DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL
SUMMARY MINUTES OF SPECIAL MEETING

Monday, September 18, 2000
6:30 p.m.

Shoreline Conference Center
Mt. Rainier Room

PRESENT: Deputy Mayor Hansen, Councilmembers Grossman, Gustafson, Lee, Montgomery and Ransom

ABSENT: Mayor Jepsen

1. CALL TO ORDER

The meeting was called to order at 6:35 p.m. by Deputy Mayor Hansen, who presided.

2. FLAG SALUTE/ROLL CALL

Deputy Mayor Hansen led the flag salute. Upon roll call by the Deputy City Clerk, all Councilmembers were present with the exceptions of Councilmembers Lee and Ransom, who arrived later in the meeting, and Mayor Jepsen.

Councilmember Gustafson moved to excuse Mayor Jepsen. Councilmember Grossman seconded the motion, which carried unanimously.

3. CITY MANAGER'S REPORT AND FUTURE AGENDAS

Public Works Director Bill Conner responded to questions raised about the Aurora Corridor Project at the Council meeting September 11. He distributed copies of the 32 points discussed as part of the Aurora Corridor Pre-Design Study. He also provided a list of frequently asked questions with responses.

Mr. Conner explained that a median of 16 feet in width is necessary to accommodate a four-foot pedestrian refuge and 12-foot left-turn lanes at intersections. He noted that the median can be narrower between intersections.

Continuing, Mr. Conner discussed the potential impact of the Aurora Corridor Project on buildings, parcels and parking spaces along Aurora Avenue. He counted 190 buildings on properties adjacent to the Aurora Corridor Project between 145th and 205th Streets, 48 of which are between 145th and 165th Streets. He estimated that the project will affect 21 of the properties along Aurora Avenue in Shoreline (three of those between 145th and 165th Streets). He mentioned possible adjustments to the project (e.g., to the width of sidewalks and medians) to reduce the impact.

Mr. Conner said the 190 buildings adjacent to the project occupy 183 parcels of land. He explained that the project will affect the parking on 141 parcels (23 between 145th and 165th Streets). More specifically, staff estimates that the project will affect 550 of the 6600 parking spaces adjacent to Aurora Avenue (81 of the 1138 between 145th and 165th Streets).

Mr. Conner cautioned that staff has not yet surveyed or designed any particular street or business. He said the City will address each on a case-by-case basis as it proceeds.

Councilmember Ransom arrived at 6:38 p.m.

Assistant City Manager Larry Bauman said 976 households participated in Super Clean Sweep Day 2000 on September 16. He mentioned that the City collected 146 tons of material for disposal and recycling.

4. COUNCIL REPORTS

Councilmember Grossman suggested that staff invite King County Councilmember Maggi Fimia to attend the upcoming meeting at which Council will consider the County transit tax-option plan.

Councilmember Montgomery said two of the transportation committees on which she serves, the Seashore Transportation Forum and the Regional Transit Committee, meet this week.

Councilmember Gustafson said he will attend the September 19th meeting of the Human Services Roundtable. He mentioned a proposal to disband and reorganize the organization.

Councilmember Ransom expressed concern at the potential loss of the Human Services Roundtable. He asserted the need for a forum in which human service providers can communicate and cooperate.

Deputy Mayor Hansen noted that the City hosted the September 13th meeting of the Suburban Cities Association (SCA). He mentioned his participation at the Super Clean Sweep 2000 Day.

Councilmember Lee arrived at 6:55 p.m.

Councilmember Lee said she attended the September 14 meeting of the Regional Water Quality Committee. She mentioned that the committee will have the opportunity to review the siting criteria for the North Treatment Facilities.

5. PUBLIC COMMENT

(a) Richard Johnsen, 16730 Meridian Avenue N, said QFC plans to remove the mail center from its store at 185th Street and Midvale Avenue N. He requested City advocacy for US Mail services to replace those being lost.

(b) Daniel Mann spoke as the owner of a business at 19926 Aurora Avenue N. He asked Council to reassess the 12-foot width for sidewalks in the Aurora Corridor Project. He said the recommendations from the planning process which Council subsequently endorsed did not indicate the amount of disruption that 12-foot-wide sidewalks would cause.

(c) Jerilee Noffsinger spoke as the owner of CarePlus, 14731 Aurora Avenue N. She said she and the owners of other businesses along Aurora Avenue question whether the City will actually consider reducing the width of sidewalks and vehicle lanes or shifting the roadway to save existing businesses.

(d) Wally Crow, 19025 9th Place NW, expressed concern about the long-term costs to maintain the median and sidewalk landscaping proposed as part of the Aurora Corridor Project. He asserted the significant impact on small businesses along Aurora Avenue of the loss of parking that will result from the 12-foot-wide sidewalks.

(e) Brian McCullough, 633 NW 180th Street, said the scope and cost of the Aurora Corridor Project is too large. He expressed concern that Shoreline taxpayers will be responsible for cost overruns. He advocated a demonstration project to show residents and businesses the effects of the proposed medians.

Mr. Bauman said staff will contact the owner of the property of the QFC at 185th Street and Midvale Avenue N about plans to remove postal services there.

Councilmember Ransom reported that the QFC store manager issued notice that the post office boxes at the store will be removed as of October 1.

Deputy Mayor Hansen advocated that Shoreline obtain its own Post Office and zip codes.

In response to Deputy Mayor Hansen, Mr. Bauman noted that staff will compile and present the public input from the September 14th Aurora Corridor Project open house for Council review and discussion. He explained that the City has not begun the design stage of the project. He stressed that Council will have final approval of any design.

Deputy Mayor Hansen noted that the Aurora Corridor Pre-Design Study included considerable public process. He asserted his willingness to change a position, given sufficient evidence of the need for such a change.

Councilmember Lee disputed the contention that Council is overlooking the concerns of existing businesses in favor of proceeding with the Aurora Corridor Project. She asserted Council attention to "the best interests" of residents, citizens, land owners and businesses.

6. ACTION ITEM

(a) Ordinance No. 247 amending the Development Code for the purposes of further defining and clarifying gambling uses

Senior Planner Rachael Markle reviewed the staff report.

Deputy Mayor Hansen invited public comment.

(1) John Prewitt spoke as the Casino Manager at Parker's, 17001 Aurora Avenue N. He commented that dining, gaming and pari-mutuel betting operate at different hours at Parker's. He asserted that the 200-car parking lot at the business is more than sufficient. He mentioned that Parker's and other mini-casinos in Shoreline contribute gambling tax revenue to the City. He asserted a lack of crime at Parker's. He noted the large new sign at Debby's Drift On Inn.

(2) David Osgood, 1411 4th Street, Suite 1424, Seattle, spoke as the attorney for Parker's. He noted that Section 1 of Ordinance No. 247 references RCW 9.46. He said horse racing is exempt from the definition of gambling under RCW 9.46. He characterized the parking requirements of the proposed ordinance as "an ingenuous way to drive casinos out of Shoreline."

(3) Richard Johnsen, 16730 Meridian Avenue N, said he sees casinos in Shoreline as a form of tourism and as means to attract other tourist-oriented businesses. He suggested that the City structure its ordinances to preserve tourism in Shoreline and the tax revenues the City receives from gambling establishments.

Councilmember Montgomery moved adoption of Ordinance No. 247. Councilmember Lee seconded the motion.

Councilmember Ransom said the proposed ordinance expands on the moratorium that Council adopted to allow time to study the impact of pari-mutuel betting. He noted the concern raised previously about parking. He said the daytime pari-mutuel betting operation at Parker's does not compete with the nightclub for use of the 200 parking spaces at the facility. He said Parker's has not filled its parking lot, except on the day of the Kentucky Derby. He noted that ten State studies found no effects on crime from card rooms and mini-casinos, and he mentioned similar studies on horse racing. He commented that pari-mutuel betting has no real effect on the Shoreline community. He said Shoreline is the only jurisdiction in all of the counties where pari-mutuel betting is available to raise an issue about it.

Councilmember Ransom asserted that the requirement of "one parking space per every three seats," in addition to "1 parking space per 75 square feet in dining or lounge areas," is excessive. He said Parker's will need to add 25 more parking spaces to those already not in use.

Councilmember Ransom said the public is not opposed to gambling. He mentioned the results of a survey at a neighborhood forum. He asserted that the State Gambling Commission tightly monitors gambling establishments. He mentioned the Washington Horse Racing Commission.

Councilmember Ransom said pari-mutuel betting creates jobs in Shoreline. He mentioned that the City's former Economic Development Coordinator identified proximity to water and casinos as criteria for attracting a convention hotel. He commented that gambling addiction is not a physical condition and that it is rare, in comparison to physical addictions. He noted that casinos contribute to a fund which pays for mental health counseling for people with gambling problems.

Councilmember Ransom recommended that Council vote against Ordinance No. 247.

Councilmember Grossman said the proposal of Ordinance No. 247 implies that the City has answers to the questions that existed when Council adopted the moratorium on pari-mutuel wagering.

In response to Councilmember Grossman, Ms. Markle said she is not aware of parking problems at Parker's. She noted that Parker's has not made improvements to facilitate pari-mutuel wagering. She said such improvements may attract a number of customers comparable to that the off-track pari-mutuel betting site in Everett, Washington attracts. She said that site has had to rent parking spaces from other businesses to accommodate customers.

Tim Stewart, Director, Planning and Development Services, asserted the intent of Ordinance No. 247 to implement the policy directive that Council adopted in July 1999. The directive prohibited new gaming establishments while permitting existing gaming establishments to continue operations as non-conforming uses. Mr. Stewart said the non-conforming status was meant to prevent intensified or expanded operations.

In response to Deputy Mayor Hansen, Mr. Stewart said Ordinance No. 247 clarifies the intent of the existing City ordinance on gambling and minimizes the potential for argument of ambiguities in the ordinance. He stressed that the parking requirements of Ordinance No. 247 would not apply to legally-existing non-conforming uses. He noted that gambling establishments that propose to expand would have to apply for a special use permit and meet the parking standards.

Councilmember Grossman said he is uncomfortable with the proposed ordinance. He noted that Parker's is an existing gaming establishment, permitted under the existing ordinance. He said the City perceived Parker's to be taking advantage of a loophole in the existing ordinance by offering pari-mutuel wagering, which the ordinance does not address. He stated that the moratorium was meant to provide time to study the impacts of pari-mutuel wagering. He asked what the City has learned from its study. He commented that the impacts seem negligible.

In response to Councilmember Grossman, City Attorney Ian Sievers said the permanent regulation (i.e., Ordinance No. 247) has little to do with the specifics of the litigation by Parker's against the City. He explained that Parker's convinced the judge on preliminary ruling that it had made some application before the moratorium took effect, giving it vested rights. He said Ordinance No. 247 is important to enable the City to regulate Parker's as a non-conforming use. He asserted the ambiguity of failing to regulate off-track betting with other forms of serious gambling. He said off-track betting could then be considered a permitted use, capable of expanding freely (e.g., without the restrictions of a special use permit). In addition, he said the proposed ordinance represents a comprehensive approach to gambling and anticipates other forms of gambling the City may address in the future.

In response to Councilmember Montgomery, Mr. Stewart said the new sign at Debby's Drift On Inn is in compliance with the new Development Code.

