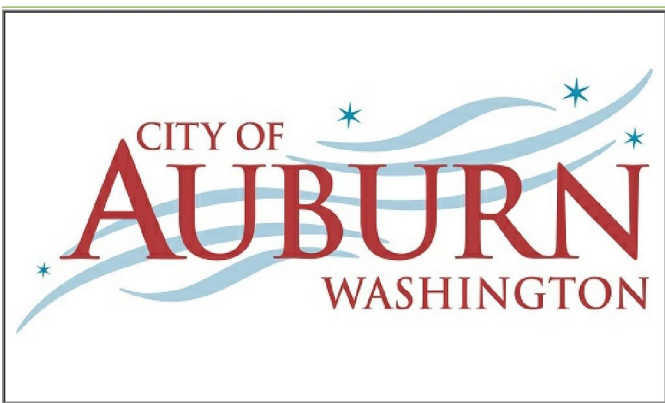


	City Council Study Session Muni Services SFA August 14, 2023 - 5:30 PM City Hall Council Chambers AGENDA Watch the meeting LIVE! Watch the meeting video Meeting videos are not available until 72 hours after the meeting has concluded.
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I. CALL TO ORDER

II. PUBLIC PARTICIPATION

A. Public Participation

The Auburn City Council Study Session Meeting scheduled for Monday, August 14, 2023 at 5:30 p.m. will be held in person and virtually.

Virtual Participation Link:

To view the meeting virtually please click the below link, or call into the meeting at the phone number listed below. The link to the Virtual Meeting is:

<https://www.youtube.com/user/watchauburn/live/?nomobile=1>

To listen to the meeting by phone or Zoom, please call the below number or click the link:

Telephone: 253 205 0468

Toll Free: 888 475 4499

Zoom: <https://us06web.zoom.us/j/86413615302>

B. Roll Call

III. AGENDA MODIFICATIONS

IV. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

V. AGENDA ITEMS FOR COUNCIL DISCUSSION

A. Ordinance No. 6913 (Gaub) (5 Minutes)

An Ordinance granting to MOX Networks, LLC, a Delaware Company, a Franchise for Dark Fiber Infrastructure

B. Ordinance No. 6916 (Gaub) (5 Minutes)

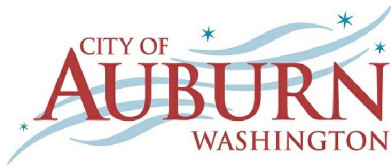
An Ordinance amending Ordinance No. 6839 and extending the deadline to complete conditions associated with vacating Right-of-Way of a portion of West Main Street, East of Lund Road SW, within the City of Auburn, Washington

VI. MUNICIPAL SERVICES DISCUSSION ITEMS

- A. Auburn Ave Theater Update (Faber/Martinson) (20 Minutes)

VII. ADJOURNMENT

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:

Ordinance No. 6913 (Gaub) (5 Minutes)

Date:

July 11, 2023

Department:

Public Works

Attachments:

[Draft Ordinance No. 6913 Franchise Agreement](#)
[No. FRN22-0004](#)

Budget Impact:

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

Administrative Recommendation:

For discussion only.

Background for Motion:**Background Summary:**

Section 20.02.040 of the Auburn City Code requires a franchise for any utility or telecommunications carrier or operator to use public ways of the City and to provide services to persons or areas inside or outside of the City.

MOX Networks, LLC has applied for a site specific franchise agreement to install dark fiber infrastructure in the public way of West Valley Highway within the city limits. MOX intends to provide services for wholesale telecommunications infrastructure of dark fiber optic cable and telecommunications capacity to its customers located outside of the city limits. MOX does not intend to provide any services to any residents or businesses inside the city limits.

Public hearing to consider this application and take public comment is scheduled before the City Council on August 21, 2023 in accordance with Auburn City Code 20.04.040.

Reviewed by Council Committees:

Councilmember: Brown

Staff: Gaub

Meeting Date: August 14, 2023

Item Number:

ORDINANCE NO. 6913

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO MOX NETWORKS, LLC, A DELAWARE COMPANY, A FRANCHISE FOR DARK FIBER INFRASTRUCTURE.

WHEREAS, MOX Networks, LLC ("Franchisee") has applied for a non-exclusive Franchise for the right of entry, use, and occupation of certain public ways within the City of Auburn ("City"), expressly to replace, install, erect, operate, maintain, repair, relocate and remove its facilities in, on, over, under, along and/or across those public ways; and

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

WHEREAS, based on the information presented at such 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 to grant the franchise to Franchisee.

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

Section 1. Definitions

For the purpose of this agreement and the interpretation and enforcement thereof, definitions of words and phrases shall be in accordance with the definitions set forth in this Agreement and in Auburn City Code 20.02.020. If there is a conflict between any of the definitions set forth in this Franchise and the definitions set forth in Auburn City Code 20.02.020, the definitions in this Agreement shall govern to the extent of such conflict.

- A. "ACC" means the Auburn City Code.
- B. "Franchise Area" means the public way of West Valley Highway within the city limits.
- C. "Franchisee's Facilities" means dark fiber optic cable in an existing 1.5-inch conduit located within a multiple conduit route in the Franchise Area, including an undivided interest in certain ducts, manholes, handholes, and vaults serving the conduit route in the Franchise Area.

D. "Franchisee's Services" means wholesale telecommunications infrastructure of dark fiber optic cable and telecommunications capacity provided by the Franchisee using Franchisee Facilities in the Franchise Area and offered for sale, lease, or to be otherwise utilized by Franchisee's clients and customers located outside the City of Auburn. Franchisee's Services do not include telecommunications services to residents or businesses inside the City limits. Franchisee's Services will not include the provision of "cable services", as defined by 47 U.S.C. §522, as amended, for which a separate franchise would be required.

Section 2. Grant of Right to Use Franchise Area

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

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

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Franchisee Facilities and Franchisee Services, and it extends no rights or privilege relative to any facilities or services of any type, including Franchisee Facilities and Franchisee 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 Franchisee'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, public ways, or property. This Franchise will be subject to the power of eminent domain, and in any proceeding under eminent domain, the Franchisee 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 public 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 Franchisee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to Chapter 35.79.030 RCW, within which the

Franchisee may continue to operate any existing Franchisee Facilities under the terms of this Franchise for the remaining period set forth under Section 4.

G. The Franchisee 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.

H. The Franchisee agrees to provide the City with complete contact information for any client, lessee, sub-lessee, customer, or other entity that Franchisee allows to utilize, control, access, or otherwise provides services to, who will also use the Franchisee Facilities to provide services to their clients and customers either inside or outside the City limits. Such contact information shall be provided to the City a minimum of sixty (60) days prior to the start of such anticipated use so that the City may determine if Franchisee's client, lessee, sub-lessee, customer, or other entity is required to obtain a franchise agreement with the City prior to such use. If the client, lessee, sub-lessee, customer, or other entity is required to obtain a franchise agreement with the City, then the Franchisee shall not allow use, control, access, or otherwise provide services to such entity until the required franchise agreement has been obtained.

I. If it at any time it is discovered that Franchisee's Facilities or Franchisee's Services are invalid or unauthorized this Franchise shall be null and void and Franchisee will be required to remove all Franchisee Facilities from the Franchise Area immediately upon notification from the City and an opportunity to cure, unless otherwise approved by the City per the provisions of Section 12. Such removal shall be subject to required permits.

Section 3. 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 is 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. Any communication made by e-mail or similar method will not constitute notice pursuant to this Agreement, except in case of emergency notification.

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

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

Franchisee: Franchisee
Attn: Allen Meeks
2040 E Mariposa Avenue
El Segundo, CA 90245
Telephone: 1-844-215-9500
Email Address: Allen@moxnetworks.com

with a copy to: Franchisee
Attn: Denise C. Clayton, General Counsel
Email Address: denise@moxnetworks.com;
legal@moxnetworks.com

B. Any changes to the above-stated Franchisee information shall be sent to the City's Right-of-Way Specialist, Public Works Department – Transportation Division, with copies to the City Clerk, referencing the title of this Agreement.

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee: MOX NETWORK OPERATIONS CENTER (NOC) 1-855-669-6621- (7x24x365).

Section 4. Term of Agreement

A. This Franchise shall run for a period of fifteen (15) years, from the date of Franchise Acceptance as described in Section 5 of this Agreement.

