

- Acting like a judge
- Specific parties
- Hearing or other contested action
- Determine rights, duties or privileges

How do Hearing Examiners Fit in the Process?

Appearance of Fairness Doctrine

- Who, What, Where and Why?
- Exceptions
- Applications

How do Hearing Examiners Fit in the Process?

Violation Consequences

- Action void
- Damages?

How do Hearing Examiners Fit in the Process?

Violation Consequences

- Arbitrary and capricious action?
- Civil rights violation (28 U.S.C. § 1983)?
- Attorneys fees liability?
- Personal liability?

How do Hearing Examiners Help?

Conduct of Hearings

- Must be fair in fact
- Must appear fair
- Procedures
- Suggested order of presentation
- Deliberation

How do Hearing Examiners Help?

Conduct of Hearings

- Ability to produce a verbatim transcript
- Number the exhibits
- Have each speaker identify him/herself
- Recognize each speaker
- Impose reasonable time limits
- Encourage speakers not to be repetitive

How do Hearing Examiners Help?

Conduct of Hearings - Manner of Proceeding

- May ask legal counsel to review criteria
- Open hearing
- Staff presentation
- Audience participation
- Applicant/opponent
- Close hearing

How do Hearing Examiners Help?

Conduct of Hearings - Deliberation

- Discussion - why supporting approval or disapproval
- Base reasons on criteria and ordinances or state law
- Point out how proposal does or does not meet criteria Base reasons on written and oral record
- Instruct the staff to take next steps in line with the decision

What are the Specific "Pros"?

- Manage large disputatious hearings
- Decisions independent of politics
- Decisions focused on law, including local code
- Experience of other jurisdictions in the state

What are the Specific "Pros"?

- Separates quasi-judicial from legislative functions
- Frees policy-makers to act on long-term planning and legislating

What are the Specific "Pros"?

- Faster, more predictable process
- Reduced appeals and judicial challenges
- Protection of constitutional due process rights
- Increased public confidence (?)

What's the Downside?

Practical Considerations

- Out of pocket cost
- Backup availability in case of conflict of interest
- Scheduling

What's the Downside?

Philosophical Considerations

- Reduced role for local elected officials?
- Insulation of decisionmaking from political aims?
- Concentration of authority in individual person?

What's the Downside?

Challenges in Implementation

- Identify Hearing Examiner jurisdiction
  - Permits requiring pre-decision hearing
  - Appellate jurisdiction
- Identify effect of Hearing Examiner decision
- Identify appeal process
  - Reconsideration
  - Appeals to City Council or to Superior Court
- Create rules of procedure?
  - Cross examination
  - Testimony under oath
  - Pre-hearing conferences

What's the Downside?

Challenges in Implementation

- Qualifications – who reviews?
- Term of office
- Conflict of interest/pro tem appointments
- Subpoena power
- Time requirements for:
  - Staff report
  - Issuance of decision

What's the Downside?

Qualifications for Hearing Examiner

- Land use experience: GMA, development regulations, comprehensive planning
- Legal background
  - Knowledge of legal procedures
  - Ability to apply rules of evidence to testimony
- Neutral and unbiased approach
- Not otherwise employed by the jurisdiction

Options for Implementing a Hearing Examiner System: Recap

- Recommendation to City Council
  - For certain types of decisions
    - Rezones
    - Subdivisions
- Final decision with closed record appeal to City Council
- Absolutely final decision - appeal to Superior Court

Options for Implementing a Hearing Examiner System

What are Others Doing?

- Go look at other codes
- Ask around

Options for Implementing a Hearing Examiner System

You Make the Call!

- Complexity
- Time, cost, accountability
- Local community support

Options for Implementing a Hearing Examiner System

Sources:

- MRSC (www.mrsc.org)
  - Local codes
  - MRSC Focus Paper
- Local Hearing Examiners

Pros and Cons: Considering a Hearing Examiner System for Land Use Decisionmaking

Thank you!

Kenneth W. Harper
Menke Jackson Beyer, LLP
www.mjbe.com

Anita Palacios

From: Anita Palacios
Sent: Wednesday, June 27, 2018 10:05 AM
To: Quinn Plant
Subject: FW: Hearing Examiner or Planning Commission
Attachments: Letter to Heather Kintzley re Hearing Examiners.pdf (Email.pdf; Mike Walter's Hearing Examiner.pdf; MRSC 8-2016 Hearing Examiner support - Tovar.pdf

From: Debbi Sellers [mailto:DebbiS@wciapool.org]
Sent: Wednesday, June 27, 2018 9:42 AM
To: Anita Palacios
Cc: Cus Arteaga
Subject: RE: Hearing Examiner or Planning Commission

Good Morning Anita,
I have attached three documents for you. The first two are lengthy letters from Mike Walters, who is one of our main land use defense attorneys, that contain the many reasons why using hearing examiners are strongly recommended. WCIA continues to recommend the use of hearing examiners because members who use hearing examiners have fewer land use claims. The final document is written by Joe Tovar for MRSC and it also provides some good insight into the risks of having governing bodies handling quasi-judicial hearings. Hopefully this information will be of assistance to you.

Debbi

Sincerely,
Debbi Sellers, RPLU, CPSI
Senior Risk Management Rep

Washington Cities Insurance Authority
PO Box 88030 Tukwila, WA 98138
Direct:206-687-7891

WA cities
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ROBERT C. KEATING (1915-2001)

August 15, 2014

Heather D. Kintzley
City Attorney
City of Richland
975 George Washington Way
Richland, WA 99352-3548

RE: **Use of a Hearing Examiner for Land Use Decision-Making**

Dear Ms. Kintzley:

It is my understanding that in a recent land use audit of all member cities conducted by Washington Cities Insurance Authority ("WCIA"), the use of a hearing examiner for land use decision-making came up, and that the City of Richland may be considering adoption of a hearing examiner system for land use decision-making. In this regard, WCIA suggested I write regarding my opinions and experiences on the use of a hearing examiner for land use decision-making. Accordingly, I am providing this letter to you, which you are encouraged to forward to the City Manager, Mayor, City Council and staff, providing my strong recommendation for the use of a hearing examiner for land use decision-making.

As I explain in this letter, I believe the use of a land use hearing examiner to make final quasi-judicial decisions on land use permits (as well as for deciding administrative appeals) is invaluable and should be utilized to the fullest extent by the City of Richland. It is the trend of most local governments to use a land use hearing examiner to adjudicate quasi-judicial and administrative land use permitting.

By way of background, I am a partner and director at Keating, Bucklin & McCormack, Inc., P.S., a law firm emphasizing representation of local government in a wide variety of municipal matters, civil lawsuits and administrative and other legal claims. For over 25 years, my practice has emphasized a broad range of municipal, land use, regulatory, environmental, civil rights and tort-related issues in defense of government entities, elected officials and their employees. I represent cities, special purpose districts and other government entities in land use, permitting, environmental matters, civil rights and other claims, and have written numerous

articles on land use law, municipal and local government legislation and regulation, permitting and environmental issues, as well as risk management on various topics of interest to local government and land use agencies. As part of my practice, I also provide municipal, land use, environmental and risk management training to elected officials and government agencies throughout the State. A significant part of my practice involves defending land use claims arising out of quasi-judicial land use decisions, made by citizen and elected bodies as well as professional hearing examiners.[1] A copy of my professional resume is attached. You can also get more information on my law firm and my land use practice through our website at www.kbmlawyers.com.

I provide the foregoing summary of my background as context for my strong, unqualified, recommendation to all cities, towns and local government entities in the use of a hearing examiner to adjudicate quasi-judicial land use matters. Being "in the trenches," as it were defending land use decisions – and frequently land use mistakes – by local government has given me first-hand experience in seeing the procedural, timeliness and significant liability risk differences in land use decisions made by planning commissions, boards of adjustment and city councils versus those decisions made by professional hearing examiners. This first-hand experience in defending literally thousands of these decisions over the past 25 years has made one thing crystal clear: there is no substitute for local government's use of a professional hearing examiner in deciding quasi-judicial land use matters. For this reason, I write to encourage the City of Richland – as I do with all of the local government entities I work with or speak to – to take full advantage of a professional land use hearing examiner.

General Authority of Hearing Examiners

I recommend to cities I work for to utilize, to the fullest extent possible, a hearing examiner to (1) make final decisions on all quasi-judicial land use permits and decisions, and (2) to act as the administrative appeal body for review of routine administrative/ministerial permits (such as right-of-way permits, clearing and grading permits, tree cutting permits, building permits, etc.) and of administrative/code interpretations. The adoption of a hearing examiner position is expressly authorized in RCW 35A.63.170. A hearing examiner may hear:

> (a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;
>
> (b) Appeals of administrative decisions or determinations; and
>
> (c) Appeals of administrative decisions or determinations pursuant to RCW ch. 43.21C.

[1] I am not a hearing examiner, and do not derive any income as a hearing examiner.

RCW 35A.63.170(1)(a)-(c).[2] These are identical to the duties a board of adjustment would otherwise perform. *Compare* RCW 35A.63.110(1)-(4). The City must explain the nature and scope of the hearing examiner's duties if the position is created. *See* RCW 35A.63.170.

The Legislature has also authorized local government to establish the procedures to be followed by the hearing examiner.

> (2) Each city or county legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:
>
> > (a) The decision may be given the effect of a recommendation to the legislative body;
> >
> > (b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or
> >
> > (c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.

RCW 35A.63.170(2).

Thus, as an alternative to using a planning commission or city council to decide quasi-judicial land use applications and permits, the council has express statutory authority[3] to adopt a hearing examiner system and vest in a hearing examiner with broad authority to conduct open record hearings on and decide applications for virtually all types of permits and land use approvals, including such things as site plans, full and short plats, conditional or special use permits, variances, reasonable use exemptions and waivers, shoreline permits, "or any other class of applications for or pertaining to development of land or land use." A hearing examiner can also be vested with authority to hear appeals of administrative or quasi-judicial permit decisions as well as appeals of determinations under SEPA. Hearing examiners also have other authorities set forth in RCW 35.63.130 and RCW 35A.63.170.

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[2] The scope of authority of hearing examiners is best described in the case of *Chausee v. Snohomish County Council*, 38 Wn. App. 630, 689 P.2d 1084 (1984). In that case, the court described hearing examiners as "creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication." *Id.*, at 38 Wn. App. 636.

[3] In any case, the city council must specifically adopt a hearing examiner system and through an ordinance or code amendment vest the hearing examiner with authority to hear and decide the specific types of land use applications or permits, or other administrative decisions, that he or she can make.

There are only two instances in which the State Legislature has mandated that legislative bodies (city councils) make decisions on land use permits and approvals: (1) decisions on final plats (subdivisions) (*see,* RCW 58.17.100); and (2) area-wide/general applicability zoning decisions/rezones. (RCW 35.63.130(1), RCW 35.63.130(2)(c), RCW 36.70.870(2)(c), and RCW 36.70.970(1). Aside from these two limited instances, hearing examiners can hear and decide virtually all other land use permits, approvals or appeals, as long as the city code expressly authorizes an examiner to hear those matters.