In response to Councilmember Lee, Mr. Sievers said Ordinance No. 247 refers to RCW 9.46 to include the definitions in that chapter of the different forms of gambling. He explained that horse racing is exempt from that chapter. He said it has its own chapter.

Councilmember Gustafson explained that he supported the moratorium to prevent the expansion of gambling in Shoreline. He asked how the proposed ordinance will affect pari-mutuel betting. Setting aside the case of Parker's, Mr. Stewart said the ordinance would prohibit pari-mutuel betting in the City of Shoreline. Mr. Sievers mentioned an October 2001 date for the court case concerning Parker's. He noted that Ordinance No. 247 would prohibit pari-mutuel betting at Parker's if the business abandoned or lost its franchise with Emerald Downs for a year.

Councilmember Gustafson questioned the need for the proposed ordinance. He said he is not comfortable with the parking requirements. He explained that his concerns about Parker's regarded the parking and the nearby school. He said he has not seen negative impacts. He expressed his willingness to reject the proposed ordinance based on his belief that existing City ordinances prevent the expansion of gambling in Shoreline.

Councilmember Lee asserted that Council had intended to maintain gambling in Shoreline at the amount that already existed. She said pari-mutuel betting represented an expansion. She commented that passage of Ordinance No. 247 will prevent further expansion (e.g., another establishment obtaining the pari-mutuel wagering franchise in the future).

In response to Councilmember Gustafson, Mr. Stewart said if Council does not adopt Ordinance No. 247 and does not extend the moratorium (which lapses on September 27) there would be a question as to whether pari-mutuel betting is permitted in Shoreline. He advised that Council could exempt pari-mutuel betting from the regulations the City has imposed on mini-casinos and other forms of gambling by including it as a new bullet in the list of exceptions in Section 1 of the proposed ordinance.

Councilmember Montgomery asserted that Ordinance No. 247 affirms and implements the policy directive that Council chose in July 1999 (i.e., Option 4), which prohibited new gaming establishments and expansion of gambling. Mr. Stewart agreed and added that Ordinance No. 247 accomplishes this within the framework established in the new Development Code. Councilmember Montgomery urged Councilmember Gustafson to vote to adopt Ordinance No. 247.

Deputy Mayor Hansen urged Council to adopt Ordinance No. 247. He commented that he considered Option 4 a compromise. He expressed support for measures limiting the expansion of gambling.

Councilmember Ransom moved to amend the motion to revise a portion of Section 3 of Ordinance No. 247 to read as follows: "3. Minimum off street parking for Gambling establishments shall be at a minimum 1 parking space per 75 square feet in dining or lounge areas, plus five parking spaces per card table~~, plus one parking space per every three seats (not associated with a gaming/card table) available for gambling or viewing gambling activities~~." Councilmember Gustafson seconded the motion.

In response to Councilmember Lee, Ms. Markle explained that she drafted Section 3 by beginning with the parking requirements that Council adopted for card rooms (i.e., "1 parking space per 75 square feet in dining or lounge areas, plus five parking spaces per card table"). She said she considered pari-mutuel wagering an additional use that would presumably attract more patrons. She therefore added the parking standard used for other types of spectator activity (e.g., theater, sporting events): one space per every three seats. She asserted her understanding that the hours of pari-mutuel wagering at Parker's overlap those of the other activity at Parker's.

In response to Councilmember Lee, Ms. Markle explained that the pari-mutuel wagering site in Everett, Washington rents extra parking to accommodate pari-mutuel wagering patrons.

In response to Deputy Mayor Hansen, Mr. Stewart said Ordinance No. 247 will not apply to Parker's unless it proposes an expansion. He stated that any legally-existing non-conforming use would be allowed to continue, even if it does not meet the standards. Based on these comments, Deputy Mayor Hansen said he does not object to the language that Councilmember Ransom has proposed to delete.

Councilmember Grossman asked if the seats for which the City proposes to require parking spaces are located in the dining or lounge areas for which the City already requires parking spaces. Ms. Markle conceded that the seats could be located in the dining or lounge areas.

A vote was taken on the motion to amend Section 3 of Ordinance No. 247 to read as follows: "3. Minimum off street parking for Gambling establishments shall be at a minimum 1 parking space per 75 square feet in dining or lounge areas, plus five

parking spaces per card table~~, plus one parking space per every three seats (not associated with a gaming/card table) available for gambling or viewing gambling activities~~." The motion failed 3-3, with Deputy Mayor Hansen and Councilmembers Lee and Montgomery dissenting.

Councilmember Ransom recommended that Council vote against Ordinance No. 247. He suggested that staff could present an amendment to the gambling ordinance that Council adopted previously if further clarification is necessary.

A vote was taken on the motion to adopt Ordinance No. 247. The motion failed 3-3, with Councilmembers Grossman, Gustafson and Ransom dissenting.

Councilmember Gustafson suggested reconsideration of Ordinance No. 247 during a meeting at which the entire Council is present.

In response to Deputy Mayor Hansen, Councilmember Grossman pointed out that Ordinance No. 233, which created the moratorium, will expire September 27.

Staff indicated that Mayor Jepsen will not be in attendance at the Council meeting on September 25.

In response to Deputy Mayor Hansen, Assistant City Manager Larry Bauman agreed that staff will prepare a moratorium extension for Council consideration September 25.

7. WORKSHOP ITEMS

(a) Shoreline Transfer Station Master Planning Effort Briefing

Planner Jeffrey Thomas introduced Kevin Kiernan, Engineering Services Manager, King County Solid Waste Division and Diane Yates, also of King County. He went on to review the staff report.

Mr. Kiernan discussed the Shoreline Transfer Station and the master planning process for the site. He mentioned the revision of the Comprehensive Solid Waste Management Plan currently underway—the County is accepting public comment on the plan and the associated environmental impact statement through September 29. He listed proposed changes to the Shoreline Transfer Station: a new transfer building, further away from the north property line; expansion of recyclable material collection on site; more on-site roadways (to prevent lines of vehicles off site); connecting into the north operating base Interstate access ramps; installation of compactors; management of self-haul traffic; noise containment; dust suppression; and aesthetic improvements. He noted the portion of Thornton Creek on the site, and he acknowledged the impact of the listing of Puget Sound salmon under the Endangered Species Act.

Continuing, Mr. Kiernan reviewed the schedule related to the Shoreline Transfer Station. He said the master plan process and the environmental review will continue through

2001. The County will begin a five-quarter-long design process in 2002, followed by construction, in phases, over 18 months. Mr. Kiernan said a County staff proposal to accelerate the Interstate access ramp project is under review by the County Executive. He explained that accelerated development would require County Council action.

Finally, Mr. Kiernan stressed that the master plan process and the environmental review will include significant public participation.

Councilmember Lee questioned the definition of neighborhood regarding public notice and involvement in the Shoreline Transfer Station planning process. Mr. Thomas explained the notification requirements in the new Development Code. Mr. Kiernan said the County typically exceeds minimum notification requirements to advertise as broadly as possible. He described the citizen advisory committees that the County typically convenes.

In response to Councilmember Lee, Mr. Kiernan said the County Executive's Office will transmit the proposal to accelerate the Interstate access ramp project, together with the rest of the budget, to the County Council in mid-October. He advised that the County Council typically votes on the budget the Monday before Thanksgiving.

In response to Councilmember Lee, Mr. Kiernan said the approved budget for improvements to the transfer station includes funding for the Interstate access ramps. He explained that the County Council included a proviso in the budget under which staff must evaluate the possibility of having some or all of the traffic generated by the new transfer station use the existing restricted freeway ramps. He commented that the rest of the project will proceed after the County Council has reviewed and approved the development alternative for the Interstate access ramps.

Councilmember Gustafson advocated accelerated development of the Interstate access ramps.

In response to Deputy Mayor Hansen, Mr. Kiernan said County staff has considered the time savings of Interstate access ramps to drivers of County hauling trucks.

Councilmembers Montgomery, Ransom and Grossman stressed that the Interstate access ramps are critical to the City.

(b) Metropolitan Area Transportation Plan Briefing

Planning Manager Kirk McKinley introduced Rocky Piro, Puget Sound Regional Council (PSRC) Growth Strategies Manager.

Mr. Piro provided an overview of PSRC. He went on to discuss the Metropolitan Area Transportation Plan (MTP), which PSRC first developed in 1995. He explained that PSRC began work a year ago to update the MTP. He reviewed the recently-released "Executive Summary: 2001 Metropolitan Transportation Plan Alternatives, Analysis and

Draft Environmental Impact Statement." In particular, he described the three MTP alternatives: 1) Updated 1995 Metropolitan Transportation Plan; 2) Current Law Revenue; and 3) Metropolitan Transportation Plan "Plus." He indicated that the alternatives provide a framework for the public discussion process from which PSRC will develop the next MTP.

Mr. McKinley noted that comments on the Draft Environmental Impact Statement (DEIS) are due October 16. He said staff will prepare a draft letter concerning the DEIS for Council to review in early October. He discussed the issues that staff outlined on pages 54 and 55 of the Council packet. He also mentioned the following issues:

- Urban centers, suburban clusters and other areas in the region may be identified in the MTP as areas for increased housing, employment and transit. The City may want to identify such areas in Shoreline, based on the Comprehensive Plan (e.g., North City, Richmond Beach in the vicinity of NW 8th Street), to improve City competitiveness for future funding.
- PSRC intends to prepare a list of transportation projects for attention over a six- to ten-year period. Projects on the list will be more competitive for future funding. The City may want to nominate projects for inclusion on the list.
- The City needs to prepare a transit plan to give staff and Council guidance for participating in Sound Transit Phase 2 planning.

Deputy Mayor Hansen invited public comment.

(1) Richard Johnsen, 16730 Meridian Avenue N, questioned the statement on page 54 of the Council packet that "Shoreline is not an 'urban center.'" He also questioned how densely populated Shoreline will become.

Mr. McKinley said Vision 2020 designates 21 urban centers in the four-county region. Mr. Piro explained that each county designated urban centers based on its own criteria and that PSRC accepted the county designations. He noted that several cities wish to revisit the issue of what qualifies as an urban center. He indicated the willingness of PSRC to support such efforts.

On the question of population density, Mr. Piro projected an additional 1.5 million people in the region between now and 2030.

Councilmember Montgomery said she has learned the magnitude of transportation problems in the region from serving on the PSRC Transportation Policy Board. She noted that the region is expected to have two to three times as many people over age 65 by 2030. She asserted the value of transit access ramps on I-5 to improve access to the bus transportation that older people, especially, will need. She commented that there are too many vehicles in the region for the existing roads but not enough people for mass transit. She noted the need to identify a funding method for needed transportation improvements.

Councilmember Ransom mentioned Initiative 745. He said many people think road construction in the region is insufficient. He asserted that these people are unwilling to ride rail or systems not tightly connected to their destinations. He expressed concern that the proposed light-rail system appears disproportionately expensive, considering the number of potential riders. He suggested more highways or additional lanes on highways as part of the funding.

Councilmember Ransom said Shoreline, with a population of 53,000, has a density of approximately 4,000 per square mile, similar to that of Seattle. He asserted that Shoreline should receive higher priority for transportation improvements to encourage local job development. Mr. Piro said PSRC is willing to work with the City to consider an urban center designation for Shoreline.

Councilmember Grossman asserted the need to integrate land-use planning and transportation planning and the need to shift from a perspective of building more roads to a perspective of greater housing density with convenient, local services. He disagreed that Shoreline is as densely populated as Seattle. He commented that Seattle includes a more extensive industrial base and that few, if any, people reside in industrial areas.