B. Automatic Extension. If the Franchisee fails to formally apply for a new franchise agreement prior to the expiration of this Franchise's term or any extension thereof, this Franchise automatically continues month to month until a new franchise agreement is applied for and approved under the then current process or until either party gives written notice at least one hundred and eighty (180) days in advance of intent to cancel this Franchise.

Section 5. Acceptance of Franchise

A. This Franchise will not become effective until Franchisee files with the City Clerk (1) the Statement of Acceptance (Exhibit "A"), (2) all verifications of insurance coverage specified under Section 16, (3) the financial security specified in Section 17, and (4) payment of any outstanding application fees required in the City Fee Schedule. These four items will collectively be the "Franchise Acceptance". The date that such Franchise Acceptance is filed with the City Clerk will be the effective date of this Franchise.

B. If the Franchisee fails to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise as described in Section 28 of this Agreement, the City's grant of the Franchise will be null and void.

Section 6. Construction and Maintenance

A. The Franchisee shall apply for, obtain, and comply with the terms of all permits required under applicable law for any work done within the City. Franchisee will comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work.

B. Franchisee agrees to coordinate its activities with the City and all other utilities located within the public way within which Franchisee is under taking its activity.

C. The City expressly reserves the right to prescribe how and where Franchisee's Facilities will be installed within the public way and may require the removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Franchisee as provided for in Chapter 35.99 RCW.

D. Before beginning any work within the public way, the Franchisee will comply with the One Number Locator provisions of Chapter 19.122 RCW to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the city the Franchisee shall have the authority to trim trees upon and overhanging streets, public ways and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Franchisee's Facilities. Franchisee shall be responsible for debris removal from such activities. If such debris is not removed within 24 hours, the City may, at its sole discretion, remove such debris and charge the Franchisee for the cost thereof. 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 other permits as necessary from the City.

Section 7. Trench Repair for Street Restorations.

A. At any time during the term of this Franchise, if a Franchisee Facility or trench within the Franchise Area causes a street to crack, settle, or otherwise fail, the City will notify Franchisee of the deficiency and Franchisee agrees to restore the deficiency and repair the damage within thirty (30) days of written notice by the City.

B. For purposes of the Section, "street" shall mean all City owned improvements within a public way, including, but is not limited to, the following: pavement, sidewalks, curbing, above and below-ground utility facilities, and traffic control devices.

Section 8. Repair and Emergency Work

In the event of an emergency, the Franchisee may commence repair and emergency response work as required under the circumstances. The Franchisee will 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 Franchisee's emergency contact phone number for corresponding response activity. The City may commence emergency response work, at any time, without prior written notice to the Franchisee, but will notify the Franchisee in writing as promptly as possible under the circumstances. Franchisee will reimburse the City for the City's actual cost of performing emergency response work.

Section 9. Damages to City and Third-Party Property

Franchisee agrees that if any of its actions, or the actions of any person, agent, or contractor acting on behalf of the Franchisee under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Franchisee will restore, at its own cost and expense, the property to a safe condition. Upon returning the 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). All repair work shall be performed and completed to the satisfaction of the City Engineer.

Section 10. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a utility or other franchisee, other than the Franchisee's, which was installed, constructed, completed or in place prior in time to Franchisee's application for a

permit to construct or repair Franchisee's Facilities under this Franchise shall have preference as to positioning and location with respect to the Franchisee's Facilities. However, to the extent that the Franchisee's Facilities are completed and installed before another utility or other franchisee's submittal of a permit for new or additional structures, equipment, appurtenances or tangible property, then the Franchisee's Facilities will have priority. These rules governing preference shall continue when relocating or changing the grade of any City road or public way. A relocating utility or franchisee will not cause the relocation of another utility or franchisee that otherwise would not require relocation. This Section will not apply to any City facilities or utilities that may in the future require the relocation of Franchisee's Facilities. Such relocations will be governed by Section 11 and Chapter 35.99 RCW.

B. Franchisee will 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; provided, that for development of new areas, the City, in consultation with Franchisee and other utility purveyors or authorized users of the public way, will develop guidelines and procedures for determining specific utility locations.

Section 11. Relocation of Franchisee Facilities

A. Except as otherwise so required by law, Franchisee 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 Chapter 35.99 RCW. Pursuant to the provisions of Section 15, Franchisee 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 way.

B. If a readjustment or relocation of the Franchisee Facilities is necessitated by a request from a party other than the City, that party shall pay the Franchisee the actual costs associated with such relocation.

Section 12. Abandonment and or Removal of Franchisee Facilities

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

B. Franchisee may ask the City in writing to abandon, in whole or in part, all or any part of the Franchisee's Facilities. Any plan for abandonment of Franchisee Facilities must be approved in writing by the City.

C. The parties expressly agree that this Section will 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. Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Franchisee will underground the Franchisee's Facilities in the manner specified by the City Engineer at no expense or liability to the City, except as may be required by Chapter 35.99 RCW. Where other utilities are present and involved in the undergrounding project, Franchisee will 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 Franchisee's Facilities. Common costs will include necessary costs for common trenching and utility vaults. Fair share will be determined in comparison to the total number and size of all other utility facilities being undergrounded.

Section 14. Franchisee Information

A. Franchisee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Franchisee's activities and fulfill any municipal obligations under state law. Said information will include, at a minimum, as-built drawings of Franchisee's Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, compatible with the City's data base system, including the City's Geographic Information System (GIS) data base. Franchisee will keep the City informed of its long-range plans for coordination with the City's long-range plans.

B. The parties understand that Chapter 42.56 RCW and other applicable law may require public disclosure of information given to the City.

Section 15. Indemnification and Hold Harmless

A. Franchisee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Franchisee's acts, errors or omissions, or from the conduct of Franchisee's business, or from any activity, work or thing done, permitted, or suffered by Franchisee arising from or in connection with this

Franchise Agreement, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

However, 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 Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee's 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, public way, or other property, except to the extent any such damage or loss is directly caused by the negligence of the City, or its agent performing such work.

C. The Franchisee 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 Franchisee, and its agents, assigns, successors, or contractors, will make such arrangements as Franchisee deems fit for the provision of such services. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 15(A), the Franchisee will 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.

Section 16. Insurance

A. The Franchisee shall procure and maintain for the duration of this Agreement and as long as Franchisee has Facilities in the public way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Agreement and use of the public way.

B. No Limitation. The Franchisee's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the

Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance. The Franchisee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Franchisee's Commercial General Liability insurance policy with respect this Franchise Agreement using ISO endorsement CG 20 12 05 09 if the franchise agreement is considered a master permit as defined by RCW 35.99.010, or CG 20 26 07 04 if it is not, or substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.

D. Minimum Amounts of Insurance. The Franchisee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and employer's liability insurance with limits of not less than \$1,000,000.00.

4. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Franchisee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

E. Other Insurance Provisions. Franchisee's Commercial General Liability, Automobile Liability, and Excess or Umbrella Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

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

G. Subcontractors. The Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, including limits no less than what is required of Franchisee under this Agreement. The Franchisee shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

H. Verification of Coverage. The Franchisee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Agreement. Upon request by the City, the Franchisee shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.

I. Notice of Cancellation. Franchisee shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of

Agreement, upon which the City may, after giving five business days' notice to the Franchisee to correct the breach, terminate the Agreement.

K. City Full Availability of Franchisee Limits. If the Franchisee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Franchisee, irrespective of whether such limits maintained by the Franchisee are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Franchisee.

L. Franchisee – Self-Insurance. Franchisee will 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. If the Franchisee is self-insured or becomes self-insured during the term of the Franchise Agreement, Franchisee or its affiliated parent entity shall comply with the following: (i) Franchisee shall submit a letter to the City stating which of the above required insurance provisions in this Section 15 Franchisee proposes to self-insure; (ii) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (iii) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in Section 15.

Section 17. Financial Security

The Franchisee will provide the City with a financial security 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. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, the City may recover jointly and severally from the principal and any surety of that financial security any damages suffered by the City as a result Franchisee's failure to comply, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities. Franchisee specifically agrees that its failure to comply with the terms of Section 20 will constitute damage to the City in the monetary amount set forth in that section. Any financial security will not be construed to limit the Franchisee's liability to the security amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 18. Successors and Assignees

A. All the provisions, conditions, regulations and requirements contained in this Franchise are binding upon the successors, assigns of, and

independent contractors of the Franchisee, and all rights and privileges, as well as all obligations and liabilities of the Franchisee will inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Franchisee is mentioned.

