Council Meeting Date: July 30, 1999 **Agenda Item: 7(a)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Approval of Expenses and Payroll as of July 19, 1999
DEPARTMENT:	Finance
PRESENTED BY:	Al Juarez, Financial Operations Supervisor

EXECUTIVE / COUNCIL SUMMARY

It is necessary for the Council to approve expenses formally at the meeting. The following claims expenses have been reviewed by C. Robert Morseburg, Auditor on contract to review all payment vouchers.

RECOMMENDATION

Motion: I move to approve Payroll and Claims in the amount of $1,006,646.29 specified in the following detail:

Payroll and benefits for May 30 through June 12, 1999 in the amount of $213,618.39 paid with ADP checks 2982-3032, vouchers 240001-240095, benefit checks 000898-000903 and

Payroll and benefits for June 13 through June 26, 1999 in the amount of $247,394.33 paid with ADP checks 3033-3076, vouchers 260001-260099, benefit checks 0001047-0001053 and

the following claims examined by C. Robert Morseburg paid on June 30, 1999:

Expenses in the amount of $529.30 paid on Expense Register dated 6/24/99 with the following claims check: 912 and

Expenses in the amount of $8752.20 paid on Expense Register dated 6/25/99 with the following claims check: 914 and

Expenses in the amount of $26,793.02 paid on Expense Register dated 6/25/99 with the following claims check: 916 and

Expenses in the amount of $195,010.82 paid on Expense Register dated 6/28/99 with the following claims checks: 917-944 and

Expenses in the amount of $22,465.87 paid on Expense Register dated 6/29/99 with the following claims checks: 945-966 and

Expenses in the amount of $62,022.49 paid on Expense Register dated 6/29/99 with the following claims checks: 967-980 and

Expenses in the amount of $34,466.45 paid on Expense Register dated 6/29/99 with the following claims checks: 981-993 and

Expenses in the amount of $3,526.00 paid on Expense Register dated 6/30/99 with the following claims check: 994 and

Expenses in the amount of $52,036.15 paid on Expense Register dated 6/30/99 with the following claims checks: 995-1017 and

Expenses in the amount of $830.90 paid on Expense Register dated 6/30/99 with the following claims checks: 1018-1032.

the following claims examined by C. Robert Morseburg paid on July 9, 1999:

Expenses in the amount of $42,877.57 paid on Expense Register dated 7/8/99 with the following claims checks: 1054-1073 and

Expenses in the amount of $22,924.46 paid on Expense Register dated 7/9/99 with the following claims checks: 1074-1089 and

Expenses in the amount of $73,398.34 paid on Expense Register dated 7/9/99 with the following claims check: 1090-1110.

Approved By: City Manager ____ City Attorney ___

Council Meeting Date: July 26, 1999 **Agenda Item: 7(b)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Ordinance No. 203 Granting US Crossing A Franchise To Install A Conduit System Along Aurora Avenue NE
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Kristoff T. Bauer, Assistant to the City Manager

EXECUTIVE / COUNCIL SUMMARY

US Crossing has applied to the City for a franchise to install conduit and fiber optic communications cable through Shoreline. Staff presented a proposed franchise ordinance to your Council for discussion at your July 19, 1999, special meeting. Any changes to the proposed ordinance or additional information requested as a result of that discussion will be presented to your Council during the staff presentation on this item.

US Crossing is a subsidiary of Global Crossing a multi-national company whose stated mission is to create the world's first independent global fiber optic network designed to offer the highest quality city-to-city communications connectivity among the largest cities worldwide. Global Crossing and its subsidiaries have completed or are in the process of completing seven to eight fiber optic rings across large water or land formations; that is the Atlantic Ocean, Pacific Ocean, South America, etc. The portion proposed to come through Shoreline is part of a ring that enters the water near Mukilteo, crosses the Pacific to Japan, crosses the Pacific to California, and then comes north eventually through Shoreline to complete the ring. Global Crossing hopes to have this ring complete and operational by early next year and is seeking to begin construction in Shoreline as soon as possible.

This proposal has some similarities to the proposal of Pacific Fiber Link discussed with your Council during the February 16 workshop that included the installation of several conduits along 15th Avenue NE. These requests are similar in that:

- Both intend(ed) to go through Shoreline providing no service directly to Shoreline residents and/or businesses
- Their business activities do not correspond with any existing franchised service currently operating within the City
- Neither company satisfies the statutory definition of "Telephone Business" contained in RCW 82.04.065 that is utilized in RCW 35.21.860 which restrict the City's authority to charge a franchise fee.

Unlike Pacific Fiber Link, US Crossing:

- Admits that they are not a "Telephone Business"

- Is installing a complete fiber optic network for their own use in selling transmission capacity on that system to others rather then installing conduit for others
- Proposes to install a smaller system using underground directional boring technology that will not require trenching or significant disruption of the right-of-way
- Will install their system under the center turn lane of Aurora Avenue North (See Attachment A)

No utilities are currently located below the center of Aurora nor is this area traditionally used for such installations. This location is not expected to interfere with or complicate anticipated improvements to Aurora.

In accordance with the feedback provided by Council during the February workshop regarding the then proposed Pacific Fiber Link franchise, staff is proposing a franchise ordinance (Attachment B) that:

- Defines the new service form (a multi-conduit fiber optic telecommunications system) that is not a telecommunications business and, therefore, not subject to state restriction on franchise fees,
- Grants US Crossing a 10 year franchise to install and maintain a Conduit System along a specific installation route (Attachment A)
- Commits US Crossing to the construction of a specific set of public capital improvements along the installation path of its facilities, specifically two 2-inch conduit and manholes for access along Aurora dedicated to the City for future use (Attachment C)

These improvements provide four key benefits to the City:

- They provide high-speed communications capacity to the region that will be accessible to telecommunications providers serving the City.
- The conduit provided to the City is expected to significantly reduce the cost of underground traffic signal control interconnections likely to be need as part of the redevelopment of Aurora.
- The City can lease the conduit to private companies or public agencies wanting to serve businesses along Aurora reducing the up front capital expenditure required to provide such service and the impact on the right-of-way. This could benefit our future economic development efforts.
- The City may also be able to use the conduit as part of a City institutional network that may be developed in conjunction with new City construction and existing Cable TV franchises.

In order to be sensitive to US Crossing's time constraints, staff has included the proposed franchise ordinance on your Council's July 26th regular meeting agenda for adoption. Any changes to the proposed ordinance resulting from discussion with Council will be brought forward as proposed amendments on July 26th.

RECOMMENDATION

Staff recommends the adoption of Ordinance No. 203 granting US Crossing a franchise to install a conduit system along Aurora Avenue.

Approved By: City Manager LB City Attorney

BACKGROUND / ANALYSIS

US Crossing is a wholly owned subsidiary of Global Crossing, a company formed in early 1997 that went public with an Initial Public Offering ("IPO") in August of 1998. Since the IPO, Global Crossing's stock price has risen from $8 to $64. The company reported assets in excess of $2.6 billion by December 31, 1998. Global Crossing claims to be the world's first independent provider of global long distance telecommunications facilities and services, utilizing a network of undersea digital fiber-optic cable systems and associated terrestrial backhaul capacity.

According to Global Crossing, while there has been significant demand for global telecommunications capacity, there has not been a corresponding growth in the number of new facilities, especially in the undersea fiber-optic cable industry. Global Crossing believes that additional undersea network capacity and faster response times will be required to satisfy current and anticipated growth in telecommunications traffic. They have already begun meeting this challenge by installing a series of fiber optic rings across the oceans and continents of the world (see Fig. 1).

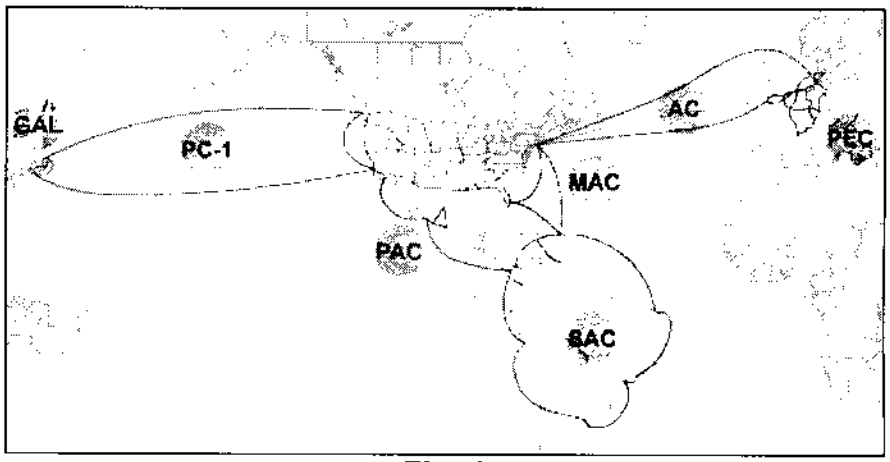


Fig. 1

US Crossing is a subsidiary of Global Crossing with a 1999 operating budget in excess of $100 million. US Crossing is charged with the task of completing all terrestrial links of the planned network within the United States and has four separate systems currently in development or construction in the states of Washington, California, Florida, and New York. This includes the segment of PC-1 (See Fig. 1) that is planned to go through Shoreline. That segment is expected to include four 1-1/4-inch & two 1-1/2-inch conduits with fiber optic cable installed by directional boring requiring access holes about every 700-ft. to 1,000-ft.

The system is designed to provide capacity to existing and future telecommunications providers. Service directly from Global Crossing to individual telecommunications customers is not expected. For this reason, taps into the system will only occur at major regional hubs and are not planned in Shoreline.

Franchise (Key Terms)

The proposed franchise ordinance is based upon Ordinance No. 85 granting ELI a franchise that was adopted by Council in June of 1996. Most of the terms and conditions are standard. One of the key differences is the identification of US Crossing's franchised business activity. US Crossing does not claim to be a

telecommunications business as state law defines that activity[1]. The terms of the proposed ordinance define a new form of utility that is focused on reselling long distance communications capacity to telecommunications businesses. US Crossing's authorized activities include the installation and maintenance of a Multi-Conduit Fiber Optic Telecommunications System.

A second key difference is that the franchise does not provide for a franchise fee due to the difficulty of calculating a fee based on gross revenues in this case where none of US Crossing's customers are located in Shoreline. Instead, US Crossing will be compensate the City for its utilization of the right-of-way by installing two 2-inch conduits along their installation route for the City. The value of this asset is discussed in further detail below.

A third key difference is that the scope of the franchise is restricted to the specific installation route identified in the franchise. Unlike other existing City franchises that grant the service provider broad authority to operate throughout the City, US Crossing's grant is restricted to the specific installation route for which compensation has been negotiated and provided.

A final key difference is that US Crossing's system is proposed to be installed underground. Unlike existing telecommunications or Cable TV providers, US Crossing is not authorized to install facilities above ground level.

Franchise Fee

The proposed ordinance provides for one time capital improvements in lieu of a cash payment or payments over time. In developing the proposed capital improvements, staff has attempted to balance the value of these improvements with the impact of the proposed franchise use on the right-of-way. In this case there has been an effort to minimize the impact of the use on the right-of-way and the capital improvements provided have strategic benefit to the City.

US Crossing will install two 2-inch conduit for the City along the entire length of the authorized installation route (Attachment A) and will provide nine access vaults, one near all of the major intersections along Aurora (See Attachment C), to ease future use of these conduits. US Crossing is providing two 1¼-inch conduits along their installation route adjacent to Shoreline in Seattle to the south and in Edmonds to the north. This will provide an easy installation path for future service providers.

US Crossing has estimated the value of the capital improvements they are providing Shoreline at $600,000. Staff has not validated their basis for this valuation, but does recognize three key ways that this system may provide future value to the City.

- First, any business or facility requiring significant telecommunications service located or interested in locating anywhere along Aurora will be half the street width

[1] State law defines "Telecommunications Business" as "...the providing of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system... RCW 82.04.065 (2)

from a pre-installed conduit system that may be utilized by a local telecommunications provider to serve them. This will make the installation of that supporting system faster and cheaper.

- Second, the City will be able to utilize this conduit for traffic signal interconnects, institutional network connections, or other City uses that may currently be above ground on Seattle City Light poles incurring pole attachment fees or may have required the City to install conduit. These costs can be avoided.
- Third, the City may be able to derive revenue from leasing space in the conduit to telecommunications providers who wish to avoid the up front capital expenditure associated with installing their own underground conduit and repairing the City's right-of-way.

Efforts to minimize the impact of this installation on the right-of-way include:

- Locating the system under the center turn lane which minimizes traffic impacts during installation, keeps patched asphalt out of the high traffic areas (this area may soon be shrubbery), and avoids traditional utility use areas,
- Using directional bore technology that avoids open trenching minimizing the disruption of the right-of-way surface, and
- Locating the system deeper then most utilities reducing the potential for conflicts with future utility needs in the right-of-way.

In summary, it is staff's recommendation that the proposed capital improvements provide value to the City that is appropriately proportionate to the impacts of the proposed use of the right-of-way.

In order to be sensitive to US Crossing's time constraints, staff has included the proposed franchise ordinance on your Council's July 26th regular meeting agenda for adoption. Any changes to the proposed ordinance resulting from discussion with Council will be brought forward as proposed amendments on July 26th.

RECOMMENDATION

Staff recommends the adoption of Ordinance No. 203 granting US Crossing a franchise to install a conduit system along Aurora Avenue.

ATTACHMENTS

Attachment A – US Crossing Installation Route Map (Referenced By Franchise)

Attachment B – Proposed Ordinance No. 203 Granting US Crossing A Franchise To Install A Conduit System Along Aurora Avenue

Attachment C – Capital Improvement Specifications And Diagrams (Referenced By Franchise)

Attachment A

US Crossing Installation Route Map

Referenced in Section 2.2 of the Proposed Franchise

CITY OF SHORELINE

U.S. CROSSING FRANCHISE

Authorized Installation Route

City of Shoreline GIS Centerline, Ortho Photo, building outlines, contour data copyrighted by City of Seattle, 1999. All rights reserved.

No warranties of any sort, including accuracy, fitness, or merchantability, accompany this product.

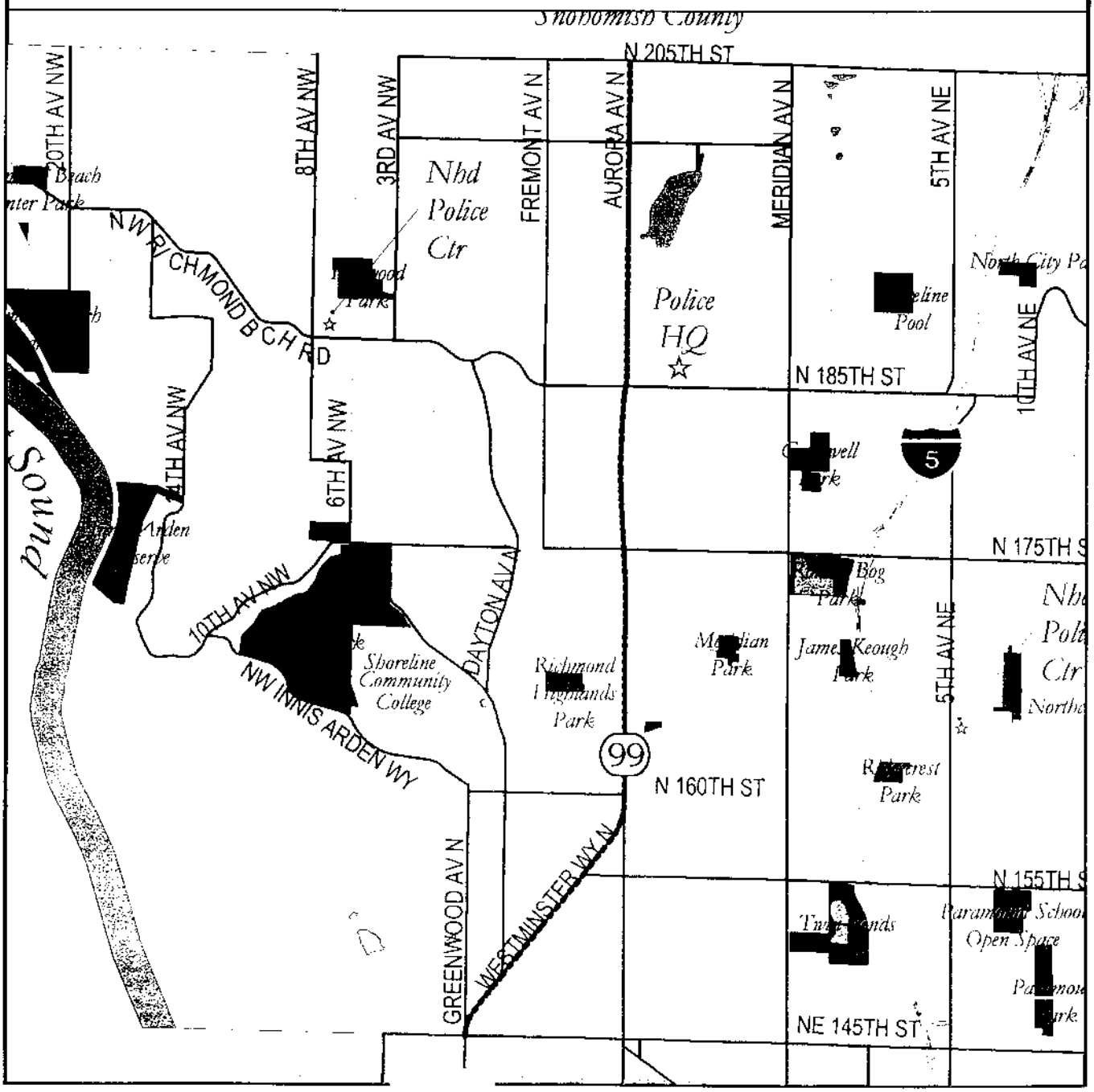
t:\asl\atymap.apr
July 8,1999

Installation Route
Street Class
Residential
Arterial
I-5
Waterbody
Public Park
City Limits

N

1 Inch = 0.47 Miles

0 0.235 0.47 0.705 Miles



Attachment B

Proposed Ordinance No. 203 Granting US Crossing A Franchise To Install A Conduit System Along Aurora Avenue

ORDINANCE NO. 203

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING US CROSSING INC. A NON-EXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A MULTIPLE CONDUIT FIBER OPTIC TELECOMMUNICATIONS SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON.

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public Right-of-Way; and

WHEREAS, RCW 35A.47.040 grants the City broad authority to grant nonexclusive franchises; and

WHEREAS, the Council finds that it is in the bests interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to US Crossing Inc. ("US Crossing"), for the operation of a multiple conduit fiber optic telecommunications system within the City Right-of-Way; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1 Definitions.

The following terms contained herein, unless otherwise indicated, shall be defined as follows:

1.1 City: The City of Shoreline, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.

1.2 Days: Calendar days.

1.3 Facilities: All conduit, wires, lines, fiber optic cable, equipment, supporting structures, and all other facilities associated with the Telecommunications System located in the Right-of-Way, utilized by US Crossing in the operation of activities authorized by this Ordinance. The abandonment by US Crossing of any Facilities as defined herein shall not act to remove the same from this definition.

1.4 Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's Right-of-Way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

1.5 Person: An entity or natural person.

1.6 Public Works Director: The head of the Public Works department of the City, or in the absence thereof, the head of the Permitting Authority, or the designee of either of these individuals.

1.7 Right-of-Way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement, and/or road Right-of-Way now or hereafter held or administered by the City of Shoreline.

1.8 US Crossing: US Crossing Inc., a Delaware corporation, and its respective successors and assigns.

1.9 Telecommunications System: means the multiple conduit fiber optic cable telecommunications system and all Facilities associated with that Telecommunications System that US Crossing seeks to construct within the Right-of-Way.

Section 2 Franchise Granted.

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to US Crossing, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of ten (10) years, beginning on the effective date of this Ordinance.

2.2 This franchise shall grant US Crossing the right, privilege and authority to construct, operate, maintain, replace, and use the Telecommunications System and Facilities located in the authorized installation route of the Right-of-Way as depicted in documents filed with the City Clerk under Clerk's Receiving Number 950, and as approved under City permits issued by the Permitting Authority pursuant to this franchise and City ordinances.

Section 3 Nonexclusive Franchise Grant.

This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in any Right-of-Way. Such franchise shall in no way prevent or prohibit the City from using any Right-of-Way or other public property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem appropriate.

Section 4 **Relocation of Facilities.**

4.1 US Crossing agrees and covenants at its sole cost and expense, to relocate from any Right-of-Way its Facilities when so required by a public project of the City provided that US Crossing shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same right-of-way upon approval by the City, any Facilities required to be relocated.

4.2 If the City determines that a public project necessitates the relocation of US Crossing's existing Facilities, the City shall:

4.2.1 At least sixty (60) days prior to the commencement of such project, provide US Crossing with written notice requiring such relocation; and

4.2.2 Provide US Crossing with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for US Crossing's Facilities.

4.2.3 After receipt of such notice and such plans and specifications, US Crossing shall complete relocation of its Facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.

4.3 US Crossing may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise US Crossing in writing if any of the alternatives is suitable to accommodate the work that otherwise necessitates the relocation of the Facilities. If so requested by the City, US Crossing shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by US Crossing full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, US Crossing shall relocate its Facilities as directed by the City.

4.4 The provisions of this Section shall in no manner preclude or restrict US Crossing from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay a City construction project or result in the installation of Facilities outside the limited scope of this franchise.

Section 5 **US Crossing's Maps and Records.**

As a condition of this franchise, and at its sole expense, US Crossing shall provide the City with typicals and as-built plans, maps, and records that show the vertical and horizontal location of its Facilities within the Right-of-Way using a minimum scale of one inch equals one hundred feet (1"=100'), measured from the center line of the Right-of-Way, which maps shall be in hard copy format acceptable to the City and in Geographical Information System (GIS) or other digital electronic format acceptable to

the City. This information shall be provided no later than one hundred eighty (180) days after the effective date of this Ordinance and shall be updated upon reasonable request of the City.

Section 6 Incorporation By Reference.

Shoreline City Ordinance No. 83, Establishing Minimum Requirements, Procedures, And Application Information For Franchises Within Shoreline, is hereby incorporated herein by this reference. In the event of a conflict between Ordinance No. 83 and this Ordinance, this Ordinance shall control. In addition, the following limitations to the requirements of Ordinance No. 83 shall apply:

6.1 US Crossing is a wholly-owned subsidiary of Global Crossing Ltd., a publicly traded corporation listed on the NASDAQ stock exchange, and the reporting requirements stated in subsections 10(A)(2) and 10(A)(6) of Ordinance 83 shall be satisfied for all purposes under this Ordinance by Global Crossing's public annual report filed with the Securities Exchange Commission;

6.2 The franchise granted herein does not require or grant authority for US Crossing to provide services of any kind to the residents and businesses of the City of Shoreline. For this reason, any terms of Ordinance No. 83 related to the provision of services shall not apply.

Section 7 Undergrounding.

The franchise granted herein is subject to Shoreline City Ordinance No. 82, Establishing Minimum Requirements And Procedures For The Underground Installation Of Electric And Communication Facilities Within Shoreline. Consistent with that Ordinance, US Crossing shall install all of its Facilities underground in accordance with relevant road and construction standards.

Section 8 Excavation And Notice Of Entry.

8.1 During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Right-of-Way so as to minimize interference with the passage of traffic and the use of adjoining property. US Crossing shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or state law, including RCW 39.04.180, for the construction of trench safety systems.

8.2 Whenever US Crossing excavates in any Right-of-Way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in the Right-of-Way. In no case shall any work commence within any Right-of-Way without a permit, except as otherwise provided in this Ordinance. During the progress of the work, US Crossing shall not unnecessarily

obstruct the passage or use of the Right-of-Way, and shall provide the City with plans, maps, and information showing the proposed and final location of any Facilities in accordance with Section 5 of this Ordinance.

8.3 At least ten (10) days prior to its intended construction of Facilities, US Crossing shall inform all residents in the affected area, that a construction project will commence, the dates and nature of the project, and provide a toll-free or local telephone number which the resident may call for further information. A pre-printed door hanger may be used for this purpose.

8.4 At least twenty-four (24) hours prior to entering Right-of-Way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal of Facilities, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by US Crossing. US Crossing shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of Facilities that protrude above the prior ground surface level consistent with sound engineering practices.

Section 9 Emergency Work, Permit Waiver.

In the event of any emergency where any Facilities located in the Right-of-Way are broken or damaged, or if US Crossing's construction area for their Facilities is in such a condition as to place the health or safety of any person or property in imminent danger, US Crossing shall immediately take any necessary emergency measures to repair or remove its Facilities without first applying for and obtaining a permit as required by this Ordinance. However, this emergency provision shall not relieve US Crossing from later obtaining any necessary permits for the emergency work. US Crossing shall apply for the required permits not later than the next business day following the emergency work.

Section 10 Recovery of Costs.

US Crossing shall be subject to all permit fees associated with activities undertaken pursuant to the franchise granted herein or other ordinances of the City. If the City incurs any costs and/or expenses for review, inspection or supervision of activities undertaken pursuant to the franchise granted herein or any ordinances relating to a subject for which a permit fee is not established, US Crossing shall pay the City's costs and expenses. In addition, US Crossing shall promptly reimburse the City for any costs the City reasonably incurs in responding to any emergency involving US Crossing's Facilities. Said costs and expenses shall be paid by US Crossing after submittal by the City of an itemized billing by project of such costs.

Section 11 Dangerous Conditions, Authority for City to Abate.

11.1 Whenever installation, maintenance or excavation of Facilities authorized by the franchise granted herein causes or contributes to a condition that appears to substantially impair the lateral support of the adjoining Right-of-Way, public or private property, or endangers any person, the Public Works Director may direct US Crossing, at US

Crossing's expense, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.

11.2 In the event US Crossing fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and US Crossing shall reimburse the City for all costs incurred.

Section 12 Safety.

12.1 US Crossing, in accordance with applicable federal, state, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.

12.2 All of US Crossing's Facilities in the Right-of-Way shall be constructed and maintained in a safe and operational condition.

12.3 The City reserves the right to ensure that US Crossing's Facilities are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist, the City will notify US Crossing in writing of said violation and establish a reasonable time for US Crossing to take the necessary action to correct the violation. If the correction is not made within the established time frame, the City, or its authorized agent, may make the correction. US Crossing shall reimburse the City for all costs incurred by the City in correcting the violation.

Section 13 Franchise Fee.

In consideration of US Crossing providing the capital improvements to the City's Right-of-Way described in the preliminary plans and specification filed with the City Clerk under Clerk's Receiving Number 951, the City agrees not to charge US Crossing any franchise fee other than standard permit and inspection fees, and the franchise application fee paid by US Crossing.

Section 14 Authorized Activities.

The franchise granted herein is solely for the construction, installation, ownership, operation, replacement, repair and maintenance of the Telecommunications System and associated Facilities, as defined herein. This franchise does not authorize US Crossing to provide services of any kind within Shoreline. US Crossing shall obtain a separate franchise for any operations or services other than authorized activities.

Section 15 Indefeasible Rights of Use.

15.1 An Indefeasible Right of Use ("IRU") is an interest in US Crossing's Facilities which gives US Crossing's customer the right to use certain Facilities for the purpose of providing telecommunications; an IRU does not provide the customer with any right to control the Facilities, or any right of physical access to the Facilities to locate, construct, replace, repair or maintain the Facilities, or any right to perform work within the Right-of-Way.

15.2 A lease or grant of an IRU regarding US Crossing's Facilities shall not require that the holder of the lease or IRU obtain its own franchise or pay any fee to the City, PROVIDED THAT, under such lease or grant of an IRU, US Crossing: (i) retains exclusive control over such Telecommunications System and Facilities, (ii) remains responsible for the location, construction, replacement, repair and maintenance of the Telecommunications and Facilities pursuant to the terms and conditions of the franchise granted herein, and (iii) remains responsible for all other obligations imposed by the franchise.