Councilmember Montgomery noted widespread opposition to greater population density.

Mr. Piro said communities like Shoreline have the population density to support transit. However, he commented that common housing arrangements (e.g., sprawling apartment complexes) encourage driving over walking.

Councilmember Lee mentioned a listing of current transportation initiatives distributed at the September 13 SCA meeting. She suggested that efficiencies could result from greater communication and coordination among jurisdictions. Mr. Piro discussed the PSRC short-term action strategy to invite local jurisdictions, transit agencies and the State to identify their transportation projects. PSRC will create a composite picture and will organize and prioritize the projects in an effort to improve mobility and accessibility. Councilmember Lee advocated PSRC leadership on such initiatives.

8. EXECUTIVE SESSION

At 9:20 p.m., Deputy Mayor Hansen announced that Council would recess into executive session for 20 minutes to discuss one issue of potential litigation.

At 9:45 p.m., Deputy Mayor Hansen extended the executive session another ten minutes.

At 10:00 p.m., the executive session concluded, and the special meeting reconvened.

MEETING EXTENSION

At 10:00 p.m., Councilmember Montgomery moved to extend the meeting until 10:30 p.m. Councilmember Ransom seconded the motion, which carried unanimously.

7. WORKSHOP (continued)

(c) An ordinance granting Metromedia Fiber Network Services, Inc. a franchise to operate an underground fiber optic telecommunications system

Kristoff Bauer, Assistant to the City Manager, reviewed the staff report.

Deputy Mayor Hansen invited public comment.

(1) Jim Greenfield, an attorney from Davis Wright Tremaine, represented Metromedia Fiber Network Services, Inc. He noted a disagreement between Metromedia and the City on interpretation of the right-of-way ordinance that Council recently adopted. He said the parties are working together to develop a creative solution with which to resolve the disagreement.

Deputy Mayor Hansen confirmed Council consensus in support of the staff recommendation to bring the proposed ordinance back to Council for approval on October 16.

Councilmember Gustafson moved to reconsider the motion to adopt Ordinance No. 247. Councilmember Montgomery seconded the motion

Councilmember Ransom noted that many people attended earlier in the meeting to be present for Council consideration of Ordinance No. 247, which was a scheduled agenda item. He expressed concern that Council is reconsidering the ordinance after its earlier discussion and vote and after those present earlier left in the assumption that Council had finished its consideration of the ordinance. He asserted that reconsideration without public notice is unfair to the public process. He said Council should include further consideration of the ordinance on the agenda of another meeting.

In response to Councilmember Lee, Councilmember Montgomery explained that Council directed staff to prepare a moratorium extension for Council consideration September 25. Councilmember Montgomery said Council cannot do this. She asserted that the public is aware that Council had not settled the issue and that Council wanted to take another vote on it.

Deputy Mayor Hansen asserted "an inherent right via parliamentary procedure to reconsider a motion" within the same meeting.

A vote was taken on the motion to reconsider the motion to adopt Ordinance No. 247. The motion carried 5-1, with Councilmember Ransom dissenting.

Councilmember Gustafson moved to amend Ordinance No. 247 with a new Section 10 to read "This ordinance shall be repealed and amendments of no force or

effect if it is not readopted or amended within three months." Councilmember Montgomery seconded the motion.

In response to Councilmember Gustafson, Mr. Sievers said the proposed amendment is typically referred to as a "sunset clause." He explained that the amended ordinance will take effect in five days, assuming Council adopts it, but that it will automatically expire after three months if Council does not readopt or amend it before that time.

Councilmembers Gustafson and Grossman asserted the importance of the issues addressed by Ordinance No. 247 and advocated that Council extend its consideration of the ordinance, as proposed, in order to be able to include Mayor Jepsen in the deliberations.

A vote was taken on the motion to amend Ordinance No. 247 with a new Section 10 to read "This ordinance shall be repealed and amendments of no force or effect if it is not readopted or amended within three months." The motion carried 6-0.

A vote was taken on the motion to adopt Ordinance No. 247, as amended, which carried 6-0.

9. CONTINUED PUBLIC COMMENT

(a) Richard Johnsen, 16730 Meridian Avenue N, asserted the value of the mail services at the Gateway QFC, considering the locations of the two nearest post offices. He advocated the establishment of mail services at another location in the same area if Gateway QFC stops providing services. He reiterated his earlier comments about the value of gambling as a form of tourism and as means to attract other tourist-oriented businesses to Shoreline. Finally, he disputed Deputy Mayor Hansen's decision not to allow public comment after the staff report on agenda item 7(a).

10. ADJOURNMENT

At 10:14 p.m., Deputy Mayor Hansen declared the meeting adjourned.

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Ruth Ann Rose, CMC
Deputy City Clerk

DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL
SUMMARY MINUTES OF REGULAR MEETING

Monday, September 25, 2000
7:30 p.m.

Shoreline Conference Center
Mt. Rainier Room

PRESENT: Deputy Mayor Hansen, Councilmembers Grossman, Lee, Montgomery and Ransom

ABSENT: Mayor Jepsen and Councilmember Gustafson

1. CALL TO ORDER

The meeting was called to order at 7:30 p.m. by Deputy Mayor Hansen, who presided.

2. FLAG SALUTE/ROLL CALL

Deputy Mayor Hansen led the flag salute. Upon roll call by the Deputy City Clerk, all Councilmembers were present with the exceptions of Mayor Jepsen and Councilmember Gustafson.

Councilmember Lee moved to excuse Mayor Jepsen and Councilmember Gustafson. Councilmember Montgomery seconded the motion, which carried 5-0.

3. REPORT OF CITY MANAGER

City Manager Robert Deis reported that QFC at 185th Street and Midvale Avenue has renegotiated with the US Postal Service to continue to provide mail services.

Mr. Deis noted the open house regarding the Interurban Trail Project September 26. He said staff will present three design options addressing the Aurora Corridor Project and the Interurban Trail Project between 175th and 185th Streets. He explained that staff will prepare a preferred recommendation based on public input during the open house.

4. REPORTS OF BOARDS AND COMMISSIONS: None

5. PUBLIC COMMENT: None

6. APPROVAL OF THE AGENDA

Councilmember Lee moved approval of the agenda. Councilmember Montgomery seconded the motion, which carried unanimously.

7. CONSENT CALENDAR

Councilmember Ransom moved approval of the consent calendar. Councilmember Montgomery seconded the motion, which carried 5-0, and the following items were approved:

Minutes of Workshop Meeting of September 5, 2000
Minutes of Dinner Meeting of September 11, 2000
Minutes of Regular Meeting of September 11, 2000

Approval of expenses in the amount of $155,098.68

8. ACTION ITEMS: OTHER ORDINANCES, RESOLUTIONS AND MOTIONS

(a) City Council Beautification Awards Presentation and Clean Sweep Recap

Eric Swansen, Senior Management Analyst, provided an overview of Super Clean Sweep Day, which occurred September 16. He said 1,122 households participated in the event, and the City collected over 100 tons of materials for recycle and disposal. He also reviewed the Hamlin Park clean-up event, which occurred September 23.

Next, Mr. Swansen discussed the City Council Beautification Award Program. He said the purpose of the program is to recognize development projects that enhance quality of life, foster community pride, develop a better sense of community and create an incentive for urban renewal and economic development in Shoreline.

Deputy Mayor Hansen presented the City Council Beautification Award to the recipient in each of the following categories:

- Commercial: Cats Exclusive Veterinary Center, 19203 Aurora Avenue N (Dr. Dennis Wackerbarth accepting)
- Residential: Allen Residence, 12th Avenue NW (Dr. Robert and Judy Allen accepting)
- Open: Central Market, 15505 Westminster Way (Jim Huffman and Larry Niccatta accepting)

Mr. Swansen mentioned the Coffee Shack, 14615 15th Avenue NE, as the recipient of an honorable mention.

(b) Motion to authorize the City Manager to Transfer Grant Funds from the City of Shoreline to the Washington Traffic Safety Committee Pedestrian

Bill Conner, Public Works Director, reviewed the staff report.

Mandi Roberts, Senior Planner, OTAK, mentioned the following partners in the proposed project: the City; the Washington State Department of Transportation (WSDOT); the Washington Traffic Safety Commission; and the Washington State Transportation Center (TRAC) at the University of Washington. She also noted input from the Harborview Injury Prevention and Research Center. She reviewed the past progress and the future schedule of the project. She explained that the planned engineering improvements are intended to "channelize" pedestrians at specific crossing points, where medians and advanced signing will improve safety.

Dave McCormick, WSDOT Project Manager, noted the number of vehicle-pedestrian accidents on Aurora Avenue in Shoreline. He discussed the improvements included in the proposed project. He mentioned that similar projects by the Cities of Federal Way, Kent, Des Moines and Tukwila on Highway 99 and by the City of Covington on Highway 516 resulted in increases in the number of pedestrians and transit ridership, decreases in the number of accidents and community and business acceptance.

Councilmember Lee moved to authorize the City Manager to transfer $90,000 of Hazard Elimination System (HES) grant funds from the City of Shoreline to the Washington Traffic Safety Committee Pedestrian Safety Program. Councilmember Ransom seconded the motion.

Councilmember Grossman supported the proposed project. He said it will provide an example of how Aurora Avenue "can be a safe place for pedestrians."

In response to Councilmember Montgomery, Mr. Conner described the operation of the "roving eyes" sign. Mr. McCormick explained that the sign draws drivers' attention to the side of the street from which the pedestrian is crossing.

In response to Deputy Mayor Hansen, Mr. Conner said the dimensions of the "roving eyes" sign is 30 inches by 20 inches.

Councilmember Lee supported the proposed project. She said she advocates projects in which government jurisdictions pool resources and collaborate to achieve "bigger and better" results.

Councilmember Lee asked if the budgeted funds will cover the costs of removing the improvements if they prove ineffective and of maintaining the proposed medians. Mr. Conner explained that the City will revise the crosswalks as part of the Aurora Corridor Project if they prove ineffective. He said the pedestrian safety demonstration project includes funds to cover the costs to remove the improvements. He said the City will maintain the medians.

Councilmember Ransom said the Richmond Highlands Neighborhood Association advocated that the City locate the crosswalk at N 170th Street south of the intersection near the raised bus stop landing. Mr. Conner said traffic counts showed that traffic turning north onto Aurora Avenue from N 170th Street causes most of the safety problems

at the intersection. He explained that locating the crosswalk north of the intersection addresses this problem.

In response to Councilmember Ransom, Mr. Conner said the crosswalk and median at N 170th Street will not affect the area of a proposed hotel on the east side of Aurora Avenue.

Deputy Mayor Hansen supported the proposed project. He asked if staff considered locating the improvements to accommodate the width of the Aurora Corridor Project. Mr. Conner explained that staff could not address the right-of-way and real estate issues of that approach within the budget of the pedestrian safety demonstration project. He noted that the sidewalk improvements will be smaller and less substantive to facilitate removal during the Aurora Corridor Project.

Deputy Mayor Hansen mentioned, and Mr. Conner concurred, that the Shoreline Pedestrian Safety Project, if successful, may become a standard throughout the country (through incorporation in the Manual of Uniform Traffic Code Devices).

