



City of Port Orchard Council Meeting Agenda
March 24, 2020
6:30 p.m.

Mayor:

Rob Putaansuu
Administrative Official

Councilmembers:

Bek Ashby
Finance Committee
Economic Development & Tourism Committee
Transportation Committee
KRCC/KRCC PlanPol-alt /KRCC TransPol
PSRC-alt/PSRC TransPOL-Alt/PRTPO

Shawn Cucciardi
Finance Committee
Economic Development & Tourism Committee
Kitsap Economic Development Alliance

Fred Chang
Economic Development & Tourism Committee
Land Use Committee

Jay Rosapepe (Mayor Pro-Tempore)
Utilities/Sewer Advisory Committee
Land Use Committee
Transportation Committee
Lodging Tax Advisory Committee
KRCC-alt

John Clauson
Finance Committee
Utilities/Sewer Advisory Committee
Kitsap Public Health District-alt

Cindy Lucarelli
Festival of Chimes & Lights Committee
Utilities/Sewer Advisory Committee
Kitsap Economic Development Alliance

Scott Diener
Land Use Committee
Transportation Committee

Department Directors:

Nicholas Bond, AICP
Development Director

Mark Dorsey, P.E.
Director of Public Works/City Engineer

Tim Drury
Municipal Court Judge

Noah Crocker, M.B.A.
Finance Director

Matt Brown
Police Chief

Brandy Rinearson, MMC, CPRO
City Clerk

Contact us:

216 Prospect Street
Port Orchard, WA 98366
(360) 876-4407

Special Note:

Pursuant to the recommendations from public health officials, the City will take the following actions for this Council Meeting:

- *Older adults and individuals with underlying medical conditions are encouraged not to attend this meeting, including employees; and*
- *The City will utilize social distancing recommendations; and*
- *Proper hand hygiene and sanitation will be readily available to all attendees and employees; and*
- *The City will comply with environmental cleaning guidelines from the US Centers for Disease Control and Prevention (CDC).*

Please note: the meeting is open to the public and no action will be taken to prohibit or otherwise limit the public's attendance from this meeting.

1. CALL TO ORDER

- A. Pledge of Allegiance**

2. APPROVAL OF AGENDA

3. CITIZENS COMMENTS

(Has been suspended until further notice. Written comments are welcomed and can be emailed to cityclerk@cityofportorchard.us)

4. CONSENT AGENDA

(Approval of Consent Agenda passes all routine items listed below, which have been distributed to each Councilmember for reading and study. Consent Agenda items are not considered separately unless a Councilmember so requests. In the event of such a request, the item is returned to Business Items.)

- A. Approval of Vouchers and Electronic Payments**
- B. Approval of Payroll and Direct Deposits**
- C. Approval of the March 10, 2020, Council Meeting Minutes **Page 3****

5. PRESENTATION

6. PUBLIC HEARING

7. BUSINESS ITEMS

- A. Adoption of an Ordinance Reclassifying the Property Located at 2843 Harold Drive SE from Commercial Mixed Use to Business Professional Mixed Use (Bond) **Page 8****
- B. Adoption of an Ordinance Amending Port Orchard Municipal Code Section 2.04.045 Remote Attendance (Mayor) **Page 23****
- C. Approval of a Contract with Hayter Industries, LLC for Public Relations, Marketing and Communications (Rinearson) **Page 26****

8. DISCUSSION ITEMS (No Action to be Taken)

9. REPORTS OF COUNCIL COMMITTEES

10. REPORT OF MAYOR

11. REPORT OF DEPARTMENT HEADS

12. CITIZEN COMMENTS

(Has been suspended until further notice. Written comments are welcomed and can be emailed to cityclerk@cityofportorchard.us)

13. EXECUTIVE SESSION: Pursuant to RCW 42.30.110, the City Council may hold an executive session. The topic(s) and the session duration will be announced prior to the executive session.

14. ADJOURNMENT

COMMITTEE MEETINGS	Date & Time	Location
Finance	TBD	City Hall
Economic Development and Tourism	TBD	City Hall
Utilities	TBD	City Hall
Sewer Advisory	TBD	City Hall
Land Use	TBD	DCD*
Transportation	TBD	City Hall
Lodging Tax Advisory	TBD	City Hall
Festival of Chimes & Lights	TBD	City Hall
Outside Agency Committees	Varies	Varies

*DCD, Department of Community Development, 720 Prospect Street, Port Orchard

CITY COUNCIL GOOD OF THE ORDER



**City of Port Orchard
Council Meeting Minutes
Regular Meeting of March 10, 2020**

1. CALL TO ORDER AND ROLL CALL

Mayor Putaansuu called the meeting to order at 6:30 p.m.

Roll call was taken by the City Clerk as follows:

Councilmember Ashby	Present
Councilmember Chang	Present
Councilmember Clauson	Present
Councilmember Cucciardi	Present
Councilmember Diener	Present
Councilmember Lucarelli	Present
Mayor Pro-Tem Rosapepe	Present
Mayor Putaansuu	Present

Staff present: Community Development Director Bond, City Attorney Archer, City Clerk Rinearson and Deputy City Clerk Floyd.

A. PLEDGE OF ALLEGIANCE

Mayor Putaansuu led the audience and Council in the Pledge of Allegiance.

2. APPROVAL OF AGENDA

MOTION: By Councilmember Rosapepe, seconded by Councilmember Lucarelli, to approve the agenda as presented.

The motion carried.

3. CITIZENS COMMENTS

There were no citizen comments.

4. CONSENT AGENDA

- A.** Approval of Voucher Nos. 79038 through 79092, including bank drafts in the amount of \$649,081.43 and EFT's in the amount of \$958.70 totaling \$650,040.13.
- B.** Approval of Payroll Check Nos. 79093 through 79095 including bank drafts and EFT's in the amount of \$143,298.85; and Direct Deposits in the amount of \$184,199.40 totaling \$327,498.25.
- C.** Approval of the February 18, 2020, Council Work Study Session Meeting Minutes

- D. Approval of the February 25, 2020, Council Meeting Minutes
- E. Adoption of an Ordinance Repealing and Replacing Port Orchard Municipal Code Chapter 2.16 Police Department (**Ordinance No. 002-20**)

MOTION: By Councilmember Ashby, seconded by Councilmember Cucciardi, to approve the consent agenda as presented.

The motion carried.

5. PRESENTATION

A. South Kitsap Fire and Rescue Levy/Bond Presentation

Fire Chief Steve Wright discussed his agency and the August 4, 2020, ballot measure. He spoke about the last Bond that passed a few years ago and the services it provided. This year's Bond is to replace 3 fire stations, upgrade headquarters campus, and upgrade existing stations.