The Advantages of Using a Hearing Examiner for Land Use Decision-Making

The following are some of the many advantages and benefits to using a hearing examiner for quasi-judicial land use decision-making and administrative appeals of permit decisions:

- Avoids political influence or pressure (which is forbidden in quasi-judicial decision-making);
- They are professional, specially trained individuals;
- They have experience with many different jurisdictions and regulations and can carry that experience and knowledge over to your jurisdiction, helping to improve your land use code and process;
- They are technically adept, and have knowledge of physical land development and technical feasibility of land development and permitting;
- A hearing examiner is more cost effective (reduces appeals and judicial challenges);
- Allows for a more efficient process (faster decisions, fewer mistakes and far fewer appeals);
- Substantial reduction in judicial (court) reversal of decisions;
- Substantial reduction in potential damages claims against the city (I can attest to this, and most municipal attorneys and land use professionals would agree);
- Eliminates the risk of lawsuits and legal claims against citizen-decision makers – like Planning Commission and City Council members – personally;
- Instills public confidence in the decision-making process;
- Helps ensure constitutional protection of due process of law and equal protection;
- Helps ensure predictability and consistency in the process and decision-making;
- Hearing examiners are skilled in understanding, interpreting and applying nuances of your municipal code, state and federal laws, and general legal principles;

- Use of a hearing examiner helps satisfy State law requirements for streamlining the regulatory process and administrative review and appeals (1995 Regulatory Reform Act, RCW Chapter 36.70B);
- Use of a hearing examiner segregates and clearly delineates quasi-judicial decision making functions from legislative (law-making) and long-term planning functions (which are the functions of planning commissions and city councils);
- Provides the opportunity for feedback and correction of code ambiguities and conflicts;
- Use of a hearing examiner frees up city council and planning commission time for other, important planning, goal setting and law-making functions; and,
- Provides good customer service.

The following is a quote from a state Supreme Court justice endorsing Pierce County's rationale for creating a hearing examiner position:

> A. The need to separate the County's land use regulatory function from its land use planning function;
>
> B. The need to ensure and expand the principles of fairness and due process in public hearings; and
>
> C. The need to provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making processes for land use matters; it is the purpose of this chapter to provide an administrative land use regulatory system which will best satisfy these needs.
>
> * * *
>
> ***[A] land use hearing examiner system will be very beneficial to all concerned or involved with land use decisions, and said system will (1) provide a more efficient and effective land use decision procedure; (2) provide the Planning Commission more time to devote towards studying and recommending land use policy changes to the Board; (3) provide an experienced expert to hear and decide land use cases based upon policy adopted by the Board; and (4) provide the Board of County Commissioners more time to spend on other County concerns by relieving them from hearing land use cases, except any appeals ... [.]***

Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 51, 873 P.2d 498 (1994) (Madsen, J., dissenting) (citing Pierce County Resolution 20489 (1978)) (emphasis added).

Risks and Pitfalls in *Not* Using a Hearing Examiner for Land Use Decision-Making

Based on the broad authority of hearing examiners to adjudicate a wide range of land use permits, decisions and appeals, the significant reduction in land use lawsuit liability exposure by using a hearing examiner, and my experience defending both planning commission/city council/board of adjustment land use decisions versus those made by hearing examiners, there is, in my experience and opinion, no good reason to not use a hearing examiner for land use decision-making.

The few reasons offered *against* the use of a hearing examiner (and, by implication for retention of elected official or citizen body land use decision-making) are neither justified nor legally supportable. One such claim is that use of a hearing examiner system is too costly, or the jurisdiction can't afford to use a hearing examiner. My first response to this claim is that local governments can't afford ***not*** to use a hearing examiner for land use decision-making. Please refer to the many advantages discussed above. Second, in my experience the costs of using a hearing examiner are minimal, and, in many cases, can be passed on to permit applicants or land use appellants, either directly or included as part of carefully crafted permit or administrative fees associated with land use permits or appeals heard by hearing examiners. Additionally, many jurisdictions share in the cost of a hearing examiner or pay into a "pool" to use a hearing examiner who essentially "rides the circuit" between several geographically close jurisdictions. If the potential cost of using a hearing examiner is of concern to the City of Richland, I urge you to talk to other jurisdictions – including Pasco and Kennewick, your neighbors – to learn about how they handle costs and their experiences.

A second reason sometimes offered *against* the use of a hearing examiner is the lack of representative control over constituent demands for land use policy-making. Regarding this claimed loss of "citizen control" over the land use permitting process, this is actually a key reason that a hearing examiner ***should*** be used. Land use planning and policy decisions are made by the elected officials (city or town councils) through comprehensive planning and comprehensive plan updates, long range strategic planning, area-wide zoning and development regulations, and adoption of other area-wide development criteria. As noted above, land use planning should be reserved to and used by both planning commissions and city or town councils.

However, that is not the case with site- or property-specific land use permits or land use actions. Property- or site-specific land use approvals and decision-making should not be done based on citizen comment, policy criteria, planning criteria or constituent desires. Such permitting and decision-making decisions – whether at the administrative or quasi-judicial level – should be entirely, 100% free of citizen control and politics. For this reason, use of a

professional hearing examiner to make decisions on such site-specific or permit-specific land use applications is the best, safest and most appropriate method of decision-making.

In short, planning commissions and city councils, should not be involved in making final decisions on quasi-judicial land use permits; nor should they hear appeals of permit decisions or code interpretations. Rather, such decisions should be delegated to a professional hearing examiner. As State law makes clear, planning commissions and city councils have far more important tasks to do with their limited time: responding to their citizen constituencies; crafting, reviewing and amending comprehensive plans; crafting, reviewing, amending and updating zoning ordinances; crafting and updating shoreline plans; doing long range land use planning; doing utility and infrastructure planning; budgeting; contracting; completing ongoing and time-sensitive planning and regulatory obligations; and handling the many day-to-day affairs of local government.

A third reason sometimes given to not use a hearing examiner is that the local jurisdiction wants to be independent, retain its autonomy, and not be "pressured" to use one just because other jurisdictions do. Yet, neither the State nor any other jurisdiction can dictate the use of a hearing examiner. But it is noteworthy – and significant – that (a) the overwhelming majority of cities, towns, counties and other land use permitting jurisdictions use hearing examiners for land use decision-making, (b) virtually all land use and government attorneys agree on the use of hearing examiners, and (c) virtually all planning professionals agree that the use of a hearing examiner for land use decision making is not only good risk management, it is more efficient, more cost effective, instills public confidence in the process, avoids arbitrary and capricious decision-making, and limits improper political influence.

Fourth, I have heard one hearing examiner opponent claim "there is no evidence that supports such a proposition [that decisions made by a hearing examiner will hold up better in court]." Even a cursory review of trial court filings and appellate court decisions will readily confirm that not only are there far fewer judicial challenges to land use decisions made by hearing examiners, those few legal challenges that are made to examiner decisions are far more frequently upheld by the appellate courts than are decisions made by elected officials or citizen groups or bodies.

Indeed, the most egregious land use decisions in this State and in the federal courts arise from elected official or citizen-body decision-making on land use permits and applications – not hearing examiner decisions. For a sampling of such decisions, see: *Mission Springs v. City of Spokane,* 134 Wn.2d 947, 954 P.2d 250 (1998) (a good case to review; Supreme Court chastises the Spokane City Council for arbitrarily denying a grading permit for a contentious development project, and imposes sanctions and attorney fees on individual council members; numerous other bad land use decisions arising from city council or planning commission actions – but no hearing examiner case – referenced); *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 935 P.2d 555 (1997); *Hayes v. City of Seattle*, 131 Wn.2d 706, 934 P.2d 1179 (1997); *Robinson v. City of Seattle*, 119 Wn.2d 34, 830 P.2d 318 (1992); *West Main Assoc., Inc. v. City of Bellevue*, 106 Wn.2d 47, 720

P.2d 782 (1986); *Pleas v. City of Seattle*, 112 Wn.2d 794, 744 P.2d 1158 (1989); *King v. City of Seattle*, 84 Wn.2d 239, 525 P.2d 228 (1974); *Bateson v. Geisse*, 857 F.2d 1300 (9th Cir. 1988); *Westmark v. City of Burien*, 140 Wn. App. 540, 166 P.3d 813 (2007); *Saben v. Skagit County*, 136 Wn. App. 869, 152 P.3d 1034 (2006); *Cox v. City of Lynnwood*, 72 Wn. App. 1, 863 P.2d 578 (1993); *Anderson v. City of Issaquah*, 70 Wn. App.64, 851 P.2 744 (1993).

Finally, I have also heard the comment that "hearing examiners tend to favor development interests more than local citizen bodies such as planning commissions." There is no evidence to support this; in fact, it is contrary to my experience and the decisions of hearing examiners in the communities I do work for.

Conclusion and Summary

In summary, I urge the City of Richland to consider modifying its land use code to eliminate Planning Commission, Board of Adjustment or City Council for hearing and deciding final land use decisions (but not comprehensive or long range planning or area-wide regulations) and, instead, use a hearing examiner to make final land use decisions and administrative appeal decisions for the City.

I hope the foregoing is of benefit to the City of Richland as it looks to updating its land use code and decision-making process. If I can be of any assistance to the City or answer other questions regarding the use of a hearing examiner, do not hesitate to call or write.

Very truly yours,

Sent unsigned to avoid delay

Michael C. Walter

MCW/ch

cc: Bill King, Deputy City Manager and
Community Development Services Director
Cathleen Koch, Administrative Services Director
Ms. Ann Bennett, Executive Director
Washington Cities Insurance Authority
Ms. Tanya Crites, Risk Management,
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SENT BY FAX

April 18, 2000

Jan Taylor Drummond
Mayor
Town of Woodway
23920 113th Place W
Woodway, WA 98020

RE: Legal Opinion
Hearing Examiner System

Dear Mayor Drummond:

In response to Lorraine Taylor's request enclosed is a legal opinion on the advantages of a Hearing Examiner system. The Authority strongly supports Mike C. Walter's recommendation to maintain its use of a professional Hearing Examiner. The Authority also supports the recommendation to expand the Hearing Examiner duties to authorize the Hearing Examiner to make final decisions appealable only to the Snohomish County Superior Court of those duties currently in Section 8.C of Ordinance No. 99-368.

The Town should be commended for establishing the office of the Hearing Examiner. To abolish the Hearing Examiner would be quite a step backward for the Town of Woodway. The advantages of a Hearing Examiner System, as outlined by Mr. Walter, far outweigh the disadvantages. Again, the Authority hopes the Town of Woodway continues it use of a Hearing Examiner.

Please call if you have any questions.