A vote was taken on the motion to authorize the City Manager to transfer $90,000 of Hazard Elimination System (HES) grant funds from the City of Shoreline to the Washington Traffic Safety Committee Pedestrian Safety Program. The motion carried 5-0.

9. CONTINUED PUBLIC COMMENT: None

10. ADJOURNMENT

At 8:40 p.m., Deputy Mayor Hansen declared the meeting adjourned.

Ruth Ann Rose, CMC
Deputy City Clerk

DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL
SUMMARY MINUTES OF JOINT DINNER MEETING

Monday, September 25, 2000
6:00 p.m.

Shoreline Conference Center
Highlander Room

Shoreline City Council

PRESENT: Deputy Mayor Hansen and Councilmembers Grossman, Lee, Montgomery and Ransom

ABSENT: Mayor Jepsen and Councilmember Gustafson

STAFF: Robert Deis, City Manager; Larry Bauman, Assistant City Manager

Shoreline Chamber of Commerce

PRESENT: Terry Green; Jim Jory; Russ McCurdy; Dan Mann; Bill Meyer; Mike Moore, Sr.; Jeri Noffsinger; Harley O'Neil; Bobbie Pederson and Sherwood Sage

The meeting convened at 6:37 p.m. All Councilmembers were present with the exceptions of Mayor Jepsen and Councilmember Gustafson.

Jim Jory explained his role with the Shoreline Chamber of Commerce. He reviewed the history of the Chamber over the past four years. He noted the Chamber goal to achieve fiscal stability. He said the Chamber now seeks to restore its credibility. He mentioned the budget request that the Chamber submitted to the City and the Chamber goal to serve visitors and tourists. He noted the interest of the Chamber in the construction of the Puget Sound Learning Center (PSLC) in Shoreline.

Terry Green expressed support of the construction of the PSLC in Shoreline.

Deputy Mayor Hansen discussed the PSLC and the possibility of it locating in a transit-oriented development (TOD) at 192nd Street and Aurora Avenue where the Shoreline Park and Ride now operates.

Robert Deis, City Manager, described the purpose and scope of TOD planning for the Shoreline Park and Ride.

Mr. Jory asserted his view that the economic future of Shoreline should build on its existing strengths. He said he expects the City to develop a strategy, and he anticipates that the PSLC could be an important part of Shoreline's future.

Councilmember Montgomery noted that one of the options for the Comprehensive Plan included more aggressive economic development. She said the public did not support that option.

Mike Moore asked if there is a vision statement for economic development.

Deputy Mayor Hansen said the City's primary role is creating the right environment for economic development.

Councilmember Lee commented that in every city she has visited the chamber of commerce plays an important role in economic development.

Mr. Moore asked what needs to be done to strengthen economic development.

Deputy Mayor Hansen said the first priority for creating more economic development is having a strong Chamber. He stressed the value to economic development in Shoreline of the work the Chamber has done to rebuild its organization.

Harley O'Neil expressed his concern that the PSLC could locate outside of Shoreline.

Dan Mann said his major concern is improving two-way communication and trust.

Russ McCurdy explained his concerns about the designs for sidewalks and medians in the Aurora Corridor Project.

Mr. O'Neil commented that not all businesses want to reduce the width of the Aurora Corridor Project.

Deputy Mayor Hansen suggested that Council hold additional meetings with the Chamber of Commerce.

Councilmember Ransom expressed his interest in seeing the Chamber develop a role as a travel bureau.

The meeting adjourned at 7:27 p.m.

_____

Larry Bauman, Assistant City Manager

DRAFT

These Minutes Subject to October 5 Approval

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES
SPECIAL JOINT WORKSHOP WITH CITY COUNCIL

September 21, 2000
6:30 P.M.

Shoreline Conference Center
Board Room

PRESENT
Chair Gabbert
Commissioner Maloney
Commissioner Doennebrink
Commissioner Marx
Commissioner Doering
Commissioner Harris
Commissioner Monroe
Commissioner McClelland

ABSENT
Vice Chair McAuliffe (Excused)

STAFF PRESENT
Tim Stewart, Director, Planning & Development Services
Rachael Markle, Senior Planner, Planning & Development Services
Anna Kolousek, Assistant Director, Planning & Development Services
Kirk McKinley, Planning Manager, Planning & Development Services
Bill Conner, Director, Public Works
Sarah Bohlen, Transportation Planner, Planning & Development Svcs.
Andrea Spencer, Planner, Planning & Development Services
Paul Cornish, Capital Projects Manager, Public Works
Joanne Dillon, Management Analyst, Planning & Development Svcs.
Brian Kreuger, Technical Asst., Planning & Development Services
Lanie Curry, Planning Commission Clerk

Councilmembers Present
Mayor Scott Jepson
Councilmember Ransom
Councilmember Gustafson
Councilmember Montgomery
Councilmember Lee

Chair Gabbert described the process that would be followed for both the work session and the regular meeting.

1. **North City Sub-Area Plan**

Mr. Stewart provided background information regarding the North City Sub-Area Planning process which was led by Anna Kolousek with participation from various staff members.

Ms. Kolousek said that the North City Sub-Area Plan is a result of the design charette that was conducted in June. The major purpose of the Sub-Area plan was to provide a planning framework that would be unique to the North City area. Another purpose was to preserve the privacy and safety of the existing neighborhoods. Many of the citizens who attended the charette were very concerned about the spill-over affect to the surrounding neighborhoods. The third purpose of the plan was to provide incentives to encourage redevelopment, particularly in the business area concentrated on 15th Ave NE. Lastly, the plan was intended to provide a design direction for the development and improvements along 15th Ave NE between 172nd and 180th Streets.

Ms. Kolousek said the first document before the Commission and Council is the amendment to the Comprehensive Plan. The second document includes special district development standards for the newly adopted Development Code. Included in the attachments is a prepared financial and Market Analysis to show some of the demonstrated projects and test their viability. Ms. Kolousek said the redevelopment concept of the plan is structured around what has been determined to be walkable distances to the business district. These walkable distances create four distinguished neighborhood units that are approximately one half mile from the heart of the business district. Ms. Kolousek said that within the heart of the business district, the plan proposes to create an interesting and safe walking street that is surrounded by a mix of office, retail and residential development. The street, itself, would be narrowed to three lanes. Traffic would have to slow down significantly to allow for public interaction.

Ms. Kolousek said that a market consultant reviewed the potential feasibility of this area. The Market Analysis showed that the aggregate potential income, within the two-mile radius, is $2 billion. This translates into a potential of $800 million in consumer spending per year. The results indicate that there is clearly a potential for over 100,000 square feet of new retail space between 172nd and 180th Streets. However, she noted that the current rental rates do not support new construction. The plan identifies two options. The City can continue with the status quo until sufficient disinvestment retires the poor performing properties existing today and allows redevelopment of larger, low-density, auto-oriented uses. The other option would be to capture higher volumes by bringing the local potential into the higher density development of more retail oriented uses. Capturing the surrounding spending and achieving the higher rental rates requires several actions to improve the existing environment, and that is the aim and vision of the proposed plan.

Ms. Kolousek explained that the Comprehensive Plan portion of the document presents two schemes. The five-year scheme includes the following demonstration sites (the corner of 180th and 15th Ave NE, immediately across from 177th Street, across from the Shoreline Water District, and the post office and Safeway sites located south of 175th Street). The property owners of these sites were heavily involved in the design cherette. The 15-year scheme involves the stretch of 15th Ave NE between 175th and 180th Streets, which would be surrounded by mixed-use development with parking located behind the buildings and accessible from the alleys. There would only be limited access from 15th Ave NE. This scheme would create a type of "main street" development with retail on the ground floor and residential units above.

Ms. Kolousek said the North City Sub-Area plan also presents options for creating more pedestrian friendly streets. Page 25 of the North City Sub-Area Plan Draft shows the concept of changing the existing four-lane street with limited street parking, sporadic sidewalks and numerous access points into a three-lane street with a left turn lane, wider sidewalks on both sides and pedestrian crossings at key points. The engineer provided a diagram to illustrate both the existing and proposed street alignment. The concept also considers the surrounding residential areas. She noted that one of the purposes of the plan is to encourage people to walk into the business area, but the present street system does not encourage pedestrian interaction. The consultant indicated that the streets should be made more pedestrian friendly and traffic on surrounding streets should be designed to discourage fast moving traffic.

Ms. Kolousek reviewed the designs proposed in the Plan for each demonstration site. The plan proposes that the North City district be identified as a special district in the Development Code. This would involve two overlay zones. Zone 1 (located from approximately 175th to 177th Streets) would not allow residential units on the ground floor. The ground floor would have to be occupied by 100 percent retail uses. There would be no required setbacks for buildings located in this zone. The same setback standards for retail uses would apply to Zone 2, as well. However, Zone 2 would allow residential units to be located on the ground floor. The code would require that these units be setback 10 feet from the sidewalk to allow for a residential type of access. The plan also recommends that there be a vertical setback along the street for taller buildings so that shadow and tunnel affects do not impact adjacent properties. To emphasize the corners, buildings within 50 feet of the street corners would be allowed a greater height with no setback requirements, but upper stories on properties more than 50 feet from the corner would have a required setback.

Ms. Kolousek referenced Table 1, and asked that Planning Commission and City Council consider the option of allowing a density bonus in order to make projects in this area more feasible. She concluded that redevelopment potential exists. Based on the financial analysis, the plan seems to provide a realistic concept. The City is concurrently preparing the traffic study to analyze what could happen if the street is constrained to three lanes. At the same time, they are preparing a planned action SEPA review. Once the SEPA review is complete, there will be no need for developers to go through additional SEPA review if their proposed project is consistent with the plan.

Commissioner Doennebrink inquired what the current rental rates are in the North City area. Ms. Kolousek answered that the rental rates are about $15 per square foot. Mr. Stewart noted that Page 5 of the North City Sub-Area Plan Draft identifies the current rates and the rates that would be needed to support retail uses. The conclusion was that retail would be financially feasible at triple rent of $17 to $18 per foot ($22 to $23 gross per square foot).

Councilmember Lee said there are many different opinions regarding mixed retail and residential uses. She noticed that in areas of Bellevue and Redmond, for example, property owners are still having trouble filling their spaces. She inquired if studies have concluded that this type of development is successful in cities. Mr. Stewart agreed that is one of the risks the City is facing, but the market study concluded that the area could support mixed-use development.

Commissioner Harris pointed towards downtown Ballard which is in a "dying phase." It seems that the key to the plan's success is the 1,500 more housing units that are identified. The trend seems to be towards the big block stores such as Costco. He likes the proposed plan, but it appears to be risky.

Commissioner Doering inquired what the average income of the area is. She said she is concerned about whether or not the people living in the area will be able to afford the units. Mr. Stewart referred to Page 8 of the Market Feasibility Study, which is the data that was used to calculate feasibility and whether or not mixed-use development would work. The team considered the revenue stream and the realistic construction costs of development, and the conclusion was that it appears to be feasible.

Councilmember Montgomery agreed that if 15th NE is narrowed to three lanes it would make a beautiful roadway, but it could create a traffic boondoggle that would cause people to avoid doing business in the area. Mr. Stewart referred to Page 16 of the North City Sub-Area Plan Draft, which illustrates, through the use of a schematic diagram, the impacts associated with a narrower road. If they constrain 15th NE, the cars would be pushed somewhere else. Cutting through the neighborhoods is unacceptable. The other alternative would be to push the traffic on to large arterial streets. The consultant guessed that perhaps as much as 40 percent of the traffic during peak hour on 15th NE has origins and destinations outside of the City. That is the target population that they want to constrain or reduce.

