

	City Council Meeting September 3, 2019 - 7:00 PM City Hall Council Chambers AGENDA Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. CALL TO ORDER

- A. **Pledge of Allegiance**
- B. **Roll Call**

II. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

- A. National Recovery Month Proclamation
Mayor Backus to proclaim September 2019 as "National Recovery Month" in the city of Auburn
- B. Constitution Week Proclamation
Mayor Backus to proclaim September 17-23, 2019 as "Constitution Week" in the city of Auburn

III. APPOINTMENTS

- A. Auburn Tourism Board
City Council to confirm the appointment of Philip Hernandez to the Auburn Tourism Board for a three-year term to expire December 31, 2021

(RECOMMENDED ACTION: Move to approve the Auburn Tourism Board Appointment.)

IV. AGENDA MODIFICATIONS

V. CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE

A. Public Hearings

- 1. Public Hearing for Franchise Agreement No. FRN19-0014 (Gaub)
City Council to hold a public hearing in consideration of Franchise Agreement No. FRN19-0014 for New Cingular Wireless PCS, LLC

B. Audience Participation

This is the place on the agenda where the public is invited to speak to the City Council on any issue. Those wishing to speak are reminded to sign in on the form provided.

C. **Correspondence - (There is no correspondence for Council review.)**

VI. **COUNCIL AD HOC COMMITTEE REPORTS**

Council Ad Hoc Committee Chairs may report on the status of their ad hoc Council Committees' progress on assigned tasks and may give their recommendation to the City Council, if any.

1. Finance Ad Hoc Committee (Chair Wales)

VII. **CONSENT AGENDA**

All matters listed on the Consent Agenda are considered by the City Council to be routine and will be enacted by one motion in the form listed.

- A. Minutes of the August 19, 2019 City Council Meeting

- B. Claim Vouchers (Thomas)

Claim vouchers list dated September 3rd, 2019 which includes voucher numbers 455289 through voucher 455471 in the amount of \$618,186.36 and three wire transfers in the amount of \$759,523.66.

- C. Payroll Vouchers (Thomas)

Payroll check numbers 538589 through 538605 in the amount of \$577,702.86, electronic deposit transmissions in the amount of \$2,075,699.94 for a grand total of \$2,653,402.80 for the period covering August 15, 2019 to August 28, 2019, are approved for payment this 3rd day of September, 2019.

- D. Setting Public Hearing for the 2020-2024 Community Development Block Grant Consolidated Plan (Tate)

City Council to set the date for a Public Hearing for the proposed Consolidated Plan 2020-2024 Update (Consolidated Plan) and Analysis of Impediments to Fair Housing Choice to be held on October 7, 2019 at 7:00pm

(RECOMMENDED ACTION: Move to approve the Consent Agenda.)

VIII. **UNFINISHED BUSINESS**

IX. **NEW BUSINESS**

X. **RESOLUTIONS**

- A. Resolution No. 5447 (Hinman)

A Resolution of the City Council of the City of Auburn, Washington, related to forfeited property; declaring forfeited real property as surplus, and authorizing the Mayor to negotiate and execute agreements

(RECOMMENDED ACTION: Move to adopt Resolution No. 5447.)

- B. Resolution No. 5451 (Gaub)

A Resolution of the City Council of the City of Auburn, Washington, setting a public

hearing to consider the vacation of right-of-way of 130th Avenue SE, between SE 304th Street and SE 302nd Place, within the City of Auburn, Washington

(RECOMMENDED ACTION: Move to adopt Resolution No. 5451.)

C. Resolution No. 5453 (Hinman)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor to negotiate and execute agreements related to the Auburn Consolidated Resource Center

(RECOMMENDED ACTION: Move to adopt Resolution No. 5453.)

XI. MAYOR AND COUNCILMEMBER REPORTS

At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.

A. **From the Council**

B. **From the Mayor**

XII. ADJOURNMENT

Agendas and minutes are available to the public at the City Clerk's Office, on the City website (<http://www.aubumwa.gov>), and via e-mail. Complete agenda packets are available for review at the City Clerk's Office.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Public Hearing for Franchise Agreement No. FRN19-0014
(Gaub)

Date:

August 14, 2019

Department:

Public Works

Attachments:

[Draft Ordinance No. 6727 Franchise Agreement
No. FRN19-0014](#)

Budget Impact:

Current Budget: \$0
Proposed Revision: \$0
Revised Budget: \$0

Administrative Recommendation:

City Council to hold a public hearing in consideration of Franchise Agreement No. FRN19-0014 for New Cingular Wireless PCS, LLC.

Background Summary:

Section 20.06.030 of the Auburn City Code requires the City to hold a public hearing before deciding to approve or reject a franchise application. Franchise Agreement No. FRN19-0014 for New Cingular Wireless PCS, LLC, would allow it to build and operate a small wireless facilities network within the City's rights-of-way. The public hearing was set by consent on August 19, 2019.

Reviewed by Council Committees:**Councilmember:****Staff:**

Gaub

Meeting Date: September 3, 2019

Item Number:

PH.1

ORDINANCE NO. 6727

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING NEW CINGULAR WIRELESS PCS, LLC, A FRANCHISE FOR WIRELESS TELECOMMUNICATIONS FACILITIES

WHEREAS, New Cingular Wireless PCS, LLC ("Grantee"), has applied to the City of Auburn ("City") for a non-exclusive Franchise for the right of entry, use, and occupation of certain public right(s)-of-way within the City, to install, construct, erect, operate, maintain, repair, relocate and remove Grantee's facilities in, on, over, under, along and/or across those right(s)-of-way; and

WHEREAS, following proper notice, the City Council held a public hearing on Grantee's request for a Franchise; and

WHEREAS, based on the information presented at the public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council now deems it appropriate and in the best interest of the City and its inhabitants to grant the franchise to Grantee.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, DO ORDAIN as follows:

Section 1. Grant of Right to Use; Franchise Area

A. Subject to the terms and conditions stated in this Agreement, the City grants to the Grantee general permission to enter, use, and occupy the Franchise Area, located within the incorporated area of the City. Grantee may locate the Grantee Facilities within the Franchise Area subject to all applicable laws, regulations, and permit conditions.

B. The Grantee is authorized to install, remove, construct, erect, operate, maintain, relocate, upgrade, replace, restore and repair Grantee Facilities to provide Wireless Telecommunications Services in the Franchise Area.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Grantee Facilities and Wireless Telecommunications Services, and it extends no rights or privilege relative to any facilities or services of any type, including Grantee Facilities and Wireless Telecommunications Services, on public or private property elsewhere within the City.

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including Franchises, impacting the Franchise Area, for any purpose that does not interfere with Grantee's rights under this Franchise.

E. Except as explicitly set forth in this Agreement, this Franchise does not waive any rights that the City has or may acquire with respect to the Franchise Area or any other City roads, rights-of-way, property, or any portions thereof. This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, the Grantee acknowledges its use of the Franchise Area shall have no value.

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any right-of-way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Grantee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.

G. The Grantee agrees that its use of Franchise Area shall at all times be subordinated to and subject to the City and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

Section 2. Notice

A. Written notices to the parties shall be sent by a nationally recognized overnight courier or by certified mail to the following addresses, unless a different address shall be designated in writing and delivered to the other party. Any such notice shall become effective upon receipt by certified mail, confirmed delivery by overnight courier, or the date stamped received by the City.

City: Right-of-Way Specialist
Public Works Department - Transportation
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010; Fax: (253) 931-3048

with a copy to: City Clerk
City of Auburn
25 West Main Street
Auburn, WA 98001-4998

Grantee: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Site No. City of Auburn Wireless Franchise Agreement (WA)
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Site No. City of Auburn Wireless Franchise Agreement (WA)
208 S. Akard Street
Dallas, TX 75202-4206

B. Any changes to the above-stated Grantee information shall be sent to the City at City's notice addresses, referencing the number of this Ordinance.

C. The City may also contact Grantee at the following number during normal business hours and for emergency or other needs outside of normal business hours of the Grantee: (800) 832-6662.

Section 3. Term of Agreement

A. This Franchise shall run for a period of five (5) years, from the effective date of this Franchise specified in Section 5.

B. Renewal Option of Term: The Grantee may renew this Franchise for one, additional five (5) year period upon submission and approval of the application specified under ACC 20.06.130, as it now exists or is amended, within the timeframe set forth in that section (currently not more than 240 and not less than 180 days prior to expiration of the then-current term). Any materials submitted by the Grantee for a previous application may be considered by the City in reviewing a current application, and the Grantee shall only submit those materials deemed necessary by the City to address changes in the Grantee Facilities or Telecommunications Services, or to reflect specific reporting periods mandated by the ACC.

C. Failure to Renew Franchise – Automatic Extension. If the Parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the Franchise automatically continues month to month until renewed or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

Section 4. Definitions

For the purpose of this agreement:

- A. "ACC" or "City Code" means the Auburn City Code.
- B. "Emergency" means a condition of imminent danger to the health, safety and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.
- C. "Franchise Area" means all present and future Rights-of-Way as defined in Section 4.H. herein, within the City Limits as they currently exist or as amended in the future.
- D. "Grantee Facilities" means any and all equipment, appliances, attachments, appurtenances and other items necessary for Telecommunications Services or "personal wireless services" as defined in RCW 80.36.375 or 35.99.010(7), respectively, that are located in the Right-of-Way. It includes microcell, minor and small cell facilities and strand-mounted units.
- Grantee Facilities do not include anything used to provide wireline services, front-haul or back-haul services, including fiber optic cables, coaxial cables, wires, conduit or other equipment, appliances, attachments and appurtenances. They do not include any equipment that is not within ten (10) feet of the pole (excluding any strand-mounted unit) or base station, or that is not within the Right-of-Way, or that is covered under a separate Franchise Agreement or agreement.
- E. "Grantee's Wireless Telecommunications Services" means the transmission and reception of wireless communications signals, including but not limited to personal wireless and data communications services, over Licensee's federally licensed frequencies, pursuant to all the rules and regulations of the Federal Communications Commission, and in accordance with the terms of this Agreement, for the benefit of wireless communications subscribers in and around the Franchise Area.
- F. "Maintenance" or "maintain" shall mean examining, testing, inspecting, repairing, maintaining, restoring and replacing the existing Grantee Facilities or any part thereof as required and necessary for safe operation.
- G. "Relocation" means permanent movement of Grantee Facilities required by the City, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

H. "Rights-of-Way" means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, shoulders, curbs, landscaping areas between sidewalks and curbs or shoulders, and other public rights-of-ways and similar public properties and areas to the extent that the City has the authority to grant permission to use any of the foregoing. It does not include structures, including poles and conduit, located in the right-of-way and, any other property owned by the City in its proprietary capacity.