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

C. Franchisee and any proposed assignee or transferee will provide and certify the following to the City not less than ninety (90) 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 in the amount established by the City's fee schedule, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

D. Before the City's consideration of a request by Franchisee to consent to a Franchise assignment or transfer, the proposed Assignee or Transferee will 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 before transfer does not waive any right to insist on full compliance thereafter.

Section 19. Dispute Resolution

A. In the event of a dispute between the City and the Franchisee arising by reason of this Agreement, the dispute will first be referred to the operational officers or representatives designated by City and Franchisee to have oversight over the administration of this Agreement. The officers or representatives will meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties will 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 will be governed by and construed in accordance with the laws of the State of Washington. If any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue will be exclusively in King County, Washington. The prevailing party in any such action will be entitled to its attorneys' fees and costs.

Section 20. Enforcement and Remedies

A. If the Franchisee willfully violates, or fails to comply with any of the provisions of this Franchise through willful or unreasonable negligence, or fails to comply with any notice given to Franchisee under the provisions of this agreement, the City may, at its discretion, provide Franchisee with written notice to cure the breach within thirty (30) days of notification. If the City determines the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee'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 Franchisee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the financial guarantee set forth in Section 17 for every day after the expiration of the cure period that the breach is not cured.

B. If the City determines that Franchisee is acting beyond the scope of permission granted in this Franchise for Franchisee Facilities and Franchisee Services, the City reserves the right to provide notice per Section 20.A to Franchisee of such determination and a 30-day opportunity to cure. If such operations are not cured within this timeframe, the City may cancel this Franchise and require the Franchisee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Franchisee's actions are not allowed under applicable federal and state or City laws, to compel Franchisee to cease those actions.

Section 21. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Franchisee will 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. The Franchisee will 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 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 enacted, amended, or adopted after the effective date of this Franchise if it provides Franchisee 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 will become automatically effective on expiration of the notice period

unless, before expiration of that period, the Franchisee 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 of the call for negotiations, the City may enact the proposed amendment, by incorporating the Franchisee'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 Franchisee, if the Franchisee fails to comply with such amendment or modification.

D. The Franchisee agrees that if at any time the Washington State Utilities and Transportation Commission (WUTC) determines that Franchisee is subject to regulation by the WUTC and is required to register with the WUTC, Franchisee will comply with the WUTC's requirements. Further, the Franchisee agrees to provide the City with evidence of Franchisee's registration with the WUTC within five (5) business days of completing such required registration.

Section 22. License, Tax and Other Charges

This Franchise will not exempt the Franchisee from any future license, tax, or charge which the City may adopt under authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 23. Consequential Damages Limitation

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

Section 24. Severability

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

Section 25. Titles

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

Section 26. Implementation.

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

Section 27. Entire Agreement

This Agreement, as subject to the appropriate city, state, and federal laws, codes, and regulations, and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. All previous Agreements between the parties pertaining to Franchisee's operation of its Facilities are hereby superseded.

Section 28. Effective Date.

This Ordinance will 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:

APPROVED AS TO FORM

Shawn Campbell, MMC, City Clerk

Harry Boesche, Acting City Attorney

PUBLISHED: _____

EXHIBIT "A"

STATEMENT OF ACCEPTANCE

MOX Networks, 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.

Franchisee Name _____
Address _____
City, State, Zip _____

By: _____ Date: _____
Name:
Title:

STATE OF _____)
)ss.
COUNTY OF _____)

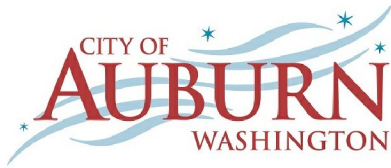
On this ____ day of _____, 20__, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of MOX Networks, LLC, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that they are 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:

Ordinance No. 6916 (Gaub) (5 Minutes)

Date:

August 1, 2023

Department:

Public Works

Attachments:

[Ordinance No. 6916](#)

[Exhibit A](#)

[Vicinity Map](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:

For discussion only.

Background for Motion:**Background Summary:**

Ralph Pozzi has requested an extension of time in which to complete conditions associated with Right-of-Way Vacation No. VAC21-0002 previously approved by City Council on December 20, 2021 under Ordinance No. 6839. The vacation is for a portion of West Main Street, east of Lund Road SW. An extension was previously granted by City Council on December 5, 2022, under Ordinance No. 6893. The current deadline to complete the conditions is September 20, 2023.

The applicant has requested an extension to September 30, 2024 to complete the conditions as the applicant is working to resolve issues that were raised during review of their applications for permits.

Ordinance No. 6916 amends Ordinance No. 6893 and 6839 extending the time for the applicant to complete conditions associated with Right-of-Way Vacation No. VAC21-0002. A depiction of the vacation area is included with Ordinance No. 6893, Exhibit A, and the Vicinity Map, in the packet.

Reviewed by Council Committees:

Councilmember: Brown

Staff:

Gaub

Meeting Date: August 14, 2023

Item Number:

ORDINANCE NO. 6916

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, AMENDING ORD. NO. 6839 AND EXTENDING THE DEADLINE TO COMPLETE CONDITIONS ASSOCIATED WITH VACATING RIGHT-OF-WAY OF A PORTION OF WEST MAIN STREET, EAST OF LUND ROAD SW, WITHIN THE CITY OF AUBURN, WASHINGTON

WHEREAS, the City of Auburn, Washington ("City"), approved Ordinance No. 6839 on December 20, 2021, vacating right-of-way located within a portion of West Main Street, east of Lund Road SW, within the City, subject to conditions outlined in that Ordinance; and,

WHEREAS, Section 1, Paragraph I of Ordinance No. 6839 required that all conditions of the vacation be completed by December 20, 2022 or the vacation and Ordinance would be null and void; and,

WHEREAS, pursuant to Auburn City Code (ACC) 12.48.090 and before the December 20, 2022 deadline in Ordinance No. 6839, the applicant requested additional time to complete the required conditions of Ordinance No. 6839. The City Council granted the request by passing Ordinance No. 6893, which amended Ordinance No. 6839 to extend its vacation condition deadline to September 20, 2023. A copy of Ordinance no. 6893 is attached as Exhibit A to this Ordinance; and,

WHEREAS, by letter dated July 10, 2023, the applicant has indicated that due to unresolved permitting issues, they will not be able to complete the vacation conditions in Section 1, paragraphs F and G of Ordinance No. 6839 by the amended September 20, 2023 deadline set by Ordinance No. 6893. The applicant again requests additional time to

Ordinance No. 6916
ROW Vacation VAC21-0002
August 1, 2023
Page 1 of 3

complete the conditions, and estimates completion by September 30, 2024; and,

WHEREAS, the City has determined that the applicant's request to have a second extension of time until September 30, 2024 to complete the conditions in Section 1, Paragraphs F and G of Ordinance No. 6839, is reasonable in light of the unresolved permitting issues, and that it is in the public interest to continue the deadline; and,

WHEREAS, the City Council has considered and approves the applicant's request for extension.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON DO ORDAIN as a non-codified ordinance as follows:

Section 1. Amendment of City Ordinance. Section 1, Paragraph I of Ordinance No. 6839 is amended to read as follows:

This vacation shall be effective upon completion of the provisions in paragraph F, G, and H, above. The above described provisions of paragraph H must be completed by December 20, 2022, and the above provisions of paragraphs F and G must be completed by September 30, 2024, or the vacation and this Ordinance will be null and void.

Section 2. Constitutionality or Invalidity. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Section 3. Implementation. The mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this location.

Section 4. Effective Date. This Ordinance shall take effect and be in force

Ordinance No. 6916
ROW Vacation VAC21-0002
August 1, 2023
Page 2 of 3

five (5) days from and after passage, approval, and publication as provided by law.