Mayor Putaansuu spoke briefly about the navigator program and how it benefits the community.

6. PUBLIC HEARING

There were no public hearings.

7. EXECUTIVE SESSION

Mayor Putaansuu noted there was an updated amendment No. 4 to the 640 Bay Street Purchase and Sale agreement and asked Council if they were comfortable with what was included in their packet and if they still wanted to go into executive session.

After brief deliberations, Council agreed they did not need an executive session.

8. BUSINESS ITEMS

A. Approval of Amendment No. 4 to Contract No. 053-18 with Waterman Investment Partners, LLC for the 640 Bay Street Purchase and Sale Agreement

Councilmember Clauson announced the attorney representing the purchaser is also the attorney for Kitsap Transit. He said if anyone has any objections, he will step aside.

There were no objections.

Councilmember Cucciardi pointed out an error in the Amendment No. 4 title and Community Development Director Bond asked to have the table removed in the exhibit map.

MOTION: By Councilmember Cucciardi, seconded by Councilmember Clauson, to approve Addendum No. 4 to the real estate purchase and sale agreement for the City's property at 640 Bay Street.

The motion carried.

B. Adoption of an Ordinance Authorizing a Civil Engineer II Position

MOTION: By Councilmember Lucarelli, seconded by Councilmember Clauson, to adopt an ordinance, approving the position and salary scale for a Civil Engineer II position in the Public Works/Engineering Department thereon, as presented in Exhibit A.

The motion carried.

(Ordinance No. 003-20)

C. Approval of Change Order No. 1 to Contract No. 019-20 with Arken, Inc. for the 2020 Library Leak Repair

MOTION: By Councilmember Clauson, seconded by Councilmember Diener, to authorize the Mayor to execute Change Order No. 1 to Contract No. 019-20 with Arken, Inc. in the amount of \$14,068.85.

The motion carried.

D. Approval of the 2020 Comprehensive Plan Amendment Agenda

MOTION: By Councilmember Ashby, seconded by Councilmember Diener, to approve the 2020 Comprehensive Plan amendment agenda pursuant to POMC 20.04.060, as presented.

The motion carried.

9. DISCUSSION ITEMS (No Action to be Taken)

A. Remote Meeting Option

Mayor Putaansuu explained he has not been traveling to many meetings due to the virus, and one of the tools he has used is Zoom. It allows him to attend meetings remotely. He asked Council and staff to login into the software for testing.

Police Chief Brown and Finance Director Crocker remotely logged in to the Council meeting at 7:17 p.m.

10. REPORTS OF COUNCIL COMMITTEES

Councilmember Cucciardi reported on the March 9th Economic Development and Tourism committee meeting. The next meeting is scheduled for the second Monday in April [April 13th].

Mayor Putaansuu reported the Transportation committee is scheduled to meet March 24th.

Councilmember Lucarelli reported the Utilities committee meeting is scheduled for Monday [March 16th]. The Sewer Advisory Committee meeting is scheduled for May 27th. The Festival of Chimes and Lights committee is scheduled for March 16th.

Councilmember Diener reported on the March 3rd Land Use committee meeting. The next meeting is scheduled for April 6th.

Mayor Putaansuu reported on the Kitsap Public Health Board and City of Port Orchard personnel policies and City Hall closures.

11. REPORT OF MAYOR

The Mayor reported on the following:

- Revised projects for the Community Service Day;
- Meeting with Port of Bremerton;
- Social media updates;
- Housing updates;
- Updates to Personnel Policies;
- Statewide single bag ban;
- Navigator position;
- Logging activity near Glenwood Road;
- Permit for Dutch Brothers;
- New building inspector position; and
- Salary survey and workforce study contract.

12. REPORT OF DEPARTMENT HEADS

Finance Director Crocker and Council discussed dates for the next Finance Committee meeting and agreed upon April 14th at 5:30 p.m.

Community Development Director Bond reported on permitting including McCormick North, Kaiser Permanente, and Stetson Heights.

Finance Director Crocker and Police Chief Brown logged out of the remote session at 7:30 p.m.

Mayor and Council spoke about the remote login process and electronic Council meeting packets.

Councilmember Rosapepe had the opportunity to watch the processing of ballots at the County and recommends others to do the same. He was very impressed with the operation and the seriousness of the workers.

13. CITIZEN COMMENTS

There were no comments by the public.

14. ADJOURNMENT

The meeting adjourned at 8:04 p.m. No other action was taken. Audio/Visual was successful.

Brandy Rinearson, MMC, City Clerk

Robert Putaansuu, Mayor



City of Port Orchard

216 Prospect Street, Port Orchard, WA 98366
(360) 876-4407 • FAX (360) 895-9029

Agenda Staff Report

Agenda Item No.: Business Item 7A
Subject: Adoption of an Ordinance Reclassifying the
Property Located at 2843 Harold Drive SE
from Commercial Mixed Use to Business
Professional Mixed Use

Meeting Date: March 24, 2020
Prepared by: Nick Bond, AICP
DCD Director
Atty Routing No.: N/A
Atty Review Date: N/A

Summary: The subject property addressed as 2843 Harold Drive SE is comprised of one tax parcel located at the northeast corner of the intersection of Harold Drive SE and SE Lundberg Road. The proposal consists of a site-specific rezone of the subject property from Commercial Mixed Use (CMU) to Business Professional Mixed Use (BPMU). The subject property is currently developed with a single-family detached house which is not a permitted use in the CMU district. The BPMU designation allows detached houses as a permitted use and office uses but does not allow certain more intense uses otherwise permitted in the CMU district.

Prior to annexation in April 2012 while in Kitsap County’s jurisdiction, the subject property was designated with Commercial zoning. Upon the April 2012 annexation, the City of Port Orchard City Council adopted zoning which most closely resembled Kitsap County zoning designations prior to annexation. The City Council attempted not to reclassify annexed properties with dissimilar zoning that they previously possessed. The subject property was designated Commercial on the City of Port Orchard Zoning map and was subject to the standards found in Port Orchard Municipal Code (POMC) Title 16. It is important to note that single-family residential was not a permitted use in the Commercial zone under POMC Title 16. However, non-conforming properties may continue under certain conditions generally related to the limitation of increasing degrees of non-conformity.

On March 27, 2019 the City of Port Orchard revised zoning classifications and added additional zones which fall under the Residential, Commercial and Industrial Comprehensive Plan land use designations. Similar to the process taken upon annexation, the City of Port Orchard attempted to match the previous zones with the new classifications while being mindful of the ultimate urban form and land use patterns derived through the new zoning designations in implementation of the City’s Comprehensive Plan. In this instance, the subject property was designated as CMU which allows for multi-family development as well as certain commercial uses, but still does not allow the development of single-family detached houses which creates a non-conforming use of the property.