Section 5. Acceptance of Franchise

A. This Franchise shall not become effective until Grantee files with the City Clerk (1) the Statement of Acceptance (Exhibit "A"), (2) all verifications of insurance coverage specified under Section 15, (3) the financial guarantees specified in Section 16, and (4) payment of any outstanding application fees per the City Fee Schedule. These four items shall collectively be the "Franchise Acceptance". The date that such Franchise Acceptance is filed with the City Clerk shall be the effective date of this Franchise.

B. Should the Grantee fail to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise, the City's grant of the Franchise will be null and void.

Section 6. Location, Siting, Construction and Maintenance

A. The Grantee shall apply for, obtain, and comply with the terms of all permits, approvals and facilities lease agreements as required under ACC Chapters 12.24, 13.32A and 20 for any work done within the Right-of-Way or to site Grantee Facilities on any facilities, structures or poles owned by third parties within the Right-of-Way or on any City-owned facilities, structures or poles within the Right-of-Way. City Council authorizes the Director of Public Works or the Director's designee to negotiate and execute all agreements necessary for the use of City owned property. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner.

Grantee shall be required to submit the appropriate application to the City related to siting within the public Right-of-Way as provided under this Franchise, for review and approval by the City Engineer, prior to submitting an application for a construction permit(s) for any and all locations in the public Right-of-Way, whether Grantee is proposing to locate on City owned facilities, structures or poles, or on third party owned facilities, structures or poles. The siting application shall be submitted to the City and shall be in addition to any other required permits for construction, building, land use, zoning, lease agreements or other approvals as required by applicable City Code.

B. Grantee agrees to coordinate its activities with the City and all other utilities located in the public Right-of-Way within which Grantee is undertaking its activity.

C. The City expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the public Right-of-Way and may from time to time, pursuant to and in accordance with the applicable sections of this Franchise or the ACC, require the adjustment, securement, removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Grantee.

D. Before commencing any work within the public Right-of-Way, the Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the City and in accordance with City ordinances, Grantee shall have the authority to reasonably trim trees upon and overhanging streets, public rights-of-way, and public places in the Franchise Area to the extent necessary to prevent the branches of those trees from coming in physical contact with the Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, the City may, at its sole discretion, remove such debris and charge Grantee for the cost of removal. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a land-clearing permit.

Section 7. Repair and Emergency Work

In the event of an emergency, the Grantee may commence repair and emergency response work as required under the circumstances. The Grantee shall notify the City telephonically during normal business hours (at 253-931-3010) and during non-business hours (at 253-876-1985) as promptly as possible, before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Grantee's emergency contact phone number for the corresponding response activity. The City may commence emergency response work, at any time, without prior written notice to the Grantee, but shall notify the Grantee in writing as promptly as possible under the circumstances. Grantee will reimburse the City for the City's actual cost of performing emergency response work.

Section 8. Damages to City and Third-Party Property

Grantee agrees that if any of its actions under this Franchise impairs or damages any property, Grantee will restore, at its own cost and expense, the property to a safe condition. Upon returning property to a safe condition, the property shall then be returned to the condition it was in immediately prior to being damaged (if the safe condition of the property is not the same as that which existed prior to damage). Such repair work shall be performed and completed to the satisfaction of the City Engineer.

Section 9. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a utility, other than the Grantee's, which was installed, constructed, completed or in place prior in time to Grantee's application for a permit to construct or repair Grantee Facilities under this Franchise shall have preference as to positioning and location with respect to the Grantee Facilities. However, to the extent that the Grantee Facilities are completed and installed prior to another telecommunication or utility operator's or carrier's submittal of a permit for new or additional structures, equipment, appurtenances or tangible property, then the Grantee Facilities shall have priority. These rules governing preference shall continue in the event of the necessity of relocating or changing the grade of any City road or right-of-way. A relocating utility shall not necessitate the relocation of another utility that otherwise would not require relocation. This Section shall not apply to any City facilities or utilities that may in the future require the relocation of Grantee Facilities. Such relocations shall be governed by Section 11.

B. Grantee shall maintain a minimum underground horizontal separation of five (5) feet from City water, sanitary sewer and storm sewer facilities and ten (10) feet from above-ground City water facilities. For development of new areas, the City, in consultation with Grantee and other telecommunication and utility purveyors or authorized users of the Rights-of-Way, will develop guidelines and procedures for determining specific telecommunications and utility locations.

Section 10. Grantee Information

A. Grantee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under state law. This information shall include, at a minimum, as-built drawings of Grantee Facilities, including installation inventory, and maps and plans showing the location of existing Grantee Facilities and planned Grantee Facilities (to the extent that maps and plans showing planned facilities are available) within the Rights of Way. This information

may be requested either in hard copy or electronic format, compatible with the City's data base system, as now or hereinafter exists, including the City's Geographic Information System (GIS) data base. Upon the City's request, Grantee shall inform the City of its long range plans for installation, if such plans are available, so that the City may coordinate any future development with Grantee's proposed designs. If such plans are not immediately available, are not finalized, or are proprietary in nature, then Grantee is under no obligation to provide such information to the City. Should the Grantee fail, for any reason, to provide information regarding its long range plans or planned Grantee Facilities upon the City's request, then the City is under no obligation to coordinate with, account for or authorize their facilities in future Right-of-Way projects or the City's long range plans.

B. The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City; however, nothing in this Section shall be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards to protect the confidential or proprietary nature of the information. Accordingly, in the event the City receives a public records request under applicable state or federal law, the City agrees to notify the Grantee of such request related to the Grantee, and to give the Grantee ten (10) working days to obtain an injunction prohibiting the release of the records.

C. Grantee shall defend, indemnify and hold the City harmless for any loss or liability for fines, penalties, and costs (including attorneys' fees) imposed on the City because of non-disclosures requested by Grantee under Washington's public records act, provided the City has notified Grantee of the pending request.

Section 11. Relocation of Grantee Facilities

A. Pursuant to Auburn City Code Chapter 13 and Chapter 20 as currently written or as amended in the future, except as otherwise so required by law, Grantee agrees to relocate, remove, or reroute its facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions of Section 14, Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the Public Right-of-Way.

B. If securement, adjustment or relocation of the Grantee Facilities is necessitated by a request from a party other than the City, that party shall pay the Grantee the actual costs.

Section 12. Abandonment and or Removal of Grantee Facilities

A. Within one hundred and eighty days (180) of Grantee's permanent cessation of use of all or a portion of the Grantee Facilities, the Grantee shall, at the City's discretion, either abandon in place or remove the affected facilities.

B. Grantee may ask the City in writing to abandon, in whole or in part, all or any part of the Grantee Facilities. Any plan for abandonment of Grantee Facilities must be approved in writing by the City, which approval shall not be unreasonably withheld.

C. The parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise.

Section 13. Undergrounding

A. The parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities.

B. Subject to applicable law addressing the undergrounding of telecommunication facilities, whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Grantee shall underground the Grantee Facilities, in the manner specified by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Where other utilities are present and involved in the undergrounding project, Grantee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

Section 14. Indemnification and Hold Harmless

A. The Grantee shall defend, indemnify, and hold the City and its officers, officials, agents, contractors and employees, and volunteers harmless from any and all costs, claims, injuries, damages, losses, suits, or liabilities including attorneys' fees arising out of or in connection with the Grantee's performance (including Grantee's agents' or representatives' performances) under this Franchise, except to the extent such costs, claims, injuries, damages, losses, suits, or liabilities are caused by the sole negligence or willful misconduct of the City or its officers, officials, agents and employees. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the

event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, officials or employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence.

B. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, right-of-way, or other property, except to the extent any such damage or loss is directly caused by the negligence or willful misconduct of the City, or its employees, contractors and agents performing such work.

C. The Grantee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Grantee, and its agents, assigns, successors, or contractors, shall make such arrangements as Grantee deems fit for the provision of such services with regard to work performed by or at the direction of Grantee. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 14(A), the Grantee shall indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

D. Acceptance by the City of any work performed by the Grantee shall not be grounds for avoidance of this section.

E. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of indemnity claims made by the City against Grantee or claims made by Grantee's employees directly against the City. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 15. Insurance

A. The Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Grantee, its officers, officials, and employees in the amounts and types set forth below:

1. Commercial Automobile Liability insurance ISO Form CG 00 01 covering all owned, non-owned, hired, and leased vehicles with a combined single limit for bodily injury and property damage of \$1,000,000.00 per accident including contractual liability. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01, or a substitute form used by Grantee, so long as it provides equivalent liability coverage.

2. Commercial General Liability insurance with limits of \$5,000,000.00 each occurrence for bodily injury and property damage and, \$5,000,000.00 general aggregate including \$5,000,000.00 products-completed operations aggregate limit, premises-operations, independent contractors, products-completed operations, personal injury and advertising injury and contractual liability coverage. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be included as an additional insured as their interest may appear under the Grantee's Commercial General Liability insurance policy with respect to the work performed under this Franchise by means of a blanket additional insured endorsement using ISO Additional Insured Endorsement for Ongoing Operations, CG 20 10 10 01 and Additional Insured Completed Operations Endorsement, CG 20 37 10 01, or substitute endorsements utilized by Grantee providing equivalent coverage.

3. Professional Liability insurance with limits of \$1,000,000.00 per claim and aggregate covering the negligence, acts, errors, and/or omissions of Grantee in the performance of professional services under this Franchise.