Sincerely,

Eric B. Larson
Assistant Executive Director

Enclosure

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April 17, 2000

Mayor Jan Taylor Drummond
Town of Woodway
23920 113th Place West
Woodway, WA 98020

RE: Legal Opinion
Advantages of Hearing Examiner System

Dear Mayor Drummond:

The Town of Woodway's request for a legal opinion on the propriety and advantages of a hearing examiner system directed to Mr. Eric Larson at Washington Cities Insurance Authority (WCIA) has been forwarded to our office for a response. As discussed in more detail in this letter, from a legal, economic, political and practical perspective, we believe the use of a professional hearing examiner is unsurpassed and provides the greatest benefit to the Town and its citizens. For the reasons set forth below, we strongly urge the Town of Woodway to continue using the hearing examiner system it established one year ago, and to consider expanding its use to the fullest extent authorized by law for final, quasi-judicial decision making.

FACTS/BACKGROUND

We understand that approximately one year ago the Town of Woodway passed Ordinance no. 99-368, which created a hearing examiner system and dissolved the Town's Board of Adjustment. The Town's hearing examiner office was created pursuant to RCW Ch. 35A.63 and Ch. 58.17, and was empowered to interpret, review and implement land use regulations, and to perform other quasi-judicial functions as delegated by ordinance. The ordinance was passed on April 19, 1999, and the hearing examiner office became effective five days thereafter on April 25, 1999.

Pursuant to Ordinance No. 99-368, the Town's hearing examiner is authorized to render **final decisions**, appealable only to the Snohomish County Superior Court pursuant to a LUPA action (RCW Ch. 36.70C), on the following matters: (1) applications for variances from the zoning ordinance; (2) applications for special property uses; (3) appeals from administrative

determinations or code interpretations; and (4) such other quasi-judicial and administrative determinations as may have been (previously) delegated to the board of adjustment.

Under the Ordinance, the hearing examiner is authorized to render a **recommendation** only to the Town Council on the following matters: (1) applications for short subdivisions; (2) applications for preliminary plat approvals; (3) applications for plat modifications; (4) applications for plat alterations; (5) applications for quasi-judicial rezones; and (6) such other quasi-judicial and administrative determinations as may have been (previously) delegated to the planning commission.

We understand that one (or more) members of the Town's Planning Commission would like to have the quasi-judicial functions now delegated to the Town's Hearing Examiner reinstated to the Planning Commission. You have requested a legal opinion on the propriety of this suggestion, and the advantages of continuing with the Town's hearing examiner system.

II. SUMMARY OF LEGAL OPINION

We believe the Town took a prudent step one year ago by establishing the office of hearing examiner and delegating to that individual quasi-judicial functions formerly given to the Planning Commission. By creating a hearing examiner system, the Town joined over 73 cities and 17 counties state-wide (as of February 1998) using a hearing examiner for land use decision-making. Those numbers grow every year. We **strongly** urge the Town to not only maintain the office of hearing examiner and preserve the duties assigned to the Hearing Examiner pursuant to Section 8 of Ordinance No. 99-368, but to **expand** those duties to authorize the Hearing Examiner to make **final** decisions appealable only to the Snohomish County Superior Court of those duties presently set forth in Section 8.C. of Ordinance No. 99-368, which are presently authorized as recommendations to the Town Council. We urge the Town to make full use of its hearing examiner, authorizing that individual to make final decisions on all authorized quasi-judicial applications. This will provide the greatest benefit to the citizens of Woodway, and will provide the highest level of risk management to the Town and to its elected officials.

III. LEGAL ANALYSIS

A. Nature of Hearing Examiner System.

A hearing examiner is an appointed officer who hears and adjudicates quasi-judicial matters in a manner similar to a trial court judge. By statute, local governments in Washington have the option of hiring or contracting with a hearing examiner to conduct quasi-judicial hearings, in place of local bodies such as city or town councils, planning commissions, boards of

adjustment, zoning boards, building code boards, design review boards and other elected or appointed adjudicative bodies.

RCW 35A.63.170 provides that a city or town council may adopt a hearing examiner system as an alternative to delegating to a planning commission the power and duty to hear and report on any proposal to amend a zoning ordinance where the amendment applied for is not of general applicability. The legislative body, pursuant to this statute, may also vest in the hearing examiner the power to hear and decide other land use matters such as:

1. Applications for conditional uses;

2. Applications for variances;

3. Applications for shoreline permits;

4. Any other class of applications for or pertaining to the development of land or land use;

5. Appeals of administrative decisions or determinations; and

6. Appeals of administrative decisions or determinations pursuant to SEPA, RCW Ch. 43.21.C.

In 1995, as part of the Regulatory Reform Act, the legislature amended the state subdivision statute to expressly authorize local government to use a hearing examiner system for adjudication of short plats and final decisions on preliminary plats. RCW 58.17.330 gives local government the option of having those decisions be in the form of a "recommendation" to the city or town council, or given the effect of an administrative decision appealable within a specified time limit to the city council, or a decision given the effect of a final decision of the city or town council.

Additionally, a hearing examiner may be appointed to serve as the building code board of appeals pursuant to the State Uniform Building Code RCW Ch. 19.27. Thus, a hearing examiner can be appointed to hear and decide appeals that arise under the Uniform Building Code.

B. Other Decisions Handled by Hearing Examiner.

In addition to making recommendations or final decisions on quasi-judicial land use matters, the city or town council may, by ordinance, authorize a hearing examiner to hear a variety of other contested matters, including:

- Civil infractions;
- Tax and licensing decisions and/or administrative appeals;
- Public nuisance complaints and/or appeals;
- Whistle blower or retaliation claims;
- Complaints of ethics violations and/or administrative appeals;
- The formation hearing and/or assessment role determinations for local improvements districts (LID) or utility local improvement districts (ULID);
- Employment decisions and personnel grievances and/or appeals; and
- Discrimination complaints under local personnel policies.

C. Advantages of Hearing Examiner System.

If properly implemented, a hearing examiner system has numerous advantages over traditional methods of making quasi-judicial land use decisions and over resolving administrative appeals from such decisions. We believe that the advantages of a properly implemented hearing examiner system so far outweigh any potential disadvantages that there is really no good reason for a city or town to not use a hearing examiner to the fullest extent authorized by law.

Some of the many advantages of a hearing examiner system for land use decision-making include:

- **More professional decisions.** Hearing examiners are specially trained – usually lawyers and/or land use professionals – and, as a result, conduct more professional and timely hearings which help ensure procedural fairness and avoid legal pitfalls. Hearing examiners have a high level of expertise and specialization.

- **No political influence or pressure.** Most legal claims over quasi-judicial land use decisions have their genesis in political influence and political "agendas." Such political influence in the context of quasi-judicial land use decision making is not permitted, and can result in invalidation of the decision and possible personal liability against the decision maker. It is frequently difficult for elected local government officials to eliminate political considerations and influence from their quasi-judicial decision making; for this reason, a professional hearing examiner should be used to eliminate this influence and substantial liability risk.

- **Hearing examiners are technically adept, with specialized land use knowledge.** Most professional hearing examiners have broad knowledge of physical land development constraints, technical issues and some esoteric aspects of a land use law and land development. With these specialized technical skills, they typically make more thoughtful and legally sustainable decisions.

- **More efficient process and more timely decisions.** Professional hearing examiners, because of their knowledge and specialization, conduct hearings in a more efficient and timely manner. Hearings tend to be less emotional and better organized. As a result, the hearing process is faster, more expedient and decisions are made more timely, thus substantially reducing risk of delayed damage lawsuits and claims of undue delay in the decision making process.

- **More cost effective decision making.** While there are costs in hiring a hearing examiner, overall, the use of a hearing examiner is generally more cost-effective to cities and towns through a more efficient adjudicative process, through substantial reduction in appeals of decisions, and through a substantial reduction in civil judicial challenges to the decisions. A professional hearing examiner can frequently resolve land use matters much more timely and efficiently and thus handle more applications in a given period of time with a substantial reduction in requests for reconsideration, administrative appeal or civil litigation. Moreover, many of the direct costs of a hearing examiner can be passed on to individual permit applicants.

- **Improved compliance with legal requirements and due process.** Because hearing examiners have special expertise in legal procedural requirements, conflict of interest issues and appearance of fairness issues, they better ensure compliance with statutory hearing requirements and, most importantly, constitutional due process requirements. Better-run hearings, with decisions based on logic and application of the facts to the law, rather than politics or

emotion, help ensure compliance with state Regulatory Reform Act requirements and federal and state constitutional guarantees of due process and equal protection.

- **Substantial reduction in potential legal claims against the city/town.** There is no doubt that the use of a professional hearing examiner for final quasi-judicial decision making results in a substantial reduction in legal challenges and claims for monetary damages against the city or town. Because of improved hearing procedures, a better record, better compliance with regulatory reform and due process requirements, as well as more consistent and documented decisions, the risk of legal challenges or claims for damages is substantially reduced. For example, in our office's experience, the majority of claims for damages against cities and towns over quasi-judicial land use decisions arise out of decision making by city or town councils, planning commissions or boards of adjustment. Conversely, in our experience, it is rare to have a legal challenge or claim for damages asserted against a city or town for a quasi-judicial land use decision by a professional hearing examiner. Those few cases that do arise against a hearing examiner are, for the most part, substantially more defenseable than those of elected officials or citizen boards or commissions.

- **Eliminates potential legal claims against elected officials/citizen decision-makers personally.** When a professional hearing examiner is used for making **final** decisions on quasi-judicial land use decisions, and elected officials and citizen decision makers are removed from the **final** decision-making process, legal claims against the elected officials or citizen decision-makers are eliminated. As a general rule, there is no basis for legal claims against a city or town council member, planning commission member, board member or other citizen decision-maker personally when those individuals do not render **final** quasi-judicial decisions. Any potential personal liability is generally only against the hearing examiner in those instances where the hearing examiner renders the final quasi-judicial decision.

- **A hearing examiner helps ensure predictability and consistency.** For the reasons above, the use of a professional hearing examiner helps ensure procedural fairness and consistent decisions. Because professional hearing examiners are removed from political pressure and influence, they tend to make more consistent and defenseable decisions, thus avoiding constitutional claims of violation of equal protection.

- **Instills public confidence in decision-making process.** Professional hearing examiners, because of their knowledge, expertise and efficient administration of hearings generally instills public confidence in the quasi-judicial decision making process. Rather than watching or participating in hearings which are based on emotion, argument and political agenda, citizens watching or participating in a hearing examiner hearing see a more professionally run hearing based on logic and common sense and rules of order. The process makes the city or town (and its elected officials) appear much more professional and organized, thus instilling confidence in the decisions being made.

- **Improved permit review and integration requirements under the Regulatory Reform Act.** The use of a professional hearing examiner system is authorized by various amendments to state law under the 1995 Regulatory Reform Act, RCW Ch. 36.70B. The use of a hearing examiner helps satisfy these state law requirements for both streamlining the regulatory process, administrative review and appeals, and in consolidating environmental review with substantive permit decision-making. A hearing examiner is an effective method of consolidating and coordinating multiple review processes, and can eliminate the need for use of other boards or commissions for adjudication of quasi-judicial permits and approvals.