Commissioner Maloney suggested that by identifying as many as 1,500 units for this area, it seems to make a statement to the Growth Management Board that the City can readily accept more of the population growth than they have presently agreed to take. Mr. Stewart said that based on economics or demographics, the consultant is suggesting that there is a market for 1,500 units. This is not being recommended as a target for North City. The intent is to demonstrate the strength of the market to individual site developers. Ms. Kolousek noted that this figure would not become part of the actual plan. It is only identified in the Market Analysis, which will be an appendix to the plan.

Councilmember Gustafson inquired if the ESA listing would have a significant impact on the cost of construction or review. Mr. Stewart explained that most of the property included in the plan is already impervious surface. For example, a change from a parking lot to a building would not increase the amount of impervious surface. The drainage area for North City is in a depressed basin, which goes into a detention basin right off of 15th NE next to the bus barn. Water quality issues in North City are going to be much easier to deal with than some of the other areas of the City.

Mayor Jepson said it seems grandiose to think that there would be 1,500 residential units constructed in the City in the short term. He supports mixed-uses in this area. He said his largest concern is how this plan will be implemented. He referenced Page 5 of the North City Sub-Area Plan Draft which lists specific actions, and said he would like this process to result in a more articulate set of strategic actions with phasing or time frames and responsibilities identified. The City, as a public agency, needs to understand their role in assisting the implementation.

Mayor Jepson referred to opportunities for tax abatement. He noted that in redevelopment around the country, tax abatement is a big issue. The City's percentage of the property tax is so small that it would not be a significant waiver. If the City wants to spur economic development and long-term sustainability, they should approach the other jurisdictions to see if they support this type of approach.

Commissioner Monroe said that there are certain types of land uses that would not generate a cash flow substantial enough to pay the rents that are necessary. The types of businesses that are encouraged in this area need to be able to generate sufficient cash flow to make the rents realistic. Also, they must consider the types of ambiance they need to attract people to the area to spend money.

Commissioner Marx pointed out that on Page 15 of the North City Sub-Area Plan Draft there is a typographical error. The amount of sidewalk should be 50 feet and not 75 feet.

Commissioner McClelland suggested that there may be many people living within walking distance, but there is no guarantee that they would come to the area to shop. She suggested that a more in-depth market study should be done to identify the people who are living in the area and match their needs with the types of services and businesses that are constructed. She concluded that retail businesses cannot succeed without housing opportunities. The Market Analysis should be much deeper before they ask the merchants to invest more money into development and improvements. But she agreed that the proposed plan is an excellent step in the right direction.

Councilmember Ransom said his main concern is the Market Analysis. He pointed out that the North City area is the poorest in the district. The residence of three of the four areas identified in the plan are lower income. The study indicates that the average family income in the area would be $60,000 per year by today's standards. The reality is more likely $40,000 per year. That means the whole marketability for the area is grossly over estimated. A 1,000 square foot home, based on the study, would be $170,000. There would be a completely different clientele living in the new homes than the people living in the residential areas now. He suggested that this may end up displacing the current residents.

Ms. Kolousek commented that the Leland Consulting Group is one of the most reliable firms in the region. They have done extensive work for jurisdictions throughout the area.

The Commission continued to discuss the issue raised by Councilmember Ransom regarding the demographics of the people who live in the area now, and those who would move in if the proposed mixed-use development is implemented.

The meeting was adjourned at 7:50 p.m.

Marlin J. Gabbert
Chair, Planning Commission

Lanie Curry
Clerk, Planning Commission

Council Meeting Date: October 9, 2000 **Agenda Item: 7(b)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Approval of Expenses and Payroll as of September 20, 2000
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 $1,207,400.59 specified in the following detail:

Payroll and benefits for August 20 through September 2 in the amount of $283,700.52 paid with ADP checks 4739 through 4794, vouchers 360001 through 360110 and benefit checks 5792 through 5802.

Payroll and benefits for September 3 through September 16 in the amount of $247,658.78 paid with ADP checks 4795 through 4838, vouchers 380001 through 380107 and benefit checks 5974 through 5984.

the following claims examined by C. Robert Morseburg paid on September 14, 2000:

Expenses in the amount of $12,637.06 paid on Expense Register dated 9/13/00 with the following claim checks: 5803-5824 and

Expenses in the amount of $93.79 paid on Expense Register dated 9/13/00 with the following claim check: 5826 and

Expenses in the amount of $28,365.74 paid on Expense Register dated 9/13/00 with the following claim checks: 5827-5850 and

Expenses in the amount of $89,290.56 paid on Expense Register dated 9/14/00 with the following claim checks: 5851-5873 and

the following claims examined by C. Robert Morseburg paid on September 20, 2000:

Expenses in the amount of $427,162.13 paid on Expense Register dated 9/18/00 with the following claim checks: 5874-5884 and

Expenses in the amount of $14,559.18 paid on Expense Register dated 9/19/00 with the following claim checks: 5885-5895 and

Expenses in the amount of $8,796.87 paid on Expense Register dated 9/19/00 with the following claim checks: 5896-5913 and

Expenses in the amount of $4,494.09 paid on Expense Register dated 9/19/00 with the following claim checks: 5914-5931 and

Expenses in the amount of $650.00 paid on Expense Register dated 9/20/00 with the following claim checks: 5932-5933 and

Expenses in the amount of $40,176.32 paid on Expense Register dated 9/20/00 with the following claim checks: 5934-5955 and

Expenses in the amount of $49,815.55 paid on Expense Register dated 9/20/00 with the following claim checks: 5956-5968

Approved By: City Manager ____ City Attorney ___

Council Meeting Date: October 9, 2000 **Agenda Item:** 7(c)

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Motion to Approve A Title Company for the Aurora Avenue North Corridor Project
DEPARTMENT:	Public Works
PRESENTED BY:	William L. Conner, Public Works Director WLC

EXECUTIVE / COUNCIL SUMMARY

The purpose of this report is to obtain your Council's approval for selection of a title company to provide title reports for the Aurora Avenue North Corridor Project. These title reports are required for the right of way land acquisition process.

On June 12, 2000, your Council approved the selection of a consultant, CH2MHill for the Base Mapping, Preliminary Engineering and Environmental Review work for the Aurora Avenue North Corridor Project. In order to perform this work, staff is required to determine land ownership of the parcels in order to proceed with a right of way acquisition process for improvement of Aurora Avenue North between North 145th Street and 205th Street.

A title company is required to provide the title search work and provide title reports of each of the parcels of land adjacent to the right of way. Staff prepared a proposal and mailed them to three qualified title companies to provide the title reports. Staff is anticipating that approximately 193 reports will be required. Staff received proposals from two qualified title companies. These companies include the following:

Title Company	(Parcels)
• Pacific Northwest Title	$77,160
• Commonwealth Land Title Insurance Company	$104,799

Funding for the land acquisition process is budgeted in the 2000 – 2005 Capital Improvement Program. The total cost to provide all of the title reports is approximately $77,160 including sales taxes and a contingency amount of $3,801 for additional parcel reports.

RECOMMENDATION

Staff recommends that your Council authorize the City Manager to execute a contract with Pacific Northwest Title to provide title reports for an amount not to exceed $77,160 for the Aurora Avenue North Corridor Project.

Approved By: City Manager LB City Attorney

Council Meeting Date: October 9, 2000 **Agenda Item: 8(a)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Ordinance No. 249 Granting Metromedia Fiber Network Services, Inc. A Franchise To Operate An Underground Fiber Optic Telecommunications System
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Kristoff T. Bauer, Assistant to the City Manager

EXECUTIVE / COUNCIL SUMMARY

Metromedia Fiber Network Services (MFNS), a Delaware Corp. traded on the Nasdaq stock exchange, applied for a franchise to install fiber optic communications cable in Shoreline in August of 1999. Staff's discussions with MFNS have been unusually protracted due to changes in MFNS's representation, changes in state law, and a protracted discussion regarding MFNS's status under state law. As discussed with your Council at your September 18, 2000, workshop those issues having been resolved to the degree possible, staff is presenting a franchise ordinance for Council consideration.

MFNS is a communications capacity provider. At this time in this region they are simply constructing infrastructure for communications (i.e. conduit or fiber-optic cable) that they then lease capacity on or the use of this infrastructure to traditional telecommunications providers (e.g. GTE). This is referred to in the industry as a "dark fiber" company. US Crossing, who the City franchised last July, is the most similar provider that the City has seen in the past. As your Council may recall, US Crossing was granted a limited franchise to install conduit and fiber-optic cable through Shoreline down the center of Aurora as part of an international ring connecting Washington to Japan. If you analogize US Crossing to a builder of interstate freeways, then MFNS would be analogous to a builder of local highways and arterials. MFNS has built or is building fiber-optic rings in New York, Philadelphia, Washington DC, Boston, Chicago, Seattle, San Francisco, Los Angeles, Dallas/Ft. Worth, Houston, and Atlanta.

Unlike US Crossing, MFNS plans to grow its local service area and services potentially even moving at some point from a dark fiber company to a direct service provider. For this reason they have requested a general franchise rather then the limited (route specific) franchise granted to US Crossing. Initial construction would come north from Seattle on Aurora and then circle the King County park and ride lot utilizing N. 185th, Linden Ave. N., and N. 192nd.

The proposed ordinance is the standard 10-year term franchise that the City has been developing since incorporation (See Attachment A). The franchise fee or utility tax is the unique issue presented by MFNS. Both franchise fees and utility taxes are usually based upon the gross revenue generated by an entity within the City. Since MFNS does not plan, at this time, to have any retail customers within Shoreline, there is no expectation of "gross revenue" upon which to base either a franchise fee or utility tax, again just like US Crossing. The proposed ordinance addresses this issue by setting an

annual charge based upon the linear feet of infrastructure installed by MFNS in the City's right of way. The franchise also provides an option for in-kind offset consistent with City regulations[1] and the City's treatment of US Crossing. For example, the US Crossing agreement provided for the laying of extra conduit in the ground to be utilized exclusively by the City of Shoreline at a future date.

State law does restrict the City's ability to charge franchise fees on those utilities that cities are authorized to tax as utilities[2] (i.e. electricity, natural gas & telephone businesses). Staff and MFNS representatives concur that MFNS is not currently a "telephone business" falling within this authority. The proposed franchise provides that should MFNS's services evolve such that it becomes a "telephone business" and, thus, subject to the City's utility tax, then all obligation to pay a franchise fee to the City would cease consistent with state law.

It is staff's position that the City has the authority to charge Dark Fiber companies a franchise fee. MFNS has taken the position that Dark Fiber companies are "Service Providers" under recently adopted state regulation[3] making the collection of a franchise fee inappropriate. Staff is recommending a side agreement through which MFNS will agree to accept the City's proposed franchise, including a franchise fee requirement, in exchange for a commitment from the City not to enforce that provision until its authority has been clarified by further legal action, i.e. a court ruling, amendment to state law, or arbitration. (See Attachment B) The agreement, in the form of MFNS's evidence of acceptance, is clear that should the City prevail it will be made whole for all costs including attorney fees and back franchise fees with interest. This agreement will allow MFNS to move forward with its plans to begin construction within the City, adding to the communication infrastructure within the City, while preserving the City's ability to take action to clarify and then enforce its authority to collect a franchise fee.