4. Workers' Compensation coverage (or qualified self-insurance coverage) as required by the Industrial Insurance laws of the State of Washington.

B. The insurance policies shall:

1. Provide that the Grantee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Grantee's insurance and shall not contribute with it.

2. Upon receipt of appropriate notice from its insurer(s), Grantee shall provide the City with thirty (30) days prior written notice of cancellation or nonrenewal of any of the required insurance policies that are not replaced.

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

D. Verification of Coverage. Grantee shall furnish the City with documentation of insurer's A.M. Best rating and with original certificates and a copy of amendatory endorsements, including but not necessarily limited to the blanket additional insured endorsements evidencing the insurance requirements of Grantee before commencement of the work.

E. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

F. Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 16. Performance Security

The Grantee shall provide the City with a bond or financial guarantee in the amount of Fifty Thousand Dollars (\$50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City, for all of the Grantee Facilities in the City. If Grantee fails to substantially comply with any one or more of the provisions of this Franchise, the City shall recover jointly and severally from the Grantee, bond or any surety of such financial guarantee, any actual and direct damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs and the cost of removal or abandonment of facilities. Grantee specifically agrees that its failure to comply with the terms of Section 19 shall constitute a material breach of this Franchise. Such a bond or financial guarantee shall not be construed to limit the Grantee's liability to the guarantee amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 17. Successors and Assignees

A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns, and independent contractors of the Grantee, and all rights and privileges, as well as all obligations and liabilities of the Grantee shall inure to its successors, assignees and contractors equally.

B. This Franchise shall not be leased, assigned or otherwise alienated without the express prior consent of the City by ordinance.

C. Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than sixty (60) days prior to the proposed date of transfer: (1) Complete information setting forth the nature, term and

conditions of the proposed assignment or transfer; (2) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (3) An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

D. Prior to the City's consideration of a request by Grantee to consent to a Franchise assignment or transfer, the proposed Assignee or Transferee shall file with the City a written promise to unconditionally accept all terms of the Franchise, effective upon such transfer or assignment of the Franchise. The City is under no obligation to undertake any investigation of the transferor's state of compliance and failure of the City to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

E. Transactions between affiliated entities are not exempt from the required City approval. Grantee shall promptly notify the City in writing prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Grantee's company. Notification shall include those items set out in subsection 17.C (1) through (3) herein above.

Section 18. Dispute Resolution

A. In the event of a dispute between the City and the Grantee arising by reason of this Agreement, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Agreement. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case, and such fees shall be included in the judgment.

Section 19. Enforcement and Remedies

A. If the Grantee shall willfully violate, or fail to comply with any of the provisions of this Franchise through negligence, or should it fail to heed or comply

with any notice given to Grantee under the provisions of this Agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of receipt of written notification. If the parties determine the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty-day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Grantee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification (2) terminate Franchisee's use of the specific portion(s) of the ROW to which the default(s) pertains at the discretion of the City Engineer, or (3) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the bond or financial guarantee set forth in Section 16 for every day after the expiration of the cure period that the breach is not cured.

B. Should the City determine that Grantee is acting beyond the scope of permission granted herein for Grantee Facilities, and Grantee Services, the City reserves the right to cancel this Franchise and require the Grantee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Grantee's actions are not allowed under applicable federal and state or City laws, to compel Grantee to cease such actions.

Section 20. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Grantee shall comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise (collectively, "Laws"). Furthermore, notwithstanding any other terms of this Agreement appearing to the contrary, the Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. The amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days or within such other timeframe as

determined by the City, of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise upon thirty (30) days written notice to the Grantee, if the Grantee fails to comply with such amendment or modification. The City shall retract its notice of termination if the City determines that the Grantee is in compliance with the amendment or modification within such 30-day period. The City may grant longer than the 30-days to comply if the Grantee provides notice to the City of its intent to comply and can demonstrate good-faith efforts to reach compliance to the satisfaction of the City.

Section 21. License, Fees, Tax and Other Charges

Grantee shall pay promptly and before they become delinquent, all fees and charges for all applicable permits, licenses and construction approvals imposed by the City for Grantee's permitted use of the Grantee Facilities within the Rights-of-Way. This Franchise shall not exempt the Grantee from any future license, fee, tax, or charge, which the City may hereinafter adopt pursuant to authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 22. Consequential Damages Limitation

Notwithstanding any other provision of this Agreement, in no event shall either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 23. Severability

If any portion of this Franchise is deemed invalid, the remainder portions shall remain in effect.

Section 24. Titles

The section titles are for reference only and should not be used for the purpose of interpreting this Franchise.

Section 25. Implementation.

The Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directions of this Franchise.

Section 26. Effective date.

Draft Ordinance No. 6727

July 30, 2019

Franchise Agreement No. FRN19-0014

Page 15 of 17

This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, City Clerk

APPROVED AS TO FORM:

Steven L. Gross, City Attorney

Published: _____

Exhibit A

STATEMENT OF ACCEPTANCE

New Cingular Wireless PCS, LLC, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

By: _____
Name: _____
Title: _____

Date: _____

STATE OF _____)
)ss.
COUNTY OF _____)

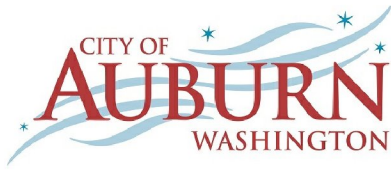
On this ____ day of _____, 2019, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____ the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

Signature

NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____



AGENDA BILL APPROVAL FORM

Agenda Subject:

Minutes of the August 19, 2019 City Council Meeting

Department:

City Council

Attachments:

[08-19-2019 Minutes](#)

Date:

August 28, 2019

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:**Background Summary:****Reviewed by Council Committees:****Councilmember:**

Meeting Date: September 3, 2019

Staff:

Item Number: CA.A

	City Council Meeting August 19, 2019 - 7:00 PM City Hall Council Chambers MINUTES Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. CALL TO ORDER

A. Pledge of Allegiance

Mayor Nancy Backus called the meeting to order at 7:00 p.m. in the Council Chambers of Auburn City Hall, 25 West Main Street in Auburn and led those in attendance in the Pledge of Allegiance.

B. Roll Call

Councilmembers present: Bob Baggett, Larry Brown, Claude DaCorsi, and Yolanda Trout-Manuel. Deputy Mayor Bill Peloza, Councilmember John Holman and Largo Wales were excused.

Department directors and staff members present included: City Attorney Steve Gross, Director of Finance Jamie Thomas, Director of Public Works Ingrid Gaub, Director of Community Development Jeff Tate, Director of Parks, Arts, and Recreation Daryl Faber, Director of Innovation & Technology David Travis, Chief of Police Bill Pierson, and Deputy City Clerk Teresa Mattingly.

II. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

A. International Overdose Awareness Day Proclamation

Mayor Backus to proclaim August 31, 2019 as "International Overdose Awareness Day" in the city of Auburn.

Mayor Backus proclaimed August 31, 2019 as International Overdose Awareness Day and will present the proclamation to Battlefield Addiction.

B. Children's Therapy Center Day Proclamation

Mayor Backus to proclaim August 29, 2019 as "Children's Therapy Center Day" in the city of Auburn.

Mayor Backus proclaimed August 29, 2019 as Children's Therapy Center Day and presented the proclamation to CEO Barry Gourley, Board President Rita Schwarting, Board Member Susan Adams, and Founders Sue Hudson and Gay Lloyd Pinder.

Mr. Gourley thanked the Mayor and Council for the partnership between Children's Therapy Center.

C. Chief of Police Presentation

Mayor Backus moved this item to the first item in this section.

Chief Pierson presented Officer Matt Wilkinson and Officer Michael Mabis with the Auburn Life Saving Award.

III. **APPOINTMENTS**

There were no announcements, reports or presentations.

IV. **AGENDA MODIFICATIONS**

There was no modifications to the agenda.

V. **CITIZEN INPUT, PUBLIC HEARINGS AND CORRESPONDENCE**

A. **Public Hearings - (No public hearing is scheduled for this evening.)**

B. **Audience Participation**

This is the place on the agenda where the public is invited to speak to the City Council on any issue. Those wishing to speak are reminded to sign in on the form provided.

Don McGurty, Auburn

Mr. McGurty asked for information on when the next litter control and recycling contract would come up for bid.

Devendra Maharaj, Verizon Wireless, Bellevue

Mr. Maharaj thanked the Mayor and Council for their efforts on adopting Resolution No. 6721, a franchise for Wireless Telecommunications Facilities with Verizon Wireless.

Virginia Haugen, 2503 R St SE, Auburn

Ms. Haugen thanked 911 operators and the Police Department for their response time, and expressed her concerns regarding Parks Department budget impact.

C. **Correspondence**

There was no correspondence for Council to review.

VI. **COUNCIL AD HOC COMMITTEE REPORTS**

Council Ad Hoc Committee Chairs may report on the status of their ad hoc Council Committees' progress on assigned tasks and may give their recommendation to the City Council, if any.

1. Finance Ad Hoc Committee (Chair Wales)

Councilmember DaCorsi, Vice Chair of the Finance ad hoc committee, reported he and Councilmember Wales have reviewed the claims and payroll vouchers described on the Consent Agenda this evening and recommended their approval.

VII. CONSENT AGENDA

All matters listed on the Consent Agenda are considered by the City Council to be routine and will be enacted by one motion in the form listed.

A. Minutes of the July 8, 2019 Study Session

B. Minutes of the August 5, 2019 City Council Meeting

C. Claim Vouchers (Thomas)

Claim vouchers list dated August 19, 2019 which includes voucher numbers 455103 through 455288 in the amount of \$4,205,532.94 and three wire transfers in the amount of \$513,975.20

D. Payroll Vouchers (Thomas)

Payroll check numbers 538565 through 538588 in the amount of \$250,588.31, electronic deposit transmissions in the amount of \$2,078,956.12 for a grand total of \$2,329,544.43 for the period covering August 1, 2019 to August 14, 2019

E. CP1720 Game Farm Park No. 4 Ballfield Lighting (Faber)

CP1720 Game Farm Park improvement project allows for the purchase and installation of softball field lights on Game Farm Park Ball field #4

F. Setting Public Hearing Date for Franchise Agreement
#FRN190014 (Gaub)

City Council to set the date of the Public Hearing for Franchise Agreement No. FRN19-0014 for New Cingular Wireless PCS, LLC to be held on September 3, 2019, at 7:00 pm

Councilmember DaCorsi moved and Councilmember Trout-Manuel seconded to approve the consent agenda.