Section 16 Indemnification.

16.1 US Crossing hereby releases and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, and agents from any and all claims, costs, judgments, awards or liability to any person, including claims by US Crossing's own employees to which US Crossing might otherwise be immune under Title 51 RCW, for injury, sickness, or death of any person or damage to property arising from the negligent acts or omissions of US Crossing, its agents, servants, officers or employees in performing activities authorized by this franchise. US Crossing further releases and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, and agents from any and all claims, costs, judgments, awards or liability to any person (including claims by US Crossing's own employees, including those claims to which US Crossing might otherwise have immunity under Title 51 RCW) arising against the City solely by virtue of the City's ownership or control of the right-of-ways or other public properties, by virtue of US Crossing's exercise of the rights granted herein, or by virtue of the City's permitting US Crossing's use of the right-of-way or other public property based upon the inspection or lack of inspection of work performed by US Crossing, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise. This covenant of indemnification shall include, but not be limited by this reference to, claims against the City arising as a result of the negligent acts or omissions of US Crossing, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any right-of-way or other public place in performance of work or services permitted under this franchise. If final judgment is rendered against the City, its elected officials, employees, and agents, or any of them, US Crossing shall satisfy the same pursuant to this Section.

16.2 Inspection or acceptance by the City of any work performed by US Crossing at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation provided that US Crossing consents to such compromise.

16.3 In the event US Crossing refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and US Crossing's refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of US Crossing, then US Crossing shall pay all of the City's costs and expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause, as well as any judgment against the City.

16.4 Should a court of competent jurisdiction determine that this franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of US Crossing and the City, its officers, employees and agents, US Crossing's liability hereunder shall be only to the extent of US Crossing's negligence. It is further specifically and expressly understood that the indemnification provided in Section 16 constitutes US Crossing's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 17 Insurance.

17.1 US Crossing shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to US Crossing, its agents or employees. US Crossing shall provide to the City an insurance certificate naming the City, for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this franchise, and such insurance shall evidence:

17.1.1 Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than $1,000,000 Combined Single Limit per accident for bodily injury and property damage; and

17.1.2 Commercial General Liability insurance policy, written on an occurrence basis with limits no less than $1,000,000 combined single limit per occurrence and $2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include blanket contractual liability and employer's liability.

17.2 Payment of deductible or self-insured retention shall be the sole responsibility of US Crossing.

17.3 The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. US Crossing's insurance shall be primary insurance for the City. Any insurance maintained by the City shall be excess of US Crossing's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.

Section 18 Abandonment of US Crossing's Facilities.

No section of cable or portion of the Facilities laid, installed, or constructed in the Right-of-Way by US Crossing may be abandoned by US Crossing without the express written consent of the City. Any plan for abandonment or removal of US Crossing's Facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work.

Section 19 Restoration after Construction.

19.1 US Crossing shall, after any abandonment approved under Section 18, or any installation, construction, relocation, maintenance, or repair of Facilities within the franchise area, restore the Right-of-Way to at least the condition the same was in immediately prior to any such abandonment, installation, construction, relocation, maintenance or repair pursuant to City standards. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. US Crossing agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

19.2 If it is determined that US Crossing has failed to restore the Right-of-Way in accordance with this Section, the City shall provide US Crossing with written notice including a description of actions the City believes necessary to restore the Right-of-Way. If the Right-of-Way is not restored in accord with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Right-of-Way. US Crossing is responsible for all costs and expenses incurred by the City in restoring the Right-of-Way in accord with this Section. The rights granted to the City under this paragraph shall be in addition to those otherwise provided herein.

19.3 Nothing in this Section shall relieve US Crossing from any obligation to replace disturbed right-of-way with improvements of a higher value as may be required by the plans and specifications referenced in Section 13 hereof.

Section 20 Commencement of Construction.

Initial construction of the Facilities contemplated by this franchise Ordinance shall commence no later than 180 days from the Effective Date of this franchise Ordinance.

Section 21 Bond.

Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this franchise, US Crossing shall furnish a bond executed by US Crossing and a corporate surety authorized to do a surety business in the State of Washington, in a sum to be set and approved by the Director of Public Works as sufficient to ensure performance of US Crossing's obligations under this franchise. The bond shall be conditioned so that US Crossing shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this franchise, and to erect or replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City. US Crossing may meet the obligations of this Section with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, US Crossing shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section.

Section 22 Recourse Against Bonds and Other Security.

So long as the bond is in place, it may be utilized by the City for reimbursement of the City by reason of US Crossing's failure to pay the City for actual costs and expenses incurred by the City to make emergency corrections under Section 11 of this Ordinance, to correct franchise violations not corrected by US Crossing after notice, and to compensate the City for monetary remedies or damages assessed against US Crossing due to default or violations of the requirements of City ordinances.

22.1 In the event US Crossing has been declared to be in default by the City and if US Crossing fails, within thirty (30) days of mailing of the City's default notice, to pay the City any penalties, or monetary amounts, or fails to perform any of the conditions of the franchise granted herein, the City may thereafter obtain from the bond, after a proper claim is made to the surety, an amount sufficient to compensate the City for its damages. Upon such withdrawal from the bond, the City shall notify US Crossing in writing, by First Class Mail, postage prepaid, of the amount withdrawn and date thereof.

22.2 Thirty (30) days after the City's mailing of notice of the bond forfeiture or withdrawal authorized herein, US Crossing shall deposit such further bond, or other security, as the City may require, which is sufficient to meet the requirements of this Ordinance.

22.3 The rights reserved to the City with respect to any bond are in addition to all other rights of the City whether reserved by this Ordinance or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the City may have.

Section 23 Modification.

The City and US Crossing hereby reserve the right to alter, amend or modify the terms and conditions of the franchise granted herein upon written agreement of both parties to such amendment.

Section 24 Remedies to Enforce Compliance.

In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel US Crossing to comply with the terms of this franchise, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a breach or revocation of the franchise.

Section 25 Force Majeure.

The franchise provided herein shall not be revoked due to any violation or breach that occurs without fault of US Crossing or occurs as a result of circumstances beyond the Grantee's reasonable control.

Section 26 City Ordinances and Regulations.

Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate regulations, the location, elevation, and manner of construction and maintenance of any fiber optic cable or other Facilities by US Crossing. US Crossing shall promptly conform to all such regulations, unless compliance would cause US Crossing to violate other requirements of law. Nothing in this Section shall require US Crossing to relocate Facilities installed in compliance with then existing City regulations.

Section 27 Cost of Publication.

The cost of the publication of this Ordinance shall be borne by US Crossing.

Section 28 Acceptance/Liaison.

After the passage and approval of this Ordinance and within thirty (30) days after such approval, the franchise granted herein shall be accepted by US Crossing by its filing with the City Clerk an unconditional written acceptance thereof. US Crossing's written acceptance shall include the identification of an official liaison that will act as the City's contact for all issues regarding this franchise. US Crossing shall notify the City of any change in the identity of its liaison. Failure of US Crossing to so accept this franchise within said period of time shall be deemed a rejection thereof by US Crossing, and the rights and privileges herein granted shall, after the expiration of the thirty (30) day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 29 Survival.

All of the provisions, conditions and requirements of Sections 4, Relocation of Facilities; 8, Excavation And Notice Of Entry; 11, Dangerous Conditions; 16, Indemnification; 18, Abandonment of US Crossing's Facilities; and 19, Restoration After Construction, of this

franchise shall be in addition to any and all other obligations and liabilities US Crossing may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to US Crossing for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of US Crossing and all privileges, as well as all obligations and liabilities of US Crossing shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever US Crossing is named herein.

Section 30 **Severability.**

If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise Ordinance. In the event that any of the provisions of this franchise Ordinance or of the franchise granted herein are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision of this franchise Ordinance or of the franchise granted herein, or may terminate this franchise. US Crossing must accept any revisions or modifications to the franchise prior to the revised franchise becoming effective.

Section 31 **WUTC Tariff Filings, Notice Thereof.**

If US Crossing intends to file, pursuant to Chapter 80.28 RCW, with the Washington Utilities and Transportation Commission (WUTC), or its successor, any tariff affecting the City's rights arising under this franchise US Crossing shall provide the City with fourteen (14) days written notice.

Section 32 **Assignment.**

The franchise granted herein shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale or otherwise, without the written approval of the City. The City's approval shall not be unreasonably withheld or delayed. Any costs associated with the City's review of any transfer proposed by US Crossing shall be reimbursed to the City by the new prospective franchisee, if the City approves the transfer, or by US Crossing if said transfer is not approved by the City.

32.1 Except as otherwise provided herein, US Crossing shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of US Crossing. Such change, transfer, or acquisition of control of US Crossing shall not require the prior approval of the City under this Section, except for a transaction which would result in the transfer of the franchise granted herein to a person or entity not controlling, controlled by, or otherwise under common control with US Crossing. Neither approval nor notification shall be required for mortgaging purposes or if said

transfer or assignment is from US Crossing to another person or entity controlling, controlled by, or otherwise under common control with US Crossing.

32.2 A change in control shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

32.3 A lease or grant of an Indefeasible Right of Use ("IRU") in the Telecommunications System, the associated Facilities, or any portion thereof, to another Person shall not be considered an assignment for purposes of this Section, PROVIDED THAT, under such lease or IRU, US Crossing: (i) retains exclusive control over the Telecommunications System and Facilities, (ii) remains responsible for the location, construction, replacement, repair and maintenance of the Telecommunications System and Facilities pursuant to the terms and conditions of the franchise granted herein, and (iii) remains responsible for all other obligations imposed hereunder.

Section 33 Notice.

Any notice or information required or permitted to be given to the City or to US Crossing under this franchise may be sent to the following addresses unless otherwise specified:

US Crossing
Sherri Cook, Esq.
Vice Pres. US Crossing, Inc.
150 El Camino Drive, Suite 204
Beverly Hills, CA 90212
Phone: (310) 281-4900
Fax: (310) 281-4942

City of Shoreline
Director of Public Works
City of Shoreline
17544 Midvale Ave. NE
Shoreline, WA 98133
Office 206-546-1700
Fax 206-546-2200

Section 34 Alternate Dispute Resolution.

If the City and US Crossing are unable to resolve disputes arising from the terms of the franchise granted herein, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to an alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

Section 35 Entire Agreement.

The franchise granted herein constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

Section 36 Effective Date.

This ordinance shall take effect and be in full force five (5) days after the date of publication and upon acceptance by US Crossing. The City Clerk is hereby directed to publish this ordinance in full.

PASSED BY THE CITY COUNCIL ON _____, 1999.

_____
Mayor Scott Jepsen

ATTEST:

_____
Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

_____
Ian Sievers
City Attorney

Date of Publication: , 1999
Effective Date: , 1999

Attachment C

Capital Improvement Specifications And Diagrams

Referenced in Section 13 of the proposed Franchise

US Crossing

Plans & Specifications

Capital Improvements

In accordance with Section 13 of Shoreline City Ordinance No. 203, and in exchange for the rights provided by that Ordinance, US Crossing agrees to perform the following work on behalf of the City of Shoreline:

1. Install two 2-inch conduits along the same path as US Crossing's installation within the City.
2. Said conduit shall be of the same grade and quality as that utilized by US Crossing for its system within the City.
3. Said conduit shall be installed in the same manner and to the same standard and specifications utilized by US Crossing in constructing its system within the City.
4. Install access vaults at the following approximate locations to allow the City access to the conduit installed on the City's behalf:

Distance from	Cross street to authorized route
500 feet North	N 145th Street
600 feet South	N 155th Street
300 feet North	N 160th Street
250 feet North	N 165th Street
600 feet South	N 175th Street
500 feet South	N 185th Street
400 feet South	N 192nd Street
350 feet South	N 200th Street
400 feet South	N 205th Street

5. All of the vaults will be located in the center turn lane.
6. The top of the vaults will be set below existing grade a minimum of 12-inches to allow adjustments in profile. Access to vaults shall be placed at existing street grade and shall be designed for traffic loads.
7. The City will be shown as the owners of the two 2" conduits and access vaults on the plans and in the ROW permit.
8. US Crossing will complete all necessary documentation requested by the City to establish the City's ownership of the provided facilities.
9. The conduit system installed by US Crossing on the City's behalf shall be completed along with the completion of US Crossing's system within Shoreline which shall be no later then February 28, 2000.
10. Plans and illustrative diagrams are attached. **(Will be attached in original)**

Council Meeting Date: July 26, 1999 **Agenda Item: 7(c)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Approval of $5,000 for Briarcrest Neighborhood Association Mini-Grant Project
DEPARTMENT:	Community/Government Relations
PRESENTED BY:	Ellen Broeske, Neighborhoods Coordinator

EXECUTIVE / COUNCIL SUMMARY

The Briarcrest Neighborhood Association is requesting $5,000 in Mini-Grant funds to build a neighborhood information kiosk to enhance neighborhood communication and increase awareness of the activities of the Briarcrest Neighborhood Association.

The Neighborhood Association Mini-Grant application was submitted in December 1998, prohibiting presentation to your Council before the end of the year. However, 1998 Mini-Grant funds have been held aside for the Neighborhood Association since the application was in process. Additional time to finalize the project was required to resolve design and construction details, ensure the project's compatibility with sidewalk plans for 25th Avenue NE, and obtain a variance and building permit from Development Services Group. The Neighborhood Association, therefore, requests approval of 1998 funds for this project.

Mini-Grant funds in the amount of $5,000 would be used to build and install a neighborhood information kiosk. The kiosk will be built by neighborhood volunteers and installed at the east entrance to Hamlin Park just off of 25th Avenue Northeast. A neighborhood volunteer with a degree in environmental design and experience in construction will supervise the building and installation of the kiosk. The neighborhood will obtain insurance coverage to address potential liability issues. The City's Parks, Recreation and Cultural Services Director and Parks Supervisor have reviewed and approved preliminary plans for the kiosk design and location.

The kiosk will be constructed of cedar and treated timber and will measure 7' 6" high and 8' across. It will feature an illuminated bulletin board with lockable Plexiglas doors and plastic flyer pockets below, a cedar shingle roof and a bench for seating. (See Attachment C).

Curbing will be added around the kiosk to protect kiosk viewers from vehicles entering and exiting the Hamlin Park parking lot. Public Works staff are working with the

Neighborhood match in the amount of $5,465 has been secured for this project. Volunteers will design, construct, install and maintain the kiosk. Volunteers will contribute more than 500 hours to achieve this match.

RECOMMENDATION

Staff recommends authorization of $5,000 in 1998 Mini-Grant funds for the Briarcrest Neighborhood Association to purchase materials and construct a neighborhood information kiosk .

Approved By: City Manager LB City Attorney N/A

BACKGROUND / ANALYSIS

Resolution No. 54 established the Neighborhoods Mini-Grant Program, with the process and administration of funds to be handled by the Office of Neighborhoods. The allocation of total funds available is determined from year to year by appropriation of the City Council. All such grants to individual neighborhood associations are governed by rules approved by the City Council on November 23, 1998. Grants must be approved by your Council prior to their implementation.

Mini-Grants provide equal grants of up to $5,000 to each of the active, organized, qualifying neighborhood associations in the City of Shoreline. Neighborhood associations are required to match Mini-Grant funds. A match may be generated from co-sponsoring groups, businesses, organizations, schools, media, in-kind donations and/or "sweat equity."

Current Proposal:

The Briarcrest Neighborhood Association proposes to improve neighborhood communications with the creation of a neighborhood information kiosk at Hamlin Park. The Briarcrest Neighborhood was incorporated into the City of Shoreline in 1997 and formed the neighborhood association shortly thereafter. This proposal represents Briarcrest's first Neighborhood Mini-Grant project.

The neighborhood kiosk Mini-Grant proposal was submitted late in 1998, prohibiting presentation to your Council before the end of the year. However, 1998 Mini-Grant funds have been held aside for the neighborhood since the application was in process. Finalizing the project has required additional time for a variety of reasons: 1) a variance was needed to build the kiosk within thirty feet of the right-of-way because the proposed location was within a residential zone; 2) Design modifications to the kiosk were required in order to provide those viewing the kiosk protection from vehicles; and 3) Capital Improvement Plans to construct sidewalk along 25th NE, adjacent to the kiosk site, needed to provide access to the kiosk.

The information kiosk will be located at the entrance to the parking lot at the East Side of Hamlin Park. The kiosk will be constructed of cedar and treated timber, feature a cedar shingle roof, and measure 7' 6" high and 8' across. It will be anchored in concrete, and concrete brick pavers will surround the kiosk in an area of approximately 10' x 10'. It will feature an illuminated bulletin board contained within a lockable, vandal-resistant Plexiglas case. (See Attachment A) Information about the Briarcrest Neighborhood Association and other public notices will be posted on the board and be maintained regularly by Neighborhood Association members. Plastic pockets beneath the bulletin board will be available for flyers. The kiosk will also feature a bench on the north side. Volunteers designed the kiosk and will also construct and install it. Over 500 hours of volunteer labor will serve as match for Neighborhood Mini-Grant funds.

Lighting for the kiosk will be provided through the use of an existing circuit at a nearby pole mounted light. Cost to light the bulletin board is estimated to be about .025 per KWH with an annual cost to the City of Shoreline of approximately $3.50. Volunteers

will coordinate with park maintenance to determine the circuit breaker location and voltage before connection.

Neighborhood volunteer Stan Terry, in close cooperation with Shoreline staff from the City's Parks, Recreation and Cultural Services Department, will oversee the project. Mr. Terry has a degree in Environmental Design from the College of Architecture at the University of Washington. He has studied building methods and materials and construction drawing and has extensive experience in home remodel as a hobby. He will consult with the City's Parks Superintendent before beginning construction and throughout the project.

Because of potential liability issues related to this project, the Neighborhood Association will be required to obtain and provide proof of general commercial liability insurance with coverage before beginning work. Briarcrest Neighborhood has determined that such insurance is available from a local insurance broker at reasonable cost and has included insurance costs in their project expenses.

PROJECT BUDGET		PROJECT MATCH	
Materials for kiosk	$3,107		
Professional sawcutting	400	Park Clearing (160.5 x $10)	1605
Insurance	500	Kiosk design/cost estimates (16 x $80)	1280
Cement concrete curb &gutter 75 LFx $8.00/LF	600	Kiosk construction/installation (258 x $10)	2580
Contingency	393		
TOTAL BUDGET	$5,000	TOTAL MATCH	$5,465

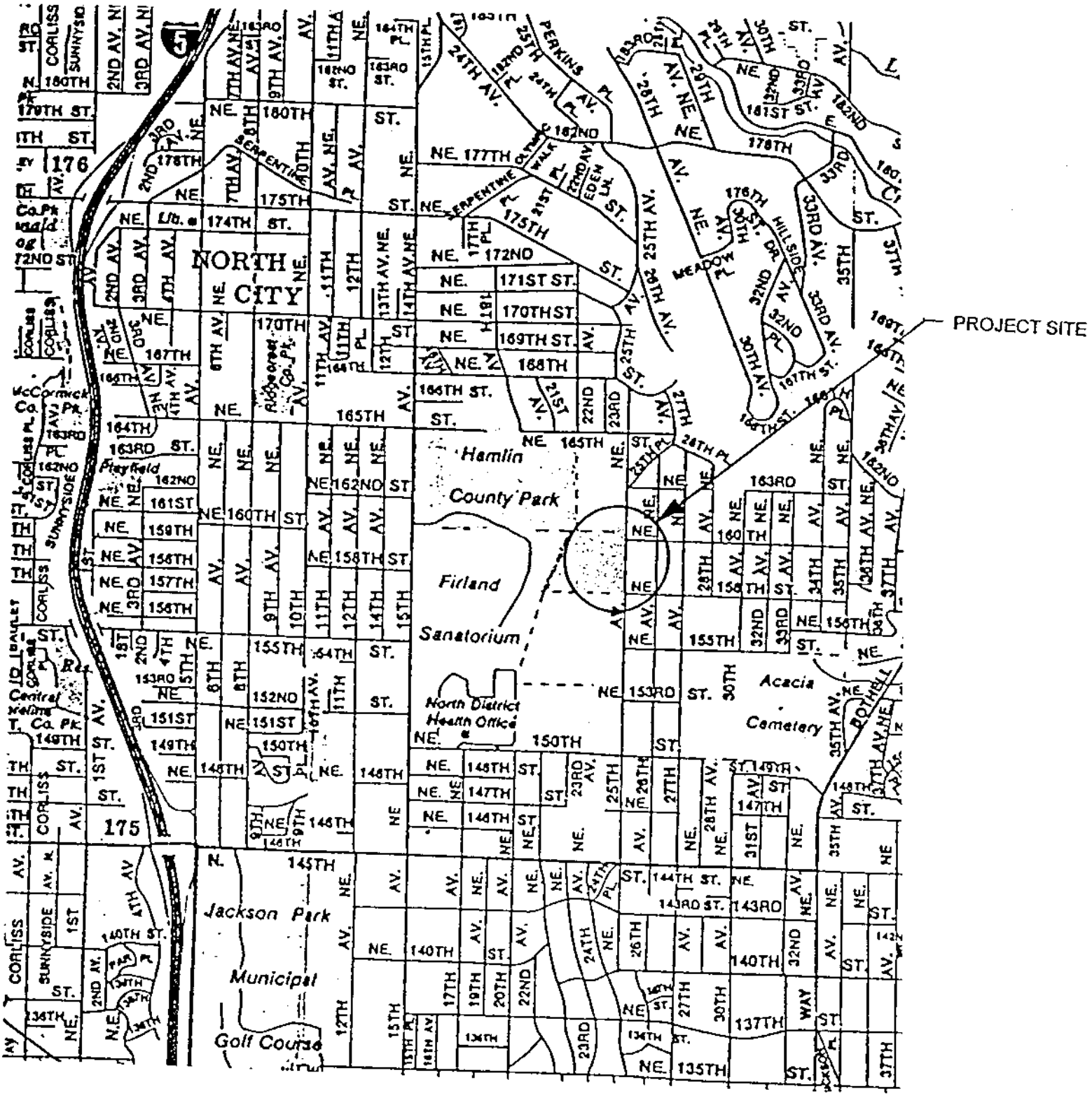
RECOMMENDATION

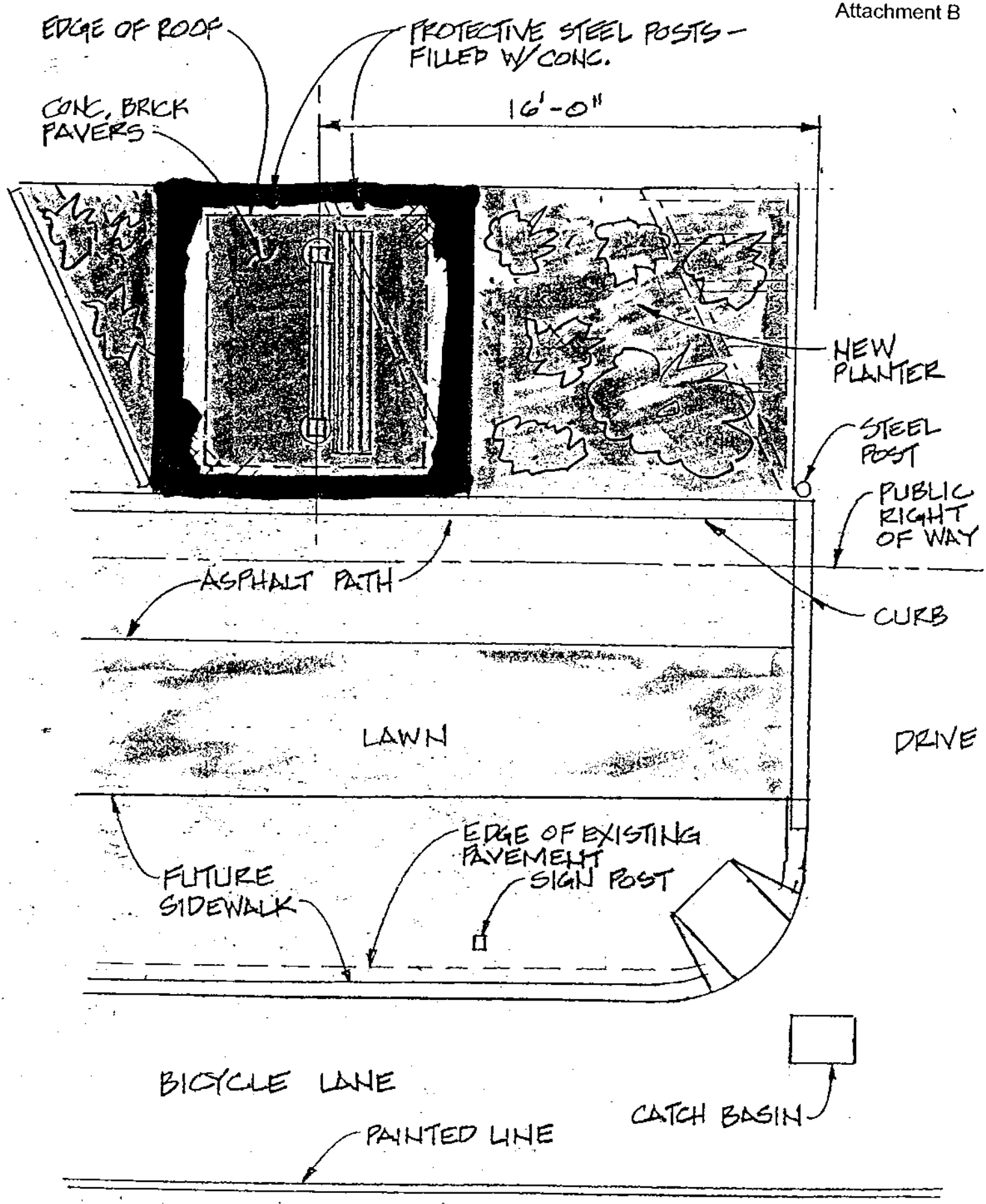
Staff recommends authorization of $5,000 in 1998 Mini-Grant funds for the Briarcrest Neighborhood Association to purchase materials and construct a neighborhood information kiosk .