- **Frees up council/planning commission time for planning and law-making functions.** Conducting public hearings and making quasi-judicial decisions is laborious, time-consuming and sometimes frustrating to elected officials and citizen bodies. City or town council members and citizen advisory bodies can free themselves from the time-drain and frustration of quasi-judicial decision making by delegating those responsibilities to a professional hearing examiner. This, then, frees up council and/or planning commission time for important policy-making, long-term planning and law making functions which, typically, are their primary duties and responsibilities. The use of a hearing examiner can be a substantial time-savings for routine decisions and for complex land use decision-making which requires review of substantial documents, lengthy formal hearings, citizen participation and education into the nuances of land use decision-making. A professional hearing examiner is better equipped to handle all of these matters.

- **Segregates and delineates quasi-judicial functions from legislative functions.** A high percentage of legal claims and damages lawsuits from land use decision-making are precipitated by confusion and conflict between the dual roles of city

or town council members: legislative (law-making) and quasi-judicial (adjudicating contested claims) functions. Using a professional hearing examiner for quasi-judicial hearings clearly separates and delineates the quasi-judicial functions (which the hearing examiner handles) from the legislative, visioning and administrative functions (required of council members). From this segregation, council members can concentrate on directly responding to citizen concerns and desires, and on "visioning" for the future through various legislative actions, without worrying about those matters improperly influencing quasi-judicial decisions (which must not include those legislative, planning or visioning matters).

- **Opportunity for feedback and correction of code ambiguities and conflicts.** Because professional hearing examiners are skilled in the law and in understanding, interpreting and applying nuances of municipal codes, land use regulations and general legal principals, they are in a unique and useful position to identify potential problem areas in municipal codes or development regulations, and to recommend that those be corrected legislatively. A professional hearing examiner has familiarity with local comprehensive plans, zoning standards and development regulations of the particular jurisdiction, as well as other jurisdictions, and can offer unique insight into potential problem areas. In this respect, a professional hearing examiner can offer feedback to the elected officials to correct comprehensive plans, zoning regulations and general development regulations to avoid vague or unconstitutional provisions, and to identify and correct conflicts within the code or between the code and comprehensive plan and/or other development regulations. A professional hearing examiner can identify where plans, regulations and development standards are weak, inconsistent or unenforceable, providing feedback for continuous improvement and redevelopment.

- **Good customer service.** Finally, the use of a professional hearing examiner is simply "good business", and provides the highest level of good customer service. In dealing with a professional hearing examiner, applicants for quasi-judicial land use approvals feel they are getting treated more fairly and equitably, and receive more consistent and timely "service" through an improved process, a more professional environment, and a more consistent and thoughtful decision. Similarly, the citizenry, due to a more professional and well-run process, sees that its needs and interests are being more fairly and objectively incorporated into the final decision.

D. Disadvantages of Hearing Examiner System.

The advantages of a professional properly administered hearing examiner system for adjudication of land use matters overwhelmingly outweighs the few disadvantages – most of which can be mitigated. There are essentially only three potential disadvantages to a hearing examiner system, and they are:

- **Cost to city or town for hearing examiner and staff.** While there are additional costs in the hiring and use of a professional hearing examiner and, where necessary, support staff, these increased costs can be mitigated in several ways. First, all or part of the direct costs can be passed on to applicants through either application fees or permit processing fees, properly adopted through ordinance. Second, cities and towns can (and frequently do) "share" a professional hearing examiner so that similar quasi-judicial hearings are "consolidated", and the time and costs are shared. Third, alternatives such as use of a personal service contract can help reduce the cost of a hearing examiner. Finally, any marginal increase in cost for the use of a professional hearing examiner is typically outweighed by the significant potential cost of more frequent administrative appeals and expensive civil lawsuits. The cost of defending alone just one large damages lawsuit against a city or town arising out of a quasi-judicial decision by elected officials or a citizen body can easily exceed annual cost of a professional hearing examiner, which would more-likely-than not have prevented the error which precipitated the lawsuit.

- **Increased potential costs to parties.** While there may be an increase in costs to applicants due to the use of a professional hearing examiner, typically those costs are *de minimus* in relation to overall application costs and to the value to the applicant for a more professional and timely decision. Indeed, any additional costs to the applicant are typically outweighed by the probable time savings and more efficient decision-making process. The moderately increased cost and formality of hearing examiner system eliminates the "hidden" costs of delay, inefficiency, multiple hearings, requests for review, administrative appeals and expensive legal action.

- **Lack of involvement by elected officials/citizen boards in decision-making process.** While some believe that the use of a professional hearing examiner to eliminate the decision-making and involvement in quasi-judicial decisions by elected officials and citizen bodies is a "disadvantage", in fact this result is in reality a substantial **advantage** to a city or town. One of the key purposes of

using a professional hearing examiner is to remove elected officials and citizen board members from quasi-judicial decision-making to avoid the political influence, the emotion and the potential prejudice which frequently undermines land use decisions by those individuals or those entities. Moreover, elected officials can maintain their "accountability" to voters by more properly concentrating on their role as legislators to achieve long term planning goals and "visioning" for the community, rather than trying to establish their "accountability" in the quasi-judicial decision making process (where it does not belong).

IV. CONCLUSION

For the foregoing reasons, we strongly urge the Town of Woodway to maintain its use of a professional hearing examiner for quasi-judicial land use decision making. And, in the interest of good legal risk management, economic efficiency and customer service, we also recommend that the Town consider modifying the duties of its hearing examiner, as established in Section 8.C of Ordinance No. 99-368, to make the decision of the hearing examiner on those identified matters a "final" and binding decision, appealable only to the Snohomish County Superior Court pursuant to a LUPA action under RCW Ch. 36.70C. We encourage the Town to make the fullest use of a professional hearing examiner for all quasi-judicial matters authorized by law and to make those hearing examiner decisions final decisions, appealable only to Court.

We hope this information is of value to the Town of Woodway. If we can provide any additional information on this topic, please let us know.

Very truly yours,

Michael C. Walter

MCW/ks

cc: Lorraine Taylor, Clerk-Treasurer
Lewis Leigh, Executive Director, WCIA
Eric B. Larson, Assistant Direct, WCIA

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MRSC
Local Government Success

Should Legislative Bodies Conduct Quasi-Judicial Hearings?

August 31, 2016 by Joseph W. Tovar
Category: Land Use Administration, Planning Advisor

Can you be a legislator and a judge at the same time?

Any high school civics student can correctly answer this question with respect to the federal and state governments. The answer is an unequivocal "no" because of the separation of powers doctrine - one of the key principles contained in both the federal and state constitutions. The response to this issue at the local government level, however, has historically been different, particularly with respect to the land use permit review process.

People are elected to Congress or the Washington State Legislature to be lawmakers. They make the law by adopting legislation. The administration and enforcement of laws adopted by those legislators is the responsibility of the executive branch. The judicial branch of government plays a very different role - it applies the meaning of the law to cases brought before it.

Adjudication requires reviewing evidence and arguments and applying the law to the facts of the case to determine the outcome. In contrast to the legislative and executive branches, which are unquestionably political bodies, the judicial branch at both the federal and state level was designed to be apolitical – rendering judgments based on facts and law, not on popular opinion or campaign promises.

This "separation of powers" has been less absolute at the local government level in Washington. Since statehood, local governments have mirrored the distinct roles and functions of the legislative branch (e.g., city, town, and county councils) and the executive branch (e.g., elected mayors). However, until the 1970's, councils in all Washington cities also played a "quasi-judicial" role with respect to certain land use permits. They were responsible not only for adopting local zoning laws, but sitting in judgment on appeals when zoning permits were approved or denied by an administrator, a board of adjustment, or a hearing examiner. Any party dissatisfied with the council's decision on such appeals may appeal to superior court. A superior or appellate court may overturn a council's decision, but significantly, depending on the circumstances, may also impose financial judgments against the city.

Since the 1970s, many counties and cities have moved away from the "quasi-judicial" role. This movement began with the adoption by local governments of the **hearing examiner system** to conduct public hearings on many quasi-judicial land use permits, building a record, and adopting conclusions of law to support the decision. Hearing examiners are hired because of their background in land use law and most are lawyers. Their professional training enables them to avoid procedural or other errors that would undermine the legal sufficiency of the permit review and decision. As non-elected officials, hearing examiners are insulated from political pressures and are relied upon to render objective and impartial decisions.

Many cities in the state now use hearing examiners to conduct at least some quasi-judicial public hearings. While council action is required on rezones, the law gives councils the option to assign to their hearing examiners authority to make final decisions on other types of quasi-judicial permits. Examples of such permits are conditional use permits, variances, planned unit developments, design review approvals, site plan approvals, and short subdivisions.

Over the past decade, many city councils have removed themselves from final approvals and appeals of these types of quasi-judicial decisions, delegating that responsibility to their hearing examiners. This means that any appeals of a hearing examiner's decision are taken directly to superior court rather than to the council. Why have those cities, including Covington, Kirkland, Mercer Island, Shoreline, and Edmonds, taken this step? Why should your council consider following their lead? There are many reasons, but here are the top three:

1. **One major concern is the financial risk of having lay elected officials with no training or background in the law attempting to, in effect, practice law.** That is why the Washington Cities Insurance Authority, the risk pool for many cities in the state, strongly encourages councils to divest themselves as much as possible of the quasi-judicial role. There are a number of procedural pitfalls that could expose the city treasury to multi-million dollar judgments. Even the most intelligent, best-intentioned, and detail-oriented people make mistakes. The risk of such mistakes is amplified at least seven-fold when seven non-legally trained council members are involved, rather than a single legally-trained hearing examiner.

When sitting as a quasi-judicial body, some city councils conduct not only the hearing but also their deliberations in open session. Some do so in an effort to make the process more transparent, but this practice also increases the surface area for a procedural misstep to occur. A too frequent error is allowing a member of the public to make comment outside the record, after it is closed. Sometimes council members feel compelled to make off-the-cuff remarks in an attempt to mollify unhappy citizens, a practice which is fraught with risk. A hearing examiner listens to public comments at the hearing and may ask questions of clarification, but her/his deliberation is an internal mental process – it occurs after the hearing is over, not while it is still in session.

2. **Quasi-judicial cases can be extremely time intensive.** The record and written and oral argument can consume many hours of time to be sufficiently reviewed, debated, and discussed. This is typical even for project permits that are fairly small in scope, such as a four-lot short plat or a variance for an individual house. City councils have many demands on their agenda time including issues with far greater impact on the well-being of the entire community.

Only the elected council can adopt city budgets, ordinances and programs, and provide overall policy direction to the many functions of the city organization. They cannot delegate those responsibilities to others. With the exception of rezones, councils can delegate the quasi-judicial role.

