



Legislation Passed February 19, 2008

The Tacoma City Council, at its regular City Council meeting of February 19, 2008, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

Resolution No. 37398

Accepting \$75,000 from the Washington State Department of Community, Trade and Economic Development; depositing said sum into the Community and Economic Development Special Revenue Fund for the development of streetscape design guidelines for mixed-use centers; and authorizing the execution of an agreement with the Washington State Department of Community, Trade and Economic Development for said purpose through June 30, 2009.

Purchase Resolution No. 37399

Awarding a contract to:
International Services Inc., on its bid of \$73,393.70, sales tax not applicable, budgeted from the Municipal Building Acquisition and Operation Fund, for security guard services, for a two-year term with the option to renew for three additional one-year periods – Specification No. PW07-1001F.

Resolution No. 37400

Authorizing and ratifying the sale of surplus property located at South 11th and Shirley Streets, to Tacoma-Pierce County Habitat for Humanity, for the appraised value of \$180,000; and depositing said sum into the Public Works Property Management Fund for the maintenance of other City-owned parcels.

Resolution No. 37401

Authorizing the execution of the following agreements:

- Tacoma-Pierce County Employment and Training Consortium, in the amount of \$54,268, for the Youth Internship Project;
 - Northwest Leadership Foundation, in the amount of \$86,612, for the Youth Assessment and Resource Center;
 - Associated Ministries, in the amount of \$60,650, for the Hilltop Action Coalition;
 - Safe Streets Campaign, in the amount of \$249,910, for Community Mobilization; and
 - Boys and Girls Clubs, for a total amount of \$94,909, for Late Night Recreation (\$63,961) and SMART Moves (\$30,948);
- for a cumulative total of \$546,349, budgeted from the General Fund.

Resolution No. 37402

Authorizing the execution of the following amendments and agreements:

- Camp Fire USA, in the amount of \$15,000, for the Teen Outreach Program;
 - Communities in Schools of Tacoma, in the amount of \$19,000, for After School Programming;
 - New DAY Diaz Art for Youth, in the amount of \$3,400, for the New DAY Diaz Art for Youth Program;
 - Sexual Assault Center of Pierce County, in the amount of \$6,287, for the Education and Prevention Program; and
 - Tacoma Area Coalition Of Individuals With Disabilities (TACID), in the amount of \$7,616, for the Access Program;
- for a cumulative total of \$51,303, budgeted from the City Council Community Services Contingency funds.

Amended Ordinance No. 27673

Amending Title 8 of the Municipal Code, relating to the regulation of noise, adopting definitions and standards for noise regulation; adopting or amending enforcement provisions, adding a new chapter to be entitled "Noise Enforcement", and re-codifying or repealing other chapters.

Ordinance No. 27696

Reestablishing the Downtown Business Improvement Area (BIA) for a ten-year period from May 1, 2008 through April 30, 2018; and approving the budget, program, and assessment rates for the first year of the renewed BIA.

Ordinance No. 27697

Amending Ordinance No. 27665, Section 9, to correct the legal description of property in the Lower Portland Avenue Mixed-Use Center added to the "R 2SRD" Residential Special Review District through an areawide rezone.

RESOLUTION NO. 37398

A RESOLUTION relating to community and economic development; authorizing the acceptance and execution of a grant agreement with the Washington State Department of Community, Trade and Economic Development, in the amount of \$75,000, for the development of streetscape design guidelines for mixed-use centers.

WHEREAS the City has been awarded a \$75,000 Growth Management Act Competitive Planning grant from the Washington State Department of Community, Trade and Economic Development, for the period of January 1, 2008, through June 30, 2009, and

WHEREAS the grant will be used to facilitate the development of streetscape design guidelines for mixed-use centers; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to accept and execute a grant agreement with the Washington State Department of Community, Trade and Economic Development, in the amount of \$75,000, for

the development of streetscape design guidelines for mixed-use centers, said document to be substantially in the form of the proposed grant agreement on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Assistant City Attorney



RESOLUTION NO. 37399

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A RESOLUTION related to the purchase of materials, supplies or equipment, and the furnishing of services; authorizing the appropriate City officials to enter into contracts and, where specified, waiving competitive bidding requirements, authorizing sales of surplus property, or increasing or extending existing agreements.

WHEREAS the City has complied with all applicable laws governing the acquisition of those supplies, and/or the procurement of those services, inclusive of public works, set forth in the attached Exhibit "A," which Exhibit is incorporated herein as though fully set forth, and

WHEREAS the Board of Contracts and Awards has reviewed the proposals and bids received by the City, and the Board has made its recommendation as set forth in Exhibit "A," and

WHEREAS the Board of Contracts and Awards has also made its recommendations as to entering into purchasing agreements with those governmental entities identified in Exhibit "A"; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the Council of the City of Tacoma does hereby concur in the findings and recommendations of the Board of Contracts and Awards set forth in the attached Exhibit "A," and does hereby approve and authorize the:

(X) A. Procurement of those supplies, services, and public works recommended for acceptance in the attached Exhibit "A";

() B. Rejection of those bids and/or proposals that are recommended for rejection in the attached Exhibit "A";



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() C. Entry into the proposed purchasing agreement with those governmental entities identified in the attached Exhibit "A," which proposed agreement is on file in the office of the City Clerk;

() D. Waiver of competitive bidding procedures in those instances, as set forth in Exhibit "A," in which it is impracticable to obtain supplies or public works improvements by competitive bid, or in those instances in which supplies and/or public works are available from a single source.


Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:



Assistant City Attorney



City of Tacoma
Public Works Department

EXHIBIT "A"

RESOLUTION NO.: 37399

ITEM NO.: 1

MEETING DATE: FEBRUARY 19, 2008

DATE: January 29, 2008

TO: Board of Contracts and Awards

SUBJECT: Unarmed Uniformed Security Guard Services for the Tacoma Municipal Building & Tacoma Municipal Building North
Budgeted from the Municipal Building Acquisition & Operation fund
Specification No. PW07-1001F

RECOMMENDATION: Public Works Facilities Management recommends that a contract in the amount of \$73,393.70, sales tax not applicable, be awarded to low bidder **International Services Inc, Torrance, CA**, for security guard services. The contract term is for two years with the option to renew three additional one year periods.

EXPLANATION: This contract will provide daily unarmed uniformed security guard services at the Tacoma Municipal Building (TMB) and Tacoma Municipal Building North (TMBN) as set forth in the specifications.

COMPETITIVE BIDDING: Specification No. PW07-1001F was opened December 18, 2007. Three companies were invited to bid in addition to normal advertising of the project.

Bidder	Location <i>(city and state)</i>	Total Bid Sales Tax Not Applicable
International Services Inc	Torrance, CA	\$73,393.70
HWA Inc	Seattle, WA	\$74,934.00
Security Masters Inc	Tacoma, WA	\$75,957.44
Secure Trans LLC	Seattle, WA	\$76,058.02
Pacific River Marine Security	Vancouver, WA	\$76,451.04
Onyx Security & Private Patrol LLC	Covington, WA	\$78,680.70
Interstate Protective Security Services Inc	Tukwila, WA	\$85,341.50

Pre-bid Estimate \$ 80,000.00

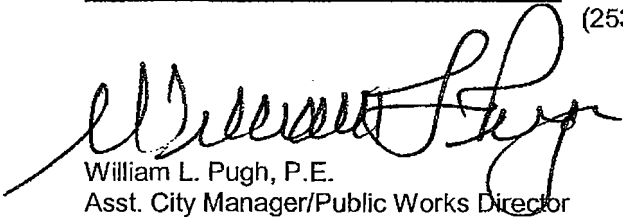
The recommended award is 8.26 percent below the pre-bid estimate.

CONTRACT HISTORY: New contract

FUNDING: Funds for this are available in the Municipal Building Acquisition & Operation fund 5700.

HUB/LEAP COMPLIANCE: N/A

PROJECT ENGINEER/COORDINATOR: Ronald L. Francis, Facilities Maintenance & Repair Supervisor,
(253) 573-2345



William L. Pugh, P.E.
Asst. City Manager/Public Works Director

cc: Marie Holm, Purchasing Analyst
Percy Jones, Peter Guzman HALO

RESOLUTION NO. 37400

A RESOLUTION relating to City surplus property; authorizing and ratifying the sale of surplus property, located at South 11th and Shirley Streets, to Tacoma-Pierce County Habitat for Humanity, for the appraised value of \$180,000.

WHEREAS, in 1952, the City acquired property located at South 11th and Shirley Streets ("Property") in fee simple by judgment for \$1,000 for a State Route 16 interchange, which was never built, and

WHEREAS the Property consists of approximately 30,342 square feet and was appraised at \$45,000 per lot, with an estimated four possible lots, for a total of \$180,000, and

WHEREAS all City departments have been notified and have shown no interest in the Property, which is zoned as single-family residential, and

WHEREAS Habitat for Humanity expressed an interest in purchasing the property for the appraised value, and the City may negotiate a direct sale of real property pursuant to Tacoma Municipal Code 1.06.268; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the proposed sale of the surplus property, located at South 11th and Shirley Streets, Tacoma-Pierce County Habitat for Humanity, for the appraised value of \$180,000, is hereby approved and ratified in accordance with the terms of the purchase and sale agreement.