MOTION CARRIED UNANIMOUSLY. 4-0

VIII. UNFINISHED BUSINESS

There was no unfinished business.

IX. NEW BUSINESS

There was no new business.

X. ORDINANCES

A. Ordinance No. 6721 (Gaub)

An Ordinance of the City Council of the City of Auburn, Washington, granting Seattle SMSA Limited Partnership, a Delaware Limited Partnership, D/B/A Verizon Wireless, a franchise for wireless telecommunications facilities

Councilmember Brown moved and Councilmember Baggett seconded to adopt Ordinance No. 6721.

MOTION CARRIED UNANIMOUSLY. 4-0

B. Ordinance No. 6726 (Gaub)

An Ordinance of the City Council of the City of Auburn, Washington, relating to the Limited Public Works Process and amending Section 3.12.100 of the Auburn City Code

Councilmember Trout-Manuel moved and Councilmember Brown seconded to adopt Ordinance No. 6726.

MOTION CARRIED UNANIMOUSLY. 4-0

XI. RESOLUTIONS

A. Resolution No. 5450 (Thomas)

A Resolution of the City Council of the City of Auburn, Washington, authorizing the contribution and withdrawal of City monies in the State of Washington Local Government Investment Pool

Councilmember DaCorsi moved and Councilmember Baggett seconded to approve Resolution No. 5450.

MOTION CARRIED UNANIMOUSLY. 4-0

XII. MAYOR AND COUNCILMEMBER REPORTS

At this time the Mayor and City Council may report on significant items associated with their appointed positions on federal, state, regional and local organizations.

A. From the Council

Councilmember Brown reported he has been exploring housing and infrastructure investment opportunities for the City.

Councilmember Trout-Manuel reported she attended the AugustFest parade.

B. From the Mayor

Mayor Backus reported she attended the Community Picnics at Evergreen Heights Elementary School and Brennan Park. She also attended the last

Summer Cruise-Ins, and the "75 Year Celebration" at Wesley Lea Hill Retirement Center.

XIII. ADJOURNMENT

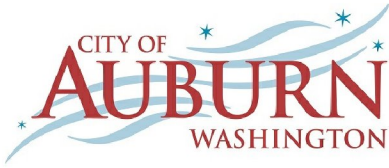
There being no further business to come before the Council, the meeting was adjourned at 7:30 p.m.

APPROVED this 3rd day of September, 2019.

NANCY BACKUS, MAYOR

Teresa Mattingly, Deputy City Clerk

Agendas and minutes are available to the public at the City Clerk's Office, on the City website (<http://www.auburnwa.gov>), and via e-mail. Complete agenda packets are available for review at the City Clerk's Office.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Claim Vouchers (Thomas)

Date:

August 28, 2019

Department:

City Council

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Claim Vouchers.

Background Summary:

Claim vouchers list dated September 3rd, 2019 which includes voucher numbers 455289 through voucher 455471 in the amount of \$618,186.36 and three wire transfers in the amount of \$759,523.66.

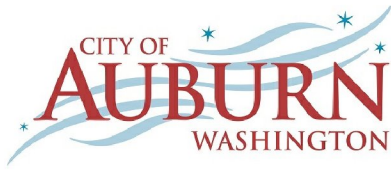
Reviewed by Council Committees:**Councilmember:****Staff:**

Thomas

Meeting Date: September 3, 2019

Item Number:

CA.B



AGENDA BILL APPROVAL FORM

Agenda Subject:

Payroll Vouchers (Thomas)

Date:

August 28, 2019

Department:

City Council

Attachments:

No Attachments Available

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

Approve Payroll Vouchers.

Background Summary:

Payroll check numbers 538589 through 538605 in the amount of \$577,702.86, electronic deposit transmissions in the amount of \$2,075,699.94 for a grand total of \$2,653,402.80 for the period covering August 15, 2019 to August 28, 2019, are approved for payment this 3rd day of September, 2019.

Reviewed by Council Committees:**Councilmember:****Staff:**

Thomas

Meeting Date: September 3, 2019

Item Number:

CA.C



AGENDA BILL APPROVAL FORM

Agenda Subject:

Setting Public Hearing for the 2020-2024 Community Development Block Grant Consolidated Plan (Tate)

Date:

August 27, 2019

Department:

Community Development

Attachments:

[Proposed Consolidated Plan and All Public Notice](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to set the date for a Public Hearing on October 7, 2019 for the CDBG Consolidated Plan and Analysis of Impediments to Fair Housing Choice.

Background Summary:

The City of Auburn's Community Development Block Grant (CDBG) Citizen Participation Plan requires Public Hearings to be held at two key stages of the Consolidated Planning process – prior to development to gain input on what should be included, and after the Consolidated Plan has been drafted. Staff requests that the City Council provide permission to call for a Public Hearing for the proposed Consolidated Plan 2020-2024 Update and Analysis of Impediments to Fair Housing Choice to be held on October 7, 2019 at 7:00pm.

The proposed Consolidated Plan and Analysis of Impediments to Fair Housing Choice are requirements for the Department of Housing and Urban Development's CDBG Program. The Consolidated Plan describes housing and community development needs as well as activities to address those needs. The Analysis of Impediments to Fair Housing Choice provides an overview of barriers to accessing Fair Housing in King County and proposes goals to address those barriers. The Consolidated Plan includes a needs assessment, five-year strategy and the 2020 Annual Action Plan.

The draft plan will be posted on the City's Community Services Division webpage on September 4, 2019, and written copies are available upon request.

Reviewed by Council Committees:**Councilmember:****Staff:**

Tate

Meeting Date: September 3, 2019

Item Number:

CA.D

City of Auburn

Community Services Division

25 West Main Street, Auburn, Washington 98001 Phone: 253-931-3041

Contact: Joy Scott, Community Services Manager
Phone: 253-876-1965 Email: jfscott@auburnwa.gov

FOR IMMEDIATE RELEASE: September 4, 2019

PUBLIC NOTICE

Notice Of Public Hearing and of 30-Day Comment Period Proposed Auburn Consolidated Plan: 2020-2024 Update and Analysis of Impediments to Fair Housing Choice

NOTICE OF PUBLIC HEARING the Auburn City Council will hold a public hearing at 7:00 p.m. on October 7, 2019, in the Council Chambers at City Hall, located at 25 West Main Street, in downtown Auburn about the proposed Consolidated Plan 2020-2024 Update (Consolidated Plan) and Analysis of Impediments to Fair Housing Choice. The Consolidated Plan is inclusive of the City of Auburn's 2020 Annual Action Plan for Community Development Block Grant (CDBG) projects.

The Consolidated Plan outlines proposed expenditures to implement the City's efforts related to its CDBG projects. It identifies federal and local funds expected to be available, indicates the activities on which they will be spent, and sets goals for the number and type of services expected to be provided.

The proposed Consolidated Plan and Analysis of Impediments to Fair Housing Choice are requirements for the Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) Program. The Consolidated Plan describes housing and community development needs as well as activities to address those needs. The Analysis of Impediments to Fair Housing Choice provides an overview of barriers to accessing Fair Housing in King County and proposes goals to address those barriers. The Consolidated Plan includes a needs assessment, five-year strategy and the 2020 Annual Action Plan.

NOTICE OF PUBLIC COMMENT the City of Auburn's Consolidated Plan 2020-2024 Update and Analysis of Impediments to Fair Housing Choice is available for a 30-day public review and comment period.

Comments may be offered in person at the public hearing on October 7, 2015. Written comments regarding the Consolidated Plan, 2020 Annual Action Plan, or Analysis of Impediments to Fair Housing Choice may be submitted to:

Joy Scott, Community Services Manager
25 W Main Street
Auburn, WA 98001

The deadline for the consideration of written comments is 4:30 p.m. on October 7, 2019. Written comments and comments from the public hearing will be addressed in the final draft of the Consolidated Plan and Action Plan.

Copies of the Plan are available at the City of Auburn's Department of Community Development, located on the second floor of Auburn's City Hall Annex, 1 E. Main Street, in downtown Auburn between the hours of 8:00 a.m. and 5:00 p.m.

Written requests for a copy of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice may be mailed to the Department of Community Development, 25 West Main Street, Auburn, WA 98001. A copy of the Plan will be provided through the mail within five (5) working days upon request.

This notice is available in alternate formats for individuals with disabilities upon request. The Auburn City Hall is wheelchair accessible. Reasonable accommodations at the public hearing such as sign language interpretation or alternate formats for printed material are available for individuals with disabilities with a minimum of 7 days advance notice.

For more information or to request a copy of the Plan, please contact Joy Scott, Community Services Manager at 253-876-1965, email jfscott@auburnwa.gov or Kyla Wright, Human Services Program Coordinator at 253-931-3096, email kwright@auburnwa.gov.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5447 (Hinman)

Date:

August 26, 2019

Department:

Administration

Attachments:

[RES 5447 Surplusing Property \(BD\)](#)

[Exhibit A: Settlement Agreement](#)

[Exhibit B: Promissory Note](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to approve Resolution No. 5447

Background Summary:

In February of 2019, Auburn initiated proceedings in King County Superior Court to seize property pursuant to RCW 69.50.505 because the property was being used to illegally manufacture marijuana. State law restricts the use of any such forfeited property and the proceeds from the sale of the property to further activities related to the expansion and improvements of controlled substance law enforcement.

The lien holder of the property has agreed to enter into a promissory note with the City whereby it will allow for the assignment of the Deed of Trust to the City and allow the City up to 6 months to sell the property, pay off the remaining balance of the loan principal with accrued interest without initiating any foreclosure proceedings.