3. **The quasi-judicial role frequently places city council members in an untenable lose-lose predicament.** Elected officials can be caught between the need to be responsive to the desires of their constituents and their duty to be responsible to the clear legal criteria governing the permit decision before them. For example, elected officials involved in a quasi-judicial hearing may not engage in "ex parte" discussions with community members about the pros and cons of that case, which can be frustrating for both parties. Doing the right thing by the legal criteria for a decision may result in a political cost at the next election, while departing from the legal framework in order to satisfy constituents runs the risk of a potentially catastrophic hit on the city treasury.

The reasons for councils to remove themselves from the quasi-judicial role are many and compelling. This does not mean that they can no longer be responsive to the needs of their communities and citizens. Indeed, it should be remembered that every quasi-judicial decision is governed by the applicable land use policies and code standards that are adopted by – the city council!

To that end, a council's time and attention to land use matters is best invested in adopting clear and effective policies and codes that govern all permits, including quasi-judicial ones. Several cities also require an annual report from their staff and hearing examiners summarizing the nature, frequency, and disposition of quasi-judicial permits. Such ongoing monitoring enables them to identify land use policies or standards that should potentially be revised. By playing this legislative role, a role for which they are uniquely suited and which only they can play, a city council can more effectively provide needed direction to the development of their community without exposing the city to needless financial risk.

About Joseph W. Tovar

Joseph W. Tovar writes for MRSC as a Planning Advisor.

Joseph W. Tovar, FAICP, helps communities create visions of their preferred futures, and how to implement them through plans, codes, projects, strategies and organizational training. He has served as planning director for the cities of Shoreline, Kirkland and Covington and as Chair of the Growth Management Hearings Board. Now in private practice, Mr. Tovar has provided consultant services to private clients as well as Snohomish and Kitsap counties, the cities of Everett, Lacey, Kirkland, and SeaTac, as well as the Association of Washington Cities. He is a Fellow of the American Institute of Certified Planners and an Affiliate Associate Professor at the University of Washington. He has taught land use decision-making and city planning best practices to audiences of planning commissioners, elected officials, planning directors and graduate students. More information is posted online at www.tovarplanning.com. He can be reached at joe@tovarplanning.com.

The views expressed in Advisor columns represent the opinions of the author and do not necessarily reflect those of MRSC.

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Comments

2 comments on Should Legislative Bodies Conduct Quasi-Judicial Hearings?

"Crystal-clear and compelling! Thanks for this fine post, Joe."

Ann Macfarlane on Aug 31, 2016 3:05 PM

"Many city councils are not comfortable allowing the hearing examiner to make the final decision on a land use case. However, those city councils should be aware that if they believe that the hearing examiner's decision is not supported by substantial evidence (as required by LUPA in RCW 36.70C.130), they can appeal that decision to superior court under LUPA. As long as the city council doesn't request a stay of the decision, such an appeal should not subject the city to a damages claim. See, Hunt Skansie Land v. City of Gig Harbor, U.S. Dist. Court, W.D. Wash. 12-23-10, 2010 WL 5394991. Be sure that you have a permit processing chapter which addresses appeals by identifying the city council as a "aggrieved party," to eliminate unnecessary disputes. later on standing issues."

Carol Morris on Aug 31, 2016 3:04 PM

Chapter 2.50
OFFICE OF THE HEARING EXAMINER[1]

Sections:

2.50.010 Purpose.

It is the purpose of this chapter:

A. With regard to land use matters to:

1. Provide a single, efficient, integrated land use regulatory hearing system;

2. Render land use regulatory decisions and recommendations to the city council;

3. Provide a greater degree of due process in land use regulatory hearings;

4. Separate the land use policy formulation and the land use policy administration processes.

B. With regard to other matters to:

1. Provide a single, efficient integrated system for hearing appeals of administrative decisions;

2. Provide a forum to hear other matters as established by city code. (Ord. 2007-14 § 1).

2.50.020 Creation.

The office of the hearing examiner is created. The hearing examiner shall interpret, review, and implement land use regulations, hear appeals from orders, recommendations, permits, decisions or determinations made by a city official as set forth in this chapter, and review and hear other matters as provided for in this code and other ordinances. Throughout this chapter the masculine gender shall include the feminine. (Ord. 2007-14 § 1).

2.50.030 Appointment and terms.

The hearing examiner shall be appointed by and shall serve at the pleasure of the city council. (Ord. 2007-14 § 1).

2.50.040 Compensation.

The city shall contract with the hearing examiner for the performance of duties described in the code. The compensation paid the hearing examiner shall be that established in the contract. (Ord. 2007-14 § 1).

2.50.050 Qualifications.

The hearing examiner shall be appointed solely with regard to his qualifications for the duties of the office, which shall include, but not be limited to, any or all of the following:

A. Appropriate educational experience, such as an urban planner or public administrator;

B. Extensive experience in planning work in a responsible capacity; and

C. Legal experience, particularly where the experience is in the area of land use management or administrative law. (Ord. 2007-14 § 1).

2.50.060 Conflict of interest.[2]

The hearing examiner shall not conduct or participate in any hearing or decision in which he has a direct or indirect personal interest which might exert such influence upon him sufficient to interfere with his decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict. If the hearing examiner concludes that he has a conflict of interest with respect to a matter pending before him, then unless all parties agree in writing to have the matter heard by that hearing examiner, he shall disqualify himself from participating in the deliberations and the decision-making process with respect to the matter. If this occurs and there is not a pro tem hearing examiner already appointed, the mayor shall appoint a person to serve as the hearing examiner for that matter. (Ord. 2007-14 § 1).

2.50.070 Freedom from improper influence.

No city council member, city official or any other person shall attempt to interfere with, or improperly influence, the hearing examiner in the performance of his designated duties. (Ord. 2007-14 § 1).

2.50.080 Duties.

A. Applications. With respect to applications of matters submitted before him, the hearing examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon these facts, which conclusions shall represent the final action on the application, unless appealed as hereinafter specified:

1. Conditional use permits pursuant to Chapter 17.86 GMC; and

2. Variances pursuant to GMC 16.08.020.

B. Appeals. With respect to appeals submitted before him, the hearing examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon those facts, which conclusions shall represent the final action on the appeal, for the following appeals:

1. Appeals from development plan and zoning permit review decisions;

2. Appeals from administrative interpretation decisions;

3. Appeals from administrative design review decisions;

4. Appeals from short subdivision decisions;

5. Appeals from stop work orders or notices of violation issued by a city official in the administration or enforcement of the provisions of the Grandview Municipal Code;

6. Appeals of SEPA determinations;

7. All other hearings and appeals provided for in the Grandview Municipal Code whether designated as an appeal to the city council or hearings before any other commission or board. In the event there is a conflict between this section and any other code section regarding hearings or appeals, this chapter shall apply and the hearing examiner is hereby designated to hear all hearings and appeals provided for in this code.

C. Recommendations. The hearing examiner shall receive and examine available information, conduct public hearings, prepare a record thereof and enter findings of fact and conclusions based upon those facts, together with a recommendation to the city council, for the following:

1. Annexations;

2. Rezones;

3. Preliminary plats;

4. Planned unit developments; and

5. All other hearings and appeals provided for in the Grandview Municipal Code whether designated as an appeal to the city council or hearings before any other commission or board. In the event there is a conflict between this section and any other code section regarding hearings or appeals, this chapter shall apply and the hearing examiner is hereby designated to hear all hearings and appeals provided for in this code.

D. Public Hearings. The hearing examiner shall conduct public hearings when required under the provisions of the State Environmental Policy Act; conduct open record public hearings or closed-record appeals in accordance with the provisions of GMC Title 14, Administration of Development Regulations; and conduct such other hearings as the city council may from time to time deem appropriate.

E. References. All references in the city code and elsewhere to the board of adjustment and the board of appeals shall be construed as referring to the hearing examiner. The provisions of this chapter shall supersede any inconsistent or conflicting provisions elsewhere in this code as to the powers and duties of the planning commission.

F. Recommendation or Decision.

1. The hearing examiner's recommendation or decision may be to grant or deny the application, or the hearing examiner may recommend or require of the applicant such conditions, modifications and restrictions as the hearing examiner finds necessary to make the application compatible with its environment, with applicable state laws, and to carry out the objectives and goals of the comprehensive plan, the zoning code, the subdivision code, and other codes and ordinances of the city. Conditions, modifications and restrictions that may be imposed are, but are not limited to, additional setbacks, screenings in the form of landscaping and fencing, covenants, easements and dedications of additional road rights-of-way. Performance bonds or other financial assurances may be required to ensure compliance with conditions, modifications and restrictions.

2. In regard to applications for rezones, the hearing examiner's findings and conclusions shall be submitted to the city council, which shall have the final authority to act on such applications. The hearing by the hearing examiner shall constitute an open record predecision hearing before the final decision is made by the city council. (Ord. 2012-1 § 1; Ord. 2007-14 § 1).

2.50.090 Applications.

Applications for all matters to be heard by the hearing examiner shall be presented to the affected city department and to the city clerk. When it is found an application meets the applicable requirements, the application shall be accepted. The city clerk shall be responsible for assigning a date for the public hearing for each application. The date set for a public hearing shall not be more than 60 calendar days after the applicant has complied with all requirements and furnished all necessary data to the city clerk. Hearings on project permit applications are subject to the notice and hearing requirements set forth in GMC Title 14, Administration of Development Regulations. (Ord. 2007-14 § 1).

2.50.100 Fees.

All applications made or appeals filed under this chapter shall be accompanied by a fee of $150.00. (Ord. 2007-14 § 1).

2.50.110 Report by city department.

For permit applications, the city clerk shall coordinate and assemble the comments and recommendations of city departments and governmental agencies having an interest in the application and shall prepare a report that includes the information described in GMC Title 14, Administration of Development Regulations. For all other matters, the appropriate city department shall prepare a report summarizing the factors involved and the department findings and supportive recommendations. At least seven calendar days prior to the scheduled hearing, the report shall be filed with the hearing examiner and copies shall be mailed to the applicant and shall be made available for use by any interested party for the cost of reproduction. (Ord. 2007-14 § 1).

2.50.120 Open record public hearing.

A. Before rendering a decision or recommendation on any application, the hearing examiner shall hold at least one open record public hearing thereon.

B. For permit applications, notice of the time and place of the public hearing shall be given as provided in GMC Title 14, Administration of Development Regulations. For all other applications, notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given at least 10 working days prior to such hearing.

C. The hearing examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this chapter and also to administer oaths and preserve order. (Ord. 2007-14 § 1).

