

ORDINANCE NO. 3121-09

An Ordinance Rezoning Everett Riverfront District Properties from M-1 Office and Industrial Park and C-2 Heavy Commercial /Light Industrial to Waterfront Commercial and Approving a Planned Development Overlay Zone and a Development Agreement for the OliverMcMillan Development

WHEREAS, the City of Everett (City) intends that the Everett Riverfront District (depicted in Exhibit 3) be redeveloped with high-quality mixed residential, commercial and retail uses, public open space, recreation opportunities, and other public amenities, consistent with the vision expressed in the City's Comprehensive Plan, Shoreline Management Program, development regulations, and other City plans and programs, to create a community where people can live, work, shop, recreate, and enjoy the amenities of the Snohomish River; and

WHEREAS, rezoning the Riverfront District properties to Waterfront Commercial, as shown in Exhibits 1 and 2, is consistent with and will implement the City's goals and objectives for the Riverfront District contained in the above plans, programs, and regulations (collectively, the "Riverfront Redevelopment Plan"); and

WHEREAS, a portion of the Riverfront District previously owned by the City, consisting of properties commonly known as the former Everett Landfill Site, the Simpson Site and the Eclipse Mill Site, were transferred by the City to OM Everett, Inc., and OMH Transfer Agent, LLC (collectively "OM") pursuant to a property disposition agreement ("PDA") that requires development of these properties (depicted in Exhibit 3, Attachments A, B, C, and D) and hereinafter referred to as the "OM Development") consistent with the Riverfront Redevelopment Plan; and

WHEREAS, the Planned Development Overlay ("PDO") Zone provides flexibility to modify standards of the underlying zone to allow innovative, high-quality development such as that envisioned for the Riverfront District, when such development will produce greater public benefit than would result from strict application of the underlying standards; and

WHEREAS, the Development Agreement between the City and OM, attached as Exhibit 3, includes zoning and development standards, including a development site plan, that shall apply to, govern and vest the development, use, and mitigation of the OM Development; and

WHEREAS, the standards in the Development Agreement are consistent with the Waterfront Commercial and PDO zones approved by this ordinance, are consistent with and implement the PDA and the Riverfront Redevelopment Plan, and will result in a high-quality development with more public benefit than could be achieved under strict compliance with the Waterfront Commercial development standards; and

WHEREAS, the standards in the Development Agreement approved by this Ordinance follow and are based on an appropriate land use and environmental review process that has included meaningful opportunities for public participation;

NOW, THEREFORE, the City enters the following Findings and Conclusions:

FINDINGS

1. The City was the owner of certain land located within the City of Everett, Snohomish County, Washington, adjacent to the Snohomish River and containing approximately 217 acres, including a former landfill site ("Landfill Site") and two former mill sites (the "Mill Site" and the "Simpson Site") with a total area of approximately 119 acres.
2. The Landfill Site and the Simpson Site has been the subject of detailed environmental characterization and remedial actions under the state's Model Toxics Control Act. The Simpson Site was the subject of a voluntary cleanup in which the Washington Department of Ecology ("Ecology") issued a "no further action letter" in 2008 and the Landfill Site was the subject of a final court-approved Consent Decree entered into between the City and Ecology dated April 2, 2002 ("the Consent Decree"), which was amended in 2008 between OM and Ecology, which includes a Restrictive Covenant dated January 14, 2002 ("Restrictive Covenant") and a final Cleanup Action Plan ("CAP"). These documents and instruments set forth certain conditions and requirements imposed to protect public health, the environment and the integrity of the remedial actions that have been taken on portions of the above properties.
3. On November 15, 2006, the Everett City Council passed Resolution 5834 declaring the above City property to be not required for City purposes and its sale to be in the best interests of the City, in accordance with Ordinance 2935-06.
4. The Everett City Council conducted a request for qualifications process to select a purchaser who would develop the properties with high quality, mixed-use retail and residential development. The City selected OM, an experienced developer of commercial, retail and residential properties, as the preferred developer and, following a period of negotiation, entered into a property disposition agreement dated February 7, 2007. The PDA was amended three times, most recently on April 30, 2008 ("PDA" as used in this ordinance means the February 7, 2007 property disposition agreement as modified by the three subsequent amendments).
5. The sale of the City properties to OM was intended to implement the City's plan for redevelopment of the Riverfront District. The City's plan is described in and implements plans and programs adopted by the City, including but not limited to the City's Comprehensive Plan, Shoreline Master Program and development regulations, and is summarized in Exhibit G of the original PDA.