Section 2. That the proper officers of the City are authorized to execute the necessary documents for this transaction, said documents to be substantially in the form of the proposed documents on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Assistant City Attorney

RESOLUTION NO. 37401

A RESOLUTION relating to youth and crime prevention; authorizing the execution of agreements with various agencies, totaling \$546,349, budgeted from the General Fund, to implement specific, ongoing youth and crime prevention programs.

WHEREAS the City of Tacoma's Strategic Plan sets, as a priority, the promotion of a safe, healthy, and livable community, and

WHEREAS the promotion of a safe, healthy, and livable community is accomplished, in part, by reducing the juvenile crime rate and promoting safety measures focused on children, youth, their families, and crime and violence prevention, and

WHEREAS the City Council approved funds to continue with the implementation of specific, ongoing youth and family crime and violence prevention programs, including funds to support the Tacoma Juvenile Curfew ordinance, when it adopted the 2008 mid biennial budget, and

WHEREAS, to properly continue with the implementation of such programs, it is necessary to enter into agreements with agencies that have the necessary skills and expertise, and

WHEREAS the Human Rights and Human Services ("HRHS") Department Director has recommended that the City enter into agreements with those agencies and for the amounts identified in Exhibit "A," attached hereto, for crime and violence prevention programs, and

WHEREAS the HRHS Director has recommended that the City enter into agreements with those agencies and for the amounts identified in Exhibit "B," attached hereto, for related curfew support programs; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to execute agreements with the various agencies identified in Exhibits "A" and "B," attached hereto, totaling \$546,349, budgeted from the General Fund, to continue the implementation of specific, ongoing youth and family crime and violence prevention programs and curfew support programs, which documents shall be substantially in the form of the proposed agreements on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Assistant City Attorney

EXHIBIT "A"

AGENCY	PROGRAM	AMOUNT
Tacoma-Pierce County Employment and Training Consortium	Youth Internship Project	\$54,268
Northwest Leadership Foundation	Youth Assessment and Resource Center	\$86,612
Associated Ministries	Hilltop Action Coalition	\$60,650
Safe Streets Campaign	Community Mobilization	\$249,910

EXHIBIT "B"

Boys and Girls Clubs	Late Night Recreation (\$63,961) SMART Moves (\$30,948)	\$94,909
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RESOLUTION NO. 37402

A RESOLUTION relating to community services; authorizing the execution of amendments and agreements with specific human services agencies, totaling \$51,303, budgeted from the General Fund, to implement certain human services programs using City Council Community Services Contingency funds.

WHEREAS the City Council retains contingency funds of 5 percent of the funding allocated for human services programs through the community services process, and

WHEREAS the City Council has the amount of \$101,510 in its Community Services Contingency funds remaining for the year 2008, and

WHEREAS, at the November 27, 2007, City Council Study Session, members asked the Human Services Commission ("HSC") to recommend use for the Community Services Contingency funds, and

WHEREAS, on January 24, 2008, the Public Safety and Human Services Committee ("Committee") reviewed the recommendation of the HSC to retain 50 percent of the City Council Community Services Contingency funds for emergent needs, with the remaining 50 percent available for programs in amounts that would provide a minimum of \$10,000 to a program to ensure participation in the evaluation system, and

WHEREAS the Committee reviewed the performance of programs currently funded with Community Services Contingency funds and recommends that the programs in Exhibit "A" be funded for the year 2008; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the City Council does hereby adopt the recommendation of the Public Safety and Human Services Committee and authorizes the proper officers of the City to execute agreements with those specific human services agencies identified in Exhibit "A" to implement certain human services projects using City Council Community Services Contingency funds, which have been budgeted and appropriated in the General Fund; provided that such agreements shall be substantially in the form of the proposed agreements on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Assistant City Attorney

EXHIBIT "A"

**2008 Community Services Council Contingency
Funding Recommendations**

Agency	Program	Total 2007 Contracts	2008 Contract- HSC process	2008 PS&HS Recommendation	Total 2008 Contract
Camp Fire USA	Teen Outreach	\$15,000	\$0	\$15,000	\$15,000
Communities in Schools of Tacoma	After School Programming	\$30,000	\$11,000	\$19,000	\$30,000
New DAY Diaz Art for Youth	New DAY Diaz Art for Youth	\$21,000	\$17,600	\$3,400	\$21,000
Sexual Assault Center of Pierce County	Education/ Prevention	\$47,125	\$40,838	\$6,287	\$47,125
TACID	Access	\$88,844	\$81,228	\$7,616	\$88,844
TOTAL		\$201,969	\$150,666	\$51,303	\$201,969

"Total 2007 Contracts" include both the funding recommended by the Human Services Commission and that allocated through the Council Contingency funding.

"2008 Contract-HSC Process" are amounts recommended by the Human Services Commission and authorized by Council at the January 15, 2008 Council meeting.

ORDINANCE NO. 27673

AN ORDINANCE relating to the regulation of noise; adopting definitions and standards for noise regulation; adopting or amending enforcement provisions; adding a new Chapter 8.122, entitled "Noise Enforcement" to Title 8 of the Tacoma Municipal Code; amending Chapters 1.06, 6B.180, 8.12, and 8.30 of the Tacoma Municipal Code in connection therewith; and repealing Chapters 8.06 and 9.35 in their entirety.

WHEREAS excessive noise affects the quality of life of the citizens of Tacoma, and

WHEREAS, cognizant of the need to balance the rights of persons living and working in a mixed urban environment with the needs of business, the City Council has determined that it is in the best interests of the City to revise, update, and consolidate the City's laws related to the regulation of noise; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. Findings. Based on the testimony provided to the Neighborhoods and Housing Committee and at public hearings before the Tacoma City Council, the City Council makes the following findings:

A. That excessive noise is a serious hazard to the public health, safety, welfare, and quality of life of the citizens of Tacoma;

B. That every citizen has the right to the quiet enjoyment of his or her private property and the usability of his or her commercial and industrial property;

C. That a substantial body of science and technology exists by which excessive noise may be substantially abated; and

D. That, based on special conditions related to the urban environment and measurements of ambient sound levels throughout the City, the City needs to impose limits that differ from the standards adopted by the State of Washington in Section 173-60-040 of the Washington Administrative Code.

Section 2. Policy. It is the policy of the City of Tacoma to prevent noise that may jeopardize the health and welfare or safety of its citizens or degrade the quality of life. This ordinance is intended to apply to the control of noise originating from activity within the City limits. It is not intended to regulate the content of any speech.

Section 3. That Title 8 of the Tacoma Municipal Code, entitled "Public Safety and Morals," is amended by adding a new Chapter 8.122, entitled "Noise Enforcement," as set forth in Exhibit "A."

Section 4. That subsection 1.06.710.F of the Tacoma Municipal Code is amended, as set forth in Exhibit "B."

Section 5. That Section 6B.180.110.H of the Tacoma Municipal Code is amended, as set forth in Exhibit "C."

Section 6. That Section 8.12.060 of the Tacoma Municipal Code is amended as set forth in Exhibit "D."

Section 7. That Section 8.30.040.D of the Tacoma Municipal Code is amended, as set forth in Exhibit "E."

Section 8. That Section 8.06.100 of the Tacoma Municipal Code is repealed in its entirety.

Section 9. That Section 9.35.060 of the Tacoma Municipal Code is repealed in its entirety.

Section 10. Severability. If any provision or section of this ordinance is held to be unconstitutional or preempted by federal or state law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

Section 11. That Sections 1 through 9 of this ordinance shall become effective April 2, 2008.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Assistant City Attorney

EXHIBIT "A"

Chapter 8.122

NOISE ENFORCEMENT

Sections:

- 8.122.010 General definitions.
- 8.122.020 General powers of the Director.
- 8.122.030 Testing by order of the Director.
- 8.122.040 Inspection.
- 8.122.050 Procedures for the determination of sound levels.
- 8.122.060 Nuisance regulations not prohibited.
- 8.122.070 Exemptions.
- 8.122.080 General prohibitions.
- 8.122.090 Construction.
- 8.122.100 Commercial music.
- 8.122.110 Variances.
- 8.122.120 Noise control plan.
- 8.122.130 Penalty for violation.
- 8.122.140 Notice of Violation and civil penalty.
- 8.122.150 Hearing by the Hearing Officer.

