

**GRANDVIEW CITY COUNCIL
COMMITTEE-OF-THE-WHOLE
MEETING AGENDA
TUESDAY, JULY 11, 2017**



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

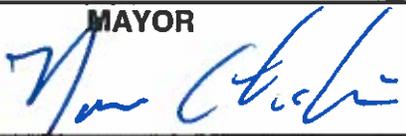
PAGE

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PUBLIC COMMENT** – At this time the public may address the Council on any topic whether on the agenda or not, except those scheduled for public hearing.
4. **NEW BUSINESS**
 - A. Resolution authorizing the Mayor to sign a License Agreement between Phillip Winterholler and the City of Grandview for the Memorial Plaza 1-9
5. **OTHER BUSINESS**
 - A. Reschedule Budget Retreat
 - B. Joint City/Port Meeting 10
 - C. City of Grandview Facebook Page – Restricted Postings 11-12
6. **ADJOURNMENT**

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

ITEM TITLE Resolution authorizing the Mayor to sign a License Agreement between Phillip Winterholler and the City of Grandview for the Memorial Plaza	AGENDA NO.: New Business 4 (A) AGENDA DATE: July 11, 2017
ORIGINATING SOURCE Parks & Recreation Department	FUNDING CERTIFICATION (City Treasurer) (If applicable) N/A

DEPARTMENT HEAD REVIEW
 Mike Carpenter, Parks & Recreation Director 

CITY ADMINISTRATOR  **MAYOR** 

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

At the June 13, 2017 C.O.W. meeting, the Beautification Commission's proposal was presented with respect to the VFW monument and flag pole, copy attached. Following discussion, the C.O.W. moved a resolution authorizing the Mayor to sign a License Agreement between Phillip Winterholler and the City of Grandview for the Memorial Plaza to the June 27, 2017 regular Council meeting for consideration, copy attached.

At the June 27, 2017 regular Council meeting, Councilmember Brewer asked whether the License Agreement would extend to a new owner should Mr. Winterholler sell the property. Following discussion, the agenda item was referred to the City Attorney for clarification.

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

Attached is the City Attorney's clarification of the license agreement. Also attached is an estimate in the amount of \$4,500.00 from the City's engineering firm to survey the parcel and create a legal description should Council consider the potential acquisition of an easement from Mr. Winterholler. In addition, there would be recording fees in the amount of \$75.00. At this point in time, staff is unaware if Mr. Winterholler would request compensation for the permanent easement.

ACTION PROPOSED

For consideration and direction.



PROPOSAL

May 22, 2017

To: Grandview City Council

From: Grandview Beautification Commission

Subject: Proposal VFW Monument & Flag Pole

Earlier this year, the Grandview City Council Committee-of-the-Whole directed the Beautification Commission to provide a recommendation for the future of the VFW monument and flag pole or "Memorial Plaza" @ 132 Division Street. Recently, the lot and building that were formerly owned by the Grandview Chapter of Veterans of Foreign Wars (VFW) were sold to Mr. Phillip Winterholler. Mr. Winterholler converted the building into Herb's Bar and Grill. The monument and flag pole remain intact today. Parks and Recreation Director, Mike Carpenter, and former Grandview VFW member Domingo Ramirez have approached Mr. Winterholler and he is willing to enter into a license agreement for the City to access and maintain the components of the "Memorial Plaza." A draft of this agreement, as compiled by the City Attorney, is attached for consideration.

The Beautification Commission recommends that the City enter into a license agreement with Mr. Winterholler to allow the City to access and maintain the "Memorial Plaza" site in the future. The Beautification Commission sees historical value in keeping the display at its current location and feels it would not be cost effective to move the elements of the "Memorial Plaza" to another site. The display has become a historical landmark for the citizens of Grandview and it should be preserved for current and future generations to enjoy while honoring our veterans.

Currently, the flag pole needs to be prepared for an additional coat of paint. There are a few memorial tiles that will need to be replaced, along with a new flag installed. Initial maintenance costs will amount to a few hundred dollars.