The City's Riverfront Redevelopment Plan and the PDA express the City's desire for a high-quality, environmentally-sensitive, mixed retail, commercial, and residential development where people will live, work, shop, recreate, and enjoy the amenities of the Snohomish River. OM agrees in the PDA that it will pursue development that meets those criteria.

6. The above plans and programs have received prior review in compliance with prior State Environmental Policy Act ("SEPA"), including public and interagency notice and opportunity to comment, under which all appeals have been resolved and for which all appeal periods have expired.
7. The PDA acknowledges that the OM Development will require applications for and City review of subsequent development approvals and environmental review, including but not limited to a rezone and development agreement.
8. As contemplated by the PDA, OM applied for approval of a PDO zone and began working cooperatively with the City towards a development agreement that would implement the PDO zone by establishing development standards based on the standards of the proposed underlying Waterfront Commercial zone but, consistent with the intent of the PDO zone, modified to achieve the high standard of quality expected of and agreed to for the OM Development.
9. The City conducted environmental review of the actions included in this ordinance consistent with the State Environmental Policy Act and the City's environmental policies and procedures. As SEPA lead agency, the City issued a Draft Environmental Impact Statement on the Everett Riverfront Redevelopment Plan (the "DEIS") which evaluates the environmental impacts of developing the properties as allowed by the proposed rezone and development agreement. The DEIS also evaluates alternatives to the proposal, including mitigation. The DEIS was circulated for public comment on December 14, 2007 and on June 11, 2008, the City issued a Final Environmental Impact Statement ("FEIS"), revised to reflect comments received on the draft. On November 24, 2008, the City issued Addendum No. 1 to the FEIS which describes certain project changes and additional information.
10. The environmental review includes four properties in the proposed rezone to Waterfront Commercial, but not within the proposed PDO Zone or Development Agreement. These properties are owned by the City, the Port of Everett, the Newlands and the Stuchells, which are included in Exhibits 1 and 2.
11. Following issuance of the FEIS, OM and City staff continued to refine the proposed standards and site plan to be included in the Development Agreement. The responsible official determined that there were no changes in the proposal that would have a probable significant adverse environmental impact that had not been analyzed in the FEIS but issued an addendum to the FEIS to include information and analysis reflecting these modifications on November 24, 2008.

12. Measures to mitigate impacts of the OM Development identified in the environmental documents are included in the Development Agreement as Exhibit 3, Attachment I and will apply to construction of the OM Development.
13. The impacts of development proposals on Riverfront District properties other than the OM Development will be mitigated in connection with subsequent development approvals and will be based on the environmental documents already prepared and any project-level environmental review conducted for the specific development proposals on those properties.
14. The PDO and Development Agreement zoning and development standards, conceptual site plan, the DEIS and FEIS, and the Addendum to the FEIS were considered by the Everett Planning Commission. The Planning Commission conducted a public hearing on December 9, 2008. Following presentations by staff and OM, testimony from members of the public, and discussion by the Planning Commission, a quorum of the Planning Commission voted unanimously to recommend approval of the Riverfront District zoning standards and design guidelines.
15. The visual impact of the increase in permitted height through the Development Agreement has been studied through the Environmental Review Process and was found to not be a significant impact.
16. The parking management plan as described in the Development Agreement will be implemented and updated in each phase of development, with review and adjustments made by the City Engineer and Planning Director as necessary to provide for adequate public parking and parking for residents, businesses, and visitors. This approach to parking management provides for adequate parking during the phasing of the project as well as an efficient use of parking resources while minimizing aesthetic impacts of large parking lots.
17. The following Comprehensive Plan policies specifically apply to this proposal:

The rezoning of this site to Waterfront Commercial will implement the Comprehensive Plan Map designation of 4.5 Waterfront Commercial.