The March 27, 2019 Port Orchard Municipal Code is a form-based code which addresses permitted building types in addition to permissible land uses. The CMU designation does not permit detached houses as an allowed building type nor single-family detached residential as a permitted use as described in POMC 20.35.030(2) and 20. 20.39.040 respectively.

The primary issue of concern for the applicant is the ability to reconstruct and continue the use of the non-conforming structure in the event of destruction. In the event of destruction which exceeds 50% of

the replacement cost of the structure, the structure shall only be reconstructed in conformity with the POMC. As described above, the owner would not be able to reconstruct a detached house as it is not a permitted building type nor a permitted use in the CMU district in the event of destruction exceeding 50% of the its replacement cost.

The BPMU district allows the development of detached houses and single-family detached residential as an allowable building type and permitted use. The site-specific rezone would allow the development of a detached house in the event of destruction greater than 50% of the replacement cost as it would be a conforming use. While certain commercial uses are still permitted in the BPMU district, those commercial uses are generally less intensive, consisting mostly of office uses, than those found in the CMU zone.

The City's State Environmental Policy Act Responsible Official issued a Determination of Nonsignificance for the proposal on December 23, 2019.

The City of Port Orchard Hearing Examiner held a public hearing consistent with the requirements of POMC 20.22.060 on January 30, 2020 and issued a Recommendation for consideration by the City Council on February 13, 2020.

Recommendation: Adoption of an ordinance, granting approval of the site-specific rezone from Commercial Mixed Use to Business Professional Mixed Use.

Motion for consideration: I move to adopt an ordinance, as presented, granting approval of the site-specific rezone from Commercial Mixed Use to Business Professional Mixed Use for the property addressed as 2843 Harold Drive SE.

Fiscal Impact: Potential redevelopment of the property will allow for a variety of residential structures which may yield income from building permit fees.

Alternatives: Approval with added conditions.

Attachments: Ordinance, Hearing Examiner Recommendation and Zoning Map.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO THE OFFICIAL ZONING MAP OF THE CITY OF PORT ORCHARD; RECLASSIFYING THE PROPERTY LOCATED AT 2843 HAROLD DRIVE SE FROM COMMERCIAL MIXED USE TO BUSINESS PROFESSIONAL MIXED USE ZONING DESIGNATION, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Kenneth and Tara Snook (the “Applicants”) are the owners of 1.05-acre parcel located at 2843 Harold Drive SE in the City of Port Orchard (the “Property”); and

WHEREAS, Applicants submitted a complete application for reclassification of their Property from the zoning designation “Commercial Mixed Use” to “Business Professional Mixed Use” in order to rectify an existing non-conforming use; and

WHEREAS, the Business Professional Mixed Use zoning designation is appropriate in areas designated as Commercial within the City of Port Orchard Comprehensive Plan Land Use Element; and

WHEREAS, the request to reclassify the Property has been reviewed and processed pursuant to Port Orchard Municipal Code Chapter 20.42; and

WHEREAS, on January 30, 2020, the Hearing Examiner held a public hearing on the request; and

WHEREAS, on February 13, 2020, the Hearing Examiner issued his Findings, Conclusions and Recommendation to the City Council, recommending approval of the request for reclassification; now, therefore

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. Adoption of Recommendation. The City Council adopts the Findings and Conclusions, and Recommendation issued by the Hearing Examiner in “In Matter of the Application of Kenneth and Tara Snook for Approval of a Site-Specific Rezone,” No. LU19-REZONE-1, attached to this Ordinance as Exhibit A (“Hearing Examiner’s Recommendation”). The City Council further accepts the recommendation of the Hearing Examiner’s Recommendation, which is to grant a zone reclassification of the property located at 2843 Harold Drive SE (“Property”), from “Commercial Mixed Use” to “Business Professional Mixed Use.” The Property and its new approved zone designation is shown on Exhibit B attached to this Ordinance.

SECTION 2. Zone Reclassification. Pursuant to POMC 20.42.040, and consistent with Section 1 of this Ordinance, the City Council amends the “Official Zoning Map of the City of Port

Orchard” by changing the zone designation for the Property from “Commercial Mixed Use” to “Business Professional Mixed Use.”

SECTION 3. No Expiration. Pursuant to POMC 20.42.050(1)(b), it is the intent of the City Council that this approval shall not expire.

SECTION 4. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

SECTION 5. Effective Date. This ordinance shall be in full force and effect five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire ordinance, as authorized by State Law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this 24th day of March 2020.

Robert Putaansuu, Mayor

ATTEST:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

SPONSORED BY:

Charlotte A. Archer, City Attorney

Not Applicable
Councilmember

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ORCHARD**

In the Matter of the Application of)	No. LU19-REZONE-1
)	
Kenneth and Tara Snook)	Harold Drive House Rezone
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Site-Specific Rezone</u>)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the City Council **APPROVE** the request to rezone the 1.05-acre residential property at 2843 Harold Drive SE from the “Commercial Mixed Use” zoning designation to the “Business Professional Mixed Use” zoning designation.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on January 30, 2020.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

James Fisk, City Associate Planner
Kenneth Snook, Applicant
Tara Snook, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Application Materials:
 - A. Master Permit Application Form, received November 4, 2019
 - B. Site-Specific Rezone Application, received November 4, 2019
 - C. Project Narrative, received November 4, 2019
 - D. Aerial Site Map, undated
 - E. SEPA Environmental Checklist Application Form, received November 4, 2019
 - F. Comprehensive Plan Map, dated June 26, 2018
2. Transmittal Letter, dated November 5, 2019
3. Revised Application Materials:
 - A. Revised Master Permit Application Form, received November 20, 2019
 - B. Title Report, No. E2019-403741, dated November 18, 2019
4. Transmittal Letter, dated November 22, 2019
5. Determination of Technical Completeness, dated December 3, 2019
6. Notice of Application, dated December 6, 2019
7. Affidavit of Mailing (Notice of Application), dated December 6, 2019

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Harold Drive House Rezone, No. LU19-REZONE-1*