8.122.010 General definitions.

As used in this Chapter, the following terms shall have the meanings set forth in this Section, unless a different meaning is clearly indicated by the context in which the term is used:

- A. "Activity" means any act or combination of acts, which actually results in the production of sound.
- B. "Ambient" sound means the sound level at a given location that exists as a result of the combined contribution in that location of all sound sources, excluding the contribution of a source or sources under investigation for violation of this code and excluding the contribution of extraneous sound sources. For purposes of the enforcement of this code, the ambient sound level of a given location may be determined based upon measurements taken at a comparable site (which includes but is not limited to comparable physical locations and time of day) in the nearby area.
- C. "ANSI" means the American National Standards Institute, which serves as the administrator and coordinator of the United States private sector voluntary standardization system.
- D. "Apparatus" means any mechanism that prevents, controls, detects, measures or records the production of sound.
- E. "Building" means a structure as defined in Section 2.01.050 of the Tacoma Municipal Code.
- F. "Charter" means the charter of the city of Tacoma including all of its amendments.
- G. "Construction" or "construction work" means any or all activity necessary or incidental to the erection, demolition, assembling, altering, installing, or equipping of buildings, public or private highways, roads, premises, parks or utility lines, including land clearing, grading, excavating, and filling.

- H. "Construction device" means any device designed and intended for use in construction including, but not limited to any air compressor, pile driver, sledgehammer, bulldozer, pneumatic hammer, steam shovel, derrick, crane, steam or electric hoist, construction vehicle, or pneumatic or electric tool.
- I. "dB (A)" means the sound level as measured with a sound level meter using the "A" weighting network. This frequency-weighting network for the measurement of sound levels shall comply with standards established by the American National Standards Institute specifications for sound level meters S1.4-1971, as amended or S1.4-1983, as amended.
- J. "dB(C)" level means the sound level as measured with a sound level meter using the "C" weighting network. This frequency-weighting network for the measurement of sound levels shall comply with standards established by the American National Standards Institute specifications for sound level meters S1.4-1971, as amended or S1.4-1983, as amended.
- K. "Decibel" means the practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure to the pressure of a reference sound (20 micropascals); abbreviated "dB."
- L. Device means any mechanism that is intended to or that actually produces sound when operated or handled.
- M. "Department" means the Department of Public Works.
- N. "Director" means Director of Public Works or his or her authorized representative.
- O. "Dwelling" means any building lawfully occupied in whole or in part as the temporary or permanent residence of one or more natural persons.
- P. "Emergency" means a public calamity or an exposure of any person or property to imminent danger.
- Q. "Emergency energy release device" means a device used specifically to release excess energy on a nonscheduled basis as necessary for purposes of safety, and not as a part of routine process control.
- R. "Emergency signal device" means any gong, siren, whistle, air horn or any similar device used on authorized emergency vehicles.
- S. "Extraneous sound" means a sound that is relatively intense, intermittent, and of short duration and is neither part of the ambient sound, nor comes from the sound source under investigation. These sources of sound are noted but excluded from all measurements.
- T. "Frequency" means the time rate of repetition of sound waves in cycles per second, reported as Hertz (Hz). "Frequency" is sometimes colloquially referred to as "pitch." Low frequency sounds can correspond to the bass notes in music. Low frequency sound waves travel farther and penetrate structures more efficiently than high frequency sound waves.
- U. "Impulsive sound" is sound that is of short duration where each peak of sound lasts one second or less. The sound is characterized by abrupt onset and rapid decay. As used in this code, the term impulsive sound shall not include music.
- V. "Lmax" means the maximum measured sound level at any instant in time.
- W. "Motor vehicle" means any vehicle that is self-propelled, used primarily for transporting persons or property upon public highways. Vehicles not actively in use for transportation on public highways are not motor vehicles as that term is used herein.
- X. "Owner" means and includes the owner of the freehold of the premises or lesser estate therein, or mortgagee thereof, a lessee or agent of any of the above persons, a lessee of a device or his or her agent, a tenant, operator, or any other person who has regular control of a device or an apparatus.
- Y. "Person" means any individual, partnership, company, corporation, association, firm, organization, governmental agency, administration, or department, or any other group of individuals, or any officer or employee thereof.

Z. "Plainly audible sound" means any sound for which any of the content of that sound, such as, but not limited to, comprehensible musical rhythms, is communicated to a person using his or her unaided hearing faculties. For the purposes of the enforcement of this code, the detection of any component of sound, including, but not limited to, the rhythmic bass by a person using his or her unaided hearing faculties is sufficient to verify plainly audible sound. It is not necessary for such person to determine the title, specific words or artist of music, or the content of any speech.

AA. "Public right-of-way" means a public highway, road, street, avenue, alley, driveway, path, sidewalk, roadway, or any other public place or public way.

BB. "Receiving property" means real property, including, but not limited to, buildings, grounds, offices and dwelling units from which sound levels from sound sources outside such property may be measured. Individual offices or dwelling units within a building may constitute a receiving property.

CC. "Sound" means an oscillation in pressure, stress, particle displacement, particle velocity, etc., in a medium with internal forces (e.g., elastic, viscous) or the superposition of such propagated oscillation that evokes an auditory sensation.

DD. "Sound level meter" means any instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specified manner and that complies with standards established by the American National Standards Institute specifications for sound level meters S1.4-1971, as amended or S1.4-1983, as amended.

EE. "Sound level" (decibels) means an expression of the acoustic pressure calculated as 20 times the logarithm to the base 10 of the ratio of the root mean square of the pressure of the sound to the reference pressure, 20 micropascals.

FF. "Sound reproduction device" means a device intended primarily for the production or reproduction of sound, including but not limited to any musical instrument, radio receiver, television receiver, tape recorder, phonograph or electronic sound amplifying system.

GG. "Sound signal" means any sound produced by a sound signal device designed to transmit information.

HH. "Sound signal device" means a device designed to produce a sound signal when operated, including but not limited to any claxon, air horn, whistle, bell, gong, siren, but not an emergency signal device.

II. "Sound source" means any activity or device that emits sound.

JJ. "Total sound level" means that measured sound level that represents the combined sound level of the source or sources under investigation and the ambient sound level. Total sound level measurements shall exclude extraneous sound sources.

KK. "Unreasonable noise" means any excessive or unusually loud sound that disturbs the peace, comfort, or repose of a reasonable person of normal sensibilities, injures or endangers the health or safety of a reasonable person of normal sensibilities, or that causes injury or damage to property or business.

LL. "Weekday" means any day that is not a federal holiday and beginning on Monday at 7:00 a.m. and ending on the following Friday at 6:00 p.m.

MM. "Weekend" means beginning on Friday at 6:00 p.m. and ending on the following Monday at 7:00 a.m.

8.122.020 General powers of the Director.

A. Subject to the provisions of this code, the Director may take such action as may be necessary to abate a sound source that causes or may cause, by itself or in combination with any other sound source or sources, an unreasonable or prohibited noise. The Director may exercise

or delegate any of the functions, powers and duties vested in him or her or in the department by this code.

B. The Director shall promulgate such rules as are necessary to effectuate the purposes of this code, including, without limitation, rules setting forth specifications for the operation, installation, best available technology, or manufacture of sound generating equipment or devices, or sound mitigation equipment or devices.

C. The Director shall promulgate such rules as are necessary with regard to standards and procedures to be followed in the measurement of sound pressure levels governed by the provisions of this code.

D. The police department, as well as other agencies of the city designated by the Director, shall have the authority to enforce the provisions of this code and police officers and designated employees of the department and of such other city agencies shall have the power to issue notices of violation for violations of this code.

8.122.030 Testing by order of the Director.

A. If the Director has reasonable cause to believe that any device is in violation of this code, the Director may order the owner of the device to conduct such tests as are necessary in the opinion of the Director to determine whether the device or its operation is in violation of this code and to submit the test results to the Director within ten days after the tests are completed.

B. Such tests shall be conducted in a manner approved by the Director. If any part of the test is conducted at a place other than the site where the device is located, that part of the test shall be certified by a laboratory acceptable to the Director. The Director may require that the entire test results shall be reviewed and certified by (i) a professional engineer with acoustical experience as specified in the rules of the department or (ii) a noise consultant with qualifications of education and/or acoustical experience as set forth in the rules of the department.

C. If in the opinion of the Director, tests by the department are necessary, the Director may order the owner to provide such access to the device as the Director may reasonably request, to provide a power source suitable to the points of testing, and to provide allied facilities, exclusive of sound level meter. These provisions shall be made at the expense of the owner of the device. The owner shall be furnished with copies of the analytical results of the data collected.

8.122.040 Inspection.

A. The department may inspect at any reasonable time and in a reasonable manner any device that creates or may create unreasonable or prohibited noise including but not limited to the premises where the device is used.

B. The department may inspect at any reasonable time and in a reasonable manner any record relating to a use of a device that creates or may create unreasonable or prohibited noise.