Resolution No. 5447, if adopted by City Council, authorizes the Mayor to enter into a Settlement Agreement, execute a promissory note, and accept forfeited property on the City's behalf. This property is declared not necessary for law enforcement purposes and therefore declared as surplus property and authorizes the Mayor to dispose of the property through a fair market sale. The Resolution, execution of the associated documents, and the sale of the property will satisfy the requirements of the promissory note, RCW 69.50.505, and provide additional unbudgeted funding for expansion and improvement of controlled substance related law enforcement activity.

Reviewed by Council Committees:**Councilmember:****Staff:**

Hinman

Meeting Date: September 3, 2019

Item Number:

RES.A

RESOLUTION NO. 5447

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON RELATED TO FORFEITED PROPERTY; DECLARING FORFEITED REAL PROPERTY AS SURPLUS, AND AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AGREEMENTS.

WHEREAS, on or about February 19, 2019, the City of Auburn initiated proceedings in the King County Superior Court to seize property located at 25322 Cumberland Way, in Black Diamond, Washington, pursuant to RCW 69.50.505, as the property was used to manufacture of marijuana; and

WHEREAS, the owners of the property have agreed to forfeit their right, title, and interests in the real property, pursuant to a settlement agreement; and

WHEREAS, state law restricts the use of such forfeited property, and the proceeds from the sale of the property, to further activities related to the expansion and improvement of controlled substances law enforcement; and

WHEREAS, the Auburn Police Department has determined that law enforcement does not require use for the property and it is in the public interest to surplus the property and sell it for its fair market value.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RESOLVES as follows:

Section 1. The Mayor is authorized to enter into a Settlement Agreement substantially in the form of Exhibit A, to execute a Promissory Note substantially in the form of Exhibit B, and to accept the forfeited property on behalf of the City.

Section 2. The property described below is declared to be not necessary for law enforcement purposes, is declared to be surplus. The Mayor is authorized to dispose of

the property through an appropriate fair market sale, and to deposit any remaining proceeds in the City's drug forfeiture fund.

25322 CUMBERLAND WAY, BLACK DIAMOND, KING COUNTY, WASHINGTON

PARCEL NO. 563600-0020

LOT 37, MORGAN CREEK I AND IV, ACCORDING TO THE PLAT THEREOF
RECORDED IN VOLUME 166 OF PLATS, PAGES 98 THROUGH 101,
INCLUSIVE, RECORDS OF KING COUNTY, WASHINGTON.
SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

Section 3. The Mayor is authorized to implement such other administrative procedures as may be necessary to carry out this legislation.

Section 3. This Resolution shall take effect and be in full force upon passage and signature.

Dated and Signed this _____ day of _____, 2019.

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Steven L. Gross, City Attorney

SETTLEMENT AGREEMENT

This Agreement is entered into by and between the CITY OF AUBURN, Washington, a municipal corporation of the State of Washington (“the City”), YUHUA WU and ZHAOWEN LIANG (“the Claimants”), and FRANK BARON, HONG FAMILY TRUST, AND DAVID ROSE, LLC (“Lender”).

RECITALS

Yuhua Wu owns real property located at 25322 Cumberland Way in Black Diamond, Washington (King County Tax Parcel No. 563600-0020 (“Property”).

On or about December 11, 2018, the Auburn Police Department executed a search warrant at the above-referenced property under APD case number 18-13348.

On February 20, 2019, the City filed a civil action in the King County Superior Court to seize the Property, which action is currently pending under Cause No. 19-2-04606-6KNT.

The City, Claimants, and Lender desire to settle this matter and have agreed to the disposition of the real property in consideration of the uncertainty of litigation, and the time and expense associated with proceeding to a trial.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the City and Claimants agree as follows:

1. Good Faith Seizure. There was probable cause sufficient for the seizure of the above described real property. Seizure of the property was lawful, and notice of the seizures followed due process. It is undisputed that the Auburn Police Department acted in good faith in pursuing the seizure and intended forfeiture of the real property.

2. Property Awarded to the City. The City is awarded real property located at 25322 Cumberland Way in Black Diamond, WA (King County parcel number 563600-0020) through operation of this Settlement Agreement. The Property legal description is as follows:

LOT 37, MORGAN CREEK I AND IV, ACCORDING TO THE PLAT
THEREOF RECORDED IN VOLUME 166 OF PLATS PAGES 98
THROUGH 101, INCLUSIVE, RECORDS OF KING COUNTY,
WASHINGTON
SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON

Claimants agree to forfeit to the City their right, title, and interest to the property, including all fixtures appliances, and appurtenances to the Property existing on the date of

seizure, and simultaneous to execution of this Agreement execute an agreed motion and order to dismiss superior court cause number 19-2-04606-6 KNT. Claimants agree to provide and execute any document reasonably necessary to facilitate a transfer of the property. City agrees to take said property in "as-is" condition and claimants give no warranties and makes no representations regarding the condition or habitability of the property.

3. Property Access. On the date of Claimants' signature of this Agreement, Claimants shall deliver to Plaintiff at 25 West Main Street, Auburn, WA, 98001, all of the following that are in their possession: house keys, garage door openers, garage door codes, all other security codes, and any written manuals or warranties for appliances, equipment, or fixtures for the Property. On the date of Claimants' signature of this Agreement, the Claimants will provide the City access to the Property for a full inspection.

3.1 Claimants will have one opportunity to enter into the home after execution of the Settlement Agreement to retrieve personal property (such as clothing, suitcases, and hygiene items) within five days after execution of this Agreement. Claimants will be required to provide at least two business days' notice to the City of the request to visit the home, limit the home visit to retrieve personal belongings to a two hour window during normal business hours, and to be accompanied at all times on the Property by two agents of the City's choosing including one Police Officer to secure the Property.

4. Division of Gross Proceeds After Sale of the Property. The parties agree that upon execution of this settlement agreement, the City will sell the Property. Upon the City's sale of the Property, the division of proceeds will be applied as follows:

4.1 Any taxes due and owing will be paid in full;

4.2 Any real estate commissions or closing costs will be paid in full;

4.3 Any utility liens, assessments including all Home Owners Association dues and assessments, or bills due and owing will be paid in full;

4.4 Any other costs or liens secured by the property will be paid in full including any outstanding mortgage payoff amount;

4.5 The costs, if any, of removing personal property from the home will be paid in full, including but not limited to the cost of hiring contractors to remove personal property and the cost of delivering and destroying personal property;

4.6 Any proceeds required to be remitted to the State Treasurer on behalf of the seizing agency;

4.7 Legal fees incurred by Doris Eslinger, counsel representing mortgaging entities, including Frank Baron, Hong Family Trust, and David Rose, LLC, the holder of a Promissory Note secured by a Deed of Trust on the Property ("Lender"), as a result of the negotiation with Parties and the sale of the Property in the amount of \$1,749.35

as of July 31, 2019, plus an additional amount to be paid consistent with Section 9(b) of the Promissory Note;

4.8 Fifty (50) percent of the net sale will be retained by the City and fifty (50) percent of the net sale will be retained by Claimants after Clauses 4.1 through 4.7 are satisfied, but in no event will Claimants sale proceeds exceed one hundred thousand dollars (\$100,000).

The City shall not accept any purchase offer without Lender's prior written consent if the City anticipates the proceeds of the sale is insufficient to fully satisfy the total payment owed to Lender (i.e., outstanding principal and other costs incurred relating to the loan). Lender agrees to forbear declaring the Deed of Trust in default for six months after the date of the signatures on this Settlement Agreement.

5. Encumbrances. Claimants agree to be in compliance with the terms in the Deed of Trust and Promissory Note prior to transferring the title of the said property to the City. If Claimants are out of compliance with any term(s) in the Deed of Trust or Promissory Note, any amount required to cure will be deducted from Claimants portion of the sale proceeds including but not limited to, outstanding mortgage or interest payments, hazard insurance, property insurance, lienable utilities, etc.

6. Dismissal of Lawsuit and Release of Lis Pendens. Within five (5) business days following execution of this Agreement by all parties, the City will file a Motion and Order of Dismissal with prejudice and without costs in King County Cause No. 19-2-04606-6 KNT. The City will also release the recorded lis pendens under King County recording no. 20190225000753 against the Property. The City and Claimants shall pay their own attorneys' fees, costs, and expenses in connection with this matter.

6. Indemnification. The Claimants shall indemnify, defend, and hold harmless the City, its agents, and employees from and against any and all liability arising from this forfeiture action and sale of the Property. In the event that the City shall elect to defend itself against any claim or suit arising from this agreement, the Claimant shall, in addition to indemnifying and holding the City harmless from any liability, indemnify the City for any and all expenses incurred by the City in defending such claim or suit, including reasonable attorneys' fees.

7. Reliance Upon Own Judgment and Counsel. The City, Claimants, and Lender have read this agreement and have knowingly, intelligently, and voluntarily entered into said agreement with full knowledge of the consequences of such agreement. The City, Claimants, and Lender agree that each of them was represented by counsel, or had the opportunity to independently consult with counsel of their choosing. As such, this agreement shall not be construed against any party as the drafter.

8. Release. The City hereby does completely and fully release, discharge, and hold harmless Claimants from any and all demands, claims, causes of action, or potential demands, claims, or causes of action, in law or equity, whether accrued or not and whether

now known or unknown, which relate to the set of facts that give rise to King County Superior Court Case No. 19-2-04606-6 KNT, meaning that the City agrees not to file any further demands, claims, or causes of action against Claimants arising out of the facts that led to the seizure and forfeiture of the real property.

9. No Admission of Liability. The Parties agree that this Agreement is a compromise and settlement of potential and/or disputed claims, and neither this Agreement nor any action taken to carry out this Agreement may be construed as, or used as an admission or concession of, or constitute a finding of, civil or criminal liability, fault, wrongdoing, or culpability by either party. Claimants deny all of the allegations contained in King County Superior Court Case No. 19-2-04606-6 KNT, but for purposes of this Agreement, agree that Claimants are entering into this Agreement knowingly, voluntarily and intelligently.