8. Affidavit of Posting (Notice of Application) dated December 6, 2019
9. Affidavit of Publication (Notice of Application), *Port Orchard Independent*, dated December 6, 2019, with Classified Proof, published December 6, 2019
10. Determination of Nonsignificance, issued December 23, 2019
11. Statutory Warranty Deed (No. 201911180208), recorded November 18, 2019, with Homeowner's Title Insurance Policy, dated November 18, 2019
12. Affidavit of Posting (Notice of Hearing), dated January 9, 2020
13. Notice of Public Hearing, undated
14. Affidavit of Mailing (Notice of Hearing), dated January 10, 2020
15. Affidavit of Publication, dated January 10, 2020; Classified Proof, *Peninsula Daily News*, published January 10, 2020
16. Staff Report, dated January 16, 2020

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Background

1. The subject property is approximately 1.05-acres and contains a single-family residence constructed in 1948. The property was zoned "Commercial" by Kitsap County prior to its annexation by the City of Port Orchard (City) in April 2012. With annexation, the City Council adopted zoning for the project site which most closely resembled the associated zoning designation under Kitsap County. Accordingly, the property was zoned "Commercial" at that time – a zoning classification that prohibits single-family residential development. As a preexisting, nonconforming use, however, the single-family residence on the property was allowed to remain. On March 27, 2019, the City revised its zoning classifications for the area and added additional zoning classifications which would fall under the Residential, Commercial, or Industrial designations of the City's Comprehensive Plan. Again, the City attempted to match previously zoned properties in the impacted area with the new classifications. This led to the subject property being rezoned as "Commercial Mixed Use" (CMU), a zoning designation which does not allow for single-family residential development. Again, however, as a preexisting, nonconforming use, the single-family residence on the property was allowed to remain following the rezone. *Exhibit 16, Staff Report, page 3.*

Application and Notice

2. Kenneth and Tara Snook (Applicant) request a site-specific reclassification (rezone) of a 1.05-acre parcel from the "Commercial Mixed Use" (CMU) zone to the "Business Professional Mixed Use" (BPMU) zone. The property is located at 2843 Harold Drive SE.¹ *Exhibit 1.B; Exhibit 3.A; Exhibit 16, Staff Report, page 1.*

¹ The subject property is identified by tax parcel number 4625-000-004-0102. *Exhibit 13; Exhibit 16, Staff Report, page 1.* A legal description is included with the project narrative. *Exhibit 1.C.*

*Findings, Conclusions, and Recommendation
City of Port Orchard Hearing Examiner
Harold Drive House Rezone, No. LU19-REZONE-1*

3. The City determined that the site-specific rezone application was complete on December 3, 2019. On December 6, 2019, the City mailed notice of the application to owners of property surrounding the subject property and published notice of the application in the *Port Orchard Independent*. On the same day the Applicant had notice posted on the subject property. On January 9, 2020, the Applicant had notice posted on the property. The next day the City mailed or emailed notice of the public hearing associated with the application to surrounding property holders in accordance with City ordinances and published notice of the hearing in the *Port Orchard Independent*. The City received no public comments or comments from reviewing government departments and agencies in response to its notice materials. *Exhibits 5 through 9; Exhibits 12 through 15; Exhibit 16, Staff Report, pages 1 and 15.*

State Environmental Policy Act

4. The City acted as lead agency and analyzed the environmental impacts of the proposed rezone, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City reviewed information submitted by the Applicant and other information on file and determined that the project would not have a probable significant adverse impact on the environment and that an environmental impact statement was not required. The City used the optional Determination of Nonsignificance (DNS) process, under Washington Administrative Code (WAC) 197-11-355, and provided notice of the threshold determination with the notice of application, which noted that the City expected to issue a DNS. The City issued the DNS on December 23, 2019, with an appeal deadline of January 6, 2020. No appeals were filed. *Exhibit 1.E; Exhibit 6; Exhibit 10; Exhibit 16, Staff Report, page 15.*
5. The site contains and is adjacent to areas with potential for wetlands. Because approval of the site-specific rezone does not involve any development, the City determined that a wetland report is not required at this time. Critical areas would be reviewed at the time of any proposed development. *Exhibit 16, Staff Report, page 14.*

Comprehensive Plan and Zoning

6. The City revised its Comprehensive Plan in November 2019. The City designates the subject property and surrounding properties to the north, east, and south as Commercial. Properties to the west are designated Medium Density Residential. Uses within the Commercial designation include retail, office, mixed-use commercial/residential, and professional services. *Comprehensive Plan, Sec. 2.4, Table 1 (Revised November 2019). Exhibit 1.F; Exhibit 16, Staff Report, pages 2 and 4.*
7. City staff reviewed the proposal and identified several Comprehensive Plan goals and policies as applicable to the rezone, including:
 - Retaining the City's small town commercial and residential character while accommodating allocated growth citywide. [Land Use Goal 1]

*Findings, Conclusions, and Recommendation
City of Port Orchard Hearing Examiner
Harold Drive House Rezone, No. LU19-REZONE-1*

- Ensuring that sufficient land is available for development to accommodate allocated growth in population and employment. [Land Use Goal 2]
- Protecting, enhancing, and maintaining the values and functions of the City’s natural areas, open spaces, and critical areas. [Land Use Goal 5]
- Encouraging the development of active, vibrant, and attractive destinations throughout the community. [Land Use Goal 7]
- Ensuring that the City’s housing stock responds to changes in desired housing types based on demographic trends and population growth. [Housing Goal 1]
- Ensuring that housing is affordable and available to all socioeconomic levels of the City’s residents. [Housing Goal 2]
- Promoting the efficient use of residential land in order to maximize development potential. [Housing Goal 5]
- Supporting a diversified economy that provides primary living wage jobs for residents, supported by adequate land for a range of employment uses, and which encourages accomplishment of local economic development goals. [Economic Development Goal 1]

Exhibit 16, Staff Report, pages 4 through 6.

8. The property is currently zoned Commercial Mixed Use (CMU), as are surrounding properties to the north, east, and south. Properties to the west are zoned Residential 3 (R3). The CMU zone is “intended to accommodate a broader range of residential and nonresidential activity than neighborhood mixed use” and auto-oriented uses are restricted to promote walkability. *Port Orchard Municipal Code (POMC) 20.35.030(1)*. The types of buildings allowed in the CMU zone include: townhouses, apartments, live-work buildings, shopfront homes, single-story shopfronts, mixed use shopfronts and general commercial buildings. *POMC 20.35.030(1)*. Commercial mixed use should be applied in areas where the existing or proposed land use pattern promotes mixed use and pedestrian-oriented activity and may be applied in areas designated commercial in the comprehensive plan. *POMC 20.35.030(1)*. *Exhibit 16, Staff Report, pages 1 through 4.*
9. Chapter 36.70A Revised Code of Washington (RCW) mandates that zoning classifications should be consistent with Comprehensive Plan designations. The City’s Comprehensive Plan Commercial designation includes both the CMU and Business Professional Mixed Use (BPMU) zoning districts. The BPMU zone is intended to accommodate mixed use development as well as a mix of uses that are oriented around the existing areas of medical, business professional, and residential uses and structures. *POMC 20.35.025(1)*. Development in this zone is sought at a scale appropriate for uses ranging from single-family detached to large medical buildings with larger buildings to be designed to be more compatible with smaller structures. *POMC 20.35.025(1)*. *Exhibit 1.C; Exhibit 16, Staff Report, pages 2 and 4.*