ATTACHMENTS

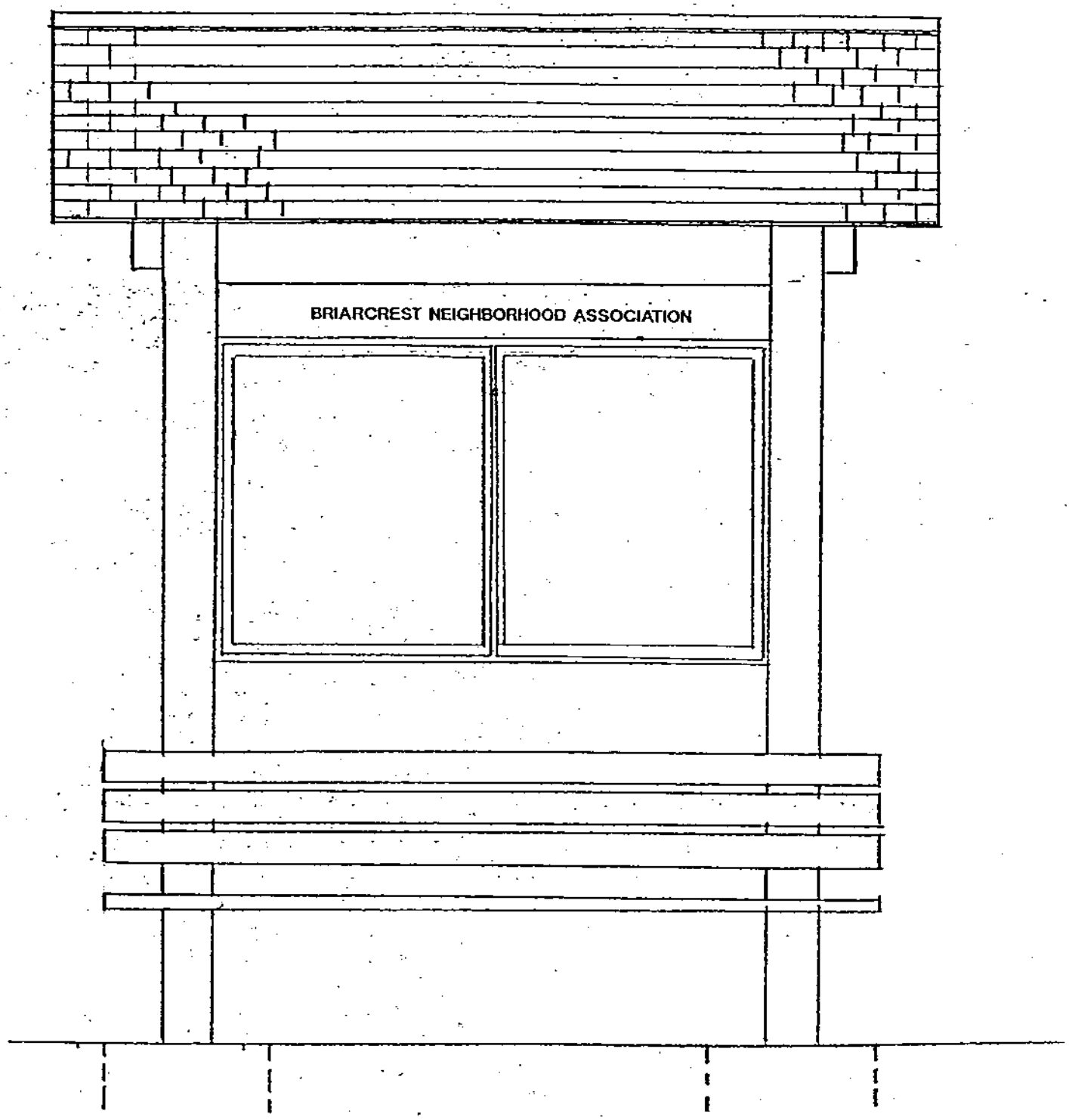
Attachment A: Project Site
Attachment B: Plan View
Attachment C: Kiosk design – north, east and south elevations

Attachment A

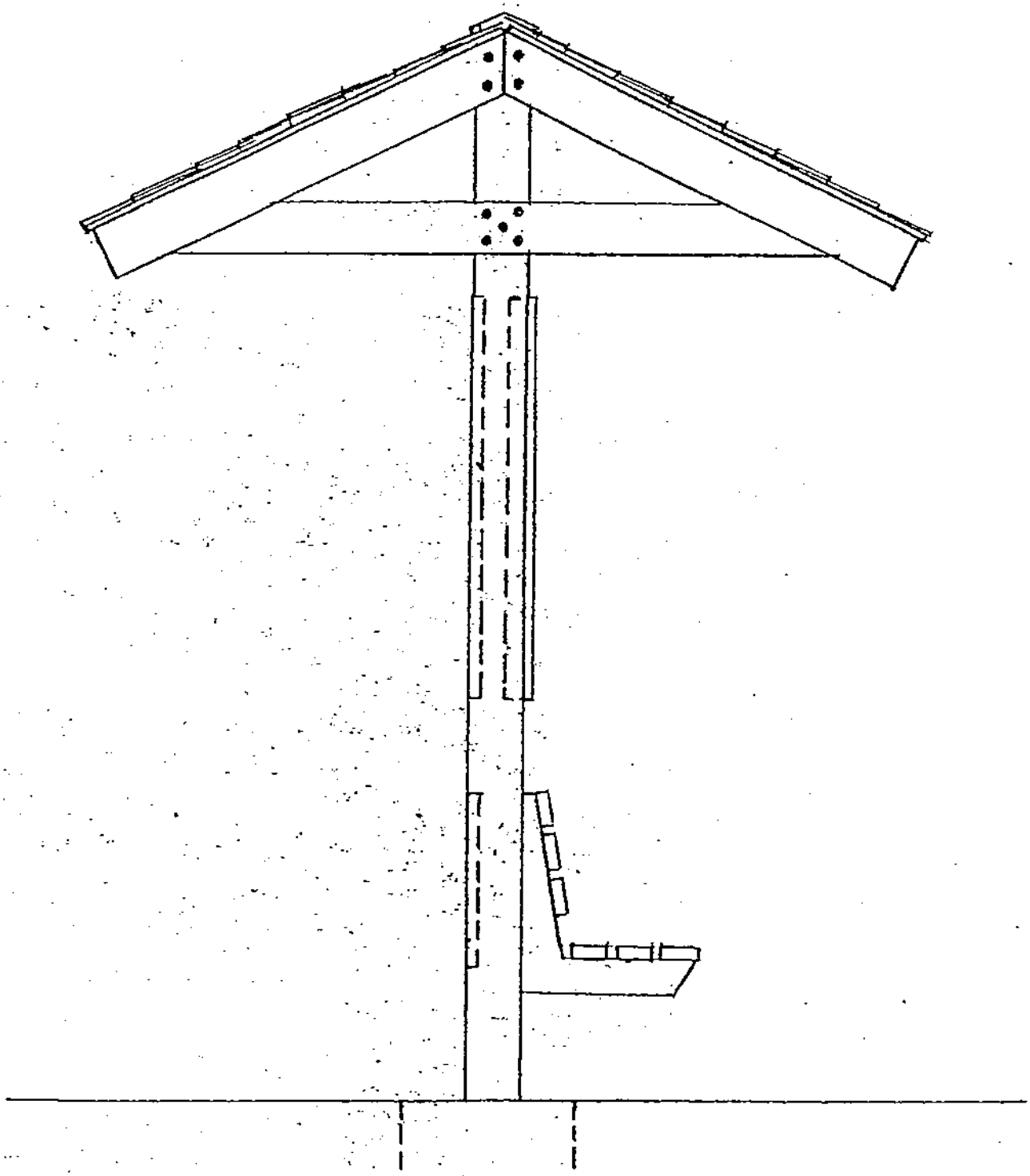



EDGE OF ROOF
PROTECTIVE STEEL POSTS - FILLED W/ CONC.
CONC. BRICK PAVERS
16'-0"
NEW PLANTER
STEEL POST
PUBLIC RIGHT OF WAY
ASPHALT PATH
CURB
LAWN
DRIVE
FUTURE SIDEWALK
EDGE OF EXISTING PAVEMENT
SIGN POST
BICYCLE LANE
CATCH BASIN
PAINTED LINE

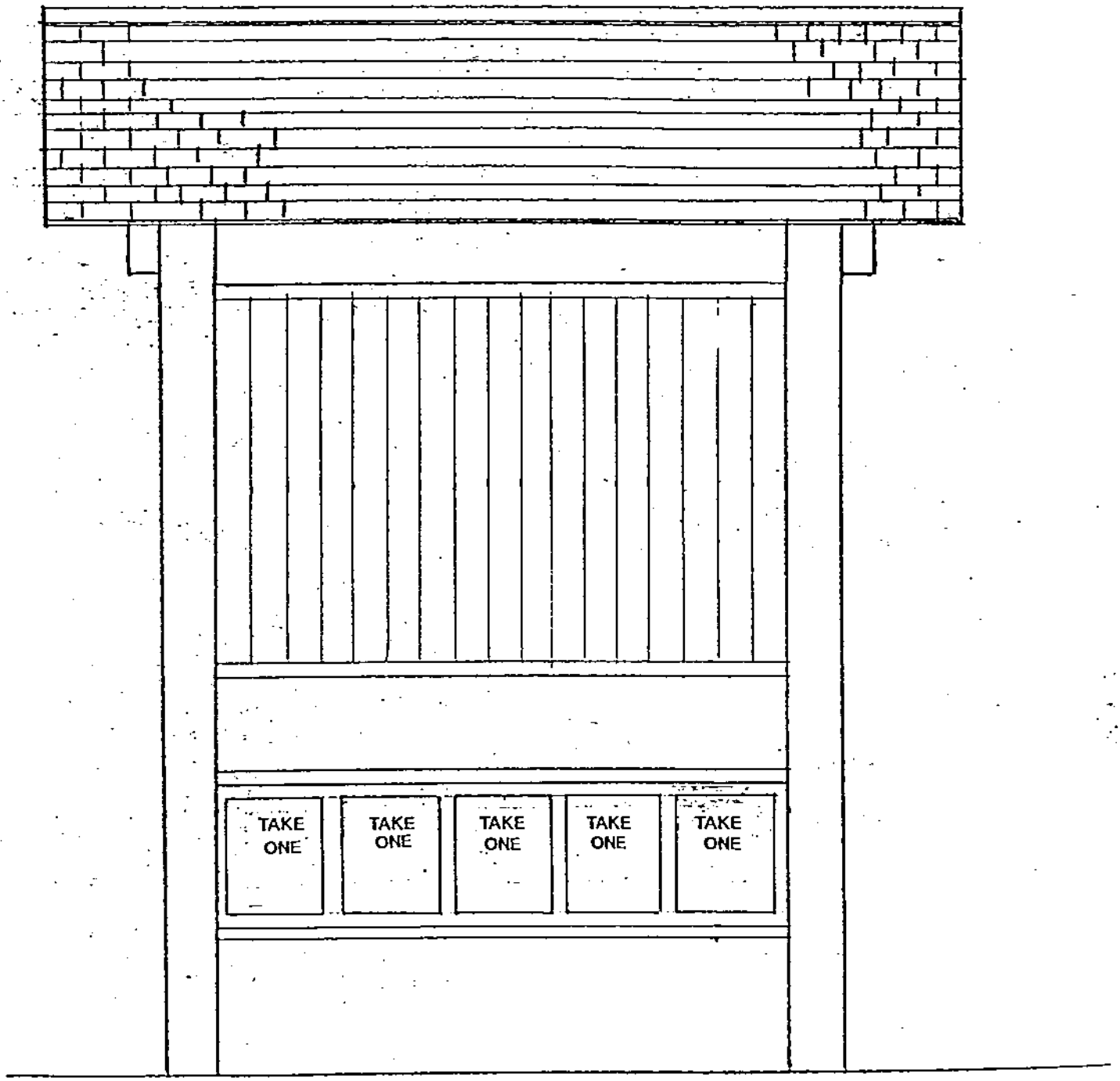
PLAN VIEW



NORTH ELEVATION



EAST ELEVATION



SOUTH ELEVATION

Council Meeting Date: July 26, 1999 **Agenda Item: 9(a)**

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	A Public Hearing to Consider Renewal of the Moratorium on Gambling Establishments and Enact Ordinance No. 200
DEPARTMENT:	City Attorney/Planning and Development Services
PRESENTED BY:	Ian Sievers, City Attorney; Lenora Blauman, Senior Planner LNB

EXECUTIVE / COUNCIL SUMMARY

At your February 8, 1999, regular meeting, Council adopted Ordinance No. 190, establishing a moratorium on new or expanded gambling establishments in Shoreline. At your March 22, 1999 regular meeting, your Council adopted Ordinance No. 193, amending Ordinance No. 190 to provide clarification concerning those gambling establishments which would also be prohibited under the moratorium.

At this time, staff is recommending that your Council conduct a public hearing and extend this moratorium, by adopting Ordinance No. 200 (Exhibit A). Ordinance 200 would provide for a combined moratorium on the filing of applications for Business Licenses and Building Permits for the expansion of existing and/or addition of new food or drink establishments conducting social card games, punch boards, or pull tabs.

The City Attorney reports that the proposed new ordinance (Ordinance 200) clarifies the moratorium with respect to two areas of enforcement of gambling expansion. Ordinance 193 prohibited intensification of gaming activities as well as expansion. Ordinance 200 removes the term "intensification" since its prohibition against changes in the manner of operation was not quantified. Intensification was a subjective criterion when applied to the three forms of gaming.

The City Attorney reports that the proposed new ordinance retains the prohibition against expansion of gaming. It defines "expansion" to include an increase in gross square footage of the structure that is devoted to gaming, or in the case of card rooms, an increase of the number of tables, as of March 22, 1999 (the effective date of Ordinance 193).

In the moratorium, the Council may wish to provide special consideration for those establishments seeking enhanced card room gambling, which had *applications in process* before the Gambling Commission on March 22, 1999. The purpose of this consideration would be to allow an equitable consideration for applications in review by the Gambling Commission. This vesting rule would address the considerable investment required of an establishment with an application before the Gambling Commission. This approach follows the Washington State rule for other land use actions which allows vesting upon application.

Alternatively, for the duration of the moratorium, Council may prefer to restrict gaming tables only to those tables *approved* by the Gambling Commission as of March 22, 1999. Allowing consideration of expansion for establishments with applications before the Gambling Commission on March 22nd would affect two establishments, Goldie's and Hideaway Tavern. If

the Commission were to grant a maximum table increase allowed under the law, a total maximum of 20 new tables could be provided between these two establishments. Allowing consideration of approved applications only would prevent expansion by Goldie's and the Hideaway, beyond those legally operating tables in place in the City on March 22nd.

Ordinances providing for each of these alternative approaches are provided herein as Exhibit A.1 (Ordinance 200) and Exhibit A.2 (Ordinance 200).

Since the initial adoption of the moratorium (Ordinance No. 190 and its companion Ordinance No. 193), Council has undertaken substantial review of impacts of gaming establishments and gambling activities, related to Legal Issues; Land Use Authorities (Comprehensive Plan, Zoning, Development Standards); and Economic/Social Issues. Future review processes include a separate and distinct Public Hearing on Options to Establish Direction for Policies and Regulations for the Gaming Industry. That separate public hearing (also scheduled on July 26,1999) will provide an opportunity for Shoreline's community members to speak to Council on their interests and opinions with respect to guiding the gaming industry in Shoreline.

Following that Public Hearing, Council may select a preferred policy option for the future of the gaming industry in Shoreline or Council may elect to continue the review process until sufficient information has been gathered to select a preferred policy option. When Council has selected a preferred policy option, staff will proceed to prepare appropriate regulations for gaming. Those regulations will then undergo review by the Planning Commission and will be provided to Council for adoption.

Pending Council's selection of a preferred policy option and the adoption of implementing regulations, staff recommends a 180 day extension (to January 26, 2000) of the moratorium on the filing of applications for Business Licenses and Building Permits for the expansion of existing and/or addition of new food or drink establishments conducting social card games, punch boards, or pull tabs. This moratorium is necessary to prohibit the expansion of the gaming industry in Shoreline until Council can complete an assessment of the secondary effects of gaming operations in our community and can adopt regulatory authorities for the gaming industry in Shoreline. This moratorium would not prohibit existing establishments from submitting applications to: (1) make improvements (e.g., structural improvements, remodeling or redecoration) that do not expand gaming; and (2) change from gaming to other uses permitted in the underlying zone. If appropriate, staff would draft regulations address identified effects.

The findings contained in this report, and the attached ordinance, demonstrate that an emergency exists and that, unless the moratorium is provided, gaming establishments with potentially harmful secondary effects may seek to gain licensing or building permit approval before constitutionally sufficient permanent Comprehensive Plan guidelines and regulatory ordinances are enacted. The moratorium is necessary for the immediate preservation of public peace, health, or safety, and for the support of City government.

RECOMMENDATION

Staff recommends that the City Council hold a public hearing and adopt Ordinance No. 200, Amending Ordinance Nos. 190 and 193 Renewing a Moratorium on the Expansion of Existing or the Addition of New Food Or Drink Establishments Conducting Social Card Games, Punch Boards, or Pull Tabs. The 180-day moratorium would be effective until January 26, 2000.

Approved By: City Manager LB City Attorney

BACKGROUND / ANALYSIS

At incorporation of the City of Shoreline, your Council adopted King County Ordinances to guide growth in our community. The purpose of adopting King County standards was to regulate new development, pending the adoption of Shoreline's Comprehensive Plan and the adoption of local development regulations to support the Plan. King County regulations, as adopted by Shoreline, permit a variety of gaming establishments in the City.

At this time, Shoreline has 17 existing gaming establishments (i.e., food and drink establishments conducting social card games, punch boards, or pull tabs). These establishments include:

Establishment	Location	Current Games
Cascade Booster Club	16325 5th Avenue NE	Bingo, Pull tabs
Parker's	17001 Aurora Avenue	*Mini – casino
China Clipper	20221 Aurora Avenue	Pull tabs
Cliffs Tavern	910 N 145th Street	+Pull tabs,Cardroom
Drift on INN	16708 Aurora Avenue	*Mini – casino
Eagles, FOE 4122	17724 15th Avenue NE	Pull tabs
Echo Lake Tavern	19508 Aurora Avenue	Pull tabs
Gateway Inn	18380 Midvale N	Pull tabs
Goldies	15030 Aurora Ave	*Mini-casino
Hideaway Tavern	14525 Aurora Avenue	+Pull tabs,Cardroom
Highland Skating Bingo	18005 Aurora Avenue	Bingo, Pull tabs
Italo Bella	14622 15th Avenue NE	+Pull tabs,Cardroom
North City Tavern	17554 15th Avenue NE	Pull tabs
Palace of China	14810 15th Avenue NE	Pull tabs
Shays	15744 Aurora Avenue	Pull tabs
Sparkey's Bar & Grill	20109 Aurora Avenue	Pull tabs; 1 card table
Wild Horse Bar	2001 NW 195th Street	Pull tabs
* Establishment has mini casino license which includes card rooms, pull tabs, and may include other amusement games + Establishment does not have mini-casino license		

In the region and in the City, there appears to be a trend toward the addition of new gaming operations and/or the expansion of existing gaming operations. For example, card rooms, which have been historically limited to 5 game tables, are now permitted to become mini-casinos with 15 tables. Other changes in gambling regulations have encouraged expansion as well. Specifically, "house bank" games are now permitted by law. In this situation, the business operates its own games (e.g., black jack, pai gow poker, Caribbean stud) rather than contracting with outside vendors to conduct games; this allows the business to realize greater profits. Additionally, the maximum bet per game has been increased from $25.00 to $100.00. This increase also provides opportunities for greater profits, which encourages expansion of operations. The Drift On Inn and Parker's have recently received permission to allow increased betting limits.

The City is just beginning to create regulations to implement the components of the Comprehensive Plan. Therefore, your Council has not yet been provided with regulatory standards (e.g., permitted uses by zones, locational criteria, design standards) for gaming establishments. Shoreline is in a similar position to several other local jurisdictions that also are beginning to contemplate options for allowing and regulating gaming operations. Some

jurisdictions have instituted moratoria on new gaming establishments in order to undertake studies of these businesses. Other jurisdictions have, in fact, prohibited gaming establishments (e.g., Burien, Enumclaw, Kent, Kirkland, Maple Valley, Normandy Park, Puyallup, Redmond, Seattle). Auburn has prohibited new gaming establishments, but permits existing establishments to remain. Renton has established restrictions on locations of gaming establishments.

The City Attorney reports that the proposed new ordinance (Ordinance 200) clarifies the moratorium with respect to two areas of enforcement of gambling expansion. Ordinance 193 prohibited intensification of gaming activities as well as expansion. Ordinance 200 removes the term "intensification" since its prohibition against changes in the manner of operation was not quantified. Intensification was a subjective criterion when applied to the three forms of gaming.

The City Attorney reports that the proposed new ordinance retains the prohibition against expansion of gaming. It defines "expansion" to include an increase in gross square footage of the structure that is devoted to gaming, or in the case of card rooms, an increase of the number of tables beyond those contained in an application before the Gambling Commission on March 22, 1999, the effective date of Ordinance 193.

In the moratorium, the Council may wish to provide special consideration for those establishments which had *applications in process* before the Gambling Commission on March 22, 1999 (Exhibit A.1 – Ordinance 200). Allowing consideration of expansion for establishments with applications before the Gambling Commission on March 22nd would affect two establishments, Goldie's and Hideaway Tavern. If the Commission were to grant a maximum table increase allowed under the law, a total maximum of 20 new tables could be provided between these two establishments.

The purpose of this consideration, during the moratorium, would be to allow an equitable consideration for vested applications in review by the Gambling Commission. This consideration would address the substantial investment required of an establishment with an application before the Gambling Commission, needed to receive the Commission's approval for participation in the pilot program for enhanced card rooms. These costs include surveillance cameras, monitors, hiring and training of additional staff, and specialized remodeling for a counting room, cashiers' cage, and monitoring room. This approach follows the Washington rule for other land use actions which allows vesting upon application.

Alternatively, for the duration of the moratorium, Council may prefer to restrict consideration only to establishments which had *approved applications* by the Gambling Commission as of March 22, 1999. (Exhibit A.2 – Ordinance 200). Allowing consideration of approved applications only would prevent expansion by Goldie's and the Hideaway, beyond those legally operating tables in place in the City on March 22nd.

The moratorium on expansion of gaming (including or excluding applications in process before the Gambling Commission) would be consistent with your Council's continuing consideration of gaming issues and options for regulating gaming operations. The purposes of your Council's consideration of gaming issues are to determine: (1) whether gaming establishments are consistent with the Comprehensive Plan, (2) whether there are secondary impacts from gaming establishments, and/or (3) whether it is appropriate/necessary to develop specific standards to limit any identified impacts from these establishments.

There are several options for policies to guide gaming operations in Shoreline – ranging from encouraging these uses, to allowing these uses with conditions, to prohibiting gaming uses.

Additional time will be needed to complete your review, to select a preferred policy option, and, if necessary, to create suitable regulations for gaming establishments in the City of Shoreline.

In order to provide Council with sufficient opportunity to complete a review of the secondary effects of gaming operations in Shoreline, and, to create policies and regulations to address identified effects, staff believes that it is appropriate to extend the moratorium for a 180-day period, to January 26, 2000. With a moratorium in place, Shoreline will have an opportunity to complete its learning about findings and approaches of communities within the region, and may elect to participate with other communities in development of regional standards. This approach is consistent with the approach being used by other jurisdictions.

This moratorium would not prohibit existing establishments from submitting applications to: (1) make improvements (e.g., structural improvements, remodeling or redecoration) that do not expand the gaming establishment; and (2) change from gaming establishments to other uses permitted in the underlying zone.

The findings contained in this report, and the attached Ordinance 200, demonstrate that an emergency exists and that, unless the moratorium is provided, gaming establishments with potentially harmful secondary effects may seek to gain licensing or building permit approval before constitutionally sufficient permanent Comprehensive Plan guidelines and regulatory ordinances are enacted. The moratorium is necessary for the immediate preservation of public peace, health, or safety, and for the support of City government.

State law authorizes cities to adopt moratoriums on land use activities in order to determine the effects of a particular type of land use. The moratorium is permitted by RCW 35A.63.220 and RCW 36.70A.390. In accordance with state law (RCW 35A.63.220), City Council is required to conduct a public hearing on this moratorium for the adoption of the moratorium. The July 26th hearing on the moratorium will constitute the required public hearing.

RECOMMENDATION

Staff recommends that the City Council hold a public hearing and adopt Ordinance No. 200, Amending Ordinance Nos. 190 and 193 Renewing a Moratorium on the Expansion of Existing or the Addition of New Food Or Drink Establishments Conducting Social Card Games, Punch Boards, or Pull Tabs. The 180-day moratorium would be effective until January 26, 2000.

ATTACHMENTS

Exhibit A.1: Ordinance No. 200, Amending Ordinance Nos. 190 and 193 Renewing a Moratorium on the Expansion of Existing or the Addition of New Food Or Drink Establishments Conducting Social Card Games, Punch Boards, or Pull Tabs.
(Regulates gaming tables pending before the Gambling Commission as of March 22, 1999.)

Exhibit A.2: Ordinance No. 200, Amending Ordinance Nos. 190 and 193 Renewing a Moratorium on the Expansion of Existing or the Addition of New Food Or Drink Establishments Conducting Social Card Games, Punch Boards, or Pull Tabs.
(Regulates gaming tables approved by the Gambling Commission as of March 22, 1999.)

ORDINANCE NO. 200

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING ORDINANCE NOS. 190 AND 193 ESTABLISHING A MORATORIUM ON THE FILING OF APPLICATIONS FOR BUSINESS LICENSES AND BUILDING PERMITS FOR THE EXPANSION OF EXISTING OR THE ADDITION OF NEW FOOD OR DRINK ESTABLISHMENTS CONDUCTING SOCIAL CARD GAMES, PUNCH BOARDS, OR PULL TABS, FOR THE PURPOSE OF CLARIFYING LAND USE ACTIVITIES SUBJECT TO THE MORATORIUM, RENEWING THE MORATORIUM, AND DECLARING AN EMERGENCY

WHEREAS, on November 23, 1998 the City Council enacted Shoreline's first Comprehensive Plan; and

WHEREAS, the City is currently in the process of revising its land use regulations to support the Comprehensive Plan adopted on November 23, 1998; and

WHEREAS, as part of this process, the City is evaluating whether it will permit gambling within the City limits; and

WHEREAS, the State Legislature and State Gambling Commission have recently expanded the ability of gambling licensees to conduct social card games as a commercial stimulant for the licensee's business; and

WHEREAS, the City Council is concerned about the proliferation of gambling establishments and the impacts they may have upon the community; and

WHEREAS, the City's current zoning regulations do not address gambling establishments in a comprehensive fashion and may allow such establishments to be located in areas where the impacts associated with gambling may be detrimental to the community; and

WHEREAS, RCW 35A.63.220 authorizes cities to enact moratoriums on land use matters to preserve the status quo while new plans or regulations are considered and prepared; and

WHEREAS, the City Council enacted Ordinance No. 190 as amended by Ordinance No. 193 establishing a moratorium on the authorizing of new food and drink businesses and/or the expansion of existing food and drink businesses conducting social card games, punch boards, or pull tabs to preserve the status quo and to allow time to consider whether additional land use regulations may be necessary or appropriate; and

WHEREAS, the City Council wishes to clarify Ordinance Nos. 190 and 193 to address land use activities within the City of Shoreline pending the consideration or enactment of new land use regulations to implement the City's Comprehensive Plan, and not to infringe upon the statutory authority of the State Gambling Commission; and

WHEREAS, absent a declaration of a moratorium, property owners could obtain vested rights to develop their property contrary to the City's planning process; and

WHEREAS, the Shoreline City Council held a public hearing on this moratorium renewal ordinance on July 26, 1999; and

WHEREAS, an emergency is declared to exist in order to protect the public health, safety and welfare;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The "WHEREAS" clauses above shall constitute findings of fact and are incorporated by reference as if fully set forth herein.

Section 2. Ordinance Nos. 190 and 193 Amended.

Section 2 of Ordinance No. 190 as amended by Ordinance 193 is further amended to read as follows:

> A. A moratorium is hereby established upon the filing of applications for business licenses, building permits, or any other permit or approvals to expand existing or establish new food and drink establishments conducting social card games, punch boards, or pull tabs. No such application shall be accepted during the effective period of this moratorium. Land use applications which were legally vested as of the effective date of Ordinance No. 190 shall continue to be processed as provided in the Shoreline Municipal Code and according to the land use regulations in effect on the date of vesting.
>
> B. No existing food and drink establishment which does not already operate or conduct social card games, punch boards, or pull tabs may begin operating or conducting the same, whether or not building permits or business licenses are required.
>
> C. Existing establishments, or properties vested for building permits for gaming facilities, shall be regulated as nonconforming uses under SMC 18.32.010-.080. However, such establishments may not expand gambling activity during the effective period of this moratorium.
>
> D. As used in subsections A. and C., "expand" means to increase the gross square footage of the structure(s) licensed for gambling activities or to increase the number of gaming tables over the number of tables approved by the Washington State Gambling Commission as of March 22, 1999.

Section 3. Renewal. The Moratorium established by Ordinance No. 190 as amended is hereby renewed and shall remain in effect until January 26, 2000.