RESOLUTION NO. 2017-___

**A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN A LICENSE AGREEMENT
BETWEEN PHILLIP WINTERHOLLER AND THE CITY OF GRANDVIEW
FOR THE MEMORIAL PLAZA**

WHEREAS, Phillip Winterholler is the owner of real property located at 132 Division Street in the City of Grandview, Yakima County Tax Parcel Nos. 230923-12460 and 230923-12461; and

WHEREAS, the building at 132 Division Street was formerly occupied by the Grandview chapter of the Veteran's of Foreign Wars ("VFW"), during which time a small memorial area was constructed on the property, which includes several concrete structures, a plaque and a flagpole (collectively the "Memorial Plaza"), for the purpose of honoring America's military veterans; and

WHEREAS, the Memorial Plaza has over the years become an important feature of the City of Grandview and is used by the general public for the purpose of paying tribute to and otherwise acknowledging the service of America's military veterans; and

WHEREAS, the Memorial Plaza has become an integral part of the City's downtown area and closely associated with the City's identity as a home to and supporter of America's military veterans; and

WHEREAS, the VFW no longer occupies the building at 132 Division Street and its members no longer actively maintain the Memorial Plaza; and

WHEREAS, an important public purpose is served by ensuring that Memorial Plaza is maintained appropriately and that residents of Grandview have access to and use of the Memorial Plaza for the purposes of gathering and acknowledging the service of America's military veterans; and

WHEREAS, in order to ensure that such access and use are continued, Mr. Winterholler is willing to grant a license to the City to access and maintain the Memorial Plaza in accordance with the terms and conditions of this License Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANDVIEW, WASHINGTON, as follows:

The Mayor is hereby authorized to sign a License Agreement between Phillip Winterholler and the City of Grandview for the Memorial Plaza in the form as is attached hereto and incorporated herein by reference.

PASSED by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on _____, 2017.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**LICENSE AGREEMENT
BETWEEN PHILLIP WINTERHOLLER
AND
CITY OF GRANDVIEW, WASHINGTON**

THIS LICENSE AGREEMENT (hereinafter "License Agreement") is made and entered into by and between Phillip Winterholler (hereinafter "Owner") and the City of Grandview, a Washington municipal corporation (hereinafter the "City").

WHEREAS, Owner is the owner of real property located at 132 Division Street in the City of Grandview, Yakima County Tax Parcel Nos. 230923-12460 and 230923-12461; and

WHEREAS, the building at 132 Division Street was formerly occupied by the Grandview chapter of the Veteran's of Foreign Wars ("VFW"), during which time a small memorial area was constructed on the property, which includes several concrete structures, a plaque and a flagpole (collectively the "Memorial Plaza"), for the purpose of honoring America's military veterans; and

WHEREAS, the Memorial Plaza has over the years become an important feature of the City of Grandview and is used by the general public for the purpose of paying tribute to and otherwise acknowledging the service of America's military veterans; and

WHEREAS, the Memorial Plaza has become an integral part of the City's downtown area and closely associated with the City's identity as a home to and supporter of America's military veterans; and

WHEREAS, the VFW no longer occupies the building at 132 Division Street and its members no longer actively maintain the Memorial Plaza; and

WHEREAS, an important public purpose is served by ensuring that Memorial Plaza is maintained appropriately and that residents of Grandview have access to and use of the Memorial Plaza for the purposes of gathering and acknowledging the service of America's military veterans; and

WHEREAS, in order to ensure that such access and use are continued, the Owner is willing to grant a license to the City to access and maintain the Memorial Plaza in accordance with the terms and conditions of this License Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, it is agreed by and between the Owner and City as follows:

1. License.

The City is licensed to access, maintain and otherwise improve Memorial Plaza for the benefit of the residents of the City of Grandview. Maintenance activities include, but may not be limited to, replacing the flag and rope, changing the lights, painting the flag pole, replacing brick name plates, cleaning litter, and other general maintenance as deemed necessary by the City in its sole discretion.

2. **Term.** The term of this License Agreement shall commence upon full execution hereof by the parties and shall run for a period of ten years. If not otherwise terminated by either party, this License Agreement shall automatically renew for four subsequent ten years terms.

3. **Taxes and Assessments.** The City shall be solely responsible for compensating its employees, agents, and/or subcontractors and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this License Agreement. The Owner shall be solely responsible for all property taxes, leasehold taxes, personal property taxes, or other taxes and assessments arising from ownership of 132 Division Street, including the Memorial Plaza.

4. **General Indemnification and Hold Harmless.** The City agrees to protect, defend, indemnify, and hold harmless the Owner from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) caused by or occurring by reason of any negligent act and/or omission of the City, its directors, officials, officers, members, employees, agents, and/or volunteers arising out of or in connection with the City's maintenance of the Memorial Plaza pursuant to this License Agreement, including but not limited to any personal injury and/or property damage claim, demand, lawsuit or other proceeding brought by one of its members against the Owner. The provisions of this section shall survive the termination or expiration of this License Agreement

5. **No Insurance provided by the Owner.** It is understood the Owner does not maintain liability insurance for the City and/or its members, directors, officials, officers, agents, members, employees and volunteers.