2.50.130 Decision and recommendation.

A. When the hearing examiner renders a decision or recommendation, the hearing examiner shall make and enter written findings from the record and conclusions therefrom which support such decision. The decision shall be rendered within 10 working days following conclusion of all testimony and hearings, unless a longer period is mutually agreed to on the record by the applicant and the hearing examiner. The copy of such decision, including findings and conclusions, shall be transmitted by first-class mail to the applicant and other parties of record in the case requesting the same. There shall be kept in the planning department a signed affidavit which shall attest that each mailing was sent in compliance with this provision.

B. In the case of applications requiring city council approval, the hearing examiner shall file a decision with the city council at the expiration of the period provided for reconsideration or, if reconsideration is accepted, within 10 working days after the decision on reconsideration. (Ord. 2007-14 § 1).

2.50.140 Reconsideration.

A party of record believing that a decision or recommendation of the hearing examiner is based on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the hearing examiner within five working days of the date the decision or recommendation is rendered. This request shall set forth the specific errors or new information relied upon by such appellant, and the hearing examiner may, after review of the record, take further action as he or she deems proper. If a request for reconsideration is accepted, a decision is not final until after a decision on reconsideration is issued. (Ord. 2007-14 § 1).

2.50.150 Appeal of decision.

A. Any party who feels aggrieved by the hearing examiner's decision may submit an appeal within 21 calendar days from the date the final decision of the hearing examiner is rendered to the Yakima County superior court.

B. No appeal may be made from a recommendation of the hearing examiner. (Ord. 2007-14 § 1).

2.50.160 City council action.

A. Any application requiring action by the city council shall be taken by the adoption of a motion, resolution or ordinance by the city council. When taking any such final action, the city council shall make and enter findings of fact from the record and conclusions therefrom which support its action. The city council may adopt all or portions of the findings and conclusions from the hearing examiner's recommendation.

B. In the case of an ordinance for rezone of property, the ordinance shall not be placed on the city council's agenda until all conditions, restrictions or modifications that may have been stipulated by the city council have been accomplished or provisions for compliance made to the satisfaction of the legal department.

C. The action of the city council, approving, modifying, or rejecting a recommendation of the hearing examiner, shall be final and conclusive. Appellants have 21 calendar days from the date of city council action to file an appeal with the superior court. (Ord. 2007-14 § 1).

2.50.170 City administrative staff is to be considered a person or party.

The city's administrative staff shall be considered a "person" and/or "party" and shall have the same rights as any other person or party to make requests for reconsideration to the hearing examiner or to appeal decisions of the hearing examiner to superior court. (Ord. 2007-14 § 1).

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[1] State law reference(s) – Land use hearing examiner, RCW 35A.63.170.

[2] State law reference(s) – Conflict of interest for planning agency, RCW 35A.63.020.

CITY OF GRANDVIEW
AGENDA ITEM HISTORY/COMMENTARY
COMMITTEE-OF-THE-WHOLE MEETING

ITEM TITLE	**AGENDA NO.:** New Business 4 (B)
Resolution approving an amended Site Use Agreement between People For People and the City of Grandview Community Center	**AGENDA DATE:** July 24, 2018
DEPARTMENT	**FUNDING CERTIFICATION** (City Treasurer) (If applicable)
Parks & Recreation Department	

DEPARTMENT DIRECTOR REVIEW

Gretchen Chronis, Parks & Recreation Director G Chronis

CITY ADMINISTRATOR **MAYOR**

ITEM HISTORY (Previous council reviews, action related to this item, and other pertinent history)

On January 9, 2018, the City approved the annual Site Use Agreement between People For People and the City of Grandview to provide food and nutrition services for area senior citizens. The current agreement provides for the use of the Grandview Community Center kitchen/dining facility on Monday, Tuesday, Thursday and Friday at a monthly rental rate of $425 per month.

ITEM COMMENTARY (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

People For People recently received more funding to increase their senior nutrition program to area seniors. They would like to extend their lease with the City of Grandview for the Community Center kitchen/dining area from four days per week to five days per week (to include Wednesday). The amended agreement also includes a revised monthly rental rate of $500 per month.

ACTION PROPOSED

Move a resolution approving an amended Site Use Agreement between People For People and the City of Grandview Community Center to a regular Council meeting for consideration.

Anita Palacios

From: Madelyn Carlson <mcarlson@pfp.org>
Sent: Monday, July 09, 2018 8:17 AM
To: Mike Carpenter; Anita Palacios
Subject: Grandview Lease

Good Afternoon,
People For People has received additional funding to serve more meals to our fragile seniors. The funding allows us to serve Monday – Friday at the Grandview Community Center through the end of 2018.
Our lease agreement with City of Grandview is only for Monday, Tuesday, Thursday, and Friday. We would like to start the additional service as soon as possible. Please let me know what we need to do to amend the current lease agreement.

Best regards,

Madelyn Carlson

PEOPLE FOR PEOPLE

Madelyn Carlson

People For People, CEO

P: 509-248-6726 Ext. 201
F: 509-457-7897
E: mcarlson@pfp.org

304 West Lincoln Ave
Yakima, WA 98902

www.pfp.org

Improving Lives∞
Strengthening Communities

RESOLUTION NO. 2018-____

A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON, APPROVED AN AMENDED SITE USE AGREEMENT BETWEEN PEOPLE FOR PEOPLE AND THE CITY OF GRANDVIEW COMMUNITY CENTER

WHEREAS, People for People Senior Nutrition Program provides food and nutrition services to area senior citizens; and,

WHEREAS, People for People Senior Nutrition Program provides these services at the Grandview Community Center; and,

WHEREAS, the City of Grandview and People For People entered into an annual Site Use Agreement on January 22, 2018; and,

WHEREAS, People For People would like to amend the current Site Use Agreement to provide said services five days per week at a base minimum of $500 per month;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANDVIEW, AS FOLLOWS:

Section 1. The Site Use Agreement approved by Resolution No. 2018-4 is terminated effective July 18, 2018.

Section 2. The Mayor is hereby authorized to sign the Site Use Agreement between People For People and the City of Grandview in the form as is attached hereto and incorporated herein by reference.

PASSED by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on _____, 2018.

MAYOR

_____

ATTEST:

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

SITE USE AGREEMENT
Between
People For People
and
City of Grandview
Grandview Community Center

THIS AGREEMENT is made and entered into by and between, City of Grandview (hereinafter City), and People For People, a Washington nonprofit corporation.

WHEREAS, People For People Senior Nutrition Program provides food and nutrition services to senior citizens, and

WHEREAS, People For People Senior Nutrition Program desires to provide these services at the Grandview Community Center, whose address is 812 Wallace Way, Grandview, Washington, 98930 in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein it is agreed by and between the City and People For People as follows:

1. **People For People:**
    a. Shall prepare and serve food services to senior citizens at the Grandview Community Center, as contracted by the City, through congregate meals as well as preparing and packaging meals for home delivery to homebound seniors.

    b. Shall use the kitchen, equipment and facilities generally between 7:00 am to 3:00 p.m., Monday, Tuesday, Wednesday, Thursday and Friday, except for Holidays and except when such use is preempted by the City pursuant to paragraph 2(b) below.

    c. Shall leave the kitchen, kitchen facilities/equipment, dishes, glassware, and utensils in a clean and orderly condition. People For People assumes all responsibility for the cleaning of the kitchen and dining areas for each day that People For People uses the facility.

    d. Upon the loss, destruction, or damage to any property at the Grandview Community Center in connection with its food service operations, People For People shall notify the City thereof and shall take all reasonable steps to protect that property from further damage. Furthermore, People For People assumes all responsibility for repairing any equipment, fixtures, or furnishings broken or damaged in the facility as a result of its food service operations.

e. Shall request permission in advance to use the said facilities and equipment in the event such use is needed outside the said time period.

f. Shall plan and carry out the operation of the meal site without aid or intervention from the City.

2. **The City:**
   a. Shall provide People For People the use of facilities, equipment, and space for the preparation and serving of meals for the Senior Nutrition program, as contracted by the City, generally from 7:00 am to 3:00 p.m., Monday through Friday, except for Holidays and when such use is preempted by the City pursuant to paragraph 2(b) below.

   b. Shall notify People For People at least five (5) business days in advance if the kitchen or dining areas are to be preempted for other use.

   c. Reserves the right to schedule classes and other activities in the Grandview Community Center. The City will make reasonable efforts to ensure that such classes and activities do not interfere with People For People's operations and services.

   d. Shall provide an annual Fire and Life Safety Survey to be performed by the local fire department.

   e. Shall provide an annual Health Inspection of the kitchen and serving area as mandated by State regulation. The Yakima Health District shall perform the inspection.

   f. Shall assure that when the facilities are used by other than People For People's Senior Nutrition program, the kitchen and other facilities have been properly cleaned prior to use by the Senior Nutrition program.

3. **Consideration:**
   a. As consideration for the food services provided pursuant to this Agreement, People For People agrees to pay the City a base minimum of $500.00 per month starting August 1, 2018. The amount for July will be prorated based upon the additional days of service and payable with the August 1, 2018 payment.

   b. The City will renegotiate with People For People the monthly base minimum, should the City determine that $500.00 per month does not cover the increased utilities costs attributable to People For People's food preparation operations and services.

4. **Amendments:**
   This Agreement contains all terms and conditions agreed upon by the parties. No change or addition to this Agreement shall be valid or binding upon either party unless such change or addition is in writing and executed by both parties.

5. **Term of Agreement:**
The term of this Agreement shall commence on July 18, 2018 or as mutually scheduled and shall end on December 31, 2018.

6. **Taxes and Assessments:**
People For People shall be solely responsible for compensating its employees and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement.

7. **Insurance:**
People For People understands and acknowledges that the City does not provide comprehensive liability insurance coverage for the benefit of People For People, including its officials, officers, agents, and employees. People For People shall maintain a policy of comprehensive liability insurance with combined single limit coverage of at least $5,000,000 for the duration of this Agreement. The policy shall provide coverage for all activities conducted by People For People at the Grandview Community Center. People For People shall provide the City with a certificate of insurance or insurance binder evidencing that said insurance is in effect. People For People is required to provide 30 days notice of cancellation of such insurance and provide proof of continued coverage.

8. **Non Discrimination:**
With regard to the provision of food services under this Agreement, People For People and the City shall not illegally discriminate against any person on the grounds of race, creed, color, religion, national origin, political affiliation, sex, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical handicap.

9. **Indemnification and Hold Harmless:**
People For People shall indemnify, hold harmless and defend the City, and its elected officials, officers, employees, and agents from and against any and all suits, actions, claims liability, damages, judgments, costs and expenses (including reasonable attorney's fees) which result from or arise out of the sole negligence of People For People, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of People For People's services, duties and obligations under this Agreement.

The City agrees to hold harmless, indemnify, and defend People For People, its elected officials, officers, employees and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) which result from or arise out of the sole negligence of the City, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of the City's services, duties and obligations under this Agreement.

In the event that the officials, officers, agents, and/or employees of both People For People and the City are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including any reasonable attorney's fees).

Nothing contained in this Section or this Agreement shall be construed to create a right of indemnification in any third party.