Section 4. Effective Date. This Ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, and welfare, shall take effect and be in full force immediately upon its adoption.

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

PASSED BY THE CITY COUNCIL ON July 26, 1999.

_____
Mayor Scott Jepsen

ATTEST:

_____
Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

_____
Ian R. Sievers
City Attorney

Date of Publication: 1999
Effective Date: 1999

ORDINANCE NO. 200

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING ORDINANCE NOS. 190 AND 193 ESTABLISHING A MORATORIUM ON THE FILING OF APPLICATIONS FOR BUSINESS LICENSES AND BUILDING PERMITS FOR THE EXPANSION OF EXISTING OR THE ADDITION OF NEW FOOD OR DRINK ESTABLISHMENTS CONDUCTING SOCIAL CARD GAMES, PUNCH BOARDS, OR PULL TABS, FOR THE PURPOSE OF CLARIFYING LAND USE ACTIVITIES SUBJECT TO THE MORATORIUM, RENEWING THE MORATORIUM, AND DECLARING AN EMERGENCY

WHEREAS, on November 23, 1998 the City Council enacted Shoreline's first Comprehensive Plan; and

WHEREAS, the City is currently in the process of revising its land use regulations to support the Comprehensive Plan adopted on November 23, 1998; and

WHEREAS, as part of this process, the City is evaluating whether it will permit gambling within the City limits; and

WHEREAS, the State Legislature and State Gambling Commission have recently expanded the ability of gambling licensees to conduct social card games as a commercial stimulant for the licensee's business; and

WHEREAS, the City Council is concerned about the proliferation of gambling establishments and the impacts they may have upon the community; and

WHEREAS, the City's current zoning regulations do not address gambling establishments in a comprehensive fashion and may allow such establishments to be located in areas where the impacts associated with gambling may be detrimental to the community; and

WHEREAS, RCW 35A.63.220 authorizes cities to enact moratoriums on land use matters to preserve the status quo while new plans or regulations are considered and prepared; and

WHEREAS, the City Council enacted Ordinance No. 190 as amended by Ordinance No. 193 establishing a moratorium on the authorizing of new food and drink businesses and/or the expansion of existing food and drink businesses conducting social card games, punch boards, or pull tabs to preserve the status quo and to allow time to consider whether additional land use regulations may be necessary or appropriate; and

WHEREAS, the City Council wishes to clarify Ordinance Nos. 190 and 193 to address land use activities within the City of Shoreline pending the consideration or enactment of new land use regulations to implement the City's Comprehensive Plan, and not to infringe upon the statutory authority of the State Gambling Commission; and

WHEREAS, absent a declaration of a moratorium, property owners could obtain vested rights to develop their property contrary to the City's planning process; and

WHEREAS, the Shoreline City Council held a public hearing on this moratorium renewal ordinance on July 26, 1999; and

WHEREAS, an emergency is declared to exist in order to protect the public health, safety and welfare;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The "WHEREAS" clauses above shall constitute findings of fact and are incorporated by reference as if fully set forth herein.

Section 2. Ordinance Nos. 190 and 193 Amended.

Section 2 of Ordinance No. 190 as amended by Ordinance 193 is further amended to read as follows:

> A. A moratorium is hereby established upon the filing of applications for business licenses, building permits, or any other permit or approvals to expand existing or establish new food and drink establishments conducting social card games, punch boards, or pull tabs. No such application shall be accepted during the effective period of this moratorium. Land use applications which were legally vested as of the effective date of Ordinance No. 190 shall continue to be processed as provided in the Shoreline Municipal Code and according to the land use regulations in effect on the date of vesting.
>
> B. No existing food and drink establishment which does not already operate or conduct social card games, punch boards, or pull tabs may begin operating or conducting the same, whether or not building permits or business licenses are required.
>
> C. Existing establishments, or properties vested for building permits for gaming facilities, shall be regulated as nonconforming uses under SMC 18.32.010-.080. However, such establishments may not expand gambling activity during the effective period of this moratorium.
>
> D. As used in subsections A. and C., "expand" means to increase the gross square footage of the structure(s) licensed for gambling activities or to increase the number of gaming tables over the number of tables for which application was pending before the Washington State Gambling Commission as of March 22, 1999.

Section 3. Renewal. The Moratorium established by Ordinance No. 190 as amended is hereby renewed and shall remain in effect until January 26, 2000.

Section 4. Effective Date. This Ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, and welfare, shall take effect and be in full force immediately upon its adoption.

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

PASSED BY THE CITY COUNCIL ON July 26, 1999.

_____
Mayor Scott Jepsen

ATTEST:

_____
Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

_____
Ian R. Sievers
City Attorney

Date of Publication: 1999
Effective Date: 1999

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	A Public Hearing to Consider Policy Guidelines for Regulation of Food and Drink Businesses Conducting Social Card Games, Punch Boards, or Pull Tabs in the City of Shoreline
DEPARTMENT:	City Attorney/Planning and Development Services
PRESENTED BY:	Ian Sievers, City Attorney; Bruce Disend, Special Counsel; Lenora Blauman, Senior Planner

EXECUTIVE SUMMARY:

At the June 21, 1999, Workshop Meeting, your Council considered a Staff Report which provided an analysis of impacts of the gaming industry. The Report included discussion concerning: Legal Issues; Land Use Authorities (Comprehensive Plan, Zoning, Development Standards), and Economic/Social Issues. That Staff Report also introduced five options for the future of the gaming industry in Shoreline, as follows:

- **Option 1: Allow gaming establishments.** This option maintains the status quo. It allows gaming establishments as a principally permitted use in all commercial districts; minimum development standards are required; incentives are not provided.
- **Option 2: Allow and Encourage gaming establishments.** This option would allow and encourage/provide incentives for gaming establishments in all commercial districts. Minimum development standards would be required.
- **Option 3: Allow gaming establishments with conditions and restrictions.** This option would limit gaming establishments to selected zones/areas of the City (e.g., regional business, gaming district). This option requires adoption of special development standards to address impacts to the site and to the public realm (e.g., architectural character, setbacks, access/parking, landscaping, lighting, signage).
- **Option 4: Permit existing gaming establishments; Prohibit new gaming establishments.** This option permits existing gaming establishments to continue operations; new gaming establishments would be prohibited. Existing, permitted gaming establishments would be non-conforming uses. The City may – but need not -- establish a maximum time period for these non-conforming uses to remain in place. Non-conforming status would limit improvements (e.g., remodeling) and place constraints on expansion of operations.
- **Option 5: Prohibit all gaming establishments.** This option prohibits all establishments. New establishments are not permitted. Existing establishments are required to cease operations immediately. State law permits a local jurisdiction to ban all gaming establishments.

***

At the conclusion of the June 21st Workshop Meeting, Council directed staff to:

(1) Schedule a public hearing to consider public input on the future of gaming in Shoreline;

(2) Provide a more specific analysis of the benefits and costs of each of the five options proposed for regulating gaming;

(3) Provide a recommendation for a preferred option and tools for land use and taxation regulations for the gaming industry (Ordinance 200 -Exhibit A.1; Ordinance 200 – Alternate – Exhibit A.2; Resolution 155 – Exhibit A.3).

The purpose of this Staff Report is to provide Council with the requested information to support your consideration of Policy Guidelines for Regulation of Food and Drink Businesses Conducting Social Card Games, Punch Boards, or Pull Tabs in Shoreline.

Pursuant to Council's request, staff is recommending a specific policy option for regulating gaming. Specifically, staff is recommending Option 4. As proposed, this Option would:

(1) Ban new social card rooms, as permitted by Washington State law (RCW 9.46.295/RCW 35A.64)

(2) Permit existing social card rooms currently licensed and/or legally operating in Shoreline to continue operations as non-conforming uses and consistent with City regulations (Ordinance 200 – Exhibit A.1; Ordinance 200 – Alternate – Exhibit A.2; Resolution 155 – Exhibit A.3).

(3) Provide tax disincentives for new tables which may occur from expansion, and which are consistent with City regulations (Resolution 155 – Exhibit A.3).

Option 4 is recommended because it provides a gaming policy that is compatible with community values, development goals and development capacity.

At the conclusion of this July 26th Public Hearing to consider Policy Guidelines for Regulation Gaming, your Council may determine a preferred Option for Policy Guidelines to regulate the gaming industry in our City. Your Council's selection of preferred policy guidelines – either Option 4, as recommended, or another preferred option -- would provide the basis for establishment of tools (criteria, regulations) for addressing the gaming industry. The guidelines and tools would need to be incorporated into our Development Code. The guidelines and tools could then replace the moratorium on gaming establishments.

In summary, this Staff Report provides information, frames issues, and presents the benefits/costs of gaming, in order to assist your Council in conducting a Public Hearing and in making a determination concerning future regulation of gaming in Shoreline.

RECOMMENDATION

Staff recommends that your City Council:

1. Conduct a public hearing to receive public comment with respect to the regulation of food and drink establishments conducting social card games, punch boards, or pull tabs in the City of Shoreline.
2. Consider Options 1-5 as the basis for policy guidelines for the regulation of the gaming industry in Shoreline.
3. Select Option 4 policies (Ordinance 200/Resolution 155 or Ordinance 200 Alternate/Resolution 155) to guide Shoreline's gaming industry (See Exhibit A.1 – Ordinance 200, Exhibit A.2 – Ordinance 200 - Alternate; and Exhibit A.3 – Resolution 155).
4. Direct staff to prepare regulatory standards, pursuant to the preferred Option, to regulate the gaming industry in Shoreline.

Approved By: City Manager LB City Attorney

I. BACKGROUND

The intent of this Staff Report is to provide a focussed benefits/costs analysis concerning each of the five options proposed for the purpose of regulating gaming uses in Shoreline. This Staff Report is built upon the literature review and interview findings presented in the Staff Report of June 21, 1999. This Report also includes information that has become available to staff following the June 21st Council meeting. This analysis reviews the Comprehensive Plan, development codes, legal issues, economic issues, financial issues and social issues. The analysis will provide the most accurate available information concerning each of these matters.

Following this analysis, staff will provide a recommendation for a Preferred Option and tools for regulating the gaming industry in Shoreline.

II. ISSUES AND DISCUSSION

This Section of the Report presents a description of benefits/costs of each of the five options. Key information is presented for each of the options, as follows:

- **OPTION 1: ALLOW GAMING ESTABLISHMENTS.** This option maintains the status quo. It allows gaming existing and new establishments as a principally permitted use in all commercial districts. Tax incentives are not provided. Minimum development standards are required to address on-site impacts and impacts to the public realm.

  The following benefits and costs are determined to be a likely outcome for Option 1:

  Economic Development, Land Use and Community Design (Comprehensive Plan/Development Code):

  The Comprehensive Plan does not directly address gaming uses, but does provide goals/policies that are generally relevant to gaming and that would be applicable to Option 1. These goals/policies are found primarily within the Land Use Element, Community Design Element and an Economic Development Element. These goals/and policies would affect both Shoreline's existing 17 gaming establishments and new uses as well. Specifically:

  - Permitting Shoreline's existing gaming establishments to continue operations would be consistent with selected Comprehensive Plan goals/policies that protect existing uses and support thriving businesses.
  - Permitting new gaming establishments could be inconsistent with Comprehensive Plan goals/policies that encourage needed, creative and diverse economic development to provide goods and services to the community.

    Shoreline has not conducted a formal study of factors relating to specific business location (i.e., incoming businesses, relocating businesses, terminating businesses). However, some general commercial uses that were operating near gaming establishments have closed their doors. New gaming uses are more likely than other businesses to locate near to established gaming uses. Based on findings from economic studies, it is reasonable to expect that these economic trends would continue with Option 1, which would allow existing and new gaming establishments.
  - New gaming uses and existing uses that are remodeling would be required only to meet minimum development standards – setbacks, heights, parking, etc. -- required for general commercial uses. This Option would likely be less compatible with Community Design Plan goals and policies calling for

neighborhood compatibility, strong design standards and concurrent public services/facilities.

Legal Issues:

- Option 1 is generally consistent with Washington State law (RCW 9.46.295), allowing a City to permit both existing and new gaming with a restaurant, bar or tavern.
- Option 1 is consistent with basic City of Shoreline local zoning ordinances and development codes for general commercial uses.

Financial Issues:

- Gaming establishments operating under Option 1 are subject to state and local taxes. For example, Washington State imposes a Business and Operations tax on all commercial enterprises, however, the State does not impose special, additional taxes on gaming establishments such as card clubs.
- Shoreline also taxes these gaming establishments. Taxation now occurs at a rate of 11 percent for cardrooms and casinos. For punch cards and pull tabs, the taxation rate is five percent of gross receipts.

  The City's Finance Department reports that, under current regulations and taxation rates, revenues from all existing card games (including card rooms and mini-casinos) will likely be $1,1695,191.00. With one new mini-casino added to the City, revenue is estimated to be $1,940,194.00. Under current regulations, and at a taxation rate of 20%, revenues from all existing card games (including card rooms and mini-casinos) will likely be $3,070,000.00. With one new mini-casino added to the City, revenue is estimated to be $3,340,000.00. In 1998, combined gambling revenue provided five percent of Shoreline's total revenue.
- With Option 1, at current taxation levels and no new gaming establishments, 1999 City revenues could be $2,200,000.00 (12% of total revenue) from all gaming uses.
- With Option 1 at current tax rates, revenues could increase if new gaming comes to Shoreline because of market demand, including restriction of gambling activities in other communities. With one new mini-casino establishment, the Finance Department indicates that the total estimated revenue for all gaming could be $2,400,000.00. Conversely, revenues could be reduced if existing uses are not maintained and contemporary gaming establishments are developed elsewhere.
- The City could also raise tax rates for existing/new establishments, up to a maximum of 20% permitted by Washington State law for social card rooms. Revenue estimates, based upon general extrapolations, were provided by the Finance Department. With these general extrapolative calculations, revenue based upon a 20% tax rate, and with one new min-casino establishment, is estimated to be approximately $3,843,427.00 from all gaming uses. With the current number of establishments, revenue from all gaming uses is estimated to be approximately $3,579,786.00.

  Staff report that increasing the rate to 20% could: (1) act to discourage new gaming establishments; and/or (2) encourage existing gaming establishments to move out of Shoreline. Further, the Washington State Legislature has indicated that, if taxation rates reduce the viability of gaming uses, then regulations will be revised to reduce maximum taxation rates.

- The Finance Department reports that tax income from the gaming industry is a variable due to the nature of gambling and the evolving laws affecting taxation rates. Because gambling revenue is unstable, it is an unreliable funding source.

Social Issues:

- The continuation and possible expansion of gaming permitted under this Option would bring recreation opportunities to the community.
- This Option would also be expected to result in social costs to the community, including increases in youth gambling, organized crime, theft, fraud, domestic abuse, and compulsive gambling.
- The community would need to consider ways to address social costs that do occur with gaming activities that would be permitted with Option 1. While the estimated number and types of social impacts and the estimated costs of services may be variable, costs would be expected to increase over current costs if new gaming establishments come into the community and existing establishments remain in place.

- **OPTION 2: ALLOW AND ENCOURAGE GAMING ESTABLISHMENTS.** This option would allow and encourage/provide incentives for gaming establishments in all commercial districts. Incentives could include lower tax rates, business incentives, and/or limited requirements for development standards to address impacts to the site and the public realm (e.g., architectural character, landscaping, access/parking).

  The following benefits and costs are determined to be a likely outcome for Option 2:

  Economic Development, Land Use and Community Design (Comprehensive Plan/Development Code):

  - Option 2, as previous options, would be consistent with selected Comprehensive Plan Goals and Policies (Land Use Element, the Economic Development Element goals/policies that
    - support thriving businesses,
    - protect existing uses and
    - encourage continuity (and potential increase) of numbers of job opportunities
  - With Option 2, allowing new gaming uses (with provision of incentives) would be less compatible with those goals/policies that encourage a mix of commercial uses, safeguard the environment and preserve a sense of community.
  - New gaming businesses and existing businesses that are remodeling could be permitted, as an incentive, to reduce design features – e.g., setbacks, heights, landscaping – required by the Comprehensive Plan and the Shoreline Municipal Code Chapter 18 – Commercial Uses.
  - New uses could be allowed to meet only those development standards that protect public health and safety. This approach would further limit consistency with Comprehensive Plan goals/policies calling for neighborhood compatibility, strong design, and concurrent public improvements.
  - Under Option 2, If gaming businesses develop to lesser standards than other uses, new gaming could result in substantial blight, discouraging nearby general commercial businesses. When neighboring uses move away from gaming establishments, impacts include a reduction in both the commercial viability and property values of the vacated properties.

- Under Option 2, financial incentives could be provided and/or tax rates could be reduced for the purpose of supporting existing gaming and encouraging new gaming establishments.

Legal Issues:

- Option 2 is generally consistent with Washington State law allowing a City to permit gaming ancillary to a restaurant, bar or tavern.
- In the event that the City seeks to provide incentives to encourage new gaming uses, a legal analysis would need to be conducted to ensure that those incentives are permitted under State law

Financial Issues:

- Gaming establishments operating under Option 2:
  - are subject to state taxes as described for Option 1 and 4;
  - may be taxed at a lower rate than current 11% as an incentive
  - may be provided with other financial incentives, where permitted by law.
- With Option 2, if current taxation rates are maintained, revenues could increase if new gaming establishments come into Shoreline and/or if other communities restrict gambling activities. For this Report, three new establishments are estimated, based upon the incentives for gaming which would be provided with Option 2. The resulting annual revenue from all gaming uses is estimated to be up to $2,800,000.00.
- In the event that the City provides lower taxation rates with this Option, as an incentive to attract new gaming uses, tax revenue could be reduced and, therefore, the City would have more limited resources to provide for community development.
- In the event that the City provides other types of financial incentives to attract new gaming uses, the cost of these incentives would also affect the City's revenue.

Social Issues:

- With Option 2, the City would likely attract more gaming uses, which could lead to increased social costs related to gambling (e.g., addiction, crime).

- **OPTION 3: ALLOW GAMING ESTABLISHMENTS WITH CONDITIONS AND RESTRICTIONS.** This option would limit gaming establishments to selected zones/areas of the City (e.g., regional business, gaming district). This option requires adoption of special development standards to address impacts to the site and to the public realm (e.g., architectural character, setbacks, access/parking, landscaping, lighting, signage).

  The following benefits and costs are determined to be a likely outcome for Option 3:

  Economic Development, Land Use and Community Design (Comprehensive Plan/Development Code):

  - As Option 3 permits new and existing gaming establishments, the majority of Comprehensive Plan Goals and Policies (Land Use Element, the Economic Development Element, Community Design Element) that were described as being consistent/inconsistent with Option 2 would also apply to Option 3.

There are, however, a small number of notable differences in the way that Option 3 would comply with the Comprehensive Plan. Specifically:

- Locational Criteria: Option 3 could provide specific locational criteria for gaming establishments, the City would need to amend its Zoning Ordinance. Rather than continue to allow gaming in all commercial areas (e.g., regional business, community business, neighborhood business), new gaming could be allowed only in a specific zone or. This would improve consistency with the Comprehensive Plan Land Use Element.
- Design Standards. Under Option 3, new gaming establishments and existing establishments that remodel will be required to fit into and enhance the identity/appearance of commercial neighborhood, creating a cohesive, contextual community image. To fulfill the intent of Option 3, the Code would need amendments to incorporate both basic development standards – setbacks, heights, parking, etc. -- and special development standards, such as, architectural character, setbacks, access/parking, landscaping, lighting, signage. These Code requirements would need to address specifically defined impacts to the site and to the public realm. These requirements would enhance consistency with the Community Design Element.
- Economic Stability: To the extent that the enhanced standards required for gaming establishments improve the quality of those establishments, better business retention and attraction could occur. These outcomes would improve commercial viability and increase property values, and, thus, be more consistent with Economic Development goals and policies.

Legal Issues:

- Option 3 is generally consistent with Washington State law, allowing a City to permit gaming ancillary to a restaurant, bar or tavern.
- Specific zoning/land use regulations proposed for Option 3 would generally be permitted by State law, if the purpose of these regulations is to establish standards for gaming, rather than to prohibit a new use. These regulations must demonstrate a clear nexus between impacts and regulatory standards (See Exhibit C).

Financial Issues:

- Gaming establishments operating under Option 3 are subject to state and local taxes as described for Option 1.
- With Option 3, at current taxation rates, City total gaming revenues would likely be approximately $2,200,000.00. If one new mini-casino establishment were added, then total revenue from all gaming uses is estimated to increase to $2,400,000.00. However, revenues could increase if new, more conveniently located and attractive gaming establishments come into Shoreline and/or if other communities restrict gambling activities. Conversely, revenues could be reduced if new gaming uses are discouraged from coming to Shoreline and existing uses decline to upgrade as a result of enhanced development requirements.
- Tax rates could be increased for existing and/or new gaming uses. At the maximum 20% taxation rate permitted by Washington State law, it is estimated that City revenues could increase to $3,579,786.00 with the current number of establishments.

- Impacts from taxation rate increases would be similar to those described for Option 1 (e.g., failure of smaller establishments, relocation of existing uses to other communities with lower tax rates).
- With Option 3, as with other options, the Finance Department also advises, however, that tax income from the gaming industry is an unreliable source of revenue for community development.

Social Issues:

- With Option 3, continuing and new gaming would bring added recreation opportunities and the added social costs previously described. The City would continue to incur costs for policing and providing social services.

- **OPTION 4: PERMIT EXISTING GAMING ESTABLISHMENTS; PROHIBIT NEW GAMING ESTABLISHMENTS.** This option permits existing gaming establishments to remain in Shoreline. New gaming establishments would be prohibited, except that the City may allow uses that have vested applications with the Gambling Commission (Exhibit A.1 – Ordinance 200) or have been approved by the Gambling Commission (Exhibit A.2 – Ordinance 200 Alternate).

  Existing, permitted gaming establishments would become non-conforming uses. The City may – but need not -- establish a maximum time period for these non-conforming uses to remain in place. Non-conforming status would place limits on improvements and on expansion of operations and relocation. Discontinued operations could not be re-established after one year.

  Under Option 4, specific land use regulations and taxation rate regulations are addressed by proposed Resolution 155.

  The following benefits and costs are determined to be a likely outcome for Option 4:

  Economic Development, Land Use and Community Design (Comprehensive Plan/Development Code):

  - Permitting Shoreline's 17 existing gaming establishments to continue operations would be consistent with selected Comprehensive Plan goals/policies that support thriving businesses and provide short-term job opportunities.
  - Prohibiting new uses would be consistent with Comprehensive Plan goals/policies that encourage a variety of businesses and services.
  - Existing gaming establishments would become non-conforming uses. Existing uses may continue for the present; a "sunset" or termination date could be established at some future time. Uses with no sunset date may be more likely to be maintained. An establishment with a sunset date, may be less likely to keep up a property, which could discourage new uses in the short term.
  - Non-conforming uses may make improvements and/or replace damaged structures (Shoreline Municipal Code Chapter 18.32 Non-Conforming Uses – Exhibit B). Expansion is prohibited.
  - Authorized improvements for non-conforming uses would be required only to meet development standards for general commercial uses, unless the City incorporates special development standards (e.g., architectural character, setbacks, access/parking, landscaping, lighting, signage) for future improvements to these uses. Code requirements would need to be based upon specifically defined impacts to the site and the public realm.

- Nearby general commercial uses may be more likely to remain in place and/or new businesses to locate in the area, if:
  - gaming uses are well-maintained
  - existing gaming is limited in scope and, perhaps, in duration -- if a short-term termination provision is required.
- Better business retention and attraction would improve commercial viability and increase property values. The City could incur short-term to middle-term costs if other economic development does not occur while gaming uses remain in place.

Legal Issues

- This Option poses a risk as the Gambling Commission and the State Office of the Attorney General have reported (in unofficial opinions) that a jurisdiction may ban all gaming, but cannot ban only new gaming establishments. Legal counsel believes that the law does permit jurisdictions to ban new gaming only, and to retain existing uses as non-conforming uses. However, there is no case law in this area. If Shoreline elects to ban social card rooms, but allows existing social card rooms to remain as non-conforming uses (without or with amortization), it is possible that the City would be party to a legal action testing this decision in the courts.

Financial Issues:

- Gaming establishments are subject to state and local taxes. For example, Washington State imposes a Business and Operations tax on all commercial enterprises, however, the State does not impose special gaming taxes.
- In 1998, combined gambling revenue provided five percent of Shoreline's total revenue. The 1999 Budget projects gaming revenue comprising 12% of total revenue.

  Revenues could increase if other communities restrict gambling activities. Conversely, revenues could be reduced if existing uses are not maintained and contemporary gaming establishments are developed elsewhere. With Option 4, at current taxation levels, City revenues for all gaming uses would likely be maintained at $2,200,000.00.
- For Option 4, incremental increases in taxation rates will be proposed for added gaming activities (e.g., more gaming tables) within existing establishments. Shoreline can consider increased tax rates up to 20% for gaming uses.

  With Option 4, at maximum taxation levels, City revenues from all gaming uses could increase to $3,579,786.00. There are also potential costs associated with a tax increase, as described for Option 1 and Option 3. Specifically, smaller gaming operations may fail. Other gaming uses may relocate to places with lower tax rates. The Washington State Legislature has indicated that, if taxation rates reduce the viability of gaming uses, then regulations will be revised to reduce maximum taxation rates.
- The Finance Department reports that tax income from the gaming industry is variable due to the nature of gambling and the evolving laws affecting taxation rates. Because gambling revenue is unstable, it is an unreliable funding source.

Social Issues:

- Existing gaming offers recreation opportunities.
- The City would continue to incur social costs that do occur with gaming activities which would be permitted with Option 4, such as policing of gaming establishments and social service costs. While the estimated number and types of social impacts and the estimated costs of services may be variable, costs would not be expected to increase considerably over current costs because gaming would be limited to existing establishments.

- **OPTION 5: PROHIBIT ALL GAMING ESTABLISHMENTS.** This option prohibits all new gaming establishments. Existing establishments are required to cease operations immediately. New establishments are not permitted. State law permits a local jurisdiction to ban all gaming establishments.

  The following benefits and costs are determined to be a likely outcome for Option 5:

  Economic Development, Land Use and Community Design (Comprehensive Plan/Development Code):

  - Under this Option, new types of development could be encouraged to come into the City, creating a more diverse, stable economic base. Neighboring uses could be encouraged to remain in Shoreline.
  - This Option is inconsistent with those Plan goals and policies which call for protection of existing uses.
  - Until new economic development comes to Shoreline, the City will incur a short-term to middle-term loss in jobs. Future economic development would be expected to increase the number and diversity of employment opportunities.

  Legal Issues:

  - This Option is consistent with State law. The Gambling Commission and the State Office of the Attorney General have reported (in unofficial opinions) that a jurisdiction may ban all gaming.

  Financial Issues:

  - With Option 5, income from gaming would cease. Unless new economic development immediately replaces gaming establishments, the City will incur a short-term to middle-term loss in revenue and jobs. This would result in the City's losing gaming revenue. The loss of revenue from all gaming uses is estimated at up to $2.2 million per year. This loss could be offset, in part, from other future, long-term economic development.

  Social Issues:

  - The discontinuation of gaming under Option would eliminate costs of policing gaming establishments. The City would continue to incur costs for policing and providing social services. Funding is required because Shoreline's residents may continue to gamble at other locations but may commit crimes and/or seek services in this community.

III PREFERRED OPTION

Following consideration of the benefits and costs for each of the five options defined for regulating gaming in Shoreline, staff believes that Option 4 best meets City guidelines and addresses community values, based upon the components of the Option and the resulting effects. The benefits and costs of this Option are described below. The Option is also proposed in codified form in Ordinance 200 (Exhibit A.1), Ordinance 200 – Alternate (Exhibit A.2). Land use regulations and taxation rate regulations are provided in Resolution 155 (Exhibit A.3).