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

7. **Severability.** If any provision of this License Agreement is determined to be invalid and unenforceable, all of the other provisions of this License Agreement shall remain valid and enforceable notwithstanding, unless the provision found to be invalid and unenforceable is of such material effect that this Agreement cannot be performed in accordance with the intent of the parties in absence thereof.

8. **Ambiguities Shall Not Be Construed Against the Drafter.** Both the City and Owner have participated in the drafting of this License Agreement. As such, the parties agree that the common law principles of construing ambiguities against the drafter shall have no application to this License Agreement.

9. **Termination.** Either party may terminate this License Agreement, with or without cause, by giving the other party fifteen (15) calendar days prior written notice of termination.

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

TO CITY: City Administrator
City of Grandview
207 W. Second Street
Grandview, WA 98930

TO OWNER: Phillip Winterholler
132 Division Street
Grandview, WA 98930

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand delivered. Such notices shall be deemed effective when mailed or hand delivered at the addresses specified above.

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

12. **Venue.** The venue for any action to enforce or interpret this License Agreement shall lie in a court of competent jurisdiction that is located in Yakima County, Washington.

13. **Integration.** This written document constitutes the entire License Agreement between the City and Owner and supercedes any and all previous written and/or oral License Agreements between the parties. There are no other oral or written License Agreements between the parties as to the matters covered herein. No changes or additions to this License Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

CITY OF GRANDVIEW

OWNER

By: _____
Mayor Norm Childress


Phillip Winterholler

Date: _____

Date: 6-20-17

ATTEST:

City Clerk

Anita Palacios

From: Quinn Plant <qplant@mjbe.com>
Sent: Wednesday, June 28, 2017 1:27 PM
To: Anita Palacios
Cc: Cus Arteaga; Mike Carpenter
Subject: RE: License Agreement w/Phillip Winterholler for Memorial Plaza

Hi Anita,

The answer is that the current license agreement would not continue. The license is personal to Mr. Winterholler. He is allowing the City onto his property to maintain the Memorial Plaza. If he no longer owns the property, then he would not have the authority to allow the City onto the property. The City would need to enter into a new license agreement with the new owner.

Note that even if the license agreement stated that it would be binding on a new owner, the owner would have the ability to terminate the license upon written notice to the City.

If the City wants to obtain more permanent access to the Memorial Plaza, the City could explore acquiring an easement from Mr. Winterholler. We will need to see if Mr. Winterholler is willing to grant the City an easement and, if so, whether he will want compensation. We would need to survey Memorial Plaza and obtain a legal description of the property that would be subject to the easement. Once executed, a grant of easement would be recorded on the title to the real property.

Quinn Plant
Menke Jackson Beyer, LLP
807 North 39th Avenue
Yakima, WA 98902
509-575-0313
509-575-0351 fax
www.mjbe.com

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From: Anita Palacios [<mailto:anitap@grandview.wa.us>]
Sent: Wednesday, June 28, 2017 10:02 AM
To: Quinn Plant
Cc: Cus Arteaga; Mike Carpenter
Subject: License Agreement w/Phillip Winterholler for Memorial Plaza

At last night's meeting, Council did not act on the License Agreement between the City and Mr. Winterholler for the Memorial Plaza.

Councilmember Brewer asked whether or not the agreement would continue if Mr. Winterholler sold the property to new owners.

Could you please advise accordingly?



Anita Palacios

From: Eric Herzog <eherzog@hlacivil.com>
Sent: Wednesday, July 05, 2017 11:34 AM
To: Anita Palacios; Cus Arteaga
Subject: Memorial Park Survey

Anita,

I estimate our fees to survey parcel 230923-12461 and create a legal description and exhibit map to be \$4,500.00. Please let me know if you would like us to proceed.