10. Entire Agreement. This Agreement and the Promissory Note incorporated in Exhibit A contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties. Either party may request changes to the Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

11. Binding on Successors and Assigns. All the terms and conditions of this Settlement Agreement and its exhibits shall be binding upon and inure to the benefit of the Claimants and the City and their respective heirs, successors, agents, and assigns.

12. Counterparts. This Settlement Agreement may be executed by multiple counterparts, each of which shall be deemed an original, binding on the parties to the Agreement, and all of which shall constitute one final agreement.

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13. Attorneys' Fees. In the event of a breach or a default under this Settlement Agreement, the breaching or defaulting party agrees to pay all attorneys' fees and costs incurred by the prevailing party in collecting amounts owed, or enforcing the agreement.

NANCY BACKUS, MAYOR

DATE

State of Washington)
)ss.
County of King)

I certify that I know or have satisfactory evidence that NANCY BACKUS is the person who appeared before me, and said individual acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the MAYOR OF THE CITY OF AUBURN to be the free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____

Notary Public in and for the State of Washington
Residing at _____
My appointment expires _____

APPROVED AS TO FORM:

Steven Gross, WSBA 24658
City Attorney

Date

YUHUA WU

DATE

State of Washington)
)ss.
County of _____)

I certify that I know or have satisfactory evidence that Yuhua Wu is the person who appeared before me, and said individual acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____

Notary Public in and for the State of Washington
Residing at _____
My appointment expires _____

ZHAOWEN LIANG

DATE

State of Washington)
)ss.
County of _____)

I certify that I know or have satisfactory evidence that Zhaowen Liang is the person who appeared before me, and said individual acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____

Notary Public in and for the State of Washington
Residing at _____
My appointment expires _____

EMILY TYSON-SHU, WSBA 51350
ATTORNEY FOR CLAIMANTS

DATE

DORIS ESLINGER, WSBA 41804
ATTORNEY FOR FRANK BARON,
HONG FAMILY TRUST, AND
DAVID ROSE, LLC

DATE

State of Washington)
)ss.
County of)

I certify that I know or have satisfactory evidence that DORIS ESLINGER is the person who appeared before me, and said individual acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the ATTORNEY FOR FRANK BARON, HONG FAMILY TRUST, AND DAVID ROSE, LLC to be the free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____

Notary Public in and for the State of Washington
Residing at _____
My appointment expires _____

**EXHIBIT A TO THE SETTLEMENT AGREEMENT
PROMISSORY NOTE**

FOR VALUE RECEIVED the City of Auburn ("City") promises to pay to the order of Frank Baron (34%), Hong Family Trust (20%), and David Rose, LLC (46%), ("Lender"), the principal sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) together with interest calculated following the date that the Settlement Agreement is signed by Lender to the date of the sale of the Property.

1. Definitions.

- a. Promissory Note: This instrument may be referred to as "the Note."
- b. Holder: The Holder of the Note is the Lender.
- c. Property: This Promissory Note is secured by a first lien Deed of Trust on the Property, recorded on December 7, 2016, under Auditor File No. 20161207002393, King County, Washington, having a common address of 25322 Cumberland Way, Black Diamond, Washington 98010. Legally described as:

LOT 37, MORGAN CREEK I AND IV, ACCORDING TO THE PLAT THEREOF
RECORDED IN VOLUME 166 OF PLATS PAGES 98 THROUGH 101,
INCLUSIVE, RECORDS OF KING COUNTY, WASHINGTON
SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON

2. Interest Rate. All interest on the outstanding principal balance of the Loan Amount shall be calculated on the basis of a 30-day month and a year of 360 days and at a rate of 8.50% per annum.

3. Payoff Loan Amount. Interest shall accrue from the date the Settlement Agreement is signed to the date of the sale of the property when the entire principal and interest shall be due no later than six months from the date of the execution of this Settlement Agreement ("Maturity Date"). Lender agrees to forbear declaring the Deed of Trust in default until the Maturity Date. Interest from the date of the Settlement Agreement until the first day of the next month shall be prorated on a per diem basis. Any unpaid interest shall be added to the principal of the Note and compounded. The final payoff shall be made payable to Mortgage Equities Inc., the agent of Lender, and sent to PO Box 407 Gig Harbor, WA 98335.

4. Payoff Deadline. The City shall have six (6) calendar months from the date of the Lender signing the Settlement Agreement to pay the Payoff Loan amount in full, or if the secured Property is sold before the Maturity Date, the Payoff Loan Amount, and all payments incurred by Lender related to the Deed of Trust shall be disbursed to Lender by escrow at closing. Notwithstanding anything to the contrary herein, interest shall continue to accrue during the processing time until Lender receives the Payoff Loan Amount. The parties reserve the right to mutually negotiate (an) extension(s) of the payoff deadline. If full timely payment is not made under the Note, default interest shall be charged at 18% per annum. All default interest will be added to the principal of the note. Timely payment includes six calendar months plus an additional 4-6 weeks for the City to process a check and deliver it to Mortgage Equities, Inc.

5. Pre-payment. This Note may be prepaid in whole or in part, at any time without penalty.

6. Reconveyance. The City will pay the Lender two hundred thirty dollars (\$230) for any request for reconveyance and the processing of the reconveyance.

7. Commercial Purpose. This Note is not primarily for personal, family or household purposes. This Note is for business, commercial and investment purposes. It is the specific intent of the undersigned and the Holder that this Note bear a lawful rate of interest, and if any court of competent jurisdiction should determine that the rate provided for in the Note exceeds that which is statutorily permitted for the type of transaction evidenced by the Note, the interest rate shall be reduced to the highest rate permitted by applicable law, with any excess interest previously collected applied against the principal, or if the principal has been fully repaid, returned to the City on demand.

8. No Waiver. The waiver by the Holder of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of payments hereunder by the Holder shall not be deemed to be a waiver of any preceding breach by the undersigned of any term, covenant or condition of the Note other than the failure of the undersigned to make the particular payment so accepted, regardless of Holder's knowledge of such preceding breach at the time of the acceptance of such payment. The acceptance of a partial payment by the Holder shall not be deemed a waiver.

9. Attorneys' fees. In the event litigation is instituted, declaratory or otherwise in connection with or arising out of the Note, the prevailing party will be awarded the costs thereof and attorneys' fees actually incurred which may be determined and fixed by a court as part of the judgment.

a. The parties agree that all pre-litigation consultation fees incurred by counsel for the Holder of the note to the date of the Settlement Agreement will be paid according to paragraph 4.7 of the Settlement Agreement.

b. The parties further agree that all pre-litigation consultation fees incurred by counsel for the Holder of the Note from the date of the Settlement Agreement to the date of the reconveyance will be the responsibility of the City. This amount is not to exceed \$1,000 and may be increased, if necessary, upon prior written agreement of the Parties.

10. Jurisdiction. This Note shall be construed under the laws of the State of Washington and the undersigned agrees that they will be subject to the jurisdiction of the State of Washington and that if any litigation ensues in connection with or arising out of the Note, such litigation shall take place in the Superior Court of King County for the State of Washington.

11. Waiver of jury trial. The Parties irrevocably waive any right to a trial by jury.

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NOTICE: ORAL AGREEMENTS, PROMISES OR COMMITMENTS TO LEND MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND THE TERMS UNDER WHICH MONEY WAS LENT OR CREDIT WAS EXTENDED, TO RELEASE ANY GUARANTOR TO FORBEAR WITH RESPECT TO THE REPAYMENT OF ANY DEBT OR THE EXERCISE OF ANY REMEDY, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO A DEBT OR OTHER EXTENSION OF CREDIT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

EXECUTED on the _____ day of _____, 2019.

CITY OF AUBURN

LENDERS

Nancy Backus, Mayor

Doris Eslinger on behalf of
Frank Baron, Hong Family Trust,
and David Rose, LLC

APPROVED AS TO FORM:

Steven L. Gross, City Attorney



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5451 (Gaub)

Date:

August 26, 2019

Department:

Public Works

Attachments:

[Resolution No. 5451](#)

[Exhibits A & B](#)

[Staff Report](#)

[Vicinity Map](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council adopt Resolution No. 5451 for Right-of-Way Vacation No. V2-19 for the Auburn School District

Background Summary:

The Auburn School District has applied to the City for vacation of the unopened right-of-way located at 130th Avenue SE, between SE 304th Street and SE 302nd Place, described in Exhibit "A" and shown on Exhibit "B". The applicant either owns the adjacent property or is in the process of acquiring it and is proposing to incorporate the right-of-way into development of the adjacent property for construction of a new school.

The application has been reviewed by City staff and utility purveyors who have an interest in this right-of-way. Through this review City staff has determined that the right-of-way is no longer necessary to meet the needs of the City and could be vacated.

Resolution No. 5451, if adopted by City Council, sets the date of the public hearing for Vacation No. V2-19 for October 7, 2019.

Reviewed by Council Committees:**Councilmember:****Staff:**

Gaub

Meeting Date: September 3, 2019

Item Number:

RES.B

RESOLUTION NO. 5451

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, SETTING A PUBLIC HEARING TO CONSIDER THE VACATION OF RIGHT-OF-WAY OF 130TH AVENUE SE, BETWEEN SE 304TH STREET AND SE 302ND PLACE, WITHIN THE CITY OF AUBURN, WASHINGTON.

WHEREAS, the City of Auburn, Washington, has received a petition signed by owners of at least two-thirds (2/3) of the property abutting the right-of-way at the location of 130th Avenue SE between SE 304th Street and SE 302nd Place, within the City of Auburn, Washington, requesting that the right-of-way be vacated; and,

WHEREAS, Section 35.79.010 of the Revised Code of Washington, requires that the City set a hearing on vacation by Resolution, with the date of the hearing being not more than sixty (60) days nor less than twenty (20) days after the date of passage of such Resolution.