Option 4: Components:

- Option 4 would ban social card rooms under the authority of state law (RCW 9.46.295), and under existing local land use regulatory authorities.
- The City may allow uses that have vested applications with the Gambling Commission (Exhibit A.1 – Ordinance 200) or have been approved by the Gambling Commission (Exhibit A.2 – Ordinance 200 Alternate).
- Tax disincentives would be imposed for legally permitted expansions of operations (i.e., addition of new tables). (Exhibit A.3 – Resolution 155).

Option 4: Outcomes

- Option 4 supports gaming by allowing existing social card rooms to remain in the community.
- Option 4 contains gaming by: (1) prohibiting new social card rooms; and (2) designating existing social card rooms as non-conforming uses, thereby limiting their growth. These uses would not be amortized.
- Option 4 is most consistent with the intent of the Comprehensive Plan and the Development Code. It provides for economic development, provides land use standards, protects short-term to mid-term tax revenue and minimizes social costs.
- Option 4 essentially limits growth of social impacts (e.g., policing, treatment of addiction).
- Option 4 enables the City to continue to collect tax revenue from gaming. Proposed revenue increases will assist in ensuring that these uses are compatible with community development goals and may provide resources for offsetting social costs.
- Option 4 is generally consistent with regulations recently adopted by the City of Auburn and unincorporated Pierce County. Auburn now prohibits new gaming establishments, but permits existing lawfully operating gaming establishments to continue business. Pierce County also now bans new gaming establishments. Pierce County permits existing lawfully operating gaming establishments to continue business, but regulates them as amortized non-conforming uses.
- Legal authorities for permitting and banning gaming establishments are unclear, as these authorities relate to Option 4, due to ambiguities in state statutes and a lack of case law.

  The Office of the Attorney General has issued an unofficial opinion which concludes that the City's power to prohibit any or all forms of gambling does not allow continuation of existing operations as non-conforming uses (Exhibit C). Therefore, Option 4 may be inconsistent with State laws regulating gaming establishments. However, it is the general opinion of the counsel for several regional jurisdictions

(including the City of Shoreline) that the law authorizes cities to regulate gaming establishments through zoning and land use restrictions (e.g., locations, development standards, non-conforming status).

IV. RECOMMENDATION

Staff recommends that your City Council:

1. Conduct a public hearing to receive public comment with respect to the regulation of food and drink establishments conducting social card games, punch boards, or pull tabs in the City of Shoreline.

2. Consider Options 1-5 as the bases for policy guidelines for the regulation of the gaming industry in Shoreline.

3. Select Option 4 policies (Ordinance 200/Resolution 155 or Ordinance 200 Alternate/Resolution 155) to guide Shoreline's gaming industry (See Exhibit A.1 – Ordinance 200, Exhibit A.2 – Ordinance 200 - Alternate; and Exhibit A.3 – Resolution 155).

   Note: Ordinance 200 (Exhibit A.1) would allow for gaming uses that have vested applications with the Gambling Commission; Ordinance 200 -Alternate (Exhibit A.2) will allow only those gaming uses that have been approved by the Gambling Commission. Resolution 155 guides taxation rates for gaming uses.

4. Direct staff to prepare regulatory standards, pursuant to the preferred Option, to regulate the gaming industry in Shoreline.

EXHIBITS

Exhibit A.1	Ordinance 200
Exhibit A.2	Ordinance 200 (Alternate)
Exhibit A.3	Resolution 155
Exhibit B.	Shoreline Municipal Code Section 18.32 – Non-Conforming Uses
Exhibit C.	Letter from State of Washington Gambling Commission to the City of Renton (February 1999) Memorandum from the Office of the Attorney General (March 1999)

ORDINANCE NO. 200

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING ORDINANCE NOS. 190 AND 193 ESTABLISHING A MORATORIUM ON THE FILING OF APPLICATIONS FOR BUSINESS LICENSES AND BUILDING PERMITS FOR THE EXPANSION OF EXISTING OR THE ADDITION OF NEW FOOD OR DRINK ESTABLISHMENTS CONDUCTING SOCIAL CARD GAMES, PUNCH BOARDS, OR PULL TABS, FOR THE PURPOSE OF CLARIFYING LAND USE ACTIVITIES SUBJECT TO THE MORATORIUM, RENEWING THE MORATORIUM, AND DECLARING AN EMERGENCY

WHEREAS, on November 23, 1998 the City Council enacted Shoreline's first Comprehensive Plan; and

WHEREAS, the City is currently in the process of revising its land use regulations to support the Comprehensive Plan adopted on November 23, 1998; and

WHEREAS, as part of this process, the City is evaluating whether it will permit gambling within the City limits; and

WHEREAS, the State Legislature and State Gambling Commission have recently expanded the ability of gambling licensees to conduct social card games as a commercial stimulant for the licensee's business; and

WHEREAS, the City Council is concerned about the proliferation of gambling establishments and the impacts they may have upon the community; and

WHEREAS, the City's current zoning regulations do not address gambling establishments in a comprehensive fashion and may allow such establishments to be located in areas where the impacts associated with gambling may be detrimental to the community; and

WHEREAS, RCW 35A.63.220 authorizes cities to enact moratoriums on land use matters to preserve the status quo while new plans or regulations are considered and prepared; and

WHEREAS, the City Council enacted Ordinance No. 190 as amended by Ordinance No. 193 establishing a moratorium on the authorizing of new food and drink businesses and/or the expansion of existing food and drink businesses conducting social card games, punch boards, or pull tabs to preserve the status quo and to allow time to consider whether additional land use regulations may be necessary or appropriate; and

WHEREAS, the City Council wishes to clarify Ordinance Nos. 190 and 193 to address land use activities within the City of Shoreline pending the consideration or enactment of new land use regulations to implement the City's Comprehensive Plan, and not to infringe upon the statutory authority of the State Gambling Commission; and

WHEREAS, absent a declaration of a moratorium, property owners could obtain vested rights to develop their property contrary to the City's planning process; and

WHEREAS, the Shoreline City Council held a public hearing on this moratorium renewal ordinance on July 26, 1999; and

WHEREAS, an emergency is declared to exist in order to protect the public health, safety and welfare;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The "WHEREAS" clauses above shall constitute findings of fact and are incorporated by reference as if fully set forth herein.

Section 2. Ordinance Nos. 190 and 193 Amended.

Section 2 of Ordinance No. 190 as amended by Ordinance 193 is further amended to read as follows:

> A. A moratorium is hereby established upon the filing of applications for business licenses, building permits, or any other permit or approvals to expand existing or establish new food and drink establishments conducting social card games, punch boards, or pull tabs. No such application shall be accepted during the effective period of this moratorium. Land use applications which were legally vested as of the effective date of Ordinance No. 190 shall continue to be processed as provided in the Shoreline Municipal Code and according to the land use regulations in effect on the date of vesting.
>
> B. No existing food and drink establishment which does not already operate or conduct social card games, punch boards, or pull tabs may begin operating or conducting the same, whether or not building permits or business licenses are required.
>
> C. Existing establishments, or properties vested for building permits for gaming facilities, shall be regulated as nonconforming uses under SMC 18.32.010-.080. However, such establishments may not expand gambling activity during the effective period of this moratorium.
>
> D. As used in subsections A. and C., "expand" means to increase the gross square footage of the structure(s) licensed for gambling activities or to increase the number of gaming tables over the number of tables approved by the Washington State Gambling Commission as of March 22, 1999.

Section 3. Renewal. The Moratorium established by Ordinance No. 190 as amended is hereby renewed and shall remain in effect until January 26, 2000.

Section 4. Effective Date. This Ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, and welfare, shall take effect and be in full force immediately upon its adoption.

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

PASSED BY THE CITY COUNCIL ON JULY 26, 1999.

_____
Mayor Scott Jepsen

ATTEST:

_____
Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

_____
Ian R. Sievers
City Attorney

Date of Publication: July 29, 1999
Effective Date: July 26,1999

ORDINANCE NO. 200

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING ORDINANCE NOS. 190 AND 193 ESTABLISHING A MORATORIUM ON THE FILING OF APPLICATIONS FOR BUSINESS LICENSES AND BUILDING PERMITS FOR THE EXPANSION OF EXISTING OR THE ADDITION OF NEW FOOD OR DRINK ESTABLISHMENTS CONDUCTING SOCIAL CARD GAMES, PUNCH BOARDS, OR PULL TABS, FOR THE PURPOSE OF CLARIFYING LAND USE ACTIVITIES SUBJECT TO THE MORATORIUM, RENEWING THE MORATORIUM, AND DECLARING AN EMERGENCY

WHEREAS, on November 23, 1998 the City Council enacted Shoreline's first Comprehensive Plan; and

WHEREAS, the City is currently in the process of revising its land use regulations to support the Comprehensive Plan adopted on November 23, 1998; and

WHEREAS, as part of this process, the City is evaluating whether it will permit gambling within the City limits; and

WHEREAS, the State Legislature and State Gambling Commission have recently expanded the ability of gambling licensees to conduct social card games as a commercial stimulant for the licensee's business; and

WHEREAS, the City Council is concerned about the proliferation of gambling establishments and the impacts they may have upon the community; and

WHEREAS, the City's current zoning regulations do not address gambling establishments in a comprehensive fashion and may allow such establishments to be located in areas where the impacts associated with gambling may be detrimental to the community; and

WHEREAS, RCW 35A.63.220 authorizes cities to enact moratoriums on land use matters to preserve the status quo while new plans or regulations are considered and prepared; and

WHEREAS, the City Council enacted Ordinance No. 190 as amended by Ordinance No. 193 establishing a moratorium on the authorizing of new food and drink businesses and/or the expansion of existing food and drink businesses conducting social card games, punch boards, or pull tabs to preserve the status quo and to allow time to consider whether additional land use regulations may be necessary or appropriate; and

WHEREAS, the City Council wishes to clarify Ordinance Nos. 190 and 193 to address land use activities within the City of Shoreline pending the consideration or enactment of new land use regulations to implement the City's Comprehensive Plan, and not to infringe upon the statutory authority of the State Gambling Commission; and

WHEREAS, absent a declaration of a moratorium, property owners could obtain vested rights to develop their property contrary to the City's planning process; and

WHEREAS, the Shoreline City Council held a public hearing on this moratorium renewal ordinance on July 26, 1999; and

WHEREAS, an emergency is declared to exist in order to protect the public health, safety and welfare;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The "WHEREAS" clauses above shall constitute findings of fact and are incorporated by reference as if fully set forth herein.

Section 2. Ordinance Nos. 190 and 193 Amended.

Section 2 of Ordinance No. 190 as amended by Ordinance 193 is further amended to read as follows:

> A. A moratorium is hereby established upon the filing of applications for business licenses, building permits, or any other permit or approvals to expand existing or establish new food and drink establishments conducting social card games, punch boards, or pull tabs. No such application shall be accepted during the effective period of this moratorium. Land use applications which were legally vested as of the effective date of Ordinance No. 190 shall continue to be processed as provided in the Shoreline Municipal Code and according to the land use regulations in effect on the date of vesting.
>
> B. No existing food and drink establishment which does not already operate or conduct social card games, punch boards, or pull tabs may begin operating or conducting the same, whether or not building permits or business licenses are required.
>
> C. Existing establishments, or properties vested for building permits for gaming facilities, shall be regulated as nonconforming uses under SMC 18.32.010-.080. However, such establishments may not expand gambling activity during the effective period of this moratorium.
>
> D. As used in subsections A. and C., "expand" means to increase the gross square footage of the structure(s) licensed for gambling activities or to increase the number of gaming tables over the number of tables for which application was pending before the Washington State Gambling Commission as of March 22, 1999.

Section 3. Renewal. The Moratorium established by Ordinance No. 190 as amended is hereby renewed and shall remain in effect until January 26, 2000.

Section 4. Effective Date. This Ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, and welfare, shall take effect and be in full force immediately upon its adoption.

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

PASSED BY THE CITY COUNCIL ON JULY 26, 1999.

Mayor Scott Jepsen

ATTEST:

Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

Ian R. Sievers
City Attorney

Date of Publication: July 29, 1999
Effective Date: July 26, 1999

Exhibit A.3 Resolution 155

RESOLUTION NO. 155

A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON, INITIATING LAND USE AND TAX REGULATIONS FOR THE GAMBLING INDUSTRY.

WHEREAS, the City established a moratorium prohibiting new gambling establishments and the expansion of existing establishments for the purpose of studying the effects and impacts of this business in the City of Shoreline; and

WHEREAS, the City has conducted public hearings on June 21 and July 26, 1999 to receive input on impacts from the gambling industry in Washington and other regions of the country; and

WHEREAS, the Council wishes to initiate the drafting and review of permanent regulations which will prohibit new gambling establishments; and

WHEREAS, a policy to increase the tax for existing card room establishments should be developed to offset impacts of enhanced social card room gaming; and

WHEREAS, The City has the authority to prohibit this use under Chapter 35A.64 RCW and RCW 9.46.295; now therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON AS FOLLOWS:

Section 1. Regulation Development. The City staff is directed to draft proposed land use ordinances to prohibit new social card games, punch boards, or pull tabs conducted by food or drink establishments as commercial incentives, and to restrict existing gambling establishments as nonconforming uses. Proposed regulations shall be forwarded to the Planning Commission for its review and recommendation to the City Council.

Section 2. Policy Development. The City staff is directed to propose a policy for progressive increases to the tax on social card room gambling based on increases in the number of gaming tables approved by the State Gambling Commission and established by businesses operating under existing social card room gambling licenses.

ADOPTED BY THE CITY COUNCIL ON _____, 1996.

_____
Mayor Scott Jebsen

ATTEST:

_____
Sharon Mattioli, CMC
City Clerk

Chapter 18.32

GENERAL PROVISIONS – NONCONFORMANCE, TEMPORARY USES, AND RE-USE OF FACILITIES

Sections:

18.32.010 Purpose.
18.32.020 Applicability.
18.32.030 Determining status.
18.32.040 Abatement of illegal use, structure or development.
18.32.050 Continuation and maintenance of nonconformance.
18.32.060 Re-establishment of discontinued nonconforming use.
18.32.070 Repair or reconstruction of nonconforming structure.
18.32.080 Modifications to nonconforming structures.
18.32.090 Expansion of nonconformance.
18.32.100 Temporary use permits – Uses requiring permits.
18.32.110 Temporary use permits – Exemptions to permit requirement.
18.32.120 Temporary use permits – Duration and frequency.
18.32.130 Temporary use permits – Parking.
18.32.140 Temporary use permits – Frame control.
18.32.150 Temporary construction buildings.
18.32.160 Temporary construction residence.
18.32.170 Temporary mobile home for medical hardship.
18.32.180 Temporary real estate offices.
18.32.190 Temporary school facilities.
18.32.200 Re-use of facilities – General standards.
18.32.210 Re-use of facilities – Re-establishment of closed public school facilities.
18.32.220 Re-use of facilities – Standards for conversion of historic buildings.

18.32.010 Purpose.

The purposes of this chapter are to:

A. Establish the legal status of a nonconformance by creating provisions through which a nonconformance may be maintained, altered, reconstructed, expanded or terminated;

B. Provide for the temporary establishment of uses that are not otherwise permitted in a zone and to regulate such uses by their scope and period of use; and

C. Encourage the adaptive re-use of existing public facilities which will continue to serve the community, and to ensure public review of redevelopment plans by allowing:

1. Temporary re-use of closed public school facilities retained in school district ownership, and the reconversion of a temporary re-use back to a school use;

2. Permanent re-use of surplus nonresidential facilities (e.g., schools, fire stations, government facilities) not retained in school district ownership; or

3. Permanent re-use of historic structures listed on the National Register or designated as city landmarks. [Ord. 125 § 1, 1997]

18.32.020 Applicability.

A. With the exception of nonconforming extractive operations identified in Chapter 18.22 SMC, all nonconformances shall be subject to the provisions of this chapter.

B. The provisions of this chapter do not supersede or relieve a property owner from compliance with:

1. The requirements of the Uniform Building and Fire Codes; or

2. The provisions of this code beyond the specific nonconformance addressed by this chapter. [Ord. 125 § 1, 1997]

18.32.030 Determining status.

A. Any use, structure or other site improvement (e.g., landscaping or signage) development standard which was legally established prior to the effective date of this title shall be considered nonconforming if:

1. The use is now prohibited or cannot meet use limitations applicable to the zone in which it is located; or

2. The use does not comply with the density, dimensions, landscaping, parking sign or residential design standards of this title.

B. A change in the required permit review process shall not create a nonconformance.

C. Any nonconformance that is brought into conformance for any period of time shall forfeit status as a nonconformance, except as specified by SMC 18.32.060. [Ord. 125 § 1, 1997]

18.32.040 Abatement of illegal use, structure or development.

Any use, structure or other site improvement not established in compliance with use and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal pursuant to the provisions of KCC Title 23. [Ord. 125 § 1, 1997]

18.32.050 Continuation and maintenance of nonconformance.

A nonconformance may be continued or physically maintained as provided by this chapter. [Ord. 125 § 1, 1997]

18.32.060 Re-establishment of discontinued nonconforming use.

A nonconforming use may be re-established as a nonconformance, except any nonconforming use that is discontinued for a period of 12 continuous months shall be deemed abandoned and shall not be re-established. [Ord. 125 § 1, 1997]

18.32.070 Repair or reconstruction of nonconforming structure.

Any structure nonconforming as to height or setback standards may be repaired or reconstructed; provided, that:

A. The extent of the previously existing nonconformance is not increased; and

B. The building permit application for repair or reconstruction is submitted within 12 months of the occurrence of damage or destruction. [Ord. 125 § 1, 1997]

18.32.080 Modifications to nonconforming structures.

Modifications to a nonconforming structure may be permitted; provided, the modification does not increase the area, height or degree of an existing nonconformity. [Ord. 125 § 1, 1997]

18.32.090 Expansion of nonconformance.

A nonconformance may be expanded subject to approval of a conditional use permit or a special use permit, whichever permit is required under existing codes, or if no permit is required then through a conditional use permit; provided, a nonconformance with the development standard provisions of Chapters 18.12 through 18.30 SMC shall not be created or increased.

Notwithstanding any other provision of this title, the expansion of a nonconforming adult use facility, as that term is defined in SMC 18.06.035 as now in effect or as may subsequently be amended, shall be subject to approval and issuance of a special use permit, and not a conditional use permit. [Ord. 140 § 3, 1997; Ord. 125 § 1, 1997]

18.32.100 Temporary use permits – Uses requiring permits.

Except as provided by SMC 18.32.110, a temporary use permit shall be required for:

A. Uses not otherwise permitted in the zone that can be made compatible for periods of limited duration and/or frequency; or

B. Limited expansion of any use that is otherwise allowed in the zone but which exceeds the intended scope of the original land use approval. [Ord. 125 § 1, 1997]

18.32.110 Temporary use permits – Exemptions to permit requirement.

A. The following uses shall be exempt from requirements for a temporary use permit when located in the RB, CB, NB, O, or I zones for the time period specified below:

1. Uses not to exceed a total of 30 days each calendar year:
   a. Christmas tree lots;
   b. Fireworks stands; and
   c. Produce stands.
2. Uses not to exceed a total of 14 days each calendar year:
   a. Amusement rides, carnivals, or circuses;
   b. Community festivals; and
   c. Parking lot sales.

B. Any use not exceeding a cumulative total of two days each calendar year shall be exempt from requirements for a temporary use permit.

C. Any community event held in a public park and not exceeding a period of seven days shall be exempt from requirements for a temporary use permit. [Ord. 125 § 1, 1997]

18.32.120 Temporary use permits – Duration and frequency.

Temporary use permits shall be limited in duration and frequency as follows:

A. The temporary use permit shall be effective for no more than 180 days from the date of the first event

B. The temporary use shall not exceed a total of 60 days, provided that this requirement applies only to the days that the event(s) actually take place;

C. The temporary use permit shall specify a date upon which the use shall be terminated and removed; and

D. A temporary use permit shall not be granted for the same temporary use on a property more than once per calendar year provided that a temporary use permit may be granted for multiple events during the approval period. [Ord. 125 § 1, 1997]

18.32.130 Temporary use permits – Parking.

Parking and access for proposed temporary uses shall be approved by the city. [Ord. 125 § 1, 1997]

18.32.140 Temporary use permits – Frame control.

The applicant for a proposed temporary use shall provide any parking/traffic control attendants as specified by the Shoreline department of public safety. [Ord. 125 § 1, 1997]

18.32.150 Temporary construction buildings.

Temporary structures for storage of tools and equipment, or for supervisory offices may be permitted for construction projects, provided that such structures are:

A. Allowed only during periods of active construction; and

B. Removed within 30 days of project completion or cessation of work. [Ord. 125 § 1, 1997]

18.32.160 Temporary construction residence.

A. A mobile home may be permitted on a lot as a temporary dwelling for the property owner, provided a building permit for a permanent dwelling on the site has been obtained.

B. The temporary mobile home permit shall be effective for a period of 12 months. The permit may be extended for one additional period of 12 months if the permanent dwelling is constructed with a finished exterior by the end of the initial approval period

C. The mobile home shall be removed within 90 days of:

1. The expiration of the temporary mobile home permit; or

2. The issuance of a certificate of occupancy for the permanent residence, whichever occurs first. [Ord. 125 § 1, 1997]

18.32.170 Temporary mobile home for medical hardship.

A. A mobile home may be permitted as a temporary dwelling on the same lot as a permanent dwelling, provided:

1. The applicant demonstrates the temporary dwelling is necessary to provide daily care to an individual certified by a physician as needing such care;

2. The primary provider of daily care shall reside on-site; and

3. The mobile home together with the permanent residence shall meet the setback, height, building footprint, and lot coverage provisions of the applicable zone.

B. Temporary mobile home permits for medical hardships shall be effective for 12 months. Extensions of the temporary mobile home permit may be approved in 12-month increments subject to demonstration of continuing medical hardship.

C. The mobile home shall be removed within 90 days of:

1. The expiration of the temporary mobile home permit; or

2. The cessation of provision of daily care. [Ord. 125 § 1, 1997]

18.32.180 Temporary real estate offices.

One temporary real estate office may be located on any new residential development, provided that activities are limited to the initial sale or rental of property or units within the development. The office use shall be discontinued within one year of recording of a subdivision or short subdivision or issuance of a final certificate of occupancy apartment development. [Ord. 125 § 1, 1997]

18.32.190 Temporary school facilities.

Temporary school structures may be permitted during construction of new school facilities or during remodeling of existing facilities, provided that such structures are:

A. Allowed only during periods of active construction or remodeling;

B. Do not expand the student capacity beyond the capacity under construction or remodeling; and

C. Removed within 30 days of project completion or cessation of work. [Ord. 125 § 1, 1997]

18.32.200 Re-use of facilities – General standards.

The interim or permanent re-use of surplus nonresidential facilities in residential zoned areas shall require that no more than 50 percent of the original floor area be demolished for either permanent or interim re-use of facilities. [Ord. 125 § 1, 1997]

18.32.210 Re-use of facilities – Re-establishment of closed public school facilities.

The re-establishment or reconversion of an interim nonschool use of school facilities back to school uses shall require a site plan and the issuance of a change of use permit pursuant to SMC 15.05. [Ord. 125 § 1, 1997]

18.32.220 Re-use of facilities – Standards for conversion of historic buildings.

In order to insure that significant features of the property are protected pursuant to KCC 20.62, the following standards shall apply to conversion of historic buildings:

A. Gross floor area of building additions or new buildings required for the conversion shall not exceed 20 percent of the gross floor area of the historic building, unless allowed by the zone;

B. Conversions to apartments shall not exceed one dwelling unit for each 3,600 square feet of lot area, unless allowed by the zone; and,

C. Any construction required for the conversion shall require certification of appropriateness from the King County landmark commission. [Ord. 125 § 1, 1997]

Exhibit C: Letter from State of Washington Gambling Commission to the City of Renton (February 1999)

STATE OF WASHINGTON
GAMBLING COMMISSION
P.O. Box 42400 • Olympia, Washington 98504-2400 • (360) 438-7654 • TDD (360) 438-7638 • FAX (360) 438-8652

February 9, 1999

RECEIVED
FEB 17 1999
ECONOMIC DEVELOPMENT

Michael Katterman
City of Renton
1055 South Grady Way
Renton, Washington 98055

RE: PENDING REQUESTS FOR MINI CASINOS IN RENTON

Dear Mr. Katterman:

We spoke a few weeks ago about the City of Renton's request that the Gambling Commission not grant pending "applications" to offer house banked games to Diamond Lil's and Schumsky's All City Diner. The law allowing card rooms to bank their games was passed in 1997 and the Gambling Commission has been approving businesses for this under a "pilot study." Under the pilot study, which will end June 30, businesses, which are already licensed to operate card rooms, enter into contracts with the Commission to offer house banked games. There is not an "application" and the business does not receive another "license." After July 1, when the study is complete, any business operating house banked games will receive a new Class F license.

As we discussed, a local jurisdiction's ability to "zone" a particular type of gambling business out of some areas, but not all areas, is not clear. It also is not clear whether local jurisdictions can allow gambling non-conforming uses or whether moratoriums on new gambling, which a few jurisdictions have adopted, are permissible. Although we cannot give legal advice, a few statutes in the Gambling Act address local jurisdictions' authority in these areas. For example, RCW 9.46.285 states that the Gambling Act "constitutes the exclusive legislative authority for the licensing and regulation of any gambling activity and the state preempts such licensing and regulatory functions, except to the power and duties of any city, town, city-county, or county which are specifically set forth in this chapter." In addition, RCW 9.46.295 states that local jurisdictions "may absolutely prohibit gambling activities, but may not change the scope of license, any or all of the gambling activities for which the license was issued."

Furthermore, RCW 9.46.070(2) provides that the Gambling Commission cannot "deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued." The Gambling Commission has not taken a formal position on these issues, but we expect that they will likely be litigated by licensees and local jurisdictions

in the coming months. We have also requested an opinion from our Assistant Attorney General on these issues. In the meantime, we are happy to work with the local jurisdictions and let them know which card rooms are scheduled for approval for house banking. Diamond Lil's is scheduled for approval to offer house banked card games at the Commission meeting this week, on Thursday, February 11. The meeting will be at Cavanaugh's at Capitol Lake (formerly Holiday Inn Select and the Westwater Inn), 2300 Evergreen Park Drive in Olympia, phone number (360) 943-4000. The meeting will begin at 1:30 p.m. If Diamond Lil's is approved, they would be able to begin offering house banked games as soon as the contract is signed, which usually occurs the same day. Schumsky's All City Diner has also requested to offer house banked games, but probably will not be approved until after July 1, assuming that they meet all of the requirements for such games.

I hope this information is helpful. If you have any questions, please contact me at (360) 438-7654, extension 307.

Sincerely,

Ed Fleisher

Ed Fleisher
Deputy Director of Policy and Government Affairs

Cc: The Honorable Jesse Tanner, Mayor

Christine O. Gregoire
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

MEMORANDUM

March 8, 1999

TO: BEN BISHOP, Director, Washington State Gambling Commission

FROM: JONATHAN T. McCOY, Assistant Attorney General

SUBJECT: **Authority of Local Jurisdictions to Regulate Gambling Commission Licensed Activities**

This memo is provided as a response to advice regarding local jurisdictions who have taken various actions affecting Licensees of the Gambling Commission; specifically, card room licensees who are seeking to operate house-banked card games.

ISSUE PRESENTED

Summary of proposed activity: Several local jurisdictions including both municipalities and counties have enacted ordinances or taken interim measures which are directed at controlling location of "mini-casinos" within their jurisdictions. I have been asked to analyze their authority in light of RCW 9.46.285 which gives the Gambling Commission exclusive authority for the licensing and regulation of any gambling activity.