Objective 3.1.1 Permit land uses as encouraged by the Comprehensive Plan and which are dependent upon or enhanced by a shoreline location, and/or which provide for increased public access to Everett's shorelines.

Objective 3.1.2 Provide performance and development standards for shoreline uses, which achieve compatibility among shoreline activities and nearby neighborhoods.

Objective 3.1.3 Provide for multiple uses of the shoreline where location and existing or proposed uses make this feasible.

Objective 3.1.8 Consider the overall development pattern of the City, including neighborhoods adjoining shoreline areas, and the Puget sound region in planning for shoreline uses and development.

Objective 3.2.5 Provide for Multi-use concept by increasing public access to the shoreline while maintaining the economic vitality of desirable shoreline uses.

Objective 3.2.9 Recognize and encourage the economic benefits derived from wildlife and fish habitats, public access, and tourism.

Goal 3.5 To prevent or minimize flood damage while protecting shoreline ecological functions and ecosystem-wide processes.

Goal 3.6.1 To achieve safe, convenient, and diversified access for the public to the shorelines of Everett.

Objective 3.6.3 Protect and, as appropriate, seek to enhance existing public access including expansion of trails, trail networks, and substantial public viewing areas.

Policy 3.6.9 Water-enjoyment uses and non-water-oriented uses that front on the shoreline should provide continuous public access.

Policy 3.6.13 Public access requirements should be completed in a timely manner and assurance devices should be used to provide meaningful and timely public access.

Goal 3.7 To provide opportunities for diverse and convenient water-oriented recreational experiences for the public where appropriate.

Goal 3.8.2 To promote and enhance the public interest by protecting, enhancing, restoring, and preserving ecological functions and ecosystem-wide processes, while allowing development in Everett's Urban Growth Boundary.

Goal 3.8.6 To protect and restore proposed, threatened or endangered species and their habitat.

Policy 3.8.9 All developments should comply with existing local, state and federal regulations relating to water quality and critical areas.

Urban Multi-Use – Area south of US 2 along the Snohomish River

Purpose – To ensure optimum uses of shorelines within urbanized areas by providing for water-oriented public and commercial activities, recreational

and residential uses, and public access, and by managing development so that it enhances and maintains shorelines for a multiplicity of urban uses, while protecting and restoring ecological functions.

Policy 3.15.3 Area south of Highway 2. Encourage high quality mixed-use development including multiple family residential, office park, and light commercial uses. Water-oriented uses, such as restaurants with views of the waterfront are encouraged. However, non-water-oriented commercial, land/or multiple family residential uses should be allowed in this area, provided the development provides views to the Snohomish River from and through the site. High quality public access should be provided-along the entire shoreline. Access shall be located so that it does not significantly impact habitat for endangered species.

Policy 3.15.4 Simpson and Tire Fire/Landfill Sites. Development of these sites should be of a high quality design and should only occur after approval of a master plan involving a public review of the site plans through the Planned Development Overlay Process.

Policy 3.15.5 Except as necessary to accommodate access to the water necessary for the operation of water-dependent and/or water-related uses, all uses shall provide buffers and rehabilitation of ecological functions along the shoreline, when the property fronts on the shoreline. Public access may be provided in portions of the buffer.

Policy 3.15.6 Extension of the existing trail system and connection to other public access improvements and perk amenities shall be required as properties within this area developed.

Policy 3.15.7 Land uses and activities that are incompatible with and discourage high quality waterfront redevelopment shall be prohibited.