Eric T. Herzog, PLS
HLA Engineering & Land Surveying, Inc.
2803 River Road
Yakima, WA 98902
Phone: (509) 966-7000
Fax: (509) 965-3800

Anita Palacios

From: Jim Sewell <jim@portofgrandview.org>
Sent: Thursday, July 06, 2017 11:08 AM
To: Anita Palacios; Cus Arteaga; Gview Mayor; Mayor
Cc: office@portofgrandview.org; Richard Shenyer (richard@portofgrandview.org); Ron Grow Port (ron@portofgrandview.org); Bill Moore; Bill Moore; Bill Moore 1 (billandrachel@charter.net); Dennis McDonald; Dennis McDonald 1 (dennismcd10@gmail.com); Gay Brewer (dancefunproductions@yahoo.com); Gaylord Brewer; Gloria Mendoza; Gloria Mendoza; Javier Rodriguez; Javier Rodriguez (rodhav1@yahoo.com); Joan Souders; Joan Souders 1 (jesouders@hotmail.com); Mike Everett; Mike Everett 1 (mike@everettlaw.net); Quinn Plant
Subject: Re: Joint City/Port Meeting

Hi Cus

Sorry for the delay in replying to your e-mail, our site certification meetings with Austin Consultants have taken more time than anticipated.

The assistance from the City; Cus, Anita, Cory, Dave Lorenz and Juan Moreno as well as Pat Mason and Kal Fuller exemplifies the operational co-operation between the City and the Port, and we are grateful for that. Additionally, I appreciate your quick approval of the BSP amendment for lot 9 BBP. We recorded it with the County Auditor yesterday afternoon.

Port Commissioners will consider the meeting invitation at our next Board meeting on July 11th. It would be important to know what specific items you wish to discuss. Rather than a wide ranging discussion about "what is going on" and "how we can improve what we both do" it may be more productive to discuss specific items. Let me know what specific items the Council would like to discuss. I expect that the Port Commissioners may have some specific items also.

Jim

Jim Sewell, Commissioner



jim@portofgrandview.org
Office - 509-382-9375
Cell - 632-1500

On 6/28/2017 9:49 AM, Anita Palacios wrote:

Good Morning,

The Mayor and Council would like to schedule a meeting between the City and the Port. They felt it was time to meet and just bring ourselves up to speed on what is going on and most importantly as to how we can improve what we both do to promote Grandview. The recommendation is to schedule an informal night meeting and do sandwiches and/or pizza.

How does the month of July look for all three Commissioners? We could do any Monday night in July so let Anita know what might work and she will make the arrangements.

Thanks,

Anita Palacios

From: Gretchen Chronis
Sent: Thursday, July 06, 2017 9:03 AM
To: Anita Palacios
Cc: Cus Arteaga
Subject: RE: Restricted postings on Facebook

As a follow up to our recent discussion regarding Facebook settings/options, it has been determined that we do NOT have the ability to host a page that prohibits comments altogether. Keep in mind that all comments are subject to a Limited Public Forum format in conjunction with the City of Grandview's Social Media Policy. We do, however, have the option of "reviewing visitor posts" prior to their publication. This would alleviate any and all issues regarding citizens outside of Washington State inadvertently posting on our business page. This only happens on occasion and would be quite simple to manage. I would not consider this a policy change, rather a courtesy to others who reside in regions with similar city names (i.e. Grandview, South Dakota, Grandview, Missouri, Grand View, Idaho).

Please let me know if you need additional information.

From: Anita Palacios
Sent: Thursday, July 06, 2017 8:24 AM
To: Cus Arteaga; Gretchen Chronis
Subject: FW: Restricted postings on Facebook

From: Paul Sullivan [<mailto:psullivan@mrsc.org>]
Sent: Thursday, July 06, 2017 8:21 AM
To: Anita Palacios
Subject: Restricted postings on Facebook

You provide the following information and question: In March 2017, the City of Grandview adopted a Social Media Policy and created a Facebook Page as an open public forum. A Councilmember has requested that we research the possibility of a closed forum (information gateway only). The concern is alleviating visitor posts (specifically negative and/or out of State public posts). We have yet to find a Facebook government page with a closed forum. Can the City choose who posts on our Facebook page without any legal ramifications?

It seems to me that the real question is whether Facebook has an option allowing the city to merely post information, but not allowing citizen comment in return. If there is such an option, I see no reason why the city could not take advantage of it. It would merely be another vehicle for providing information to the public. There shouldn't be a problem if no one could post a comment directly to the information provided.

I am concerned, however, if the above option was not available, and the city (somehow) could control who could post comments. It would be discriminatory if the city could allow some comments but not others. If the site provides an open forum, it would need to be open to all. Restricting some comments would be, in my opinion, a violation of free speech. (Some comments, I suppose, such as those stating a threat or using obscene

language, could likely be restricted or removed, but general comments, even if they opposed some city initiative, would need to be allowed.)

If Facebook does not allow an information gateway only, no comments allowed, the issue about allowing elective posts would be moot.

Paul Sullivan

Legal Consultant

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