BRIEF RESPONSE

Pursuant to RCW 9.46.285 the Gambling Commission has exclusive authority to license and regulate gambling activities authorized under the Gambling Act. This provision specifically preempts any local jurisdiction's authority to do so, except as specifically outlined in the Act. Nevertheless, local jurisdictions may take actions that affect licensed activities but do not directly conflict with the provisions of the Act and the Gambling Commission's specific authority. It is therefore necessary to address the specific actions taken by a jurisdiction and determine whether they conflict with this licensing and regulatory function. To the extent that they conflict, they are preempted by state law. To the extent that they do not conflict, they are authorized.

APPLICABLE LAW AND DEFINITIONS

Article XI, section 11 of the Washington Constitution provides that "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws."

RCW 9.46.285 entitled, Licensing and regulation authority, exclusive, provides:

> This chapter constitutes the exclusive legislative authority for the licensing and regulation of any gambling activity and the state preempts such licensing and regulatory functions, except as to the powers and duties of any city, town, city-county, or county which are specifically set forth in this chapter. Any ordinance, resolution, or other legislative act by any city, town, city- county, or county relating to gambling in existence on September 27, 1973 shall be as of that date null and void and of no effect. Any such city, town, city-county, or county may thereafter enact only such local law as is consistent with the powers and duties expressly granted to and imposed upon it by chapter 9.46 RCW and which is not in conflict with that chapter or with the rules of the commission.

RCW 9.46.295 further provides that

> Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

ANALYSIS

As a general rule, "[m]unicipal police power is as extensive as that of the legislature, so long as the subject matter is local and the regulation does not conflict with general laws. . . . The scope of police power is broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people." Covell v. City of Seattle, 127 Wn.2d 874, 878, 905 P.2d 324 (1995) *quoting* Hillis Homes, Inc. v. Snohomish County, 97 Wn.2d 804, 808, 650 P.2d 193 (1982) (itself *quoting* State v. City of Seattle, 94 Wn.2d 162, 165, 615 P.2d 461 (1980)). Nonetheless, "Article XI, section 11 requires a local law yield to a state statute on the same subject matter if that statute 'preempts the field, leaving no room for concurrent jurisdiction,' or 'if a conflict exists such that the two cannot be harmonized.' Weden v. San Juan County, 135 Wn.2d 678, 691, 958 P.2d 273 (1998); Brown v. City of Yakima, 116 Wn.2d 556, 559, 561, 807 P.2d 353 (1991).

RCWs 9.46.285 and .295 constitute "general laws" under the provisions of Article XI, section 11 of the Washington Constitution. Moreover, pursuant to the explicit terms of RCW 9.46.285 "the state preempts such licensing and regulatory functions" except those specifically reserved elsewhere in the chapter. Therefore any action which directly conflicts with that authority is "null and void" in accordance with RCW 9.46.285.

But the Supreme Court has generally been solicitous of local jurisdictional authority and "An ordinance must yield to state law only 'if a conflict exists such that the two cannot be harmonized.'" Brown, 116 Wn.2d at 561; *accord* City of Bellingham v. Schampera, 57 Wn.2d 106, 111, 356 P.2d 292, 92 A.L.R.2D 192 (1960). "'In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa. Judged by such a test, an ordinance is in conflict if it forbids that which the statute permits[.]" Weden, 135 Wn.2d at 693 (citations omitted); Schampera, 57 Wn.2d at 111.

Following this analysis, it is necessary to determine, looking at the specific provisions of the local ordinance, whether the ordinance "forbids that which the statute permits". In this case, whether the local ordinance seeks to prohibit an activity which is within the purview of the Gambling Commission to license and regulate. If it does, the ordinance cannot affect the licensed activity; if it does not, the local ordinance is authorized.

The ordinances have taken several different forms, so I will not address them all individually, but I can address them generally as they apply to gambling activities licensed by the Commission. The action of the ordinances fall roughly into five categories: Licensing of card rooms; moratoria prohibiting new licenses; moratoria on new activities; zoning against gambling activities in certain areas; and zoning against activities which support a gambling activity.

1. *Licensing of Card Rooms*

Several jurisdictions have taken the unusual step of requiring food and drink establishments who would otherwise qualify to conduct "commercial stimulant" activities to obtain special licenses from the jurisdiction in order to conduct card room activities. This procedure is clearly prohibited. By its terms, RCW 9.46.285 specifically provides "the exclusive legislative authority for the licensing and regulation of any gambling activity" and further explicitly preempts "any city, town, city-county, or county" from attempting such licensing. In such a case, the Gambling Commission has no obligation to consider the effect of the local jurisdiction's effort which is void ab initio. "Municipalities are constitutionally vested with the authority to enact ordinances in furtherance of the public health, safety, morals, and welfare. However, the plenary police power in regulatory matters accorded municipalities by Const. Art. 11, §11, ceases when the state enacts a general law upon the particular subject, unless there is room for concurrent jurisdiction." Baker v. Snohomish County Planning, 68 Wn. App. 581, 585, 841 P.2d 1321 (1992); Lenci v. Seattle, 63 Wn.2d 664, 669, 388 P.2d 926 (1964). In this case there is clearly no room for concurrent jurisdiction.

2. *Moratoria prohibiting new licenses*

In this case, the answer turns on whether the licensed activities already exist within the jurisdiction. If there are not currently licensed activities which are operating within the local jurisdiction, such an ordinance would not appear to be in conflict with RCW 9.46.295. RCW authorizes local jurisdictions to "absolutely prohibit" any or all gambling activities. It does not specify what form such prohibition may take, except that it may not "change the scope of" a license. If, on the other hand, existing licenses have been issued, the question is more nuanced. If the moratorium prohibits all of a particular licensed activity, including existing licenses (e.g. all public card rooms), it would appear to comport with RCW 9.46.295 which by its terms seems to authorize prohibition even after licenses have been granted (although there may be other issues which arise under such an interpretation which are beyond the scope of this Memorandum). If the moratorium only prohibits *new* licenses, however, it would seem to conflict with the statute, since the local jurisdiction does not have authority to determine which licensees are qualified.

3. *Moratoria on new activities*

Some ordinances seek to prohibit only "mini-casinos" but not card rooms generally. An ordinance in such a form would directly conflict with the existing statute and thus be prohibited. Under RCW 9.46.295 a local jurisdiction may prohibit a "gambling activity" but it may not change the scope of a license. As the Gambling Act is currently drafted, house-banked card games are an authorized form of "social card game" which may be played in public card rooms. "Social card games" are the authorized activity, and the statute does not distinguish between house-banked and non-house-banked games in this authorization. Any effort to distinguish between forms of card games that could be played in an otherwise authorized card room would be regulatory in nature, and directly conflict with the Gambling Commission's authority.

4. *Zoning against gambling activities in certain areas*

Some ordinances prohibit gambling activities in certain areas under the local jurisdiction's zoning authority. This is perhaps the most problematic approach. Nonetheless, I believe that such an approach does conflict with the Gambling Act. RCW 9.46.295 specifies that "Any license to engage in any of the gambling activities authorized by this chapter... shall be legal authority to engage in the gambling activities for which issued." Under RCW 9.46.285, only the Gambling Commission has the authority to grant such licenses. Other provisions of the Act authorize specific activities to qualified licensees, such as RCW 9.46.0325 which authorizes activities by any business "primarily engaged in the selling of food or drink for consumption on the premises". So long as the underlying activity is authorized by local ordinance or zoning code, it is beyond the purview of the local jurisdiction to determine whether they may also engage in gambling activities on that premises as it would be "an ordinance [that] forbids that

which the statute permits[.]" It is solely within the Gambling Commission's authority to make that determination.

5. *Zoning against activities which support a gambling activity*

Some ordinances prohibit, primarily through zoning, certain underlying activities that, if authorized, would support gambling operations. For example, a local jurisdiction may prohibit alcoholic sales within a certain distance from a school or church. Such an ordinance would not, of itself, conflict with the Gambling Act, since the local jurisdiction was not directly prohibiting or authorizing the gambling activity, or limiting the scope of a license. Generally speaking, therefore, a local jurisdiction would have authority to engage in that sort of zoning activity. (It would still be necessary for the local jurisdiction to meet the other requirements for such an ordinance, i.e., that the statute must promote the health, safety, peace, education, or welfare of the people and bear some reasonable relationship to accomplishing the purpose underlying the statute. Weden, *supra* at 700.) So long as the ordinance was valid on its face, the Gambling Commission would be bound by its terms.

I hope that this analysis is helpful in your deliberation on these matters. While this Memorandum does not represent the official view of the Attorney General's Office, it does represent my views as your assigned Assistant Attorney General, and is provided for your use as you see fit.

JONATHAN T. McCOY,
Assistant Attorney General

Council Meeting Date: July 26, 1999 **Agenda Item: 10(a)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	**Update on additional parking for the Shoreline Swimming Pool**
DEPARTMENT:	**Public Works**
PRESENTED BY:	**Michael A. Gillespie, City Engineer**

EXECUTIVE / COUNCIL SUMMARY

When your Council adopted the 1999-2004 Capital Improvement Program, it allocated funding for improvements to the Swimming Pool parking in 1999. This issue was discussed with your Council on May 3, 1999, as part of a broader staff report regarding the master planning process for the Swimming Pool. It was pointed out at that time that this master plan would include improvements for the construction of additional parking to address the current parking deficiencies. The purpose of this report is to inform your Council of the progress on this project and obtain your Council's consensus on the preferred alternative to provide additional parking.

In March of this year, staff conducted a topographic survey and began preliminary design of parking alternatives. Staff evaluated the designs and identified a preferred alternative. The preferred alternative consists of angle parking in two zones along the east side of 1st Avenue to the north and south of the pool. It also includes a load/unload zone adjacent to the pool (see Aerial Map – Attachment A, and Preferred Alternative – Attachment B). Staff's preference for this alternative is based on an evaluation of several criterion (see Figures 1A and 1B – Attachment C). For the cost, this alternative provides the safest options, provides the recommended number of parking stalls, and will have minimal impact on the park when combined with mitigating measures. It would create 41 additional parking stalls to bring the pool parking total to 60 stalls. This would accommodate parking demands for current usage. The total number of parking stalls may be slightly reduced during the design phase to provide areas for landscaping and trees along the parking strips. The total cost for constructing the preferred alternative is approximately $205,000. This estimate is still preliminary and additional design is needed to refine the estimate. Items that may affect the cost estimate include the storm drainage system and mitigation for the impacts to the park area on the north. The adopted budget for this project to construct additional parking at the swimming pool is $363,000.

In early June, staff discussed the design alternatives with the Shoreline School District staff who supports the preferred alternative. Staff then presented the design alternatives to the public at an Open House/Site Walk on June 24, 1999. Ten neighbors attended the open house. The public provided constructive input but raised concerns about impacts to the park. Staff is currently evaluating means to mitigate these impacts. Later that evening, staff presented the design alternatives, along with public input, to the Parks and Recreation Cultural Services Advisory Committee (PRCS). The PRCS committee unanimously supported staff's recommendation of the preferred alternative.

Upon the completion of construction of this additional parking, staff recommends that the existing parking that is occurring along the west side of 1st Avenue NE be eliminated. Staff will bring back to your Council an ordinance that would prohibit that parking along the west side. The timing for that ordinance would coincide with the completion of the new parking.

Staff is taking this opportunity to inform your Council of the development and input on plans for additional parking at the Shoreline Pool and seeking your Council's consensus on the preferred alternative. Staff will return to your Council later this fall with final design plans attached to a recommendation for your approval to award the construction contract.

RECOMMENDATION

Staff is seeking consensus from your Council on staff's preferred alternative to provide additional parking at the Shoreline Pool. Staff will bring an action before your Council this fall to award the construction contract.

Approved By: City Manager LB City Attorney N/A

BACKGROUND / ANALYSIS

History

When your Council adopted the 1999-2004 Capital Improvement Program, it allocated funding for improvements to the Swimming Pool parking in 1999. Those improvements included the construction of additional parking to address the current parking deficiencies. As discussed with your Council on May 3, 1999, the master plan for the Swimming Pool will address parking improvements. The purpose of this report is to inform your Council of the progress on this project and obtain your Council's consensus on the preferred alternative to provide additional parking.

Currently, parking for the pool is a combination of on and off street parking. The parking lot in front of the pool consists of 19 stalls, which is too few for the current needs of the pool. Based on current usage, the pool should have 50 to 60 parking stalls. Parking along the west side of 1st Avenue poses certain risks crossing the street to get to the pool and parking on the neighboring side streets impacts the neighborhood. Members of the community, including the Echo Lake Neighborhood Association, have voiced their concern over the limited parking at the pool and the related safety issues. The City has heard these concerns and intends to provide additional parking as soon as possible.

In March of this year, staff conducted a topographic survey and began preliminary design of parking alternatives. Design parameters for the project include increasing safety and parking while minimizing cost and impacts to the park. Staff evaluated the designs and identified a preferred alternative. This alternative would provide the recommended number of parking stalls, provide for safe parking with curb, gutter, and sidewalk along the pool side of 1st Avenue, and minimize impacts to the park.

The preferred alternative consists of angle parking in the North Zone, load and unload parking in the Middle Zone, and angle parking in the South Zone to create 41 additional parking stalls (see Aerial Map – Attachment A, and Preferred Alternative – Attachment B). Staff's preference for this alternative is based on an evaluation of several criterion (see Figures 1A and 1B – Attachment C). For the cost, this alternative provides the safest options, provides the recommended number of parking stalls, and will have minimal impact on the park when combined with mitigating measures.

In early June, staff discussed the design alternatives with the Shoreline School District staff. The Shoreline School District staff supports this recommendation and has indicated a willingness to provide the City with easements for the improvements.

Staff then presented the design alternatives to the public at an Open House/Site Walk on June 24, 1999. The public provided constructive input but raised concerns about impacts to the park. The preferred alternative would encroach into the park area approximately twenty-five feet and result in the loss of at least 24 trees. Staff is currently evaluating means to mitigate these impacts. Mitigation may include such things as replacement of trees and vegetation, connection and integration of the new sidewalk into the existing asphalt walkway, and enhanced landscaping adjacent to and within the park area. Later that evening, staff presented the design alternatives, along with public input, to the Parks and Recreation Cultural Services Advisory Committee (PRCS). The PRCS committee unanimously agreed with staff's recommendation of the preferred alternative for all three zones.

Analysis

The purpose of the following discussion is to provide your Council with a basic description of the design alternatives for additional parking and staff's basis for a recommendation of a preferred alternative.

The project is located at Shoreline Park north of the Shoreline Conference Center along the east side of 1st Avenue NE. It extends from the south end of the tennis courts to the northern edge of the park (see Aerial Map – Attachment A).

The primary design parameters and objectives for the project include increasing safety and parking while minimizing cost and impacts to the park. Staff has identified a preferred alternative that accomplishes these goals.

Preferred Alternative

The preferred alternative consists of angle parking in the North Zone, load and unload parking in the Middle Zone, and angle parking in the South Zone (see Preferred Alternative – Attachment B for design drawings showing these options). Staff's preference for this alternative is based on the following evaluation.

Rating Criteria

Staff's recommendation is based on the rating criteria listed below (see Figures 1A and 1B – Attachment C). These figures represent the graphical and numerical rating assigned to each alternative for each criterion. These figures include the additional number of parking stalls and the total score. It is important to note that the criteria are not weighted and the significance of safety enhancements and park impacts should be given special consideration.

Criteria

1) Enhance Pedestrian Safety
2) Enhance Handicap Parking
3) Enhance Vehicular Safety
4) Enhance Driveway Safety
5) Minimizes Impacts to Park
6) Minimizes Permitting Issues
7) Provides Load/Unload Zone
8) Utilizes Roadway Right-of-Way
9) Create Additional Parking
10)Cost

For evaluation purposes, the project area was divided into three zones North, Middle, and South (see Aerial Map – Attachment A). Each zone presents unique options. These zones and their corresponding options are described below. The options are variations on two parking configurations – parallel parking and angle parking. The option of "Do nothing" is also included. The cost estimates are approximate and should only be considered for preliminary planning purposes.

With the exception of Options 4, 5, and 6 in the North zone, the parking for each option would be adjacent to 1st Avenue and utilize the City owned right-of-way. In all cases, the existing surface water drainage ditch would be undergrounded and improvements would include curb, gutter, sidewalk, and landscaping.

North Zone

The North Zone is the area West of and adjacent to the wooded park and extends from just north of the pool building to the northern boundary of the park (see North Zone – Attachment D). Six options are identified for this zone. The City owns this property.

Option 1 – Do Nothing

Preliminary costs = $0

Positive: No cost associated with this option and no loss of park space.

Negatives: This option provides no change from the existing condition. Presently, cars are parallel parking on the shoulder. Passengers leaving and entering vehicles on the street side are in or near the lane of traffic. People parking on the West side of 1st Avenue must cross the street. The safety issues related to the existing condition is a source of concern shared by many.

Option 2 – Parallel Parking – 14 Stalls

Preliminary costs = $51,100

Positives: This option provides parallel parking along the pool side of 1st Avenue with enough room to allow passengers to safely enter and exit their vehicle away

from the lane of traffic. This option will not result in the loss of any trees or useable park space.

Negatives: This option offers improved pedestrian safety compared with the existing condition. Parallel parking a vehicle, however, must be done from the street, which will require stopping in the lane of traffic. Likewise, when pulling out from a parking stall, vehicles will be entering directly into the lane of traffic.

(Preferred Alternative) Option 3 – Angle Parking – 23 Stalls

Preliminary costs = $54,800

Positives: This option provides angle parking along 1st Avenue with enough room to allow vehicles to pull off the street and into a stall. Vehicles leaving may back out and wait safely in the shoulder before entering the lane of traffic. From a pedestrian/vehicle safety standpoint, this is the safest option.

Negative: This option requires approximately 0.25 acres of park and would result in the loss of approximately 24 trees. Reconfiguring the layout could save a few trees.

Option 4 – Parallel w/ 2 Parallel – 29 Stalls

Preliminary costs = $71,000

Positives: In addition to option 2, this option provides 2 additional lanes of parallel parking east of the sidewalk. This additional parking is safer than the on street parking.

Negatives: This option requires approximately 0.34 acres of park and would result in the loss of approximately 27 trees. The exact number and location of trees beyond the boundary of this option is unknown due to the limits of the survey. For the cost and park impacts, this option only provides six more spaces than Option 3.

Option 5 – Angle w/ 1 Angle – 32 Stalls

Preliminary costs are estimated at $75,000

Positives: In addition to Option 3, this option would provide one additional lane of angle parking east of the sidewalk. This additional parking is safer than the on street parking.

Negatives: This option requires approximately 0.53 acres of park and would result in the loss of approximately 27 trees. The exact number and location of trees beyond the boundary of this option is unknown due to the limits of the survey.

Option 6 – Angle w/ 2 Angle – 52 Stalls

Preliminary costs are estimated at $80,000

Positives: In addition to Option 3, this option would provide two additional lanes of angle parking east of the sidewalk. This additional parking is safer than the on street parking.

Negatives: This option requires approximately 0.64 acres of park and would result in the loss of at least 27 trees. The exact number and location of trees beyond the boundary of this option is unknown due to the limits of the survey.

Middle Zone

The Middle Zone is the area west of and adjacent to the swimming pool building and extends from the entrance to the pool's existing parking lot to the northern side of the pool building (see Middle Zone – Attachment E). The three alternatives identified for this zone are Option 1 – Load/Unload, Option 2 – Parallel, or Option 3 – Angle. Options 1 and 2 could be constructed within City owned right of way. Option 3 would require an easement from the Shoreline School District. The School District has reviewed the alternatives and supports the City's preferred alternative of Option 1.

(Preferred Alternative) Option 1 – Load/Unload

Preliminary costs = $8,900

Positives: This option would provide a designated area for short-term parking or a load/unload zone for parents dropping off and picking up children and buses transporting students. On a cost/benefit basis, this option would require minimal modification of the existing condition and provide a valuable service.

Negatives: This option would utilize space that could provide an additional 4 to 8 long-term parking stalls.

To avoid repetition, Options 2 and 3 are generally described in the North Zone. Option 3 would result in the removal of five trees and the relocation of the existing sidewalk. The cost for option 2 would be similar to option 1. Option 3 would cost substantially more.

South Zone

The South Zone is the area West of and adjacent to the tennis courts and extends just beyond the south and north ends of the tennis courts (see South Zone – Attachment F). The three alternatives identified for this zone are Option 1 – Do Nothing, Option 2 – Parallel, or Option 3 – Angle. The scenario is similar in its options to the North Zone except there are no trees present in this area. Options 1 and 2 could be constructed within City owned right of way. Option 3 would require an easement from the Shoreline School District. The School District has reviewed the alternatives, supports the City's preferred alternative, and has expressed willingness grant the City and easement.

Option 1 – Do Nothing

Preliminary costs = $0

Positives: No cost associated with this option and no loss of park space.

Negatives: This option provides no change from the existing condition. Presently, cars are parallel parking on the shoulder. Passengers leaving and entering vehicles on the street side are in or near the lane of traffic. People parking on the West side of 1st Avenue must cross the street. The safety issues related to the existing condition is a source of concern shared by many.

Option 2 – Parallel Parking – 11 Stalls

Preliminary cost = $66,000

Positives: This option provides parallel parking along the pool side of 1st Avenue with enough room to allow passengers to safely enter and exit their vehicle away from the lane of traffic. This option will not result in the loss of any trees or useable park space.

Negatives: This option offers improved pedestrian safety compared with the existing condition. Parallel parking a vehicle, however, must be done from the street, which will require stopping in the lane of traffic. Likewise, when pulling out from a parking stall, vehicles will be entering directly into the lane of traffic.

(Preferred Alternative) Option 3 – Angle Parking – 18 Stalls

Preliminary cost = $78,500

Positives: This option provides angle parking along 1st Avenue with enough room to allow vehicles to pull off the street and into a stall. Vehicles leaving may back out and wait safely in the shoulder before entering the lane of traffic. From a pedestrian/vehicle safety standpoint, this is the safest option.

Negative: More costly than Option 2. Requires an easement.

Public Involvement

Staff mailed over 300 flyers for the Open House to neighbors within 500 feet surrounding the park. Staff also notified the Echo Lake Neighborhood Association, Pool user groups, and provided flyers at the pool. The Open House was attended by 10 citizens most of whom lived in the neighborhood. A citizen survey was conducted as part of the Open House and 9 responses were received. Opinion on the North zone was 5 in favor of Option 1 – Do Nothing and 4 in favor of the preferred Option 3 – Angle parking. Comments in favor of doing nothing in the North zone emphasized preservation of the park space. These comments suggested further investigation of parking to the south of the tennis courts and the soccer fields as well as the reconfiguration of the north parking lot at the Shoreline Conference Center. These comments also suggested

prohibiting parking on 1st Avenue as a means to force people into the existing parking areas. Staff is also considering parking restrictions on 1st Avenue and the neighboring side streets as part of these improvements to lessen impacts on the neighborhood.

Opinion on the Middle zone was equally divided between the preferred Option 1 – Load Unload and Option 3 – Angle parking. Individuals concerned with preserving the park expressed comments in favor of angle parking in this zone. These individuals suggested the use of this space for eight (8) parking stalls rather than a load/unload zone. Comments in favor of the load and unload option recognized the benefit of providing this service with minimal modification of the existing condition.

Opinion on the South zone was nearly unanimous in favor of the preferred Option – 3 Angle parking. Comments positively reflected the added benefits and minimal impacts to the park.

Summary

The preferred alternative consists of Option 3 – Angle parking in North Zone, Option 1 – Load/Unload in the Middle Zone, and Option 3 – Angle parking in the South Zone (see Preferred Alternative Map – Attachment B). Staff recommends this alternative for the following reasons. For the cost, this alternative provides the safest options, provides the recommended number of parking stalls, and has the potential for minimal impact on the park when combined with mitigating measures. These options scored the highest for criteria being evaluated and a majority of the opinions were in favor of the preferred alternative.

The Shoreline School District supports this recommendation, and the PRCS committee unanimously agreed with staff's recommendation of the preferred alternative for all three zones. The committee's vote on the North zone included a recommendation that measures be taken to mitigate impacts to the park. Suggestions included modifying the design to save trees, replacing lost trees, and providing park benches.

The next steps are to proceed with design, identify mitigation for the North zone, and meet again with the community.

Staff is taking this opportunity to inform your Council of the development and input on plans for additional parking at the Shoreline Pool and seeking your Council's consensus on the preferred alternative. Staff will return to your Council later this fall with final design plans attached to a recommendation for your approval to award the construction contract.

RECOMMENDATION

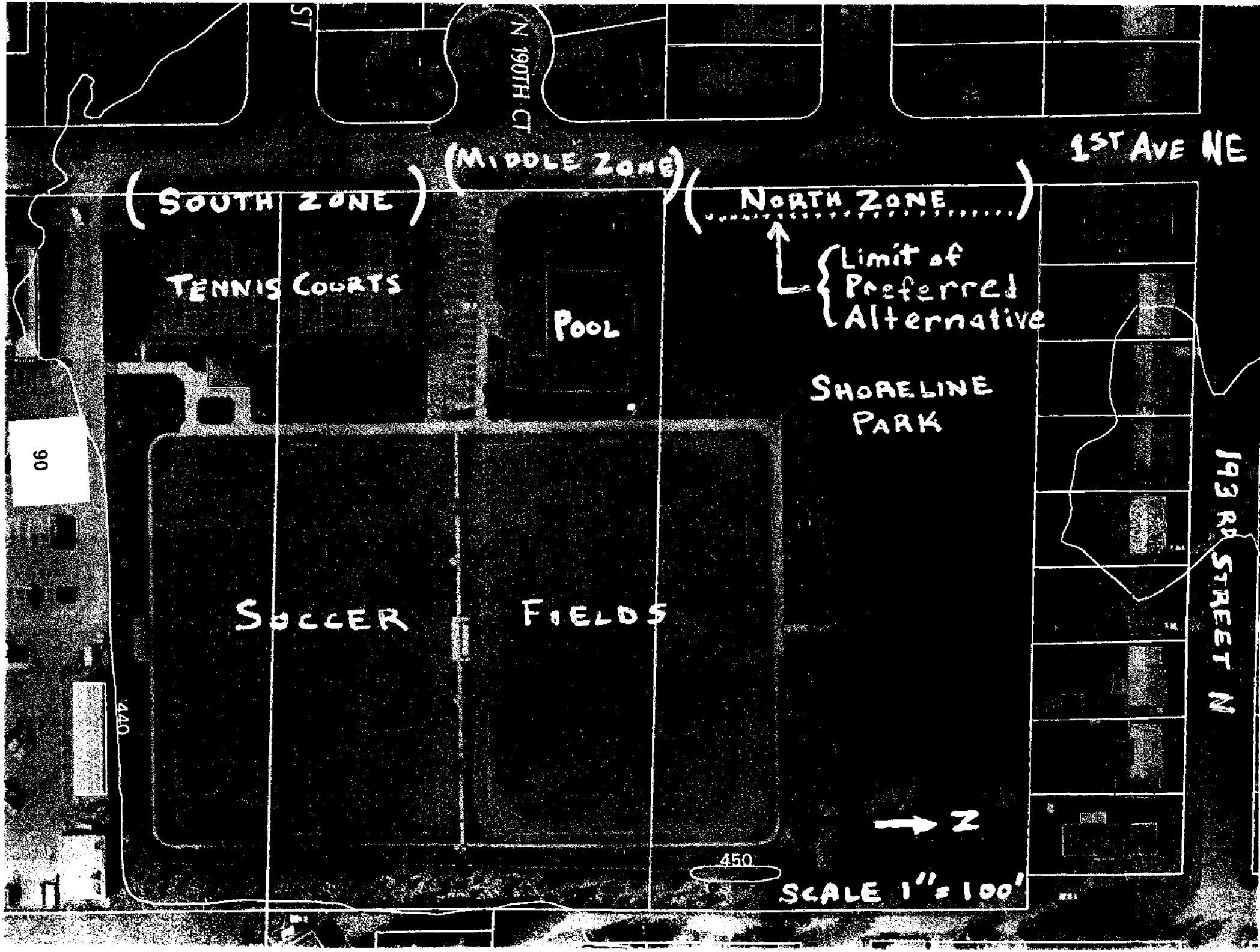
Staff is seeking consensus from your Council on staff's preferred alternative to provide additional parking at the Shoreline Pool. Staff will bring an action before your Council this fall to award the construction contract.