18. The proposed rezone is consistent with the Everett Comprehensive Plan; bears a substantial relationship to the public health, safety and welfare; promotes the best long-term interests of the Everett community; and mitigates adverse impacts upon existing or anticipated land uses in the immediate vicinity of the subject property.
19. Any conclusion below that may be construed as a finding is included here as such by this reference.

CONCLUSIONS

1. Any finding above that may be construed as a conclusion is included as such by this reference.

2. The proposed zoning standards, design guidelines, and site plan which will be adopted as a part of the PDO and Development Agreement will implement the policies of the Comprehensive Plan and specifically those referenced in this Ordinance. (Findings 10, 11, 14)
3. The rezone is consistent with the Comprehensive Plan policies and the Comprehensive Plan Land Use Map for the reasons discussed in this ordinance. (Finding 10, 11,14).
4. The development agreement between OM and the City for the Everett Riverfront District Area is in the best long term interests of the community. (Findings 1, 2, 3, 6, 7, 9, 10, 11, 14).
5. The rezone of the four additional parcels outside of the Planned Development Overlay Zone is in the best long-term interests of the community. Finding 10.11.14)
6. The PDO zone implemented through the Development Agreement which includes mitigation and standards will mitigate the adverse impacts of the Riverfront District Project. (Findings 1, 2, 3, 6, 7)
7. The amendment to the land use map zoning promotes the best long term interests of the Everett community by providing a long term plan and framework for the redevelopment of an important part of the Everett waterfront. (Findings 1, 2, 3, 6, 7, 9, 10, 11, 14)
8. The PDO implemented through the Development Agreement complies with the procedural and substantive requirements of EMC 19.29.(Findings 1, 2, 3, 4, 5, 8, 9, 12)

Based on the evidence in the record and having entered the foregoing Findings and Conclusions,

NOW, THEREFORE, THE CITY DOES ORDAIN:

Section 1: Approval of Rezone to Waterfront Commercial

The Riverfront District properties, as depicted in Exhibit 1, and legally described in Exhibit 2, are rezoned from M-1 Office and Industrial Park and C-2 Heavy Commercial /Light Industrial to Waterfront Commercial.

Section 2: Approval of Planned Development Overlay Zone and Development Agreement

The properties as described in Exhibit 3, Attachments A, B, and C are zoned Planned Development Overlay Zone as shown in Exhibit 3, Attachment D. The Development Agreement between the City and OM attached to this Ordinance at Exhibit 3 is approved and the Mayor is authorized to execute the Development Agreement in substantially the form as provided in Exhibit 3.

Section 3: Corrections

The City Clerk and the codifiers of this Ordinance (including exhibits and attachments) are authorized to make necessary corrections to the Ordinance (including exhibits and attachments) including, but not limited to, the correction of scrivener's / clerical errors, references, resolution numbering, section / subsection numbers and any references thereto.

Section 4. Severability

Should any section, subsection, paragraph, sentence, clause or phrase set forth in this Ordinance, exhibits, or any attachment to this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance, exhibits, or attachments or its application to any other person or situation.

Section 5: Purpose

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance.

It is the specific intent of this Ordinance that neither provisions nor any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees.

Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from action or inaction on the part of the City, its officers, employees or agents.

Section 6: Pending Actions

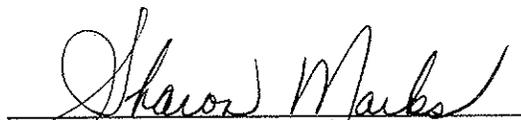
The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter pending before the City or in any court.

Section 7: Recording

A copy of this Ordinance, and an executed copy of the Development Agreement, shall be recorded with the Snohomish County Auditor's Office and shall constitute a covenant running with the land.