The remaining terms of the franchise are standard, consistent with past Council action including terms relating to undergrounding (MFNS will only be installing its facilities underground), relocation of its facilities, providing the City with information regarding its construction plans, and safety and enforcement provisions.

Staff has reviewed MFNS's financial position and they appear to have sufficient resources to satisfy their obligations under the franchise. A performance bond will also secure their performance under the franchise.

Granting MFNS a franchise has the potential to bring additional communications capacity to the residents and businesses in Shoreline potentially allowing existing communications providers to offer additional, new, or improved service. If MFNS does evolve into a direct service provider then Shoreline customers would benefit from both new capacity and a more competitive service environment.

RECOMMENDATION

Council motion adopting Ordinance No. 249 Granting Metromedia Fiber Network Services, Inc. a franchise and to authorize the City Manager to execute an acceptance agreement on the City's behalf substantially in the form attached.

Approved By: City Manager LB City Attorney

[1] SMC 12.25.090
[2] RCW 35.21.860
[3] ESSB 6676 added "Service Provider" to RCW 82.04.065, which restricts cities' authority to charge franchise fees.

BACKGROUND / ANALYSIS

In December 1999 your Council adopted Ordinance 221 amending SMC 12.25.090 to require all franchises to include a 6% franchise fee or other comparable compensation. The language of this section reads as follows:

> "All franchises or right-of-way use agreements executed by the City shall include terms requiring a grantee to pay a fee in consideration of the privilege granted under a franchise or right-of-way use agreement to use the public right-of-way and the privilege to construct and/or operate in the City. Said franchise fee shall provide the City with compensation equal to 6% of the gross revenues generated by the grantee within the City unless limited by state or federal law. Provided, however, that this fee may be offset by any utility tax paid by grantee or in-kind facilities or services provided to the City. ***Any Grantee that does not provide revenue-generating services within the City shall provide alternate compensation as set out in the franchise.***" (Emphasis Added)

Consistent with the policy established in this ordinance, staff has sought to ensure that all entities that utilize the City's right of way contribute to the operations of the City in an amount equal to 6% of their gross revenues generated within the City either through a franchise fee or the City's utility tax. The only entities operating in the right of way that are not in compliance with this policy are Seattle City Light, the Shoreline Water District, and Shoreline Wastewater Management District.

State law is fairly consistent in granting cities the right to charge an entity operating in their right of way either a utility tax or a franchise fee[4]. The definitions utilized in the provision granting cities the authority to collect a utility tax on "natural gas, electricity, and telephone business," RCW 35.21.865, are the same definitions utilized to restrict authority to charge franchise fees, RCW 82.04.065. Some argue, however, that these regulations were impacted by recent legislation.

In July, staff discussed many of the changes in municipal franchising authority related to telecommunication companies included in ESSB 6676 (effective June 8, 2000), the "Right-of-Way" bill. One of these changes is the introduction of a new definition for a "Service Provider." While this definition is not synonymous with the definition of "Telephone Business," municipal authority to charge a franchise fee on a "Service Provider" is similarly restricted[5]. This definition was not, however, added to the section of state law that grants the City authority to collect a utility tax, which does specifically reference "Telephone Business."

There is a third definition "Telephone Company" utilized by the Washington Utilities and Transportation Commission (WUTC) to identify companies that fall within its regulatory authority. This definition is not consistent with either the definitions of "Telephone Business" or "Service Provider." MFNS is registered with the WUTC as a "Telephone Company," but they do not provide any services that are regulated by the WUTC.

What Is MFNS?

MFNS asserts that it is a "Service Provider," but that it is not a "Telephone Business." In addition, despite their registration with the WUTC as a "Telephone Company" they claim not to provide any regulated services. If this is the case then MFNS would be

[4] Cable TV and Solid Waste Collection services are exceptions. City's can charge these entities both a franchise fee and a utility tax, but consistent with Council policy, Shoreline collects a maximum of 6% from these providers as well.
[5] ESSB 6676 added "Service Provider" to RCW 82.04.065, which restricts cities' authority to charge franchise fees.

subject to neither a utility tax nor a franchise fee and would not be regulated by the WUTC. Shoreline Staff, including the City Attorney, as well as staff and legal counsel from other cities do not concur with this position.

The proposed ordinance is based on the position that MFNS is neither a "Service Provider" nor a "Telephone Business." Thus the City has a right to charge a franchise fee. If, however, in the evolution of MFNS's services they begin to provide telecommunications services to retail customers in Shoreline, then they would clearly be both a "Service Provider" and a "Telephone Business." If this occurs then the City would have the authority to collect a utility tax on their sales, but would no longer have the authority to collect a franchise fee of any kind.

Section 15 of the proposed ordinance is structured to handle both the current situation and the potential evolution of MFNS's operations. It initially charges a franchise fee based upon the linear feet of right of way utilized by MFNS (discussed further below). This charge is then eliminated when MFNS conducts business consistent with it being a "Telephone Business," i.e. it begins to pay the City's utility tax on revenue generated within the City. Very similar language was included in the amendment to the City's franchise with Metricom[6] earlier this year.

Per Linear Foot Franchise Fee

A number of cities have been working on developing this kind of fee in order to resolve the dilemma raised by pass through companies, i.e. companies that utilize a city's right of way but have no customers within the city, thereby generating no revenue upon which to levy either a tax or franchise fee. US Crossing is the purest example of "pass through" company. The difficulty with per linear foot charges is selecting an appropriate basis for the charge, that is, valuing the use.

Lake Forest Park has enacted a per linear foot charge that is based upon the average land valuation within their City. This average value is then attributed to the right of way on a per square foot basis and each use is charged a fee based upon both the square feet of the use and its estimated duration. While this methodology starts with a readily available basis (assessed valuation) the resulting fee is rather nominal (around $2,000 per year for a three-mile use) and does not appear to result in a good proxy for the value of the actual use.

The standard method of valuation used throughout the real estate industry is the utilization of comparables (what was another buyer willing to pay for a similar property?). In this case perhaps the best analogy would be what would the utility pay a private property owner for an easement across their property? The variables that determine this value, however, are diverse. The number of bedrooms, bathrooms, existence of a garage, and lot size are all analogous variables used to determine whether a home sale is truly comparable.

In this case, Shoreline has one truly comparable transaction and that is the in-kind contribution of US Crossing made in exchange for its 10-year franchise that they valued at $600,000. Staff started with this figure, spread it over the life of the 10-year franchise, and then allocated it to the facilities installed by US Crossing based upon the volume of usable space provided by each to the user. This methodology resulted in a value per interior square foot of usable space ($30) which then was allocated on a per

[6] Metricom is the small antenna wireless internet service provider that has operated in the City since 1996.

linear foot basis to conduit of different circumferences installed by directional boring. A second calculation utilizing exterior space occupied, that is how many cubic feet of the right of way is actually occupied, resulted in a lower value ($1.20). This calculation was derived from and applied to open trench installation and is significantly lower due to the larger cubic foot calculation per linear foot resulting from this installation method.

The point is that if you applied the Schedule of Right-of-Way Use Charges attached at the end of the proposed ordinance to US Crossing's installation, then the resulting payment will approximate their $600,000 in-kind contribution over a 10-year period.

While staff is recommending this methodology at this time, it is recognized that significant uncertainty regarding the best, fairest, most supportable and legally sustainable methodology of establishing a per linear foot charge remains. It is for this reason that the Schedule is referenced, but not incorporated in the franchise leaving some ability to adjust this methodology based upon future experience and new information. Staff will bring this issue back to your Council with additional analysis prior to any efforts to enforce compliance with the charge.

Resolution of Disputed Terms

MFNS continues to dispute the City's ability to charge them a franchise fee of any kind. In order to allow MFNS to move forward with its planned construction and provision of services within the City, staff recommends that the City agree to a conditional acceptance by MFNS of the City's offered franchise. This acceptance agreement (See Attachment B) preserves the City's right to seek clarification of the City's authority to charge MFNS a franchise fee at a future date. Should the City prevail in that future action, MFNS would be obligated to compensate the City for its reasonable legal costs of obtaining that clarification and back franchise fees, consistent with the franchise, and accumulated interest.

This agreement provides the City an opportunity to defer legal action for a period of time during which others may resolve this issue without cost to the City. The City will also be working with similarly situated jurisdictions to determine if joint action would be advantageous. In addition, the amount at issue, i.e. the franchise fee, is currently unclear as MFNS is yet to operate within the City. By deferring action at this time, the City gains an opportunity to make a decision informed by improved estimates of potential costs and benefits at a future date.

Review of Franchise Application

Staff reviewed significant information provided by MFNS to support a finding that they have the technical and financial ability to comply with the terms of the proposed franchise. MFNS has been granted franchises in several other cities in the region and is already operating in 10 other major urban areas across the nation. MFNS is a publicly owned corporation traded on the Nasdaq market. One of its more significant commercial relationships is a $10.8 million agreement to provide dark fiber capacity to America Online. They have also already received a commitment from GTE to purchase capacity on the trunk line that they plan to install in Shoreline.

Despite this breadth of activity and apparent financial health, new entrants to a dynamic industry carry increased risk. To mitigate this risk, the proposed franchise includes both a performance bond requirement and updated insurance requirements.

SUMMARY

Except for the franchise fee/utility tax issue, the proposed franchise is standard and consistent with past City actions and current City policies. An acceptance agreement is proposed to defer legal action to resolve the franchise fee/utility tax issue to a future time when more information will be available to assist your Council in weighing the costs and potential benefits of such action.

RECOMMENDATION

Council motion adopting Ordinance No. 249 Granting Metromedia Fiber Network Services, Inc. a franchise and to authorize the City Manager to execute an acceptance agreement on the City's behalf substantially in the form attached.

ATTACHMENTS

Attachment A – Proposed Ordinance No. 249 Granting Metromedia Fiber Network, Inc. A Franchise To Install A Fiber Optic Telecommunications System

Attachment B – Proposed MFNS Franchise Acceptance Agreement

ORDINANCE NO. 249

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING METROMEDIA FIBER NETWORK SERVICES, INC. A NON-EXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR AN UNDERGROUND FIBER OPTIC TELECOMMUNICATIONS SYSTEM, IN, ALONG, UNDER, THROUGH AND BELOW 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 non-exclusive franchises; and

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to Metromedia Fiber Network Services, Inc. ("MFNS"), for the operation of an underground 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 of the plant, equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver Telecommunications Services, including but not limited to wires, lines, conduits, cables, communication and signal lines and equipment, fiber optic cable, anchors vaults, and all attachments, appurtenances, and appliances necessary or incidental to distribution and use of Telecommunications Services. all other facilities associated with the Telecommunications System located in the Right-of-Way, utilized by MFNS in the operation of activities authorized by this Ordinance. The abandonment by MFNS of any Facilities as defined herein shall not act to remove the same from this definition.

1.4 MFNS: Metromedia Fiber Network Services, Inc., a Delaware corporation, and its respective successors and assigns.

1.5 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.

1.6 Person: An entity or natural person.

1.7 Public Works Director or 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.

1.8 Right-of-Way: As used herein shall refer to the surface of and the space along 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.