8.122.050 Procedures for the determination of sound levels.

Unless otherwise specifically provided, sound levels shall be determined as follows:

- A. The sound level shall be measured with a sound level meter. The sound level meter and calibrator must be recertified annually at a laboratory approved by the Director. A field check of meter calibration and batteries must be conducted before and after every set of measurements, and at least every hour as necessary.
- B. Total and ambient sound levels shall be taken in accordance with procedures approved by the Director. Calculation of source sound levels shall conform to accepted practice.
- C. The ambient sound level shall be taken in the A-weighting network and the C-weighting network, as appropriate, with the sound level meter set to slow response.
- D. Impulsive sound levels shall be measured in the A-weighting network with the sound level meter set to fast response, and shall be measured from any point within the receiving property. The requirement for A-weighted measurements shall not apply to impulsive sounds arising from amplified sound sources, when measured indoors.
- E. all sound level measurements under this code shall be taken in LMax.
- F. Measurements shall be taken in three 30-second intervals within a 30-minute period.
- G. dB(A) will be measured from any point within the receiving property.
- H. dB(C) will be measured from any point inside a building on the receiving property.

8.122.060 Nuisance regulations not prohibited.

Nothing in this chapter or the exemptions provided herein shall be construed as preventing the regulation of noise from any source as a nuisance. Ordinances or rules regulating noise on such a basis shall not be deemed inconsistent with this chapter.

8.122.070 Exemptions.

The operational performance standards established in this subchapter shall not apply to any of the following noise sources:

- A. Sounds originating from residential property relating to temporary projects for the maintenance or repair of homes, grounds, and appurtenances between the hours of 7:00 a.m. and 9:00 p.m. on weekdays, or between the hours of 9:00 a.m. and 9:00 p.m. on weekends and federal holidays;
- B. Agricultural activities;
- C. Unamplified bells, chimes, or carillons while being used in conjunction with ongoing religious activities;
- D. Emergency energy release and signal devices;
- E. Emergency work conducted at the site of the emergency;
- F. National Warning System (“NAWAS”): systems used to warn the community of an attack or imminent public danger, such as flooding, explosion, or hurricane;
- G. Noise of aircraft operations;
- H. Sounds originating from officially sanctioned parades and other public events when properly permitted under Chapter 11.15 TMC;
- I. Sounds created by animals, which sounds shall be regulated under the provisions of Chapter 17 TMC.
- J. Sounds created by motor vehicles, which sounds shall be regulated under the provisions of Chapter 8.12 TMC.
- K. Sounds created by motor boats competing in a regatta or in a boat race, whether on trial runs or on official trial for speed records, authorized by the City under Chapter 9.35 TMC.

- L. Sounds generated by a shooting range operated by a law enforcement agency.
- M. Sounds generated by trains.
- N. Events at City facilities, including but not limited to the Greater Tacoma Convention and Trade Center, the Tacoma Dome, the Broadway Center for the Performing Arts, and Cheney Stadium, provided that general or event-specific noise limits shall be set forth in license agreements established for such facilities.
- O. Emergency sirens at either a fixed location or on an emergency vehicle, responding to an emergency.

8.122.080 General prohibitions.

A. No person shall make, continue, or cause or permit to be made or continued any sound attributable to any device that , increases the total sound level by the limits in Table 1 when measured at or within a receiving property:

Table 1. Maximum permissible source sound level in excess of increase in total sound level above the ambient sound level:

	Outdoors	Indoors
7:00 a.m. to 10:00 p.m.	10 dBA	6 dBC
10:00 p.m. to 7:00 a.m.	5 dBA	3 dBC

B. No person shall make, continue, or cause or permit to be made or continued any impulsive sound, attributable to the source, that increases the total sound level by 15 dB(A) or more above the ambient sound level, when there are less than ten impulses per hour between the hours of 7:00 a.m. and 10:00 p.m., less than four impulses within one hour between the hours of 10:00 p.m. and 7:00 a.m. If the number of impulses exceeds that set forth in this subsection, the sound level limits in Table 1 of subsection A shall apply.

C. Notwithstanding the provisions of subsection A of this section, where a particular sound source or device is subject to decibel level limits and requirements specifically prescribed for such source, device or activity elsewhere in this code, the decibel level limits set forth in this section shall not apply to such sound source, device, or activity.

D. This section shall not apply to Construction Activities conducted between the hours of 7:00 a.m. and 9:00 p.m., during the week, and 9:00 a.m. and 9:00 p.m. on the weekend.

8.122.090 Construction.

A. All construction devices used in construction and demolition activity shall be operated with a muffler if a muffler is commonly available for such constructing device.

B. Construction and demolition activity, excluding emergency work, shall not be performed between the hours of 9:00 p.m. and 7:00 a.m. on weekdays or between the hours of 9:00 p.m. and 9:00 a.m. on weekends and federal holidays, except as otherwise provided in this code.

C. After hours work on weekdays and weekends shall be allowed, provided that no sound created by the work exceeds the limits in 8.122.080(a).

8.122.100 Commercial music.

A. No person shall make or cause or permit to be made or caused any music originating from or in connection with the operation of any commercial establishment or enterprise when the level of sound attributable to such music, as measured inside any receiving property dwelling unit:

1. causes a 6 dB(A) or more increase in the total sound level above the ambient sound level as measured in decibels in the "A" weighting network; or
2. causes a 6 dB(C) or more increase in the total sound level above the ambient sound level as measured in decibels in the "C" weighting network.

B. No person shall make or cause or permit to be made or caused any music originating from or in connection with the operation of any commercial establishment or enterprise when the level of sound attributable to such music is plainly audible from a distance of at least one hundred feet in any direction from the property line of the commercial establishment.

8.122.110 Variances.

A. Any person who owns or operates a sound source may apply for a variance from the Director:

B. Applications for a permit of variance shall supply information including, but not limited to:

1. The nature and location of the noise source for which such application is made;
2. The reason for which the permit of variance is requested, including the hardship that will result to the applicant, his/her client, or the public if the permit of variance is not granted;
3. The nature and intensity of noise that will occur during the period of the variance, and;
4. A description of interim noise control measures to be taken by the applicant to minimize noise and the impacts occurring therefrom;
5. The name, address and means of contacting a responsible party during the hours of operation for which the permit of variance is issued.

C. The Director may charge the applicant a fee to cover expenses resulting from the processing of the permit of variance application.

D. In making the determination on granting a variance, the Director shall consider:

1. The character and degree of injury to, or interference with, the health and welfare of the reasonable use of property which is caused or threatened to be caused by the sound to result from the permit of variance.
2. The social and economic value of the activity for which the variance is sought.
3. The ability of the applicant to apply best practical noise control measures.
4. Physical conditions that create a significant financial hardship in complying with the provisions of this chapter.

E. The permit of variance shall enumerate the conditions of the variance including:

1. Specific dates and times for which the variance is valid;
2. Sound level limits which may not be exceeded at the nearest affected residential property.

F. The permit of variance may be revoked by the Director if the terms of the variance are violated.

G. A variance may be revoked by the Director, and the issuance of future variances withheld, if there is:

1. Violation of one or more conditions of the variance;
2. Material misrepresentation of fact in the variance application; or,
3. Material change in any of the circumstances relied upon by the Director in granting the variance.

8.122.120 Noise control plan.

- A. Any person who receives a Notice of Violation under this chapter shall be required to submit a noise control plan.
- B. The noise control plan shall include but not necessarily be limited to:
 - 1. The nature and location of the noise source to be controlled;
 - 2. The nature and intensity of noise that will be controlled under the plan;
 - 3. Sound level limits which may not be exceeded at the nearest affected residential property;
 - 4. A description of noise control measures to be taken to insure compliance with this code;
 - 5. Information on the ability of the applicant to apply best practical noise control measures; and
 - 6. The name, address and means of contacting a responsible party for the noise control plan.

8.122.130 Penalty for violation.

- A. Every person who violates any provision of this chapter has committed a civil violation and shall be subject to the provisions herein. The owners, agents, contract buyers, tenants, or lessees of all residential dwellings, commercial establishments, and/or real estate upon which a violation of this article is found shall be jointly and severally responsible for compliance with this article and jointly and severally liable for any damages or costs incurred and awarded under this article.
- B. The penalties set forth in this Chapter are not exclusive. The City may avail itself of any other remedies provided by law.

8.122.140 Notice of Violation and civil penalty.

- A. Any person who violates any of the provisions of this chapter shall, upon a determination that a violation has been committed, be assessed monetary penalties.
- B. The Notice of Violation will be either:
 - 1. Prepared and sent by first-class mail to the Owner of the Property and to the Person in control of the Property, if different; or
 - 2. Personally served upon the Owner of the property and to the Person in control of the Property, if different; or
 - 3. Posted on the Property in a prominent location on the premises in a conspicuous manner that is reasonably likely to be discovered.
- C. The Notice of Violation shall contain the following:
 - 1. The address of the site and specific details of the condition that is to be corrected;
 - 2. The citation penalties that shall be imposed in the event that the condition is not corrected within 18 days.
 - 3. If required, the specified timeframe to submit an approved noise control plan.
 - 4. The appropriate department and/or division investigating the case and the contact person.
- D. At the end of the specified timeframe, the site will be reinspected to see if the condition has been corrected. If the condition has been corrected or an acceptable noise control plan submitted, the case will be closed. If the condition has not been corrected or an acceptable noise control plan has not been submitted, a civil penalty shall be assessed. The monetary penalties for violations of this chapter shall be as follows:
 - 1. First civil penalty, \$250;
 - 2. Second and subsequent civil penalties, \$500. At such time that two civil penalties have been assessed within a one-year period City-issued permits and/or licenses for the site or site activity may be suspended, in accordance with the procedures appropriate for each permit or license, until such time that an approved noise control plan has been submitted and deemed operational by the Director;

3. Civil penalties will continue to accumulate until the condition is corrected. At such time that the assessed penalty exceeds \$1,000, a Certificate of Complaint may be filed with the Pierce County Auditor to be attached to the title of the property. A copy of the Certificate of Complaint shall be sent to the Property Owner and parties of interest, if different from the Owner.