Section 5. Recordation. The City Clerk is directed to record this Ordinance together with Ordinance No. 6893 and Ordinance No. 6839 with the office of the King County Auditor only upon completion of those conditions set forth in Ordinance No. 6839, at which time the vacation pursuant to Ordinance No. 6839 shall be effective under Auburn City Code 12.48.080.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Harry Boesche, Acting City Attorney

PUBLISHED: _____

Ordinance No. 6916
ROW Vacation VAC21-0002
August 1, 2023
Page 3 of 3

ORDINANCE NO. 6893

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, AMENDING DEADLINE TO COMPLETE CONDITIONS ASSOCIATED WITH VACATING RIGHT-OF-WAY OF A PORTION OF WEST MAIN STREET, EAST OF LUND ROAD SW, WITHIN THE CITY OF AUBURN, WASHINGTON

WHEREAS, the City of Auburn, Washington ("City"), approved Ordinance No. 6839 on December 20, 2021, a copy of which is attached as Exhibit A, vacating right-of-way located within a portion of West Main Street, east of Lund Road SW, within the City, subject to conditions outlined in Ordinance No. 6839; and,

WHEREAS, Section 1, Paragraph I of Ordinance No. 6839 required that all conditions of the vacation be completed by December 20, 2022 or the vacation and Ordinance will be null and void; and,

WHEREAS, the applicant has requested additional time to complete the conditions set forth in Section 1, Paragraphs F and G of Ordinance No. 6839; and,

WHEREAS, the City has determined that the applicant's request to have one extension of time until September 20, 2023 to complete the conditions in Section 1, Paragraphs F and G of Ordinance No. 6839, is reasonable in light of unforeseeable circumstances, and that it is in the public interest to continue the deadline; and,

WHEREAS, the City has determined that the deadline to complete all other conditions in Section 1 of Ordinance No. 6839 shall remain December 20, 2022; and,

WHEREAS, the City Council has considered the request for extension.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,

Ordinance No. 6893
ROW Vacation VAC21-0002
November 7, 2022
Page 1 of 3

WASHINGTON DO ORDAIN as a non-codified ordinance as follows:

Section 1. Extension. The deadline for completing the right of way vacation conditions in Section 1, Paragraphs F and G of Ordinance No. 6839 is continued in a one-time extension to September 20, 2023. The applicant's deadline to complete all other conditions of the right of way vacation in Ordinance No. 6839 shall remain December 20, 2022.

Section 2. Constitutionality or Invalidity. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Section 3. Implementation. The mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this location.

Section 4. Effective Date. This Ordinance shall take effect and be in force five (5) days from and after passage, approval, and publication as provided by law.

Ordinance No. 6893
ROW Vacation VAC21-0002
November 7, 2022
Page 2 of 3

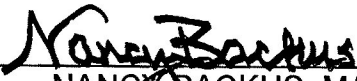
Section 5. Recordation.

The City Clerk is directed to record this Ordinance together with Ordinance No. 6839 with the office of the King County Auditor only upon completion of those conditions set forth in Ordinance No. 6839, at which time the vacation pursuant to Ordinance No. 6839 shall be effective under Auburn City Code 12.48.080.

INTRODUCED: DEC 0 5 2022

PASSED: DEC 0 5 2022

APPROVED: DEC 0 5 2022



NANCY BACKUS, MAYOR

ATTEST:


For: Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:



Kendra Comeau, City Attorney

PUBLISHED: _____

Exhibit "A"

ORDINANCE NO. 6839

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, VACATING RIGHT-OF-WAY OF A PORTION OF WEST MAIN STREET, EAST OF LUND ROAD SW, WITHIN THE CITY OF AUBURN, WASHINGTON.

WHEREAS, the City of Auburn, Washington ("City"), has received a petition signed by at least two-thirds (2/3) of the owners of property abutting right-of-way located within a portion of West Main Street, east of Lund Road SW, within the City of Auburn, requesting vacation of the right-of-way; and,

WHEREAS, as required by Chapter 12.48 of the Auburn City Code, a public hearing was held in connection with the possible vacation, with notice having been provided pursuant to statute; and,

WHEREAS, the City Council has considered all matters presented at the public hearing on the proposed vacation, held on the 20th day of December, 2021, at the Auburn City Council Chambers in Auburn, Washington.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON DO ORDAIN as a non-codified ordinance as follows:

Section 1. Vacation. That the right of way located at a portion of West Main Street, east of Lund Road SW, located within the City of Auburn, Washington, legally described as follows:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1
OF CITY OF AUBURN SHORT PLAT NUMBER SP-11-85,
RECORDED JANUARY 08, 1986 UNDER RECORDING
NUMBER 8601080790, IN KING COUNTY, WASHINGTON;
THENCE NORTH 86°14'47" WEST ALONG THE NORTH

Ordinance No. 6839
ROW Vacation VAC21-0002
November 3, 2021
Page 1 of 7

LINE OF SAID LOT 1 A DISTANCE OF 65.87 FEET;
THENCE SOUTH 03°45'13" WEST 3.00 FEET TO THE
BEGINNING;
THENCE CONTINUING SOUTH 03°45'13" WEST 27.00 FEET
TO THE BEGINNING OF A NON-TANGENT CURVE TO THE
RIGHT THE RADUIS POINT OF WHICH BEARS NORTH
03°45'13" EAST DISTANT 2260.00 FEET;
THENCE ALONG SAID CURVE THROUGH A CENTRAL
ANGLE OF 8°35'30" AN ARC LENGTH OF 338.89 FEET;
THENCE NORTH 77°39'17" WEST 31.05 FEET;
THENCE NORTH 86°14'47" WEST 30.07 FEET TO THE
BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT
THE RADIUS POINT OF WHICH BEARS SOUTH 80°54'28"
EAST DISTANT 30.00 FEET;
THENCE ALONG SAID CURVE THROUGH A CENTRAL
ANGLE OF 94°02'01" AN ARC LENGTH OF 49.24 FEET TO
THE BEGINNING OF A CURVE TO THE LEFT HABING A
RADIUS OF 2233.00 FEET;
THENCE ALONG SAID CURVE THROUGH A CENTRAL
ANGLE OF 9°22'20" AN ARC LENGTH OF 365.27 FEET TO
THE POINT OF BEGINNING.

CONTAINING AN AREA OF 10,620 SQUARE FEET, MORE
OR LESS.

and as shown on the survey, a copy of which is attached, marked Exhibit "A" is vacated and
the property lying in the right-of-way described, shall inure and belong to those persons
entitled to receive the property in accordance with RCW 35.79.040, conditioned upon the
following:

A. Reservation in favor of the City of a perpetual Nonexclusive Easement
under, over, through and across the vacated right-of-way as described above for the
purpose of laying, maintaining, and installing future and existing water, sanitary sewer
and storm water facilities and including a reservation in favor of the City of the right to
grant easements for utilities over, under and on all portions of the vacated right-of-way as

Ordinance No. 6839
ROW Vacation VAC21-0002
November 3, 2021
Page 2 of 7

described above.

The City shall have the absolute right, at times as may be necessary for immediate entry upon said Easement Area for the purpose of maintenance, inspection, construction, repair or reconstruction of the above improvements without incurring any legal obligation or liability.

The City shall have the absolute right to place any type of driving surface within said Easement Area deemed necessary by the City.

The owners of the adjacent properties agree and shall not in any way block, restrict or impede access and egress to or from said Easement Area, and /or in any way block, restrict or impede full use of the real property within the Easement Area by the City for the above described purposes. No building, wall, rockery, fence, trees, or structure of any kind shall be erected or planted, nor shall any fill material be placed within the boundaries of said Easement Area, without the express written consent of the City. Except as required or approved by the City, no excavation shall be made within three feet of said facilities. The surface level of the ground within the Easement Area shall be maintained at the elevation as currently existing except areas that were previously graded and must be re-graded to satisfy conditions of this right-of-way vacation as set forth in paragraphs F and G.

This easement shall be a covenant running with the adjacent property parcels and burden said real estate, and shall be binding on the successors, heirs and assigns of all parties.

Ordinance No. 6839
ROW Vacation VAC21-0002
November 3, 2021
Page 3 of 7

B. Under the terms of the reservation set out in Paragraph A above and in accordance with RCW 35.79.030, the City grants a private utility easement to Puget Sound Energy over, under, and upon the vacated right-of-way as described above for the construction, operation, maintenance, repair, replacement, improvement and removal of electric and gas distribution facilities. The owners of the adjacent property shall not erect any structures on the easement and shall not place trees or other obstructions on the easement that would interfere with the exercise of Grantee's rights.

This easement shall be a covenant running with the adjacent property parcels and burden said real estate, and shall be binding on the successors, heirs and assigns of all parties.