Existing and Surrounding Property

10. The existing property contains a non-conforming detached historic residence constructed in 1948 on one of the original Port Orchard homesteads. Access is from Harold Drive SE. A detached house is not listed as an allowed use in the CMU zone. *POMC 20.35.030(2)*. As an existing non-conforming structure in the CMU, it could not be rebuilt if destruction exceeded 50 percent of its replacement cost. The Applicant submitted a project narrative describing surrounding property as purchased by a public entity and that the change to BPMU zoning would allow more redevelopment potential in the future for the subject property. *Exhibit 1.C; Exhibit 16, Staff Report, pages 2 and 4.*
11. The developed portion of the site is buffered by a natural critical area located to the east. Property to the south contains a self-storage facility. The single-family residence located on the property faces a single-family residential development to the west. Both are separated from the subject property by improved roads. Properties to the north are zoned CMU and undeveloped. *Exhibit 16, Staff Report, page 12.*

Rezone Criteria

12. City staff reviewed the proposed site-specific rezone request against the required criteria for a rezone in POMC 20.42.030 and determined:
 - The proposed rezone would be consistent with the Comprehensive Plan and purpose of the proposed zoning district.
 - The zoning history includes Commercial zoning by Kitsap County prior to annexation.
 - The proposed rezone would allow uses that are less intense than in the CMU zone.
 - Unless additional development occurs, no additional buffering is required.
 - No new parcel boundaries would be created.
 - The proposed rezone would have no significant impacts on housing or public services.
 - No additional environmental factors were identified.
 - There is no change in land use that would impact pedestrian safety.
 - Although the rezone would reduce employment intensity, this is not considered a significant impact.
 - With the rezone, the character of the property would not change, whereas if the zone remained CMU, reconstruction of the non-conforming single-family residence would not be allowed if more than 50 percent of the home were destroyed. The structure is not a registered historical site, nor is it located in a shoreline view area.
 - No additional impact on service capacities was identified.
 - The City determined that Kitsap County has acquired bordering property limiting the opportunity for consolidation and large-scale development on-site. The City

determined that the BPMU zone is more compatible with the surrounding properties and future development of the site.

- The proposed rezone would not have an adverse impact on the critical area wetlands located on the property. Any future proposed development would address any impacts and would be subject to the critical areas ordinance in effect at the time of development application.

Exhibit 16, Staff Report, pages 10 through 13.

13. The City staff determined that that proposed rezone would be consistent with the Comprehensive Plan goals and policies, and with the City's long-term Comprehensive Plan direction. No other site-specific rezone applications have been requested in the immediate area. *Exhibit 16, Staff Report, pages 4, 12, and 15.*

Testimony

14. City Associate Planner James Fisk testified generally about the proposal, the history of the project site, and why a rezone would be necessary to ensure that future redevelopment of the site as a residential property is necessary in case of significant damage or destruction. *Testimony of Mr. Fisk.*
15. Applicant Kenneth Snook testified that the existing residence is one of the original Port Orchard homesteads and, because of this, the commercial designation and zoning for the property have never made sense. He testified that he and his wife are seeking the site-specific rezone to protect their investment in the property. Applicant Tara Snook concurred with Mr. Snook's testimony. *Testimony of Mr. Snook; Testimony of Mrs. Snook.*

Staff Recommendation

16. Mr. Fisk testified that the City recommends approval of the proposed site-specific rezone without conditions. *Exhibit 16, Staff Report, page 16; Testimony of Mr. Fisk.*

CONCLUSIONS

Jurisdiction

The City of Port Orchard Hearing Examiner has jurisdiction to hold a hearing on rezone applications that are not part of the Comprehensive Plan Amendment process. Based on the evidence in the record, the Hearing Examiner shall make a recommendation to the City Council as to whether the proposed rezone meets the criteria in POMC 20.42.030. *POMC 2.76.080; POMC 2.76.100; POMC 2.76.110; POMC Table 20.22.020, -.060(5); POMC 20.42.010(2), - 040(5).*

When reviewing a rezone application, the Hearing Examiner does not review development proposals. Rather, the role of the Hearing Examiner is to review the rezone request to ensure compliance with the site-specific rezone criteria found in POMC 20.42.030. The City Council then reviews the Hearing Examiner's recommendation and may hold an additional hearing on the site-specific rezone application at its discretion. The City Council's approval, modification, deferral, or denial of a site-specific rezone application shall be based on the criteria set forth in

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POMC 20.42.030. If a quasi-judicial rezone is approved, the city council will subsequently adopt an ordinance amending the city's official zoning map to be consistent with their final decision on the rezone application. *POMC 20.42.040(6)*.

Criteria for Review

POMC 20.42.030 sets forth general provisions and criteria the Hearing Examiner must use to evaluate a request for a site-specific rezone. A request for a rezone shall only be approved upon compliance with the following review criteria:

- (1) The following general provisions shall apply to review of all site-specific rezone applications:
 - (a) There is no presumption of validity favoring the action of rezoning;
 - (b) The proponents of the rezone have the burden of proof to demonstrate that conditions have changed since the original zoning; and
 - (c) The rezone must bear a substantial relationship to the public health, safety, morals or welfare.
- (2) Criteria for Review. In addition to the general criteria in subsection (1) of this section, the city shall review applications for site-specific rezone applications and issue approval of said applications pursuant to the following criteria:
 - (a) Consistency with the existing comprehensive plan (the comprehensive plan that has been approved and is in place at the time the application was submitted);
 - (b) Consistency with the purpose of the proposed zoning district;
 - (c) Consistency between zone criteria and area characteristics;
 - (d) Zoning history and precedential effect. Previous and potential zoning changes both in and around the area identified in the application shall be examined;
 - (e) The impact of more intense zones on less intense zones or industrial and commercial zones on other zones shall be minimized by the use of transitions or buffers in the more intense zone, if possible. A gradual transition between zoning categories, including height limits, is preferred;
 - (f) Physical buffers may provide an effective separation between different uses and intensities of development. The following elements may be considered as buffers:
 - (i) Natural features such as topographical breaks, lakes, rivers, streams, ravines and shorelines;
 - (ii) Freeways, other major traffic arterials and railroad tracks;
 - (iii) Distinct change in street layout and block orientation;
 - (iv) Open space and greenspaces suitable in area to mitigate against more intense uses;
 - (v) Zone boundaries;
 - (g) In establishing boundaries, the following elements shall be considered:
 - (i) Physical buffers as described in subsection (2)(f) of this section; and
 - (ii) Platted lot lines;