E. Each day that a property or person is not in compliance with the provisions of this chapter may constitute a separate violation of this chapter.

F. The Director is authorized to waive monetary penalties upon the Director's finding that the person to whom a Notice of Violation has been issued has either come into compliance or has taken all practicable steps toward coming into compliance.

8.122.150 Hearing by the Hearing Officer.

A. A person to whom a Notice of Violation is issued may request a hearing by filing the request with the City Clerk no later than seven (7) calendar days after said Notice of Violation is issued.

B. If a hearing is requested, the Hearing Officer, or his or her designee will conduct the hearing required by this chapter no more than 18 calendar days after the Director issues the Notice of Hearing.

C. If a request for a hearing is received, the Hearing Officer shall mail a notice giving the time, location, and date of the hearing, by certified mail, with a five-day return receipt requested, to person or persons to whom the Notice of Violation was directed.

D. The Hearing Officer, or his or her designee, shall conduct a hearing on the civil violation. The Director, as well as the person to whom the Notice of Violation was directed, may participate as parties in the hearing, and each party may call witnesses. The City shall have the burden of proof to establish, by a preponderance of the evidence, that a violation has occurred and that the required corrective action is reasonable.

E. The Hearing Officer shall determine whether the City has established, by a preponderance of the evidence, that a violation has occurred and that the required corrective action is reasonable and shall affirm, modify, or vacate the Director's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

F. The Hearing Officer shall issue a final Order that contains the following information:

1. The decision regarding the alleged violation including findings of facts and conclusion based thereon;

2. The required corrective action, if any;

3. The date and time by which the correction must be completed;

4. A statement of any appeal remedies;

5. A notice that a lien may be assessed against the property if the civil penalties are not paid in accordance with the provisions of this chapter.

G. If the person to whom the Notice of Violation was directed fails to appear at the scheduled hearing, the Hearing Officer will enter an Order finding that the violation has occurred.

H. The Order shall be served on the person in the same manner as a Notice of Violation as provided for in this Chapter.

I. A final Order of the Hearing Officer may be appealed to a court of competent jurisdiction no more than ten calendar days of its issuance.

EXHIBIT "B"

1.06.170 Public Works Department.

The Public Works Department shall be under the Director of Public Works, and shall:

* * *

F. Issue and revoke all building and sign permits; administer all building codes and ordinances; cause to be inspected all gas, plumbing, heating system installations, boilers, sanitary and safety equipment of all buildings and structures within the City; issue, and collect the fees for, all building, plumbing, sewer, street obstruction, sign, and all other permits relating to the construction, maintenance and repair of buildings and structures, and installations appurtenant thereto; propose and revise all building and construction codes; recommend condemnation and abatement of unsafe buildings and structures; enforce all codes and ordinances regulating commercial, industrial, and residential building and housing; regulate and maintain the City's master address maps and records; administer and enforce the City's zoning, open space, shoreline, and environmental regulations, as provided in Title 13 hereof; and administer and enforce provisions of the City's noise enforcement ordinances.

EXHIBIT "C"

6B.180.110 Restrictions.

* * *

H. No vendor shall make any noise that exceeds the standards in Chapter 8.122.020 TMC or use mechanical audio or noise-making devices to advertise his or her product.

EXHIBIT "D"

8.12.060 Public disturbance noises.

A. It is unlawful for any person to cause, or for any person in possession of property to allow originating from the property, sound that is:

1. an unreasonable noise, as defined in subsection 8.122.010(39) TMC; or
2. any sound that is plainly audible (as that term is defined in Chapter 8.122 TMC) within any dwelling unit; or
3. any sound produced by a sound reproduction device (as that term is defined in Section 8.122.010) that is plainly audible (as that term is defined in Section 8.122.010 TMC) 50 feet from the source of the sound; Provided, that this subsection c shall not apply to commercial music under TMC 8.122.100; or
4. Commercial music in excess of the limitations set forth in TMC 8.122.100.

B. In addition to the provisions of Section 8.12.060(1), the following sounds are determined to be public disturbance noises:

1. The frequent, repetitive, or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;
 2. The creation of frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within a residential district, so as to disturb or interfere with the peace, comfort, and repose of a reasonable person of normal sensibilities.
3. Sound from motor vehicle sound systems, such as tape players, radios, and compact disc players, operated at a volume so as to be audible distance greater than 50 feet from the vehicle itself;

EXHIBIT "E"

8.30.040 Specific public nuisances declared.

The following specific acts, omissions, places, conditions, and things are hereby declared to be public nuisances: The erecting, maintaining, using, placing, depositing, causing, allowing, leaving, or permitting to be or remain in or upon any private lot, building, structure, or premises, or in or upon any sidewalk, street, avenue, alley, park, parkway, or other public or private place in the City, of any one or more of the following disordered, disturbing, or unsanitary conditions or things:

* * *

D. Making, causing, or permitting to be made any noise in violation of the provisions of Chapter 8.122 TMC.

ORDINANCE NO. 27696

AN ORDINANCE related to Business and Parking Improvement Areas; reestablishing the Downtown Business Improvement Area; providing for the levy of a special assessment upon real property (and the owners thereof) within the area; and providing for the deposit of revenues in a special account, and expenditures therefrom.

WHEREAS, the City enacted Ordinance 24058 on April 5, 1988, creating the Downtown Business Improvement Area ("BIA") for a period of ten years, which was renewed for a second ten years by Ordinance 26205, enacted on March 10, 1998; and

WHEREAS, the owners of property subject to 50 percent or more of the special assessment levied by this ordinance filed a petition with the City of Tacoma to reestablish the Downtown Business Improvement Area pursuant to RCW 35.87A, a copy of the petition being on file with the City Clerk and contained in this ordinance file, and

WHEREAS the City Council, pursuant to Resolution No. 33945 adopted January 27, 1998, declared its intent to reestablish a Downtown Business Improvement Area pursuant to RCW 35.87A, and

WHEREAS, as provided in Resolution No. 33945, the City Council held a public hearing on February 24, 1998, concerning the formation of the Downtown Business Improvement Area and the imposition of special assessments on real property (and property owners) within such Downtown Business Improvement Area, prior to the adoption of this ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. District Established. That, as authorized by RCW 35.87A, there is hereby reestablished a Downtown Business Improvement Area within the following described boundaries (when a street or alley is named, the District boundary is the center line of the right-of-way unless otherwise stated):

Beginning at Court D at South 7th, then south on Court D to South 15th, east on South 15th to Market Street, south on Market Street to Jefferson Avenue, southwest on Jefferson Avenue to South 21st Street, east on South 21st to the Northern Pacific Railway Depot yard, then north parallel to Pacific Avenue to South 15th Street, then northeasterly to South 14th Street and Cliff Street extended, then north on Cliff Street extended to South 12th Street and the west right-of-way line of Schuster Parkway, then northwesterly along Schuster Parkway to its connection to Stadium Way, then south on Stadium Way to South 7th Street, (Spanish Stairs), then west on South 7th Street to beginning at Court D.

said area being hereinafter called the "District" or "BIA" (Business Improvement Area).

Section 2. District Assessment. That all real property, inclusive of land and buildings (and the owners thereof), within the boundaries of the District, will be specially benefited by the purposes for which the District is being established; and such property (and the owners thereof) shall be subject to a special assessment as authorized by RCW 35.87A.010, this ordinance, and amendments thereto. That the benefit to the property (and the owners thereof) subject to the special assessment, and to the BIA as a whole, is a special benefit which would not otherwise be available but for the activities, programs, and special services carried out with funding provided by the special assessments authorized herein; and that such special benefits, and the increase in value of the property in the BIA resulting therefrom, and the increased opportunity which is created for each property (and

the owners thereof) within the BIA to benefit from the BIA programs, activities, and special services, are hereby found to be commensurate with, or in excess of, the amount of the assessment under this ordinance.

Section 3. Purposes and Programs. Special assessment revenues shall only be used for the following types of purposes, programs, services, and administrative and collection costs associated therewith:

A. The operation of a security and public relations program to:

(1) provide enhanced security for common areas and for people, which may include, but is not limited to, dissemination of information relative to security and for the purpose of generating favorable publicity, and to promote the District and the property and businesses therein as a clean, safe, and inviting area; and

(2) provide additional security through a combination of public and private personnel and facilities; and such other measures or activities as will accomplish the above-stated objectives, and also assist in changing the perception that the District is an undesirable or unsafe area.