C. In accordance with RCW 35.79.030, the City grants a private utility easement to CenturyLink over, under and upon the vacated right-of-way as described above for the construction, operation, maintenance, repair, replacement, improvement and removal of wireline telecommunications facilities. The owners of the adjacent properties shall not erect any structures on the easement and shall not place trees or other obstructions on the easement that would interfere with the exercise of Grantee's rights.

This easement shall be a covenant running with the adjacent property parcels and burden said real estate, and shall be binding on the successors, heirs and assigns of all parties.

Ordinance No. 6839
ROW Vacation VAC21-0002
November 3, 2021
Page 4 of 7

D. In accordance with RCW 35.79.030, the City grants a private utility easement to Comcast over, under and upon the vacated right-of-way as described above for the construction, operation, maintenance, repair, replacement, improvement and removal of cable facilities. The owners of the adjacent properties shall not erect any structures on the easement and shall not place trees or other obstructions on the easement that would interfere with the exercise of Grantee's rights.

This easement shall be a covenant running with the adjacent property parcels and burden said real estate, and shall be binding on the successors, heirs and assigns of all parties.

E. It is provided, however that such reserved or granted utility and access easements as set out in Paragraphs A, B, C and D above may be modified to accommodate a removal, relocation and sitting of the affected utility lines if the Utility and the property owners on whose property the utility lines are located agree to the removal relocations and sitting being paid by said property owners and with the removal relocation and sitting being done in conformity with applicable standards.

F. The applicant shall move the existing fence to the current property line (as it exists prior to vacation) and obtain a Grading Permit to remove gravel and construct proper site improvements for storm drainage to storm inlet structures, parking, lighting and landscaping per City requirements and Engineering Design and Construction Standards.

Ordinance No. 6839
ROW Vacation VAC21-0002
November 3, 2021
Page 5 of 7

G. The applicant shall obtain required permits and replace the domed storm inlet structures with a standard grate and shall install concrete aprons around all storm inlet structures per the City's Standard Details.

H. In accordance with RCW 35.79.0360 and ACC 12.48.085, compensation to the City of Auburn, shall be made by the owner or owners of property adjacent thereto in the total amount of Forty-five Thousand (\$45,000.00) Dollars for the full appraised value of the right-of-way, which has been right-of-way for more than twenty-five (25) years and for which public funds were expended.

I. This vacation shall be effective upon completion of the provisions in paragraph F, G, and H, above. The above described provisions must be completed by December 20, 2022 or the vacation and this Ordinance will be null and void.

Section 2. Constitutionality or Invalidity. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Section 3. Implementation. The Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this location.

Section 4. Effective Date. This Ordinance shall take effect and be in force five (5) days from and after passage, approval, and publication as provided by law.

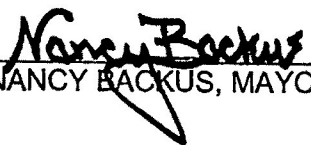
Ordinance No. 6839
ROW Vacation VAC21-0002
November 3, 2021
Page 6 of 7

Section 5. Recordation. The City Clerk is directed to record this Ordinance with the office of the King County Auditor only upon completion of those provisions set forth in Section 1, Paragraphs F, G, and H, above, at which time the vacation pursuant to this Ordinance shall be effective under Auburn City Code 12.48.080.

INTRODUCED: DEC 20 2021

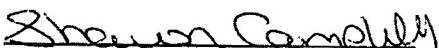
PASSED: DEC 20 2021

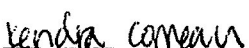
APPROVED: DEC 20 2021


NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:


Shawn Campbell, MMC, City Clerk


Kendra Comeau, City Attorney

PUBLISHED: _____

Ordinance No. 6839
ROW Vacation VAC21-0002
November 3, 2021
Page 7 of 7

EXHIBIT A

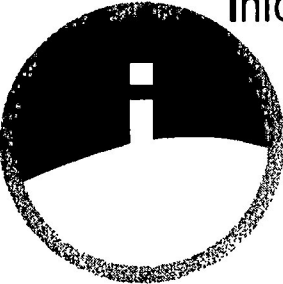
PAGE 1

RIGHT OF WAY VACATION LEGAL DESCRIPTION

COMMENCING AT THE NORTHEAST CORNER OF LOT 1 OF CITY OF AUBURN SHORT PLAT NUMBER SP-11-85, RECORDED JANUARY 08, 1986 UNDER RECORDING NUMBER 8601080790, IN KING COUNTY, WASHINGTON;
THENCE NORTH 86°14'47" WEST ALONG THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 65.87 FEET;
THENCE SOUTH 03°45'13" WEST 3.00 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 03°45'13" WEST 27.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT THE RADIUS POINT OF WHICH BEARS NORTH 03°45'13" EAST DISTANT 2260.00 FEET;
THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 8°35'30" AN ARC LENGTH OF 338.89 FEET;
THENCE NORTH 77°39'17" WEST 31.05 FEET;
THENCE NORTH 86°14'47" WEST 30.07 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT THE RADIUS POINT OF WHICH BEARS SOUTH 80°54'28" EAST DISTANT 30.00 FEET;
THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°02'01" AN ARC LENGTH OF 49.24 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 2233.00 FEET;
THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 9°22'20" AN ARC LENGTH OF 365.27 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 10,620 SQUARE FEET, MORE OR LESS.

A PORTION OF THE NE 1/4 OF THE SW 1/4 OF
SECTION 13, T21N, R4E, W.M.



informed land survey

PO Box 5137
Tacoma, WA 98415-0137

Phone: 253-627-2070
admin@i-landsurvey.com
www.i-landsurvey.com

LAND SURVEYING • MAPPING • CONSTRUCTION LAYOUT

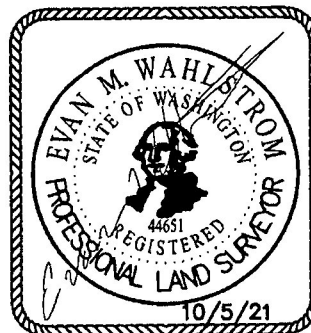
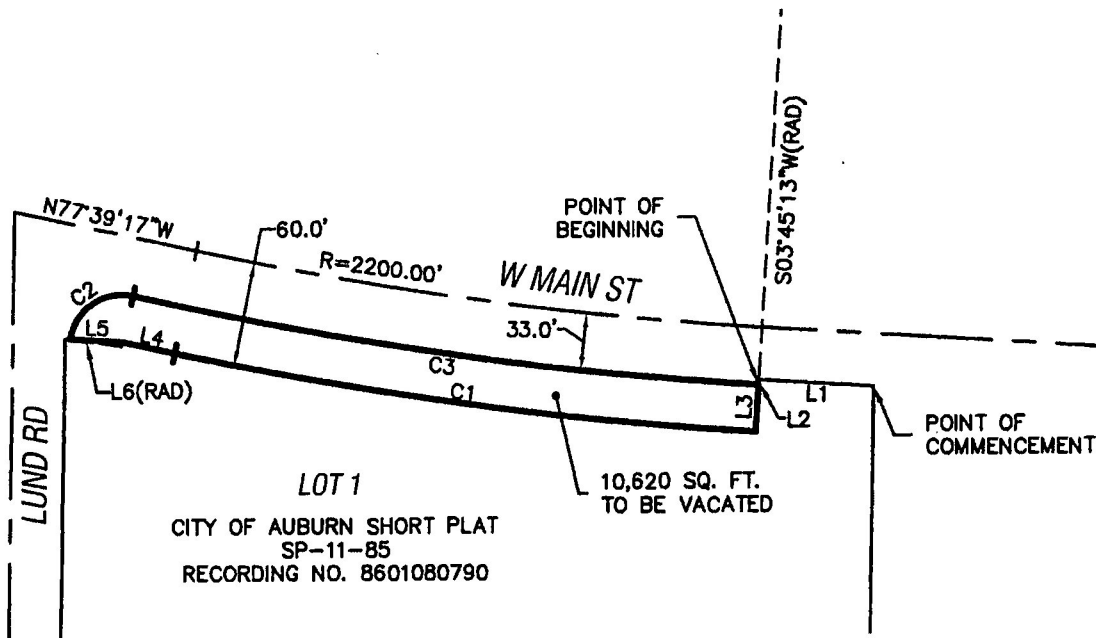
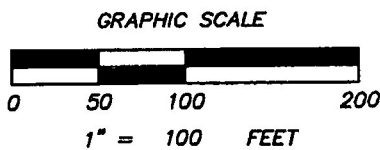