People For People hereby releases the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City from any and all liability or responsibility to People For People or anyone claiming through or under People For People by way of subrogation or otherwise, for any loss, expense or damage, even if said loss, expense or damage is caused by the fault or negligence of the City, its elected or appointed officials, employees or volunteers, except to the extent that the City has an indemnification obligation to People For People under this paragraph 9.

Solely for the purposes of its obligations under this Agreement, each party specifically waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51, Revised Code of Washington, for any claims by its employees against the other for bodily injuries or death sustained while performing services hereunder. Further, the indemnification obligations of either party to the other shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under Worker's Compensation Acts, Disability Benefit Acts, or other benefit acts; provided, that each party's wavier of immunity by this provision shall extend only to claims by one party against the other and shall not include or extend to any claims by either party's employees directly against the employer party.

This paragraph nine (9) shall survive the termination of the Agreement.

10. <u>Assignment:</u>

This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by the City to any other person or entity without the prior written consent of People For People. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the City as stated herein.

This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by People For People to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of People For People as stated herein.

11. **Waiver of Breach:**
The waiver by People For People or the City of the breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party or prevent either party thereafter enforcing any such provision.

12. **Severability:**
If any portion of this Agreement is changed per mutual agreement or any portion is held invalid; the remainder of the Agreement shall remain in full force and effect.

13. **Integration:**
This Agreement sets forth all the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all such former agreements which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto, except as herein provided and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.

14. **Termination:**
Either party may terminate this Agreement, with or without cause, by giving the other party thirty (30) days advance written notice of termination.

15. **Notices:**
Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand delivered to the parties to their addresses as follows:

THE CITY OF GRANDVIEW

Cus Arteaga
City of Grandview
207 W. 2nd Street
Grandview, WA 98930
(509) 882-9200

PEOPLE FOR PEOPLE:

Madelyn Carlson, CEO
People For People
304 W. Lincoln Avenue
Yakima, WA 98902
(509) 248-6726

Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand delivered. Such notices shall be deemed effective at the time mailed or hand delivered at the address specified above. Each party shall provide written notification within 15 calendar days of change of address.

16. **Payment:**
Rent payments will be mailed to the following address:

City of Grandview
Parks and Recreation Department
207 W. 2nd Street
Grandview, WA 98930

17. **Governing Law:**
This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

18. **Venue:**
The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington, Yakima County.

THE CITY OF GRANDVIEW

By: _____
Norm Childress, Mayor

Date: _____

PEOPLE FOR PEOPLE, a Washington nonprofit corporation

By: _____
Madelyn Carlson, CEO

Date: _____

CITY OF GRANDVIEW
AGENDA ITEM HISTORY/COMMENTARY
COMMITTEE-OF-THE-WHOLE MEETING

ITEM TITLE	**AGENDA NO.:** New Business 4(C)
Fire Truck Purchase – USDA RD Loan Closing Documents	**AGENDA DATE:** July 24, 2018
DEPARTMENT	**FUNDING CERTIFICATION** (City Treasurer) (If applicable)
City Treasurer	

DEPARTMENT DIRECTOR REVIEW

Matthew Cordray, City Treasurer

CITY ADMINISTRATOR **MAYOR**

ITEM HISTORY (Previous council reviews, action related to this item, and other pertinent history)

On March 14, 2017 Council approved the Letter of Conditions and Request for Obligation of Funds that allowed the City to apply for a loan from USDA to purchase a new fire truck.

ITEM COMMENTARY (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

The City is preparing to close on the loan and received the funds. In order for this to take place, the following must be approved: resolution accepting the fire truck as complete, an ordinance for a general obligation bond to secure the loan and a loan resolution must be approved.

Monthly principal and interest payments to USDA totaling $2,959 from the Current Expense Fund will begin September 2018 and end in August 2040.

ACTION PROPOSED

Move the following documents to a regular Council meeting for consideration:

- Resolution accepting the 2019 KME Custom Pumper Fire Truck as complete
- Resolution authorizing and providing for the incurrence of indebtedness for the purpose of providing a portion of the cost of acquiring, constructing, enlarging, improving, and/or extending its purchase fire truck and equipment to serve an area lawfully within its jurisdiction to serve
- Ordinance providing for the issuance of a limited tax general obligation bond, in the principal amount of $550,000 to provide funds to purchase a new fire truck; fixing the form, terms and convenants of such bond; approving the sale of the bond to the United State of America, acting through the United States Department of Agriculture; and providing for other matters relating thereto.

RESOLUTION NO. 2018-___

A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON, ACCEPTING THE 2019 KME CUSTOM PUMPER FIRE TRUCK AS COMPLETE

WHEREAS, the City purchased a 2019 KME Custom Pumper Fire Truck, VIN 1K9AF4S89KN058747 utilizing loan funding through the United State Department of Agriculture Rural Development; and,

WHEREAS, the City's Fire Chief has determined that the truck received is complete and ready for final acceptance by the City Council,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANDVIEW, AS FOLLOWS:

The City of Grandview has received and accepts the 2019 KME Custom Pumper Fire Truck VIN 1K9AF4S89KN058747 purchase as complete.

PASSED by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on _____, 2018.

MAYOR

_____

ATTEST:

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

Position 5

USDA
Form RD 1942-47
(Rev. 12-97)

LOAN RESOLUTION
(Public Bodies)

FORM APPROVED
OMB NO. 0575-0015

A RESOLUTION OF THE City Council

OF THE Grandview, City Of
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

Purchase fire truck and equipment
FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the Grandview, City Of
(Public Body)
(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

550,000.00

pursuant to the provisions of RCW 35 ; and

WHEREAS, the Association intends to obtain assistance from the Rural Housing Service, Rural Business - Cooperative Service, Rural Utilities Service, or their successor Agencies with the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U. S. C. 1983 (c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of $ 10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contract or agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by the Government. No free service or use of the facility will be permitted.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.

12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.

13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

14. That if the Government requires that a reserve account be established and maintained, disbursements from that account may be used when necessary for payments due on the bond if sufficient funds are not otherwise available. With the prior written approval of the Government, funds may be withdrawn for:

    (a) Paying the cost of repairing or replacing any damage to the facility caused by catastrophe.
    (b) Repairing or replacing short-lived assets.
    (c) Making extensions or improvements to the facility.

    Any time funds are disbursed from the reserve account, additional deposits will be required until the reserve account has reached the required funded level.

15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain the Government's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.

16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

17. To accept a grant in an amount not to exceed $ _____

    under the terms offered by the Government; that the _____

    and _____ of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

    The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee

    The vote was: Yeas _____ Nays _____ Absent _____.

IN WITNESS WHEREOF, the City Council of the

Grandview, City Of has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this _____ day of _____, _____.

(SEAL)

_____

By _____

Attest:

Title _____

_____

_____

Title

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as _____ of the Grandview, City Of _____ hereby certify that the _____ of such Association is composed of _____ members, of whom _____, constituting a quorum, were present at a meeting thereof duly called and held on the _____ day of _____, _____; and that the foregoing resolution was adopted at such meeting by the vote shown above. I further certify that as of _____, the date of closing of the loan from the Government, said resolution remains in effect and has not been rescinded or amended in any way.

Dated, this _____ day of _____, _____.

_____

Title _____

CITY OF GRANDVIEW, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GRANDVIEW, WASHINGTON, PROVIDING FOR THE ISSUANCE OF A LIMITED TAX GENERAL OBLIGATION BOND, IN THE PRINCIPAL AMOUNT OF $550,000, TO PROVIDE FUNDS TO PURCHASE A NEW FIRE TRUCK; FIXING THE FORM, TERMS AND COVENANTS OF SUCH BOND; APPROVING THE SALE OF THE BOND TO THE UNITED STATES OF AMERICA, ACTING THROUGH THE UNITED STATES DEPARTMENT OF AGRICULTURE; AND PROVIDING FOR OTHER MATTERS RELATING THERETO.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GRANDVIEW, WASHINGTON, DO ORDAIN as follows:

Section 1. Recitals. The City Council of the City of Grandview, Washington (the "City") finds and determines that:

(a) The City is a municipal corporation duly organized and existing under the laws of the State of Washington (the "State").

(b) The United States of America, acting through the United States Department of Agriculture, Rural Housing Service (the "USDA") provided the City with a Letter of Conditions dated March 7, 2017, and amended June 1, 2018 (together, the "Letter of Conditions"), establishing the conditions under which the USDA would loan and grant money to the City to finance a new fire truck for the City (the "Project"). RCW 39.69.020 authorizes the City to enter into a loan agreement with the United States government and to evidence the City's obligation to repay the loan under the terms and conditions of such loan agreement. Chapter 39.48 RCW authorizes the City to sell the Bond to the USDA by private sale at a price of not less than par plus accrued interest. The USDA has offered to purchase the Bond according to the terms set forth herein and in the Letter of Conditions.

(c) It is advisable for the City to purchase a new fire truck for the City. The City has estimated that the total costs of the Project will be $600,000. It is advisable for the City to provide funds for defraying all or a portion of the cost of the Project from the proceeds of the sale of a limited tax general obligation bond (the "Bond").

(d) Based on the foregoing, it is in the City's best interest to authorize the issuance of the Bond to evidence the City's obligation to repay the loan from the USDA and to authorize the delivery of the Bond to the USDA upon the terms set forth in this ordinance.

Section 2. Debt Capacity. The assessed valuation of the taxable property within the City as ascertained by the last preceding assessment for City purposes for the calendar year 2018 is $480,981,494, and the City has outstanding general indebtedness evidenced as of December 31, 2017, evidenced by State loans in the principal amount of $1,266,415 incurred within the limit of up to 1-1/2% of the value of the taxable property within the City permitted for general municipal purposes without a vote of the qualified voters therein, and no unlimited tax general obligation bonds or notes incurred within the limit of up to 2 1/2% of the value of the taxable property within the City for capital purposes issued pursuant to a vote of the qualified voters of the City. The amount of indebtedness for which the bond is authorized herein to be issued is $550,000.

Section 3. Authorization and Description of the Bond. For the purpose of paying part of the costs of the Project, including paying the costs of issuing the Bond, the City shall cause to be issued a limited tax general obligation bond as set forth in this ordinance. Bond proceeds shall be used to pay or reimburse the City for the Project.