B. Maintenance and appearance enhancement of common areas, such as the sweeping and cleaning of sidewalks, the removal or covering of graffiti, the removal or prevention of litter, and such other related activities or services which would enhance the appearance of the area and encourage the general public to increasingly visit and do business in the District.

C. Provide professional management, planning, and promotion for the area, including the management and promotion of retail trade activities in the area as deemed appropriate and approved by the ratepayers.

This listing of programs is illustrative and not exclusive. All such activities are to be supplemental to street maintenance and normal police staffing or security, at the level previously and regularly provided by the City, and are not to displace any services previously and regularly provided by the City. The specific programs, activities, and services to be funded with the special assessment will be determined annually at the time the City Council approves the annual budget for the District for the ensuing year, in the manner as more specifically set forth in Section 12 below. The budget, programs, activities, and services for the first annual period of the renewed BIA shall be approved pursuant to Section 13 below.

Section 4. Levy of Special Assessment. To finance programs and services authorized in Section 3 above, there is levied and shall be collected an annual special assessment upon the buildings and other real property within the District (and the owners thereof), at the following rates:

A. Property improved with buildings containing office, retail, and commercial uses (unless such building or use falls within another classification as below provided), may be assessed up to the annual rate of \$0.15 for each square foot of the total gross square footage of such building used for office and commercial uses. "Gross square footage," as used herein, shall mean all floor area within the exterior surfaces of the exterior walls, including lobbies, washrooms, janitor's closets, building stairs, fire towers, elevator shafts, flues, vents, stacks, pipe shafts, vertical ducts, basement areas, areas of exterior exit stairways and balconies, and those parts of other exterior balconies and walkways under roof overhangs.

B. Unimproved land, surface parking lots, parking garages, warehouse and storage facilities, churches, or similar buildings which are only substantially occupied for the intended use once or twice a week; those portions of buildings used for transient lodging or residential use; and buildings which are vacant and unable to be occupied without major renovation may be assessed at the annual rate of up to \$0.05 per square foot of the gross square footage of such building or of the surface area of the land or surface parking lot. Pursuant to RCW 35.87A, the ordinance, or amendments thereto, may provide for reasonable classification of businesses for purposes of determining the rate to be charged, which rates may be lower than those set forth herein, and may provide for exemptions from assessments as may be appropriate. (See Section 6.)

C. That portion of a building used by a nonprofit school or college for educational purposes, and which is exempt from property taxes under RCW 84.36.050, shall be assessed at the lower rate per square foot of the gross square footage of the portion of the building so used for educational purposes.

D. That portion of a building or land owned and used by a nonprofit organization for the purpose of maintaining and exhibiting art, scientific, or historical collections for the benefit of the general public and not for profit, and which is exempt from property taxes under RCW 84.36.060, shall be assessed at the lower rate per square foot of the gross square footage of the portion of the building and land so used for such purpose.

E. That portion of a building or land owned and used by a nonprofit organization for character-building, benevolent, protective, or rehabilitative social

services directed at persons of all ages, and which is exempt from property taxes under RCW 84.36.030(1), shall be assessed at the lower rate per square foot of the gross square footage of the portion of such building or land so used for such purpose.

F. That portion of a building which is vacant, not rented or used, or unable to be occupied in excess of two years:

(1) due to applicable building and fire codes for a use permissible under the City's Land Use Regulatory Code, unless substantial cost is incurred to correct existing code deficiencies, as necessary to obtain an occupancy permit or otherwise allow such vacant portion of the building to be occupied in compliance with applicable codes, shall be assessed at the lower rate per square foot of the gross square footage area of such vacant portion of the building; or

(2) due to such space not being reasonably tenantable or occupiable in its present condition, unless substantial cost is incurred to correct its present condition, shall be assessed at the lower rate per square foot of the gross square footage of such vacant area until such time as such area is occupied or rented. "Substantial cost," as used herein, shall mean an amount of at least \$15 per square foot of the gross square footage of the vacant portion.

G. A vacant area which is being assessed at the lower rate per square foot under Section 4(F) shall be deemed to be occupied and assessable at the occupied rate at the commencement of the next annual assessment period unless, prior thereto, the owner of the building or owner's representative shall give

written certification to the City that the space in question still remains untenable or unoccupiable due to code deficiencies or due to its present condition.

H. That portion of a building which has been vacant in excess of two years, and is not assessable at the lower rate per square foot under any of the preceding subsections, shall be assessed at the higher rate per square foot of the gross square footage of such vacant portion of the building if the majority (50 percent or more) of the remainder of the gross floor area of the building is assessable at the higher rate per square foot. If less than 50 percent of the building is occupied and assessable at the higher rate, only that portion of the building that is occupied shall be assessed at the higher rate per square foot of the gross square footage. The remaining unoccupied portion of the building shall be assessed at the lower rate per square foot of the gross square footage.

I. That portion of a building or land owned and used by a nonprofit fraternal organization to conduct its meetings or other noncommercial activities shall be assessed at the lower rate per square foot of the gross square footage of the portion of such building or land so used for such purpose.

Section 5. Calculation of Assessments.

A. The gross square footage and use shall be initially determined from the records of the Pierce County Assessor/Treasurer, subject to adjustment thereafter upon a finding that the actual gross square footage on which the assessment is to be calculated or the use thereof is different from that shown on the Pierce County Assessor/Treasurer's record. It is presumed that the higher rate per square foot of gross square footage applies unless adequate evidence is made

available to the appropriate City official that the lower rate per square foot of gross square footage is applicable. The burden of proof shall be on the ratepayer questioning the higher rate assessment to prove that the lower rate is applicable.

B. The initial assessment and subsequent annual assessments showing the rate of the special assessment, the gross square footage on which it is calculated, and the total assessment for each separate ownership shall be mailed to the owner or reputed owner whose name appears as the owner on the tax rolls of the Pierce County Assessor/Treasurer and at the address for such owner as shown on the tax rolls of the Pierce County Assessor/Treasurer. Subsequent annual assessments, with the applicable rate, gross square footage, and total assessment for each separate ownership, may be sent by regular mail or delivered by the City to the owner or reputed owner as contained in the records of the City Treasurer and at the address for such owner or reputed owner as contained in the records of the City Treasurer, and if no addresses is shown there, to the address shown in the tax records of the Pierce County Assessor/Treasurer. It will be presumed that ownership and the address of any owner or reputed owner remains the same as at the time of mailing of the initial annual assessment, unless the City Treasurer receives written notice of a change in the address of the owner to which the assessment notice is to be mailed. Duplicate notices will be mailed upon request of the owner to the owner's named representative at the address given in such written request by the owner.

C. In the event the approved annual budget is greater or less than the funds which will be available from the total of all assessments within the District

for such annual period, calculated at the assessment rates as set forth in Section 4 above, then such rates shall be adjusted on a pro rata basis (i.e., for every one cent change in the higher rate per square foot, there would be a one-third of a cent change in the lower rate per square foot) in an amount which, when multiplied by the total assessable square footage in the District, will produce a total sum equal to the approved total budget amount for the annual period for which the special assessment is being made. Any increase of the assessment rate in order to produce a total assessment equal to the approved annual budget will not exceed the maximum assessment rates as set forth in Section 4 above, and as Section 4 may be amended, except to the extent that such excess amount is equal to or less than the inflation in prices which has occurred since the date of the first annual assessment, as measured by the Consumer Price Index more specifically defined in Section 14 below. Any unexpended and unobligated budgeted amount remaining at the end of any annual assessment period, and any assessments or funds collected and deposited in the District Fund in excess of the amount authorized to be expended for the annual assessment period in which such excess amounts are received, may be expended as authorized by: (1) the next annual BIA budget approved by the City Council, or (2) amendment to the current annual budget, as approved by the City Council, pursuant to Section 20 below.

Section 6. Exemptions. Public rights-of-way and property owned by the state and federal government shall be exempt from the special assessment, provided that nothing herein shall preclude the state or federal government from agreeing to make payment for any such assessment. Property owned by the City

and leased to the federal government for an initial term of at least ten years shall be exempt from the special assessment for the term of the lease and any extension thereof, except such exemption shall not apply if the federal government agrees to pay or voluntarily pays the special assessment as to such property.

Section 7. Collection Schedule. Insofar as is consistent with this ordinance and RCW 35.87A, special assessments shall be collected on an annual basis, with payments due on May 1 (or the first City business day thereafter) or within 30 days after mailing to the property owner the first notice of the amount of the annual special assessment due, whichever date is later. A property owner may elect to make payment in two equal, semiannual installments, the first due on May 1 (or the first City business day thereafter) or within 30 days after mailing to the property owner the first notice of the amount of the annual special assessment due, whichever date is later, and the next installment to be due on November 1 (or the first City business day thereafter), provided: (a) failure to make timely payment in May (unless such date be extended by late mailing of notice) makes the entire annual assessment due and payable, and (b) a charge of \$15 shall be added to semiannual payments to cover the cost of processing. The special assessment upon property (and the owner thereof) which becomes assessable by reason of loss of exemption, or which becomes assessable at a different rate by reason of a change in occupancy or use, shall be adjusted to reflect such rate change as of the date the loss of exemption or change in occupancy or use occurs, and such increase or decrease to the amount previously assessed shall be added to or deducted from the next annual payment of semiannual installment to be made.