EXHIBIT A
PAGE 2
RIGHT OF WAY VACATION DEPICTION

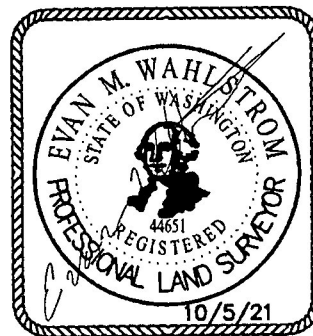


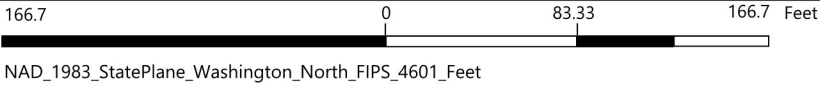
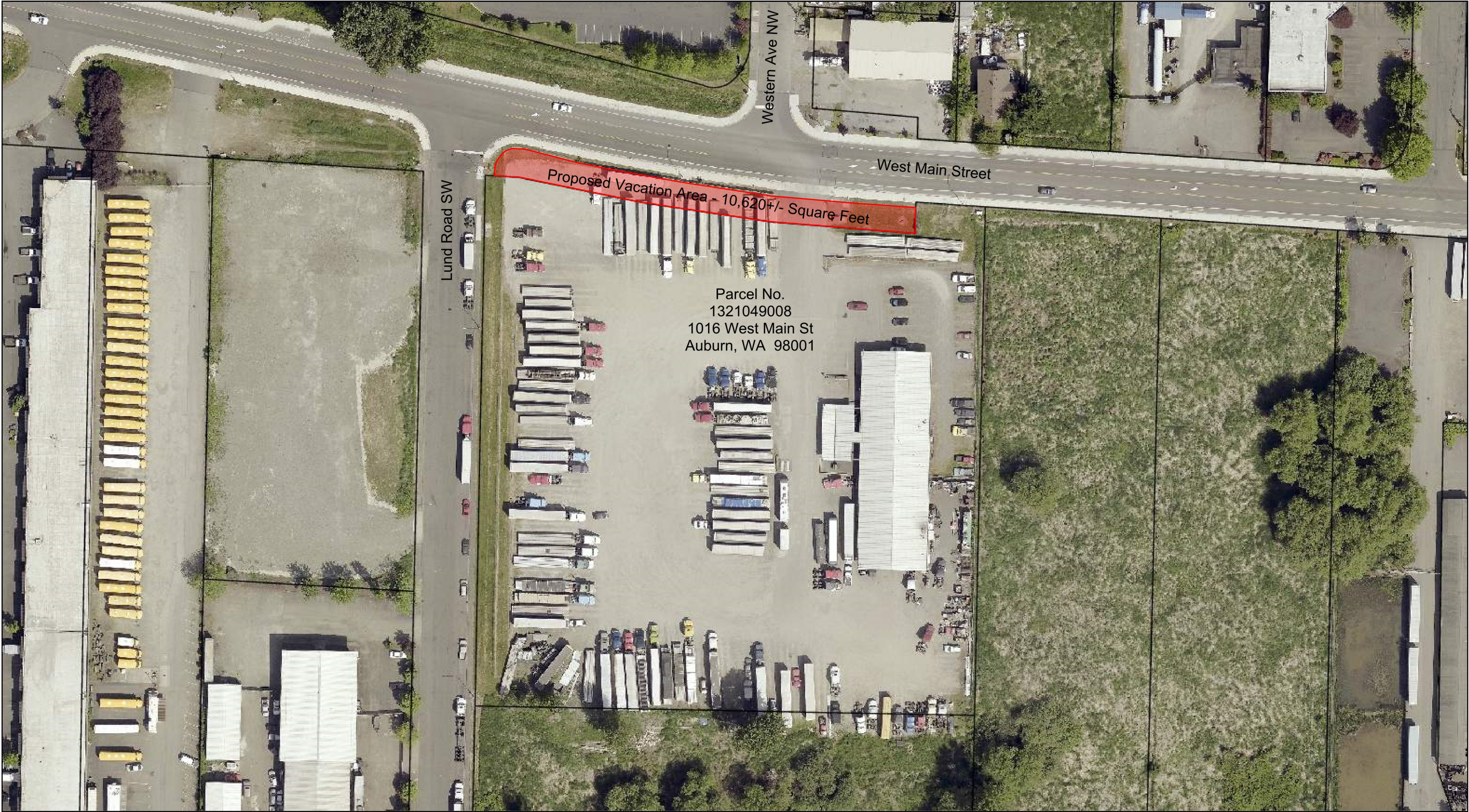
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE
C1	338.89'	2260.00'	8°35'30"
C2	49.24'	30.00'	94°02'01"
C3	365.27'	2233.00'	9°22'20"

LINE	BEARING	DISTANCE
L1	N86°14'47"W	65.87'
L2	S03°45'13"W	3.00'
L3	S03°45'13"W	27.00'
L4	N77°39'17"W	31.05'
L5	N86°14'47"W	30.07'
L6	S80°54'28"E	30.00'

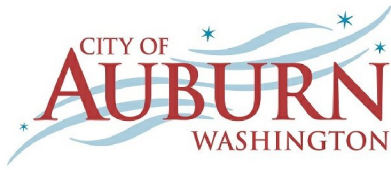


A PORTION OF THE NE 1/4 OF THE SW 1/4 OF
 SECTION 13, T21N, R4E, W.M.





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:

Auburn Ave Theater Update (Faber/Martinson) (20 Minutes)

Date:

August 9, 2023

Department:

Parks/Art and Recreation and
Human Resources

Attachments:

[Auburn Ave Theater update PDF](#)

Budget Impact:

Current Budget: \$0

Proposed Revision: \$0

Revised Budget: \$0

Administrative Recommendation:**Background for Motion:****Background Summary:****Reviewed by Council Committees:**

Councilmember: Jeyaraj

Staff:

Faber/Martinson

Meeting Date: August 14, 2023

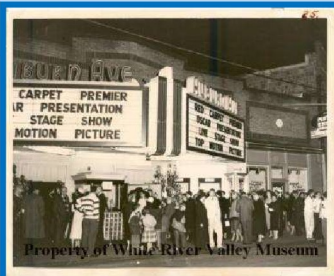
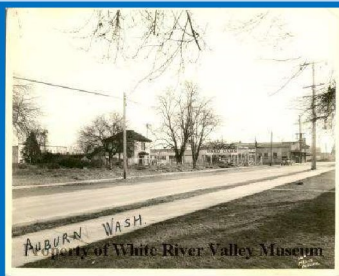
Item Number:



1

BACKGROUND & HISTORY

Built in 1926, the Auburn Avenue Theater was originally used as a bus depot, a movie theater as well as a dinner theater.



From 2007-2021, the City of Auburn managed and operated the Auburn Avenue Theater.

2

THEATER OPERATIONS

- Performing Arts season at the Auburn Ave. Theater included music, dance, comedy, tribute shows, the AveKids series, & seven full-scale theater productions.
- BRAVO season included over 80 performances with an estimated attendance of 14,000.
- Many performances included touring groups from across the Northwest.
- The Auburn Avenue Theater also served as a rental venue



3

STRUCTURAL DAMAGE

Fire at Max House Apartments on July 24, 2021

Downtown Auburn fire causes millions in damage

Investigators are still working to determine the cause of the fire.

By Henry Stewart-Wood
henry.stewart-wood@soundpublishing.com

Investigators are still working to determine what caused the fire that consumed the Max House Apartments on Main Street in downtown Auburn during the early hours of July 24.

"The investigator is waiting on two pieces of evidence to come back from the lab and then he's hoping to make a cause determination," said public information officer Kimberly Terhune. "He has to analyze that and compare it to all of his other notes to come up with the cause determination." It could take weeks for the evidence to come back from the lab, Terhune said. Although the cause is not yet known, the Valley Regional Fire Authority has estimated the cost of the damage done by the fire.

The building, which includes seven businesses and 15 apartment units, sustained an estimated \$1.7 million in structural damage, Terhune said. An additional \$1.25 million worth of damage was done to the contents of the building. This includes personal belongings and products from the businesses, Terhune said. Around 30 residents of the Max House Apartments were displaced by the fire.