WHEREAS, this Resolution is consistent with Auburn City Code 12.48.070 and calls for a public hearing to consider the proposed vacation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RESOLVES as follows:

Section 1. That a hearing on the vacation of right-of-way at the location of 130th Avenue SE between SE 304th Street and SE 302nd Place, within the City of Auburn, Washington, legally described as follows:

Resolution No. 5451
ROW Vacation #V2-19
August 12, 2019
Page 1

A PORTION OF THE WEST HALF OF THE SOUTHEAST QUARETER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THAT PORTION OF 130TH AVENUE SOUTHEAST, BEING A RIGHT OF WAY 30 FEET IN WIDTH ACCORDING TO THE PLAT OF VINTAGE HILLS DIVISION V, AS RECORDED IN VOLUME 199 OF PLATS AT PAGES 94-98, LYING SOUTHERLY OF THE EASTERLY EXTENSION OF THE SOUTHERLY MARGIN OF SOUTHEAST 302ND PLAVE AND LYING NORTHERLY OF THE NORTHERLY MARGIN OF SOUTHEAST 304TH STREET.

CONTINING 12,490 SQUARE FEET MORE OR LESS.

[Also identified as Exhibit "A".]

and as shown on the document attached, marked as Exhibit "B", is set for 7:00 p.m. on the 7th day of October 2019, at the City Council Chambers at 25 West Main Street, Auburn, Washington, 98001, with all persons wishing to speak to the vacation at the public hearing being invited to attend.

Section 2. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation, including posting notice of the public hearing as required by State law and City Ordinance.

Section 3. This Resolution shall be in full force in effect upon passage and signatures.

DATED and SIGNED this _____ day of _____, 2019.

CITY OF AUBURN

NANCY BACKUS
Mayor

Attest:

Shawn Campbell, City Clerk

Approved as to Form:

Steven L. Gross, City Attorney

Resolution No. 5451
ROW Vacation #V2-19
August 12, 2019
Page 3

EXHIBIT A

130th AVE SE RIGHT OF WAY VACATION
LEGAL DESCRIPTION EXHIBIT

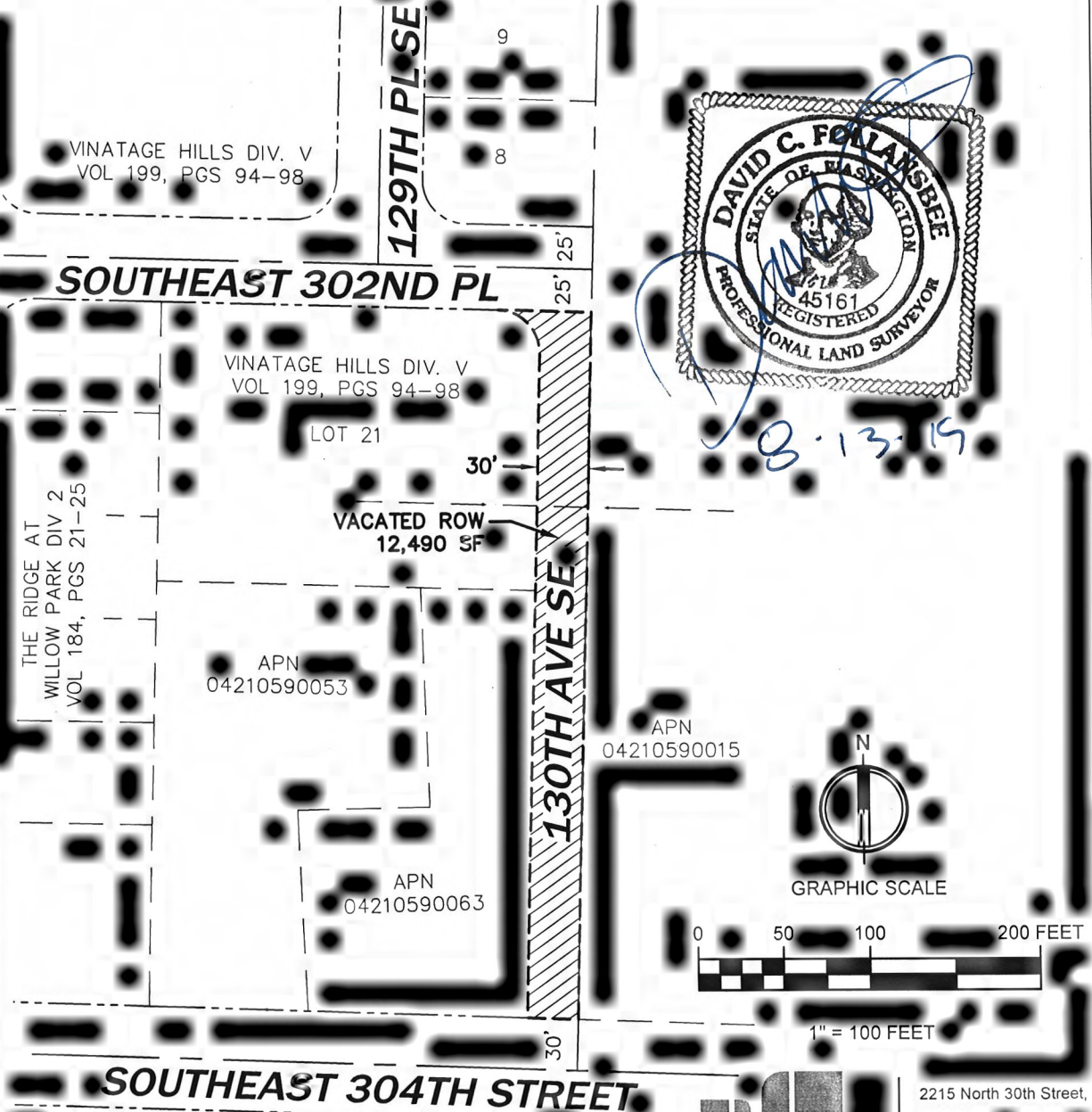
A PORTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 21 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THAT PORTION OF 130TH AVENUE SOUTHEAST, BEING A RIGHT OF WAY 30 FEET IN WIDTH ACCORDING TO THE PLAT OF VINTAGE HILLS DIVISION V, AS RECORDED IN VOLUME 199 OF PLATS AT PAGES 94-98, LYING SOUTHERLY OF THE EASTERLY EXTENSION OF THE SOUTHERLY MARGIN OF SOUTHEAST 302ND PLACE AND LYING NORTHERLY OF THE NORTHERLY MARGIN OF SOUTHEAST 304TH STREET.

CONTAINING 12,490 SQUARE FEET MORE OR LESS.



EXHIBIT "B"
130TH AVE SE RIGHT OF WAY
VACATION DEPICTION EXHIBIT

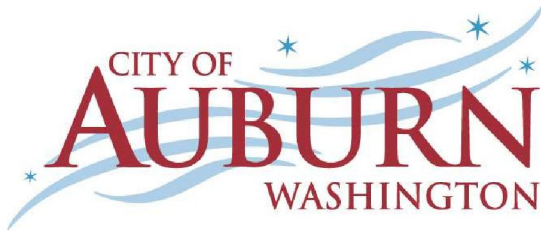


JOB NO. 2180950
May 6, 2019
RIGHT OF WAY VACATION
LEGAL BY: TD EXHIBIT BY: TD
w:\edskproj\2018\2180950\130th vacation.dwg



2215 North 30th Street,
Suite 300,
Tacoma, WA 98403
253.383.2422 TEL
253.383.2572 FAX

THIS EXHIBIT HAS BEEN PREPARED TO ASSIST IN THE INTERPRETATION
OF THE ACCOMPANYING LEGAL DESCRIPTION. IF THERE IS A CONFLICT
BETWEEN THE WRITTEN LEGAL DESCRIPTION AND THIS SKETCH, THE
LEGAL DESCRIPTION SHALL PREVAIL.



RIGHT-OF-WAY VACATION STAFF REPORT

Right-of-Way (ROW) Vacation Number V2-19

Applicant: Auburn School District

Property Location: Rights-of-Way of 130th Avenue SE between SE 304th Street and SE 302nd Place.

Description of right-of-way:

This ROW proposed for vacation consists the unopened 30 foot right-of-way of 130th Avenue SE between SE 304th Street and SE 302nd Place. The ROW is adjacent to Parcel No. 0421059063 and 8946700210 on the west side and Parcel No. 0421059015 on the east side. The Auburn School District owns Parcel No. 0421059063 and 0421059015 and is in the process of acquiring Parcel No. 8946700210. It is bordered on the north and south by right-of-way. The total area of ROW proposed for vacation is 12,490 (+/-) square feet.

The unopened 30 foot ROW of 130th Avenue SE was dedicated to the City for street purposes by the plat of Vintage Hills Division V on May 8, 2001 and recorded in Vol 199 of Plats, Page 94-98, Recording No. 20010508001335 records of King County.

See Exhibits "A" and "B" for legal description and map.

Proposal:

The Applicant proposes to vacate the above described rights-of-way and incorporate it into development of the adjacent parcels for construction of a new school.

Applicable Policies & Regulations:

- RCW's applicable to this situation - meets requirements of RCW 35.79.
- MUTCD standards - not affected by this proposal.
- City Code or Ordinances - meets requirements of ACC 12.48.
- Comprehensive Plan Policy - not affected.
- City Zoning Code - not affected.

Public Benefit:

- The street vacation decreases the right-of-way maintenance obligation of the City.
- The vacated area may be subject to property taxes.

Discussion:

The vacation application was circulated to Puget Sound Energy (PSE), Comcast, CenturyLink, and City staff.

1. Puget Sound Energy (PSE) – PSE currently has overhead electric facilities in the proposed vacation area. Please reserve easements for PSE in the vacation ordinance.
2. Comcast – Comcast has no objection to the proposed vacation.
3. CenturyLink – No Comments received.
4. Water – The City has an 8" water main in that location. The School District will need to replace this line with a larger one and the location will likely change, but an easement will be required for the existing line until such time as a new line and new easements are in place.
5. Sewer – Sewer does not have any facilities in the vacation area.
6. Storm –No comments.
7. Transportation – No comments.
8. Planning – No comments.
9. Fire – No comments.

10. Police – No comments.
11. Streets – No comments.
12. Construction –No comments.
13. Innovation and Technology – No comments.