ATTACHMENTS

A – Aerial Map
B – Preferred Alternative
C – Figures 1A and 1B
D – North Zone: Photograph and Design Options
E – Middle Zone: Photograph and Design Options
F – South Zone: Photograph and Design Options

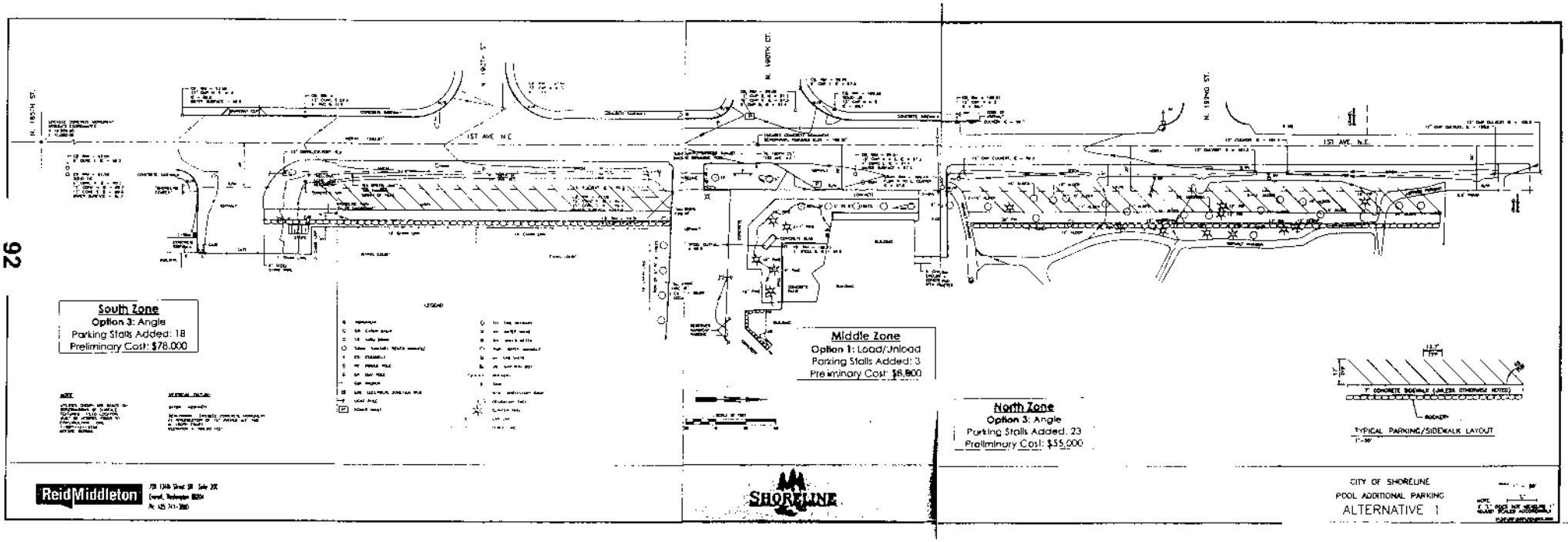
Attachment A

Aerial Map


N 190TH CT
1ST AVE NE
(SOUTH ZONE)
(MIDDLE ZONE)
(NORTH ZONE.....)
Limit of Preferred Alternative
TENNIS COURTS
POOL
SHORELINE PARK
SOCCER FIELDS
193 RD STREET N
440
450
N
SCALE 1"=100'

Attachment B

Preferred Alternative



South Zone
Option 3: Angle
Parking Stalls Added: 18
Preliminary Cost: $78,000

Middle Zone
Option 1: Load/Unload
Parking Stalls Added: 3
Preliminary Cost: $8,800

North Zone
Option 3: Angle
Parking Stalls Added: 23
Preliminary Cost: $55,000

Reid Middleton

SHORELINE

CITY OF SHORELINE
POOL ADDITIONAL PARKING
ALTERNATIVE 1

Attachment C

Figures 1A and 1B

Figure 1A: Shoreline Pool Parking Alternative Evaluation

City of Shoreline

	CRITERIA												
	Enhance Pedestrian Safety	Enhance Handicap Parking	Enhance Vehicular Safety	Enhance Driveway Safety	Minimizes Impacts to Park	Minimizes Permitting Issues	Provides Load/Unload Zone	Utilizes Roadway Right-of-Way	Create Additional Parking	Cost	Preliminary Cost Estimate in $1000's	Additional Number of Parking Stalls	SCORE
South Zone													
Option 1 - Do Nothing	○	○	○	○	●	●	○	○	○	●	0	0	●●●
Option 2 - Parallel	◑	◔	◑	◑	◑	◑	○	●	◑	◕	66	11	●●●●●
Option 3 - Angle	●	◔	●	●	◕	◑	○	◕	●	◑	78	18	●●●●●●◕
Middle Zone													
Option 1 - Load/Unload	●	○	●	◑	◕	●	●	●	◑	●	9	3	●●●●●●●◕
Option 2 - Parallel	◔	○	◑	◑	◕	●	○	◕	◑	◕	na	4	●●●●●
Option 3 - Angle	◑	○	◕	◑	○	◑	○	◔	●	◔	na	8	●●●◕
North Zone													
Option 1 - Do Nothing	○	○	○	○	●	●	○	○	○	●	0	0	●●●
Option 2 - Parallel	◑	◔	◑	○	◕	◕	○	●	◔	◑	51	14	●●●●◑
Option 3 - Angle	●	◑	●	○	◑	◑	○	◕	◑	◑	55	23	●●●●●◔
Option 4 - Parallel w/ 2 Parallel	◕	◑	◕	○	◔	○	○	◑	◕	◔	71	29	●●●◕
Option 5 - Angle w/ 1 Angle	●	◑	●	○	○	○	○	◔	◕	◔	na	32	●●●◕
Option 6 - Angle w/ 2 Angle	●	●	●	○	○	○	○	◔	●	○	na	52	●●●●◔

Rating Criteria: ○ ◔ ◑ ◕ ●

worst - - - best

Figure 1B: Shoreline Pool Parking Alternative Evaluation

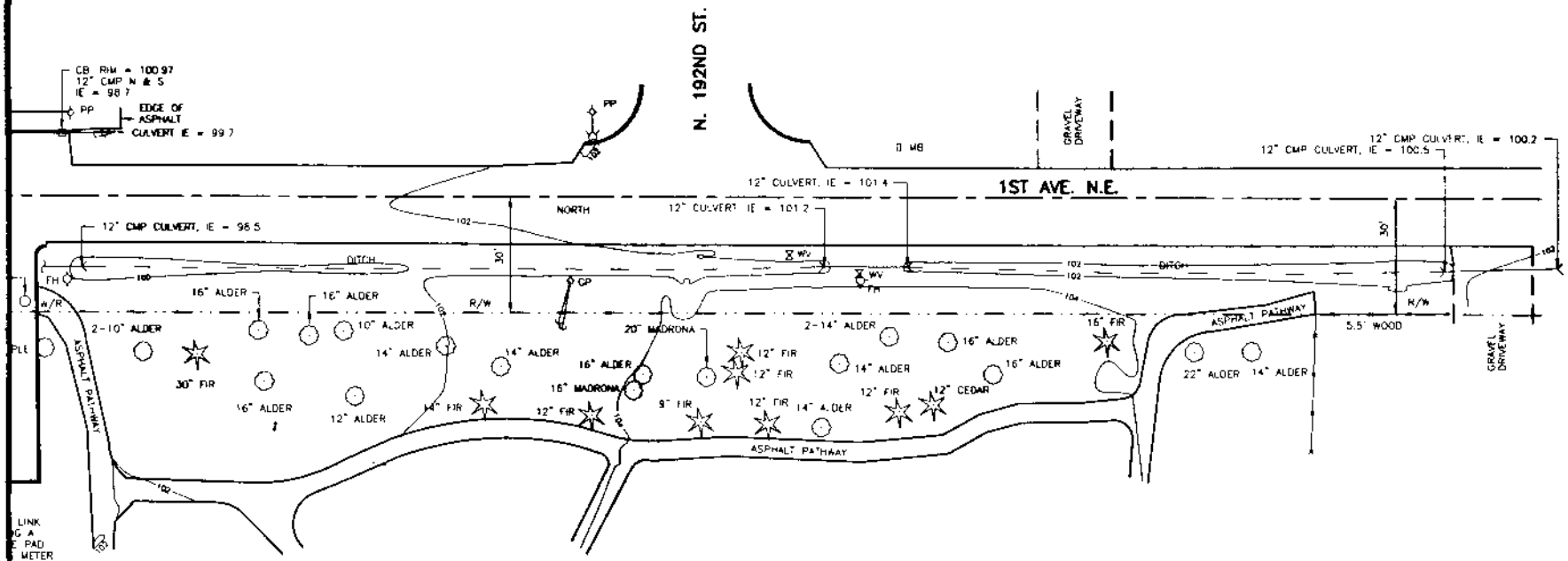
City of Shoreline

	CRITERIA												
	Enhance Pedestrian Safety	Enhance Handicap Parking	Enhance Vehicular Safety	Enhance Driveway Safety	Minimizes Impacts to Park	Minimizes Permitting Issues	Provides Load/Unload Zone	Utilizes Roadway Right-of-Way	Create Additional Parking	Cost	Preliminary Cost Estimate in $1000's	Additional Number of Parking Stalls	SCORE
South Zone													
Option 1 - Do Nothing	0	0	0	0	100	100	0	0	0	100	0	0	300
Option 2 - Parallel	50	25	50	50	50	50	0	100	50	75	66	11	500
Option 3 - Angle	100	25	100	100	75	50	0	75	100	50	78	18	675
Middle Zone													
Option 1 - Load/Unload	100	0	100	50	75	100	100	100	50	100	9	3	775
Option 2 - Parallel	25	0	50	50	75	100	0	75	50	75	na	4	500
Option 3 - Angle	50	0	75	50	0	50	0	25	100	25	na	8	375
North Zone													
Option 1 - Do Nothing	0	0	0	0	100	100	0	0	0	100	0	0	300
Option 2 - Parallel	50	25	50	0	75	75	0	100	25	50	51	14	450
Option 3 - Angle	100	50	100	0	50	50	0	75	50	50	55	23	525
Option 4 - Parallel w/ 2 Parallel	75	50	75	0	25	0	0	50	75	25	71	29	375
Option 5 - Angle w/ 1 Angle	100	50	100	0	0	0	0	25	75	25	na	32	375
Option 6 - Angle w/ 2 Angle	100	100	100	0	0	0	0	25	100	0	na	52	425

Rating Criteria:	0	25	50	75	100
	worst	-	-	-	best

Attachment D

North Zone
Photograph and Design Options



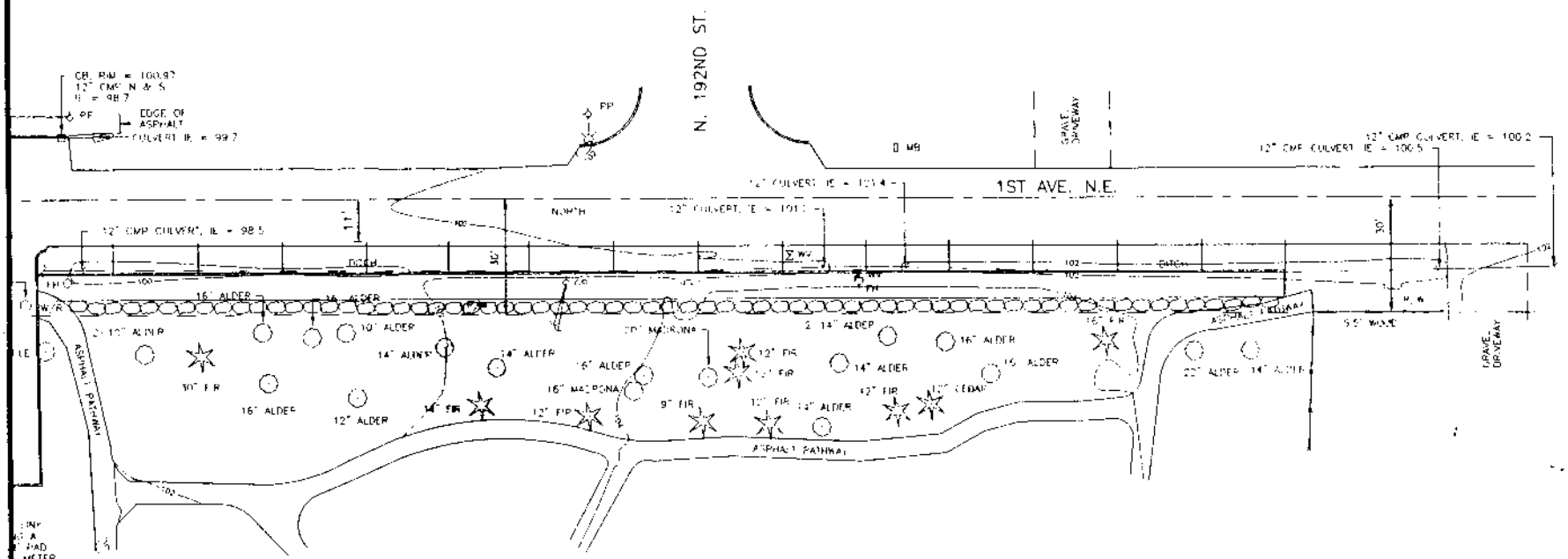
North Zone
Option 1: Do Nothing
Parking Stalls Added: 0
Preliminary Cost: $0

CITY OF SHORELINE
POOL ADDITIONAL PARKING

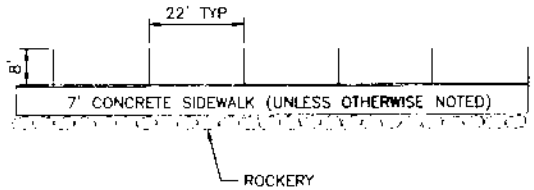
SCALE 1" = 20'

NOTE: IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.

L:\25\99\009\FIGURES.DWG



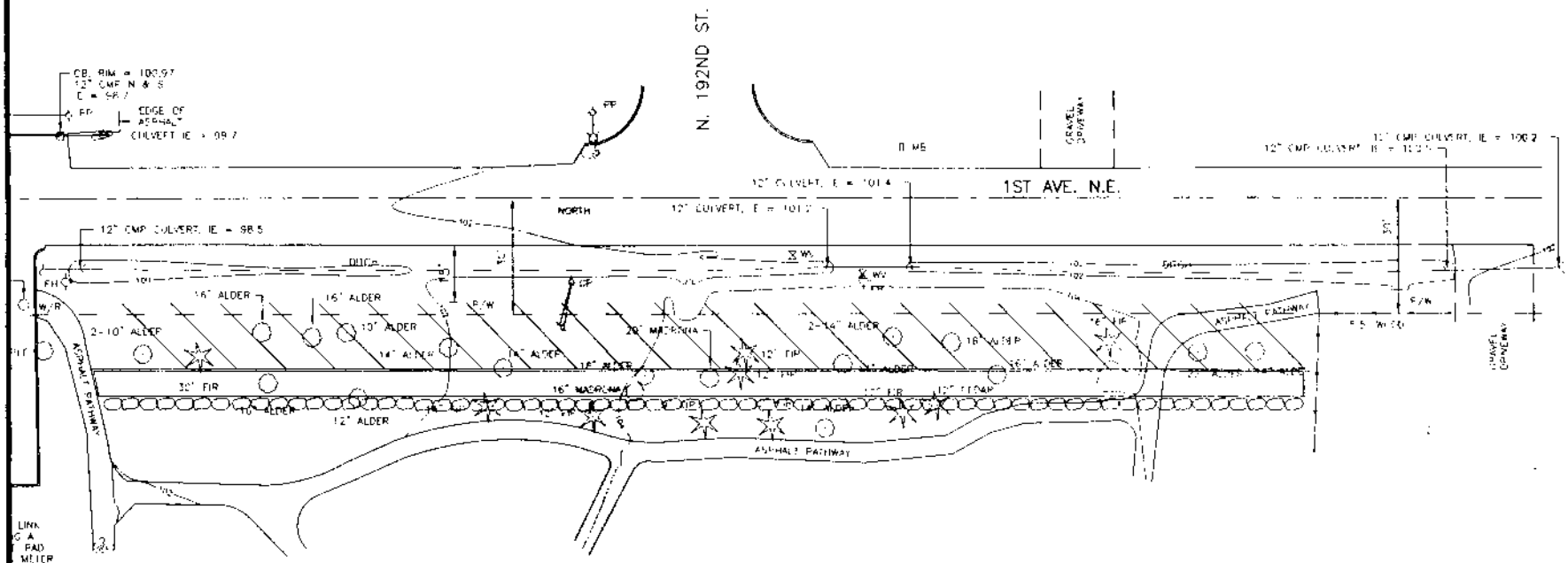
North Zone
Option 2: Parallel
Parking Stalls Added: 14
Preliminary Cost: $51,000

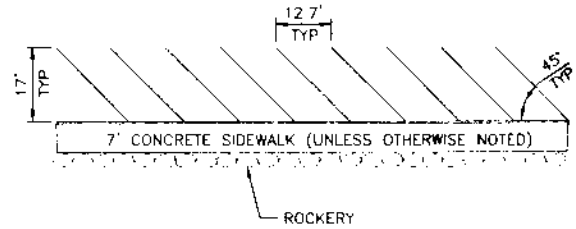


TYPICAL PARKING/SIDEWALK LAYOUT
1"=20'

CITY OF SHORELINE
POOL ADDITIONAL PARKING
ALTERNATIVE 5

SCALE 1" = 20'
NOTE: "L"
IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.
I:\25\99\009\FIGURES.DWG



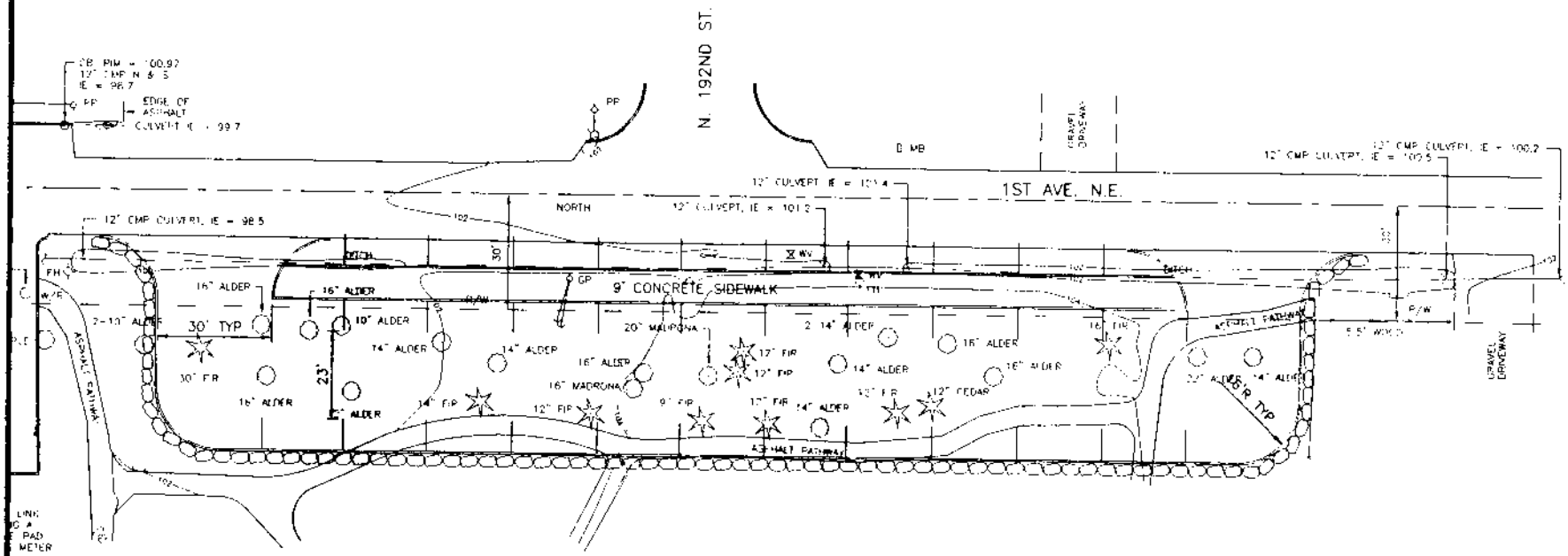


TYPICAL PARKING/SIDEWALK LAYOUT
1"=20'

North Zone
Option 3: Angle
Parking Stalls Added: 23
Preliminary Cost: $55,000

CITY OF SHORELINE
POOL ADDITIONAL PARKING
ALTERNATIVE 1

SCALE 1" = 20'
NOTE: IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.
I:\25\99\008\FIGURES.DWG



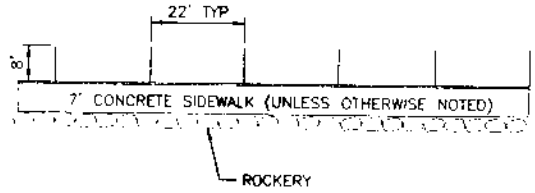
North Zone

Option 4: Parallel w/ 2 Parallel

Parking Stalls Added: 29

Preliminary Cost: $71,000

(This option not recommended based on current usage)



TYPICAL PARKING/SIDEWALK LAYOUT

1"=20'

CITY OF SHORELINE

POOL ADDITIONAL PARKING

ALTERNATIVE 6

SCALE 1" = 20'

"L"

NOTE: IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.

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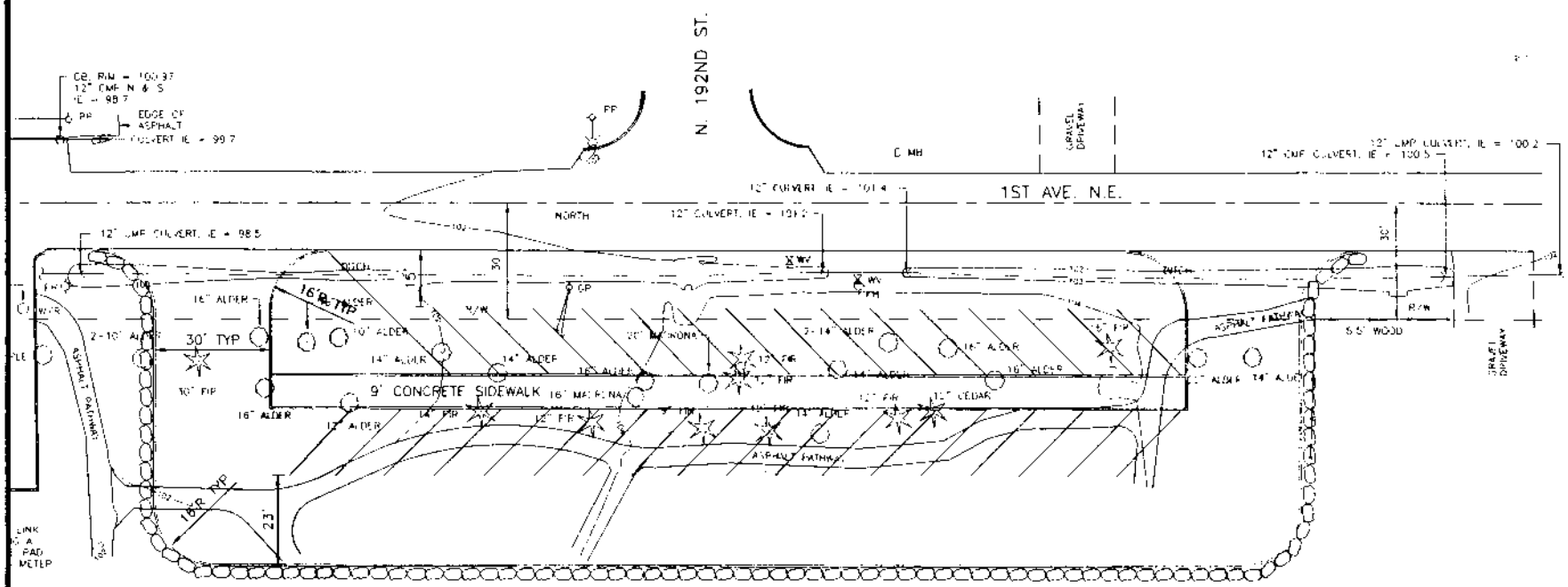
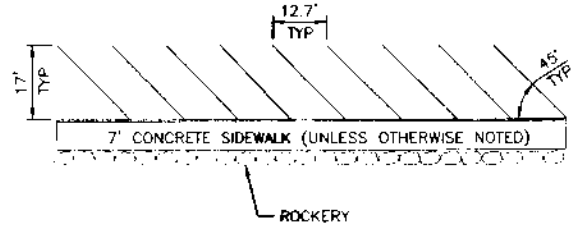


North Zone

Option 5: Angle w/ 1 Angle Parking Stalls Added: 32

Preliminary Cost: n/a

(This option not recommended based on current usage)



TYPICAL PARKING/SIDEWALK LAYOUT

1"=20'

CITY OF SHORELINE

POOL ADDITIONAL PARKING

ALTERNATIVE 2

SCALE 1" = 20'

"L"

NOTE: IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.