The Valley Regional Fire Authority on July 29 reported a detailed description of the fire. Firefighters responded to a report of smoke in the area at 1:36 a.m. July 24. When they arrived at around 1:40 a.m., a Max House resident called to report flames above their unit. The crew confirmed the presence of flames and called for more support.

The fire grew rapidly and more calls from residents came in, reporting the fire was blocking the stairwells outside due to the severity of the fire. The VREA received assistance from several neighboring agencies and were able to extinguish the blaze by 6:34 a.m. No firefighters or residents were injured in the fire.

At the same time, firefighters on the ground set up ladders to help two residents escape from their units. A man and woman jumped over the roof of the 4th and 5th floors and were able to escape.

One searched and everyone was evacuated. Firefighters began fighting the fire from outside due to the severity of the fire. The VREA received assistance from several neighboring agencies and were able to extinguish the blaze by 6:34 a.m. No firefighters or residents were injured in the fire.

Whale's Tales: Mourning the loss of civility with hope for its return Page 4

AUBURN REPORTER

Demolition of the Max House Apartments has begun

The building was damaged by a fire in July 2021.

Excavators demolish the Max House Apartments complex in downtown Auburn on Wednesday, Dec. 15. Photo by Henry Stewart-Wood/Sound Publishing

Musical fundraiser helps food bank

Page 2

Excavators demolish the Max House Apartments complex in downtown Auburn on Wednesday, Dec. 15. Photo by Henry Stewart-Wood/Sound Publishing

Excavators demolish the Max House Apartments complex in downtown Auburn on Wednesday, Dec. 15. Photo by Henry Stewart-Wood/Sound Publishing

4

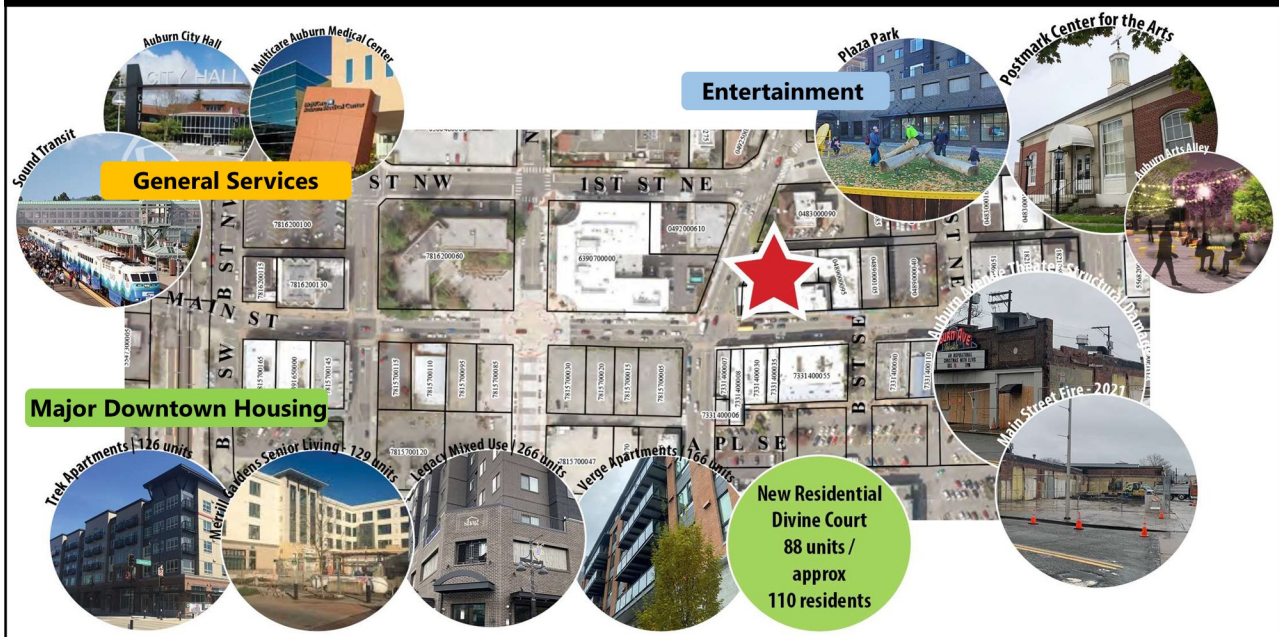
STRUCTURAL DAMAGE

The Auburn Avenue Theater was structurally damaged at the end of 2021 and subsequently condemned in January 2022. The damage was due to the demolition of an adjacent building, which was the result of a fire in July 2021 that destroyed the apartment building and several businesses.