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- (h) Boundaries between commercial and residential areas shall generally be established so that commercial uses face each other across the street on which they are located, and face away from adjacent residential areas. An exception may be made when physical buffers can provide a more effective separation between uses;
- (i) Impact Evaluation. The evaluation of the changes that would result from approval of the application shall consider the possible negative and positive impacts on the affected area and its surroundings. Factors to be examined include, but are not limited to, the following:
 - (i) Housing;
 - (ii) Public services;
 - (iii) Environmental factors, such as noise, air and water quality, terrestrial and aquatic flora and fauna, glare, odor, shadows and energy conservation;
 - (iv) Pedestrian safety;
 - (v) Manufacturing activity;
 - (vi) Employment activity;
 - (vii) Character of areas recognized for architectural or historic value;
 - (viii) Shoreline view, public access and recreation;
 - (ix) Service Capacities. Development which can be reasonably anticipated based on the proposed development potential shall not exceed the service capacities which can reasonably be anticipated in the area, including: street access to the area; street capacity in the area; transit service; parking capacity; utility and sewer capacity; shoreline navigation;
 - (x) Population and employment allocations as established through the countywide planning policies;
 - (xi) Changed Circumstances. Consideration of changed circumstances shall be limited to elements or conditions included in the criteria for the relevant zone designations in the zoning code;
 - (xii) Critical Areas. If the area is located in or adjacent to a critical area, the effect of the rezone on the critical area shall be considered.

POMC 20.42.030.

Conclusions

1. **The rezone would meet the general site-specific rezone provisions of POMC 20.42.030(1) and rezone criteria of POMC 20.030(2)(a)-(c).** The City provided reasonable notice of the application and hearing. No public comments or comments from reviewing government departments or agencies were received in response to the City's notice materials. The property was zoned Commercial by Kitsap County and annexed into the City. In 2019, the City rezoned the property to CMU, resulting in the ongoing non-conforming status of the existing residential structure on the property. The Applicant requested that the property be rezoned to BPMU, a zoning district consistent with the City's Comprehensive Plan Commercial designation for this area that would also

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allow ongoing (or future) single-family residential development on the property.
Findings 1 – 16.

2. **The rezone would meet the rezone criteria of POMC 20.030(2)(d) and (e).** No other site-specific rezones have been applied for in the immediate area. The proposed rezone would not set a precedent, as the purpose is to allow the non-conforming single-family residence to be rebuilt in the event of destruction of over 50 percent. Permitted uses in the BPMU zone are less intensive than in the CMP zone. *Findings 1, 2, 9, 11, and 12.*
3. **The rezone would meet the rezone criteria of POMC 20.030(2)(f).** The developed portion of the site is buffered by a natural critical area located to the east. No additional buffering was identified, as properties to the west and south are separated by roadways. Properties to the north are zoned CMU and undeveloped. *Findings 2, 4, 5, 11, and 12.*
4. **The rezone would meet the rezone criteria of POMC 20.030(2)(g) and (h).** The proposed rezone would apply to the entire parcel and existing platted lot lines. The existing single-family residence faces residential properties to the west of the subject properties. The developed portion of the site is buffered by a natural critical area located to the east. *Findings 1, 2, 10, 11 and 12.*
5. **The rezone would meet the rezone criteria of POMC 20.030(2)(i).** The proposed rezone would have no significant impacts on housing or public services. The proposed rezone would allow uses that are less intense than in the CMU zone. The City reviewed the proposal's environmental impacts and issued a Determination of Nonsignificance, which was not appealed. There is no change in land use that would impact pedestrian safety. Although the rezone would reduce employment intensity, this is not considered a significant impact. With the rezone, the character of the property would not change, whereas if the property remained zoned CMU, reconstruction of the non-conforming single-family residence would not be allowed if more than 50 percent of the replacement cost were destroyed. The City determined that Kitsap County has acquired bordering property limiting the opportunity for consolidation and large-scale development in the immediate vicinity. The City determined that the BPMU zone is more compatible with the surrounding properties and future development of the site. The proposed rezone would not have an adverse impact on the critical area wetlands located on the property. Any future proposed development would address any impacts and would be subject to the critical areas ordinance in effect at the time of development application. *Findings 1 – 16.*

RECOMMENDATION

Based on the above findings and conclusions, the Hearing Examiner recommends that the City Council **APPROVE** the request for a site-specific rezone from Commercial Mixed Use to

Business Professional Mixed Use for the 1.05-acre parcel located at 2843 Harold Drive SE.

RECOMMENDED this 13th day of February 2020.