The Bond shall be dated as of the date of its delivery to the United States of America, acting through the USDA (the "Purchaser"); shall be designated as the "Limited Tax General Obligation Bond, 2018" of the City and shall be in the principal amount of $550,000; the Bond shall mature on the Installment Payment Date that occurs on (or nearest to) the 22nd anniversary of the date the Bond is issued (or such earlier date that the principal of and interest on the Bond is fully paid); shall bear interest from its date at the per annum rate of 3.375% or such other interest rate as set by the Purchaser as of the date of its issuance (the "Interest Rate") on its outstanding principal balance (computed on the basis of a 365-day year for actual number of days elapsed); shall be numbered R-1, with any additional designation as the Registrar deems necessary for purposes of identification; and shall be issued only in registered form as to both principal and interest on the Bond Register. The principal of and interest on the Bond shall be payable in equal monthly amortized installments on each Installment Payment Date in an amount required to amortize the Bond over the remaining term thereof, except that the last such payment shall be in an amount equal to the remaining principal and interest due on the Bond. For purposes of this ordinance, "Installment Payment Date" shall mean the date that is one month from the dated date of the Bond and that day of every month thereafter to and including the final maturity of the Bond. If the dated date of the Bond is the 29th, 30th or 31st day of the month, the Installment Payment Date will be the 28th day of the month after the dated date and on the 28th day of every month thereafter to and including the final maturity of the Bond.

Section 4. Extra Payments. To the extent the City's scheduled principal and interest payment obligation on the Bond are current (or will be made current upon such payment), the City may make payments to the entity or person named as the registered owner of the Bond on the Bond Register, initially the United States of America (the "Registered Owner"), on any Installment Payment Date, that are in addition to the regularly scheduled payments of principal and interest on the Bond. The amount of such extra payment shall be applied first to interest on the Bond accrued to the date of receipt of such extra payment, and shall be applied second to the outstanding principal of the Bond. After such extra payment is received by the Registered Owner, the amount of the installments of principal and interest on the Bond shall remain unchanged but shall be recalculated to reflect the reduction in the outstanding principal balance of the Bond and the resulting increase in the portion of each future installment payment credited to the principal of the Bond. The final Installment Payment Date of the Bond, and the amount payable on such date, shall be adjusted to

reflect such extra payment and the increased amount of future installment payments that is applied to principal. Notice of any such extra payment shall be given at least 10 days prior to the Installment Payment Date by mailing to the Registered Owner a notice specifying the amount of such extra payment.

Section 5. Failure to Pay Installments. If any installment of principal of and interest on the Bond is not paid when due, the City shall be obligated to pay interest on that installment at the same rate provided in the Bond from and after its payment date until that installment, both principal and interest, is paid in full.

Section 6. Execution, Issuance and Delivery of the Bond and Related Documents.

(a) The City will issue and deliver the Bond to the USDA on the date the USDA pays the City $550,000 in exchange therefor. The Bond shall be in a form consistent with the provisions of this ordinance and State law, shall be signed by the Mayor and City Clerk, either or both of whose signatures may be manual or in facsimile, and shall have the seal of the City (or a facsimile reproduction thereof) impressed or printed thereon.

(b) The Bond shall not be valid or obligatory for any purpose, or entitled to the benefits of this ordinance, unless such bond bears a certificate of authentication manually signed by the Registrar stating: "This Bond is the fully registered City of Grandview, Washington, Limited Tax General Obligation Bond, 2018 (Taxable), described in the Bond Ordinance." A minor deviation in the language of such certificate shall not void a certificate of authentication that otherwise is substantially in the form of the foregoing. The authorized signing of a certificate of authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

(c) The Mayor and City Clerk, or their designees, are severally authorized and directed to: (i) do everything necessary for the execution, issuance and delivery of the Bond; and (ii) execute and deliver any documents, agreements, certificates, receipts and instruments that are necessary or appropriate in their discretion to give effect to this ordinance and to consummate the borrowing of money authorized herein.

(d) The City directs Foster Pepper PLLC, as the City's bond counsel, to prepare the Bond and such other documents, agreements, certificates, receipts and instruments as may be necessary and appropriate to properly document the issuance and delivery of the Bond to the USDA and the receipt of money by the City from the USDA. Such law firm shall coordinate the execution and delivery of such documents on behalf of the City, and shall compile and distribute to the City and the USDA a transcript containing such documents (or copies thereof) as it deems necessary to support its legal opinions rendered in connection with the issuance of the Bond.

Section 7. Appointment of Registrar, Registration and Transfer of the Bond.

(a) The City Treasurer is appointed as the initial Registrar for the Bond. The Registrar shall keep, or cause to be kept, at its office, sufficient books for purposes of registering the name and mailing address of the Registered Owner of the Bond, and for registering any transfer of Bond ownership. The books and records maintained by the Registrar for such purpose shall be considered the Bond Register for purposes of this ordinance. The Bond

Register shall at all times be open to inspection by the City. In addition to maintaining the Bond Register, the Registrar is authorized and directed to perform the following duties with respect to the Bond: (i) to authenticate the Bond upon the initial issuance thereof by executing the Certificate of Authentication contained thereon; (ii) to authenticate and deliver the Bond that is transferred in accordance with the provisions thereof and this ordinance; (iii) to serve as the City's paying agent for the Bond; (iv) to imprint on the Bond transferred or exchanged pursuant to this ordinance the name of the Registered Owner, the principal amount of the Bond, the interest rate borne by the Bond, and the maturity date of the Bond; (v) to cancel the Bond returned to the Registrar upon the payment in full thereof; and (vi) to carry out all of the Registrar's duties otherwise described in this ordinance.

(b) The Bond may be transferred only if endorsed in the manner provided thereon and surrendered to the Registrar. Any transfer shall be without cost to the Registered Owner or transferee and shall be noted in the Bond Register. The Registrar shall not be obligated to transfer the Bond during the 15 days preceding any Installment Payment Date.

Section 8. Payment of the Bond. Installments of principal and interest on the Bond shall be payable in lawful money of the United States of America and shall be paid by check, draft or preauthorized debit and sent to the Registered Owner so that the Registered Owner receives said payments when due at the address appearing on the Bond Register; provided, if the Registered Owner of the Bond is other than the United States of America, then the last installment of principal and interest on the Bond shall be payable only upon presentation and surrender of the Bond by the Registered Owner at the office of the Registrar. So long as USDA is the Registered Owner of the Bond, the City shall request the Treasurer to establish a Preauthorized Debit Payment ("PAD") process whereby the Registrar authorizes funds to be withdrawn electronically from the City's bank account on the exact day that the payment is due. Notwithstanding the foregoing, the City may engage in any payment program established by the Purchaser from time to time, so long as the City can engage in such program under State law. The Registrar shall destroy the Bond when surrendered for final payment and furnish the City a certificate of destruction within 30 days following the surrender and payment in full of the Bond.

Section 9. Deposit of Bond Proceeds; Bond Account. The Treasurer is authorized and directed to deposit the proceeds of the Bond into a fund designated by the City to finance or refinance the Project (the "Project Fund").

The Limited Tax General Obligation Bond Fund, 2018 (the "Bond Fund") is created as a special fund of the City for the sole purpose of paying principal of and interest on the Bond. Bond proceeds in excess of the amounts needed to pay or reimburse the City for the Project and pay the costs of issuance of the Bond, if any, shall be deposited into the Bond Fund. All amounts allocated to the payment of the principal of and interest on the Bond shall be deposited in the Bond Fund as necessary for the timely payment of amounts due with respect to the Bond. The principal of and interest on the Bond shall be paid out of the Bond Fund. Until needed for that purpose, the City may invest money in the Bond Fund temporarily in any legal investment, and the investment earnings shall be retained in the Bond Fund and used for the purposes of that fund.

Section 10. Pledge of Taxes. For as long as the Bond is outstanding, the City irrevocably pledges to include in its budget and levy taxes annually, within the constitutional and statutory tax limitations provided by law without a vote of the voters of the City, on all of the taxable property within the City in an amount sufficient, together with other money legally available and to be used therefor, to pay when due the principal of and interest on the Bond. The full faith, credit and resources of the City are pledged irrevocably for the annual levy and collection of those taxes and for the prompt payment of that principal and interest.

Section 11. Refunding or Defeasance of the Bond. The City may issue refunding bonds pursuant to the laws of the State or use money available from any other lawful source to pay when due the principal of and interest on the Bond, or any portion thereof included in a refunding or defeasance plan, and to redeem and retire, refund or defease all of the principal amount of the Bond (hereinafter collectively called the "defeased Bond") and to pay the costs of the refunding or defeasance. If money and/or noncallable "government obligations" (as defined by chapter 39.53 RCW) maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defease the defeased Bond in accordance with its terms are set aside in a special trust fund or escrow account irrevocably pledged to that redemption, retirement or defeasance of the defeased Bond (hereinafter called the "trust account"), then all right and interest of any Registered Owner of the defeased Bond in the covenants of this ordinance and in the funds obligated to the payment of the defeased Bond shall cease and become void. Any Registered Owner of the defeased Bond shall have the right to receive payment of the principal of and interest on the defeased Bond from the trust account. The City shall include in the refunding or defeasance plan such provisions as the City deems necessary for notice of the defeasance to be given to any Registered Owner of the defeased Bond and to such other persons as the City shall determine, and for any required replacement of a Bond certificate for the defeased Bond. The defeased Bond shall be deemed no longer outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the defeased Bond to any lawful purposes as it shall determine.

NOTWITHSTANDING THE ABOVE, FOR AS LONG AS THE UNITED STATES OF AMERICA IS THE REGISTERED OWNER OF THE BOND, THE CITY AGREES NOT TO DEFEASE THE BOND.

Section 12. Reporting Requirements. The City hereby covenants and agrees with the Registered Owner of the Bond as follows:

(a) For so long as the United States of America is the Registered Owner of the Bond, the City will: (i) for the first year of the Bond, submit quarterly reports to the USDA, (ii) after the first year of the Bond, annually submit to the USDA the City's operating budget; (iii) submit to the USDA the City's audits, as determined by the USDA on an annual basis; and (iv) provide such additional information and reports as may be reasonably requested by the USDA from time to time.

(b) It will abide by the conditions of the Rural Development Form Loan Resolution (Form RD 1942-47) for so long as the United States of America is the Registered Owner of the Bond.

(c) The City must maintain position fidelity bonds and real property insurance as required in the Letter of Conditions for so long as the United States of America is the Registered Owner of the Bond.

Section 13. General Authorization; Ratification of Prior Acts. The Mayor, Treasurer and City Clerk of the City and each of the other appropriate officers of the City are each hereby authorized and directed to take any actions and to execute documents as in their judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by this ordinance. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified.

Section 14. Severability. If any provision in this ordinance is declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this ordinance and shall in no way affect the validity of the other provisions of this ordinance.

Section 15. Effective Date. This ordinance shall be effective five days from and after its passage and publication as required by law.

PASSED by the City Council of the City of Grandview, Washington, and approved by its Mayor at a regular meeting thereof held this 14th day of August, 2018.

CITY OF GRANDVIEW, WASHINGTON

By _____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Published: _____, 2018

CERTIFICATE

I, the undersigned, City Clerk of the City of Grandview, Washington, (the "City") and keeper of the records of the City Council (herein called the "Council"), DO HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. _____ of the Council (herein called the "Ordinance"), duly passed at a regular meeting thereof held on the 14th day of August, 2018.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of August, 2018.

_____

City Clerk