5

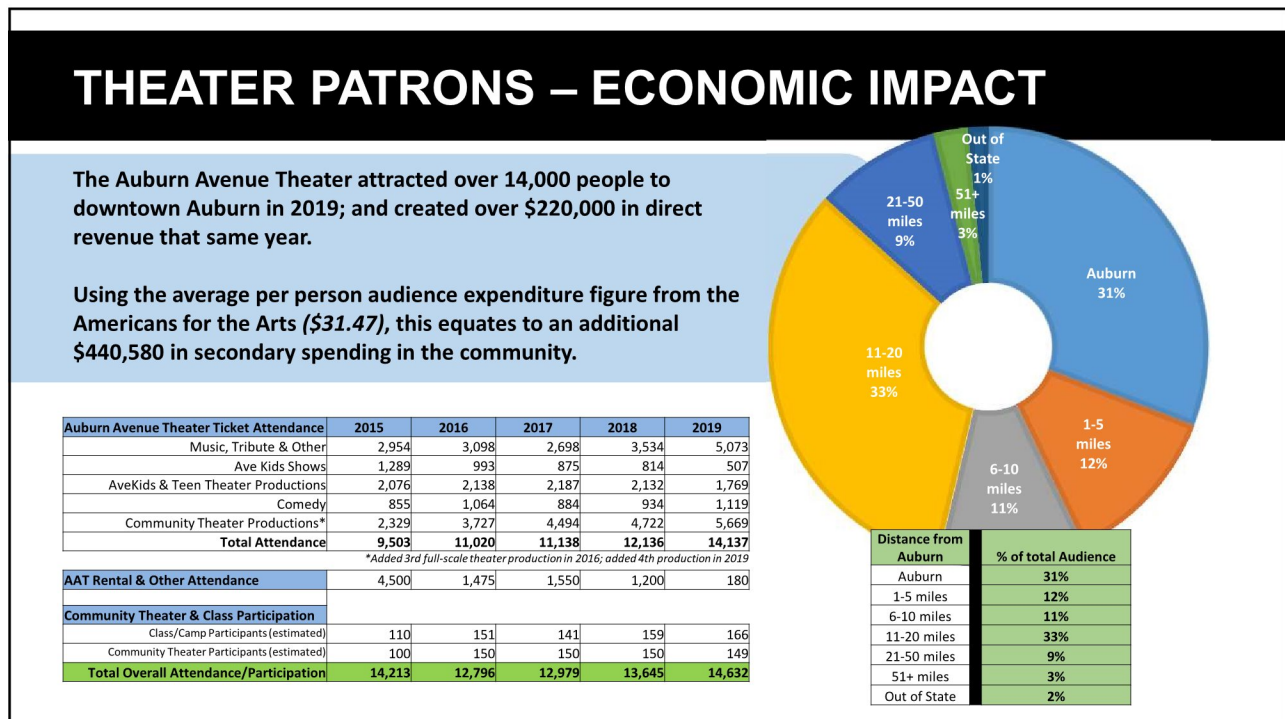
ADDED DOWNTOWN HOUSING



6



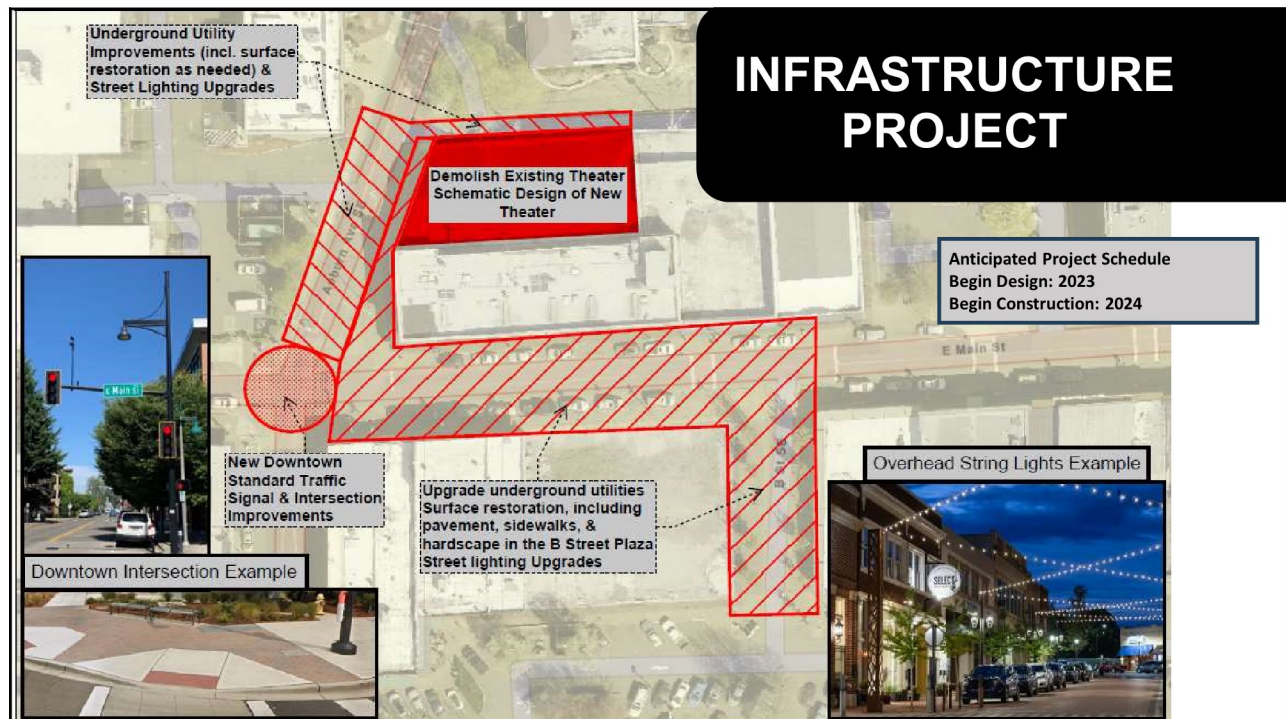
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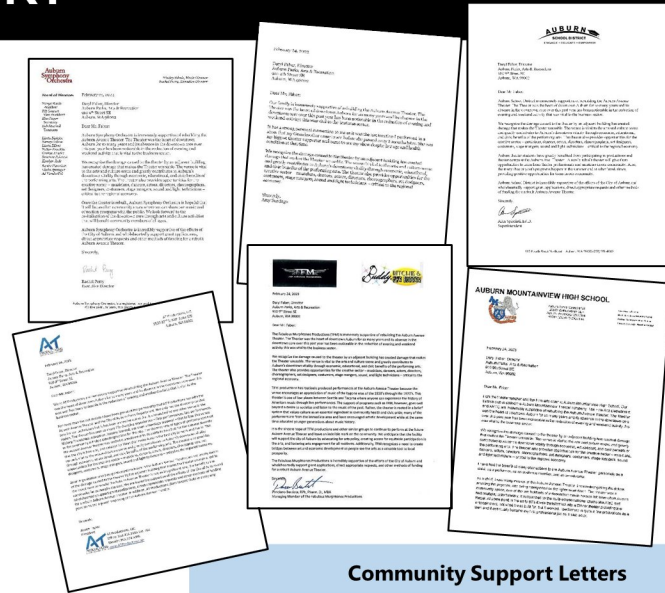


12

COMMUNITY SUPPORT

Notes from Council Retreat

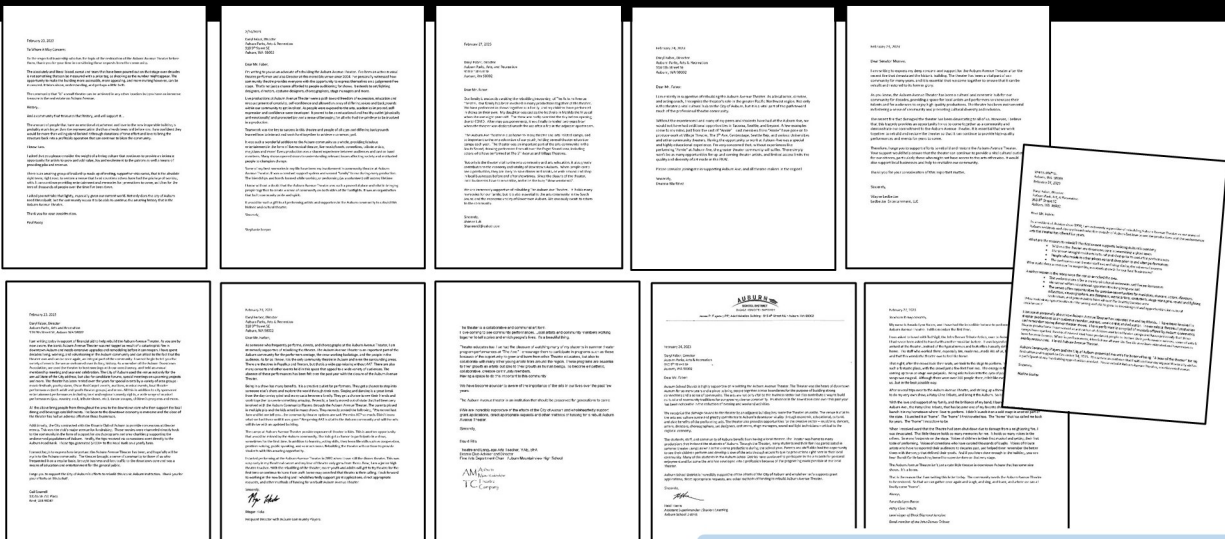
FACILITY IMPROVEMENTS
PUBLIC WORKS, PARKS, POOL
DOWNTOWN REVITALIZATION
HOMELESSNESS
AFFORDABLE HOUSING
COMMUNICATION FLUIDITY
BETWEEN STAFF & COUNCIL
EXTERNAL PARTNERS
INTERNSHIP PROGRAM
EQUITY INCLUSION/COMMUNITY
ENGAGEMENT
AUBURN IMPROVEMENT DISTRICT



Community Support Letters

13

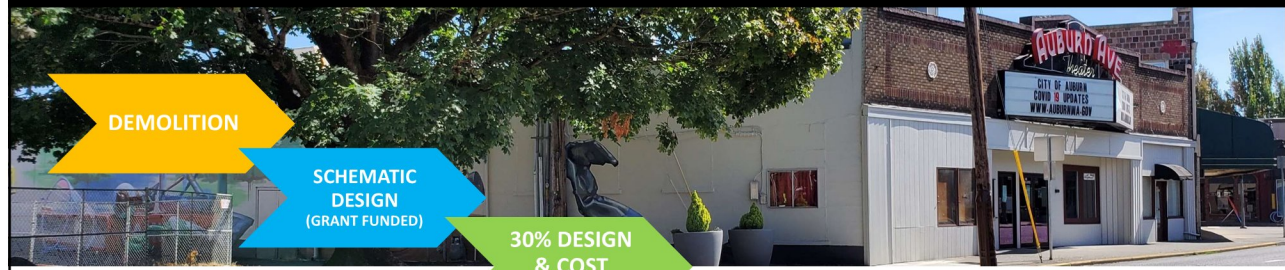
MORE COMMUNITY SUPPORT



Community Support Letters

14

NEXT STEPS



DEMOLITION

SCHEMATIC DESIGN
(GRANT FUNDED)

30% DESIGN & COST ESTIMATES

HOW TO FUND THE PROJECT

Downtown Infrastructure Funds:
 \$1,100,000 (new traffic signal)
 \$2,881,866 (utility and roadway/plaza improvements)

Theater Demo and Schematic Design:
 \$228,200 (insurance claim reimbursement)
 \$100,000 (King County Grant)

Theater Detailed Design & Construction:
 \$1,498,650 (WA State Grant)

Additional Funding Options/Opportunities

- Park Impact Fees
- ARPA Funding Reallocation
- REET
- Naming Rights
- Inside Debt
- Parks Cell Tower Lease Revenues

THEATER ESTIMATIONS:	
Direct Building Elemental Costs: Approximately \$800-\$850/sf	\$8-\$8.5 Million
Total Cost A&E Fees, Furnishings & Equipment, Contingency, Taxes (<i>factored at 30% of direct costs</i>)	\$10.5-\$11 Million

15

DREAMING



16