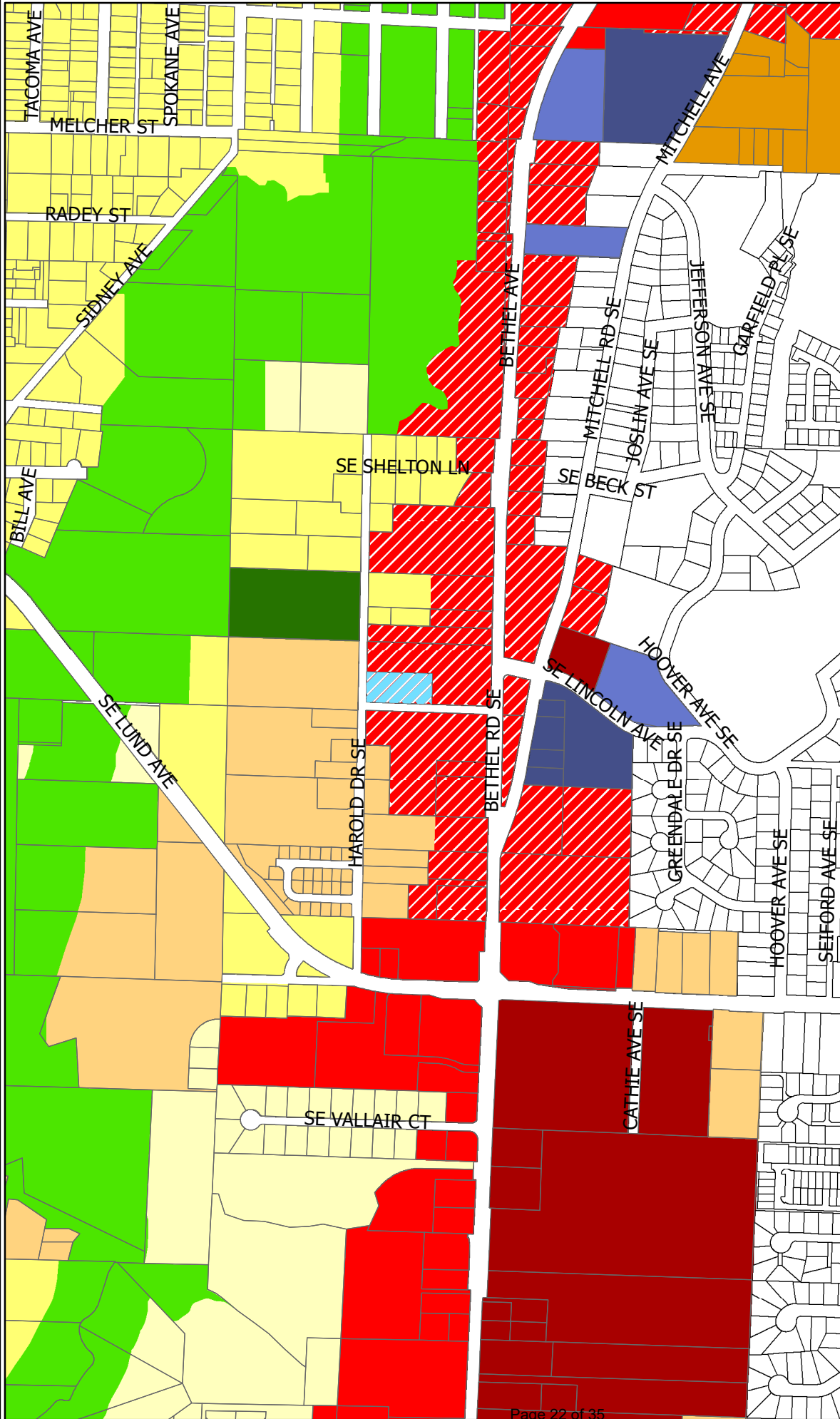


ANDREW M. REEVES
Hearing Examiner
Sound Law Center



City of Port Orchard Site-Specific Rezone LU19-REZONE-01

EXHIBIT B

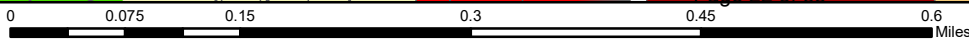


- Greenbelt (GB)
- Residential 1 (R1)
- Residential 2 (R2)
- Residential 3 (R3)
- Residential 3 (R4)
- Residential 6 (R6)
- Business Professional Mixed Use (BPMU)
- Commercial Mixed Use (CMU)
- Downtown Mixed Use (DMU)
- Gateway Mixed Use (GMU)
- Neighborhood Mixed Use (NMU)
- Commercial Corridor (CC)
- Commercial Heavy (CH)
- Civic and Institutional (CI)
- Light Industrial (LI)
- Parks and Recreation (PR)
- Public Facilities (PF)



City of Port Orchard
 Department of Community Development
 216 Prospect Street, Port Orchard, WA 98366
 Phone: (360) 874-5533 Fax: (360) 876-4980
www.cityofportorchard.us

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City of Port Orchard

216 Prospect Street, Port Orchard, WA 98366
(360) 876-4407 • FAX (360) 895-9029

Agenda Staff Report

Agenda Item No.: Business Item 7B
Subject: Adoption of an Ordinance Amending Port Orchard Municipal Code Section 2.04.045 Remote Attendance

Meeting Date: March 24, 2020
Prepared by: Charlotte Archer
City Attorney
Atty Routing No.: N/A
Atty Review Date: N/A

Summary: At the March 17, 2020, City Council meeting, discussion was held regarding remote meeting attendance. The Council raised issues regarding the proposed new code section for remote attendance by Councilmembers, including: (1) ensuring that the language was plural, so that multiple Councilmembers (or employees) could attend, if necessary; and (2) ensuring that, in the event of an emergency necessitating remote attendance, all Councilmembers are offered remote attendance to limit the Mayor’s (or Mayor Pro Tem’s) discretion.

This Ordinance also includes a declaration of emergency, and if adopted, would be immediately effective.

Proposed ordinance has been provided for your consideration.

Recommendation: N/A

Relationship to Comprehensive Plan: N/A

Motion for consideration: “I move to adopt an Ordinance Amending Port Orchard Municipal Code Section 2.04.045, Pertaining to Remote Attendance, as presented.”

Fiscal Impact: Unknown

Alternatives: N/A

Attachments: Draft redline Ordinance.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO COUNCIL MEETINGS; AMENDING PORT ORCHARD MUNICIPAL CODE SECTION 2.04.045 FOR COUNCIL MEETING ATTENDANCE; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY; ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Chapter 35A.110 RCW, including but not limited to RCW 35A.12.110, establishes the parameters for the conduct of council meetings, including notice and attendance; and

WHEREAS, in compliance with Chapter 35A.110 RCW, the City Council by Ordinance designated the date and time, location, and parameters for council meetings, codified at Port Orchard Municipal Code (POMC) Chapter 2.04; and

WHEREAS, the City Council finds that amendments to POMC Section 2.04.045 pertaining to the time and remote attendance of meetings by Council members and City staff are necessary and appropriate to ensure the health and safety of the Council, public, and the City's employees;

WHEREAS, the Mayor issued a Proclamation of Local Emergency on March 16, 2020, pertaining to the spread of the novel coronavirus known and COVID-19, and the City Council ratified that Proclamation at an open meeting by motion on March 17, 2020 confirming the existence of an emergency in the City; now, therefore

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. Amendment. Port Orchard Municipal Code 2.04.045 is hereby amended to read as follows:

2.04.045 Remote Attendance.

The Mayor, or in the Mayor's absence the mayor pro tem (the "Presiding Officer"), may approve Councilmembers or employees appearance at a regular, special or work study session meeting via video conferencing or telephone ("remote attendance") under the following circumstances:

- a. When action on a measure to be voted on **should** not be delayed but rather requires **immediate** action or remedy; and
- b. The remote attendance is for the benefit of the City and not for the benefit of an individual Councilmember; and
- c. In the event of fire, flood, earthquake, or other emergency relating to public health and safety.

If the above requirements are met, the Presiding Officer shall notify all Councilmembers in advance of the meeting, and shall accommodate all requests by Councilmembers for remote attendance.