Upon termination of the BIA, pursuant to Section 19 below or otherwise, no refunds for overpayments of assessments shall be made to persons paying such overpayments, unless there are sufficient funds in the District Fund to pay such overpayments after payment of all other costs, debts, or liabilities incurred on or payable from the District Fund. If there are sufficient funds remaining to refund some of the overpayments, but not all, such refunds shall be prorated among those who have made timely claims pursuant to Section 16 below, and are entitled to such refunds.

Section 8. Deposit into Fund. A special fund is hereby created, to be called the Downtown Business Improvement Area Fund, hereafter called the “District Fund,” into which shall be deposited:

- A. all revenues from special assessments levied under this ordinance;
- B. interest, late charges, penalties, and income from the investment of fund deposits;
- C. gifts and donations to the fund; and
- D. restitution monies for expenditures made from the fund and reimbursement due the fund.

Section 9. Expenditures. Expenditures from the District Fund, as may be authorized by the City Council, shall be used exclusively for the purposes specified in this ordinance and shall not be used for any other purpose.

Section 10. Administration. The City Manager, or such other City officer(s) as the City Manager may designate to act in his/her stead, shall administer the District for the City, with authority to:

A. Classify property and ratepayers within the types of use under Section 4 above, determine the gross square footage of buildings and land for assessment purposes, determine the rate applicable to a ratepayer when classifications overlap, and resolve ambiguities in the application of rates. In determining gross square footage, the designated City official may rely on figures supplied by the Pierce County Assessor, the Local Development Council of Tacoma (hereinafter "LDC"), or a lease agreement, without making measurements directly.

B. Collect the special assessments, refund special assessments when overpaid, and extend the deadline for payment and/or waive delinquency charges and interest whenever the delinquency is the result of the failure by the City to provide a statement of the amount due, or nonpayment results from extenuating circumstances beyond the ratepayer's control, such as a casualty loss, causing permanent closure of the business or bankruptcy.

C. Determine and apply the interest rate for late payments contemplated by Section 17.

D. Establish a schedule of proportionate payments for new ratepayers first becoming subject to the assessment after May 1 of the year.

E. After consultation and with the advice of the LDC, or its successor, take such other action as is necessary and appropriate to carry out contemplated programs with special assessments.

F. Refer for initial determination and recommendations thereon questions pertaining to determination of gross square footage, rates, building use, and other questions pertaining to an application of the special assessment on a particular property or property owner to the LDC, or its successor, in accordance with the contract to be approved between the LDC and the City. Such initial determination and recommendation by the LDC shall be advisory, and the City Manager or the designated City official may adopt, amend, or reject such recommendation in making administrative determinations hereunder. Any determination hereunder by the City Manager or the designated City official may be appealed to the Hearing Examiner, and from the Hearing Examiner to the City Council, in the manner authorized pursuant to Section 16 below.

G. Direct the appropriate officers of the City to pursue collection procedures, including bringing legal civil actions in district or superior court, to collect any unpaid assessments and to collect such unpaid assessments by foreclosure action against the property on which it is assessed in accordance with laws applicable to foreclosure of local improvement district liens, and/or to collect by civil action such unpaid assessment by judgment against the owner.

Section 11. Advisory Board. The Board of Directors of the LDC, or its successor, shall serve as an advisory board in carrying out a contract for program management of activities and programs to be funded through special

assessments. The advisory board shall contain members representative of the classifications subject to assessment. The City Manager may appoint City representatives in a nonvoting capacity to the advisory board.

Section 12. Annual Budget/Annual Assessment Amount. On or before February 10 of any year, after consultation with the LDC (or its successor) and any established ratepayers' advisory board (as may be provided in the management contract), the City Manager, or his designee, shall submit to the City Council the following: (a) a statement of the proposed programs and activities to be conducted during the ensuing fiscal year (May 1 through April 30); (b) the proposed annual budget; and (c) a statement of any adjustment to the assessment rates required for financing the proposed activities and budget for the ensuing fiscal year.

After receipt of the proposed budget, the City Council will adopt a resolution setting the time and place for a hearing to be held by the City Council to consider the proposed activities and budget. Notice of the hearing shall be given by:

(a) one publication of the notice of hearing in a newspaper of general circulation in the City; and (b) mailing a copy of the proposed activities, budget, and assessment rates for the ensuing fiscal year to the owner or reputed owner of property in the District whose names appear as the owners on the records of the City Treasurer, at the address for such owners as shown on the records of the City Treasurer, or at such other address for a particular owner as such owner may have previously requested in writing; or, if no address is shown there, to the address shown in the tax records of the Pierce County Assessor/Treasurer. At the time fixed for the hearing, and at the times to which the hearing may be adjourned, the City Council

may correct, revise, modify, and amend the proposed activities, budget, and assessment; and, thereafter, the City Council may approve, by ordinance or resolution, said activities, budget, and assessment as proposed or as modified. Upon City Council approval, the assessment roll shall be filed with the City Treasurer and billings for the ensuing annual assessment shall be mailed to the property owners in the District. Any property owner wishing to object to the special assessment billed shall file, within 30 days from the date of mailing of the annual assessment billing, an objection thereto stating the grounds of the objection, with the City Clerk. Objections not so made within the required time shall be conclusively presumed to have been waived.

Filed with the office of the City Clerk prior to the adoption of this ordinance is a map showing the boundaries of the BIA and a list showing each lot and parcel to be assessed and the rate and amount assessed, as authorized herein, against each lot and parcel (and the owner thereof), together with improvements thereon. Such list, together with the assessments as shown, is referred to as the "Annual Assessment Roll," which is hereby approved and confirmed. Initial assessments shall be made in accordance with the approved Annual Assessment Roll; and subsequent annual assessments shall be made in accordance with subsequent Annual Assessment Rolls as may be amended to reflect changes in the per-square-foot rate of the assessment, amended to reflect correction of errors in the computation of an assessment as to a particular property, or as may otherwise be amended by the City Council. The City Treasurer or other City official, as authorized herein, is hereby directed to collect the initial annual assessments as

shown on the Annual Assessment Roll and collect subsequent annual assessments, as may be shown on subsequent Annual Assessment Rolls, as the same may be amended or corrected.

Section 13. Approval of Expenditures/Contract for Program Management.

The first annual budget for the first year of the renewed BIA and activities, services, and projects to be funded with the special assessment proceeds, as set forth in the materials on file with the City Clerk, are hereby approved. There is hereby appropriated and authorized to be expended from the District Fund the sum of \$801,500, or so much thereof as may be necessary, for the purposes, projects, activities, and services approved for the first year of the renewed BIA. Unless otherwise authorized by the City, the total amount to be specially assessed and expended in subsequent years shall be as set forth in the annual budget approved by the City. The particular programs and services to be provided for each subsequent annual period and the amount of funding thereof shall be approved by resolution or ordinance of the City Council, after notice and hearing as provided by Section 12 above. The City may enter into a contract, subject to approval by the City Council, with the LDC to administer the projects and activities for the first year of the renewed BIA and each annual period thereafter, the term of which contract to be effective from May 1 through April 30 of each BIA year, unless a suitable successor organization is recommended by (a) a majority of the votes of the ratepayers at their annual meeting weighed by the dollar value of their assessments, (b) a petition signed by ratepayers paying a majority of the assessments, or (c) by the association itself.

Section 14. Rate Changes. Any change in the assessment shall only be made by ordinance and as authorized in RCW 35.87A.130-140. Upon the recommendation of the advisory board, the City may, from time to time by ordinance, increase or reduce assessment rates to reflect changes in programs or program costs. The maximum for the high rate shall be \$0.15 per square foot, and the maximum for the low rate shall be \$.05 per square foot. These rates may only be exceeded to reflect changes in the purchasing power of money as measured by the Seattle-Tacoma Consumer Price Index for All Urban Consumers (CPI-U), published by the United States Department of Labor, Bureau of Labor Statistics (on or about October of each year), or a suitable, comparable index recommended by the advisory board.

Section 15. Nontransferability. Ratepayers shall not transfer the payment responsibility for BIA assessments to the tenants; provided, however, ratepayers are not precluded from recovering assessment costs through their normal lease negotiation processes.

Section 16. Notices. Notices of assessments, installment payments, or delinquency, and all other notices contemplated by this ordinance, may be sent by regular mail or delivered by the City to the address shown on the records of the City Treasurer, and, if no address is shown there, to the address shown in the tax records of the Pierce County Assessor/Treasurer. Failure of the ratepayer to receive any mailed notice shall not release the ratepayer from the duty to pay the assessment or pay said assessment on the due date, together with any delinquency charges, except as authorized by Section 10.B above.