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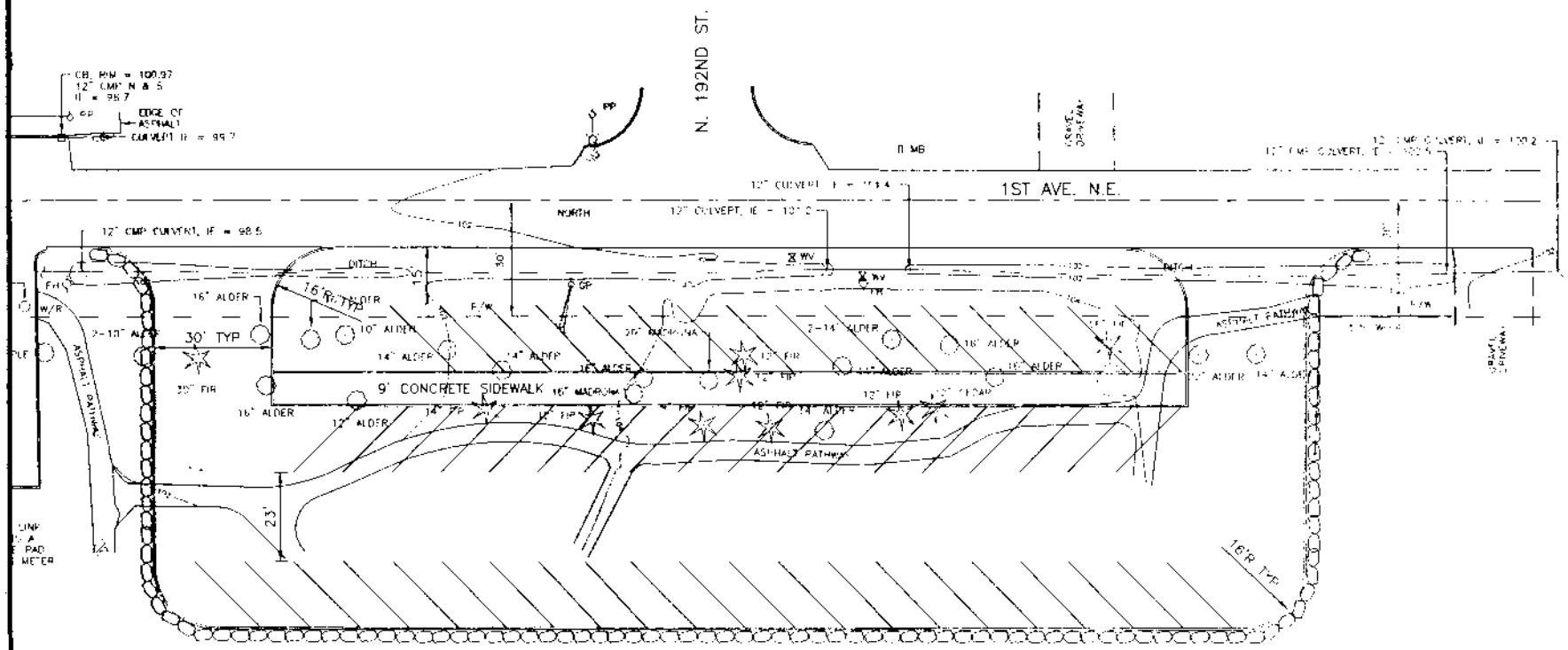
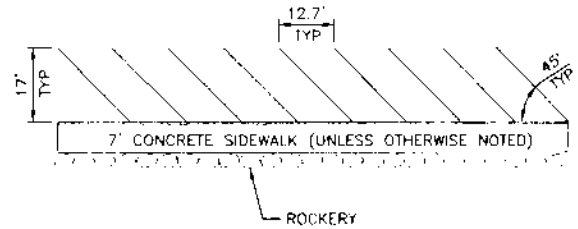


North Zone

Option 6: Angle w/ 2 Angle Parking Stalls Added: 52
Preliminary Cost: n/a
(This option not recommended based on current usage)



TYPICAL PARKING/SIDEWALK LAYOUT
1"=20'

CITY OF SHORELINE
POOL ADDITIONAL PARKING
ALTERNATIVE 3

SCALE 1" = 20'
NOTE: "L"
IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.
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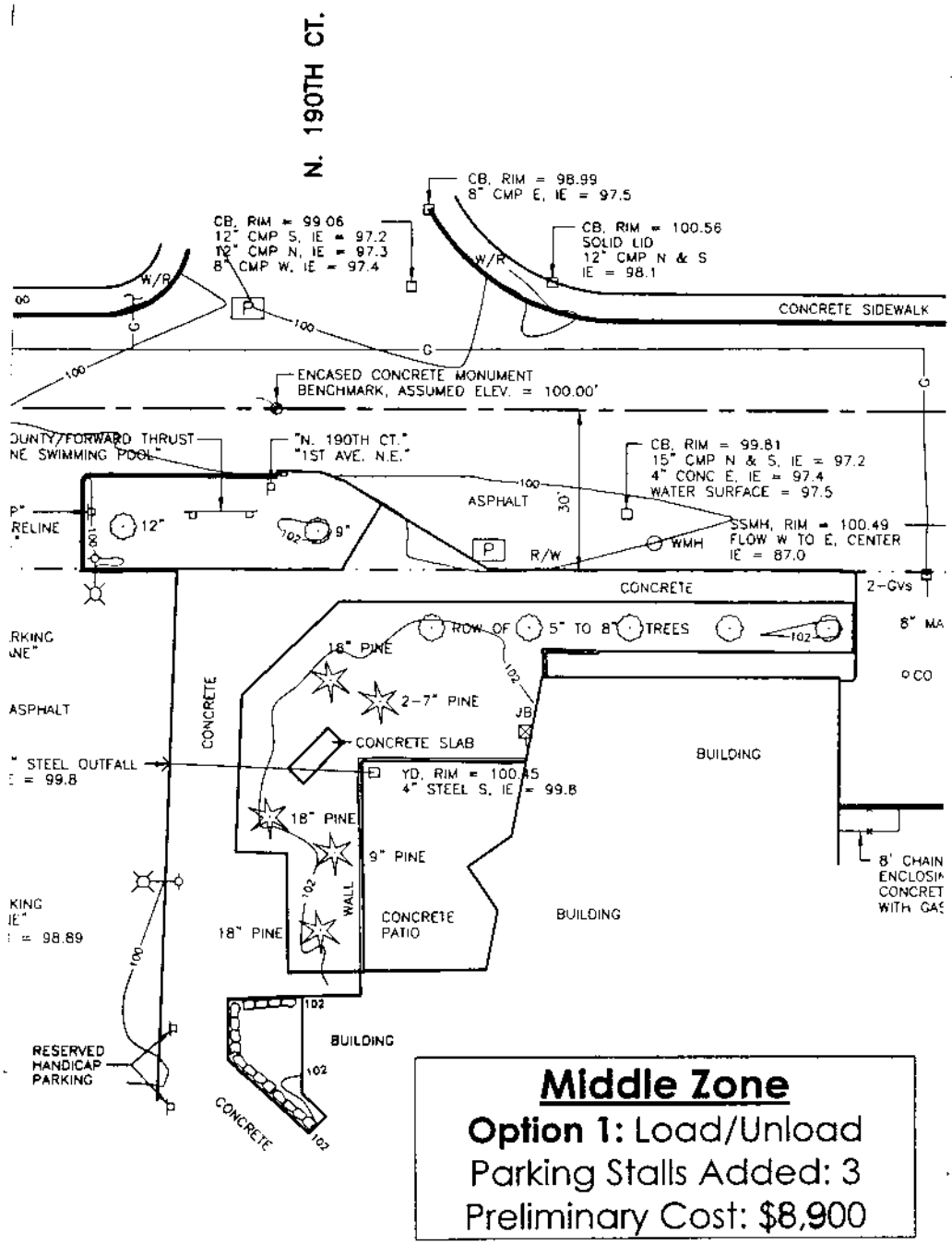
Attachment E

Middle Zone
Photograph and Design Options

N 190 CT



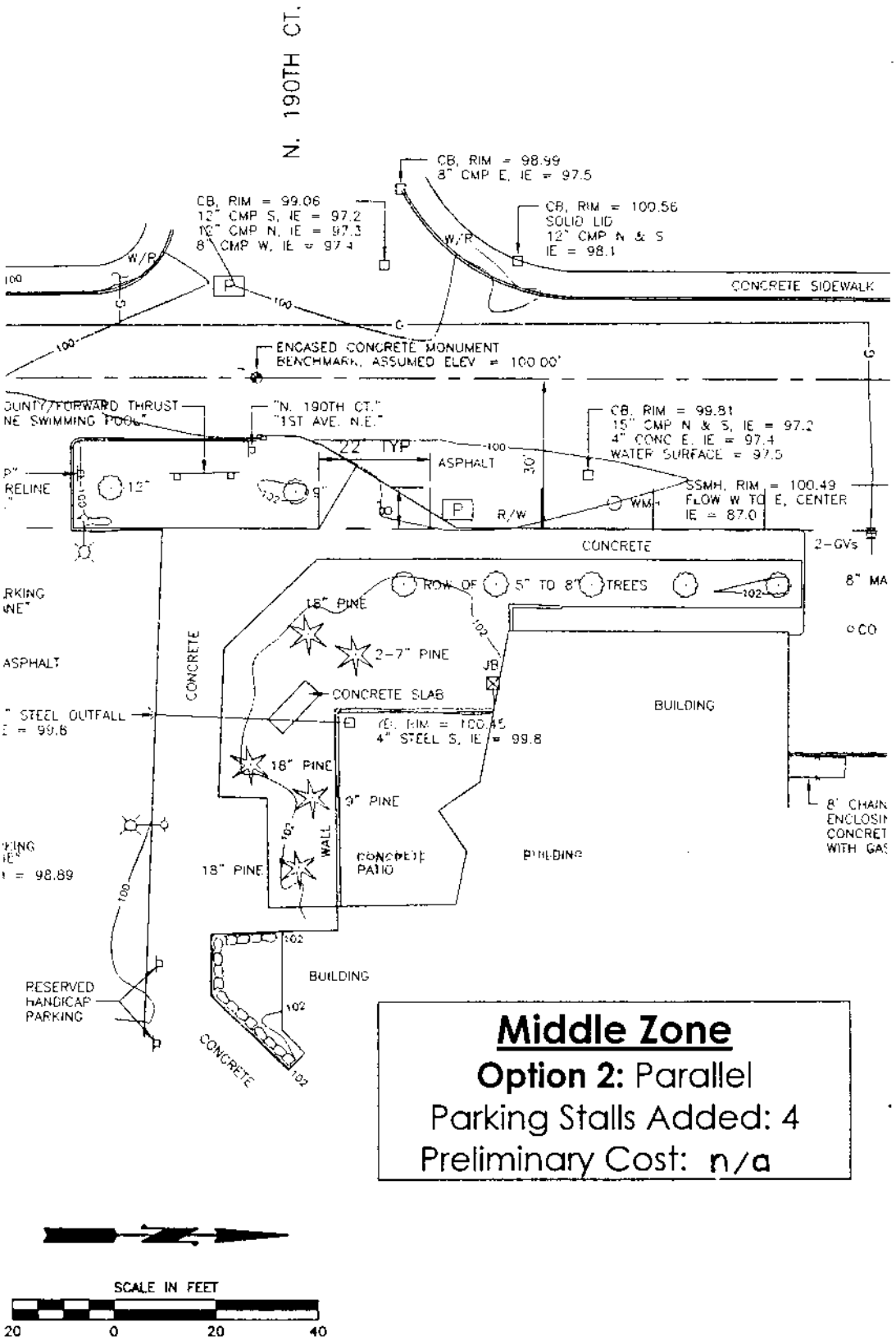
Middle Zone

Option 1: Load/Unload

Parking Stalls Added: 3

Preliminary Cost: $8,900

SHORELINE

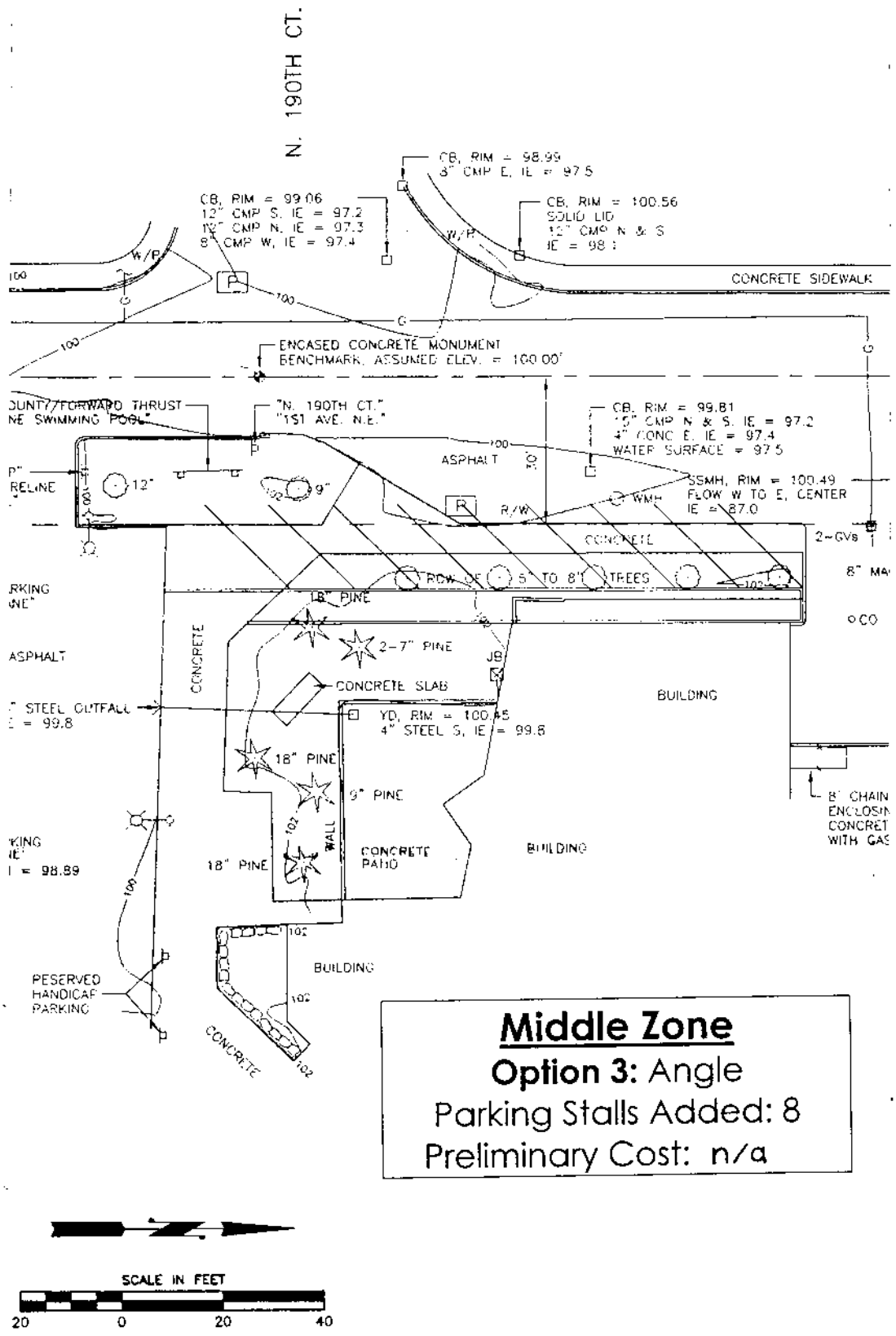


Middle Zone

Option 2: Parallel

Parking Stalls Added: 4

Preliminary Cost: n/a



Middle Zone

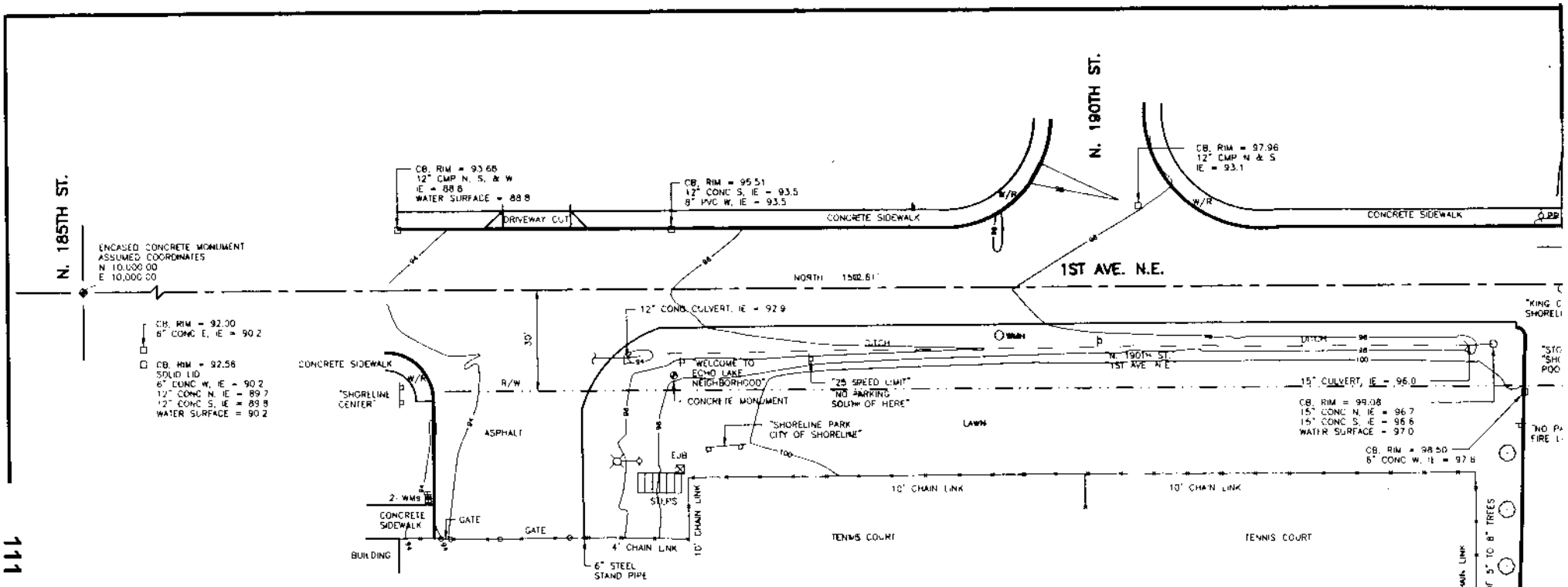
Option 3: Angle

Parking Stalls Added: 8

Preliminary Cost: n/a

Attachment F

South Zone
Photograph and Design Options



South Zone

Option 1: Do Nothing
Parking Stalls Added: 0
Preliminary Cost: $0

LEGEND

⊕	MONUMENT	FH	FIRE HYDRANT
□	CB CATCH BASIN	WV	WATER VALVE
□	YD YARD DRAIN	WM	WATER METER
○	SSMH SANITARY SEWER MANHOLE	WMH	WATER MANHOLE
○	CO CLEANOUT	GV	GAS VALVE
◊	PP POWER POLE	⊠	JB JUNCTION BOX
◊	GP GUY POLE		ROCKERY
←	GUY ANCHOR	⊢	SIGN
⊠	EJB ELECTRICAL JUNCTION BOX		W/R WHEELCHAIR RAMP
	LIGHT POLE		DECIDUOUS TREE
P	POWER VAULT		CONIFER TREE
		G	GAS LINE
			FENCE LINE

NOTE:

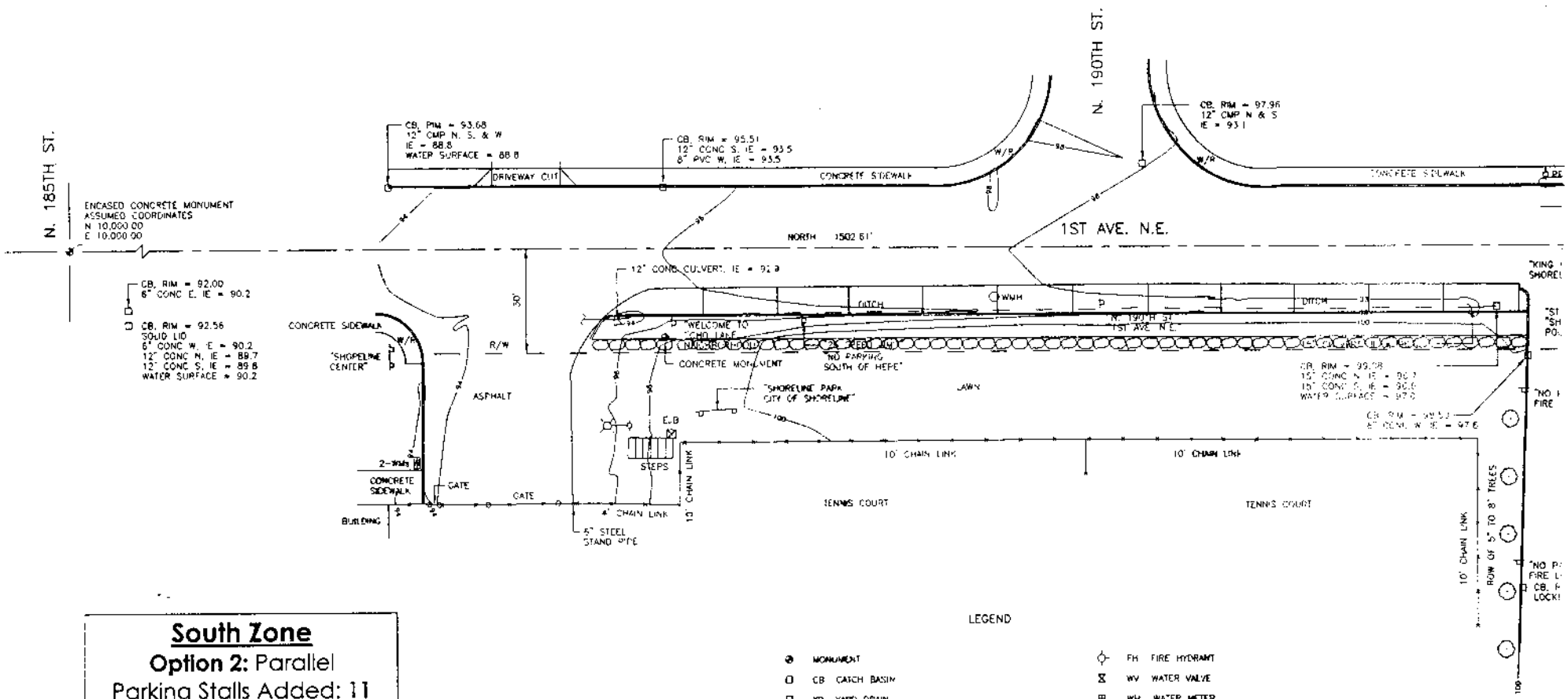
UTILITIES SHOWN ARE BASED ON OBSERVATIONS OF SURFACE FEATURES. FIELD LOCATION MUST BE VERIFIED PRIOR TO CONSTRUCTION. DIAL 1-800-424-5555 BEFORE DIGGING.

VERTICAL DATUM:

DATUM: ASSUMED

BENCHMARK: ENCASED CONCRETE MONUMENT AT INTERSECTION OF 1ST AVENUE N.E. AND N. 190TH COURT.
ELEVATION = 100.00 FEET

ReidMiddleton
728 134th Street SW · Suite 200
Everett, Washington 98204
Ph: 425 741-3800



South Zone

Option 2: Parallel

Parking Stalls Added: 11

Preliminary Cost: $66,000

LEGEND

⊕	MONUMENT	◇	FH FIRE HYDRANT
□	CB CATCH BASIN	⧖	WV WATER VALVE
□	YD YARD DRAIN	⊞	WM WATER METER
○	SSMH SANITARY SEWER MANHOLE	○	WMH WATER MANHOLE
○	CO CLEANOUT	⊟	GV GAS VALVE
◊	PP POWER POLE	⊠	JB JUNCTION BOX
◊	GP GUY POLE	▭▭	ROCKERY
←	GUY ANCHOR	▷	SIGN
⊠	EJB ELECTRICAL JUNCTION BOX		W/R WHEELCHAIR RAMP
⊠—◊	LIGHT POLE	○	DECIDUOUS TREE
P	POWER VAULT	✳	CONIFER TREE
		—G—	GAS LINE
		—x—x—	FENCE LINE

NOTE:

UTILITIES SHOWN ARE BASED ON OBSERVATIONS OF SURFACE FEATURES. FIELD LOCATION MUST BE VERIFIED PRIOR TO CONSTRUCTION. DIAL 1-800-424-5555 BEFORE DIGGING.

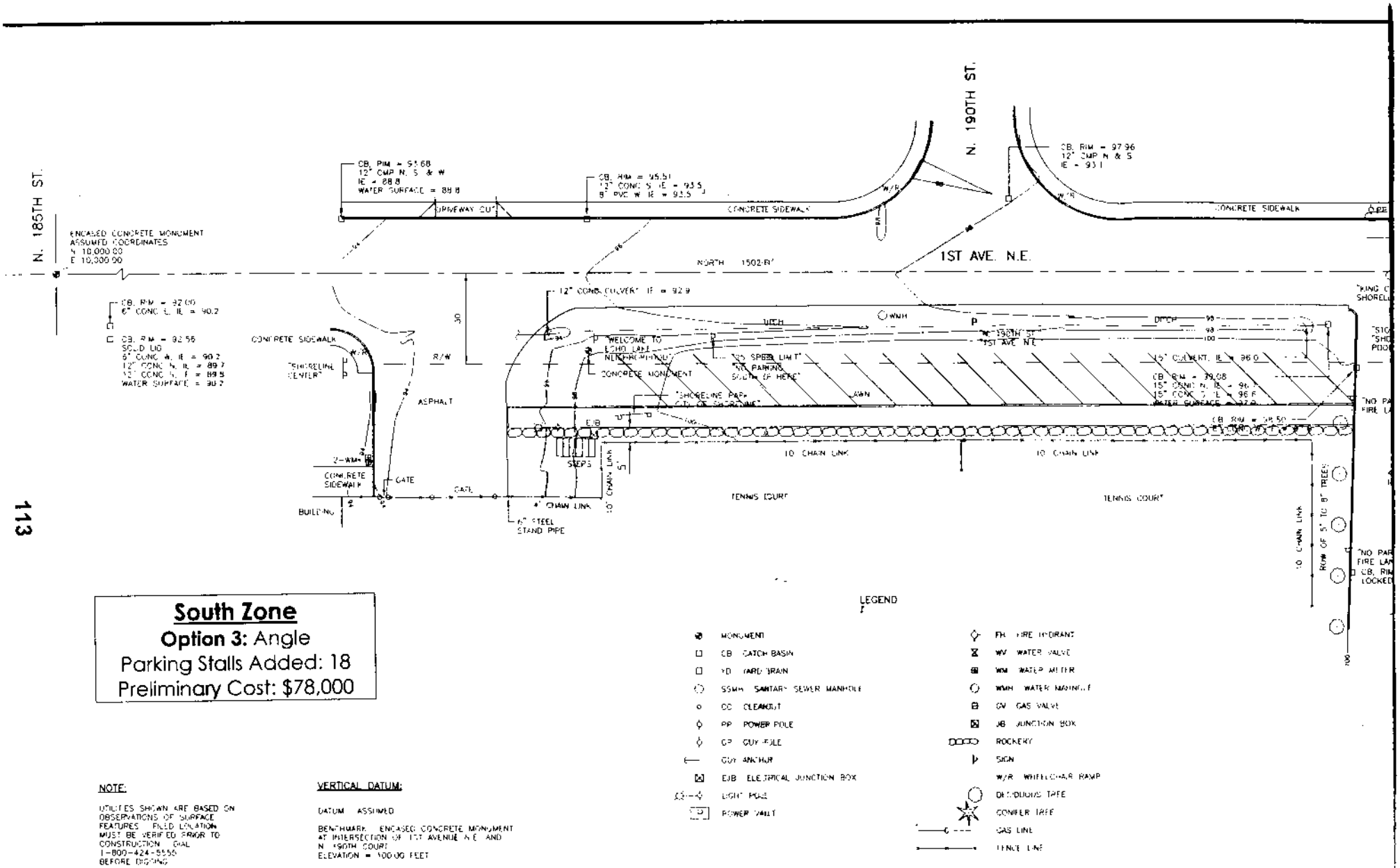
VERTICAL DATUM:

DATUM ASSUMED

BENCHMARK: ENCASED CONCRETE MONUMENT AT INTERSECTION OF 1ST AVENUE N.E. AND N 190TH COURT
ELEVATION = 100.00 FEET

ReidMiddleton

728 134th Street SW · Suite 200
Everett, Washington 98204
Ph: 425 741-3800



113

South Zone

Option 3: Angle

Parking Stalls Added: 18

Preliminary Cost: $78,000

LEGEND

●	MONUMENT	FH	FIRE HYDRANT
□	CB CATCH BASIN	WV	WATER VALVE
□	YD YARD DRAIN	WM	WATER METER
○	SSMH SANITARY SEWER MANHOLE	WMH	WATER MANHOLE
○	CO CLEANOUT	GV	GAS VALVE
◇	PP POWER POLE	JB	JUNCTION BOX
◇	GP GUY POLE		ROCKERY
⟵	GUY ANCHOR		SIGN
⊠	EJB ELECTRICAL JUNCTION BOX		W/R WHEELCHAIR RAMP
	LIGHT POLE		DECIDUOUS TREE
	POWER VAULT		CONIFER TREE
			GAS LINE
			FENCE LINE

NOTE:

UTILITIES SHOWN ARE BASED ON OBSERVATIONS OF SURFACE FEATURES. FIELD LOCATION MUST BE VERIFIED PRIOR TO CONSTRUCTION. DIAL 1-800-424-5555 BEFORE DIGGING.

VERTICAL DATUM:

DATUM: ASSUMED

BENCHMARK: ENCASED CONCRETE MONUMENT AT INTERSECTION OF 1ST AVENUE N.E. AND N. 185TH COURT
ELEVATION = 100.00 FEET

ReidMiddleton

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