1.9 Telecommunications Service: The transmission of information by wire, optical cable, or other similar means. For the purpose of this subsection, "information" means knowledge or intelligence represented by and form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this ordinance, Telecommunications Service excludes wireless communications, over-the-air transmission of broadcast television or broadcast radio signals.

1.10 Telecommunications System: The system of conduit, fiber optic cable, and supporting Facilities in the Rights-of-Way associated with MFNS's provision of Telecommunications Services.

Section 2 Franchise Granted.

2.1 Pursuant to RCW 35A.47.040 and SMC Chapter 12.25, the City hereby grants to MFNS, 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 MFNS the right, privilege and authority to locate construct, operate, maintain, replace, acquire, sell, lease, and use a Telecommunications System in the Right-of-Way 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. This 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 ordedication of the same as the City may deem appropriate.

Section 4 Relocation of Facilities.

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

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

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

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

4.2.3 After receipt of such notice and such plans and specifications, MFNS 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 MFNS 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 MFNS in writing as soon as practicable 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, MFNS shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by MFNS as full and fair a consideration as the project schedule will allow. In the event the City ultimately determines that there is no other reasonable alternative, MFNS shall relocate its Facilities as directed by the City and in accordance with Section 4.2.3.

4.4 The City will notify MFNS as soon as practical of any facilities that are not identified during the design of the public project, but are discovered during the course of construction and need to be relocated. MFNS will work with the City to design and complete a relocation to facilitate the completion of the public project with minimum delay.

4.5 Failure to complete a relocation requested by the City in accordance with 4.2 above by the date included in the notice provided for thereby may subject MFNS to liquidated damages in the amount of $100 per day of actual delay in progress of the public project related to the untimely relocation.

4.6 The provisions of this Section shall in no manner preclude or restrict MFNS 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.

Section 5 **MFNS's Maps and Records.**

As a condition of this franchise, and at its sole expense, MFNS 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 within ten (10) business days of a reasonable request of the City.

Section 6 **Incorporation By Reference and Guarantor.**

SMC Chapter 12.25, Establishing Minimum Requirements, Procedures, And Application Information For Franchises Within Shoreline (as amended), is hereby incorporated herein by this reference. In the event of a conflict between that Chapter and this Ordinance, this Ordinance shall control. In addition, the following limitations to the requirements of that Chapter shall apply:

6.1 MFNS is a wholly owned subsidiary of Metromedia Fiber Network Inc., a publicly traded corporation. MFNS, as a condition of this franchise, shall secure and deliver to the City prior to the effective date of this Ordinance, an irrevocable commitment from Metromedia Fiber Network to act as MFNS's guarantor for all its obligations hereunder. For this reason, the reporting requirements stated in SMC 12.25.100 subsections (A)(2) and (A)(6) shall be satisfied for all purposes under this Ordinance by Metromedia Fiber Networks Inc.'s annual report filed with the Securities Exchange Commission;

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, MFNS shall install all of its Facilities underground in accordance with relevant road and construction standards. MFNS will also share information necessary to facilitate joint-trenching and other undergrounding projects, and will otherwise cooperate with the City and other utility providers to serve the objectives of Ordinance No. 82.

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. MFNS 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 MFNS 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, MFNS 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 five (5) days prior to construction of Facilities consisting of digging, trenching, cutting, or other activities that may impact the utilization of the Right-of-Way for more than a four (4) hour period, MFNS shall take reasonable steps to inform all apparent owners or occupiers of property within fifty (50) feet of said activities, that a construction project will commence. The notice shall include, at a minimum, the dates and nature of the project and a toll-free or local telephone number that the resident may call for further information. A pre-printed door hanger may be used to satisfy MFNS's obligations under this Section.

8.4 At least twenty-four (24) hours prior to entering Right-of-Way within ten (10) feet of private property to perform other than Minor Activities or Blanket Activities that will not impact the private property owner for greater than one (1) hour or result in a permanent alteration in the appearance of the Right-of-Way, MFNS shall post a written notice describing the nature and location of the work to be performed adjacent to the affected private property as well as the information listed in Section 8.3. MFNS 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, if any, consistent with sound engineering practices.

Section 9 Blanket Permit.

The terms "Minor Activities" and "Blanket Activities" shall be defined in a specifically negotiated "Blanket Permit Definitions", a copy of which has been filed with the City Clerk and identified by Clerk's Receiving Number _____. MFNS shall be authorized to perform Minor Activities without a City permit of any kind and Blanket Activities under the terms and conditions of this Section. All other activities will require a separate permit in accordance with City ordinances.

9.1 MFNS shall pay the City a permit inspection/processing fee in the amount set out in Blanket Permit Definitions.

9.2 MFNS shall provide a monthly list of permit construction activity by the 10th of the following month listing the previous month's activity authorized under this Section.

9.3 MFNS shall provide payment of inspection fees for the monthly activity on a monthly basis. No statement will be provided by the City.

9.4 For each separate use of the Right-of-Way for Blanket Activities under this Section, and prior to commencing any work on the Right-of-Way, MFNS shall:

9.4.1 Fax or otherwise deliver to the Permitting Authority, at least twenty-four (24) hours in advance of entering the Right-of-Way, a City Inspection Request Form, as provided by the Permitting Authority, which shall include at a minimum the following information: franchise ordinance number, street address nearest to the proposed work site; parcel number and description of work to be performed.

9.4.2 Fax or deliver to the Permitting Authority a notice of completion in the form provided by the Permitting Authority within twenty-four (24) hours after completing work.

9.5 In the event MFNS fails to comply with any of the material conditions set forth in this Section, the City is authorized to terminate MFNS's authority to operate under this Section by providing MFNS ten (10) day advance written notice of such termination and the basis therefore. The standards for revocation of Utility in Good Standing (UGS) as established by City ordinance shall inform this termination decision.

9.6 The City reserves the right to alter the terms and conditions of Section 9 and of Blanket Permit Definitions by providing thirty (30) days written notice to MFNS. Any change made pursuant to this Paragraph, including any change in the inspection fee stated in Blanket Permit Definitions, shall thereafter apply to all subsequent work performed pursuant to this Section. Further, the City may terminate MFNS's authority to work in the City's Right-of-Way under the terms of this Section at any time without cause by providing thirty (30) days written notice to MFNS. Notwithstanding any termination, MFNS will not be relieved of any liability to the City unless otherwise provided in this franchise.

Section 10 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 MFNS'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, MFNS 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 MFNS from later obtaining any necessary permits for the emergency work. MFNS shall apply for the required permits not later than the next business day following the emergency work.

Section 11 Recovery of Costs.

MFNS 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, MFNS shall pay the City's reasonable costs and reasonable expenses.

In addition, MFNS shall promptly reimburse the City for any costs the City reasonably incurs in responding to any emergency involving MFNS's Facilities. If the emergency involves the facilities of other utilities operating in the Right-of-Way, then the City will allocate costs among parties involved in good faith. Said costs and expenses shall be paid by MFNS after submittal by the City of an itemized billing by project of such costs.

Section 12 Dangerous Conditions, Authority for City to Abate.

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

12.2 In the event MFNS 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 MFNS shall reimburse the City for all costs incurred.

Section 13 Safety.

13.1 MFNS, 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 of its Facilities 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.

13.2 All of MFNS's Facilities in the Right-of-Way shall be constructed and maintained in a safe and operational condition, in accordance with applicable federal, state, and local safety rules and regulations.

13.3 The City reserves the right to ensure that MFNS's Facilities are constructed and maintained in a safe condition. If a violation of any applicable safety regulation is found to exist, the City will notify MFNS in writing of said violation and establish a reasonable time for MFNS 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. MFNS shall reimburse the City for all reasonable costs incurred by the City in correcting the violation.

Section 14 Authorized Activities.

The franchise granted herein is solely for the location, construction, installation, ownership, operation, replacement, repair, maintenance, acquisition, sale, lease, and use of the Telecommunications System and associated Facilities for providing Wholesale and Retail Telecommunications Services. MFNS shall obtain a separate franchise for any

operations or services other than authorized activities.

Section 15 Franchise Fee & Utility Tax.

The City has adopted SMC 12.25.090 (Franchise Fee) & 3.32.010 (Utility Tax) in order to support City efforts to manage the Right-of-Way and to provide additional resources to support municipal services to the extent allowed by law.

15.1 In accordance with SMC 12.25.090, MFNS shall make a quarterly payment to the City. Said payment shall be based upon MFNS's use of the Right-of-Way calculated in accordance with the Schedule of Right-of-Way Use Charges filed with the City Clerk under Clerk's Receiving Number ____. Said payment shall be offset by a franchise fee of 6% on any revenue generated by MFNS within the City and shall be due by the 15th day of the months of April, July, October, and January for the previous quarter's activity. Provided, however, that:

15.1.1 The payment required by Paragraph 15.1 may be offset for a period of time based upon the value of specific improvements constructed by MFNS in the Right-of-Way at the request of the City and agreement of MFNS. All terms of this offset must be specifically articulated in writing.

15.1.2 MFNS will be exempted from the payment required by Paragraph 15.1 at such time as it becomes subject to and actually pays the City Utility Tax in accordance with SMC 3.32.010.

Section 16 Indefeasible Rights of Use.

16.1 An Indefeasible Right of Use ("IRU") is an interest in MFNS's Facilities which gives MFNS's customer the right to use certain Facilities for the purpose of providing Telecommunication Services; 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.

16.2 A lease or grant of an IRU regarding MFNS's Facilities shall not require that the holder of the lease or IRU to obtain its own franchise or pay any fee to the City, PROVIDED THAT, under such lease or grant of an IRU, MFNS: (i) retains exclusive control over such Telecommunications System and Facilities, (ii) remains responsible for the location, relocation, 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 17 Indemnification.

17.1 MFNS 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 MFNS's own employees to which

MFNS 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 MFNS, its agents, servants, officers or employees in performing activities authorized by this franchise except to the extent that such arise from the grossly negligent or intentional acts or omissions of the City. MFNS 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 MFNS's own employees, including those claims to which MFNS 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 MFNS's exercise of the rights granted herein, or by virtue of the City's permitting MFNS's use of the Right-of-Way or other public property based upon the inspection or lack of inspection of work performed by MFNS, 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 except to the extent that such arise from the grossly negligent or intentional acts or omissions of the City. 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 MFNS, 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 in connection with a type of claim referenced in this Section, MFNS shall satisfy the same pursuant to this Section.

17.2 Inspection or acceptance by the City of any work performed by MFNS 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 MFNS consents to such compromise.

17.3 In the event MFNS 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 MFNS'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 MFNS, then MFNS shall pay all of the City's reasonable costs and reasonable expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause, as well as any judgment against the City.

17.4 Should a court of competent jurisdiction or such other tribunal as the parties agree shall decide the matter 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 MFNS and the City, its

officers, employees and agents, MFNS's liability hereunder shall be only to the extent of MFNS's negligence. It is further specifically and expressly understood that the indemnification provided in Section 17 constitutes MFNS'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 18 Insurance.

18.1 MFNS 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 MFNS, its agents or employees. MFNS shall provide to the City an insurance certificate naming the City as additional insured, for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this franchise, and such insurance shall evidence:

18.1.1 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

18.1.2 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.