Section 17. Disputes/Appeals.

A. Correction of Assessment/Initial Appeal. Any person having been issued a notice of assessment, interest, and/or penalties may petition the City in writing for a correction in the amount of the assessment and a conference for examination and review of the assessment. The petition shall be filed in the office of the City Clerk within 30 days after issuance of the original notice or the period covered by any extension of the due date thereof granted by the City Manager, or his designee (referred to in this Section 17 as the "City official"). A copy of the petition shall be also filed in the office of the City Engineer. The petition shall set forth the amount of assessment, interest, and/or penalties, if any, which the petitioner believes should be reduced or refunded and the reason such correction should be granted.

The City official shall promptly consider the petition and may grant or deny it. If denied, the petitioner shall be notified by mail thereof, together with the reasons for such denial. If a conference is granted, the City official shall fix the time and place therefor and notify the petitioner thereof by mail. Prior to the date set for the conference, the City official may also request, but not require, the petitioner to meet with a board of arbitrators (which may be provided for under the contract with the LDC) in order to receive recommendations from the board on such matter. After the conference with the City official, the City official may make such determinations as may appear to be just and lawful and consistent with the provisions of this ordinance, and shall mail a copy of such determination to the petitioner. If no such petition is filed within the 30-day period specified in this

Section 17, the assessment covered by the notice shall become final and any right to contest or appeal such assessment amount shall be deemed conclusively waived.

B. Appeal to Hearing Examiner. Any person having received a notice of denial of a petition or a notice of determination made under subsection A above may appeal the same to the City's Hearing Examiner within 20 days from the date of the notice of such denial or determination. In the notice of appeal, the petitioner shall set forth the amount of the assessment, interest, and/or penalties which he/she contends should be reduced or refunded and the reason for such reduction or refund. The appeal shall be perfected by filing a copy of the notice of appeal in the office of the City official making the denial or determination and filing the original thereof in the office of the Hearing Examiner within the time specified herein. The appeal before the Hearing Examiner shall be conducted in accordance with the rules of practice and procedure as set forth in Chapter 1.23 of the Tacoma Municipal Code (hereinafter "TMC"). In such proceeding, the petitioner shall be deemed the plaintiff and the City official denying the petition or making the determination being appealed shall be deemed the defendant. The burden shall rest on the plaintiff to prove that the assessment, together with any interest or penalties thereon, is incorrect, either in whole or in part, and to establish the correct amount thereof.

C. Appeal to City Council. Either party designated in subsection B above as plaintiff or defendant may appeal the decision of the Hearing Examiner to the City Council. Such appeal shall be within the time and in accordance with the

rules and procedures as set forth in TMC 1.23 and 1.70. The burden of proof shall remain upon the plaintiff (ratepayer) to prove that the assessment in question is incorrect, either in whole or in part, and to establish the correct amount of the assessment and any interest or penalties thereon.

D. Extension of Time. The time for payment of any assessment, interest, or penalties payable under this ordinance shall not be extended by reason of any claim by the ratepayer that the amount thereof is incorrect or by reason of the filing of a petition or appeal hereunder. If the City official finds that the nonpayment by a petitioner to pay any assessment by the due date was the result of circumstances beyond the control of the petitioner, interest or penalties imposed under this ordinance, with respect to such assessment, may be waived.

Section 18. Delinquent Payments. If an assessment has not been paid within 30 days after its due date and the ratepayer has been making prompt payments in the past, the City official in charge of assessment collections shall send a reminder notice and add a \$25 processing fee. If: (a) the assessment is not paid within 60 days after its due date; or (b) the assessment was not paid within 30 days, and the ratepayer has been late on one of the previous two payments, a delinquency charge shall be added in the amount of 10 percent of the assessment, in addition to the processing fee. All assessments which are not paid when due shall also bear interest at the rate of 12 percent from the payment due date.

Section 19. Collection/Foreclosure. Whenever any annual assessment which the ratepayer has elected not to make in two semi-annual payments, or any

semi-annual installment of an assessment under this ordinance shall be delinquent for more than 30 days, the entire annual assessment shall be due and payable and shall constitute a lien on the property assessed. The collection thereof may be enforced through foreclosure action on the property assessed in the manner as provided for collection and foreclosure of local improvement district assessments, pursuant to RCW 35 (including, but not limited to Chapters 35.44, 35.49, and 35.50), and applicable provisions of the Tacoma Municipal Code. Alternatively, or as a cumulative remedy, the delinquent assessment may be collected from the ratepayer liable therefor by civil action in either district or superior court.

Section 20. Termination of BIA. The BIA and the special assessment levy therefor shall terminate within one year (or such longer period as set forth in the termination petition) from the date of submission to the City of a petition requesting termination of the same, which contains the signatures of the owners of property in the BIA who pay 50 percent or more of the annual special assessment amount for the BIA. The BIA and the special assessment levy therefor shall continue for a period of ten years, unless a petition is submitted to the City, at least 90 days prior to such termination, requesting the continued existence of the BIA, with such petition containing the signatures of the owners of property in the BIA who will pay 50 percent or more of the annual special assessment for the BIA.

Section 21. Changes in Budget. If the City Council finds that: (a) by reason of changed condition or unanticipated circumstances it is in the best interest of the participants in the BIA to provide changes to the approved annual budget; (b) changes in the approved annual budget are necessary in order to best

meet the objectives or purposes for which the BIA was formed; or (c) the total assessments collected are greater or less than anticipated, or the actual cost of a particular program or service is greater or less than anticipated, then the City Council may, by resolution or ordinance, amend the annual budget and reallocate the funding for the particular programs or services to be provided and to provide funding for such other purposes as may be necessary, as determined by the City Council, to best serve the purposes for which the BIA was formed, in light of the conditions or unanticipated circumstances which then exist.

Section 22. Disestablishment of Area - Assets and Liabilities. Upon disestablishment or termination of the BIA and in accordance with RCW 35.87A.190, any proceeds of the special assessments or assets acquired with such proceeds, or liabilities incurred as a result of the formation of such BIA, shall be subject to disposition as the City Council shall determine; provided, however, that any liabilities, either current or future, incurred as a result of action taken to accomplish the purposes of RCW 35.87A.010 or the purposes of the BIA shall not be an obligation of the General Fund or any special fund of the City, but such liability shall be provided entirely from available revenues generated from the special assessments under this ordinance.

Section 23. Severability. If any provision of this ordinance, or its application to any person or circumstance, is held invalid, the remainder of this ordinance or the application of the provision to other persons or circumstances is not affected.

Section 24. Ratification and Confirmation. The making of contracts and the sending of assessment notices pursuant to the authority and prior to the effective date of this ordinance are hereby ratified and confirmed.

Passed _____

Mayor

Attest: City Clerk

Approved as to form and legality:

Assistant City Attorney

ORDINANCE NO. 27697

AN ORDINANCE relating to zoning and reclassifying the zoning for various areas that are proposed to be removed from existing mixed-use centers; amending Ordinance No. 27665, Section 9, to correct the legal description of property added to the “R-2SRD” Residential Special Review District through an areawide rezone.

WHEREAS, pursuant to the State Growth Management Act, the Planning Commission (“Commission”) annually recommends changes to the Comprehensive Plan and to the Land Use Regulatory Code, and

WHEREAS, pursuant to the recommendation of the Commission, on December 4, 2007, the City Council passed Ordinance No. 27665, amending Chapter 13.06 of the Tacoma Municipal Code, reclassifying the zoning for various areas proposed to be removed from existing mixed-use centers; to wit, the removal and rezoning of certain properties from the Lower Portland Avenue mixed-use center, and

WHEREAS the City Council approved the areawide rezone based upon information provided, which included a map depicting the proposed area to be rezoned; however, the legal description included in Ordinance No. 27665 included property that was not intended to be rezoned; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That Ordinance No. 27665, Section 9, is amended to read as follows:

13.06.115(35) ADDED TO “R-2SRD” RESIDENTIAL SPECIAL REVIEW DISTRICT. The following property shall be included in the “R-2SRD” Residential Special Review District:

Beginning at the centerline intersection of East 35th Street and East Portland Avenue (said point is located in the southeast quarter of Section 10, Township 20 North, Range 03 East, W.M.);

Thence South along the centerline of East Portland Avenue to the westerly extension of the centerline of the alley between Blocks 8746 and 8845 of the MAP OF THE INDIAN ADDITION TO THE CITY OF TACOMA as recorded in Volume 7 of Plats at Pages 30-31, records of the Pierce County Auditor;

Thence West along said alley centerline to the southerly extension of the East line of Lot 12, Block 8742 of said plat;

Thence North along said East line and its northerly extension through Blocks 8742, 8741, 8642, 8641, and 8542 of said plat to the centerline of East 35th Street;

Thence East along said centerline to the Point of Beginning.

Passed _____

Mayor

Attest:

City Clerk

Approved as to Form:

Assistant City Attorney