Assessed Value:

ACC 12.48 states “The city council may require as a condition of the ordinance that the city be compensated for the vacated right-of-way in an amount which does not exceed one-half the value of the right-of-way so vacated, except in the event the subject property or portions thereof were acquired at public expense or have been part of a dedicated public right-of-way for 25 years or more, compensation may be required in an amount equal to the full value of the right-of-way being vacated. The city engineer shall estimate the value of the right-of-way to be vacated based on the assessed values of comparable properties in the vicinity. If the value of the right-of-way is determined by the city engineer to be greater than \$2,000, the applicant will be required to provide the city with an appraisal by an MAI appraiser approved by the city engineer, at the expense of the applicant. The city reserves the right to have a second appraisal performed at the city’s expense.” Note: The city engineer has not required an appraisal for the value of this right-of-way since the right-of-way was originally acquired through dedication of a Plat at no cost to the City and the ROW has never been opened for public use.

Recommendation:

Staff recommends that the street vacation be granted subject to the following conditions:

1. A public utility easement shall be reserved for Puget Sound Energy electrical facilities along the entire length and width of the vacated ROW.
2. A public utility easement shall be reserved for City of Auburn water facilities along the entire length and width of the vacated ROW.
3. Staff recommends that compensation for the value of the right-of-way not be required since the right-of-way was originally acquired through dedication of a Plat at no cost to the City and it has never been opened for public or street use or maintained by the City.

ROW Vacation #V2-19 Auburn School District - 130th Ave SE

Printed Date: 8/13/2019
Map Created by City of Auburn eGIS
Imagery Date: May 2015



377.8	0	188.9	377.8	Feet
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NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

$$1\text{ in} = 189\text{ ft}$$

1: 2,267

Page 56 of 63



Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Resolution No. 5453 (Hinman)

Date:

August 27, 2019

Department:

Administration

Attachments:

[RES 5453 One Stop Shop](#)

[Letter of Intent](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

City Council to approve Resolution No. 5453

Background Summary:

For the last decade, City staff and elected officials have had a variety of conversations about the goal of establishing a consolidated hub where disadvantaged members of our community could more efficiently obtain a variety of community, social and human services. The City has an opportunity to enter into a long-term lease of approximately 23,000 square feet of existing building space located at 2802-2818 Auburn Way North where this vision can be brought to reality.

Reviewed by Council Committees:**Councilmember:****Staff:**

Hinman

Meeting Date: September 3, 2019

Item Number:

RES.C

RESOLUTION NO. 5 4 5 3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AGREEMENTS RELATED TO THE AUBURN CONSOLIDATED RESOURCE CENTER

WHEREAS, for the last decade City staff and elected officials have had a variety of conversations about the goal of establishing a consolidated hub where disadvantaged members of our community could more efficiently obtain a variety of community, social and human services; and,

WHEREAS, the City has an opportunity to enter into a long-term lease of approximately 23,000 square feet of existing building space located at 2802-2818 Auburn Way North; and,

WHEREAS, there are remaining funds in the 2019-2020 budget available for this project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RESOLVES as follows:

Section 1. The Council approves of the “Auburn Consolidated Resource Center” (Center) concept. The purpose of the center is to co-locate a variety of community, social, and human services providers to improve coordination among them, and to make it easier to access those services.

Section 2. The Mayor is authorized to negotiate and execute a lease agreement between the City of Auburn and Benson W. and Kaye M Liu in substantial conformity with the Letter of Intent attached as Exhibit A.

Section 3. The Mayor is authorized to negotiate and execute sublease agreements with tenants.

Section 4. The Mayor is authorized to negotiate and execute sponsorship agreements with funding partners.

Section 5. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 6. This Resolution will take effect and be in full force on passage and signatures.

Dated and Signed: _____

CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Steven L. Gross, City Attorney

City of Auburn
AUBURN SHOPS LETTER OF INTENT

August 20th, 2019

City of Auburn
C/O Josh Arndt

VIA Email

**RE: Tenant's July 2, 2019 Counter proposal
 Landlord's Counter offer
 Letter of Intent to Lease roughly 23,000/ft of commercial space in the Auburn Shops**

Dear Josh,

This Letter of Intent (LOI) is being sent as a result of The City of Auburn's interest in leasing the vacant +/-23,000/ft of commercial space in the Auburn Shops building and subsequent negotiations. Below are the primary business points that are mutually acceptable to the Landlord and the City as a result of these negotiations.

PREMISES:	2802 – 2818 Auburn Way North, Auburn, WA 98002 Estimated 23,000 square feet of leasable area + Those non-handicapped parking stalls located right outside the tenant space and the parking stalls located along the south property line east of the south vehicle ingress/egress drive. (33 total parking stalls, (24) non-HC stalls outside of tenant's spaces, (9) non-HC stalls along south property line). We request an onsite meeting to walk the desired parking area requested. We also want to confirm the intended uses for these parking stalls. Currently the center is "cross parked" with Non-exclusive stalls. We are open to the possibility of exclusive parking, depending on the location and use of the stalls.
RENT:	\$ 12.00/ft/year (base rent) + NNN (\$7.70/ft 2019 estimate)
RENT CONCESSIONS:	2802: no base rent first 5 mos (est. 6,647ft) 2806 – 2818: no base rent first 3 mos (est. 15,660ft) The Landlord will grant the requested free rent and the Tenant is taking the space in its "As Is" condition. The Tenant will pay Triple Nets during the Rent Concession period.
RENTAL PAYMENTS:	monthly
RENTAL ESCALATIONS	Base rent will increase annually on the anniversary date of the lease by 2 ½%, with the first escalation effective Jan 1, 2021
INITIAL TERM / RENEWAL OPTIONS:	Initial Term: Five years from lease commencement Renewal Options: Three (3) Five (5) year renewal term options at tenant's option. The Tenant must provide the Landlord with written notice of their intentions to renew their lease, at least One Hundred and Eighty (180) prior to the expiration of the existing lease term.

City of Auburn
AUBURN SHOPS LETTER OF INTENT

APPROPRIATIONS:	If the City Council fails to appropriate money for this project, the tenant will have the right to terminate the lease with 180 days written notice should funding for this lease cease to exist. Tenant shall pay a cancellation penalty equal to one year's total rent
LEASE COMMENCEMENT / DELIVERY:	The lease to commence upon delivery by Landlord to Tenant of the premises. Both Parties agree to make reasonable efforts to see lease commencement and delivery of the premises within 30 days following Auburn City Council approval. The Tenant will notify the Landlord at least ten (10) days prior to the date of the Council meeting when the proposed terms will be submitted for approval. In no event will the terms be submitted to Council for approval later than the September 16, 2019 City Council Meeting or these terms expire.
MAINTENANCE RESPONSIBILITIES:	Landlord: Foundation, exterior walkways & walls, roof, quarterly HVAC service, pylon sign & parking lot. The costs for some or all of these maintenance items will be billed back to the Tenant in the Triple Net charges. Tenant: Interior walls/plumbing/electrical, fixtures, flooring, trade fixtures, per terms specified in the lease.
SIGNANGE:	Tenant use of all open space on pylon sign minus single slot for each of the existing 3 tenants. Tenant responsible for cost and installation. Plus, space for façade sign above each store front. The Tenant will submit sign designs for all signage to the Landlord for review and approval. Landlord will have Ten (10) business days from delivery by Tenant to approve or disapprove Tenants signage. If Tenant does not receive notification of disapproval from Landlord by 5:00PM on the tenth day the Tenant's signage submittal to Landlord will be deemed approved. All signage will be subject to all applicable codes.
UTILITIES:	Tenant will establish private accounts for all public and private utilities that are individually metered for the sole use of tenant's premises. Tenant will be responsible for a pro-rata share of all public and private utilities that are on a master meter/account. Tenant will have 10 business days from delivery to review and approve/disapprove of utility information provided by landlord. Landlord will provide the following utility information not less than 10 calendar days before the City's scheduled consideration of this term sheet: breakdown on those utilities that are separately metered vs on a master meter. The Landlord will provide the names of the utility providers, but no past bills as the space has been unoccupied.
USES:	Social Service related activities including, but not limited to: Food Bank, Day

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Shelter, Night Shelter, Workforce Training, Community Court, Police Substation. The City will maintain a Police Substation facility on the premises as part of its tenancy, but are under no staffing obligations for the Substation. A constant police presence is not required, however, the space and parking area will have supervision during the lease term and operation of the facilities.

SUBLEASE: The tenant will have the right to sublease some or all of the tenant's premises to other service providers as tenant deems necessary with written approval of the landlord. Landlord will have Ten (10) business days from the request by the Tenant to sublease all or a portion of the premises to approve or disapprove of the Subtenant. If no response of approval or disapproval is received by 5:00PM on the tenth day then Landlord is deemed to have approved the Subtenant.

FIRST RIGHT OF REFUSAL If at any point during the tenancy by the City of Auburn, the Landlord receives an offer to purchase the Auburn Shops Center, the City shall have a Thirty (30) day First Right of Refusal to match the first solicited or unsolicited offer for the sale of the property. This will be a ONE TIME RIGHT and will apply to the first bona fide offer received only. Should the City elect not to exercise their First Right of Refusal, their right shall terminate and the Landlord may sell the building to any third party they chose with no further obligation to the Tenant/City of Auburn.

CITY COUNCIL: This lease and any of its terms are subject to the approval and/or ratification of the Auburn City Council, no later than the September 16, 2019 scheduled Council Meeting.

This Letter of Intent is not binding upon either party, rather a summary of terms City of Auburn staff can present to City Council for approval. If you are in agreement with the above terms, please execute this letter and return an executed copy to me so the City may proceed with the Council process.

Respectfully,

Mr. Benson and Mrs. Kaye Liu

[SIGNATURES ON THE FOLLOWING PAGE]

City of Auburn
AUBURN SHOPS LETTER OF INTENT

Acceptance of Terms

LANDLORD:

By: Benson W. Lim
Kaye M. Liu

Title: Co-Managers

Date: 08/20/2019

CITY OF AUBURN:

By: _____

Title: _____

Date: _____

Liu - City of Auburn - Landlord Counter Offer - Auburn Shops - 8-20-19 Clean Doc