RAY STEPHANSON, Mayor

ATTEST:


City Clerk

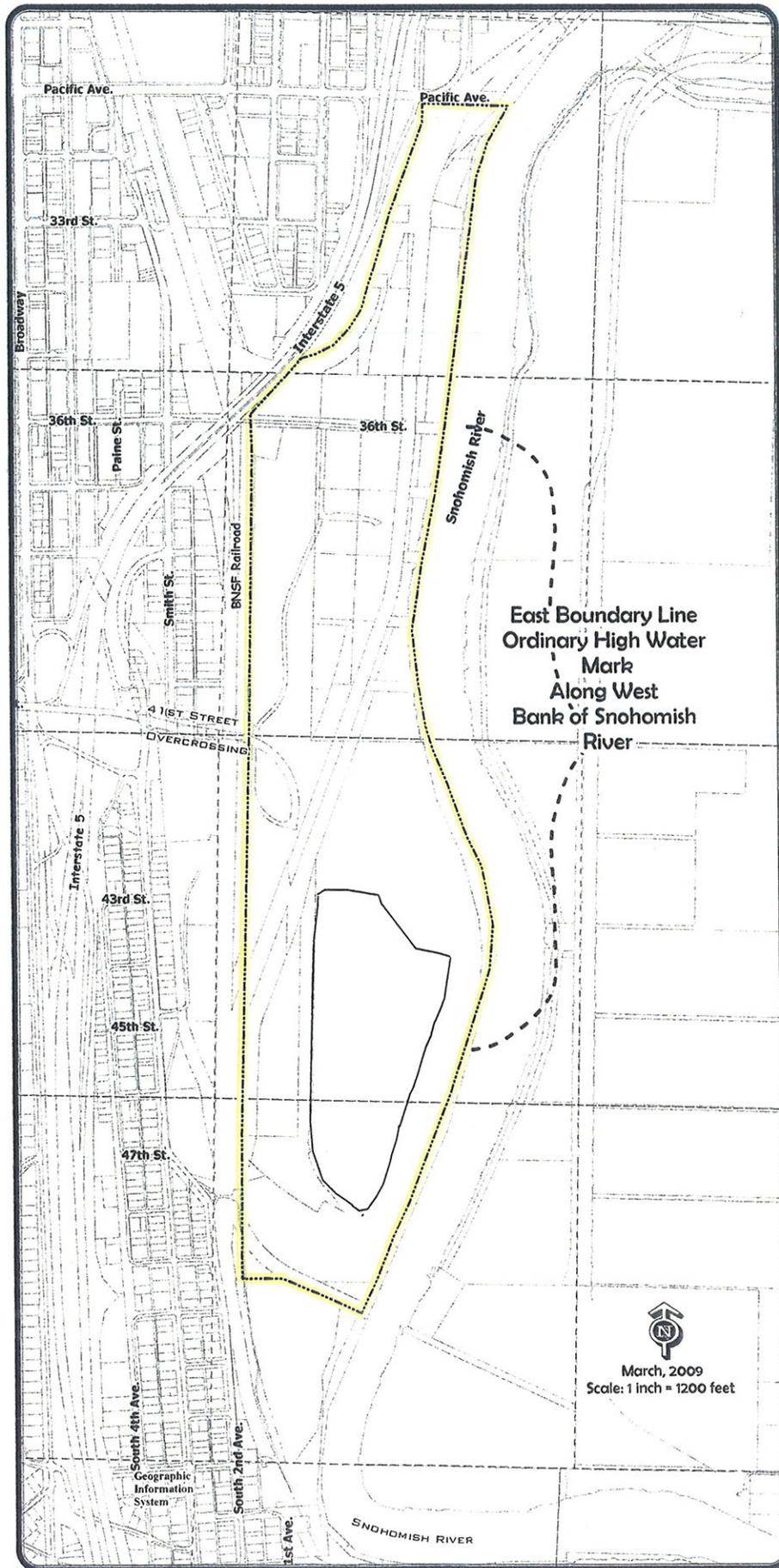
Passed: 3-25-09

Valid: 3-30-09

Published: 4-2-09

Effective Date: 4-14-09

Exhibit 1



Riverfront Planned Development Overlay District
Area Legal Description

All of those portions of NE ¼ and SE ¼, Section 29, Township 29 North, Range 5 E, W.M., and those portions of NE ¼ and SE ¼, Section 32, Township 29 North, Range 5 E, W.M., Snohomish County, Washington, lying within the following described boundary:

Beginning at the intersection of the south right-of-way line of Pacific Avenue as per the Plat of the Everett Land Company's First addition to Everett, as recorded in Volume 3 of Plats, Page 20, Records of Snohomish County, Washington, and the eastern right-of-way line of Washington State Route 5 (aka Interstate 5) as now located and constructed, as the point of beginning; THENCE easterly along south right-of-way line of Pacific Avenue and its easterly projection thereof to intersect the Ordinary High Water Mark of the west bank of the Snohomish River; THENCE in a southerly direction following along the Ordinary High Water Mark of the west bank of the Snohomish River to its intersection with the south line of Lot 27, EVERETT TIDE LANDS Section No. 3, per State of Washington Commissioner of Public Lands Maps of EVERETT TIDE LANDS Section No. 3 dated 1934; THENCE northwesterly along the south line of said Lot 27 to the southwest corner of Lot 27, EVERETT TIDE LANDS Section No. 3; said corner also being the southeast corner of that certain New Lot 10 per City of Everett Boundary Line Adjustment No. 08-004 filed for record under Boundary Line Adjustment and Record of Survey for City of Everett under Snohomish County Auditor's Recording No. 200804085006, hereinafter referred to as Boundary Line Adjustment No. 08-004; THENCE northwesterly along the south line of New Lot

10 a distance of 515.14 feet to a point on the south line of said New Lot 10; THENCE westerly along the south line of New Lot 10 and the westerly projection thereof a distance of 289.79 feet to intersect the southwest corner of New Lot 11 per Boundary Line Adjustment No. 08-004; THENCE northerly along the west line of New Lot 11 a distance of 314.21 feet to a point on the west line of New Lot 11; THENCE southeasterly a distance of 34.52 feet to a point on the west line of New Lot 11; THENCE northerly along the west line of New Lot 11 a distance of 538 feet more or less to intersect the west line of New Lot 10 per Boundary Line Adjustment No. 08-004; THENCE northerly along the west line of New Lot 10 a distance of 319.49 feet to intersect the west line and southwest corner of New Lot 14 per Boundary Line Adjustment No. 08-004; THENCE northerly along the west line of New Lot 14 a distance of 1155.33 feet to intersect the southern most point of New Lot 16 per Boundary Line Adjustment No. 08-004; THENCE northwesterly along the west line of New Lot 16 a distance of 193.52 to a point on the west line of New Lot 16; THENCE continuing northerly along the west line of New Lot 16 a distance of 1583.25 feet to intersect the most westerly line of New Lot 20 per Boundary Line Adjustment No. 08-004; THENCE continuing northerly along the most westerly line of New Lot 20 a distance of 85.12 feet to intersect the west line of New Lot 21 per Boundary Line Adjustment No. 08-004; THENCE continuing northerly along the west line of New Lots 21, 22, 25, and 26 per Boundary Line Adjustment No. 08-004 a total distance of 1791.80 feet to intersect the west line and southwest corner of New Lot 29 per Boundary Line Adjustment No. 08-004; THENCE continuing northerly along the west line of New Lot 29 and the northerly projection thereof a distance of 540 feet more or less to intersect the eastern right-of-way line of Washington State Route 5 (aka Interstate 5) as now located and constructed; THENCE northerly along the east right-of-way line of Washington State Route 5 (aka Interstate 5) to intersect the south right-of-way line of Pacific Ave as per the Plat of the Everett Land

Company's First addition to Everett, as recorded in Volume 3 of Plats, Page 20, Records of Snohomish County, Washington, and the Point of Beginning.

EXCEPT, those areas lying below the Ordinary High Water Mark and designated as AQ (Aquatic) per City of Everett Ordinance No. 2706-03.

All situate in the County of Snohomish, State of Washington.