SECTION 2. Declaration of Emergency. Pursuant to RCW 35A.12.130 and RCW 35A.13.190, this Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995), underlying facts necessary to support this emergency declaration are included in the recitals set forth above, which are adopted by reference.

SECTION 3. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

SECTION 4. Effective Date. This ordinance shall be in full force and effect upon adoption. The Clerk is authorized to post and publish this ordinance, as required by law. A summary of this Ordinance may be published in lieu of the entire ordinance, as authorized by State Law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this ___ day of March 2020.

Robert Putansuu, Mayor

ATTEST:

Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

SPONSORED BY:

Charlotte A. Archer, City Attorney

Shawn Cucciardi, Councilmember



City of Port Orchard

216 Prospect Street, Port Orchard, WA 98366
(360) 876-4407 • FAX (360) 895-9029

Agenda Staff Report

Agenda Item No.: Business Item 7C

Meeting Date: March 24, 2020

Subject: Approval of a Contract with Hayter
Industries, LLC for Public Relations,
Marketing and Communications

Prepared by: Brandy Rinearson, MMC
City Clerk

Atty Routing No.: N/A

Atty Review Date: N/A

Summary: As the City grows and the population increases, there is a need for a dedicated public relations and communications specialist to keep the community updated on City projects, expand on the City's current social media outreach and help the City to develop strategy's to communicate with staff.

On February 27, 2020, the Finance Director sent the Request for Statement of Qualifications to 6 firms listed on the MRSC (Municipal Research & Services Center) small works roster. The City received one bid from Hayter Industries, LLC.

Recommendation: Staff recommends approval of a contract with Hayter Industries, LLC for Public Relations, Marketing and Communications.

Relationship to Comprehensive Plan: N/A

Motion for consideration: I move to approve a contract with Hayter Industries, LLC for Public Relations, Marketing, and Communications, as presented.

Fiscal Impact: Contract cost not to exceed \$25,000.

Alternatives: Do not approve contract.

Attachments: Contract.

CITY OF PORT ORCHARD PERSONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 17th day of March 2020, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF PORT ORCHARD, WASHINGTON (hereinafter the "CITY")
216 Prospect Street
Port Orchard, Washington 98366

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

And HAYTER INDUSTRIES, LLC, a corporation, organized under the laws of the State of Washington, doing business at:

7805 Broadstone Place SW (hereinafter the "CONSULTANT")
Port Orchard, WA 98367

Contact: Ryan Hayter Phone: (360) 981-2929

for personal services in connection with the following Project:

Public Relations, Marketing, and Communications consultant

TERMS AND CONDITIONS

1. Services by Consultant.

A. The Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

2. Schedule of Work.

A. The Consultant shall perform the services described in the Scope of Work in accordance with the tasks identified within Exhibit "A" and the terms of this Agreement. If delays beyond the Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. The Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

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Personal Services Agreement Contract No. _____
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3. **Terms.** This Agreement shall commence on April 1, 2020 (“Commencement Date”) and shall terminate December 31, 2020 unless extended or terminated in writing as provided herein.

4. **Compensation.**

LUMP SUM. Compensation for these services shall be a Lump Sum of \$_____.

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed **\$25,000** without written authorization and will be based on an hourly rate of \$100.

TIME AND MATERIALS. Compensation for these services shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit “_____.”

5. **Payment.**

A. The Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within thirty (30) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. The Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. For the duration of this Agreement, the Consultant shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant’s business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.

E. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

6. **Discrimination and Compliance with Laws**

A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the

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approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the term(s) of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. The Consultant shall obtain a City of Port Orchard business license prior to commencing work pursuant to a written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

7. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including but not limited to compensation, insurance, and unemployment insurance, are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

8. Suspension and Termination of Agreement

A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. Termination with cause. This Agreement may be terminated upon the default of the Consultant and the failure of the Consultant to cure such default within a reasonable time after receiving written notice of the default.

C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. The Consultant shall not be entitled to any reallocation of cost, profit or overhead. The Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. The Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

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2. *Default.* If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained, by the City by reason of such default.

D. Suspension. The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

9. Standard of Care. The Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by the Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Ownership of Work Product.

A. All data, materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of the City, shall be forwarded to the City at its request and may be used by the City as it sees fit. Upon termination of this Agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to City. Any reuse or modification of such documents, reports or other material or work of the Consultant for purposes other than those intended by the Consultant in its scope of services under this Agreement shall be at the City's risk.

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in the Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise. The Consultant is permitted to disclose any such information only to the extent required by law, subpoena or other court order.

11. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder, and shall utilize all protection necessary for that purpose. All work shall be done at

the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

12. Indemnification. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries or damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement 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 the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

13. Insurance. The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

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B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Workers' Compensation Employer's Liability each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.
4. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

14. Assigning or Subcontracting. The Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

15. Notice. Any notices required to be given by the City to the Consultant or by the Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Robert Putaansuu
Mayor
216 Prospect Street
Port Orchard, WA 98366

Phone: 360.876.4407
Fax: 360.895.9029

Ryan Hayter, CONSULTANT
President
7805 Broadstone Place SW
Port Orchard, WA 98367

Phone: (360) 981-2929

16. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the Mayor's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other party.

17. General Provisions.

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

B. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or

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unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF PORT ORCHARD,
WASHINGTON

CONSULTANT

By: _____
Robert Putaansuu, Mayor

By: Ryan Hayter

ATTEST/AUTHENTICATE:

Name: Ryan Hayter

By: _____
Brandy Rinearson, MMC
City Clerk

Title: President

APPROVED AS TO FORM:

By: _____
Charlotte Archer, City Attorney

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EXHIBIT A

SCOPE OF SERVICES TO CONTRACT NO. _____

Project Description:

The consultant will perform the work described herein, at the direction of the Mayor and staff, to create website content, and draft social media posts, press releases, and public notices. Specifically, the consultant may be directed to perform the following:

Social Media:

Assist the City in expanding on a social media strategy that provides timely and relevant information about City projects and activities. The communications consultant task includes:

- Develop an annual calendar with anticipated announcement dates and updates around key projects and initiatives
- Craft messaging with Mayor and senior staff as appropriate
- Collaborate with community pages

Public Relations:

- Develop and maintain relationships with local news and media outlets including Kitsap, King and Pierce counties
- Draft and disseminate City news stories on a timely basis
- Coordinate interviews and articles with local journalists
- Develop guidelines for City employees to communicate with public

Internal Communications:

- Develop tools and strategy for City to communicate with staff
- Develop messaging for City to communicate with staff

Community Events:

- Identify opportunities for city officials to participate in community activities.
- Develop and execute events/activities for city officials to interact with constituents outside of City Hall.

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