18.2 Payment of deductible or self-insured retention shall be the sole responsibility of MFNS.

18.3 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. MFNS's insurance shall be primary insurance for the City. Any insurance maintained by the City shall be excess of MFNS'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 19 Abandonment of MFNS's Facilities.

No portion of the Facilities laid, installed, or constructed in the Right-of-Way by MFNS may be abandoned by MFNS without the express written consent of the City. Any plan for abandonment or removal of MFNS's Facilities must be first approved by the Public Works Director, which shall not be unreasonably withheld or delayed, and all necessary permits must be obtained prior to such work.

Section 20 Restoration after Construction.

20.1 MFNS shall, after any abandonment approved under Section 19, 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. MFNS agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

20.2 If it is determined that MFNS has failed to restore the Right-of-Way in accordance with this Section, the City shall provide MFNS 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 accordance with the City's notice within fifteen (15) Days of that notice, the City, or its authorized agent, may restore the Right-of-Way. MFNS is responsible for all reasonable costs and expenses incurred by the City in restoring the Right-of-Way in accordance with this Section. The rights granted to the City under this paragraph shall be in addition to those otherwise provided herein.

Section 21 Bond.

Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this franchise, MFNS shall furnish a bond executed by MFNS 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 MFNS's obligations under this franchise. The bond shall be conditioned so that MFNS 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. MFNS 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, MFNS 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 as provided herein for reimbursement of the City by reason of MFNS's failure to pay the City for actual costs and expenses incurred by the City to make emergency corrections under Section 12 of this Ordinance, to correct franchise violations not corrected by MFNS after notice, and to compensate the City for monetary remedies or damages reasonably assessed against MFNS due to material default or violations of the requirements of City ordinances.

22.1 In the event MFNS has been declared to be in default of a material provision of this franchise by the City and if MFNS 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, or fails to begin to perform any condition that may take more than 30 days to complete, 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 MFNS 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, MFNS 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 MFNS 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 and MFNS each reserve the right to pursue any remedy to compel the other to comply with the terms of this franchise, and the pursuit of any right or remedy by a party shall not prevent such party 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 MFNS or occurs as a result of circumstances beyond MFNS'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 of other Facilities by MFNS. MFNS shall promptly conform to all such regulations, unless compliance would cause MFNS to violate other requirements of law. Nothing in this

Section shall require MFNS to relocate Facilities installed in compliance with then existing City regulations.

Section 27 Acceptance/Liaison.

MFNS's written acceptance shall include the identification of an official liaison who will act as the City's contact for all issues regarding this franchise. MFNS shall notify the City of any change in the identity of its liaison. MFNS shall accept this franchise in the manner hereinafter provided in Section 35.

Section 28 Survival.

All of the provisions, conditions and requirements of Sections 4, Relocation of Facilities; 8, Excavation And Notice Of Entry; 12, Dangerous Conditions; 17, Indemnification; 19, Abandonment of MFNS's Facilities; and 20, Restoration After Construction, of this franchise shall be in addition to any and all other obligations and liabilities MFNS may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to MFNS 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 the parties and all privileges, as well as all obligations and liabilities of each party shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever such party is named herein.

Section 29 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.

Section 30 WUTC Tariff Filings, Notice Thereof.

If MFNS 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 MFNS shall provide the City with fourteen (14) days written notice.

Section 31 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 reasonable costs associated with the City's review of any transfer proposed by MFNS shall be reimbursed to the City by the new prospective franchisee, if the City approves the transfer, or by MFNS if said transfer is not approved by the City.

31.1 The City shall receive notice and approve any proposed change in control of MFNS or assignment of the Franchise Agreement to a subsidiary or affiliate of MFNS, which causes a change in control of the Franchisee. The City shall be notified but need not approve changes or assignments that do not result in a change in control of the Franchisee. Neither approval nor notification shall be required for mortgaging purposes.

31.2 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, or changes in business form that act to materially reduce the resources available to MFNS to perform its obligations under the Franchise granted herein.

31.3 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, or an offer or provision of capacity or bandwidth from the Telecommunications System or associated Facilities shall not be considered an assignment for purposes of this Section, PROVIDED THAT, under such lease, IRU, or offer, MFNS: (i) retains exclusive control over the Telecommunications System, (ii) remains responsible for the location, construction, replacement, repair and maintenance of the Telecommunications System pursuant to the terms and conditions of the franchise granted herein, and (iii) remains responsible for all other obligations imposed hereunder.

Section 32 Notice.

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

Metromedia Fiber Network Services, Inc.	City of Shoreline
V.P. Legal Affairs	Director of Public Works
360 Hamilton Avenue	17544 Midvale Ave. NE
White Plains, NY 10601	Shoreline, WA 98133

Either party can alter their official address for notifications provided in this section by providing the other party written notice thereof.

Section 33 Alternate Dispute Resolution.

If the City and MFNS 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 34 **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 35 **Directions to City Clerk.**

The City Clerk is hereby directed to publish this Ordinance in full and forward certified copies of this ordinance to MFNS. MFNS shall have thirty (30) days from receipt of the certified copy of this ordinance to execute the "Acceptance Agreement", a copy of which has been filed with the City Clerk and identified by Clerk's Receiving Number _____. If MFNS fails to accept this franchise in accordance with the above provisions, this Franchise shall be null and void.

Section 36 **Publication Costs.**

MFNS shall reimburse the City for the cost of publishing this franchise ordinance within thirty (30) Days of receipt of the City's invoice.

Section 37 **Effective Date.**

This ordinance shall take effect and be in full force five (5) Days after the date of publication.

PASSED BY THE CITY COUNCIL ON _____, 2000.

_____
Mayor Scott Jepsen

ATTEST:

_____
Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

_____
Ian Sievers
City Attorney

Date of Publication: , 2000
Effective Date: , 2000

Schedule of Right-of-Way Use Charges

September 28, 2000

Type of Facility	Size	Annual Charge/Linear Ft.	Basis ($/Cu. Ft)
Conduit (no trench)	1.25" Dia. or less	$.26	$30
	1.5" Dia.	$.37	$30
	1.75" Dia.	$.50	$30
	2"Dia.	$.65	$30
Open Trench (Width X Depth of CDF)	1.5'X 2'	$3.59	$1.20
	2'X 2'	$4.78	$1.20
	2.5'X 2'	$5.98	$1.20
	3'X 2'	$7.17	$1.20
Vault/Manhole	Interior Size	Annual Charge	
Lane of travel	4'X 4'	$2,000	$30
Outside Lane of travel	4'X 4'	$1,000	$15

The rates articulated in the table above shall apply to all facilities installed or otherwise placed in use by Franchisee for the duration of the Franchise agreement. The City may change this schedule upon 30 days advance notice, but the new rates will only apply to facilities installed or placed in use after the new rates become effective.

ACCEPTANCE AGREEMENT

THIS ACCEPTANCE AGREEMENT is made by and between THE CITY OF SHORELINE, WASHINGTON, an optional municipal code city of the state of Washington ("City") and METROMEDIA FIBER NETWORK SERVICES, INC., a Delaware corporation ("MFNS").

BACKGROUND

A. MFNS wishes to construct and operate a telecommunication service system, portions of which MFNS wishes to construct and operate within the City of Shoreline and upon its public rights of way. The telecommunications service system will allow MFNS to provide other telecommunication service providers and retail customers switched and non-switch point-to-point fiber optic cable telecommunication service. MFNS plans initially to provide this telecommunication service to and from locations outside the City of Shoreline, but, as customers become available within the City, to and from locations within the city.

B. The City's municipal code provides that the City may in certain circumstances levy a utility tax for the act or privilege of engaging in a telephone business upon the gross revenues of sales from customers within the City. (SMC §3.32) The City's municipal code also provides that the City may in certain circumstances require a user of the City's rights-of-way to pay a fee in consideration of the privilege of using the right-of-way. (SMC §12.25.090)

C. State law prohibits a city from imposing a franchise fee or any other fee or charge upon a "telephone business" or "service provider" for the use of the city's right of way except for certain utility taxes and certain charges necessary to recover administrative expenses. (RCW 35.21.860; Chapter 83, Laws of 2000.)

D. Section 253 of the federal Telecommunications Act of 1996 also prohibits cities from imposing franchise fees that that prohibit or have the effect of prohibiting an entity's ability to provide interstate or intrastate telecommunications service. Cities may only require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis.

E. The City and MFNS wish to enter into a franchise agreement to authorize MFNS to utilize the City's rights-of-way for its telecommunication system, but the City and MFNS disagree as to whether the City has authority to impose the franchise fee described under SMC §12.25.090 upon MFNS for the privilege of using the City's rights-of-way.

AGREEMENT

For and in consideration of the mutual covenants contain herein and in order to settle the outstanding dispute between the parties regarding the City's authority to impose a franchise fee upon MFNS and other matters with respect to the franchise agreement as set forth below, the City and MFNS agree as follows:

1. Franchise Fee Provisions of Franchise Shall have No Force or Effect Until Resolution of City Authority Issue. MFNS agrees to accept the franchise agreement adopted by the Shoreline City Council on October __, 2000 attached hereto as Exhibit A (the "Franchise Agreement") but that the terms of Section 15 of that agreement relating to the City's imposition of a franchise fee shall have no force or effect unless and until a court of competent jurisdiction, or, if the parties agree to submit this dispute to binding arbitration, an arbitrator with jurisdiction over this matter, renders a final judgment (i.e., all appeals which can be taken have been taken or the time for taking any appeals has expired) that the City does have such authority. If such court or arbitrator renders a final judgment that the City does have such authority, MFNS shall, within sixty (60) days thereof commence payments under Section 15 and pay the City an amount equal to the aggregate amount of franchise fees that would have accrued from to the effective date of the franchise agreement to the date of the final judgment and interest at the statutory rate from the date payments were due under the franchise agreement through the full satisfaction of this obligation. Should the City substantially prevail in any litigation or arbitration commenced under this paragraph it shall be awarded its costs including those incurred on appeal and reasonable attorney's fees.

2. City May Not Unilaterally Modify the Franchise. Notwithstanding the terms and conditions of Section 29 of the Franchise Agreement, if a court or arbitrator does not find that the City has authority to impose a franchise fee, the City may not unilaterally amend or terminate the Franchise Agreement. However, as part of the adjudication, the City may redraft language of Section 15 of the Franchise Agreement to impose a franchise fee not to exceed that originally set forth in the Franchise Agreement that it believes is consistent with the ruling of the arbitrator or court. If approved by both parties or by the court or arbitrator, the language will serve to amend the Franchise Agreement from the date of approval.

3. Parties Do Not Need to Seek Prior Alternative Dispute Resolution. Notwithstanding the terms and conditions of Section 33 of the Franchise Agreement, the parties may, but are not required to, submit this dispute to Alternative Dispute Resolution before submitting the dispute to a court.

4. No Other Terms of the Franchise Agreement Affected. The parties agree that this Acceptance Agreement shall not affect any other terms or conditions of the Franchise Agreement except to the extent such terms and conditions are inconsistent with the specific provisions or the intent of this Acceptance Agreement and would frustrate its purpose, and that this agreement shall evidence MFNS's unconditional acceptance of such terms and conditions.

EXECUTED, this _____ day of October, 2000

THE CITY OF SHORELINE

_____
Robert Deis, City Manager

APPROVED AS TO FORM:

_____
Ian Sievers
City Attorney

METROMEDIA FIBER NETWORK
SERVICES, INC.

_____